



WESTMINSTER  
COLORADO

January 26, 2004  
7:00 P.M.

## CITY COUNCIL AGENDA

**NOTICE TO READERS:** City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Presentations
  - A. Presentation of Boy Scouts Chairman's Award to Mayor Ed Moss
5. Citizen Communication (5 minutes or less)
6. Report of City Officials
  - A. City Manager's Report
7. City Council Comments

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 citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

8. Consent Agenda
  - A. December Financial Report
  - B. Replacement computer lease purchase program for 2004
  - C. Purchase of Water Treatment Chemicals
  - D. Change Order for Lowell Boulevard Waterline Contract
  - E. 2004 Concrete Replacement Project Bids
  - F. Special Real Estate Legal Counsel
  - G. Outside Legal Counsel for City Tax-Exempt Financings
  - H. Contract for Public Safety Radio System Maintenance
  - I. CB No. 1 re Pollutant Limitations Amendment to City Code
  - J. CB No. 3 re Growth Management Program Amendment
  - K. CB No. 4 re FY2003 Budget Amendment
9. Appointments and Resignations
  - A. Resolution No. 4 re Reappointments to Boards & Commissions
10. Public Hearings and Other New Business
  - A. Public Hearing re North Huron Urban Renewal Area
  - B. Resolution No. 5 re North Huron Reinvestment Study and Urban Renewal Plan
  - C. Public Hearing re Funding for the Upgrade and Expansion of Big Dry Creek WW Treatment
  - D. Action on Funding for the Upgrade and Expansion of the Big Dry Creek Wastewater Treatment Facility
  - E. Resolution No. 6 re Lowe's Home Improvement Warehouse
  - F. Councillor's Bill No. 5 re 2003 Budget Supplemental Appropriation
  - G. Councillor's Bill No. 6 re Warwick Station Apartments Refunding Bonds
  - H. Resolution No. 7 re Supplemental Compensation for Employees Serving in Operation Iraqi Freedom
  - I. Resolution No. 8 re 2003 Great Outdoors Colorado Grant Contract
  - J. Resolution No. 9 re Recovery Contract Interest Rate
  - K. Resolution No. 10 re 2003 Private Activity Bond Allocation Assignment

- 11. Old Business and Passage of Ordinances on Second Reading**
- 12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
  - A. Citizen Communication
  - B. City Council
  - C. Executive Session
    1. Property Acquisition
    2. Attorney Client privilege
- 13. Adjournment**

**GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JANUARY 26, 2004 AT 7:18 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Moss, Mayor Pro-Tem McNally, Councillors Dittman, Dixon, Kauffman and Price were present at roll call. J. Brent McFall, City Manager; Martin McCullough, City Attorney; and Richelle Work, Acting City Clerk, were also present. Absent Hicks. Councillor Hicks arrived at 7:56 p.m.

CONSIDERATION OF MINUTES

Councillor Dixon moved, seconded by McNally to approve the minutes of the meeting of January 12, 2004 with no additions or corrections. The motion carried unanimously.

PRESENTATION OF BOY SCOUTS CHAIRMAN'S AWARD TO MAYOR ED MOSS

District Commissioner Randall Bishop and Tim Bennett, Mark Walker, Terry Price, and Dave Corey of the Valley District presented Mayor Ed Moss with the Boy Scouts Districts Chairman's Award for outstanding leadership and community involvement.

CITIZEN COMMUNICATION

Joe Armstrong, 4765 W 101<sup>st</sup> Place, representing the Rocky Mountain Figure Skating Club at Sun Microsystems Ice Centre, updated the Council on upcoming events. Puppies in training and their handlers with Guide Dogs for the Blind were present for Council meeting. Dave Corey, Valley District Boy Scouts, addressed Council on a Flag retiring ceremony on July 6, 2004 7:00 p.m. Leroy Ritter, 8371 Auburn Lane, addressed Council concerning Building Department policies.

CONSENT AGENDA

The following items were considered as part of the consent agenda: December Financial Report; Replacement computer lease purchase program for 2004 for \$392,000; Purchase of Water Treatment Chemicals not to exceed \$314,800; Change Order for Lowell Boulevard Waterline Contract got \$36,655; 2004 Concrete Replacement Project Bids for \$729,740; Special Real Estate Legal Counsel not to exceed \$30,000; Outside Legal Counsel for City Tax-Exempt Financings not to exceed \$10,000; Contract for Public Safety Radio System Maintenance for \$70,677.30; CB No. 1 re Pollutant Limitations Amendment to City Code; CB No. 3 re Growth Management Program Amendment; CB No. 4 re FY2003 Budget Amendment.

The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

Mayor Pro-Tem McNally moved, seconded by Dittman to adopt the consent agenda items as presented. The motion carried unanimously.

CITY MANAGER COMMENTS

Brent McFall, City Manager, commented on last night's storm and commended City Staff on the handling of city streets.

CITY COUNCIL COMMENTS

Councillor Dixon commented on the city streets being properly cleaned with this storm, Don VanArsdale was recognized on the new gymnastics center being named after him, her attendance at High Tea at the College Hill Library, and the connections for C-470 go by the Rocky Flats area.

Councillor Price commented on her attendance at a tour of the new 74<sup>th</sup> & Irving Library and that the new library is very nice.

Mayor Pro-Tem McNally commented on the final hearings on the C-470 northwest corridor connections and that the next meeting is this Wednesday.

RESOLUTION NO. 4 REAPPOINTMENT TO BOARDS & COMMISSIONS

Mayor Pro-Tem McNally moved, seconded by Dittman to adopt Resolution No. 4 reappointing James Boschert to the Planning Commission, Ben Beaty to the Open Space Advisory Board, and Ian Walsworth to the Board of Adjustment with terms of office to expire December 31, 2005. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING RE TEFRA WARWICK STATION APARTMENTS REFUNDING BONDS

At 7:45 p.m. the public hearing was opened on the Warwick Station Apartments Refunding. Marty McCullough, City Attorney, and Calvin Hansen of Sherman and Howard were present and addressed Council. There was no opposition. The hearing was declared closed at 7:49 p.m.

COUNCILLOR'S BILL NO. 6 RE WARWICK STATION APARTMENTS REFUNDING BONDS

Councillor Dittman moved, seconded by McNally, to pass Councillor's Bill No. 6 as an emergency ordinance approving the refunding indenture, financing agreement, intercreditor agreement and bond purchase agreement necessary to refund the Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A in the amount of \$8,355,000 for the Warwick Station Apartment Project, and authorizing the Mayor, City Clerk, City Manager and City Attorney to execute documents as necessary to finalize the transaction. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING NORTH HURON REINVESTMENT STUDY AND URBAN RENEWAL PLAN

At 7:50 p.m. the public hearing was opened for the North Huron Reinvestment Study and Urban Renewal Plan. Aaron Gagne, Senior Projects Coordinator, gave a Power Point presentation and entered the following information into the record: a copy of the Agenda Memorandum and other related items. Jim Martell, attorney for the Foster family (Susan Mowrey and Cindy Steele), 300 S. Howes, Ft. Collins, addressed Council on this plan. Eric (Rick) White, 7276 S. Chapparral Cir E, Aurora, representing the property owners at 144<sup>th</sup>, between I-25 and Huron, addressed Council with concerns on this plan. The Public Hearing was declared closed at 8:13 p.m.

RESOLUTION NO. 5 RE NORTH HURON URBAN RENEWAL PLAN

Mayor Pro-Tem McNally moved, seconded by Hicks to adopt Resolution No. 5 adopting the North Huron Urban Renewal Plan and directing staff to commence with the implementation of the Plan. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING EXPANSION OF BIG DRY CREEK WASTEWATER TREATMENT FACILITY

At 8:14 p.m. the public hearing was opened for the Expansion of Big Dry Creek Wastewater Treatment Facility. Kent W. Brugler, Senior Engineer, entered the following information into the record: a copy of the Agenda Memorandum, and other related items. The Public Hearing was declared closed at 8:25 p.m.

UPGRADE AND EXPANSION OF BIG DRY CREEK WASTEWATER TREATMENT FACILITY

Councillor Dixon moved, seconded by Price, to authorize Staff to pursue funding for the upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility through the Colorado Water Resources and Power Development Authority loan program. The motion carried unanimously.

RESOLUTION NO. 6 RE LOWE'S HOME IMPROVEMENT WAREHOUSE

Councillor Dittman moved, seconded by Dixon, to adopt Resolution No. 6 to designate Lowe's Home Improvement Warehouse (Lowe's) as an Economic Development Project for the purpose of receiving administrative review of the Official Development Plan. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 5 RE 2003 BUDGET SUPPLEMENTAL APPROPRIATION

Councillor Dixon moved, seconded by McNally, to pass Councillor's Bill No. 5 on first reading providing for supplementary appropriation to the 2003 budget of the General Fund. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 7 COMPENSATION FOR ACTIVE MILITARY DUTY IN IRAQI FREEDOM

Mayor Pro-Tem McNally moved, seconded by Dixon, to adopt Resolution No. 7 that extends pay and benefits to those City employees who have been or will be called into active military duty in connection with the military operation Iraqi Freedom for a period of up to eighteen months per employee. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 8 RE 2003 GREAT OUTDOORS COLORADO GRANT CONTRACT

Councillor Kauffman moved, seconded by Dittman to adopt Resolution No. 8 authorizing the City Manager to sign a contract with Great Outdoors Colorado accepting a \$50,000 grant for the Westminster Skatepark. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 9 RE RECOVERY CONTRACT INTEREST RATE

Councillor Dittman moved, seconded by Dixon to adopt Resolution No. 9 establishing the 2004 calendar year interest rate for non-City funded public improvement recovery contracts at 6.00 percent and an interest rate of 4.60 percent for City-funded public improvements. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 10 RE PRIVATE ACTIVITY BOND ALLOCATION ASSIGNMENT

Councillor Hicks moved, seconded by Kauffman, to adopt Resolution No. 10 assigning 2003 Private Activity Bond allocations in the amount of \$3,358,938 to the Westminster Economic Development Authority (WEDA) to undertake redevelopment activity within urban renewal areas. Upon roll call vote, the motion carried unanimously.

EXECUTIVE SESSION

Mayor Moss stated there would be an executive session to discuss a property acquisition and an attorney-client matter.

ADJOURNMENT:

The meeting was adjourned at 8:30 P.M.

ATTEST:

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City Clerk

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Mayor

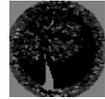


## Agenda Item 4 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
January 26, 2004



**SUBJECT:** Presentation of Boy Scouts Chairman's Award to Mayor Ed Moss

**Prepared By:** Mary Joy Barajas, Executive Secretary

### Recommended City Council Action

Mayor Moss accept the Boy Scouts Chairman's Award to be presented by Valley District Commissioner Randall Bishop.

### Summary Statement

- Mayor Ed Moss is being recognized by the Chairman's Award by the Boy Scouts of American Valley District for this outstanding leadership and community involvement.
- Valley District Commission Randall Bishop will be in attendance to present this award to Mayor Moss.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Not applicable.

**Alternative**

Not applicable.

**Background Information**

Mayor Moss grew up as a Cub Scout and Boy Scout. Moss continued his involvement with the Scouts when his son joined the Cub Scout pack at Flynn Elementary. Moss was on the pack's parent's council, was an assistant pack Cubmaster, and a Webelos den leader for two years. Webelos is the transition between Cub Scouts and Boy Scouts.

Mayor Moss continued his involvement with Scouts well after his son was out of the program and spent two years helping a Webelos den leader who was new to the program. "Webelos is a great program that brings kids and parents together to do things that they might not otherwise do together. It's a lot easier to change a light switch by yourself, but you do it together if your son needs the experience to earn a badge. I love the Webelos program!" says Moss.

Although Scouts is a great way to bring fathers and sons closer together, Scouts also provides male role models to many boys from single-parent families, which Moss sees as another valuable attribute to the organization.

After his tenure assisting a new den leader, Moss was recruited to help the Valley District with the Webelos to Boy Scouts transition. Moss spent several years in this volunteer position, before resigning in 2000 due to time constraints from his new post on the Westminster City Council.

Moss has continued to support the Scouts, helping boys earn merit badges for citizenship in the community, citizenship in the nation, and law. You can often find Moss helping Scouts earn their badge requirements at City Hall.

Moss also takes the time to attend the "Court of Honor" ceremony for Westminster Scouts that achieve the honor of Eagle Scout. Only about two percent of all Scouts earn this rank. "A requirement for the rank is that the young man has to design, supervise and implement some public service project. Many Scouts work with the Parks, Recreation & Libraries Department on projects in the City.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
January 26, 2004



**SUBJECT:** Financial Report for December 2003

**Prepared By:** Mary Ann Parrot, Finance Director

**Recommended City Council Action**

Accept the Financial Report for December as presented.

**Summary Statement**

City Council is requested to review and accept the attached monthly financial statement and monthly revenue report.

The Shopping Center Report is also attached to this monthly financial report; this reflects November sales and use tax receipts received in December. A summary of key points of the shopping center report is as follows and shows improved results for the month and year to date. Several of the following figures will be adjusted where needed for the late filing by a major store mentioned in last month's report. The adjusted figures below will differ from those printed in the shopping center report due to timing differences.

- Westminster Mall sales and use tax returns year-to-date through December were down 9%. (Last month this figure was negative 11%). For the month, returns were up 5.8% on an adjusted basis. (Last month this adjusted figure was negative 8%.)
- Overall shopping center sales and use tax returns (for 25 shopping centers) for the month of December 2003 were up 4.3% on an adjusted basis compared to December 2002. (Last month this adjusted figure was positive 3%.) Overall shopping center sales and use tax returns (for 25 shopping centers) year-to-date through December were down 4%. (Last month this figure was negative 3%). The difference in this month's figure is due to a different mix of stores between the two reports as well as a sizable use tax returns received in November and poor returns for two shopping centers in December.)

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Key features of the monthly financial report for December are as follows:

- At the end of December, 12 months of the year, or 100% of the year, has passed. However, not all of the revenues and expenses have been recorded.
- This month's report shows a comparison of Actual to Budgeted Revenues and Expenditures, rather than pro-rated Revenues and Expenditures. It also will exclude a consideration of carryover, in order to give the reader a picture of the activity for the year presented. This is a more meaningful report for the year-end.
- Year-end adjustments, made during work in preparation for the annual audit, will be recorded from January - April, and will result in accruals for year-end revenues and expenses. Additional adjustments may also result in other differences between this report and the final year-end audited reports. Final information will be available in June.
- The Sales and Use Tax Fund revenues are currently \$2,987,911 under budget for the year without consideration of carryover. The December figures reflect the sales in November, tax receipts received in December. Auto Use Tax for December was received after December books were closed and has not been recorded. It is approximately \$500,000, thus reducing the variance to \$2.5 million under budget. Sales tax returns are up 13.7% for December 2003 compared to December 2002. Sales Tax Returns are up 1.3% year-to-date over last year, or \$479,022 above year-to-date 2002, due in part to vendor fee receipts of \$653,168 and retired business assistance packages.

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- For the entire Sales and Use Tax Fund (Sale and Use Tax Returns plus Audits), the fund is 0.7% above last year on a year-to-date basis. This does not reflect the accruals for the year-end, which will be made during the year-end work in preparation for the annual audit. Staff anticipates that the fund will still be \$2.0 million to \$2.5 million under budget when audited figures are available. Staff presented to City Council at the annual budget retreat on September 29 a revised set of recommendations to address this shortfall, which City Council approved. Staff also reduced the Sales Tax transfer to the General Fund by \$1 million per month, which is reflected in the monthly financial statements.
- The General Fund revenue is currently at 97.1% of budget for twelve months, assisted by surpluses in property tax collections, licenses and permits, and miscellaneous receipts (primarily the \$194,950 DIA noise litigation award, \$86,303 Federal snow removal grant passed through the state, and \$45,720 of passport revenues). This figure is below 100% due primarily to the reduction in the sales tax transfer to the General Fund discussed below.

### Policy Issues

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.

### Alternatives

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 is broken down into a discussion of highlights of each fund presented.

For revenues, a positive indicator is a budget percentage at or above 100%. For expenditures, a positive indicator is a budget percentage that is below 100%.

### General Fund

This fund reflects the results of the City's operating departments: Police, Fire, Public Works (Streets), Parks Recreation and Libraries, Community Development, and the internal service functions such as City Manager, City Attorney, Finance, and General Services.

At the end of December, the General Fund is in the following position regarding both revenues and expenditures:

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- Revenues under budget (97.1% of budget) by \$2,009,068. This is due mostly to the reduction of the transfer of funds from the Sales and Use Tax fund to accommodate the projected shortfall of revenues in the Sales Tax Fund. Billings for EMS and off-duty police time are under budget, causing the category "Other Services" in total to be under budget. Other line items are over budget such as property taxes, licenses & permits, and miscellaneous payments.
- Expenditures under budget (89% of budget) by \$8.1 million. This is due to several factors: 38.5 positions are still frozen and the salary savings of over \$2.0 million are included in these numbers and, the unspent contingency funds of over \$900,000 are reflected in Central Charges, and the departments are all below budget on expenditures. 2003 year-end purchases paid for in January-February 2004 will reduce this expenditure savings figure of \$8.1 million.

Sales and Use Tax Funds (Sales & Use Tax Fund and Open Space Sales & Use Tax Fund)

These funds are the repositories for the 3.25% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the Capital Projects Fund and the Debt Service Fund. The Open Space Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, buy open space, and make park improvements on a pay-as-you-go basis. At the end of December, the position of these funds is as follows:

- Sales & Use Tax Fund revenues are under budget (94% of budget) by \$2,987,911. This number is anticipated to be reduced below \$2.6 million once year end adjustments are made.
- Sales & Use Tax Fund expenditures are under budget by \$2.562 million because of the reduction of transfers to the General Fund by \$1.0 million per month for October and November and the reduced transfer of \$462,016 in December. In addition, staff completes an annual transfer to bring the Debt Service Fund into compliance with federal arbitrage regulations regarding “bona fide debt service fund” for purposes of arbitrage and rebate reporting to the federal government.
- Open Space Sales & Use Tax Fund revenues are under budget (94% of budget) by \$263,648, due to overall returns being below budget.
- Open Space Sales & Use Tax Fund expenditures are under budget (90% of budget) by \$585,421, due primarily to appropriating carryover from 2002 this past July. This increased the budget by \$1.4 million. Expenditures since August are still below the \$1.4 million, leaving the fund’s expenditures in a positive position.

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 operating revenues are used to fund capital projects. At the end of December, the Enterprise is in a positive position.

- Combined Water & Wastewater revenues are over budget (110% of budget) by \$3,639,570, due mostly to increases in water revenues from monthly charges and tap fees.
  - Water fund revenues are over budget (112% of budget) by \$3,014,699, due mostly to increases in fees and charges and tap fees. Water sales are over budget for the second successive month (102.2% of budget) and for the year by \$439,991.
  - Wastewater revenues are over budget (106% of budget) for the year by \$624,872.
  - Storm Water Drainage revenues are over budget (107% of budget) by \$56,788.
- Combined Water & Wastewater expenses are under budget (87% of budget) by \$4.97 million due primarily to under-spending in personnel and contractual services at this time of year:
  - Water expenses are under budget (85% of budget) by \$3.29 million.
  - Wastewater expenses are under budget (89% of budget) by \$1.68 million.
  - Storm Water Drainage expenses are under budget (67% of budget) by \$78,197.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City’s two municipal golf courses. The report for the Golf Courses shows an adjustment for the impact of the 1997 Sales Tax Bonds. The 1997 Sales Tax Bonds are not a legal obligation of the Legacy Ridge Golf Course. The Legacy Ridge statement reflects Operating Income and Net Income. The difference is that Operating Income does not reflect debt service while Net Income does reflect debt service. By showing the debt service separately, this will indicate the operating performance of the golf courses as a whole. This is highlighted in the footnotes.

- Legacy – Revenues are under budget (92% of budget) by \$145,977.
- Legacy – Expenses are under budget (91% of budget) by \$128,643.
- Legacy – Net Income is under budget by \$17,334.
- Heritage – Revenues are under budget (72% of budget) by \$556,569.

- Heritage – Expenses are under budget (92% of budget) by \$111,431.
- Heritage – Net Income is under budget by \$445,213.

Staff will attend the January 26th City Council Meeting to address any questions.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments  
Financial Report  
Revenue Report

**City of Westminster  
Financial Report  
For the Twelve Months Ending December 31, 2003**

Description	Budget	Notes	Actual	(Under) Over Budget	%
<b>Open Space Fund</b>					
<b>Revenues</b>					
Sales & Use Tax	4,461,775	(1)	4,189,594	(272,181)	94%
Intergovernmental Revenue	100,000		100,000	0	100%
Interest Income	25,000	(3)	21,111	(3,889)	84%
Miscellaneous	0		12,422	12,422	
Interfund Transfers	0	(4)	0	0	
Sub-total Revenues	<u>4,586,775</u>		<u>4,323,127</u>	<u>(263,648)</u>	
Carryover	1,422,375	(2)			
Total Revenues	<u>6,009,150</u>		<u>4,323,127</u>	<u>(263,648)</u>	72%
<b>Expenditures</b>					
Central Charges	<u>6,009,150</u>		<u>5,423,729</u>	<u>(585,421)</u>	90%
Revenues Over(Under) Expend	<u>0</u>		<u>(1,100,602)</u>	<u>321,773</u>	

(1) Open Space Sales Taxes 100%; Open Space Use Tax 100%.

(2) Carryover from prior year is budgeted for the next year; included here to render correct balanced budget perspective.

Carryover (Actual) represents use of prior year fund balance, as budgeted.

(3) These numbers reflect the reversal of the unrealized gain recorded for FYE 2002, as required by the Governmental Accounting Standards Board.

(4) This was a FYE transfer from General Capital Improvement Fund of carryover funds.

City of  
 Revenue  
 PRELIMINARY - For the

Description	Budget 2003 YTD	Current Period Actual 2003 December
<b>General Fund Revenues</b>		
Carryover	3,057,631.00	0.00
Taxes	3,663,000.00	92,785.58
Licenses & Permits	1,625,000.00	288,646.72
Intergovernmental Revenue	4,849,433.00	275,997.24
Recreation Charges	4,906,100.00	281,944.07
Franchise Fees	2,485,000.00	166,036.51
General Service Charges	2,771,500.00	230,599.83
Fines	1,900,000.00	136,756.24
Interest Income	450,000.00	15,590.11
Misc	413,543.00	13,324.55
Leases	575,000.00	143,750.00
Refunds	(65,000.00)	0.00
Interfund Transfers	44,260,000.00	3,226,317.67
Other Financing Sources	211,000.00	0.00
<b>Revenues Total General Fund</b>	<b>71,102,207.00</b>	<b>4,871,748.52</b>
<b>Water Fund Revenues</b>		
Carryover	107,000.00	0.00
License & Permits	70,000.00	6,000.00
Intergovernmental Revenue	40,000.00	0.00
Water Sales	20,198,436.00	1,342,911.53
Water Tap Fees	3,433,500.00	367,881.00
Contractor Locate Fee Misc	0	0.00
Interest Income	700,000.00	54,163.21
Miscellaneous	179,500.00	3,713.93
Interfund Transfers	0.00	0.00
Contributions of F/A-amort	0.00	0.00
Other Financing Sources	0.00	0.00
<b>Total Water Revenues</b>	<b>24,728,436.00</b>	<b>1,774,669.67</b>
<b>Wastewater Fund Revenues</b>		
Carryover	14,562,500.00	0.00
Wastewater Sales	8,685,811.00	843,023.57
Wastewater Tap Fees	1,200,000.00	169,701.00
Contractor Locate Fee	0.00	0.00
Interest Income	550,000.00	49,842.38
Miscellaneous	9,498.00	50.00
Interfund Transfers	0.00	0.00

Contributions of F/A-amort	0.00	0.00
Other Financing Sources	0.00	0.00
<b>Wastewater Revenues</b>	<b>25,007,809.00</b>	<b>1,062,616.95</b>

#### Legacy Ridge Fund Revenues

Carryover	(195,605.00)	0.00
Miscellaneous	0.00	0.00
Rentals	0.00	434.28
Concessions	0.00	800.00
Merchandise Sales	206,991.00	4,949.56
Lessons	15,681.00	0.00
Green Fees	1,113,361.00	14,160.00
Cart Rental	261,057.00	2,677.72
Driving Range	125,825.00	2,096.62
Jr. Golf Camp	5,227.00	0.00
Gift Certificates	143,970.00	7,282.80
Gift Certificates Used	0.00	(1,767.95)
Interest Income	0.00	45.75
Miscellaneous	16,727.00	31.23
Refunds	47,219.00	0.00
Contributions of F/A amort	0.00	0.00
Other Financing Sources		
<b>Revenues Total Legacy Ridge</b>	<b>1,740,453.00</b>	<b>30,710.01</b>

#### Heritage at Westmoor Revenues

Carryover	195,605.00	0.00
Miscellaneous	0.00	280.04
Rentals	0.00	87.50
Concessions	0.00	801.53
Merchandise Sales	172,493.00	4,104.19
Lessons	13,590.00	0.00
Green Fees	1,055,863.00	14,821.00
Cart Rental	287,487.00	2,978.86
Driving Range	99,314.00	896.17
Jr. Golf	2,718.00	0.00
Gift Certificates	37,635.00	3,769.00
Gift Certificates Used	0.00	(1,095.55)
Interest Income	0.00	663.35
Miscellaneous	27,181.00	37.02
Refunds	88,337.00	0.00
Contributions of F/A amort	0.00	0.00
Other Financing Sources	0.00	0.00
<b>Revenues Total Heritage Fund</b>	<b>1,980,223.00</b>	<b>27,343.11</b>

#### Storm Drainage Fund Revenues

Carryover	0.00	0.00
Storm Drainage Fee	850,000.00	81,874.78
Interest Income	0.00	2,699.13
Miscellaneous	0.00	0.00
Interfund Transfers	0.00	0.00
Contributions of F/A Amo	0.00	0.00

Other Financing Sources	0.00	0.00
<b>Storm Drainage Revenues</b>	<b>850,000.00</b>	<b>84,573.91</b>

#### Sales and Use Tax Fund Revenues

Carryover	0.00	0.00
Sales Tax Returns	41,309,188.00	3,276,738.58
Sales Tax Audit	500,000.00	36,595.71
Sales Tax Refunds	(60,000.00)	(3,259.65)
Sales Tax Audit Refunds	(5,000.00)	(1,935.08)
Use Tax Returns	2,000,000.00	110,559.36
Use Tax Building	1,900,000.00	351,518.97
Use Tax Auto	5,400,000.00	394,386.97
Use Tax Audit	450,000.00	30,560.69
Use Tax Refunds	(100,000.00)	0.00
Use Tax Collection Fees	(300,000.00)	(19,719.36)
Use Tax Audit Enf (Contra)	0.00	0.86
Interest Income	50,000.00	(869.21)
<b>Revenues Total Sales and Use Tax Revenue</b>	<b>51,144,188.00</b>	<b>4,174,577.84</b>

#### Open Space Sales & Use Tax Fund Revenues

Carryover	1,422,375.00	0.00
Sales Tax Returns	3,715,625.00	279,910.69
Sales Tax Audit	25,000.00	3,049.64
Sales Tax Refunds	(4,000.00)	(271.64)
Sales Tax Audit Refunds	0.00	(161.26)
Use Tax Returns	172,500.00	9,422.28
Use Tax Building	130,000.00	29,775.54
Use Tax Auto	431,650.00	32,865.54
Use Tax Audit	20,000.00	2,546.73
Use Tax Refunds	(6,000.00)	0.00
Use Tax Collection Fees	(23,000.00)	(1,643.28)
Use Tax Audit Enf (Contra)	0.00	0.00
Intergovernmental Revenue	100,000.00	0.00
Interest Income	25,000.00	886.16
Miscellaneous	0.00	1,100.00
Interfund Transfers	0.00	0.00
<b>Revenues Total Open Space Sales/Use Tax</b>	<b>6,009,150.00</b>	<b>357,480.40</b>

































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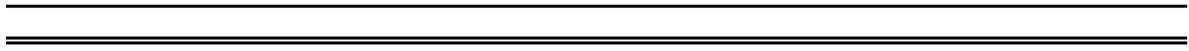
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of Westminster  
 Report For Council  
 e Month Ended December 31, 2003

Year-to-Date Actual 01/03-12/03 Grand Total	Notes	Budget 2002 YTD	Current Period Actual 2002 December	Year-to-Date Actual 01/02-12/02 Grand Total
0.00		9,799,925.00	0.00	0.00
4,439,609.41		3,288,000.00	79,382.49	4,147,938.55
2,285,412.07		1,428,000.00	142,189.54	1,971,067.69
4,297,328.66		4,713,162.00	739,387.16	5,007,730.52
4,922,026.83		4,656,048.00	1,077,849.41	5,374,800.90
2,532,585.82		2,475,000.00	483,958.39	2,637,507.07
2,485,600.00		2,509,604.00	54,008.53	2,609,641.12
1,631,763.96		1,900,000.00	172,584.40	1,714,040.48
158,833.85		400,000.00	72,177.16	322,704.31
699,986.90		278,625.00	45,587.01	350,597.32
575,000.00		575,000.00	143,750.00	575,000.00
(1,624.00)		(65,000.00)	0.00	(14,194.18)
41,797,984.30		46,527,000.00	2,418,915.00	40,902,000.00
211,000.00		354,785.00	354,785.00	354,785.00
<b>66,035,507.80</b>		<b>78,840,149.00</b>	<b>5,784,574.09</b>	<b>65,953,618.78</b>
0.00		17,641,360.00	0.00	0.00
102,306.16		70,000.00	5,700.00	96,625.00
1,165.53		176,000.00	49,146.95	80,247.26
20,638,426.61		20,141,775.00	656,260.25	20,707,011.79
6,063,486.18		3,900,000.00	1,104,042.00	9,494,915.00
555.00		0.00	0.00	4,250.12
463,393.57		1,000,000.00	685,346.61	1,127,606.55
366,801.08		1,626,422.00	2,275,424.84	4,783,737.66
0.00		0.00	0.00	0.00
0.00		0.00	0.00	0.00
0.00		7,250,000.00	0.00	0.00
<b>27,636,134.13</b>		<b>51,805,557.00</b>	<b>4,775,920.65</b>	<b>36,294,393.38</b>
0.00		3,606,633.00	0.00	0.00
9,024,598.95		8,386,834.00	676,407.36	8,830,556.74
1,638,593.75		1,011,000.00	434,159.00	2,766,230.00
0.00		0.00	0.00	0.00
395,152.89		750,000.00	380,145.65	832,536.79
11,834.92		5,000.00	1,260,248.00	1,261,873.00
0.00		0.00	0.00	0.00

0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00
<b>11,070,180.51</b>	<b>13,759,467.00</b>	<b>2,750,960.01</b>	<b>13,691,196.53</b>

0.00			0.00
9,880.00	16,000.00	0.00	10,776.72
14,079.24	14,000.00	139.40	9,282.62
32,574.82	36,000.00	3,000.00	36,000.00
162,708.31	192,000.00	7,276.07	171,971.01
13,005.00	10,000.00	50.00	9,767.00
1,003,327.31	964,204.00	21,716.00	1,064,055.50
227,598.70	253,540.00	4,208.66	246,713.12
117,261.84	122,199.00	3,143.29	117,594.23
2,603.50	5,000.00	0.00	4,450.00
77,829.55	174,000.00	8,255.00	87,800.35
(64,632.16)	0.00	(1,676.80)	(78,410.14)
(1,827.30)	0.00	347.18	(6,247.48)
66.72	0.00	24.87	3,048.56
0.00	0.00	0.00	62.00
0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00
<b>1,594,475.53</b>	<b>1,786,943.00</b>	<b>46,483.67</b>	<b>1,676,863.49</b>

0.00	0.00	0.00	0.00
40,302.74	25,000.00	(692.80)	30,322.16
11,517.50	11,989.00	87.50	6,927.50
31,291.85	36,000.00	3,002.88	36,170.88
164,060.24	185,850.00	3,725.48	149,509.32
10,195.00	10,000.00	0.00	7,756.00
883,511.33	1,102,582.00	18,373.00	915,337.61
202,258.35	256,454.00	4,075.19	268,196.86
67,463.49	117,291.00	1,410.92	69,618.59
0.00	4,500.00	0.00	1,444.00
64,867.49	112,088.00	3,014.00	54,339.40
(58,037.88)	0.00	(828.70)	(47,271.62)
5,202.56	0.00	(504.83)	713.15
1,021.05	0.00	30.94	574.43
0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00
<b>1,423,653.72</b>	<b>1,861,754.00</b>	<b>31,693.58</b>	<b>1,493,638.28</b>

0.00	0.00	0.00	0.00
886,978.30	830,000.00	152,190.86	939,734.93
19,810.37	0.00	17,778.30	35,973.47
0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00

0.00	0.00	0.00	0.00
<b>906,788.67</b>	<b>830,000.00</b>	<b>169,969.16</b>	<b>975,708.40</b>

0.00	900,000.00	0.00	0.00
38,236,460.76	42,710,000.00	2,930,036.67	37,749,160.35
595,836.49	450,000.00	(15,937.40)	573,921.00
(79,925.16)	(55,000.00)	(51,633.78)	(71,647.45)
(2,606.86)	(3,000.00)	0.00	(59.55)
1,588,341.05	1,900,000.00	79,309.71	1,498,329.70
2,534,203.56	1,850,000.00	119,516.91	2,483,260.86
5,176,889.11	5,600,000.00	812,220.93	5,606,482.28
393,454.73	350,000.00	180,761.12	395,695.01
(13,661.06)	(70,000.00)	(20,127.58)	(99,524.62)
(258,841.03)	(280,000.00)	(40,611.08)	(280,324.30)
(4,481.24)	0.00	(6.92)	(5,274.59)
(9,393.28)	50,000.00	(10,280.31)	(72,203.91)
<b>48,156,277.07</b>	<b>53,402,000.00</b>	<b>3,983,248.27</b>	<b>47,777,814.78</b>

0.00	2,441,005.00	0.00	0.00
3,359,512.62	3,867,966.00	246,850.33	3,405,714.34
49,620.48	25,000.00	(1,328.15)	47,826.62
(6,660.74)	(4,000.00)	(4,302.88)	(5,971.68)
(217.24)	0.00	0.00	(4.95)
136,502.85	160,000.00	5,686.08	134,297.07
209,685.92	145,200.00	26,370.26	223,395.28
431,406.94	459,500.00	67,685.00	467,206.35
32,818.74	20,000.00	(1,347.13)	16,564.00
(1,132.66)	(6,000.00)	(482.54)	(7,172.58)
(21,570.18)	(23,000.00)	(3,384.26)	(23,360.33)
(373.21)	0.00	(0.58)	(439.55)
100,000.00	275,000.00	200,000.00	275,000.00
21,111.00	25,000.00	15,039.27	41,534.12
12,422.25	158,500.00	158,600.00	168,093.00
0.00	611,115.00	0.00	611,115.00
<b>4,323,126.77</b>	<b>8,155,286.00</b>	<b>709,385.40</b>	<b>5,353,796.69</b>































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**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Replacement computer lease purchase program for 2004

**Prepared By:** Karen Heckenbach, Systems Analyst III  
Robert Byerhof, Financial Analyst

**Recommended City Council Action:**

Authorize the City Manager to enter into a lease/purchase agreement in the amount of \$392,000 to fund the purchase of computers for the replacement and acquisition program in 2004.

**Summary Statement:**

City Council is being asked to approve the lease purchase of \$392,000 for the purchase and financing cost of personal computers (PCs). The approval continues the replacement PC program that was approved by Council at their February 12, 2001, meeting. Approval of the 2004 lease purchase will:

- Fund the purchase and financing cost of 265 PCs that will support new or upgraded software.
- Continue the on-going long-term replacement program.
- Provide essential tools to conduct the daily business of the City.
- Provide standardization across the City that reduces maintenance costs.

Authorization is requested at this time to comply with Colorado State Law regarding the waiting period required from time of passage to the date purchases can be made. Delivery will not occur until March 2004.

The purchase and financial cost of the computers is estimated to be \$392,000 and the associated lease payments were approved in the 2004 budget. The interest rate will be determined on the date of commitment by the City as defined in the master lease agreement approved by Council on February 12, 2001.

**Expenditure Required:** \$392,000

**Source of Funds:** General, Water and Wastewater, Fleet, Property and Liability, and Open Space Fund Operating Budgets

## **Policy Issues**

Should the City continue the replacement and acquisition schedule of PCs approved by City Council on February 26, 2001?

## **Alternatives**

1. Discontinue the replacement computer program. This option is not recommended. Previous to implementing the replacement program the amount of money available for replacement of PCs fluctuated greatly and many of the machines could not accommodate some of the software used in the City. This led to unproductive duplication of work and effort. The replacement program has eliminated this problem to a large extent.
2. Finance the PC purchases with cash. This option is not recommended. Annual cash funding of computer purchases results in significant and fluctuating cash demands on the City's budget. The master lease purchase program stretches out the annual cost of replacing PCs into quarterly lease payments over three to four years. By moving to the master lease concept, the cash flow needed to purchase replacement and additional computers over the next few years can be scheduled and budgeted with certainty. With the 2004 purchases, the City's entire computer inventory is on the lease program. Beginning in 2005, the quarterly payments will not vary significantly from year to year and will generally increase only by adding new computers to the City's inventory or an increase in interest rates. Currently, the interest rate the City projects to pay for the 2004 purchases is 2.80%, which is well below the City's cost of debt. Because the lease is a revolving 3-year lease, the rate should continue to be low.

## **Background Information**

In 1985, the City of Westminster had approximately 15 personal computers installed in several departments, representing a total asset value of \$48,000. Because of the limited number of PCs in use during the mid-late 1980s, planning for and securing adequate budget for replacing these computers as they became obsolete was not difficult. During the 1990's, the City continued to place added emphasis on the use of PC's and purchased many PCs as Staff recognized the value that PCs offered in terms of internal communications, employee productivity and as tools to provide enhanced and efficient services for citizens and businesses. Currently, the City uses 853 personal computers throughout all departments, representing an investment of approximately \$1.92 million.

A survey by Information Technology (IT) Staff indicated there was a backlog of 122 PCs that were obsolete but were not scheduled for replacement in 2001. Staff members from the City Manager's office, Information Technology and Finance analyzed various options to determine the best method to solve the obsolescence challenge. Given the significant number and value of computers in use by the City, lease purchase financing proved to be the most cost effective method to implement an on-going replacement and acquisition program. The expected results of the program were:

- 1) The City has stabilized the annual cost associated with PC hardware replacement.
- 2) The City has avoided technology obsolescence by establishing a regular replacement schedule and planned annual lease expense.
- 3) PCs have been standardized throughout the City, thus promoting efficiencies in maintenance.

The replacement program was implemented in 2001 using a master lease. The PCs purchased are on either a three- or four-year replacement cycle since computers become obsolete generally between three and four years after purchase, depending on user applications:

- When they no longer have adequate processing speed.
- When the hardware fails.
- When memory capacity or disk space is needed to support new or upgraded software.

Minimum PC capacity and processing speed requirements increase as software vendors add more features and functionality to their products. PCs are essential tools that are used daily to conduct the business of the City. It is important that the technology be updated on a regular schedule in order to provide users with adequate performance, functionality and configuration to be compatible with new software applications.

With the 2004 purchases, the PC leasing cost will stabilize. After 2004, lease expense would increase only when additional new PCs are added to the lease, or interest rates rise in future years.

In 2003, 199 PCs were purchased under the replacement program, which included desk and laptop computers, monitors, peripheral equipment, and software. Scheduled 2004 purchases include 265 PCs along with associated hardware (monitors and drives), for a total estimated cost of \$392,000, which includes the estimated financing cost. The 2004 General Fund and Utility Fund budgets include funds for the lease payments of computers, associated hardware and related software for purchases made from 2001-2004.

Colorado State Law requires a thirty-day waiting period once the City Council passes a lease purchase authorization; this is to allow for citizen comment regarding the leasing function. No objections have been recorded in the past. Therefore, the request to authorize the lease purchase is being requested now so the thirty-day waiting period can begin. The PCs will not be ordered until March 2004.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Purchase of Water Treatment Chemicals

**Prepared By:** Carl F. Pickett, Purchasing Specialist

**Recommended City Council Action**

Deleted:

Award the bid for Ferric Chloride to Kemiron, Caustic Soda and Sodium Hypochlorite to DPC, and for Polyaluminum Chloride to General Chemical at the unit prices indicated on the bid tabulation on an as-needed basis up to a maximum of \$314,800, and charge the expense to the appropriate 2004 Water Resources Division Budget.

**Summary Statement**

- City Council approved the 2004 Water Resources Division budget, which included funds to purchase water treatment chemicals.
- Four chemicals will be purchased in large quantities in 2004. They include: Ferric Chloride, Caustic Soda, Sodium Hypochlorite, and Polyaluminum Chloride.
- In November 2002, the City's Purchasing Specialist received the results of MAPO's (Multiple Assembly of Procurement Officials) bid for water treatment chemicals for 2003/2004. The low bid is being recommended for the purchase of Ferric Chloride, Caustic Soda, and Sodium Hypochlorite.
- Polyaluminum Chloride was not included in MAPO's bid, so the City solicited bids from three vendors in 2003. The only response meeting specifications is being recommended for purchase.

**Expenditure Required:** not to exceed \$314,800

**Source of Funds:** Utility Fund, Water Resources Division Budget

**Policy Issue**

Should the City accept the MAPO bid for Water Treatment Chemicals or seek bids separately for the City of Westminster?

**Alternative**

Reject the MAPO bid and re-bid the chemicals. This is not recommended as the bids received through MAPO are good bids that the City would most likely not be able to improve upon.

**Background Information**

As part of the 2004 budget, City Council approved the purchase of water treatment chemicals for the City's water supply. Information regarding each chemical and its approximate annual usage and low bid price follows:

CHEMICAL	APPROXIMATE QUANTITY	PRICE	EXTENDED PRICE	VENDOR
Ferric Chloride	300 tons	\$285 ton	\$85,500	Kemiron Companies
Caustic Soda	100 tons	\$345 ton	\$34,500	DPC Industries
Sodium Hypochlorite	100 tons	\$1060 ton	\$106,000	DPC Industries
Polyaluminum Chloride	120 tons	\$740 ton	\$88,800	General Chemical

Ferric Chloride is used for coagulation/clarification in the treatment process at the Semper Water Treatment Facility. Caustic Soda is used for pH control and chlorine is used for disinfection. These chemicals are used at the Semper Water Treatment Facility and the Northwest Water Treatment Facility. The usage numbers are approximate since this is for the whole year's usage, and factors such as weather and demand are unpredictable. The approximate usage figures are based on last year's actual usage.

This bid was put out on behalf of MAPO, a cooperative of state, municipal, county, special district, school district and other local government agencies. This is a competitive bid and offers greater volume and lower prices to the City than the City can obtain on its own. Westminster City Code 15-1-4-A1 specifically states that this is an acceptable form of purchasing for the City.

Twenty-nine chemicals were put out on the MAPO bid. Thirty-two water chemical vendors responded to the bid notification. They were American Pride; Aqua Ben Corp.; Aqueous Solution; Basic Chemical Solutions; BHS Marketing; Calgon Carbon; Carbon USA; Carus Corp; CPL Carbon Link; DPC Industries; General Chemical; General Technologies; Good Pasture; Harcros Chemical; Industrial Chemicals; Interstate Chemical; LCI Lucier Chemical Industry; Kemiron North America; Marina Pool Corp.; MeadWestvaco; Mississippi Lime; Norit Americas; Ondeo Nalco; Peak Polymer; Polydine; PVS Tech; Solvay Minerals; Thatcher Company; Treatment Tech.; U.S. Welding; and Univar.

The low bids for the three chemicals, Ferric Chloride to Kemiron in the annual approximate amount of \$85,500, Caustic Soda to DPC Industries in the annual approximate amount of \$34,500, and Sodium Hypochlorite to DPC Industries in the annual approximate amount of \$106,000 meets all specifications and requirements set by the City.

Polyaluminum chloride is used for coagulation/clarification in the treatment process at the Northwest Water Treatment Facility. The sole responsive bid put out by the City for Polyaluminum Chloride was received from General Chemical and was not bid by MAPO. Two other bids were received from Kemiron and Summit Research but they did not meet specifications. Their products each contained less aluminum and required higher volumes of chemical use to offset the difference, thus increasing their net cost. The added volumes also increased the cost of pH adjustment and man-hours for handling the additional chemical shipments. The bid from General Chemical in the annual approximate amount of \$88,800 meets all specifications and requirements set by the City, at the lowest net cost.

The annual estimated cost of the chemicals is within the amount previously approved by City Council for this expense.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2003



**SUBJECT:** Change Order for Lowell Boulevard Waterline Contract

**Prepared By:** Diane M. Phillips, Capital Improvement Coordinator  
Richard Clark, Utilities Operations Manager

**Recommended City Council Action**

Authorize the City Manager to approve a change order to the Farner Enterprises, Inc. contract in the amount of \$36,655 for additional services on the Lowell Boulevard waterline project.

**Summary Statement**

- The existing 6-inch waterline in Lowell Blvd was replaced with a 12-inch waterline because it was undersized and needed numerous repairs.
- The original contract price with Farner Enterprises for construction was \$220,050 plus a contingency of \$22,000.
- There are change orders totalling \$36,655 for this project because of various unforeseeable field conditions that occurred that had to be addressed immediately during construction to prevent interruption of water service.
- Funds are available in the Utility Fund Waterline CIP account for this expense.

**Expenditure Required:** \$36,655

**Source of Funds:** Utility Fund Capital Improvement Project Account

**Policy Issue**

Should the City approve a change to the Farner Enterprises, Inc. contract for additional work on the Lowell Blvd waterline project?

**Alternative**

There are no recommended alternatives to this change. These changes were due to unforeseen circumstances that arose during the course of the project. Due to the continuous operations nature of the utilities systems, these changes needed to be carried out immediately. The required work has already been performed and the contractor should be paid for the additional work.

**Background Information**

The existing 6-inch waterline in Lowell Boulevard was aging and required continued repair. It was undersized and needed to be replaced with 1,600 feet of 12-inch waterline to provide adequate flow.

JR Engineering completed the design and Farner Enterprises, Inc. performed the construction. The contract for these improvements with Farner Enterprises, Inc. for construction was for \$220,050 and was approved by City Council on June 9, 2003. During construction of the waterline additional work was required for a total change to the project of \$36,655, which is 17% of the original contract.

The Lowell Boulevard waterline was installed in an older part of the City where drawings of existing utility lines no longer exist and where it is difficult to locate other existing utilities and where many different utilities have been abandoned. During construction of this waterline an existing sewer manhole and 16-inch waterline interfered with placement of a vault. These utilities were located on the plans, but the exact location could not be determined until actual construction, causing field change conditions in the amount of \$6,006. A temporary wet tap was also needed to maintain water service in the area at a cost of \$5,795.

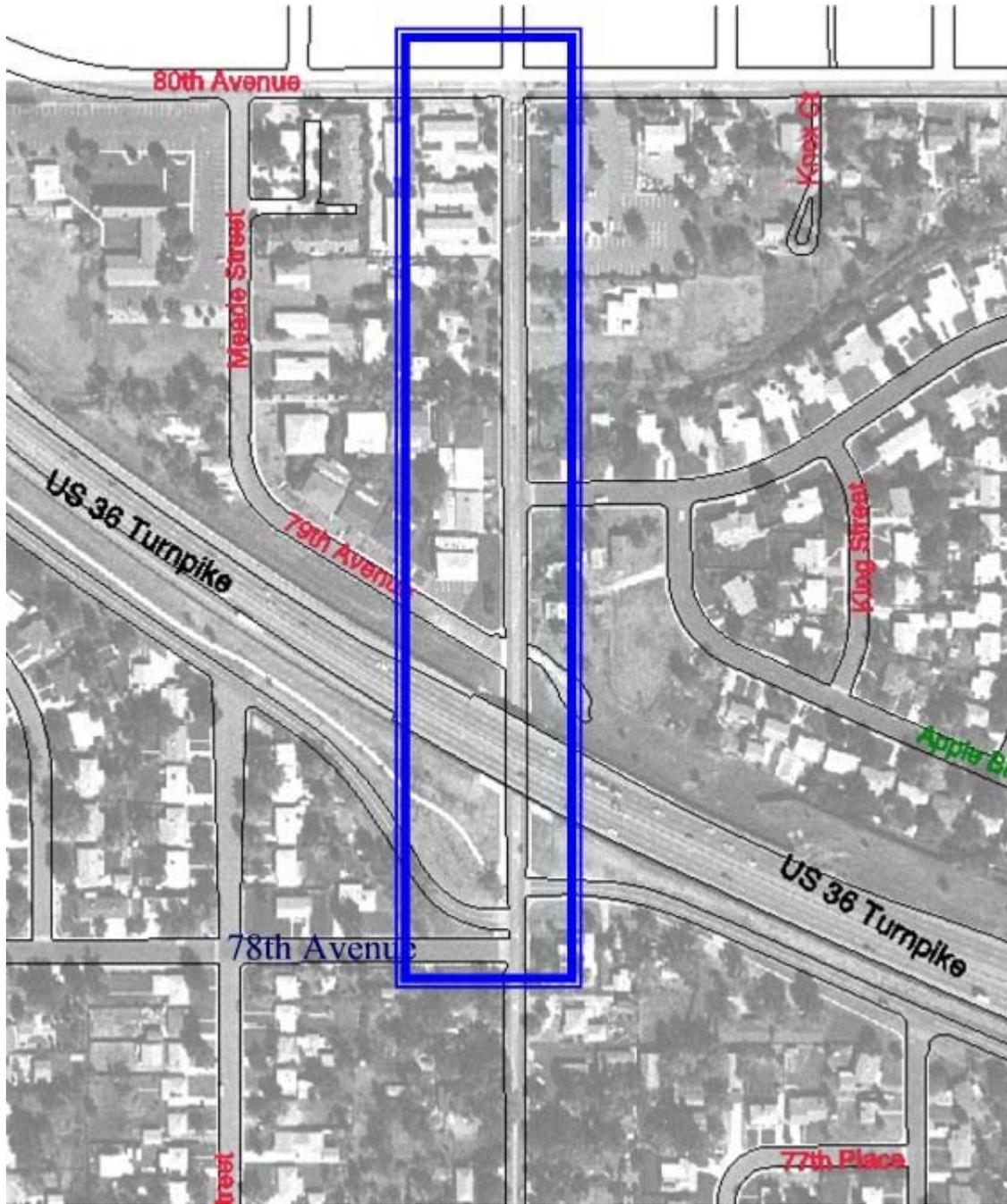
Unstable underground pipe bedding and ditch shoring caused additional time and costs on the project in the amount of \$5,650. Standard potholing did not detect these conditions and these conditions necessitated the use of extensive stabilization to an existing sewer pipe and the surrounding area. These conditions affected some concrete sanitary sewer services that needed to be repaired and protected at a cost of \$4,652. \$7,190 was spent for new water meters vaults and services because they could not be repaired. \$4,180 was spent on down time on the part of the contractor as City staff spent time to operate some old damaged valves on the City's system and for the cost to make system repairs. \$2,376 was spent to repair sidewalk that had been damaged related to the above issues. A gate valve was added when it was realized that one was not existing on some old design plans as shown for a cost of \$1,675 and there was a deduction on the entire contract of \$869 for miscellaneous items.

Funds are available in the Utility Fund Waterline CIP account for this expense.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**



City Council Meeting  
January 26, 2004

**SUBJECT:** 2004 Concrete Replacement Project Bids

**Prepared By:** Ray Porter, Infrastructure Improvements Division Manager

**Recommended City Council Action**

Authorize the City Manager to sign a contract with the low bidder, Asphalt Specialties Co., Inc., in the amount of \$699,740; authorize a \$30,000 contingency amount; and charge the expenses to the appropriate 2004 Department of Public Works and Utilities Infrastructure Improvements Division, Street Division, Utilities Field Operations and General Fund Capital Improvement Project budget accounts.

**Summary Statement**

- City Council action is requested to award the bid for the 2004 Concrete Replacement Project.
- City Council approved funds in the 2004 Infrastructure Improvements Division budget to replace over 24,500 linear feet of deteriorated curbs, gutters, sidewalks, crosspans and curb ramps.
- Project concrete replacement will be done on 52 streets earmarked for reconstruction or resurfacing, at the Municipal Service Center parking lots, and at 201 locations from the “Citizen’s Request for Concrete Replacement Priority List.”
- Participating in this year’s bid were Adams County School Districts #12 and #50 for sidewalk, curb, and gutter replacement at various school sites.
- Formal bids were solicited from ten contractors with nine responding.
- The low bidder, Asphalt Specialties Co., Inc., meets all of the City bid requirements and has successfully completed similar projects in Westminster during the past ten years.

**Expenditure Required:** \$729,740

**Source of Funds:** General Fund; Department of Public Works and Utilities – Infrastructure Improvements Division operating budget, \$646,750, plus \$30,000 contingency; Street Division operating budget, \$28,866; Utilities Field Operations budget, \$5,884; and the City Facilities Parking Lot Maintenance Program General Fund Capital Improvement Project, \$18,240.

### Policy Issue

Should this bid be awarded to the low bidder Asphalt Specialties Co., Inc., for the replacement of concrete curbs, gutters and sidewalks as specified in the contract documents for this project.

### Alternatives

Alternatives to this project include:

- Not replacing concrete on streets earmarked for reconstruction or resurfacing.
  - a) Available dollars for asphalt work could increase by \$185,600.
  - b) The asphalt improvements would not realize full life expectancy, due to accelerated deterioration where damaged gutters are left.
  - c) The backlog of concrete replacement requested by citizens would increase.
  - d) Service level would fall lower than the norm in the Metro Area.
- Not replacing concrete at the citizens' requests.
  - a) Available dollars for asphalt work could increase by \$490,000.
  - b) Service level would fall more in line with other metro entities.
  - c) Citizens would experience a decrease in service and be responsible for any hazards that exist per City ordinance.
- Separate the bids for curb, gutter and sidewalk replacement on isolated citizen requests and street improvements.
  - a) Two bids would be necessary instead of one.
  - b) Some smaller contractors may be able to bid the smaller projects, however doing this in past years has not resulted in a substantial savings.
  - c) If two different contractors acquire the bids, the construction time may be decreased.
  - d) Administrative time and costs would double due to another bid being prepared and administered.

### Background Information

City Council approved funds in the 2004 Infrastructure Improvements Division budget to replace 24,500 linear feet of deteriorated curbs, gutters, sidewalks, crosspans and curb ramps at 53 locations earmarked for street reconstruction or resurfacing and at 201 isolated locations from the "Citizens Request for Concrete Repairs" priority list.

Also participating in this bid is Adams County School Districts #12 and #50. The School Districts' portions of this bid will be awarded and administered by each respective entity.

The following sealed bids were received:

1. Asphalt Specialties Co., Inc.	\$699,740
2. Quality Paving	\$707,379
3. Stack Holm Development & Construction Co.	\$723,241
4. Rives Enterprises	\$750,500
5. Thoutt Bros. Concrete Co.	\$752,392
6. ABCO Contracting	\$755,102
7. Concrete Express Inc.	\$766,249
8. Citywide Enterprises, Inc.	\$778,494
9. Concrete Works of Colorado	\$797,530
City Staff Estimate	\$796,750

City Staff estimated an inflationary cost increase of 3%. Asphalt Specialties' bid averages an 8% decrease in costs when compared to 2003 prices. This bid is an indication of concrete contractors needing the work due to the current economic slow down and the fact that the cost of cement has decreased.

The cost breakdown for this project is as follows:

Infrastructure Improvements Division Operating Budget	\$646,750
MSC Parking Lots (CIP)	18,240
Street Division Operating Budget	28,866
Utilities Field Operations	5,884
Project Contingency	<u>30,000</u>
 TOTAL	 <u>\$729,740</u>

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Special Real Estate Legal Counsel

**Prepared By:** Martin R. McCullough, City Attorney  
Steve Smithers, Assistant City Manager

**Recommended City Council Action:**

Authorize the City Manager to enter into an agreement with Ms. Barbara Banks for special legal counsel services in an amount not to exceed \$30,000 for work related to the Center Point/Catellus buy-back agreement, the Promenade area development, and general real estate legal advice.

**Summary Statement**

- Staff is recommending that the City Council authorize the City Manager to execute a legal services agreement with Ms. Barbara Banks, of Banks and Imatani, for assistance on non-routine real estate law issues that arise from time to time in the course of negotiating and preparing more complex agreements relative to such projects as the Center Point/Catellus buy-back agreements, the Promenade development, and further real estate transactions related to future retail proposals.
- When negotiating some of the more complex agreements involving private owners and their lenders, it can be very important to have someone with the appropriate knowledge to respond to representation that something is either required by or objectionable to the owner's lender or is not commercially "reasonable." In addition, some of the increasingly complex and time-sensitive transactions in which the City is finding itself lately often require more than one attorney to handle the project.
- City Council has previously found merit in approving special legal counsel to assist the City Attorney's Office as needed, rather than expanding staff.
- There are several projects on the immediate horizon that will benefit from such assistance, including future development within the Promenade area, and various North I-25 economic development efforts.
- Funds for this expense are available in the General Fund, Central Charges Professional Services account.

**Expenditure Required:** Not to exceed \$30,000

**Source of Funds:** 2004 General Fund - Central Charges Budget

**Policy Issues**

Whether to retain special legal counsel to assist in the negotiating and drafting of various agreements involving non-routine real estate law issues.

**Alternatives**

City Council could elect not to retain this type of special legal counsel assistance or seek such assistance from another source. Staff believes this outside assistance is critical to the timing and success of several significant current and future developments in the City.

**Background Information**

Ms. Banks is an experienced attorney specializing in real estate law. Ms. Banks is a current member and past chairperson of the Real Estate Section of the Colorado Bar Association. She has written and presented papers on a wide variety of complex real estate issues, including such matters as lender law and “mortgageable ground leases.”

Ms. Banks has previously assisted the City in the negotiations attendant to the Butterfly Pavilion Lease, and was instrumental in completing the joint development agreement, the “condominiumizing agreement” and the conference center lease for the Westin Hotel project. Under the proposed agreement, Ms. Banks is willing to continue her current discounted rate to the City of \$200 per hour. Her regular rate is \$230 per hour.

The City Charter requires City Council approval of all outside legal counsel agreements. City Council previously approved a similar arrangement for specialized legal consulting with Mr. Dee Wisor of Sherman & Howard for public finance and tax law issues. Often, only relatively brief consultations are required, and these type of arrangements afford the opportunity to obtain the necessary advice without holding up progress on the negotiations and structuring of the overall transaction.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Outside Legal Counsel for City Tax-Exempt Financings

**Prepared by:** Martin R. McCullough, City Attorney

**Recommended City Council Action:**

City Council is requested to authorize the City Manager to execute a fee agreement with Sherman & Howard for an amount not to exceed \$10,000 for general tax and financing advice.

**Summary Statement**

- Outside legal counsel is needed, on occasion, to provide necessary advice and counsel to the City in connection with the issuance of tax-exempt bonds, certificates of participation (COP's), lease-purchase agreements, and other forms of tax-exempt financings permitted under the Internal Revenue Code.
- The services of qualified bond counsel are sometimes needed for relatively brief, specific consultations on a particular tax law question.
- Special issues where outside legal counsel services from Sherman & Howard may be of assistance include structuring future business assistance agreements in tax-increment funded urban renewal areas in a way that preserves the ability to issue tax increment bonds; creating special financing districts such as General Improvement Districts and Title 32 Special Districts; issues related to existing and future bond covenants and their requirements; and reviewing proposed uses and assignments of the City's private activity bond allocations.

**Expenditure Required:** Not to exceed \$10,000

**Source of Funds:** 2004 General Fund - Central Charges Budget

**Policy Issues**

The policy issue is whether to authorize a fee agreement with Sherman & Howard for general tax and financing advice for 2004.

**Alternatives**

Do not obtain outside legal services for these types of issues. This is not recommended due to the specialized nature of this work.

**Background Information**

As City Council is aware, over the years, the City has established a particularly positive relationship with Mr. Dee Wisor of Sherman & Howard. City Staff and the City Attorney's Office believe that the City has greatly benefited through the expertise and knowledge Mr. Wisor has brought to the various financings in which he has been involved, resulting in substantial, hard-dollar savings in terms of interest rate savings and cost of issuance. Mr. Wisor's knowledge of the City has significantly streamlined the timetable for getting some of the more time-sensitive financings accomplished. In addition, some of the projects that the City has tax-exempt financed required significant creativity in order to bring them into compliance under the tax laws. The Westin Conference Center is a good example. From time to time, we have also received the advice and counsel of Mr. Wisor's partner, Mr. Jim Lane, who is an expert on the tax-exempt regulations of the Internal Revenue Code. Mr. Lane has been previously involved with advising the City in connection with a random audit of one of our industrial development bond issues, as well as the sale of advertising space at the Ice Centre. Staff is recommending that the City Council authorize the City Manager to execute a legal services agreement with Sherman & Howard for general tax and financing advice when needed for special matters that are not part of an overall financing project.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting

January 26, 2004



**SUBJECT:** Contract for Public Safety Radio System Maintenance

**Prepared By:** R.T. Tripp, Commander, Police Technical Services Division

**Recommended City Council Action**

Authorize the City Manager to sign a contract renewal with Legacy Communications Inc. in the amount of \$70,677. for the maintenance of the MayCom 800 MHz radio system based upon the recommendation of the City Manger and a finding that a negotiated contract for this service best serves the publics interest. This approval would authorize the City Manger to sign such contract renewal with Legacy Communications Inc. and the City of Arvada.

**Summary Statement**

The Police Department is recommending that the City approve the attached contract that has been reviewed and approved by the City Attorney’s Office and the City of Arvada City Attorney’s Office.

The Cities of Westminster and Arvada have a 800 MHz radio system via an Inter-Governmental Agreement that was signed in 1992. The current maintenance agreement with Legacy Communications, Inc. expired in July of 2003. Legacy Communications, Inc., who is MayCom’s sub-contractor for providing radio maintenance, had agreed to continue providing maintenance services for Westminster as well as Arvada, during this interim period preceding contract approval. They will no longer provide service on a month-to-month basis without a contract. The original contract was in need of updating and now reflects current building addresses, technology, and maintenance issues.

Since July 2003, the City of Arvada's Technical Systems Manager and Commander Tripp have explored other vendors that could be invited to participate in a bid process. Working closely with MayCom, staff determined that the only “certified” service provider in the Denver Metropolitan area capable on working on the combined MayCom system was Legacy Communications, Inc. The combined Arvada and Westminster system is a large and complex multi-site system that requires a service provider large enough to address a combined 24 hour, 7 day per week public safety operation. Therefore, Staff determined that the public interest would best be served by awarding this contract to Legacy Communications, Inc. and recognizes them as our designated radio maintenance provider. No other local vendor could meet service requirements. Their service has been excellent and they are very familiar with our system infrastructure. The City of Westminster has not experienced a price increase from Legacy Communications Inc. for over 3 years. This contract does reflect an 8% price increase for the year 2004 and Legacy has informed Staff that there will be an additional increase in 2005.

**Expenditure Required:** Funds were approved by City Council in the 2004 budget for this expense. Total contract for the shared system maintenance is \$142,004 and the Westminster portion is \$70,677.30

**Source of Funds:** General Fund, Police Department Operating Budget

**Policy Issue**

Should the City enter into a contract renewal for radio maintenance with Legacy Communications, Inc. in the amount of \$70,677 for the City of Westminster's portion of the maintenance of the Westminster/Arvada shared 800MHz radio system.

**Alternatives**

City Counsel could choose not to authorize City Manger Brent McFall to sign a contract for radio maintenance with Legacy Communications, Inc. This course of action could leave the City without radio system service, which would compromise public safety and supporting department's ability to communicate. Currently, Legacy Communications, Inc. is the only vendor in the Denver area that is capable of maintaining our large system.

**Background Information**

The City of Westminster is responsible for delivering public safety and services to the community and depends on complex radio communication components in order to communicate. The maintenance of this shared radio system requires cooperation and trust. Since 1992, the City of Westminster and the City of Arvada have worked under an IGA that enabled them to share the "backbone" portion of the 800 MHz radio system. This partnership has proven successful and has saved both cities considerable costs. Both cities depend on each other for radio communication needs. The City of Westminster's radio system serves Police, Fire, Public Works, Streets, Parks, Recreation & Libraries, and Utilities.

Both cities recognize the critical role that proper system maintenance plays. Therefore, they continue to work collectively to maintain the integrity of the shared 800MHz radio system. The original IGA that set this partnership in motion continues to pay dividends.

The contract previously in effect was outdated and in need of change. It had been renewed for several years without language change and subsequent changes were needed in order to protect the collective cities from contract violations and high costs. Therefore, the attached contract is the culmination of those changes.

Over the past several years Arvada and Westminster have received maintenance from Legacy Communications, Inc as the subcontractor to MayCom, Inc. and have been pleased by the level of service that Legacy has provided. In addition, Legacy Communications, Inc. has not increased service costs for three years. Staff is very confident in their skills and knowledge of the radio system.

It is anticipated that Arvada's City Council will approve this agreement with Legacy Communications for radio maintenance at their meeting on January 26, 2004.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

**AN AGREEMENT BETWEEN  
THE CITY OF ARVADA, THE CITY OF WESTMINSTER,  
AND LEGACY COMMUNICATIONS, INC.,  
FOR RADIO SYSTEM MAINTENANCE SERVICES  
FOR THE M/A-COM, INC. EDACS SYSTEM**

1.0 **PARTIES.** The parties to this Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003, are the City of Arvada ("Arvada"), 8101 Ralston Road, P. O. Box 8101, Arvada, Colorado, 80001-8101, the City of Westminster ("Westminster"), 4800 W. 92<sup>nd</sup> Ave, Westminster, CO 80030 (collectively referred to as "Customers"), and Legacy Communications Inc. ("Contractor").

2.0 **RECITALS AND PURPOSE**

2.1 Customers entered into an Intergovernmental Agreement for a radio communications system dated April 27, 1992.

2.2 Customers subsequently purchased a radio communications system ("System") from Ericsson GE Mobile Communications Distribution, Incorporated. M/A-COM, Inc. ("M/A-COM") is the successor entity to Ericsson GE.

2.3 Customers are in need of maintenance services for said System.

2.4 Contractor is in the business of providing maintenance services for radio communications systems and represents that it possesses the requisite experience, background, skill, and expertise to provide maintenance for the System.

2.5 Customers wish Contractor to provide maintenance services for the System.

2.6 The parties wish to enter into a radio system maintenance agreement ("Agreement") under the terms and conditions set forth below.

3.0 **DEFINITIONS.**

"*Fixed equipment*" means the site repeater stations and associated equipment, multi-site coordinator, console electronic equipment, and radio control stations.

"*Mobile equipment*" means all vehicular mounted radios, personal portable radios, vehicular repeaters, and portable radio chargers.

"*Workday*" means Monday through Friday, not including the following holidays: New Years Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

"*Working hours*" means 8:00 a.m. through 5:00 p.m., Monday through Friday, not including holidays.

4.0 **SCOPE OF SERVICES.**

4.1 Contractor shall provide Customers with maintenance and repair services and parts to maintain Customers' System as set forth herein:

a. Contractor shall supply all supervision, labor, service facilities, repair parts, test equipment, and supplies necessary to meet the service requirements stated herein.

b. Contractor agrees that this maintenance Agreement covers the entire System, including every module or component of Customers' existing System, and upgrades thereto. Maintenance of additions to or replacement of mobile equipment shall be covered under this Agreement. Fees for maintenance of such mobile equipment are included in Customers' monthly maintenance as set forth in Section 7.1 of this Agreement. Major additions to the System, such as adding another site, installing additional channels, or installing base stations, are not subject to this Agreement unless all parties agree said major addition should be subject to this Agreement.

4.2 Contractor recognizes and acknowledges that the System is used by Customers in their public safety departments and, due to the nature of their operations, requires they receive a high priority response when maintenance of the System is required. Contractor agrees to assign a high priority to Customers' calls and use its best efforts to resolve system maintenance problems in a timely manner.

## 5.0 TERMS AND CONDITIONS.

5.1 Service and System Center. Contractor shall at all times throughout the duration of this Agreement remain a M/A-COM authorized service center. Contractor shall at all times throughout the duration of this Agreement meet the established maximum standards for technician training levels and test equipment standards for M/A-COM authorized service centers. Contractor agrees that all technicians who work on the system will be trained and certified by M/A-COM to work on radio communications systems. Within thirty (30) days of the beginning of the initial or any subsequent term, Contractor shall submit to Customers a written report stating it is a M/A-COM authorized service and system center, and listing the training classes and certifications of each Contractor technician who may be assigned work on the System during that term of the Agreement.

5.2 Service Facilities. Contractor shall have a full service maintenance facility available and staffed with factory trained service technicians. The maintenance facility shall be located so that Contractor can easily meet Contractor response times specified throughout this Agreement. The location and staffing level shall be sufficient to meet the service requirements of this System.

5.3 Fixed equipment maintenance. All work on fixed equipment shall be performed at the location of the equipment. Emergency service shall be provided twenty-four hours per day, seven days per week. Technical personnel who have the necessary training, skills, and ability to assess the failure reported must respond to the location of the failed equipment within 2 hours of the request for emergency service. The costs of this service shall be included in the maintenance rate. No fixed equipment shall be out of service in excess of 24 hours after notification of equipment failure when the failure results in the inability of mobile units to communicate with each other or with a dispatch center.

5.4 Mobile equipment maintenance. Mobile equipment shall be serviced at the location where the vehicle is normally assigned, at the vehicle's work location, or at the Contractor's north shops facility during normal working hours. If the equipment is serviced at Contractor's facility, Contractor shall be responsible for transportation of the vehicles. All mobile service requests must be responded to within two working days. All mobile equipment that has a pending service report shall be serviced on the same working day. If a mobile radio cannot be repaired within one hour from the beginning of service action, the

radio unit shall be replaced with a Department-provided spare unit on a rotational basis. The rotational repair cycle for a radio shall not exceed ten working days. Any mobile radio that cannot be repaired within 10 working days shall be replaced with a similar mobile radio.

5.5 Emergency services. All marked police cars, marked police motorcycles, marked fire trucks, and ambulances can, at the Customer's discretion, have emergency service requested on a 24-hour a day basis. Contractor's factory trained and certified technician shall be on-site at the most probable location of failure within 2 hours of notification by either Customer.

Emergency call out shall be defined by the following criteria:

- a. Failure of any type which takes more than one RF channel out of service. In the event of a single channel failure, Contractor's technician shall take that channel out of service via dial-up modem access through the System Manager. The channel shall be repaired no later than the end of the next business day; or
- b. Failure of any type that jeopardizes the overall integrity of the communications system: These items include, but are not limited to, Site Controller, Voter Controller, System Manager, CEC Switch, CEC Manager; or
- c. Failure of any console; or
- d. Failure of any microwave hop; or
- e. Failure of any control station; or
- f. Failure of any of the marked police cars, marked police motorcycles, marked fire trucks, and ambulances that require 24-hour service availability.

5.6 Lead technician requirements. Contractor shall assign a factory trained, certified technician who is familiar with the System as the lead technician for the purpose of implementing this Agreement. The lead technician shall act as the primary technician for the System. Duties of the lead technician include, but are not limited to: performing ongoing preventive maintenance and on-demand services, acting as the primary contact for Customers, keeping Customers informed about the status of the System. The lead technician shall attend and participate in a weekly status conference with designated representative of each Customer at each Customer's office at a mutually agreed upon time. Within thirty (30) days of the beginning of the initial or subsequent term, Contractor shall submit to Customers the name of the lead technician for that term. The lead technician shall be subject to Customers' approval.

5.7 Demand services. Contractor shall provide fixed rates for installation, removal, or reinstallation of equipment. These demand services shall be for work performed that is "above and beyond" maintenance contract specified requirements. Contractor shall provide the fixed costs for the following:

- a. Hourly rate for demand services during normal working hours;
- b. Hourly rate for demand services after normal working hours;
- c. Front mount mobile installation for standard vehicles;

- d. Remote mount mobile installation for standard vehicles
- e. Vehicle charger installation including charger, speaker, antenna, and microphone for standard vehicles;
- f. All removals; and
- g. An add-on charge for non-standard vehicle installation (Police, Fire, Ambulance and others).

Installation pricing shall be for mobile radio equipment only and shall not include sirens, shotgun mounts, light bars or controllers, mobile data terminals, computers, or any other accessories. These items shall be installed at the above established demand service hourly rates, plus materials.

Portable batteries and items abused or misused by Customers are not covered by the standard maintenance contract. These items shall be repaired or replaced under the demand services pricing structure. All parts shall be sold to Customers at a discount of 15% of the Manufacturer's List Price or 25% over Contractor's cost, whichever is less.

5.8 Preventive maintenance. Contractor acknowledges the need for timely preventive maintenance for all components of the System, and agrees to provide said maintenance for both fixed and user equipment. Preventive maintenance and reports related thereto shall be performed according to the preventive maintenance schedule attached as Exhibit "A" attached hereto.

5.9 Spare Parts and Radios. Contractor shall maintain an adequate stock of spare parts for system-critical modules as well as components commonly needed for repairing the mobile and portable radios. Contractor shall on a regular basis monitor and adjust this stock to provide the best turn-around possible.

5.10 Service Records. Contractor acknowledges the need to create and maintain adequate records and reports of service activity and preventive maintenance work performed, as well as the status of the system components. Written service and preventive maintenance records shall be provided to Customers as follows:

- a. Monthly mobile service activity by vehicle number, including model number, serial number, work performed, and time required to restore service.
- b. Monthly emergency service activity including failure type, corrective action taken, and time required to restore service.
- c. Monthly backup of the System Manager activity data to tape on the first working day of each month.

5.11 Software upgrades. Contractor shall provide labor to install and test software upgrades, whether for corrective or enhancement purposes, provided the Customers purchase or subscribe to software upgrades from the equipment manufacturer.

5.12 Database reprogramming. Contractor shall provide mobile radio or system database corrections at no cost, for the following items:

- a. To reflect changes in mobile or portable hardware equipment assignment, i.e., replacement of a defective unit in a vehicle with a spare unit.

- b. Removal and reinstallation, by Contractor personnel, of a unit in a new or different vehicle.
- c. Database changes to reflect Customers' personnel assignment changes.
- d. Contractor shall assist Customers with major radio reprogramming initiatives and provide technicians to assist in reprogramming tasks. These types of services shall be considered to be a maintenance service. Fees for these types of services are included in Customers' monthly maintenance as set forth in Section 7.1 of this Agreement.

5.13 Additional equipment. Customers may purchase any equipment that is compatible with the System. Contractor shall provide costs for installing this equipment and adding it to the maintenance agreement after the initial warranty period.

5.14 Maintenance Concept. Contractor shall assign one dedicated M/A-COM factory trained and certified technician that serves as the primary technician for the System as set forth under Section 5.6 of this Agreement. Contractor shall also provide technicians that serve as backup to the primary technician when primary technician is not available (i.e., sick, on vacation, undergoing training, etc.). The backup technicians shall also be M/A-COM factory trained and certified and available to work with the primary technician in situations where more than one technician is required.

All on call service personnel shall carry pagers and/or cellular telephones 24 hours a day. Customers shall be provided with an "On Call" list, in advance, showing responsible service personnel and their respective "Backup" on call technician. Customers shall be provided with one on call telephone number to initiate call out services. Customers shall at no time be required to make more than one call to initiate call out services. The on-call technician shall keep a four-wheel drive service vehicle at their residence to allow them the shortest possible response time.

Failed equipment shall be replaced at the lowest replaceable unit in the field to facilitate bringing the system back on line as quickly as possible. Repaired equipment shall be re-installed and proper operation verified or returned to the appropriate spare storage location. Contractor shall only use M/A-COM approved parts or assemblies to execute any repairs.

Contractor's service technician shall, at the conclusion of any call out service performed, notify Customer contact of the outcome of his or her call out repair service efforts.

5.15 Website. Contractor shall maintain and monitor on a daily basis an Internet website which allows Customers to notify Contractor of after-hours repair requests. Contractor shall acknowledge Internet repair requests in a timely manner.

5.16 Scheduling of work. Contractor shall notify Customers in advance of any service or preventive maintenance work that affects, degrades, or reduces the effectiveness of the System or causes an outage or reduction in service. Work notifications shall include approximate start time and estimated completion time. Scheduling of all work shall be done to minimize the duration of the work and the detrimental effect of the work.

## 6.0 **TERM**

6.1 The initial term of the Agreement shall be from January 1, 2004 through and including December 31, 2004. The Agreement may be renewed annually for up to four (4) additional one (1) year terms. Said renewals shall be automatic, unless Customers terminate this Agreement by giving Contractor thirty (30) days written notice.

## 7.0 COMPENSATION.

7.1 Customers shall pay the total monthly maintenance fees as set forth in Exhibit "B," attached hereto, in advance of the month for which the maintenance fee is due. Contractor shall bill Customers separately for monthly maintenance fees. Customers may, at any time, adjust the respective amount paid by each Customer to Contractor for each Customer's user equipment maintenance costs. Customers shall notify Contractor should any such adjustment occur, and Contractor shall modify its invoices to reflect such adjustment.

7.2 Customers shall pay undisputed fees for demand services as set forth in Exhibit "A" within thirty (30) days of receipt of Contractor's invoice. All invoices shall be generated no later than thirty (30) days from date of service. All demand services requested by the City of Arvada shall be billed directly to, and paid by, the City of Arvada. Demand services requested by the City of Westminster shall be billed directly to, and paid by, the City of Westminster.

7.3 Contractor's invoice for demand services shall include a summary of current outstanding repair orders and repair jobs completed during that billing period. The invoice format shall be as mutually agreed upon by the parties.

7.4 Following the initial one (1) year term of this Agreement, an annual rate review meeting may be held for the purpose of revising service rates for the subsequent one year renewal period, if any. Contractor shall notify Customers of the need for a rate review meeting no fewer than 60 days before the expiration of the initial or any subsequent term. If no such notice is given, rates for the subsequent term shall remain unchanged. Contractor agrees that service rates shall not exceed an increase of five percent (5%) per year for any one (1) year renewal period. Customers' City Managers are authorized to approve service rate changes.

9.0 **TERMINATION.** Customers may terminate this Agreement with or without cause during any term hereof upon giving thirty (30) days written notice to Contractor.

10.0 **INSURANCE.** Contractor shall at its own expense keep in full force and effect during the term of this Agreement insurance as follows:

Contractor agrees to secure, at its own expense, a policy or policies of insurance sufficient to insure against the liability assumed by Contractor pursuant to the provisions of this paragraph. Contractor's insurer must be rated "B+" or better, according to Best's Key Rating Guide and must be admitted to do business in the State of Colorado. Contractor shall provide Customers with a certificate of insurance, from a properly qualified representative of the insurer, that any policy purchased pursuant to this Agreement complies with the conditions required by this Agreement. The certificate of insurance must show current name and address of the insured(s) named in the policy.

Contractor shall not be relieved of any liability assumed pursuant to the foregoing paragraph by reason of his failure to secure insurance as required by this Agreement or by reason of his failure to secure insurance in sufficient amounts of sufficient durations, or sufficient types to cover such liability. The required policy shall meet the following conditions:

- a. The policy limits shall be as follows:
  1. The limit for each occurrence shall be not less than \$1,000,000. Costs of defense shall not be included within such limits. However, if costs of defense are included, the minimum limits shall be \$1,000,000 combined single limits.
  2. The general aggregate limit shall be unlimited or at least \$2,000,000.

- b. The policy shall include Customers as an additional insured. The parties hereto understand and agree that Customers are relying on and does not waive or intend to waive by this Agreement, any provision hereof, including the provisions of this paragraph, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, CRS. 24-10-101, et seq., as from time to time amended, or otherwise available to Customers.
- c. The insurer shall give Customers notification of any cancellation or termination by refusal to renew the policy or any change in coverage of the policy in the manner provided by law. If no such notification is provided by law, the insurer shall give Customers at least 30 days' prior written notification of any cancellation or termination by refusal to renew the policy or of any change in coverage of the policy, unless cancellation or termination is for non-payment of premium, in which case, the industry standard of ten (10) days prior written notification shall apply.
- d. Contractor shall be responsible for any deductible losses under the policy.
- e. If the policy is a claims made policy, the policy shall provide Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, and extend a reporting period of not less than two years. Contractor agrees to purchase such an extended reporting period should the policy be canceled or terminated.
- f. If the policy is a claims made policy, the policy shall give Customers the right to purchase the extended reporting period described in above if Contractor fails to purchase such an extended reporting period as required by this Agreement. Customers' exercise of such right shall not relieve Contractor of any liability for its failure to purchase such an extended reporting period as required by this Agreement.
- g. If the policy is a claims made policy, the retroactive date of any renewal of such policy shall be not later than the date of this Agreement is signed by the parties hereto.
- h. If Contractor purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Agreement is signed by the parties hereto.

Contractor must comply with Customers' requirements for filing certificates of insurance, as determined by the Risk Management Division. A certificate of insurance acceptable to the Risk Management Division must be provided at the time the agreement is executed by the parties hereto unless both parties arrange otherwise. Contractor is responsible for submitting certificate(s) of insurance, subject to the insurance requirements described above, for all subcontractors. All certificates of insurance are subject to periodic verification and approval by Customers.

**11.0 INDEMNIFICATION.** Contractor expressly agrees to indemnify and hold harmless Customers or any of their officers or employees from any and all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury, or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any omission or act of commission by Contractor or any of its employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Customers, Customers will give notice thereof to Contractor/Consultant/Vendor.

12.0 **DEFAULT.** Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the nondefaulting party, in which case, the nondefaulting party may recover such damages as may be proper. If the nondefaulting party elects to treat this Agreement as being in full force and effect, the nondefaulting party, after having made all reasonable attempts at dispute resolution, shall have the right to an action for specific performance or damages or both. Notwithstanding the foregoing, the defaulting party shall have the right to remedy the default within thirty (30) days after the date of the nondefaulting party's notice of default or termination.

13.0 **WAIVER OF BREACH.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

14.0 **NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States mail.

15.0 **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

16.0 **ASSIGNMENT.** This Agreement shall not be assigned by Contractor without the prior written consent of the other party.

17.0 **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

18.0 **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

19.0 **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

20.0 **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Customers and Contractor and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of Customers and Contractor that any person other than Customers or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21.0 **ATTORNEY'S FEES.** If any party breaches this Agreement, the breaching party shall pay all of the prevailing party's reasonable attorneys' fees and costs in enforcing this Agreement.

22.0 **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the appropriate court for Jefferson County, Colorado.

23.0 **FUND AVAILABILITY.** Financial obligations of Customers after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

24.0 **RIGHT TO TERMINATE.** On 30 days' prior written notice, Customers shall have the right to terminate this Agreement in the event that the Arvada City Council or Westminster City Council does not appropriate, budget or otherwise make funds available for the purpose of extending this Agreement past its initial term, or in the event that any court of competent jurisdiction determines that any extension of this Agreement, or any portion thereof, is in violation of Section 20, Article X, of the Colorado Constitution. Any such termination shall not be considered a breach of this Agreement or any extension thereof.

25.0 **PAYMENTS TO CONSTITUTE CURRENT EXPENDITURES.** Customers and Contractor acknowledge and agree that all payment obligations under this Agreement are current expenditures of Customers, payable in the fiscal year for which funds are appropriated for the payment thereof. Customers' obligations under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of Customers within the meaning of Article X, Section 20 of the Colorado Constitution.

26.0 **EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

27.0 **INDEPENDENT CONTRACTOR.** Contractor and Customers hereby represent that Contractor is an independent contractor for all purposes hereunder. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by Customers except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of Customers.

28.0 **WORKER'S COMPENSATION.** Contractor shall at its own expense keep in full force and effect during the term of this Agreement Statutory Worker's Compensation insurance.

29.0 **NON-DISCRIMINATION.** Contractor agrees that neither Contractor, its agents, employees, or subcontractors will discriminate in the employment of persons engaged in the performance of this Agreement on the basis of age, race, color, national origin, ancestry, religion, sex, marital status, physical handicap, disability, or medical condition.

30.0 **SIGNATURE IN COUNTERPART.** This Agreement may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

**CITY OF ARVADA**, a Colorado municipal corporation

---

Ken Fellman, Mayor  
8101 Ralston Road  
P. O. Box 8101  
Arvada, CO 80001-8101

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Christopher K. Daly, Arvada City Attorney

**CITY OF WESTMINSTER**, a Colorado municipal corporation

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Brent McFall, City Manager  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80030-6399

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Westminster City Attorney

**LEGACY COMMUNICATIONS INC.**

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Art Lippolis, President  
Legacy Communications, Inc.  
11211 E. Arapahoe Road, Suite 120  
Centennial, Colorado 80112

ATTEST:

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EXHIBIT "A"

**Arvada/Westminster Periodic Maintenance Schedule**

<b>Site / Equipment</b>	<b>Periodic Maintenance Schedule</b>
Westminster Dispatch	Quarterly
Arvada Dispatch	Quarterly
Microwave Equipment	Bi-Annually
Eldorado Site	Quarterly
Estes Site	Quarterly
95 <sup>th</sup> & Hooker Site	Quarterly
Base Stations	Annually
Mobiles	Annually
Portables	Annually

EXHIBIT "B"

LEGACY COMMUNICATIONS, INC.  
MAINTENANCE SERVICES RATES

ARVADA AND WESTMINSTER POLICE DEPARTMENTS

REGULARLY SCHEDULED MAINTENANCE SERVICES PRICING

<b>Item</b>	<b>Description</b>	<b>Monthly Cost</b>	<b>Annual Cost</b>
1	SHARED FIXED EQUIPMENT	<u>\$ 3,410.61</u>	<u>\$ 40,927.28</u>
2	ARVADA FIXED EQUIPMENT	<u>\$ 107.95</u>	<u>\$ 1,291.54</u>
3	WESTMINSTER FIXED EQUIPMENT	<u>\$ 53.81</u>	<u>\$ 645.70</u>
4	ARVADA USER EQUIPMENT	<u>\$ 4,130.65</u>	<u>\$ 49,567.80</u>
5	WESTMINSTER USER EQUIPMENT	<u>\$ 4,130.65</u>	<u>\$ 49,567.80</u>

**DEMAND SERVICES PRICING:**

**Cost Per Use**

Hourly Rate for Demand Services during normal working hours \$ 89.25

Hourly Rate for Demand Services after normal working hours \$ 133.88

Front Mount Mobile Installation for standard vehicles \$ 105.00

Remote Mount Mobile Installation for standard vehicles \$ 145.00

Vehicle Charger Installation including charger, speaker, antenna,  
and microphone for standard vehicles \$ 95.00

All Removals \$ 42.00

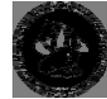
Add-on charge for Non-Standard Vehicle Installation (Police, Fire,  
Ambulance, and others) \$ 52.50



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Second Reading of Councillor’s Bill No. 1 re Pollutant Limitations  
Amendment to City Code

**Prepared By:** David Cross, Wastewater Operations Coordinator

**Recommended City Council Action**

Pass Councillor’s Bill No. 1 on second reading amending the Specific Pollutant Limitations for industrial dischargers to the City’s sanitary sewer system.

**Summary Statement**

- This Councillor’s Bill was passed on first reading on January 12, 2004.
- Schedule 8-10 (A) contained in City Code Section 8-10-4 (N) specifies concentration limits for pollutants discharged by industrial users to the City’s sanitary sewer system.
- These limits are periodically reviewed and recalculated based on changes in treatment facility’s capacity and in the wastewater’s sources and characteristics.
- Limits for two metals, Mercury and Molybdenum, were recalculated and are to be increased from zero to 0.046 mg/L and 5.20 mg/L respectively.
- The Environmental Protection Agency has reviewed and approved these changes as required by the Federal Clean Water Act.
- Staff has no concern that these changes will negatively impact the wastewater treatment process.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **1**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE AMENDING SCHEDULE 8-10(A), SPECIFIC POLLUTANT LIMITATIONS  
THE CITY OF WESTMINSTER ORDAINS:

Section 1: Title 8, Chapter 10 of the Westminster Municipal Code is hereby amended as follows:

SCHEDULE 8-10(A)  
SPECIFIC POLLUTANT LIMITATIONS

	Daily Maximum Concentration (mg/L)
Ammonia Nitrogen	60
Arsenic	0.54
BOD5	1000
Cadmium	0.20
Chromium	17.21
Copper	3.82
Cyanide	0.01
Lead	0.89
Mercury	Ø <b>0.046</b>
Molybdenum	Ø <b>5.20</b>
Nickel	2.42
Oil & Grease	75.0
Ph	Between 5.5 and 10.0
Selenium	0.18
Silver	0.44
Zinc	0.89

Section 2. 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 January, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 26th day of January, 2004.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Second Reading of Councillor's Bill No. 3 re Growth Management Program Amendment Revising the South Westminster Residential Project Definition

**Prepared By:** Shannon Sweeney, Planning Coordinator

**Recommended City Council Action:**

Pass Councillor's Bill No. 3 on second reading amending Title XI, Chapter 3 of the Westminster Municipal Code pertaining to the South Westminster Residential Project definition within the Growth Management Program.

**Summary Statement**

- City Council action is requested to pass the attached Councillors Bill on second reading amending Section 11-3-2 (I) of the Westminster Municipal Code revising the South Westminster Residential Project definition within the Growth Management Program.
- This Councillor's Bill was passed on first reading on January 12, 2004.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 3

SERIES OF 2004

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE AMENDING CHAPTER 3 OF TITLE XI OF THE WESTMINSTER  
MUNICIPAL CODE CONCERNING THE GROWTH MANAGEMENT PROGRAM DEFINITION  
FOR SOUTH WESTMINSTER RESIDENTIAL PROJECTS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-3-2(I), W.M.C., is hereby AMENDED as follows:

**11-3-2: DEFINITIONS:**

**(I) SOUTH WESTMINSTER RESIDENTIAL PROJECT:**

1. A residential project located south of 80<sup>th</sup> Avenue ~~and east of Sheridan Boulevard~~ in the City of Westminster; THAT
2. ~~Which is no larger than ten (10) acres, and~~
3. ~~Which~~ meets all applicable design criteria for such projects.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 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 12th day of January 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 26th day of January 2004.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Second Reading of Councillor's Bill No. 4 re FY2003 Budget Amendment

**Prepared By:** Barbara Opie, Assistant to the City Manager

**Recommended City Council Action:**

Pass Councillor's Bill No. 4 on second reading amending the FY2003 budgets of the General, Utility, General Capital Improvement and Fleet Maintenance Funds.

**Summary Statement**

- City Council action is requested to pass the attached Councillors Bill on second reading amending the FY2003 budgets of the General, Utility, General Capital Improvement and Fleet Maintenance Funds. The budget amendment authorizes the transfer of funds from the General and Utility Funds into the General Capital Improvement and Fleet Maintenance Funds (the total proposed amendment equals \$220,000).
- This Councillor's Bill was passed on first reading on January 12, 2004.

**Expenditure Required:** \$220,000

**Source of Funds:** General and Utility Funds

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2004

COUNCILLOR'S BILL NO. 4  
INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL, UTILITY, FLEET, GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Fund does not change with this ordinance. However, the changes in the expense accounts are shown here for informational purposes.

Section 2. The Expense accounts shall be amended as follows:

Description	Account Number	Current Budget	Increase (Decrease)	Final Budget
<b>Expenses</b>				
Contingency	10010900.79900.0000	\$1,180,000	\$ (110,000)	\$1,070,0000
Maint/Repair- Custodial	10012110.66200.0702	415,366	(36,000)	379,366
Transfer to Fleet	10010900.79800.0300	0	36,000	36,000
Transfer to GCIF	10010900.79800.0750	233,000	<u>110,000</u>	343,000
Total change to expenses			<u>\$0</u>	

Section 3. The 2003 appropriation for the Utility Fund does not change with this ordinance. However, the changes in the expense accounts are shown here for informational purposes.

Section 4. The Expense accounts shall be amended as follows:

Description	Account Number	Current Budget	Increase (Decrease)	Final Budget
<b>Expenses</b>				
Contingency	21010900.79900.0000	\$300,000	\$(110,000)	\$190,000
Transfer to GCIF	21010900.79800.0750	5,600,000	<u>110,000</u>	5,710,000
Total change to expenses			<u>\$0</u>	

Section 5. The 2003 appropriation for the Fleet Fund, initially appropriated by Ordinance No. 2977 in the amount of \$1,149,638 is hereby increased by \$36,000 which, when added to the fund balance as of the City Council action on January 12, 2004 will equal \$1,212,138. The actual amount in the Fleet Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an increase in the transfer from the General Fund.

Section 6. The \$36,000 increase in the Fleet Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Account Number	Current Budget	Increase (Decrease)	Final Budget
<b>Revenue</b>				
Transfer from General Fund	3000.45000.0100	\$0	<u>\$36,000</u>	\$36,000
Total change to revenues			<u>\$36,000</u>	

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Fuel & Lubricants	30012460.74000.0000	\$221,262	<u>\$36,000</u>	\$257,262
Total change to expenses			<u>\$36,000</u>	

Section 7. The 2003 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$220,000 which, when added to the fund balance as of the City Council action on January 12, 2004 will equal \$19,937,186. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an increase in the transfer from the General Fund and Utility Fund.

Section 8. The \$220,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Revenue</b>				
Transfer from General Fund	7500.45000.0100	\$233,000	\$110,000	\$343,000
Transfer from Utility Fund	7500.45000.0210	5,600,000	<u>110,000</u>	5,710,000
Total change to revenues			<u>\$220,000</u>	

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Huron St. 129 <sup>th</sup> /144 <sup>th</sup>	80175030069.80400.8888	\$4,700,000	<u>\$220,000</u>	\$4,920,000
Total change to expenses			<u>\$220,000</u>	

Section 9 – 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 10. This ordinance shall take effect upon its passage after the second reading.

Section 11. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 12th day of January, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of January, 2004.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**Subject:** Resolution No. 4 re Reappointments to Boards and Commissions

**Prepared by:** Richelle Work, Acting City Clerk

**Recommended City Council Action:**

Adopt Resolution No. 4 reappointing James Boschert to the Planning Commission and Ben Beaty to the Open Space Advisory Board with terms of office to expire December 31, 2005.

**Summary Statement:**

- City Council action is requested to reappointment James Boschert to the Planning Commission and Ben Beaty to the Open Space Advisory Board . Mr. Boschert and Mr. Beaty should have been reappointed at the January 12, 2004 City Council meeting, but were inadvertently omitted from the list of appointments.
- In addition, on Resolution No. 1 adopted on January 12, 2004, Martha Brundage was listed as being reappointed to the Planning Commission. Ms. Brundage was not up for reappointment, so should not have been listed on the Resolution. She is currently serving on the Planning Commission with her term of office expiring December 31, 2004. Her appointment and expiration should not have been changed. She will still be serving on the Planning Commission with a term of office expiring December 31, 2004.

**Expenditure Required:** \$0

**Source of Funds:** n/a

**Subject:** Resolution re reappointment

Page 2

**Policy Issue:**

Does City Council want to make this reappointment at this time?

**Alternative:**

No alternatives identified.

**Background Information:**

The terms of office for James Boschert on the Planning Commission and Ben Beaty on the Open Space Advisory Board expired December 31, 2003. Mr. Boschert and Mr. Beaty should have been reappointed at the January 12, 2004 City Council meeting, but were inadvertently omitted from the list of appointments.

On the Resolution that went before City Council on January 12, 2004, Martha Brundage was listed as being reappointed to the Planning Commission. Ms. Brundage was not up for reappointment, so should not have been listed on the Resolution. She is currently serving on the Planning Commission with her term of office expiring December 31, 2004. Her appointment and expiration should not have been changed. She will continue serving on the Planning Commission with a term of office expiring December 31, 2004.

Passage of the attached Resolution will correct these errors.

Respectfully Submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2004

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CITY OF WESTMINSTER BOARD AND COMMISSION REAPPOINTMENTS

WHEREAS, Each member whose term expired on December 31, 2003 has been contacted and asked if they wish to be re-appointed to the Board where they are currently serving; and

WHEREAS, It is important to have each City Board or Commission working with its full complement of authorized appointees to carry out the business of the City of Westminster.

NOW THEREFORE, be it resolved that the City Council of the City of Westminster does hereby reappoint the following individuals to the City of Westminster Board or Commission listed below.

<b>BOARD/COMMISSION</b>	<b>NAME</b>	<b>TERM EXPIRATION</b>
Planning Commission	James Boschert	December 31, 2005
Planning Commission	Martha Brundage	December 31, 2004
Open Space Advisory Board	Ben Beaty	December 31, 2005
Board of Adjustment	Ian Walsworth (Alternate)	December 31, 2005

Passed and adopted this 26th day of January, 2004.

ATTEST:

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Mayor

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City Clerk



## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
January 26, 2004

**SUBJECT:** Public Hearing and Resolution No. 5 re North Huron Reinvestment Study and Urban Renewal Plan

**Prepared By:** Aaron B. Gagné, Senior Projects Coordinator

### Recommended City Council Action

- Hold a Public Hearing.
- Adopt Resolution No. 5 adopting the North Huron Urban Renewal Plan and direct staff to commence with the implementation of the Plan.

### Summary Statement

- In February 2002, the draft I-25 Corridor Study between the Cities of Westminster and Thornton was completed identifying certain development and redevelopment opportunities. Goals of the Study included the creation of an identifiable northern “gateway” to the community, the creation of employment and shopping opportunities and the creation of a cohesive design and land use vision for the corridor.
- One of the mechanisms viewed as appropriate for the area is a formal urban renewal area designation, which will provide a source of funds to construct public improvements needed to stimulate development activity.
- In September of 2003, the “I-25/Huron Street Area Conditions Survey,” also known as a “blight study” was completed supporting the goal of designating the study area as a formal urban renewal area. In that study, there were identified three major impediments to achieving the goals of the I-25 Corridor Plan.
- First, there are major floodplains in the area covered by the I-25 Corridor Plan as a result of inadequate drainage under I-25 and stormwater from the McKay Lake area, Big Dry Creek, Shay Ditch and Quail Creek. These floodplains affect a number of parcels and adversely effect the development of the area. Secondly, there are mineral rights, including oil and gas leases and severed mineral interests, that impede development. Finally, there is inadequate public infrastructure, including roads, water utilities and sewage facilities, to support the type of urban development contemplated by the I-25 Corridor Plan.
- The objectives for the North Huron Urban Renewal Plan include the following:
  - Provide an efficient system of streets, roads and other transportation facilities necessary to support urban development;
  - Provide an adequate system of drainage improvements to eliminate floodplain and floodway conditions;
  - Provide necessary water, sewer and other utility facilities necessary for development of the Plan Area;
  - Provide employment opportunities in an attractive setting;
  - Support transit-oriented developments that take advantage of major transit and roadway improvements in the I-25 Corridor.

**Expenditure Required:** \$36,000

**Source of Funds:** General Fund - Community Development Operating Budget

**Policy Issue**

Should the City pursue designation of the North Huron area as an urban renewal area, and proceed with the implementation of the urban renewal plan?

**Alternative**

Do not designate the North Huron area as an urban renewal area. This would not enable the City to pursue the use of urban renewal powers in the defined area. Staff does not recommend this option since urban renewal powers could be critical to facilitating redevelopment of infrastructure and commercial projects in the area.

**Background Information**

The consulting firm of Clarion Associates was retained to prepare a blight study for the North Huron area. The attached blight study evaluates properties between 124<sup>th</sup> Avenue to the south and the City boundary (150<sup>th</sup> Avenue extended) to the north, and from I-25 to the east generally to Huron Street to the west. A detailed map of the area is contained in the attached Study. The blight study finds a number of substandard conditions that meet the definition of blight contained in the urban renewal law.

These conditions include faulty lot layout, unsanitary or unsafe conditions, deterioration of sight or other improvements, and inadequate public improvements or utilities. As a result of these findings, the entire study area is being recommended for designation of an urban renewal area.

The urban renewal plan, which incorporates the blight determination, has been submitted to City Council for its review and adoption with a formal public input process. If the urban renewal plan is adopted, the Westminster Economic Development Authority (WEDA) would be authorized to undertake projects within the urban renewal area that may include infrastructure improvements or redevelopment of specific properties utilizing tax increment financing and other mechanisms available to the Westminster Economic Development Authority. The urban renewal powers can also be used to prevent deterioration, not just to remedy it once it has occurred.

As Council is aware, WEDA has powers that the City government lacks as they relate to land assemblage for redevelopment purposes as well as being able to issue tax increment bonds (TIF) to finance needed infrastructure.

City Staff for this project will be prepared to make a brief presentation and answer Council's questions at the January 26, 2003 City Council meeting.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

RESOLUTION

RESOLUTION NO. 5

INTRODUCED BY COUNCILLORS

SERIES OF 2004

A RESOLUTION

FOR APPROVAL OF THE NORTH HURON URBAN RENEWAL PLAN AND FINDING THAT THE NORTH HURON URBAN RENEWAL AREA IS A BLIGHTED AREA, DESIGNATING SUCH AREA AS APPROPRIATE FOR AN URBAN RENEWAL PROJECT PURSUANT TO THE URBAN RENEWAL PLAN, AND FINDING THAT THE ACQUISITION, CLEARANCE, REHABILITATION, CONSERVATION, DEVELOPMENT, REDEVELOPMENT OR A COMBINATION THEREOF OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE OF THE CITIZENS OF THE CITY OF WESTMINSTER.

WHEREAS, an urban renewal plan for the North Huron Area has been submitted to the City Council of the City of Westminister for appropriate action pursuant to Part 1 of Article 25 of Title 31, C.R.S.; and

WHEREAS, the North Huron area which is subject to the North Huron Urban Renewal Plan is described in Exhibit A to this Resolution; and

WHEREAS, the City Council of the City of Westminister adopted the Westminister Comprehensive Land Use Plan on June 23, 1997, which is the general plan for the development of the City of Westminister; and

WHEREAS, the North Huron Urban Renewal Plan has previously been submitted to the Westminister Planning Commission for its review and recommendations as to conformity with the Westminister Comprehensive Land Use Plan pursuant to C.R.S. §31-25-107(2); and

WHEREAS, the Westminister Planning Commission has determined that the North Huron Urban Renewal Plan does conform to the Westminister Comprehensive Land Use Plan; and

WHEREAS, no property in the North Huron Urban Renewal Area has been included in an urban renewal plan previously submitted to the City Council of the City of Westminister; and

WHEREAS, the City Clerk of the City Westminister has published the notice of the time, place, and purpose of the public hearing to consider the adoption of the North Huron Urban Renewal Plan in the Westminister Window in conformance with C.R.S. §31-25-107(3); and

WHEREAS, the City Westminister has provided written notice of the public hearing to consider the adoption of the North Huron Urban Renewal Plan to all property owners, residents, and business owners within the proposed North Huron Urban Renewal Area at their last known addresses in conformance with C.R.S. §31-25-107(4)(c); and

WHEREAS, the Adams County Commissioners have received notification of and copies of the North Huron Urban Renewal Plan as well as such additional information as is required by C.R.S. §31-25-107(3.5); and

WHEREAS, the Adams 12 School Districts have received notification of and copies of the North Huron Urban Renewal Plan and has been given an opportunity to participate in an advisory capacity; and

WHEREAS, the City Council of the City of Westminister has considered the North Huron Blight Survey prepared by Clarion Associates and the proposed North Huron Urban Renewal Plan; and

WHEREAS, City Council of the City of Westminister has conducted a public hearing and considered the public testimony received.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER THAT:

1. Blight, as defined by C.R.S. §31-25-103(2), is present in the North Huron Urban Renewal Area as documented by the North Huron Blight Survey prepared by Clarion Associates and based on evidence presented at the public hearing. The following blight factors are present in the North Huron Urban Renewal Area: predominance of defective or inadequate street layout; faulty lot layout; unusual topography; defective or unusual conditions of title rendering the title non-marketable; and inadequate public improvements or utilities.

2. The North Huron Urban Renewal Area is a blighted area and is appropriate for an urban renewal project pursuant to Part 1 of Article 25 of Title 31, C.R.S.

3. The boundaries of the North Huron Urban Renewal Area have been drawn as narrowly as feasible to accomplish the planning and development objectives for the North Huron Urban Renewal Area.

4. The North Huron Urban Renewal Area does not consist of an area of open land.

5. The North Huron Urban Renewal Plan conforms to the Westminster Comprehensive Land Use Plan, which is the general plan for the development of the City of Westminster.

6. The North Huron Urban Renewal Plan is hereby approved.

7. There exist feasible methods for the relocation of individuals and families and business concerns in accommodations or areas suitable for their relocation.

8. The North Huron Urban Renewal Plan will afford maximum opportunity, consistent with the sound needs of the City of Westminster as a whole, for the rehabilitation or redevelopment of the Westminster Comprehensive Land Use Area by private enterprise.

9. The acquisition, clearance, rehabilitation, conservation, development or redevelopment of a combination thereof of the North Huron Urban Renewal Area pursuant to the North Huron Urban Renewal Plan is necessary in the best interests of the public health, safety, morals, and welfare of the citizens of the City of Westminster.

Passed and adopted this 26th day of January, 2004.

ATTEST:

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Mayor

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City Clerk

**NORTH HURON**  
**URBAN RENEWAL PLAN**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

**JANUARY 2004**

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# I-25/HURON STREET AREA DEVELOPMENT PLAN

JANUARY 2004

## I. INTRODUCTION

### 1.1 Preface

This I-25/Huron Street Area Development Plan ("Plan") has been prepared by the Westminster Economic Development Authority ("WEDA") for adoption by the City Council of the City of Westminster pursuant to provisions of the Urban Renewal Law of the State of Colorado, Article 25 of Title 31, Colorado Revised Statutes. This Reinvestment Plan is prepared and adopted to satisfy the requirements of § 31-25-107(1), C.R.S., that an urban renewal plan be adopted by the governing body of the municipality before an urban renewal authority undertakes an urban renewal project. The administration of this project and the enforcement and execution of this Plan shall be performed by WEDA.

### 1.2 Background

The Westminster Center is the area bounded by I-25 on the east, 124<sup>th</sup> Avenue extended on the south, Huron Street on the west, and 152<sup>nd</sup> Avenue on the north except for three areas where the boundaries extend west of Huron Street, including the extended right-of-way of 144<sup>th</sup> Avenue. The area is approximately 918 acres in size. It is currently vacant or used as agricultural. The area is the northern gateway to the City of Westminster and to the Denver metropolitan area along I-25. The Westminster Comprehensive Land Use Plan and the I-25 Corridor Plan prepared by the City of Westminster and the City of Thornton anticipate that this area is a prime development corridor with extensive office, retail, and mixed use developments.

The I-25 Corridor Plan has been prepared jointly by the Cities of Thornton and Westminster and covers the area on both sides of I-25 from 124<sup>th</sup> Avenue extended to 152<sup>nd</sup> Avenue. The area east of I-25 to Washington Street is in the Thornton and the area west of I-25 to Huron is in Westminster. The I-25 Corridor Plan envisions joint development of the area with the two cities sharing in the costs of interchange improvements on along I-25 and coordinated development of transit-oriented improvements. The I-25 Corridor Plan represents a model of cooperation between municipalities that otherwise could have found themselves in an unproductive competition for developments while ignoring the impacts of that development on the adjacent city. The City of Thornton has also recently adopted an Urban Renewal Plan for much of the area studied in the I-25 Corridor Plan, extending from 144<sup>th</sup> Avenue north to State Highway 7 and from I-25 east to Washington Street with the exception of two parcels that extend further east.

The I-25 Corridor Plan has the following goals:

- Create a high quality “Gateway Image” which conveys the values of each city
- Balance complementary land uses within identifiable sub-districts
- Allow for adequate transportation and transit systems to serve the area
- Enhance drainage systems improvements that maximize function and aesthetics within the corridor
- Develop economic stability through value-creation and value-retention
- Coordinate planning and engineering for transportation and storm drainage
- Develop parks, recreation and trails to serve the area

There are three major impediments to achieving the goals of the I-25 Corridor Plan. First, there are major floodplains in the area covered by the I-25 Corridor Plan as a result of inadequate drainage under I-25 and stormwater from the McKay Lake area, Big Dry Creek, Shay Ditch and Quail Creek. These floodplains affect a number of parcels and adversely effect the development of the area. Secondly, there are mineral rights, including oil and gas leases and severed mineral interests, which impede development. Finally, there is inadequate public infrastructure, including roads, water utilities and sewage facilities, to support the type of urban development contemplated by the I-25 Corridor Plan.

Implementation of this Plan would mitigate or remove these obstacles to develop by providing the financial mechanism for supporting necessary drainage and utility improvements and by allowing the removal of adverse conditions of title.

### **1.3 Definitions**

**Cooperation Agreement:** Any agreement between WEDA and the City of Westminster or any other public body respecting action taken pursuant to any of the powers set forth in the Urban Renewal Law, or in any other provision of Colorado law, for the purpose of facilitating public undertakings deemed necessary or appropriate by WEDA under this Plan.

**I-25 Corridor Plan:** The land use plan prepared by the City of Westminster and the City of Thornton for the Area, which is a part of the Comprehensive Land Use Plan of the City of Westminster.

**Plan:** This I-25/Huron Street Area Development Plan as it may be amended from time to time.

**Development Agreement:** An agreement between WEDA and a developer or developers respecting the development of property within the I-25/Huron Street Area Development Plan Area.

Plan Area: The property described in Section 2.5 of this Plan which has been found to be blighted and for which the undertaking of urban renewal projects is declared to be necessary.

## **2. LEGISLATIVE FINDINGS**

### **2.1 Qualifying Conditions**

Based on the I-25/Huron Street Area Conditions Survey prepared by Clarion Associates, dated November 2003, and evidence presented at the public hearing, the City Council finds that there exists blight, as defined by § 31-25-103(2), C.R.S., in the Plan Area.

The I-25/Huron Street Area Conditions Survey found multiple conditions of blight which indicate that at least five factors of blight are present in the Plan Area, as required by § 31-25-103(2), C.R.S. The factors found to exist include:

- a) Defective and inadequate street layout: Existing streets and roads are inadequate to support development contemplated by the I-25 Corridor Plan.
- b) Unusual topography: A substantial proportion of the Plan Area is in floodplain.
- c) Conditions that endanger life and property: Floodplain and floodway conditions endanger life and property in a substantial proportion of the Plan Area.
- d) Inadequate public improvements: Water, sewer, and transportation systems are inadequate to support the planned development of the area.
- e) Defective or unusual condition of title: A substantial proportion of the Plan Area is affected by severed mineral estates which impair planning and financing of development.

The City Council finds that the presence of these factors in the Plan Area substantially impairs or arrests the sound growth of the City of Westminster, retards the provision of housing accommodations, constitutes an economic and social liability and is a threat to the public health, safety, morals and welfare of the City of Westminster.

### **2.2 Development Projects**

The City Council finds that the Plan Area is appropriate for one or more projects and other undertakings of WEDA as authorized by the Urban Renewal Law. Projects that have been initially identified include the mitigation and consolidation of flood hazard areas, the widening and improvement of Huron Street and its appurtenant intersections and the construction of a new interchange off of I-25 at 144<sup>th</sup> Avenue as well as the reconstruction and widening of 14<sup>th</sup> Avenue.

## **2.3 Planning Approval**

A general plan for the City of Westminster, known as the Comprehensive Land Use Plan (“CLUP”), has been adopted by the City Council. In addition the I-25 Corridor Plan has been prepared by the City Council to guide the development of the Plan Area. This I-25/Huron Street Area Development Plan has been submitted to the Planning Commission for review and recommendations as to its conformity with the CLUP and the I-25 Corridor Plan. The Planning Commission met on December 9, 2003 and has submitted its written recommendations to the City Council. This Plan has also been submitted to the Board of County Commissioners of Adams County as required by the Urban Renewal Law.

## **2.4 Public Hearing**

The City Council of the City of Westminster held a public hearing to consider this Plan after public notice thereof in compliance with the Urban Renewal Law in the Westminster Window newspaper, describing the time, date, and purpose of the public hearing, identifying the Plan Area and outlining the general scope of the projects being considered for implementation pursuant to this Plan.

## **2.5 Boundaries of the I-25/Huron Street Area Development Plan Area**

The boundaries of the I-25/Huron Street Area Development Plan Area are set forth in Figure 1 attached hereto. The Plan Area is designated as an urban renewal area by this Plan.

## **2.6 Other Findings**

- 2.6.1 One or more of the projects may require the demolition and clearance, subject to other restrictions, of certain property within the Plan Area as provided in this Plan. Such actions may be necessary to eliminate unhealthy, unsanitary, and unsafe conditions, eliminate obsolete and other uses detrimental to the public welfare, and otherwise remove and prevent the spread of deterioration.
- 2.6.2 Other portions of the Plan Area may be conserved or rehabilitated through appropriate public action, as authorized or contemplated by the Urban Renewal Law, and through the cooperation and voluntary action of the owners and tenants of such property.
- 2.6.3 In order to eliminate or reduce the qualifying conditions currently existing within the Plan Area, it is the intent of the City Council in adopting this Plan that WEDA exercise all powers authorized to be exercised by WEDA under the Urban Renewal Law and which are necessary, convenient, or appropriate to accomplish the objectives of this Plan. It is the intent of this Plan that except as otherwise provided herein, WEDA shall exercise

all such powers as may now be possessed or hereafter granted to WEDA for the elimination of qualifying conditions within the Plan Area. Acquisition of property or any interest in property by WEDA within the Plan Area may be undertaken by any means authorized by WEDA, including condemnation.

- 2.6.4 A feasible method exists for the relocation of individuals, families, and business concerns that may be displaced by an urban renewal project through the adoption of a relocation policy by WEDA insuring that decent, safe and sanitary dwelling accommodations and business locations can be made available.
- 2.6.5 The powers conferred by the Urban Renewal Law are for public uses and purposes for which public money may be expended and the police powers exercised, and this Plan is in the public interest and necessity, such finding being a matter of legislative determination by the City Council.
- 2.6.6 WEDA may, in its discretion, issue bonds, including revenue bonds or other obligations, to the extent permitted by law.
- 2.6.7 The uses contemplated under this Plan are necessary and appropriate to facilitate the sound growth and development of the City of Westminster in accordance with sound planning standards and local community objectives, and any acquisitions within the Plan Area which may require the exercise of governmental action are necessary because of the presence of blight in the Plan Area.

### **3. DESCRIPTION OF PLAN OBJECTIVES**

This Plan is an important tool to address the problems confronting the Plan Area. The Plan is intended to achieve the goals for the area previously outlined in the CLUP and the I-25 Corridor Plan. The objectives for the Plan include the following:

- Provide an efficient system of streets, roads and other transportation facilities necessary to support urban development.
- Provide an adequate system of drainage improvements to eliminate floodplain and floodway conditions.
- Provide necessary water, sewer and other utility facilities necessary for development of the Plan Area.
- Eliminate adverse conditions of title that impede development.
- Provide employment opportunities in an attractive setting.

- Support transit-oriented developments that take advantage of major transit and roadway improvements in the I-25 Corridor.

#### **4. PLAN IMPLEMENTATION**

In order to accomplish the objectives of this Plan and to fully implement this Plan, WEDA shall be authorized to undertake the following activities:

##### **4.1 Development Activities**

Development activities within the Plan Area may include such undertakings and activities as are in accordance with this Plan and the Urban Renewal Law, including without limitation: demolition and removal of buildings and improvements as set forth herein; installation, construction and reconstruction of public improvements as set forth herein; elimination of unhealthful, unsanitary or unsafe conditions; mitigation of floodway and floodplain conditions; and other actions to remove or to prevent the spread of deterioration or to provide land for needed public facilities. WEDA is authorized to solicit interest from developers in development projects and to negotiate with landowners, developers, and investors regarding appropriate projects within the Plan Area.

##### **4.2 Property Acquisition and Land Assemblage**

It is a goal of this Plan that property for projects in the Plan Area be voluntarily acquired by private individuals and entities. While WEDA is authorized to acquire real property or any interest in real property by purchase, gift, donation, lease or other conveyance, this principal intent is the foundation upon which this Plan has been developed. If necessary, WEDA is authorized to acquire property or interests in property by condemnation as provided in Article 1 and Article 7 of Title 38 of the Colorado Revised Statutes.

##### **4.3 Relocation Assistance and Payments**

In the event it is necessary to relocate or displace any residents, businesses or other commercial establishments as a result of any property acquisition, WEDA shall adopt relocation policies for payment of relocation expenses. Such expenses may include moving expenses, actual direct losses of property for business concerns, and goodwill and lost profits that are reasonably related to relocation of the business, resulting from its displacement for which reimbursement or compensation is not otherwise made.

##### **4.4 Demolition, Clearance and Site Preparation**

With respect to property acquired by WEDA, it may demolish and clear, or contract to demolish and clear, those buildings, structures and other improvements from property pursuant to this Plan if in the judgment of WEDA, such buildings, structures and other improvements are not to be rehabilitated in accordance with this Plan.

#### **4.5 Public Improvements and Facilities**

WEDA may undertake certain actions which would make the Plan Area more attractive for private investment. These actions may include street and traffic improvements, streetscape improvements, stormwater and other drainage improvements, landscaping, park and recreation facilities, utility improvements and public art projects.

#### **4.6 Property Disposition**

WEDA may sell, lease, or otherwise transfer real property or any interest in real property subject to such covenants, conditions and restrictions, including architectural and design controls, time restrictions on development, and building requirements, in addition to zoning and building code regulations. Real property or interests in real property may be sold, leased or otherwise transferred for uses in accordance with this Plan.

#### **4.7 Redevelopment Agreements**

WEDA is authorized to enter into one or more Development Agreements with developer(s) and such other entities as are determined by WEDA to be necessary or desirable by WEDA to carry out the purposes of this Plan. Such Development Agreements may contain such terms and provisions as shall be deemed necessary or appropriate by WEDA for the purpose of undertaking the activities contemplated by this Plan or the Urban Renewal Law, and may further provide for such undertakings by WEDA, including financial assistance, as may be necessary for the achievement of the objectives of this Plan or as may otherwise be authorized by the Urban Renewal Law.

#### **4.8 Interagency Cooperation**

WEDA may enter into one or more Cooperation Agreements with the City of Westminster or other public bodies pursuant to the Urban Renewal Law. Cooperation Agreements may provide, without limitation, for financing, for construction of public improvements, for administration, for technical assistance and for other purposes.

### **5. PROJECT FINANCING**

#### **5.1 Tax Increment Financing**

The primary method of financing the projects undertaken in furtherance of this Plan shall be the use of sales tax and property tax increment financing pursuant to Section 31-25-107(9), C.R.S., which is by this reference incorporated herein as if set forth in its entirety. If there is any conflict between the Urban Renewal Law and this Plan, the provisions of the Urban Renewal Law shall control. Certain portions of sales tax receipts from the Plan Area have previously been committed to support the construction of certain transportation improvements as a result of an intergovernmental agreement between the City of Westminster and the City of Thornton. All property and available sales taxes collected within the Plan Area shall be divided as follows:

- a) That portion of property and available sales taxes equal to the amount collected within the boundaries of the Plan Area in the twelve-month period ending on the last day of the month prior to the effective date of the approval of this Plan shall be paid into the funds of each such public body as are all other taxes collected by or for such public body.
- b) Except as WEDA may legally provide otherwise under the Urban Renewal Law, the portion of such property and available sales taxes in excess of the amounts described in paragraph a), above, shall be allocated to and, when collected, paid into a special fund to fund WEDA's obligations with respect to any project, including payment of the principal of, the interest on, and any premiums due in connection with the bonds, loans or advances to, or indebtedness incurred by (whether funded, refunded, assumed, or otherwise) WEDA for financing or refinancing, in whole or in part, the reinvestment projects.
- c) When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith, have been paid, but in no event later than 25 years following the adoption of this Plan for the construction of the projects' improvements, any excess property and available sales tax collections not allocated pursuant to this paragraph or any Cooperation Agreement between WEDA and City or other taxing jurisdiction, shall be paid into the funds of said jurisdiction or public body. Unless and until the total property and available sales tax collections in the Plan Area exceed the base year property and available sales tax collections in the Plan Area, as provided in paragraph a), above, all such property and available sales tax collections shall be paid into the funds of the appropriate public body. WEDA reserves the right to enter into Cooperation Agreements with select taxing jurisdictions relative to allocation of incremental tax revenues.
- d) The adoption of this Plan shall be deemed an adoption of a provision that taxes, if any, levied after the effective date of the approval of this Plan upon taxable property in the Plan Area shall be divided among WEDA and various taxing entities for a period of 25 years thereafter or such lesser period as provided in Section 31-25-107(9), C.R.S., or in any Cooperation Agreement between WEDA and a county, the City or a special district.
- e) WEDA and the City may, by Cooperation Agreement or other agreement, provide for the method by which available sales tax increments shall be allocated and paid to WEDA pursuant to the provisions of this Plan and the Urban Renewal Law. Such agreements, and similar agreements between WEDA and other public bodies, may provide for additional assistance by the City and cooperation between WEDA and the City in support of the projects as may be more fully set forth in the provisions of such Cooperation Agreement or other agreement.

## **5.2 Additional Taxing Entities**

WEDA recognizes that tax increment financing is the primary tool for funding redevelopment activities. However, Colorado law allows the creation of additional political subdivisions within a municipality to provide services within a defined area. These entities include metropolitan and other special districts as well as business improvement districts. These districts have available certain taxing powers that can generate revenues in addition to those generated by tax increment financing.

WEDA is committed to exploring a variety of strategies and mechanisms to complement tax increment financing. WEDA recognizes that it is imperative that financing mechanisms be flexible and creative to provide necessary assistance to a broad range of redevelopment activities.

## **5.3 Participating Interest in Projects**

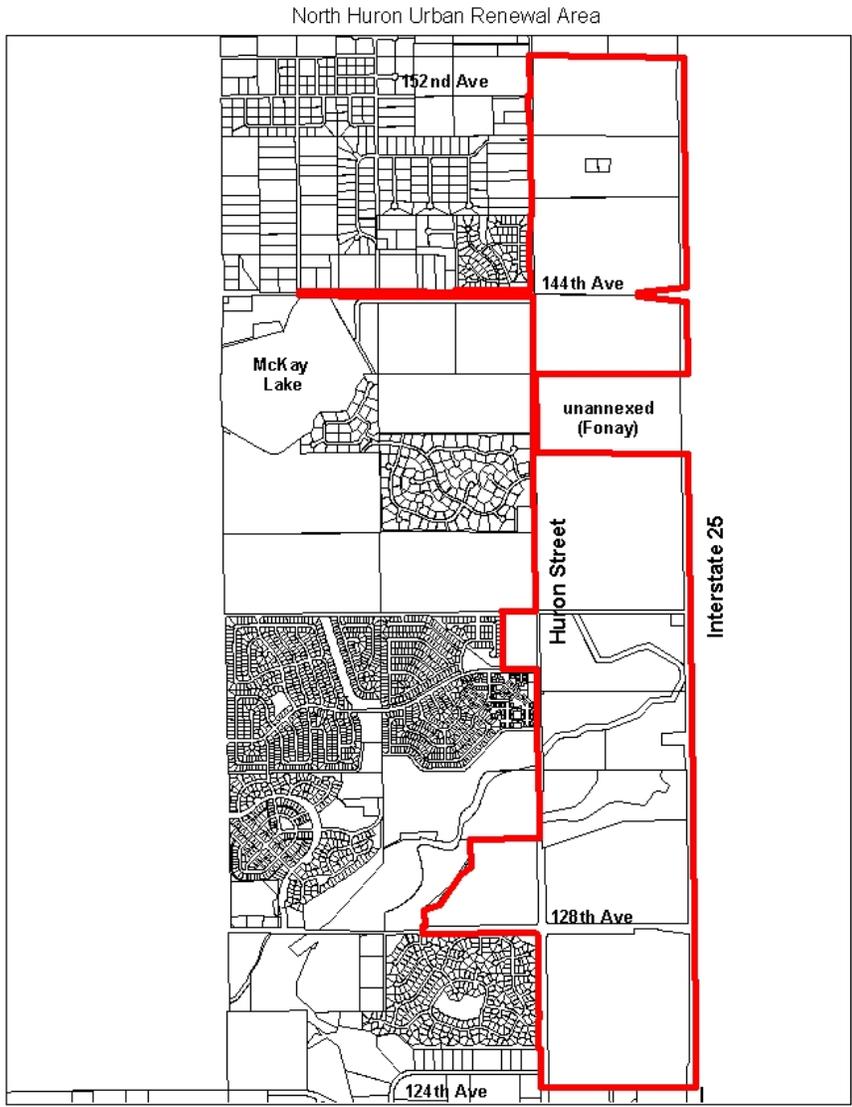
WEDA may require a participating interest in private development projects for which it provides financial assistance. Public assistance is frequently needed for redevelopment projects in order to fill the gap between traditional equity and debt financing and the additional costs of a redevelopment project. In the event the project generates revenues at or greater than market return, the public should share in the success of the project. The terms of the participating interest will be specified in the Redevelopment Agreement at a level and on terms appropriate for each project.

## **6. AMENDMENTS TO THIS PLAN**

This Plan may be amended or modified pursuant to provision of the Urban Renewal Law as provided in § 31-25-107, C.R.S.

# FIGURE 1

## I-25/Huron Street Area Development Plan Area





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Public Hearing and Action on Funding for the Upgrade and Expansion of the Big Dry Creek Wastewater Treatment Facility

**Prepared By:** Kent W. Brugler, Senior Engineer, Public Works and Utilities

**Recommended City Council Action**

- Hold a Public Hearing.
- Authorize Staff to pursue funding for the upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility through the Colorado Water Resources and Power Development Authority loan program.

**Summary Statement**

- The City intends to apply for funding through the Colorado Water Resources and Power Development Authority for the upcoming upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility.
- As part of the funding application process, a public hearing is required to be held during the City Council meeting on January 26, 2004 to discuss the funding application to be submitted by February 2, 2004.
- The Big Dry Creek Wastewater Treatment Facility needs to be expanded to accommodate growth in the Big Dry Creek service area of the City and the resulting increased wastewater flow, and some of the older treatment processes and equipment need to be replaced.
- The recently completed Wastewater Utility Plan and Site Application quantified the flows expected through build-out of the City, evaluated the treatment facility needs for expansion and upgrade, and recommended improvements that need to be made to meet the treatment requirements.
- The upcoming widening of Huron Street adjacent to the plant site will affect access into the plant and to several buildings within the plant site, and will impact the alignment of the major interceptor pipelines that convey wastewater to the treatment facility.
- The final design phase of the project is underway with construction anticipated to begin in September of this year.

**Expenditure Required:** Total project costs are estimated to be \$23-28 Million. A final design cost estimate will be completed by April 15, 2004.

**Source of Funds:** Utility Fund Capital Improvement Budget and revolving loan funding from the Colorado Water Resources and Power Development Authority

## **Policy Issues**

Should the City debt finance some or all of the costs of the upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility, either through the Colorado Water Resources and Power Development Authority or through other means such as a revenue bond issue?

## **Alternatives**

The City could choose to not pursue funding through the revolving loan fund program and instead issue revenue bonds possibly; however, this could result in higher interest rates.

## **Background Information**

The Big Dry Creek Wastewater Treatment Facility (BDCWWTF) was originally constructed in 1974 with a capacity of 2.0 million gallons per day (MGD), and has been expanded several times since then, most significantly in 1982 and 1995, to its current capacity of 7.5 MGD average daily flow. Most of the original structures and equipment are still in use today and show signs of wear and deterioration. The BDCWWTF serves the northern half of the City, representing approximately 60% of the wastewater flow from the entire City. The Metro Wastewater District serves the southern section of the City, within the Little Dry Creek drainage basin. The attached Figure 3-1 identifies the service areas.

The state permit for the discharge from the BDCWWTF requires that once the flow into the facility reaches 80% of the facility's maximum monthly flow capacity (9.2 MGD), the design process must begin for the expansion of the facility. This level of flow, or 7.4 MGD, was exceeded in 2001 and triggered the need to complete the preliminary design work in 2002. The permit also requires that construction be started prior to the flows reaching 95% of the permitted capacity, or 8.7 MGD. This flow is anticipated to be reached in 2005. The Wastewater Master Plan concluded that the build-out capacity for the facility would need to be 11.9 MGD. This final design phase will allow the facility to be expanded to treat this capacity by 2006.

The preliminary design phase, which was completed in early 2003, included a thorough evaluation of: the build-out capacity facility flow requirements, all existing structures and processes at the facility, odor control options, a security assessment, improved automation methods, biosolids processing and handling options, all related permit coordination and a recommendation of the most effective waste treatment method that should be followed in the final design phase.

The final design process began in August and thus far has focused on reviewing and confirming the recommendations made during the preliminary design phase. Several additional alternatives were evaluated and a more detailed analysis of the recommended improvements was completed and costs were updated. Site access improvements were addressed as they relate to the Huron Street widening project that will eliminate all existing access driveways into the plant, and additional odor assessments were completed that form the basis for the design of the proposed odor control facilities. Another significant component of the project is the replacement of the gas chlorination system with an ultraviolet disinfection system, eliminating the hazard of a gas leak and improving the safety of the facility. A similar project was completed last winter at the Semper Water Treatment Facility.

Staff is continuing to evaluate the most cost effective funding package for this project, considering a combination of Utility Enterprises Fund cash financing, Water and Power revolving loan financing, and/or City issued revenue bonds. The final package will be determined based on the lowest long term costs presented to the City at the time the funding must be in place. The submission of the application to the Water and Power Authority is being made to maintain the City's eligibility for this source of funding.

SUBJECT: Funding for the Upgrade and Expansion of the Big Dry Creek  
Wastewater Treatment Facility

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The construction cost estimate will be finalized in April. The project is scheduled to go to bid in June and construction is anticipated to begin in September of this year.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Resolution No. 6 re Lowe's Home Improvement Warehouse

**Prepared By:** Becky Johnson, Economic Development Program Coordinator  
Dan Osborn, Planner I

**Recommended City Council Action**

Pass Resolution No. 6 to designate Lowe's Home Improvement Warehouse (Lowe's) as an Economic Development Project for the purpose of receiving administrative review of the Official Development Plan.

**Summary Statement**

- City Code subsection 11-5-8 (B) allows a non-residential Official Development Plan to receive administrative review and approval if designated by resolution as an Economic Development Project.
- The Lowe's project meets the City's redevelopment goals and qualifies for economic development assistance.

Subject: Lowe's Home Improvement Warehouse  
January 26, 2004  
Page 2

- The Lowe's project will provide a redevelopment opportunity to the former Mobile Tool site, at 5600 West 88<sup>th</sup> Avenue, west of Sheridan Boulevard on the south side of 88<sup>th</sup> Avenue, and will bring significant economic influence to the area.
- The Lowe's project meets the general criteria required by Code; is zoned for the use intended; and, is considered an economic development project.
- Allowing an administrative review is key to the financing of the project and to keep it on a time sensitive construction schedule.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Does Council desire to approve a resolution designating Lowe's as an Economic Development Project for the purpose of allowing the Official Development Plan to receive administrative approval?

**Alternative**

One alternative is to deny the request designating Lowe's as an Economic Development Project. This would result in a time delay, while the plan is formally taken to public hearing for the Official Development Plan approval process, resulting in Lowe's inability to complete the financing for the project by the end of January 2004.

**Background Information**

Staff has been working with Lowe's on the redevelopment of the former Mobile Tool site at 5600 West 88<sup>th</sup> Avenue since June of 2003. Plans include the demolition and clean up of a 15.27 acre site and construction of a new 116,000 square foot home improvement center. Lowe's is scheduled to close on the acquisition of the former Mobile Tool site by the end of January 2004. One of the major requirements of the land acquisition is to receive formal approval of the Official Development Plan prior to closing. This project will contribute significant sales and property tax to the City of Westminster and the Westminster Economic Development Authority, as the site is located in the Westminster Center urban renewal area.

Section 11-5-8(B) of the Westminster Municipal Code allows that an Official Development Plan (ODP) for a non-residential project under 20 acres in size may be administratively approved by the City Manager if it is determined that the project furthers the City's economic development goals, or if it qualifies for economic development assistance.

Lowe's must still meet City planning requirements in order to receive administrative approval. In an effort to keep the land acquisition on time and this project moving forward in a time sensitive manner, staff recommends that Council designate Lowe's as and Economic Development Project for the purpose of receiving administrative approval.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

**RESOLUTION**

RESOLUTION NO. **6**

INTRODUCED BY COUNCILLORS

SERIES OF 2004

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DECLARING THE LOWE'S HOME IMPROVEMENT WAREHOUSE AS AN ECONOMIC DEVELOPMENT PROJECT FOR THE PURPOSE OF RECEIVING ADMINISTRATIVE REVIEW OF THE OFFICIAL DEVELOPMENT PLAN

WHEREAS, the City is engaged in the redevelopment of the former Mobile Tool site at 5600 West 88<sup>th</sup> Avenue; and

WHEREAS, the project will result in the construction of a 116,000 square foot retail home improvement center providing additional property, sales, and use tax to the City of Westminster and to the Westminster Economic Development Authority; and,

WHEREAS, when Lowe's Home Improvement Warehouse Official Development Plan meets staff approval, administrative approval will be granted; and,

WHEREAS, the Lowe's site is comprised of a 15.27 acre site, which is within the allowed site size to receive an Economic Development Project designation; and,

WHEREAS, Section 11-5-8(B) of the Westminster Municipal Code allows that an Official Development Plan (ODP) for a non-residential project under 20 acres in size may be administratively approved by the City Manager if it is determined that the project furthers the City's economic development goals, or if it qualifies for economic development assistance.

NOW, THEREFORE, be it resolved that the Westminster City Council resolves that Lowe's Home Improvement Warehouse is be designated as an Economic Development project for the purposes of receiving administrative review as outlined in the Westminster City Code, Section 11-5-8 (B), enabling the City Manager to administratively approve the Official Development Plan for the project, upon staff recommendation.

Passed and adopted this 26th day of January 2004.

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Councillor's Bill No. 5 re 2003 Budget Supplemental Appropriation

**Prepared By:** Karen Creager, Internal Auditor

**Recommended City Council Action:**

Pass Councillor's Bill No. 5 on first reading providing for supplementary appropriations to the 2003 budget of the General Fund.

**Summary Statement**

City Council action is requested to pass the attached Councillor's Bill on first reading amending the 2003 budget appropriations in the General Fund.

- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2003 4th quarter supplemental appropriation.
- General Fund amendments:
  - \$9,430 Police Department overtime reimbursement
  - \$7,049 Police Department grants
  - \$511,562 Lease proceeds
  - \$3,322 Parks, Recreation and Libraries youth sponsorship funds
  - \$16,500 Parks, Recreation and Libraries additional program revenue
  - \$6,660 Parks, Recreation and Libraries special event revenue
- Appropriation of these unbudgeted funds allows the funds to be spent in 2003.

**Expenditure Required:** \$554,523

**Source of Funds:** The funding sources for these expenditures include reimbursements, lease proceeds, general recreation program revenue, special event revenue and various grants

**Policy Issue**

Does City Council support amending the appropriations for the 2003 budget of the General Fund?

**Alternative**

The alternative would be not to amend the 2003 budget appropriations for the General Fund and utilize these funds to increase reserves. Staff does not recommend this alternative as the various departments have already incurred these expenses and covered them in their current budget in anticipation of receipt of the funds.

**Background Information**

This agenda memo and attached Councillor's Bill is a routine action addressing the need to appropriate additional revenues and offsetting expenditures that resulted from increased activity or events that were not anticipated during the normal budget process.

The Police Department (PD) received \$2,529, \$392 and \$6,509 from the City of Thornton, US Department of Justice and the City of Lakewood, respectively, for High Intensity Drug Trafficking Area (HIDTA) Drug Investigations overtime. These reimbursements were for overtime incurred by members of the Police Department while working on Federal HIDTA cases. (General Fund)

Additionally, the PD has received a grant of \$7,049 through the Colorado Internet Crimes Against Children Task Force. This Task Force is intended to target sexual predators of children who operate via the Internet. The grant was used to purchase an undercover laptop/software, undercover phone lines, etc. to fund the program. (General Fund)

On November 11, 2002, City Council approved the lease purchase financing for one Pierce 75' Heavy Duty Ladder apparatus, which was purchased in 2003. The lease amount was \$472,039. Additionally, the City entered into a lease for \$39,523 for copiers in 2003. In order to properly reflect the receipt of the lease proceeds and the subsequent use of the proceeds on the City's books, the lease proceeds are now being appropriated. (General Fund)

The Westminster Youth Scholarship Fund will benefit from the net proceeds of \$3,322 received in 2003 from community events such as 4th of July, the Holy COW Trail Stampede, art shows, etc. held in Westminster. Funds from the youth scholarship program are used to award scholarships for City-sponsored recreation programs to youth who could not otherwise afford to participate. (General Fund)

Parks, Recreation and Libraries (PR&L) received \$6,660 in 2003 from special events such as 4<sup>th</sup> of July, Infinity Broadcasting's Dom and Jane Concert and the Westminster Faire. The funds are being appropriated to help offset the costs of these events. (General Fund)

PR&L Recreation Program Division is requesting to appropriate \$16,500 for temporary salaries, contractual services and recreation supplies to offset some of the expenses required for additional programs that were offered in 2003. (General Fund)

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

Respectfully Submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **5**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Fund, initially appropriated by Ordinance No. 2977 in the amount of \$67,576,244 is hereby increased by \$554,523 which, when added to the fund balance as of the City Council action on January 26, 2004 will equal \$71,656,730. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an appropriation of reimbursements, lease proceeds, general recreation program revenue, special event revenue and various grants.

Section 2. The \$554,523 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Revenue</b>				
Federal Grants	1000.40610.0100	\$28,774	\$7,049	\$35,823
General Misc	1000.43060.0000	242,490	9,430	251,920
Special Events	1000.41030.0509	0	6,660	6,660
Adult Activities	1000.41030.0503	834,100	16,500	850,600
Youth	1000.41030.0528	0	3,322	3,322
Scholarship				
Note Proceeds	1000.46000.0225	211,000	<u>511,562</u>	722,562
Total change to revenues			<u>\$554,523</u>	

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
PD Inv - Overtime	10020300.60400.0000	\$178,233	\$11,686	\$189,919
PD Inv – Career Dev	10020300.61800.0000	7,750	1,888	9,638
PD Inv – Prof Svcs	10020300.65100.0000	14,500	810	15,310
PD Inv – Supplies	10020300.70200.0000	17,420	2,095	19,515
Adult Sports – Prof Svcs	10050760.65100.0504	67,020	2,000	69,020
Adult Sports – Rec Supplies	10050760.71200.0504	37,750	1,000	38,750

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Spec Events – Cont Svcs	10050760.67800.0533	35,800	6,660	42,460
Spec Promo	10050760.67600.0528	4,683	3,322	8,005
Other Financing Use	10010900.78800.0000	211,000	<u>511,562</u>	722,562
Total change to expenses			<u>\$554,523</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 AND PUBLISHED this 26th day of January, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2004.

ATTEST:

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Mayor

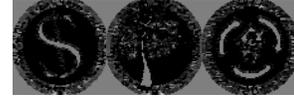
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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Councillor’s Bill No. 6 re Warwick Station Apartments Refunding Bonds

**Prepared By:** Martin R. McCullough, City Attorney  
Mary Ann Parrot, Finance Director

**Recommended City Council Action**

1. Conduct a TEFRA public hearing.
2. Pass Councillor's Bill No. 6 as an emergency ordinance approving the refunding indenture, financing agreement, intercreditor agreement and bond purchase agreement necessary to refund the Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A in the amount of \$8,355,000 for the Warwick Station Apartment Project, and authorizing the Mayor, City Clerk, City Manager and City Attorney to execute documents as necessary to finalize the transaction.

**Summary Statement**

- The Warwick Station Apartments are located at 104<sup>th</sup> Avenue and Dover. The project was financed with tax-exempt multi-family housing revenue bonds approved by the City in 1985.
- The owner of the project, EQR Warwick L.L.C. (the “Owner”), is requesting the City authorize the issuance of refunding bonds.
- EQR Warwick is an affiliate of Equity Residential (“EQR”), the nation’s largest real estate investment trust. EQR is consolidating its credit relationship for tax-exempt multifamily housing projects with the Federal Home Loan Mortgage Corporation (“Freddie Mac”).
- The refunding is expected to reduce the interest cost to the Owner allowing it to continue to maintain affordable rents.
- In exchange for a 5-year extension of the maturity date of the bonds, the developer is agreeing to increase the percentage of affordable housing units from 20% of the completed units to 30% of the completed units.

The City’s fees will be paid as follows: The developer shall pay for the City’s bond counsel and financial advisor fees, and the City’s Industrial Development Revenue Bonds (IDRB) review fee of .25 percent of the principal (\$20,887.50).

- The City’s Financial Advisor, David Bell with Stifel Nicholas, has reviewed the transaction and concurs with the approach being proposed.
- Federal tax law requires a public hearing before extending the maturity date of tax-exempt bonds such as these.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issues**

Should the City agree to refund the bonds for this project to accommodate the Owner's desire to reduce its interest cost and to change credit enhancement providers, with a 5-year extension of maturity (from 2018 to 2023) in exchange for an increase in affordable housing from 20% to 30% of the 332 units and with no increase in principle amount?

**Alternatives**

Do not approve the refunding of the bonds. This is not recommended because the fees to be paid to the City will be adequate to cover the City's expenses. There is no increase in the amount of the current bonds, resulting in no increased risk to the City as the issuer of the refunding bonds. The City has supported similar refundings in the past.

**Background Information**

In December of 1985, City Council authorized the issuance of tax-exempt multi-family housing revenue bonds in the aggregate principal amount of \$14,500,000. The primary reason for approving the 1985 financing was to enable the construction of affordable rental housing to be made available at reasonable rental rates. The bonds were issued under the State's industrial development revenue bond (IDRB) act, and do not constitute a financial obligation or a debt or indebtedness of the City. The bonds are payable solely from Project revenues.

In 1994, the current bonds were remarketed. At that time the interest rate on the bonds was fixed at 6% per annum. Payment of the principal of and interest on the bonds is insured by a municipal bond insurance policy issued by Financial Security Assurance and the current bonds are "AAA" rated securities, with ratings issued by Standard & Poor's and Moody's.

The Owner is now requesting the City refund the bonds because its parent organization is consolidating its credit enhancement relationship for its tax-exempt financed multifamily housing projects across the country. The Owner has not requested that the principal amount of the proposed refunding bonds be increased to an amount greater than the outstanding amount of the current bonds.

The Owner has requested an extension of the term of the bonds, from 2018 to 2023, an extension of 5 years. In return for this, the Owner has agreed to increase the percentage of affordable housing units from 20% of the total number of completed units of the project to 30% of the total number of completed units of the project. This means that the number of affordable units will increase from 66 units to 99 units, of a total of 332 units in the 15-building apartment complex. These units will be leased to tenants whose income is 80% or less of median income for the area (or about \$54,000 per year). Staff recommends that the City Council approve this arrangement, as it meets one of Council's strategic plan goals and is consistent with another refunding of IDRB bonds for Cascade Village Apartments completed in 2002.

The new bonds are to be designated as the "City of Westminster, Colorado, Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Warwick Station Apartments) Series 2004 (the "Bonds"). The proceeds of these new bonds will be used to redeem and payoff the current bonds. The costs of issuance of the Bonds, including all of the City's fees and incidental expenses, will be paid at closing by the Owner from its own funds. The Bonds, like the current bonds, will also be issued pursuant to the State's industrial development revenue bond act and will not constitute a financial obligation or debt or indebtedness of the City.

Under Federal tax laws, when a tax-exempt bond final maturity is extended, it is necessary to conduct a hearing (known as TEFRA hearing, for the Tax Equity Finance and Reform Act passed by the US Congress in the 1980's), in order to hear of any objections or support for this financing.

The Bonds when issued will be variable rate bonds and the payment of the principal and interest on the Bonds will be secured by a Credit Enhancement Agreement issued by Freddie Mac. Freddie Mac will be secured by a second lien mortgage interest in the Project and in other EQR projects being refinanced with Freddie Mac's guarantee. The Bonds will be secured directly by a first mortgage lien. Pursuant to a cross-collateralization agreement with Freddie Mac, EQR, the Owner and other affiliates of EQR, Freddie Mac will be entitled, at its option, to declare an event of default on the Bonds if a default shall occur on any of the other Freddie Mac guaranteed projects. In such event Freddie Mac could cause a mandatory tender of the Bonds, however, Freddie Mac would be obligated to pay the purchase price of the Bonds upon such mandatory tender pursuant to the terms of its guarantee.

The Bonds are to be underwritten by Merrill Lynch & Co. ("Merrill"). Merrill is also being retained to act as remarketing agent for the Bonds. Sherman & Howard L.L.C. will act as bond counsel for the City in connection with this refinancing.

The refunding bonds will meet the City's "AA" or better rating requirement.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **6**

SERIES OF 2004

INTRODUCED BY COUNCILLORS:

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A BILL

FOR AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF AN AMOUNT NOT TO EXCEED \$8,355,000 VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (WARWICK STATION APARTMENTS) SERIES 2004 OF THE CITY OF WESTMINSTER, COLORADO FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF REFUNDING THE CITY OF WESTMINSTER, COLORADO MULTIFAMILY HOUSING REVENUE BONDS (WARWICK STATION APARTMENTS) 1985 SERIES A; APPROVING AND AUTHORIZING EXECUTION OF A TRUST INDENTURE, A FINANCING AGREEMENT, PURCHASE AGREEMENT, INTERCREDITOR AGREEMENT, AND AN AMENDED AND RESTATED LAND USE RESTRICTION AGREEMENT WITH RESPECT TO THE BONDS AND THE MULTIFAMILY HOUSING PROJECT BEING REFINANCED WITH THE PROCEEDS OF THE BONDS; MAKING FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; DECLARING AN EMERGENCY AND REPEALING ALL ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH.

WHEREAS, the City of Westminster, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado (the "State"), created and operating pursuant to Article XX of the Colorado Constitution and the home rule charter of the City (the "Charter"); and

WHEREAS, the County and Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), authorizes cities and counties in the State to finance or refinance one or more projects, including any land, buildings or other improvements, and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families or persons may be provided, which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, the City is further authorized by the Act to issue its revenue bonds for the purposes of defraying the costs of financing or refinancing any such project, including all incidental expenses incurred in issuing such bonds, and to secure the payment of such bonds as provided in the Act; and

WHEREAS, the City has previously made a loan of the proceeds of its Variable Rate Demand Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A (the "Original Bonds") in the original aggregate principal amount of \$14,500,000 pursuant to the terms of an Indenture of Trust dated as of December 1, 1985 between the City and Mellon Bank, N.A., as trustee (the "Original Indenture") to Warwick Venture ("Warwick Venture"), a Texas limited partnership, to provide financing for a multi-family rental housing development known as Warwick Station (the "Project") located within the boundaries of the City, for occupancy partially (as least 20%) by individuals of low or moderate income within the meaning of and for the period required by Section 103(b) of the Internal Revenue Code of 1954, as amended, all for the public purpose of providing more adequate residential housing facilities for low- and middle-income families and persons; and

WHEREAS, the interest of Warwick Venture in the Project was sold to Wellsford Warwick Corp., a Colorado corporation ("Wellsford Warwick") on November 9, 1993; and

WHEREAS, the Original Indenture was amended and restated pursuant to the terms of an Amended and Restated Trust Indenture dated as of April 4, 1994, pursuant to which the Original Bonds were remarketed as the City of Westminster, Colorado Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A (the "Prior Bonds") in the aggregate principal amount of \$11,000,000; and

WHEREAS, the interest of Wellsford Warwick in the Project was sold to EQR Warwick L.L.C. (the "Owner"), a Delaware limited liability company on May 30, 1997 and the Owner assumed Wellsford Warwick's obligations under the Amended and Restated Financing Agreement dated as of April 1, 1994 between the City and Wellsford Warwick; and

WHEREAS, representatives of the Owner have requested that the City issue its variable rate demand multifamily housing revenue refunding bonds pursuant to terms of the Act to refund the Prior Bonds (the "Refunding Project"); and

WHEREAS, the City has considered the request of the Owner and has concluded that the Refunding Project will assure the continuing provision of low- and middle-income residential rental facilities, promoting the public health, welfare, safety, convenience and prosperity, and that the City should issue its variable rate demand multifamily housing revenue refunding bonds under the Act to finance a portion of the cost of the Refunding Project, subject to the conditions set forth herein; and

WHEREAS, the City will issue, sell and deliver its City of Westminster, Colorado Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Warwick Station Apartments) Series 2004 (the "Bonds"), in an aggregate principal amount not to exceed \$8,355,000, pursuant to the terms of a Trust Indenture dated as of January 1, 2004 (the "Indenture") between the City and The Bank of New York, as trustee (the "Trustee") to pay a portion of the cost of the Refunding Project; and

WHEREAS, the Owner will enter into a Financing Agreement, dated as of January 1, 2004 (the "Financing Agreement") among the City, the Owner and the Trustee pursuant to which the proceeds of the Bonds will be loaned to the Owner (the "Bond Mortgage Loan"); and

WHEREAS, the Owner will execute a Multifamily Note (the "Bond Mortgage Note") evidencing its obligation to repay the Bond Mortgage Loan to be delivered upon the order of the City pursuant to the Financing Agreement to the Trustee; and

WHEREAS, the Owner will cause to be delivered to the Trustee on the date of initial issuance of the Bonds a direct pay Credit Enhancement Agreement dated as of January 1, 2004 (the "Credit Enhancement Agreement") between the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Trustee which will provide for (i) draws in an amount equal to certain "Guaranteed Payments" with respect to the Bond Mortgage Loan and (ii) liquidity draws by the Trustee to the extent remarketing proceeds are insufficient to pay the purchase price of Bonds while the Bonds bear interest at a variable rate; and

WHEREAS, to evidence the Owner's reimbursement obligations to Freddie Mac for draws made under the Credit Enhancement Agreement, the Owner and Freddie Mac will enter into a Reimbursement and Security Agreement dated as of January 1, 2004; and

WHEREAS, to secure the Owner's obligations under the Bond Mortgage Note, the Owner will execute and deliver to the Trustee on the date the Bonds are delivered a Multifamily Deed of Trust, Assignment of Rents and Security Agreement (including Fixture Filing) with respect to the Project; and

WHEREAS, the City has been requested to enter into an Intercreditor Agreement (the "Intercreditor Agreement") in connection with Freddie Mac's provision of credit enhancement; and

WHEREAS, the City is authorized by the Supplemental Public Securities Act, Article 57 of Title 11 of Colorado Revised Statutes, as amended (the "Public Securities Act"), to delegate to any of its members, chief executive officer, or chief financial officer the authority to sign a contract for the purchase of securities or to accept a binding bid for securities and, in addition, may delegate the following determinations to such member or officer without any requirement that the issuing authority approve such determinations: (a) the rate of interest on securities; (b) the conditions on which and the prices at which the applicable securities may be redeemed before maturity; (c) the existence and amount of any capitalized interest or reserve funds; (d) the price at which the securities will be sold; (e) the principal amount and denominations of the securities; (f) the amount of principal maturing in any particular year; and (g) the dates on which principal and interest shall be paid; and

WHEREAS, the City hereby determines that it is in the City's best interest to delegate to its City Manager ("City Manager") the powers enumerated in the Public Securities Act as more specifically provided in this Ordinance; and

WHEREAS, there have been presented to the City Council at this meeting the following documents: (a) the proposed form of the Financing Agreement, (b) the proposed form of the Indenture, (c) the proposed form of the Intercreditor Agreement, (d) the proposed form of the Amended and Restated Land Use Restriction Agreement dated as of January 1, 2004 (the "Regulatory Agreement"), by and among the City, the Owner and the Trustee and (e) the proposed form of Purchase Agreement (the "Purchase Agreement") among the City, the Owner and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter").

**THE CITY OF WESTMINSTER ORDAINS:**

**Legal Authorization.** The City is a duly organized and existing home rule municipality of the State, created and operating pursuant to Article XX of the Colorado Constitution and the City's Charter and is authorized under the Act to issue and sell its multifamily housing revenue bonds in the form of one or more debt instruments, such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in the Act, in this Ordinance, and in the Indenture.

**Findings.** The City Council has heretofore determined, and does hereby determine, based upon the representations of the Owner, as follows:

The Project is an eligible "project," as defined in the Act.

The issuance of the Bonds will effectuate the public purposes of the City and carry out the purposes of the Act by, among other things, providing residential facilities for low- and middle-income persons in the City.

The Bonds are special, limited obligations of the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the Indenture. The Bonds, the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City within the meaning of any provision or limitation of the State Constitution, State statutes or the Charter, and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing power and shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the City under Article X, Section 20 of the Colorado Constitution. Neither the State of Colorado nor any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the State, the City or any political subdivision thereof.

**Authorization of Issuance of Bonds.** To defray the cost of the Refunding Project, there is hereby authorized and created a series of variable rate revenue bonds designated "City of Westminster, Colorado, Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Warwick Station Apartments) Series 2004" in an aggregate principal amount not to exceed \$8,355,000. Subject to the determination of the City Manager, the issuance of the Bonds shall be in such principal amounts, bearing such dates and provisions for determination of variable interest rates and such Bonds shall mature as set forth in the Indenture. The Bonds shall be payable, shall be subject to redemption or purchase in lieu of redemption and tender prior to maturity and shall be in substantially the form as provided in the Indenture. Furthermore, the Bonds shall be payable at such place and in such form, shall carry such registration privileges, shall be executed, and shall contain such terms and conditions, as set forth in the Indenture. The maximum net effective interest rate on the Bonds shall not exceed 12.00% per annum. Section 11-57-204 of the Public Securities Act provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Public Securities Act. The City hereby elects to apply all of the Public Securities Act to the Bonds.

**Sale of Bonds** The placement and purchase of the Bonds pursuant to the terms of the Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor (or Mayor pro tem) is hereby authorized and directed to execute the Bonds and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Bonds and each is hereby authorized to deliver the Bonds for and on behalf of the City to the Trustee for authentication pursuant to the Indenture. The Bonds shall be sold to the Underwriter for the purchase price as set forth in the Purchase Agreement (subject to the limitations set forth herein).

Delegation. Pursuant to the terms of the Public Securities Act, the City Manager is hereby delegated the authority to establish: (i) the terms upon which the interest rate or rates of the Bonds will be determined and the payment dates therefore, provided that the net effective interest rate for the Bonds shall not exceed 12.00%; (ii) the prior redemption provisions for the Bonds, provided, any redemption premium thereon shall not exceed 4% of the principal amount to be redeemed; (iii) the original issue discount or premium thereon shall not exceed 3% of the aggregate principal amount of the Bonds; and (iv) the dates on which the Bonds shall mature, including the amounts to mature in each year, provided that, the final maturity date for any Bond shall not be later than December 15, 2023.

Approval and Authorization of Documents. The Indenture, the Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor (or Mayor pro tem) is hereby authorized and directed to execute and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Indenture, the Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement in substantially the forms and content as presented to the City on this date, subject to the approval of bond counsel to the City, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof as before this date.

All Actions Heretofore Taken. All actions (not inconsistent with the provisions of this Ordinance) heretofore taken by the City Council and the officers of the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved and confirmed.

Compliance with the Act. The following determinations and findings are hereby made in accordance with Sections 29-3-113, 29-3-114 and 29-3-120 of the Act:

The maximum amount necessary in each year to pay the principal of and the interest on the Bonds (based on the maximum net effective interest rates set forth herein, assuming that interest is paid monthly, and assuming no redemptions) shall not exceed:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
2004	\$ --	\$ 860,565	\$ 860,565
2005	--	1,002,600	1,002,600
2006	--	1,002,600	1,002,600
2007	--	1,002,600	1,002,600
2008	--	1,002,600	1,002,600
2009	--	1,002,600	1,002,600
2010	--	1,002,600	1,002,600
2011	--	1,002,600	1,002,600
2012	--	1,002,600	1,002,600
2013	--	1,002,600	1,002,600
2014	--	1,002,600	1,002,600
2015	--	1,002,600	1,002,600
2016	--	1,002,600	1,002,600
2017	--	1,002,600	1,002,600
2018	--	1,002,600	1,002,600
2019	--	1,002,600	1,002,600
2020	--	1,002,600	1,002,600
2021	--	1,002,600	1,002,600
2022	--	1,002,600	1,002,600
2023	8,355,000	1,002,600	9,357,600

Pursuant to the Indenture there shall be established certain debt service reserve funds for payment of the Bonds, which reserves are required to be replenished from time to time, if necessary, from Revenues (as defined in the Indenture).

In the Financing Agreement, the Owner has covenanted to maintain, or cause to be maintained, the Project and to carry, or cause to be carried, all proper insurance with respect thereto.

The revenues and other amounts payable under the Financing Agreement are sufficient to pay, in addition to all other requirements of the Financing Agreement and this Ordinance, all sums referred to in paragraphs (a), (b) and (c) of this Section and all taxes or payments in lieu of taxes levied upon the Project.

**Investments.** Proceeds from the sale of the Bonds and special funds from the revenues from the Project shall be invested and reinvested in such securities and other investments specified in, and otherwise in accordance with, the Indenture and Section 29-3-109 of the Act.

**Authority to Execute and Deliver Additional Documents.** The officers, employees and agents of the City shall take all action in conformity with the Act, the Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance of the Bonds and shall take all action necessary or desirable in conformity with the Act and the Charter to finance the portion of the costs of the Project to be financed with proceeds of the Bonds and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement including without limitation the execution, delivery and filing of any documents, statements or reports with the United States Internal Revenue Service or with the Secretary of the United States Treasury or his delegate necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, the execution of any letter of representation or similar document required of any securities depository, and the execution and delivery of additional security documents and any closing documents to be delivered in connection with the sale and delivery of the Bonds.

**Bonds are Limited Obligations.** The Bonds shall be special, limited obligations of the City payable solely from the receipts and revenues of the City under the Financing Agreement that are specifically pledged therefor under the Indenture; the Bonds shall never constitute a debt or indebtedness of the City, the State or any county, municipality or political subdivision of the State within the meaning of any provision or limitation of the Constitution or statutes of the State or the Charter or of any political subdivision of the State; and the Bonds shall never constitute nor give rise to any pecuniary liability of, or a charge against the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The Bonds shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the Colorado Constitution.

**No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement or the Purchase Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bonds, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement or the Purchase Agreement or any other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State, none of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of refinancing the Project, or power to operate the Project as a business or in any manner.

**No Condemnation by City.** The City shall not condemn any land or other property for the Project.

**Trustee and Remarketing Agent.** The Bank of New York is hereby appointed as Trustee and Paying Agent under the Indenture and Merrill Lynch, Pierce, Fenner & Smith Incorporated, is hereby appointed as Remarketing Agent pursuant to the terms of the Indenture.

**Supplemental Ordinances.** The City may, subject to the terms and conditions of the Indenture, pass and execute ordinances supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

**Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is intended or shall be construed to give to any person, other than the City, the Owner, the Underwriter and the owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Ordinance or any covenants, conditions and provisions herein contained; this Ordinance and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the City, the Owner, the Underwriter and the owners of the Bonds as herein provided.

**Pledge of Revenues.** The creation, perfection, enforcement, and priority of the pledge of the Revenues to secure or pay the Bonds as provided herein and in the Indenture shall be governed by Section 11-57-208 of the Public Securities Act and this Ordinance. The Revenues for the payment of the Bonds, as received by or otherwise credited to the City, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Revenues shall have priority over any or all other obligations and liabilities of the City. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

**Immunity of Officers.** Pursuant to Section 11-57-209 of the Public Securities Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such council member, officer, or agent for payment of the principal of or interest on the Bonds. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against any official, officer, council member or agent of the City or the State, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Bonds.

**Limitations on Actions.** In accordance with the Act, no action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding relating to the Bonds or the Bonds, or the Project on and after thirty days from the effective date of this Ordinance.

**Counterparts.** This Ordinance may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Captions.** The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

**Validity of Bonds.** Each Bond shall contain a recital that such Bond is issued pursuant to the Act and the Public Securities Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

**Irrepealability.** After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

**Severability.** If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Declaration of Emergency.** In order to complete the issuance and sale of the Bonds while favorable market conditions exist to effect the Refunding Project, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This Ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

**Repealer.** All orders, ordinances, resolutions, bylaws, and regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on  
January 26, 2004.

( S E A L )

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Mayor

ATTESTED:

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Acting City Clerk

STATE OF COLORADO )  
 )  
 COUNTIES OF ADAMS ) SS.  
 AND JEFFERSON )  
 )  
 CITY OF WESTMINSTER )

I, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the "City") do hereby certify:

Section 1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council (the "Council") of the City at a regular meeting of the Council held at the City Hall on January 26, 2004.

Section 2. The Ordinance has been signed by the Mayor, sealed with the corporate seal of the City, attested by me as City Clerk, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

Section 3. The passage of the Ordinance as an emergency was duly moved and seconded and the Ordinance was approved by vote of a \_\_\_ of \_\_\_ of the members of the Council as follows:

Those Voting Yes:		_____
		_____
		_____
		_____
		_____
Those Voting No:		_____
Those Abstaining:		_____
Those Absent:		_____

Section 4. That notice of the meeting of January 26, 2004, in the form, attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this \_\_\_\_ day of January, 2004.

(SEAL)

\_\_\_\_\_  
 Acting City Clerk

EXHIBIT A

(Attach Notice of Meeting )

EXHIBIT B

(Attach Affidavit of Publication)



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Resolution No. 7 re Supplemental Compensation for Employees Serving in Active Military Duty in Operation Iraqi Freedom

**Prepared By:** Debbie Mitchell, Human Resources Manager

**Recommended City Council Action**

Adopt Resolution No. 7 that extends pay and benefits to those City employees who have been or will be called into active military duty in connection with the military operation Iraqi Freedom for a period of up to eighteen months per employee.

**Summary Statement**

- City Council is requested to approve the attached resolution that extends pay and benefits to those City employees who have been or may be called to active military duty in the military operation, Iraqi Freedom.
- The Uniform Services Employment and Reemployment Act of 1994 (USERRA) requires employers to safeguard the position and status of any employee called to active military duty. This is a requirement for up to a five-year period.
- USERRA requires employers to provide both unpaid leave and the option for employee-paid continuation of medical and dental benefits.
- City Personnel Policies and Rules reflect the requirements of the USERRA law.
- City Council previously approved supplementary pay and the continuation of the City-paid portion of City benefits to employees called into active duty during Operation Enduring Freedom on April 14, 2003 for a period of up to twelve months per employee.
- The City currently has two individuals who are serving in active military duty for the operation Iraqi Freedom military initiative.

**Expenditure Required:** \$5,000-\$120,000 For the increased coverage of an additional six months of supplemental pay and benefits, depending on a number of factors described in this report.

**Source of Funds:** General Fund

### **Policy Issue**

Should the City continue to extend an enhanced pay and benefit package beyond what is required by Federal law to employees called into active military service for the Iraqi Freedom Operation?

### **Alternatives**

1. Do not extend compensation beyond what has already been provided to employees for twelve months of active duty. This is a viable option but does not address the potential ongoing hardship employees may experience with reduced compensation and benefits while serving in active duty for the military.
2. Provide the extension of an enhanced pay and benefit package to employees for the entire time they are serving in an active military duty status. The eighteen-month recommended period would provide additional support to employees as they adjust to the difference in compensation and benefits. If this alternative is adopted the cost of the package may increase significantly, since the maximum active duty time is five years. The City may also need to absorb military replacement position costs during the Iraqi Freedom operation, if these employees remain in military service for an extended timeframe.

### **Background Information**

The Uniform Services Employment and Reemployment Act of 1994 (USERRA) requires employers who have employees who are military reservists and have been called to active military duty to safeguard the position and status of employees during the time they are in active duty. The Act does not require any compensation but does require that employees be given a continuation of benefits option for the employee and their family, at a cost of up to 102% of the total health insurance premium. City Personnel Policies and Rules provide the same active duty leave and benefits as outlined in the USERRA law. The Act also provides for reinstatement of the employee into the same position or, in cases of longer-term absences, it requires that the employee be returned to a similar position with like status and pay.

City Council is requested to approve salary and benefits for employees required to report to active military service for the Iraqi Freedom operation for an eighteen-month period per employee. The current authorization from City Council is for a twelve-month period. These enhanced pay and benefits consist of:

- Continuation of employer-paid medical and dental City benefits for the employee and his/her family at the same premium contribution rates as other regular employees. Long-term disability, life and survivors' income benefit are only available to active military duty individuals for up to 90 days. This is a limitation set forth in the insurance policies.
- Payment of the difference between City compensation the employee would have earned and the military pay being earned by the employee in those cases where the military pay is lower.

Staff recommends these additional benefits be offered to all active military duty personnel for an eighteen-month period per employee or until active military service is ended, whichever is sooner. The eighteen-month maximum period would provide financial support to military personnel during the period of transition to active military service while limiting the City's financial liability to a reasonable timeframe. The City currently has two employees serving in an active duty capacity and six others who are either active reservists or recently active military personnel who may be recalled into active service. The potential maximum cost to the City for the enhanced pay and benefits, assuming all nine employees are called into service, is approximately \$120,000, although it is very unlikely that the cost of the extended compensation would be this high. The more likely cost is projected at less than \$30,000.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

RESOLUTION

RESOLUTION NO. 7

INTRODUCED BY COUNCILLORS

SERIES OF 2004

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Military Leave Benefits

WHEREAS, the President of the United States ordered a military operation in Iraq under the name Iraqi Freedom on March 19, 2003; and

WHEREAS, this campaign is still ongoing; and

WHEREAS, City employees have been called up to serve in the Iraqi Freedom operation and more employees may be called to active military duty; and

WHEREAS, these employees and their families are sustaining the burden of the war effort as well as financial difficulties created by this emergency military duty; and

WHEREAS, the City believes that its employees are its greatest asset, and wishes to support them and their families in this time of strife.

WHEREAS, City Council previously authorized for up to twelve months the payment of the difference between the employee's salary with the City and his/her military salary when the City salary was higher and the payment of the City's portion of fringe benefits.

NOW, THEREFORE, be it resolved that the City Council of Westminster, does extend the following salary and benefits to employees who, as members of the National Guard or a reserve component of the Armed Forces of the United States, have been called up for active military duty in the Iraqi Freedom operation:

- (1) The City shall extend military leave compensation for up to eighteen (18) months per employee while in active military duty, by paying the difference between the employee's military duty pay and the City salary when the compensation from the military is lower;
- (2) The City shall continue the normal City portion of the cost of fringe benefits for up to eighteen (18) months per employee for medical, dental and pension benefits, and 90 days for Long-term Disability, Life Insurance, and Survivors' Income benefits.

Passed and adopted this 26th day of January, 2004.

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Resolution No. 8 re 2003 Great Outdoors Colorado Grant Contract

**Prepared By:** Becky Eades, Landscape Architect II

**Recommended City Council Action**

Adopt Resolution No. 8 authorizing the City Manager to sign a contract with Great Outdoors Colorado (GOCO) accepting a \$50,000 grant for the Westminster Skatepark.

**Summary Statement**

- In August 2003, the Department of Parks, Recreation and Libraries applied for a \$50,000 grant from the Great Outdoors Colorado Program for the construction of a skatepark to be located at City Park.
- Great Outdoors Colorado approved this grant to the City of Westminster in December of 2003.
- The Department of Parks, Recreation and Libraries has a 50% match of \$50,000 in the 2003 Capital Improvement Program for a Skatepark, as well as \$75,000 in 2003 Carryover Funds for a total project budget of \$175,000.

**Expenditure Required:** \$175,000

**Source of Funds:** \$125,000 from Parks, Recreation and Libraries General Capital Improvement Fund and a \$50,000 grant from GOCO

**Policy Issue**

Should the City accept grant monies from GOCO?

**Alternative**

Council could choose not to accept additional funding for this project and proceed with the improvements at the current budget level. These grant funds will allow for substantial upgrades to the project and therefore Staff recommends that the City accept these funds.

**Background Information**

In addition to the \$50,000 received for the skatepark project at City Park, the Department of Parks, Recreation and Libraries has also received grants from GOCO for projects such as the Westminster T-Ball Complex, Sensory Park, Skyline Vista Park and the Countryside Youth Little League Ballfields in the past for a total of \$485,000. The Department of Parks, Recreation and Libraries has also applied for \$150,000 from the Jefferson County Joint Venture Grant Program for this project, which could bring the total project budget to \$325,000 if the county grant is approved. Staff expects to hear about this grant status in February of 2004.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

RESOLUTION

RESOLUTION NO. 8

INTRODUCED BY COUNCILLORS

SERIES OF 2004

AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND  
THE GREAT OUTDOORS COLORADO TRUST FUND

WHEREAS, The City of Westminster supports the completion of the Westminster Skatepark.

WHEREAS, The City of Westminster has received a grant in the amount of \$50,000 from Great Outdoors Colorado to fund the Westminster Skatepark, subject to the execution of a grant agreement.

NOW, THEREFORE, be it hereby resolved by the Westminster City Council of the City of Westminster that:

Section 1: The City of Westminster hereby authorizes the City Manager to sign the grant agreement with Great Outdoors Colorado.

Section 2: The City of Westminster hereby authorizes the expenditure of funds as necessary to meet the terms and obligations of the grant agreement and application.

Section 3: This resolution shall be in full force and effect from and after its passage and approval.

Passed and adopted this 26th day of January 2004.

Attest:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**Subject:** Resolution No. 9 re Recovery Contract Interest Rate

**Prepared By:** Frances A. Velasquez, Secretary

**Recommended City Council Action**

Adopt Resolution No. 9 establishing the 2004 calendar year interest rate for non-City-funded public improvement recovery contracts at 6.00 percent and an interest rate of 4.60 percent for City-funded public improvements.

**Summary Statement**

- In accordance with Section 8(A) of Title XI, Chapter 6, of the City Code, Staff requests that City Council establish interest rates on recovery agreements for 2004. For more than 15 years, it has been City practice to add two percent to the Prime Rate for non-City funded recovery contracts. The Prime Rate on January 1, 2004, was 4.00 percent. It is proposed that the recovery interest rate for 2004 on non-City-funded public improvements be the Prime Rate plus two percent, or 6.00 percent.
- The recovery interest rate on City-funded projects is based on the Municipal Bond Index. This index is obtained by referencing the Municipal Bond Buyer's 20 Bond Weekly Index. This index for 2004 is 4.60 percent. The proposed recovery interest rate on City-funded projects is 4.60 percent for 2004.

**Expenditure Required:** \$0

**Source of Funds:** n/a

**Policy Issues**

Does the City Council wish to continue this method of assessing interest on recoveries associated with new private developments in the City?

**Alternatives**

Council is free to establish any interest rate for recovery agreements that it deems appropriate.

**Background Information**

Several years ago, City Council established a recovery system that enables developers to recover a portion of certain costs associated with public improvements installed with their developments that also benefit adjacent, undeveloped properties. Recovery contracts are executed between the City and the developer. When subsequent development occurs in those areas benefited by the improvements installed by the original developer, the new development is assessed its proportionate share plus interest, which is then returned to the original developer. The recovery system has also allowed the City to be reimbursed for public improvements installed by the City when subsequent private development occurred abutting the improvements.

Prior to 1993, the interest rate used in calculations for recoveries owed on City-funded public improvements was equal to that used on privately funded improvements (i.e., prime rate plus two percent). However, the actual cost of money used to fund City Capital Improvement Projects is usually much less than that charged to private developers. Since the philosophy behind the City's recovery system is one of cost reimbursement, not profit making, it is more equitable to select an interest rate for City-funded projects that more closely approximates the actual cost of money to the City. Therefore, beginning in 1993, Council determined that the Municipal Bond Index in effect at the first of each calendar year would be selected as the recovery interest rate for City projects. Thus, the recovery interest rate for such projects during 2004 is proposed to be 4.60 percent.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

RESOLUTION

RESOLUTION NO. 9

INTRODUCED BY COUNCILLORS

SERIES OF 2004

WHEREAS, Section 11-6-9.75(A) of the Westminster City Code provides the City Council shall establish the interest rates to be utilized for the assessment of interest costs relating to recovery costs for public improvements; and

WHEREAS, the Westminster City Code provides that such interest rates are to be established from time to time; and

WHEREAS, these interest rates have traditionally been calculated at the beginning of each calendar year; and

NOW, THEREFORE, be it resolved that the City Council of the City of Westminster hereby establish the 2004 calendar year interest rate for any non-City funded public improvement recovery contract to be 6.00 percent and the 2004 calendar year interest rate for City-funded public improvements to be 4.60 percent.

Passed and adopted this 26<sup>th</sup> day of January 2004.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 26, 2004



**SUBJECT:** Resolution No. 10 re 2003 Private Activity Bond Allocation Assignment

**Prepared By:** Robin Byrnes, Community Development Programs Coordinator

**Recommended City Council Action:**

Adopt Resolution No. 10 assigning 2003 Private Activity Bond (PAB) allocation in the amount of \$3,358,938 to the Westminster Economic Development Authority (WEDA), to undertake redevelopment activity within urban renewal areas.

**Summary Statement**

- The City’s 2003 Private Activity Bond (PAB) total allocation is \$3,858,938. The allocation is issued by the State of Colorado pursuant to federal legislation, and is required for municipalities wanting to issue bonds for certain “private activities” such as residential mortgage programs, construction of affordable rental housing, and certain redevelopment projects within an urban renewal area.
- On September 8, 2003 City Council passed Resolution No. 38 that exercised the “carry forward” PAB provision in the total amount of \$3,858,938. The City must now act to assign the 2003 PAB allocation to an eligible activity(s) by February 15, 2004, or lose the allocation pursuant to the IRS regulations governing Private Activity Bonds.
- A total of \$3,358,938 of the City’s 2003 PAB allocation is proposed to be assigned to the Westminster Economic Development Authority (WEDA) to undertake redevelopment activities in the South Westminster Urban Renewal District. The remainder of the \$500,000 PAB allocation is proposed to be assigned to the Metro Mayors Caucus Multi-Family Tax Exempt Bond Allocation Association Transit Oriented Housing Pool.
- WEDA projects already identified for possible use of the 2003 Private Activity Bonds are the Northgate Redevelopment project located on the southwest corner of 72<sup>nd</sup> Avenue and Federal Boulevard and the redevelopment of the Lowell Boulevard and 73<sup>rd</sup> Avenue area, both projects are within the designated Urban Renewal District.
- The Agenda Memo and Resolution have been reviewed by the Finance Department and the City Attorney’s Office for City Council review and approval.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City assign a portion of the City's 2003 Private Activity Bond allocation in the amount of \$3,358,938 to WEDA or allow the allocation to revert back to the federal government?

**Alternative**

City Council may choose to take no action, and allow the City's allocation to revert to the federal PAB pool. This option is not recommended, as it would limit the City's options on the use of the PAB allocation relative to redevelopment in South Westminster.

**Background Information**

Private Activity Bonds (PAB) are tax-exempt bonds that can be issued for qualified public purposes. Qualified uses of Private Activity Bonds include:

- Industrial bonds for construction of manufacturing facilities;
- Single-family mortgage revenue bonds;
- Redevelopment bonds to acquire property in blighted areas and prepare land for redevelopment activities;
- Student loans for eligible students;
- Residential rental project bonds to finance new construction or acquisition/rehabilitation of housing for persons with low to moderate incomes;
- Exempt facility bonds such as hazardous waste facilities, water, sewer and solid waste facilities.

The State of Colorado is the authorized agent to administer the PAB allocations from the federal government. The Colorado Private Activity Bond allocation program was established by state statute to provide for the allocation of the state PAB under the federal Tax Reform Act.

Fifty percent (50%) of the state allocation is made available directly to state authorities. Eligible state authorities include the Colorado Housing and Finance Authority, Colorado Agricultural Development Authority, Colorado Post-Secondary Education Facility Authority, Colorado Health Facilities Authority and the Colorado Student Obligation Bond Authority. The remaining 50% of the PAB allocation is made available to local governments based on population. Those local governments whose populations warrant an allocation of \$1 million or more receive a direct allocation from the State of Colorado.

The City of Westminster receives a direct annual allocation of approximately \$3.9 million in Private Activity Bonds (PAB) as determined by the Colorado State Division of Local Affairs. The allocation is available to local governments from January 1 to September 15 of each year. Any portion of a direct allocation not assigned for a qualified project by a local government by September 15 of each funding year reverts to the statewide balance.

The City has utilized its PAB allocation in the past to fund the following projects:

**The 1999 Private Activity Bond Allocation of \$2,398,300 was assigned as follows:**

- \$250,000 allocation to the Metro Mayors Caucus for the Single Family Mortgage Bond Program.
- \$2,148,300 allocation to the Westminster Economic Development Authority for the Westminster Plaza redevelopment project.

**The 2000 Private Activity Bond Allocation of \$2,432,675 was assigned as follows:**

- \$1,000,000 allocation to the Metro Mayors Caucus for the Single Family Mortgage Bond Program.
- \$1,432,675 allocation to Mendel-Allison for construction of 74 senior assisted living rental units at Panorama Pointe, completed in the fall/winter of 2004/2005.

**The 2001 Private Activity Bond Allocation of \$3,069,281 was assigned as follows:**

- \$3,069,281 allocation to the Westminster Economic Development Authority (WEDA) for redevelopment projects including Lowell Boulevard/73<sup>rd</sup> Avenue area and the Northgate redevelopment project.

**The 2002 Private Activity Bond Allocation of \$3,785,250 was assigned as follows:**

- \$3,785,250 allocation to the Westminster Economic Development Authority (WEDA) for redevelopment projects in the designated Urban Renewal District.

<b>TOTAL PRIVATE ACTIVITY BOND ASSIGNMENTS 1999 - 2003</b>		
<b>YEAR</b>	<b>BONDS ASSIGNED TO</b>	<b>AMOUNT ASSIGNED</b>
1999	Metro Mayors Caucus Mortgage Program	\$250,000
1999	WEDA	\$2,148,300
2000	Metro Mayors Caucus Mortgage Program	\$1,000,000
2000	Mendel-Allison Panorama Point	\$1,432,675
2001	WEDA	\$3,069,281
2002	WEDA	\$3,785,250
2003	Metro Mayors Caucus Transportation	\$500,000
2003	WEDA	\$3,385,938
<b>TOTAL PRIVATE ACTIVITY BOND ASSIGNMENTS</b>		<b>\$15,571,444</b>

<b>TOTAL PRIVATE ACTIVITY BOND ASSIGNMENTS TO WEDA 1999 - 2003</b>		
<b>YEAR</b>	<b>AMOUNT</b>	<b>DEADLINE DATE FOR PAB USAGE</b>
1999	\$2,148,300	Used
2000	None Assigned	N/A
2001	\$3,069,281	2005**
2002	\$3,785,250	2006**
2003	\$3,358,938	2007**
<b>TOTAL</b>	<b>\$12,361,769</b>	

**\*\*Currently WEDA has \$10,213,469 in PAB assignments that have not been utilized.**

In January 2001 City Council adopted the South Westminster Revitalization Strategic Plan in which Private Activity Bonds were identified as a funding mechanism for redevelopment projects in south Westminster. Therefore south Westminster revitalization projects were established as a funding priority for the allocation of Private Activity Bonds.

One of the reasons the City established the Westminster Economic Development Authority (WEDA) was to have a vehicle with which to sell tax-exempt bonds using Private Activity Bond allocations for redevelopment projects such as the completed Westminster Plaza project. Staff is requesting that the City's 2003 Private Activity Bond partial allocation in the amount of \$3,358,938 be assigned to WEDA for revitalization efforts in the South Westminster Urban Renewal District.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

A RESOLUTION

RESOLUTION NO. **10**

INTRODUCED BY COUNCILLORS

SERIES OF 2003

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A RESOLUTION CONCERNING THE ASSIGNMENT OF THE 2003 CARRY FORWARD OF PRIVATE ACTIVITY BOND ALLOCATION FROM THE CITY OF WESTMINSTER TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

WHEREAS, the City of Westminster (the "Assignor") and the Westminster Economic Development Authority (WEDA)(the "Assignee") are authorized and empowered under the laws of the State of Colorado (the "State") to issue Revenue Bonds for the purpose of financing Redevelopment purposes as defined in Section 144 (c) of the Internal Revenue Code of 1986, (the "Qualified Redevelopment Projects") and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to finance such Qualified Redevelopment Projects and for certain other purposes (the "State Ceiling"); and

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Assignee and other governmental units in the State, and further providing for the assignment of allocations from such other governmental units to the Assignee; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, the Assignor has an allocation of the 2003 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to September 15, 2003 (the "2003 Allocation"); and

WHEREAS, the Assignor has determined that the 2003 Allocation thereof, can be utilized most efficiently by assigning it to the Assignee to issue Private Activity Bonds for the purpose of financing one or more Qualified Redevelopment Projects ("Revenue Bonds"); and

WHEREAS, the Assignee has prior voter approval to issue the Bonds for the purpose of financing one or more Qualified Redevelopment Projects; and

WHEREAS, the City Council of the Assignor has determined to assign to the Assignee \$3,358,938 of its 2003 Allocation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WESTMINSTER:

1. The Assignor agrees to use its best efforts to cause Assignee to issue and sell the Revenue Bonds, in one or more series, to finance the Qualified Redevelopment Projects to acquire property in blighted areas, and to prepare land for redevelopment activities ("the Project").
2. The Assignor hereby assigns to the Assignee \$3,358,938 of its 2003 carry forward allocation, subject to the terms and conditions contained herein. The Assignor represents that it has received no monetary consideration for said assignment.
3. The officers, employees and agents of the Assignor shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Project and to otherwise carry out the transactions contemplated by this resolution, including without limiting the generality of the foregoing, the following:

- a. Notifying the Colorado Department of Local Affairs of the assignment of its 2003 carry forward allocation of private activity bond volume to WEDA for the Qualified Redevelopment Project;
  - b. Executing a form of assignment of its carry forward 2003 allocation of private activity bond volume cap to WEDA in a form satisfactory to the Colorado Department of Local Affairs; and
  - c. Executing a form of assignment of its carry forward 2003 allocation of private activity bond volume cap to WEDA in a form satisfactory to the Internal Revenue Service.
4. The officers and employees of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this resolution.
  5. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carry forward purpose.
  6. The Assignor agrees that it will take such further action and adopt such further proceedings as may be required to implement the terms of the Assignment.
  7. Nothing contained in the Assignment shall obligate the Assignee to finance the Project.
  8. The Assignment is effective upon execution and is irrevocable.

PASSED AND ADOPTED this 26th day of January 2004.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, January 26, 2004. Present at roll call were Mayor Moss, Mayor Pro-Tem McNally, Councillors Dittman, Dixon, Kauffman and Price were present at roll call. Absent Hicks. Councillor Hicks arrived at 7:56 p.m.

The minutes of the January 12, 2004 meeting were approved.

District Commissioner Randall Bishop and Tim Bennett, Mark Walker, Terry Price, and Dave Corey of the Valley District presented Mayor Ed Moss with the Boy Scouts Districts Chairman's Award for outstanding leadership and community involvement.

The following Public Hearings were held: At 7:45 p.m. the TEFRA hearing for the Warwick Station Apartments Refunding Bonds; at 7:50 p.m. for the North Huron Urban Renewal Area; and at 8:14 p.m. on the Funding for Upgrade and Expansion of the Big Dry Creek Wastewater Treatment Facility.

Council approved the following: December Financial Report; Replacement computer lease purchase program for 2004 for \$392,000; Purchase of Water Treatment Chemicals not to exceed \$314,800; Change Order for Lowell Boulevard Waterline Contract got \$36,655; 2004 Concrete Replacement Project Bids for \$729,740; Special Real Estate Legal Counsel not to exceed \$30,000; Outside Legal Counsel for City Tax-Exempt Financings not to exceed \$10,000; Contract for Public Safety Radio System Maintenance for \$70,677.30; and authorized Staff to pursue funding for the upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility through the Colorado Water Resources and Power Development Authority loan program.

Council reappointed the following persons for the various Boards and Commissions: reappointing James Boschert to the Planning Commission, Ben Beaty to the Open Space Advisory Board, and Ian Walsworth to the Board of Adjustment with terms of office to expire December 31, 2005.

The following Councillor's Bills were passed on first reading:

**A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS purpose: 2003 Budget Supplemental Appropriation**

The following Councillor's Bill was adopted as emergency ordinance:

**A BILL FOR AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF AN AMOUNT NOT TO EXCEED \$8,355,000 VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (WARWICK STATION APARTMENTS) SERIES 2004 OF THE CITY OF WESTMINSTER, COLORADO FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF REFUNDING THE CITY OF WESTMINSTER, COLORADO MULTIFAMILY HOUSING REVENUE BONDS (WARWICK STATION APARTMENTS) 1985 SERIES A; APPROVING AND AUTHORIZING EXECUTION OF A TRUST INDENTURE, A FINANCING AGREEMENT, PURCHASE AGREEMENT, INTERCREDITOR AGREEMENT, AND AN AMENDED AND RESTATED LAND USE RESTRICTION AGREEMENT WITH RESPECT TO THE BONDS AND THE MULTIFAMILY HOUSING PROJECT BEING REFINANCED WITH THE PROCEEDS OF THE BONDS; MAKING FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; DECLARING AN EMERGENCY AND REPEALING ALL ACTION HERETOFORE TAKEN IN CONFLICT HEREWITH. purpose: Warwick Station Apartments Refunding Bonds**

The following Councillor's Bills were passed on second reading:

**A BILL FOR AN ORDINANCE AMENDING SCHEDULE 8-10(A), SPECIFIC POLLUTANT LIMITATIONS**

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3 OF TITLE XI OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE GROWTH MANAGEMENT PROGRAM DEFINITION FOR SOUTH WESTMINSTER RESIDENTIAL PROJECTS

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL, UTILITY, FLEET, GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS

The following Resolutions were adopted:

Resolution No. 4 re Reappointments to Boards & Commissions

Resolution No. 5 re North Huron Reinvestment Study and Urban Renewal Plan

Resolution No. 6 re Lowe's Home Improvement Warehouse

Resolution No. 7 re Supplemental Compensation For Active Military Duty In Iraqi Freedom

Resolution No. 8 re 2003 Great Outdoors Colorado Grant Contract

Resolution No. 9 re Recovery Contract Interest Rate

Resolution No. 10 re 2003 Private Activity Bond Allocation Assignment

At 8:30 P.M. the meeting was adjourned

By order of the Westminster City Council

Richelle Work, CMC, Acting City Clerk

Published in the Westminster Window on February 5, 2004

BY AUTHORITY

ORDINANCE NO. **3090**

COUNCILLOR'S BILL NO. **1**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

**Dittman-Dixon**

A BILL

FOR AN ORDINANCE AMENDING SCHEDULE 8-10(A), SPECIFIC POLLUTANT LIMITATIONS  
THE CITY OF WESTMINSTER ORDAINS:

Section 1: Title 8, Chapter 10 of the Westminster Municipal Code is hereby amended as follows:

SCHEDULE 8-10(A)  
SPECIFIC POLLUTANT LIMITATIONS

	Daily Maximum Concentration (mg/L)
Ammonia Nitrogen	60
Arsenic	0.54
BOD5	1000
Cadmium	0.20
Chromium	17.21
Copper	3.82
Cyanide	0.01
Lead	0.89
Mercury	<del>0</del> <b>0.046</b>
Molybdenum	<del>0</del> <b>5.20</b>
Nickel	2.42
Oil & Grease	75.0
Ph	Between 5.5 and 10.0
Selenium	0.18
Silver	0.44
Zinc	0.89

Section 2. 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 January, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 26th day of January, 2004.

BY AUTHORITY

ORDINANCE NO. **3091**

COUNCILLOR'S BILL NO. **3**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

McNally-Dttman

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 3 OF TITLE XI OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE GROWTH MANAGEMENT PROGRAM DEFINITION FOR SOUTH WESTMINSTER RESIDENTIAL PROJECTS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 11-3-2(I), W.M.C., is hereby AMENDED as follows:

**11-3-2: DEFINITIONS:**

**(I) SOUTH WESTMINSTER RESIDENTIAL PROJECT:**

1. A residential project located south of 80<sup>th</sup> Avenue ~~and east of Sheridan Boulevard~~ in the City of Westminster; THAT
2. ~~Which is no larger than ten (10) acres, and~~
3. ~~Which~~ meets all applicable design criteria for such projects.

Section 2. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 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 12th day of January 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of January 2004.

BY AUTHORITY

ORDINANCE NO. **3092**

COUNCILLOR'S BILL NO. **4**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

**Dixon-Dittman**

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL, UTILITY, FLEET, GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Fund does not change with this ordinance. However, the changes in the expense accounts are shown here for informational purposes.

Section 2. The Expense accounts shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Contingency	10010900.79900.0000	\$1,180,000	\$ (110,000)	\$1,070,0000
Maint/Repair- Custodial	10012110.66200.0702	415,366	(36,000)	379,366
Transfer to Fleet	10010900.79800.0300	0	36,000	36,000
Transfer to GCIF	10010900.79800.0750	233,000	<u>110,000</u>	343,000
Total change to expenses			<u>\$0</u>	

Section 3. The 2003 appropriation for the Utility Fund does not change with this ordinance. However, the changes in the expense accounts are shown here for informational purposes.

Section 4. The Expense accounts shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Contingency	21010900.79900.0000	\$300,000	\$(110,000)	\$190,000
Transfer to GCIF	21010900.79800.0750	5,600,000	<u>110,000</u>	5,710,000
Total change to expenses			<u>\$0</u>	

Section 5. The 2003 appropriation for the Fleet Fund, initially appropriated by Ordinance No. 2977 in the amount of \$1,149,638 is hereby increased by \$36,000 which, when added to the fund balance as of the City Council action on January 12, 2004 will equal \$1,212,138. The actual amount in the Fleet Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an increase in the transfer from the General Fund.

Section 6. The \$36,000 increase in the Fleet Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Revenue</b>				
Transfer from General Fund	3000.45000.0100	\$0	<u>\$36,000</u>	\$36,000
Total change to revenues			<u>\$36,000</u>	

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Fuel & Lubricants	30012460.74000.0000	\$221,262	<u>\$36,000</u>	\$257,262
Total change to expenses			<u>\$36,000</u>	

Section 7. The 2003 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$220,000 which, when added to the fund balance as of the City Council action on January 12, 2004 will equal \$19,937,186. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an increase in the transfer from the General Fund and Utility Fund.

Section 8. The \$220,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Revenue</b>				
Transfer from General Fund	7500.45000.0100	\$233,000	\$110,000	\$343,000
Transfer from Utility Fund	7500.45000.0210	5,600,000	<u>110,000</u>	5,710,000
Total change to revenues			<u>\$220,000</u>	

<b>Description</b>	<b>Account Number</b>	<b>Current Budget</b>	<b>Increase (Decrease)</b>	<b>Final Budget</b>
<b>Expenses</b>				
Huron St. 129 <sup>th</sup> /144 <sup>th</sup>	80175030069.80400.8888	\$4,700,000	<u>\$220,000</u>	\$4,920,000
Total change to expenses			<u>\$220,000</u>	

Section 9 – 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 10. This ordinance shall take effect upon its passage after the second reading.

Section 11. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 12th day of January, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of January, 2004.

BY AUTHORITY

ORDINANCE NO. **3093**

COUNCILLOR'S BILL NO. **6**

SERIES OF 2004

INTRODUCED BY COUNCILLORS:

**Dittman-McNally**

A BILL

FOR AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF AN AMOUNT NOT TO EXCEED \$8,355,000 VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS (WARWICK STATION APARTMENTS) SERIES 2004 OF THE CITY OF WESTMINSTER, COLORADO FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF REFUNDING THE CITY OF WESTMINSTER, COLORADO MULTIFAMILY HOUSING REVENUE BONDS (WARWICK STATION APARTMENTS) 1985 SERIES A; APPROVING AND AUTHORIZING EXECUTION OF A TRUST INDENTURE, A FINANCING AGREEMENT, PURCHASE AGREEMENT, INTERCREDITOR AGREEMENT, AND AN AMENDED AND RESTATED LAND USE RESTRICTION AGREEMENT WITH RESPECT TO THE BONDS AND THE MULTIFAMILY HOUSING PROJECT BEING REFINANCED WITH THE PROCEEDS OF THE BONDS; MAKING FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT AND THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; DECLARING AN EMERGENCY AND REPEALING ALL ACTION HERETOFORE TAKEN IN CONFLICT HERewith.

WHEREAS, the City of Westminster, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado (the "State"), created and operating pursuant to Article XX of the Colorado Constitution and the home rule charter of the City (the "Charter"); and

WHEREAS, the County and Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), authorizes cities and counties in the State to finance or refinance one or more projects, including any land, buildings or other improvements, and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families or persons may be provided, which promote the public health, welfare, safety, convenience and prosperity; and

WHEREAS, the City is further authorized by the Act to issue its revenue bonds for the purposes of defraying the costs of financing or refinancing any such project, including all incidental expenses incurred in issuing such bonds, and to secure the payment of such bonds as provided in the Act; and

WHEREAS, the City has previously made a loan of the proceeds of its Variable Rate Demand Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A (the "Original Bonds") in the original aggregate principal amount of \$14,500,000 pursuant to the terms of an Indenture of Trust dated as of December 1, 1985 between the City and Mellon Bank, N.A., as trustee (the "Original Indenture") to Warwick Venture ("Warwick Venture"), a Texas limited partnership, to provide financing for a multi-family rental housing development known as Warwick Station (the "Project") located within the boundaries of the City, for occupancy partially (as least 20%) by individuals of low or moderate income within the meaning of and for the period required by Section 103(b) of the Internal Revenue Code of 1954, as amended, all for the public purpose of providing more adequate residential housing facilities for low- and middle-income families and persons; and

WHEREAS, the interest of Warwick Venture in the Project was sold to Wellsford Warwick Corp., a Colorado corporation ("Wellsford Warwick") on November 9, 1993; and

WHEREAS, the Original Indenture was amended and restated pursuant to the terms of an Amended and Restated Trust Indenture dated as of April 4, 1994, pursuant to which the Original Bonds were remarketed as the City of Westminster, Colorado Multifamily Housing Revenue Bonds (Warwick Station Apartments) 1985 Series A (the "Prior Bonds") in the aggregate principal amount of \$11,000,000; and

WHEREAS, the interest of Wellsford Warwick in the Project was sold to EQR Warwick L.L.C. (the "Owner"), a Delaware limited liability company on May 30, 1997 and the Owner assumed Wellsford Warwick's obligations under the Amended and Restated Financing Agreement dated as of April 1, 1994 between the City and Wellsford Warwick; and

WHEREAS, representatives of the Owner have requested that the City issue its variable rate demand multifamily housing revenue refunding bonds pursuant to terms of the Act to refund the Prior Bonds (the "Refunding Project"); and

WHEREAS, the City has considered the request of the Owner and has concluded that the Refunding Project will assure the continuing provision of low- and middle-income residential rental facilities, promoting the public health, welfare, safety, convenience and prosperity, and that the City should issue its variable rate demand multifamily housing revenue refunding bonds under the Act to finance a portion of the cost of the Refunding Project, subject to the conditions set forth herein; and

WHEREAS, the City will issue, sell and deliver its City of Westminster, Colorado Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Warwick Station Apartments) Series 2004 (the "Bonds"), in an aggregate principal amount not to exceed \$8,355,000, pursuant to the terms of a Trust Indenture dated as of January 1, 2004 (the "Indenture") between the City and The Bank of New York, as trustee (the "Trustee") to pay a portion of the cost of the Refunding Project; and

WHEREAS, the Owner will enter into a Financing Agreement, dated as of January 1, 2004 (the "Financing Agreement") among the City, the Owner and the Trustee pursuant to which the proceeds of the Bonds will be loaned to the Owner (the "Bond Mortgage Loan"); and

WHEREAS, the Owner will execute a Multifamily Note (the "Bond Mortgage Note") evidencing its obligation to repay the Bond Mortgage Loan to be delivered upon the order of the City pursuant to the Financing Agreement to the Trustee; and

WHEREAS, the Owner will cause to be delivered to the Trustee on the date of initial issuance of the Bonds a direct pay Credit Enhancement Agreement dated as of January 1, 2004 (the "Credit Enhancement Agreement") between the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Trustee which will provide for (i) draws in an amount equal to certain "Guaranteed Payments" with respect to the Bond Mortgage Loan and (ii) liquidity draws by the Trustee to the extent remarketing proceeds are insufficient to pay the purchase price of Bonds while the Bonds bear interest at a variable rate; and

WHEREAS, to evidence the Owner's reimbursement obligations to Freddie Mac for draws made under the Credit Enhancement Agreement, the Owner and Freddie Mac will enter into a Reimbursement and Security Agreement dated as of January 1, 2004; and

WHEREAS, to secure the Owner's obligations under the Bond Mortgage Note, the Owner will execute and deliver to the Trustee on the date the Bonds are delivered a Multifamily Deed of Trust, Assignment of Rents and Security Agreement (including Fixture Filing) with respect to the Project; and

WHEREAS, the City has been requested to enter into an Intercreditor Agreement (the "Intercreditor Agreement") in connection with Freddie Mac's provision of credit enhancement; and

WHEREAS, the City is authorized by the Supplemental Public Securities Act, Article 57 of Title 11 of Colorado Revised Statutes, as amended (the "Public Securities Act"), to delegate to any of its

members, chief executive officer, or chief financial officer the authority to sign a contract for the purchase of securities or to accept a binding bid for securities and, in addition, may delegate the following determinations to such member or officer without any requirement that the issuing authority approve such determinations: (a) the rate of interest on securities; (b) the conditions on which and the prices at which the applicable securities may be redeemed before maturity; (c) the existence and amount of any capitalized interest or reserve funds; (d) the price at which the securities will be sold; (e) the principal amount and denominations of the securities; (f) the amount of principal maturing in any particular year; and (g) the dates on which principal and interest shall be paid; and

WHEREAS, the City hereby determines that it is in the City's best interest to delegate to its City Manager ("City Manager") the powers enumerated in the Public Securities Act as more specifically provided in this Ordinance; and

WHEREAS, there have been presented to the City Council at this meeting the following documents: (a) the proposed form of the Financing Agreement, (b) the proposed form of the Indenture, (c) the proposed form of the Intercreditor Agreement, (d) the proposed form of the Amended and Restated Land Use Restriction Agreement dated as of January 1, 2004 (the "Regulatory Agreement"), by and among the City, the Owner and the Trustee and (e) the proposed form of Purchase Agreement (the "Purchase Agreement") among the City, the Owner and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter").

#### THE CITY OF WESTMINSTER ORDAINS:

Legal Authorization. The City is a duly organized and existing home rule municipality of the State, created and operating pursuant to Article XX of the Colorado Constitution and the City's Charter and is authorized under the Act to issue and sell its multifamily housing revenue bonds in the form of one or more debt instruments, such as the Bonds, for the purpose, in the manner and upon the terms and conditions set forth in the Act, in this Ordinance, and in the Indenture.

Findings. The City Council has heretofore determined, and does hereby determine, based upon the representations of the Owner, as follows:

The Project is an eligible "project," as defined in the Act.

The issuance of the Bonds will effectuate the public purposes of the City and carry out the purposes of the Act by, among other things, providing residential facilities for low- and middle-income persons in the City.

The Bonds are special, limited obligations of the City payable solely out of the income, revenues and receipts specifically pledged pursuant to the Indenture. The Bonds, the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the City within the meaning of any provision or limitation of the State Constitution, State statutes or the Charter, and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing power and shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the City under Article X, Section 20 of the Colorado Constitution. Neither the State of Colorado nor any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the State, the City or any political subdivision thereof.

Authorization of Issuance of Bonds. To defray the cost of the Refunding Project, there is hereby authorized and created a series of variable rate revenue bonds designated "City of Westminster, Colorado, Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Warwick Station Apartments) Series 2004" in an aggregate principal amount not to exceed \$8,355,000. Subject to the determination of the City Manager, the issuance of the Bonds shall be in such principal amounts, bearing such dates and provisions for determination of variable interest rates and such Bonds shall mature as set forth in the Indenture. The Bonds shall be payable, shall be subject to redemption or purchase in lieu of redemption and tender prior to maturity and shall be in substantially the form as provided in the Indenture. Furthermore, the Bonds shall be payable at such place and in such form, shall carry such registration privileges, shall be executed, and shall contain such terms and conditions, as set forth in the Indenture. The maximum net effective interest rate on the Bonds shall not exceed 12.00% per annum. Section 11-57-204 of the Public Securities Act provides that a public entity, including the City, may elect in an act of

issuance to apply all or any of the provisions of the Public Securities Act. The City hereby elects to apply all of the Public Securities Act to the Bonds.

**Sale of Bonds** The placement and purchase of the Bonds pursuant to the terms of the Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor (or Mayor pro tem) is hereby authorized and directed to execute the Bonds and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Bonds and each is hereby authorized to deliver the Bonds for and on behalf of the City to the Trustee for authentication pursuant to the Indenture. The Bonds shall be sold to the Underwriter for the purchase price as set forth in the Purchase Agreement (subject to the limitations set forth herein).

**Delegation.** Pursuant to the terms of the Public Securities Act, the City Manager is hereby delegated the authority to establish: (i) the terms upon which the interest rate or rates of the Bonds will be determined and the payment dates therefore, provided that the net effective interest rate for the Bonds shall not exceed 12.00%; (ii) the prior redemption provisions for the Bonds, provided, any redemption premium thereon shall not exceed 4% of the principal amount to be redeemed; (iii) the original issue discount or premium thereon shall not exceed 3% of the aggregate principal amount of the Bonds; and (iv) the dates on which the Bonds shall mature, including the amounts to mature in each year, provided that, the final maturity date for any Bond shall not be later than December 15, 2023.

**Approval and Authorization of Documents.** The Indenture, the Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement be and the same are in all respects hereby approved, authorized and confirmed, and the Mayor (or Mayor pro tem) is hereby authorized and directed to execute and the City Clerk is hereby authorized and directed to affix the seal of the City and to attest the Indenture, the Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement in substantially the forms and content as presented to the City on this date, subject to the approval of bond counsel to the City, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof as before this date.

**All Actions Heretofore Taken.** All actions (not inconsistent with the provisions of this Ordinance) heretofore taken by the City Council and the officers of the City directed toward the issuance and sale of the Bonds therefor are hereby ratified, approved and confirmed.

**Compliance with the Act.** The following determinations and findings are hereby made in accordance with Sections 29-3-113, 29-3-114 and 29-3-120 of the Act:

The maximum amount necessary in each year to pay the principal of and the interest on the Bonds (based on the maximum net effective interest rates set forth herein, assuming that interest is paid monthly, and assuming no redemptions) shall not exceed:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
2004	\$ --	\$ 860,565	\$ 860,565
2005	--	1,002,600	1,002,600
2006	--	1,002,600	1,002,600
2007	--	1,002,600	1,002,600
2008	--	1,002,600	1,002,600
2009	--	1,002,600	1,002,600
2010	--	1,002,600	1,002,600
2011	--	1,002,600	1,002,600
2012	--	1,002,600	1,002,600
2013	--	1,002,600	1,002,600
2014	--	1,002,600	1,002,600

2015	--	1,002,600	1,002,600
2016	--	1,002,600	1,002,600
2017	--	1,002,600	1,002,600
2018	--	1,002,600	1,002,600
2019	--	1,002,600	1,002,600
2020	--	1,002,600	1,002,600
2021	--	1,002,600	1,002,600
2022	--	1,002,600	1,002,600
2023	8,355,000	1,002,600	9,357,600

Pursuant to the Indenture there shall be established certain debt service reserve funds for payment of the Bonds, which reserves are required to be replenished from time to time, if necessary, from Revenues (as defined in the Indenture).

In the Financing Agreement, the Owner has covenanted to maintain, or cause to be maintained, the Project and to carry, or cause to be carried, all proper insurance with respect thereto.

The revenues and other amounts payable under the Financing Agreement are sufficient to pay, in addition to all other requirements of the Financing Agreement and this Ordinance, all sums referred to in paragraphs (a), (b) and (c) of this Section and all taxes or payments in lieu of taxes levied upon the Project.

**Investments.** Proceeds from the sale of the Bonds and special funds from the revenues from the Project shall be invested and reinvested in such securities and other investments specified in, and otherwise in accordance with, the Indenture and Section 29-3-109 of the Act.

**Authority to Execute and Deliver Additional Documents.** The officers, employees and agents of the City shall take all action in conformity with the Act, the Public Securities Act and the Charter necessary or reasonably required to effectuate the issuance of the Bonds and shall take all action necessary or desirable in conformity with the Act and the Charter to finance the portion of the costs of the Project to be financed with proceeds of the Bonds and for carrying out, giving effect to and consummating the transactions contemplated by this Ordinance, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement and the Purchase Agreement including without limitation the execution, delivery and filing of any documents, statements or reports with the United States Internal Revenue Service or with the Secretary of the United States Treasury or his delegate necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, the execution of any letter of representation or similar document required of any securities depository, and the execution and delivery of additional security documents and any closing documents to be delivered in connection with the sale and delivery of the Bonds.

**Bonds are Limited Obligations.** The Bonds shall be special, limited obligations of the City payable solely from the receipts and revenues of the City under the Financing Agreement that are specifically pledged therefor under the Indenture; the Bonds shall never constitute a debt or indebtedness of the City, the State or any county, municipality or political subdivision of the State within the meaning of any provision or limitation of the Constitution or statutes of the State or the Charter or of any political subdivision of the State; and the Bonds shall never constitute nor give rise to any pecuniary liability of, or a charge against the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The Bonds shall not constitute a “multiple fiscal year direct or indirect debt or other financial obligation” of the City under Article X, Section 20 of the Colorado Constitution.

**No Pecuniary Liability.** Nothing contained in this Ordinance or in the Bonds, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement or the Purchase Agreement or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Ordinance, the Bonds, the Financing Agreement, the Indenture, the Regulatory Agreement, the Intercreditor Agreement or the Purchase Agreement or any other instrument shall not impose any pecuniary liability upon, or any charge upon the general credit or taxing powers of, the City, the State or any county, municipality or political subdivision of the State, none

of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of refinancing the Project, or power to operate the Project as a business or in any manner.

No Condemnation by City. The City shall not condemn any land or other property for the Project.

Trustee and Remarketing Agent. The Bank of New York is hereby appointed as Trustee and Paying Agent under the Indenture and Merrill Lynch, Pierce, Fenner & Smith Incorporated, is hereby appointed as Remarketing Agent pursuant to the terms of the Indenture.

Supplemental Ordinances. The City may, subject to the terms and conditions of the Indenture, pass and execute ordinances supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

Limitation of Rights. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Ordinance or the Bonds is intended or shall be construed to give to any person, other than the City, the Owner, the Underwriter and the owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Ordinance or any covenants, conditions and provisions herein contained; this Ordinance and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the City, the Owner, the Underwriter and the owners of the Bonds as herein provided.

Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of the Revenues to secure or pay the Bonds as provided herein and in the Indenture shall be governed by Section 11-57-208 of the Public Securities Act and this Ordinance. The Revenues for the payment of the Bonds, as received by or otherwise credited to the City, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Revenues shall have priority over any or all other obligations and liabilities of the City. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

Immunity of Officers. Pursuant to Section 11-57-209 of the Public Securities Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such council member, officer, or agent for payment of the principal of or interest on the Bonds. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against any official, officer, council member or agent of the City or the State, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Bonds.

Limitations on Actions. In accordance with the Act, no action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding relating to the Bonds or the Bonds, or the Project on and after thirty days from the effective date of this Ordinance.

Counterparts. This Ordinance may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Captions. The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

Validity of Bonds. Each Bond shall contain a recital that such Bond is issued pursuant to the Act and the Public Securities Act, and such recital shall be conclusive evidence of its validity and of the regularity of its issuance.

Irrepealability. After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall have been fully paid, canceled and discharged.

Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Declaration of Emergency. In order to complete the issuance and sale of the Bonds while favorable market conditions exist to effect the Refunding Project, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This Ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Repealer. All orders, ordinances, resolutions, bylaws, and regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on January 26, 2004.