



WESTMINSTER
COLORADO

APRIL 24, 2000
7:00 P.M.
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 by Adams County School District 50 Students
 - B. Proclamation re National Drinking Water Week May 7th through 13th
5. Citizen Communication
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. Right of Way Agreement with Metricom, Inc for wireless Internet services
 - B. ICG Contract for Building Hookup and Conduit Installation Fiber Optic Network for \$71,000
 - C. Councillor's Bill No. 28 re Local Law Enforcement Block Grant and Mandalay Middle School Bicycle Patrol Grant Appropriation (Smith-Dixion)
 - D. Councillor's Bill No. 29 re Establishing Reclaimed Water System Rates and Operating Policies (Hicks-Merkel)
9. Appointments and Resignations
None
10. Public Hearings and Other New Business
 - A. TABLED Resolution No. 32 re Radionuclide Soil Action Level Oversight Panel Final Recommendation
 - B. Public Hearing re First Amended Preliminary and Official Development Plan for Lake Arbor Industrial Park Filing No. 1 to allow church uses at 9051 Harlan Street
 - C. First Amended Preliminary and Official Development Plan for Lake Arbor Industrial Park Filing No. 1 to allow church uses at 9051 Harlan Street
 - D. Resolution No. 33 re Career Enrichment Park Site Improvement and Utilization Plan
 - E. Councillor's Bill No. 32 re Contingency Transfer for Walker Building Remodeling
 - F. Councillor's Bill No. 33 re Lease Agreement with Adams Community Mental Health Foundation re use of Walker Building
 - G. Councillor's Bill No. 34 re changes to Board of Building Code Appeals Ordinance
 - H. Westminster Promenade Land Trade with Inland Pacific of Colorado LLC and WestCol Center LLC
 - I. Resolution No. 34 re Lowell Boulevard ROW Acquisition from 68th Avenue to the Railroad Tracks
 - J. Implementation Services for new HR/Payroll and Financial Management System with AMX International for \$1,048,000
 - K. Councillor's Bill No. 7 E re \$15,000,000 Subordinate Water and Wastewater Enterprise Revenue Bonds

- L. Councillor's Bill No. 35 re Supplemental Appropriation for \$15M Colorado Water and Power Authority Bond Proceeds for New Water Treatment Facility
- M. Membrane Equipment Bid for new Water Treatment Facility to Pall Corp for \$4,744,000
- N. Nation Tax Online Sales Tax Return Filing via Internet for Westminster Businesses
- O. Councillor's Bill No. 36 re changes to Boards and Commissions Ordinance

11. Old Business and Passage of Ordinances on Second Reading

- A. Councillor's Bill No. 30 re Amendment to Planning and Zoning Commission Ordinance (Hicks-Dixon)
- B. Councillor's Bill No. 31 re Amendment to Special Permit and License Board Ordinance (Merkel-Hicks)

12. Citizen Presentations and Miscellaneous Business

- A. Financial Report for March, 2000
- B. City Council
- C. Request for Executive Session

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 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, APRIL 24, 2000 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE:

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

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro Tem Dixon and Councillors Atchison, Hicks, Merkel, Moss and Smith. Also present were William Christopher City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk. Absent none.

CONSIDERATION OF MINUTES:

A motion was made by Merkel and seconded by Dixon to accept the minutes of the meeting of April 10 and the special meeting of April 17, 2000 with no additions or corrections. The motion carried unanimously.

PRESENTATIONS:

Candy Madden, Teacher/Sponsor and students of School District 50 High Schools thanked the City and gave a brief presentation to Council concerning their experiences while participating in the Washington, D.C. Close Up Government Program.

Mayor Heil presented a proclamation to Program Coordinator Steve Ramer proclaiming the week of May 7-13 as National Drinking Water Week in the City.

CITIZEN COMMUNICATION:

Verlin Wolf addressed Council concerning an open space trail from Northglenn to Federal Boulevard and the poisoning of prairie dogs within this area on City of Westminster open space land. Cathy Dawson gave Council a copy of the City of Boulder's prairie dog policy. Anita Hartman asked for a moratorium on the poisoning of prairie dogs. Steve Olson thanked the City for the Clean Up program. Lori Harrison, Prairie Dog Campaign Coordinator addressed the prairie dog dwindling population. Justin Hill, Ray Swindel and Joe Swindel also addressed the prairie dog issue.

CITY OFFICIALS REPORT:

City Manager Bill Christopher stated there would be a joint Planning Commission and City Council tour on Saturday from 8:15 A.M. until 3:30 P.M.

CONSENT AGENDA:

The following items were considered as part of the Consent Agenda: Metricom Inc. Right of Way Agreement – Authorize City Manager to sign the Right of Way Agreement with Metricom Inc. which will allow wireless Internet services in Westminster; Building Hookup and Conduit Installation for ICG/City Fiber Optic Network – Authorize City Manager to sign a contract with ICG in the amount of \$71,000 plus a 15% contingency, to cover any additional costs and charge the expense to the appropriate capital budget accounts in the Utility Fund; Councillor's Bill No. 28 re Local Law Enforcement and Bicycle Patrol Grant appropriations; and Councillor's Bill No. 29 re Reclaimed Water System Rates and Operating Policies. 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.

A motion was made by Atchison and seconded by Merkel to adopt the Consent Agenda items as presented. The motion carried unanimously.

PUBLIC HEARING ON FIRST AMENDED PDP AND ODP OF LAKE ARBOR INDUSTRIAL PARK:

At 7:50 P.M. the meeting was opened to a public hearing to consider an amendment to the combined Preliminary and Official Development Plans for Lake Arbor Industrial Park Filing No. 1, located at 9051 and 9053 Harlan Street. Planning Manager Dave Shinneman entered a copy of the Agenda Memorandum, Planning Commission recommendation and other related items as exhibits. The applicant and property owner Paul Yantorno, 11475 Quivas Way, was present to address Council. No one spoke in opposition. At 7:59 P.M. the public hearing was declared closed.

FIRST AMENDED PDP AND ODP FOR LAKE ARBOR INDUSTRIAL PARK FILING NO. 1:

A motion was made by Moss and seconded by Hicks to approve the First Amendment to the Preliminary and Official Development Plan of Lake Arbor Industrial Park, Filing No. 1, based upon Section 11-5-14 of the City Code regarding standards for amending PDP's.

A friendly amendment was made by Atchison that the First Amendment to the PDP and ODP apply to 9053 Harlan Street only. The amendment was agreed to by the maker and second of the motion. The main motion as amended carried unanimously.

RESOLUTION NO. 33 – CAREER ENRICHMENT PARK SITE IMPROVEMENT & UTILIZATION PLAN:

A motion was made by Merkel and seconded by Hicks to Table Resolution No. 33 adopting the Career Enrichment Park Site Improvement and Building Utilization Plan. The motion carried unanimously.

COUNCILLOR'S BILL NO. 32 CONTINGENCY TRANSFER FOR WALKER BUILDING REMODELING:

A motion was made by Dixon and seconded by Hicks to pass Councillor's Bill No. 32 on first reading transferring \$65,000 from the General Fund Contingency Account to the appropriate General Capital Improvement Account for the remodel of the City-owned Walker Building, authorize the expenditure of \$65,000 for this project and charge the expense to the appropriate project account. Youlon Savage, Executive Director of Adams Community Mental Health Center, was present to address Council. Upon roll call vote, the motion carried with 6 aye votes and a dissenting vote by Atchison.

COUNCILLOR'S BILL NO. 33 LEASE AGREEMENT WITH ADAMS COMMUNITY MENTAL HEALTH:

A motion was made by Dixon and seconded by Merkel to pass Councillor's Bill No. 33 on first reading authorizing the Mayor to execute a lease agreement with Adams Community Mental Health Foundation, related to the remodel of the Walker Building, and the continued use of the building as the Westminster office for Adams Community Mental Health. Youlon Savage, Executive Director of Adams Community Mental Health Center, was present to address Council. Upon roll call vote, the motion carried with 6 aye votes and a dissenting vote by Atchison.

COUNCILLOR'S BILL NO. 34 – CHANGES TO BOARD OF BUILDING CODE APPEALS ORDINANCE:

A motion was made by Atchison and seconded by Hicks to pass Councillor's Bill No. 34 on first reading amending Title II, Chapter 10, Board of Building Code Appeals, to the Westminster Municipal Code. Upon roll call vote, the motion carried unanimously.

WESTMINSTER PROMENADE LAND TRADE:

A motion was made by Hicks and seconded by Dixon to authorize the Mayor to execute the necessary documents to convey City property to Inland Pacific Colorado, LLC and WestCol Center, LLC, in exchange for land of approximate equal value and area being conveyed to the City. The motion carried unanimously.

RESOLUTION NO. 34 – LOWELL BOULEVARD RIGHT-OF-WAY ACQUISITION:

A motion was made by Merkel and seconded by Atchison to adopt Resolution No. 34 authorizing City Staff to proceed with the acquisition of the right-of-way and easements necessary to construct street improvements for the Lowell Boulevard Improvement Project, using eminent domain proceedings if necessary. Upon roll call vote, the motion carried unanimously.

IMPLEMENTATION SERVICES FOR HR/PAYROLL AND FINANCIAL MANAGEMENT SYSTEM:

A motion was made by Smith and seconded by Atchison to direct Staff to finalize a contract with AMX International for the purchase of implementation services of the JD Edwards Human Resources, Payroll and Financial Management System software and authorize the City Manager to sign the contract on behalf of the City for an amount not to exceed \$1,048,000, which includes a 15% contingency, with payment subject to the appropriation of funds at the completion of the financing; additionally, the contract will stipulate that AMX International will cease work if, and when, the appropriated funds are exhausted. The motion carried unanimously.

UTILITY ENTERPRISE ORDINANCE NO. 7E – SUBORDINATE W&WW REVENUE BONDS SERIES:

A motion was made by Dixon and seconded by Moss to adopt Councillor's Bill No. 7E as an emergency ordinance, as City Council acting in the capacity of the Board of Directors of the Water and Wastewater Enterprise, authorizing the issuance of approximately \$15 million in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds at a net interest cost of 4.450907% and authorize the Mayor, City Clerk and Finance Director to sign all necessary documents on behalf of the Water and Wastewater Enterprise. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 35 – COLORADO WATER POWER AUTHORITY BOND APPROPRIATION:

A motion was made by Atchison and seconded by Dixon to pass Councillor's Bill No. 35 on first reading appropriating \$15 million for the construction of the new Water Treatment Plant, and authorize the Finance Director to pay for the costs of issuance out of the note proceeds. Upon roll call vote, the motion carried unanimously.

MEMBRANE EQUIPMENT BID FOR NEW WATER TREATMENT FACILITY:

A motion was made by Smith and seconded by Merkel to authorize the City Manager to sign an agreement with Pall Corp, subject to City Council appropriating the funds, for the purchase of membrane treatment equipment in the amount of \$4,744,000 and charge this expense to the appropriate project account in the Utility Fund. The motion carried unanimously.

NATIONTAX ONLINE SALES TAX RETURN FILING AUTHORIZATION:

A motion was made by Hicks and seconded by Dixon to authorize the City Manager to sign a contract with NationTax Online to provide web-based on-line sales and use tax return filing for Westminster businesses at no cost to the City. The motion carried unanimously.

COUNCILLOR'S BILL NO. 36 – BOARD AND COMMISSION DEFINITION FOR ATTENDANCE:

A motion was made by Merkel and seconded by Hicks to pass Councillor's Bill No. 36 on first reading adding a definition for attendance pertaining to excused and unexcused absences for all Board and Commission members. Upon roll call vote, the motion carried unanimously.

CHANGES TO PLANNING COMMISSION & SPECIAL PERMIT & LICENSE BOARD ORDINANCES:

A motion was made by Atchison and seconded by Merkel to adopt Councillor's Bill No. 30 on second reading, as amended, regarding the Planning and Zoning Commission; and to adopt Councillor's Bill No. 31 on second reading, as amended, regarding the Special Permit and License Board. Upon roll call vote, the motion carried unanimously.

MISCELLANEOUS BUSINESS:

Council reviewed the March 2000 Financial Report.

Mayor Heil recognized members of Boy Scout Troop 322 who were in attendance at the meeting.

ADJOURNMENT:

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

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000
Subject: Presentation by Adams County School District 50 Students
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to hear from several Adams County School District 50 High School students about their experience involving the Washington DC Close Up Government Program. This opportunity was a week long trip to Washington, D.C.

Summary

In appreciation of the City of Westminster's financial contribution, several of the students from School District 50 High Schools wish to make a presentation to City Council.

Candy Madden Teacher/Sponsor and several of the students that participated in this program will be present at Monday night's City Council meeting to make a short presentation of their impressions of their visit to Washington, D.C. and the workings of the federal government.

Staff Recommendation

Mayor and City Council listen to presentation by students.

Background Information

The City of Westminster provides matching funds to the School District No. 50 Education Foundation to send high school students to Washington, D.C. as part of the Washington Close Up Government Program.

This week long program experience was the week of March 5th through 11th. This program gives students the opportunity to interact with their legislators at the national level.

Respectfully submitted,

William M. Christopher
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Proclamation re National Drinking Water Week

Prepared by: Steve Ramer, Laboratory Analyst/Program Coordinator

Introduction

City Council is requested to proclaim the week of May 7-13, as “National Drinking Water Week” in the City of Westminster. Steve Ramer, Water Plant Laboratory Analyst and Program Coordinator for the Westminster Water Week Program, will be at the City Council meeting to accept the proclamation.

Summary

National Drinking Water Week focuses on the importance of a safe domestic water supply and the limited nature of our Nation’s drinking water supply resources. The objective of this week is to educate and inform the public of the importance of a safe, reliable public water source, the need for wise use of water and water conservation and protection, and to encourage each local water utility to involve its citizens in water promotion activities.

Staff Recommendation

Proclaim the week of May 7-13, 2000 as “National Drinking Water Week” in the City of Westminster.

Background

Due to construction activities at the Westminster Mall, our annual booth and display for National Drinking Water Week Activities has been cancelled but will resume in 2001. This year, an open house has been scheduled for May 20, at the Semper Water Treatment Facility from 10:00 a.m.- 2:00 p.m. City Staff will be offering tours of the facility, and there will be tabletop displays for viewing and learning about Westminster’s drinking water. Handouts and brochures, along with promotional items, will also be available. Free refreshments and a raffle will be held for great door prizes. Publicity on the open house and tours will be provided through the news media and public information Channel 8.

In conjunction with this activity, classroom presentations will be offered to elementary and junior high school students. There will be a poster contest for elementary school students and an essay contest for junior high school students, all of which will be displayed at the Westminster Recreation Center and the Open House at Semper Water Treatment Facility. The winning posters and essays will be on display at the Semper Water Treatment Facility for the remainder of the year.

Respectfully submitted,

William M. Christopher
City Manager
Attachment: Proclamation

WHEREAS, our health, comfort and standard of living depend on an abundant supply of safe, high quality water, and

WHEREAS, the problems and challenges of meeting future water supply needs are many and growing in complexity, and

WHEREAS, the ever increasing need for domestic water makes expansion of storage, supply and distribution facilities, the water quality monitoring and continued training of skilled personnel essential.

NOW THEREFORE, the City Council of the City of Westminster, Colorado, does hereby proclaim the week of May 7-13, 2000 as

National Drinking Water Week

in the City of Westminster and asks all citizens to join in extending our appreciation to the dedicated men and women of our Westminster Municipal water system, and urge that Westminster citizens participate in National Drinking Water Week activities and become more informed about Westminster's water supply and system.

Signed this 24th day of April, 2000.

Mayor Nancy M. Heil



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Metricom, Inc. Right of Way Agreement

Prepared by: Gary Casner, Sr. Telecommunications Administrator

Introduction

City Council is requested to authorize the City Manager to sign a Right-of-Way Agreement with Metricom, Inc. concerning wireless high-speed Internet services.

Summary

The Greater Metro Telecommunications Consortium, (GMTC), has negotiated a model Right-of-Way Agreement with Metricom, Inc. to provide wireless high speed Internet services in the greater metro area. The agreement has been reviewed by the City Attorney's Office and conforms to legal form.

The service from Metricom, Inc. will allow citizens another choice for Internet service.

Alternative:

Request that Staff try to negotiate a different agreement. This alternative does not appear to be in the City's best interest, as the City alone does not have the power of all the cities in the metro area through the GMTC.

Staff Recommendation

Authorize the City Manager to sign the Right-of-Way Agreement with Metricom, Inc., which will allow wireless Internet services in Westminster.

Background

In 1992, City Council approved an intergovernmental agreement for membership in the Greater Metro Telecommunications Consortium. The Consortium was formed to allow metro area agencies to jointly negotiate cable TV and other telecommunications. Metricom, Inc. met with the GMTC and entered into negotiations for a right-of-way agreement to provide wireless Internet service throughout the metro area.

Metricom, Inc. is proposing to install a series of small antennas on Public Service light poles in Westminster. Approximately 30 antennas would be installed. The antennas measure approximately 7"x4"x12" for minimal visual impact. Metricom would only place antennas on City facilities when a Public Service pole was not available, and such placement would require a standard review and approval process.

Advantages to the City include:

- High-speed Internet access for citizens and businesses.
- Metricom, Inc. will pay the City 5% of the adjusted gross revenues from customers within the City as a right-of-way fee. This is expected to result in approximately \$25,000 per year once the system is fully utilized.
- The City will also receive up to 10 free subscriptions during the term of the agreement.

The term of the agreement is nine years, with provisions for three five-year extensions. Either party may choose to not renew the agreement at the end of each contract period. The agreement is non-exclusive, although no other providers of this type have contacted the City about offering service in the City. Per Federal regulations, providers have the right, within limits, and with negotiated parameters for each agreement, to use the right-of-way for this type of service.

Attached is a package including a picture and diagrams of the system.

Respectfully submitted,

William M. Christopher
City Manager

Attachments



WESTMINSTER COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Building Hookup and Conduit Installation for ICG/City Fiber Optic Network

Prepared by: Gary Casner, Sr. Telecommunications Administrator
David Puntenney, Information Technology Director

Introduction

City Council action is requested to authorize the City Manager to sign a contract with ICG for fiber splices and the installation of conduit required to connect City facilities to the fiber network. Funds are available and were previously approved by City Council in the 1998 Capital Projects budget for this expense.

Summary

In 1998, City Council approved the construction of the Reclaimed Water System. Installation of the reclaimed water distribution lines includes a conduit and fiber optic cable for system controls. The conduit will be used to house fiber optic cable needed to control the reclaimed water system and to expand the City fiber optic data and voice network to City buildings along the route.

In late 1999, City Council authorized an agreement with ICG that provided ICG with space in City owned conduit in exchange for the dedicated, permanent City use of 24 pair of fiber optic cable installed by ICG. Under this agreement, the City saved over \$500,000 by avoiding the cost associated with installing fiber optic cable.

While ICG agreed to incur the cost of the fiber cable installation, the City agreed to provide conduit leading from the reclaimed water system conduit into each City facility that will be connected to the network. The City also agreed to pay for all fiber splices needed to connect the City facilities.

Cost of the City's portion of the agreement is \$71,000 for splices and conduit to connect 12 City facilities. These costs would be incurred regardless of who installed the main fiber optic cable.

In the interest of time, cost and coordination, ICG has agreed to perform the conduit and fiber installation into City facilities. ICG has also agreed to charge the City an amount equivalent to their actual cost - no markup will be added.

Alternatives:

1. Develop a bid and send out to area contractors. Staff does not recommend this option due to the following reasons: (a) Lack of contractors – the City received only one bid last year when requesting bids for the entire fiber project. Other contractors were too busy to even submit a bid; (b) This portion of the project represents only 15% of the total original job (since ICG is installing the main fiber at no charge to the City). ICG has greater buying power on a large project, and is passing on their discounts along to the City of Westminster; (c) The City would incur the cost of supervising the project. ICG is providing this service for free; (d) Bidding the installation would result in project delays; and (e) Savings would be unlikely, since ICG has agreed to perform the work at their actual cost, and their projection was in line with the specific task costs included on a previous bid received in 1999.

Building Hookup and Conduit Installation for ICG/City Fiber Optic Network

2. Forgo the connection of fiber to City facilities and continue to lease voice and data communication circuits from US WEST. While this alternative would eliminate the need to invest \$71,000 in installation cost, Staff does not recommend this alternative based on the following reasons: (a) The City would continue to incur an annual expense of \$33,180 to lease voice and data lines; (b) Performance of the current data communication circuits is inadequate for current and future applications. If additional network devices or new applications are needed in these facilities, more costly or additional leased lines will be required; (c) The major portion of the fiber installation is being completed at no expense to the City, and the benefit of the project would be drastically minimized if City facilities were not connected.

Staff Recommendation

Authorize the City Manager to sign a contract with ICG in the amount of \$71,000, plus a 15% contingency, to cover any additional costs and charge the expense to the appropriate capital budget accounts in the Utility Fund.

Background

In 1999, City Council approved an agreement with ICG to exchange City owned conduit space for the permanent use of 24 pair of ICG installed fiber optic cable. The fiber optic cable will allow the City to expand its current fiber optic network of 1.5 to 17.5 miles in 2000 and to 26 miles in 2001. The agreement has many benefits for the City, including the following:

- The City saved over \$500,000 in fiber installation.
- ICG will repair any breaks in the cable, which insures the reliability of the system, and reduces maintenance expense for the City.
- The City receives the discounts ICG experiences when working on larger projects, which lowers the cost for the City portion of the project.

Under the terms of the agreement, the City is responsible for the installation of any conduit from the reclaimed water conduit to City facilities, and for fusions of the cable to connect those facilities. ICG will also install the fiber cable along the backbone of the system and will extend the City portion of the fiber cable into any City building along the route. Scope of the major work to be completed includes installation of conduit from 112th Avenue to College Hill Library and Fire Station #4, from the street to Fire Station #6, from the end of the pipeline to Legacy Ridge Golf Clubhouse, under Sheridan Boulevard to the conduit at City Park and to the conduit at Westview Recreation Center.

Staff previously requested bids for the installation of the entire fiber project, but after the agreement was sealed with ICG, the City no longer needed a contractor to install the complete system. However, Staff recently referenced the detail included with the only bid received last year to verify that ICG's total projected cost was equal to or less than the amount bid for the comparable portions of the project.

When completed, the system will serve City Park Recreation and Fitness Centers, Fire Stations #4 and #6, College Hill Library, Legacy Ridge and Heritage Golf Courses, Sun Microsystems Ice Arena, Westin/Westminster Conference Center and Big Dry Creek Reclamation Center. In 2001, the MSC, Semper and Fire Station #3 will be added to the system. In addition, the reclaimed water system will be installed, the traffic signal system will be added, and the water control SCADA system will be added.

Respectfully submitted,

William M. Christopher
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: First Amended Preliminary and Official Development Plan of Lake Arbor Industrial Park

Prepared by: Patrick Caldwell, Planner II

Introduction

City Council action is requested to conduct a public hearing to consider an amendment to the combined Preliminary Development Plan (PDP) and Official Development Plan (ODP) of the Lake Arbor Industrial Park Filing No. 1 to add “church” as a use. The building affected by this use change is located at 9051 Harlan Street (see attached location map).

Summary

The applicant, Paul Yantorno, has proposed to add “church” as an allowed use in the PDP. The current zoning of this property, Planned Unit Development (PUD) allows a variety of office, commercial and business uses but is silent as to church uses.

Applicant/Property Owner

Paul Yantorno
Center Land Company, Inc.
1550 East 73rd Avenue
Denver, Colorado 80229

Location/Surrounding Land Uses/Comprehensive Land Use Plan Designations: The Lake Arbor Industrial Park, Filing No. 1 is located on the west side of Harlan Street to the south of 91st Avenue. To the south of the site is a shopping center known as the Shops at the Westminster Mall, zoned C-1, with retail uses. To the north and west are light industrial uses in the Lake Arbor Industrial Park, zoned PUD. The east side of Harlan contains the Westminster Mall; a regional shopping center zoned PUD.

The Comprehensive Land Use Plan (CLUP) designates this parcel for District Center uses. Churches are allowed in all land use areas if listed in the PDP. An amendment to the CLUP is not needed.

Size of Site: The area of this PDP is 5.25 acres. Two buildings occupy the site. The east building is 28,000 square feet. The west building is 26,250 square feet. Parking for 277 vehicles is available.

Description of Proposed Use: The proposal is to add “church” as an allowed use. Currently, the allowed uses include a variety of office, commercial and business uses. No new construction is anticipated. Remodeling of existing tenant spaces will accommodate a church use.

Major Issues: There are no major issues with this proposal.

Planning Commission Recommendation: The Planning Commission reviewed the proposed actions on April 11, 2000 and voted 6-1 to recommend that “church” be added as a permitted use to the PDP/ODP within this PUD. The dissenting Planning Commissioner (Crocker) stated that he believed a church is incompatible with the adjacent uses.

Staff Recommendation

1. Hold a public hearing.
2. Approve the First Amendment to the Preliminary and Official Development Plan of Lake Arbor Industrial Park, Filing No. 1 based upon Section 11-5-14 of the City Code regarding standards for amending PDP’s.

Alternative(s)

Council could deny the request to amend the Preliminary and Official Development Plan of Lake Arbor Industrial Park Filing No. 1 to add “church” as an allowed use.

Background Information

The Lake Arbor Industrial Park PDP was approved in 1981. The ODP for this site was approved in 1985 and the buildings were constructed at that time. The two buildings were painted and other significant site upgrades occurred in 1997.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Map



WESTMINSTER COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Resolution No. 33 re Career Enrichment Park Site Improvement and Utilization Plan

Prepared by: Tony Chacon, South Westminster Revitalization Projects Coordinator

Introduction

City Council action is requested to adopt the Career Enrichment Park (CEP) Site Improvement and Building Utilization Plan as presented. City Staff and representatives of Adams County School District No. 50 have worked cooperatively over the last several months to prepare the Plan to guide future improvement and use of the District-owned property located at the northeast corner of 72nd Avenue and Lowell Boulevard.

Summary

City Staff and representatives of Adams County School District No. 50, with the assistance of an outside consultant, have spent several months preparing a plan to improve the visual character and functional use of the Career Enrichment Park (CEP), located at the northeast corner of 72nd Avenue and Lowell Boulevard. The CEP Site and Utilization Plan (attached) is the product of this cooperative planning effort, and is being presented to the City Council for formal adoption. The Plan will be used by the City and District to guide future investment and improvements to the property. The plan was presented at the April 10 Study Session.

City involvement with this District owned parcel is based in part on its strategic location in original Westminster as well as identifying improvements that tie to revitalization of the area.

Recommendation

Adopt Resolution No. 33 adopting the Career Enrichment Park Site Improvement and Building Utilization Plan as presented.

Background Information

In July, 1998, the City of Westminster and Adams County School District No. 50 entered into an Intergovernmental Agreement to prepare a plan to improve the aesthetic and functional quality of the Career Enrichment Park (CEP) at 72nd Avenue and Lowell Boulevard. The CEP is owned and operated by District 50. The strategic location and public context of the CEP make the campus a focal point and catalyst for neighborhood revitalization. Based on this premise, City Staff and representatives of District 50, serving as a CEP planning group, worked cooperatively with a team of consultants to prepare a Plan addressing the following parameters:

- Providing aesthetic improvements on perimeter and throughout the site to enhance the visual quality of the campus;
- Providing physical improvements to the site and buildings to support and attract continual active use of the campus by the community;
- Identifying opportunities to provide indoor space to support general community use;
- Identifying opportunities to improve, expand or create new programs for District students and the general public; and,

- Identifying potential partners for future program development and operation.

After thorough discussion and review of several Plan revisions by the CEP planning group, the CEP Site and Utilization Plan is ready for City Council and District 50 review and adoption. The Plan is generally comprised of two parts:

1. An improvement plan recommending specific site improvements along with cost estimates and an implementation schedule; and,
2. A facilities utilization component identifying potential opportunities for improving or expanding existing, or developing new, educational and community-based programs.

The primary emphasis of the CEP Plan is to improve the functional and aesthetic quality of the campus grounds and adjoining rights-of-way. The Plan recommends specific site improvements to be phased in over a five to ten year period. Proposed improvements generally include the following:

Construction of a new access drive and 72nd Avenue landscaping enhancements -- A new entry drive, providing primary vehicular access from 72nd Avenue, is proposed to replace the existing “alley” access from Lowell Boulevard immediately south of the CEP (North Mall) building. The drive will be oriented and enhanced with landscaping to re-emphasize the “historical” building entry on the south side of the CEP building. The drive will be lined with shade trees that will eventually form a “tree-canopy” upon maturity. The parking lot between the ACE (former Union High School) building and the DeSpain building will also be reconstructed and landscaped to accentuate the entry into the CEP campus. The existing modular building and tennis courts would be removed in conjunction with the parking lot improvements.

Creation of public park space adjacent to Lowell Boulevard -- Approximately one and one-half acres of the CEP site immediately adjacent to Lowell Boulevard and south of the CEP building will be improved as public park space. The park will be designed to promote and accommodate leisurely and restful activity. The relatively small size of the park area limits its use for active recreational purposes.

Relocation and improvement to the soccer field to support more active use -- The Plan recommends relocating the soccer field concurrently with extending the new access drive and developing the public park adjacent to Lowell Boulevard. The relocated field would continue to meet regulation dimensions for District use. Further, it would be equipped with an up-to-date irrigation system to keep it in good repair for competitive level play. In an effort to open the field to more community use and activity, the Plan also calls for the installation of enclosures to support portable restroom facilities.

Construction of an interconnected network of pedestrian paths -- Extensive improvements are proposed for the pedestrian path system throughout the site. A main spine running from east to west along the existing “alley” access will provide a continuous pedestrian linkage between the new Westminster Plaza Shopping Center, the Community Senior Center, and the “historic” commercial district at Bradburn Boulevard and 73rd Avenue. In addition, a series of interconnecting loops will replace the existing oval track as a safe and enticing opportunity for walkers to stroll without conflict with vehicular traffic.

Construction of a history-based public plaza in conjunction with restoration and improvement to the DeSpain school -- The CEP has a long history that closely parallels the history of the City of Westminster and the surrounding area. In fact, the three principal structures on the site are important historical artifacts that the plan proposes to preserve and restore. The historic importance of the site provides the foundation for designing and constructing a public plaza immediately north of the DeSpain building, in recognition of the site’s history.

This project would include an effort to restore the historically designated DeSpain building to its original architectural grandeur. (A collaborative effort with the Westminster Historical Society is contemplated)

Providing for the expansion and improvement to the Crowne Point Charter School including construction of a joint-use playground -- Crown Point Charter School is a community asset to be retained and enhanced. A partnership between the City, District 50 and the Charter School will pave the way to future improvements and expansion. Accordingly, the plan provides for the expansion of the school to accommodate one set of classes for each grade level of K – 8. The Plan further recognizes the need for playground equipment for both the school children and other children within the neighborhood.

Development of a mini-arboretum garden and natural resources learning lab -- The CEP is home to a unique natural resources program incorporating such disciplines as horticulture, wetland management, and landscape architecture. In addition, the CEP site is home to a number of unique tree and shrub species not readily grown or seen in Colorado which have been planted by the horticulture staff and students over the years. By combining these unique resources, the opportunity exists to develop and maintain a small-scaled arboretum interspersed throughout the CEP grounds, interconnected by an extensive internal pedestrian trail network. Such a facility would provide an attraction to the South Westminster community as well as all Westminster residents.

Provision of facilities to support cultural/performing arts programming -- The District and community are in need of facilities to promote the development of cultural and arts programs. The CEP provides a unique, centrally located site capable of accommodating programs and supporting facilities. As a long-term measure, the plan proposes the eventual development of both indoor and outdoor space devoted exclusively to performing arts programs. In the interim, minimal improvements to the ACE (former Union High School) building could be made to promote artistic programming.

Improvements to parking layout, circulation and landscaping throughout the campus and streetscaping along street frontages -- Parking is essential relative to operations and activities on the CEP site. While the site has a substantial amount of parking, it generally lacks visual appeal to the general public. The configuration and layout of the parking is also confusing and inefficient. It is the intent of the plan, therefore, to provide adequate parking to support the multitude of activities on the site while enhancing the aesthetic quality from highly visible locations. The Plan further recommends an intensive landscaping program to improve the visual character along adjoining streets.

The second part of the Plan pertaining to facilities utilization is directed to providing ideas for future educational and community programming opportunities. The areas identified in the plan as having the potential for program enhancement or development are the following:

- Culinary Arts and Restaurateur Program / LeParc Café;
- Business Support and Incubator Services;
- Child Care Center and Care Provider Learning Module;
- Natural Resources Planning, Design and Operations;
- Arts Curriculum and Programs; and,
- Hispanic/Latino and Asian Resources and Outreach.

The Plan identifies opportunities relative to each of the programming areas which can be pursued by the District independently or in partnership with the City of Westminster or other agencies. In the spirit of promoting partnerships, the Plan provides a list of potential stakeholders and partners that could be approached relative to the following needs and/or resources.

- Operational space and facility improvements;
- Revenue enhancement;
- Program development and support;
- Employment and internships; and,
- Community services and outreach.

Adoption of the CEP Site and Utilization Plan provides the initial step in reinstating the campus a key community resource and focus it held for many years. Funding to implement the Plan on a multi-year phased basis will be dependent upon available funds from the School District, City and others. The City is currently awaiting a response from the School District for 2000-2001 funding. Adoption of the Plan in no way commits either the City or the School District to funding the identified improvements.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **33**

INTRODUCED BY COUNCILLORS

SERIES OF 2000

CAREER ENRICHMENT PARK SITE IMPROVEMENT AND BUILDING UTILIZATION PLAN

WHEREAS, The City Council hereby determines that the Career Enrichment Park is a significant community asset that can serve as a catalyst for revitalization efforts in South Westminster; and

WHEREAS, The Career Enrichment Park has a long and distinguished history relative to the Westminster community; and

WHEREAS, The Career Enrichment Park is in need of partnership efforts to preserve, restore, and enhance its character and function; and

WHEREAS, the Westminster City Council did approve an Intergovernmental Agreement with Adams County School District No. 50 on July 7, 1998 to jointly prepare a plan to guide future improvement and use of the District-owned property known as the Career Enrichment Park; and

WHEREAS, The Career Enrichment Park Site Improvement and Building Utilization Plan does not establish any financial obligation on the part of the City of Westminster or Adams County School District No. 50.

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

1. City Council hereby adopts the Career Enrichment Park Site Improvement and Building Utilization Plan.
2. The Career Enrichment Park Site Improvement and Building Utilization Plan shall be used to guide improvements, utilization and funding for the CEP site.

Passed and adopted this 24th day of April, 2000.

ATTEST:

Mayor

City Clerk



WESTMINSTER COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Remodel of the Walker Building and Lease Agreement with Adams Community Mental Health Foundation

Prepared by: Matt Lutkus, Deputy City Manager for Administration

Introduction

City Council is requested to pass the attached Councillor's Bill which transfers General Fund Contingency funds for the remodel of the City-owned Walker Building, which is currently being used by Adams Community Mental Health as their Westminster office. Funds are available in the General Fund Contingency Account for this construction project. In addition, Council is being asked to pass the attached Councillor's Bill approving an amended lease with Adams Community Mental Health Foundation related to their continued use of this building.

Summary

At study sessions in July 1999 and March 2000, City Staff reviewed with Council a proposal for remodeling the Walker Building, located at 3200 West 76th Avenue, for Adams Community Mental Health. The Mental Health Center has used this City-owned former residence since 1974 to operate its Westminster clinic. The facility is in need of remodeling, not only due to normal wear and tear that has occurred over the past 2 ½ decades, but also to make the building more usable for counseling services. The proposed project cost also reflects changes that are needed to address updates in the City's Building Code that have occurred since the Mental Health Center initially started using the building, as well as Federal requirements regarding access to individuals with disabilities and asbestos removal.

At City Council's request, City Staff retained an architect to develop preliminary construction drawings and obtain actual contractor quotes for the project. The projected total remodel cost is \$181,257. The Adams Community Mental Health Center Foundation, the non-profit corporation which owns and operates Adams Community Mental Health Center facilities, has agreed to contribute \$50,000 of this amount. Based on Council's preliminary direction on funding this project at the March 6, 2000 Study Session, Staff's recommendation would provide for half of the City contribution to be made in 2000 and the other half to be made in early 2001.

Given the appraiser's estimated market value of \$152,500, it clearly made sense to review other options to remodeling the property prior to investing more than \$180,000 in construction expense. Working with the City's South Westminster Revitalization Coordinator, General Services Staff identified five potential other sites for relocating the Center offices. Because of the costs of either buying or leasing these properties or the uncertainties with regard to their future, none of the alternatives identified proved to be viable.

Funds were not budgeted in the 2000 City Budget for the proposed remodel project. Therefore, Council action is being requested to approve a contingency transfer. The transfer of \$65,000 from the General Fund Contingency Account would leave a balance of \$1,212,500 in that account. In addition to the authorization of funds, Council is also being asked to approve the revised lease agreement with the Adams Community Mental Health Center Foundation.

This agreement provides for the contributions toward the remodel project from the Foundation and the City, stipulates an initial term of the agreement of 20 years, and defines the ongoing building maintenance responsibilities for both parties.

Alternatives to the proposed remodel project are:

1. Take no action with regard to the proposed remodel and continue the current lease agreement with the Mental Health Center. The City's ongoing maintenance would help ensure that the building would continue to be maintained in a usable condition for the Center. This alternative does not address the needs of the Center with regard to making the building more usable as a counseling clinic and will not provide for the updating of the facility to address changes in the Building Code and Federal laws.
2. Sell the Walker Building and use the proceeds in combination with the proposed contributions from the City and the Foundation to either purchase or lease another facility appropriate for Mental Health Center counseling. While this would generate funds for a move to another facility, there are concerns to be noted. First, Mental Health Center Staff are very pleased with the residential atmosphere that they have with the Walker Building. Secondly, there is a concern with turning the Walker Building back to private ownership as a single family residence given its location immediately adjacent to both the Swim and Fitness Center and the Housing Authority's Westminster Commons facility.

Staff Recommendation

1. Pass Councillor's Bill No. 32 on first reading transferring \$65,000 from the General Fund Contingency Account to the appropriate General Capital Improvement Account for the remodel of the City-owned Walker Building, authorize the expenditure of \$65,000 for this project and charge the expense to the appropriate project account.
2. Pass Councillor's Bill No. 33 on first reading authorizing the Mayor to execute a lease agreement with Adams Community Mental Health Foundation, related to the remodel of the Walker Building and the continued use of the building as the Westminster office for Adams Community Mental Health.

Background

Since 1974, Adams Community Mental Health Center has operated its Westminster office out of a City-owned former residence known as the Walker Building, located at 3200 West 76th Avenue. Westminster citizens have benefited by having one of several Mental Health Center's clinics in close proximity. In addition, City Staff has had, over the years, a very good working relationship with Mental Health Center Staff. Center services for the City have ranged from handling various employee issues, facilitation services, and assistance for residents at Westminster Commons. In addition to providing use of the Walker Building at a nominal cost, the City has contributed to the Center each year through its Human Services Funding. For 2000, this contribution is \$30,000.

Approximately one year ago, City Manager Bill Christopher initiated a meeting with the Executive Director of the Center, Youlon Savage, to discuss improvements the Center needed to make it more viable. This inquiry was done in acknowledging the important role that the Center carries out that would fall on the City if the Center was to be eliminated or closed. City Staff provided a preliminary estimate of the cost of remodeling the building and later, at City Council's request, obtained actual construction quotes based on Architecture Unlimited plans. The estimated total cost of the project is \$181,257, with project expenses itemized:

Design		\$14,990
Construction		
	Roof Replacement	\$16,389
	Handicap Ramp	4,911
	Entryway Remodel	14,929
	Replacement of Exterior Windows	7,965
	Other Exterior Repairs	16,026
	Basement Remodel	22,862
	Main Floor Remodel	12,171
	HVAC	9,112
	Plumbing and Fixtures	21,515
	Electrical	14,800
	Asbestos Abatement	3,900
	Subtotal Construction	\$144,580
	Contingency	<u>\$ 21,687</u>
	Total Project	\$181,257

It is important to note that the costs listed above include the expense involved in upgrading the facility to meet both the current Building Code and the Federal Regulations for the Americans with Disabilities Act, as well as the costs for asbestos removal.

Since Staff initially met with Council in July 1999, they have sought to identify alternative locations for the Mental Health Center’s Westminster clinic. Working with the South Westminster Revitalization Coordinator Tony Chacon, five potential sites were identified but later rejected for a number of reasons. These sites were:

- Aspen Care Nursing Home site (75th Avenue and Lowell Boulevard)
- Summit Square Shopping Center (84th Avenue and Federal Boulevard)
- Career Enrichment Park
- Bradburn Liquor Building (73rd Avenue and Bradburn Boulevard)
- Former Holy Trinity Convent

During the previous two Study Session discussions on this topic, there was considerable focus on whether it made “good business sense” to be investing a significant amount of City and Mental Health Center dollars into a former residence knowing that this investment would not substantially increase the value of the building. The property is currently zoned R1 Residential and the use of the structure as a medical office facility is allowed as a non-conforming use. To help determine the highest and best use of the property, Staff has confirmed with the City Attorney’s Office that, if the property were to be sold, its non-conforming use could be continued with a new owner, as long as the conditions in the ordinance of such a use were met. In order to obtain a clearer picture of the building’s market value, City Staff retained the services of Louis Garone with Valuation Research Corporation. Mr. Garone is a Certified General Appraiser, which allows him to provide both residential and commercial appraisals. Based on Mr. Garone’s assessment, the location of the property does not permit it to be marketed as desirable space for medical or other professional offices. He believes that if it were to be vacated by the Mental Health Center, its highest and best use would be as a residence. With this in mind, he determined that the current appraised value of the property is \$152,500 in an “as is” condition or \$181,500 if the building were to be renovated as a house.

From a real estate investment standpoint, committing \$181,257 to a \$152,500 property that has little appreciation potential does not seem prudent. However, when addressed from the standpoint of trying to obtain usable office space for the Mental Health Center in the most cost effective manner possible, remodeling the facility could be deemed to be the most practical approach. Comparable medical office space, if available, would likely lease for \$15 a square foot or \$48,000 for a 3,200 square foot building per year. Architecture Unlimited estimates that the cost for a new building would be considerably more than double the cost for remodeling, based on estimated new construction costs of \$110 to \$120 per square foot, not including the purchase of property for the new building.

One possible consideration would be to sell the current Walker Building and roll the equity from that sale into the contributions that would otherwise be allocated to remodeling. As stated above, having a private residence or a small business in such close proximity to the Swim and Fitness Center and the Housing Authority is not deemed to be desirable. Moreover, the Mental Health Center Staff believes that the residential atmosphere, which is very conducive to their counseling environment, would be lost with the move to an office building.

Funds for the proposed remodel project were not included in the 2000 City Budget. Thus, a contingency transfer would be necessary to provide for the necessary funding. During the March 6, 2000 Study Session, City Council indicated their preference to spread the City's cost over a two-year period. This can readily be accomplished through the timing of the project, which would begin in late 2000 and conclude in early 2001. The proposed actions would, therefore, include moving \$65,000 from the General Fund Contingency Account in 2000. The balance of the City's contribution, \$66,287, would then be requested as part of the 2001 Capital Improvement Program. The attached Councillor's Bill will provide for the necessary contingency transfer in 2000 and indicate the City's intent to subsequently provide for the balance of the funds necessary to complete the project in 2001.

Also attached for Council's review and formal consideration is the proposed lease agreement for the use of the Walker Building by the Mental Health Center. This agreement provides for the contributions for both the City and the Adams Community Mental Health Foundation, describes the specific responsibilities of each of the parties, sets the initial term of the agreement at 20 years with a provision that allows for the agreement to be renewed in two-year increments and addresses a number of other issues with regard to insurance, indemnification, termination, and Ordinance of disputes.

The Adams Community Mental Health Foundation Board of Directors, Executive Director, and the Foundation's legal counsel reviewed the agreement in initial draft form and provided some suggestions for minor modifications. Most of these modifications were made and the current agreement is acceptable to the Center. Also, at its April 4, 2000 meeting, the Foundation formally approved the allocation of \$50,000 as the Foundation's contribution toward the remodel project.

Mr. Savage will be present at Monday evening's City Council meeting to respond to any questions Council may have for him.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **32**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2000 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT PROJECT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2000 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2000 appropriation for the General Capital Improvement Project Fund, initially appropriated by Ordinance No. 2728 in the amount of \$12,699,851 is hereby increased by \$65,000 which, when added to the fund balance as of the City Council action on May 8, 2000, will equal \$15,717,131. The actual amount in the General Capital Improvement Project 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 the appropriation of a transfer from the General Fund Contingency Account to fund expenses associated with the remodel of the City owned Walker Building.

Section 2. The \$65,000 increase in the General Capital Improvement Project Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<u>Description</u>	<u>Current Budget</u>	<u>\$ Increase</u>	<u>Final Budget</u>
<u>REVENUES</u>			
Transfer from General Fund 75-9999-360	\$ 1,775,280	\$ 65,000	\$ 1,840,280
<u>EXPENSES</u>			
Traffic Signal System Improvement 75-12-88-555-197	\$ 0	\$ 65,000	\$ 65,000

Section 3. The General Fund budget will not change as a result of this ordinance but is included here for clarification purposes only.

<u>Description</u>	<u>Current Budget</u>	<u>\$ Increase</u>	<u>Final Budget</u>
<u>EXPENSES</u>			
Contingency 10-10-99-999-000	\$ 1,277,500	\$(65,000)	\$ 1,212,500
Transfer to GCIF 10-10-95-990-975	\$ 1,693,520	\$ 65,000	\$ 1,758,520

Section 4 - 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 5. This ordinance shall take effect upon its passage after the second reading.

Section 6. 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 24th day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this _____ day of May, 2000.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING A REVISED AGREEMENT BETWEEN THE CITY AND ADAMS COMMUNITY MENTAL HEALTH FOUNDATION REGARDING THE LEASE OF THE CITY'S WALKER BUILDING

WHEREAS, the City has leased the Walker Building to Adams Community Mental Health since 1974 for use as their Westminster office; and

WHEREAS, the City and the Adams Community Mental Health Foundation wish to continue a similar lease agreement which also includes an agreement of the parties on a major remodel of the facility; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Mayor and City Clerk are authorized to execute the revised lease agreement between the City and Adams Community Mental Health Foundation for the lease of the City's Walker Building in substantially the same form as attached as Exhibit "A."

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. 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 (20) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this _____ day of May, 2000.

ATTEST:

Mayor

City Clerk

EXHIBIT A Revised 4/24/00

REVISED LEASE AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
ADAMS COMMUNITY MENTAL HEALTH FOUNDATION
FOR USE OF THE WALKER BUILDING

THIS AGREEMENT is made and entered this _____ day of _____, 2000 by and between the CITY OF WESTMINSTER, a Colorado home rule municipality ("the City"), and ADAMS COMMUNITY MENTAL HEALTH FOUNDATION ("the Foundation"), a public, non-profit corporation.

Recitals:

WHEREAS, Adams Community Mental Health has operated its Westminster clinic out of a City-owned building referred to as the "Walker Building" located at 3200 West 76th Avenue since 1974; and

WHEREAS, the City and Foundation desire to continue to have Adams Community Mental Health operate a satellite office in Westminster; and

WHEREAS, many citizens of Westminster benefit by having such a facility within close proximity; and

WHEREAS, both the City and Foundation desire to undertake a major remodel of the Walker Building; and

WHEREAS, the City and the Foundation wish to set forth mutually acceptable terms to address the use of the facility by the Foundation and conditions that will assure ongoing maintenance of this building,

NOW, THEREFORE, in consideration of the above premises, the mutual promises set forth below, and for other good and valuable consideration, the City and Foundation hereby agree to the following:

- I. That in consideration of the payment of the rent and the keeping and performance of the covenants and agreements by the Foundation hereinafter set forth, the City hereby continues to lease to the Foundation the following described premises situated in the County of Adams and State of Colorado, to wit:

The East 75 feet of the following described property:

That part of the W1/2NW1/4NE1/4SW1/4 of Section 32, Township 2 South, Range 68 West of the 6th P.M., described as follows:

Commencing at a point 20 feet South and 20 feet East of Northwest corner of said tract; thence South and parallel with the West line of said Tract, 127.93 feet;

thence East and parallel with the North line of said tract, 310 feet to the East line of said tract;

thence North along the East line of said Tract, 127.85 feet;

thence West and parallel with the North line of said Tract, 310 feet to the point of beginning.

(Otherwise known as 3200 West 76th Avenue, Westminster, Colorado)

This lease shall become effective at 12:00 o'clock noon of the first day of May, 2000 until 12:00 o'clock noon of the first day of May, 2020 for a rental for the full term aforesaid of One Dollar (\$1.00) payable in advance.

II. Financial Contributions

- A. The Foundation shall contribute \$50,000 to the City no later than September 1, 2000 to be used toward the costs of remodeling the Walker Building.
- B. The City shall pay for the balance of the remodeling costs, currently estimated at \$131,257, for the building remodel.

III. Building Use

- A. In return for the use of the Walker Building and the City's contribution toward the remodel, the Foundation agrees to continue to operate the Mental Health Center's Westminster office from this facility for the term of the Agreement unless this Agreement is terminated sooner in accordance with Section VI AND IX.
- B. The City agrees to provide the use of the building by the Foundation on an ongoing basis for the length of this agreement unless this agreement is terminated sooner in accordance with Section VI AND IX.
- C. The Center shall have the right to increase the size of its present signage in accordance with current City ordinances and regulations.

IV. Maintenance

- A. The City shall provide, at the City's expense, all ongoing HVAC repair and preventative maintenance; shall maintain garbage disposal, the sump pump, and water heater; shall service all circuit wiring, the electrical panel, switches, outlets, and light fixtures; shall maintain exterior paint, roofing, block, windows, exterior doors, concrete stairs, hand rails, driveways, sidewalk, and garage; and provide lawn care, irrigation, and snow removal.
- B. The Foundation shall at the Foundation's expense provide maintenance after the completion of the remodel, repair or replace as necessary: appliances, bulbs and ballasts; interior paint, drywall, baseboard, carpet and tile, interior doors and hardware, locks, window coverings, and mirrors; and valves, washers and internal water closet parts and hardware; and shall provide for all custodial services,

V. Conditions of Use

- A. Upon termination of this Agreement, the Foundation agrees to surrender and deliver up said premises in as good order and condition as when the same were entered upon, loss by fire, inevitable accident, or ordinary wear excepted.
- B. The Foundation agrees not to sublet any part of said premises, and not to assign this lease or any interest herein, without the prior written consent of the City.
- C. The Foundation shall not use the premises for any purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster, or any improper or questionable purpose whatsoever.

- D. The Foundation shall not permit the premises or the walls or floors thereof to be endangered by overloading or the premises to be used for any purpose which renders the insurance thereon void, or the insurance risk more hazardous.
 - E. The Foundation shall make no alterations or changes in or upon or about the premises without the written consent of the City.
 - F. The Foundation shall allow the City at any reasonable hour of the day to enter upon and view the premises.
 - G. The Foundation shall pay for all charges for water, sewer, heating, air conditioning, and lighting.
 - H. The Foundation will neither hold or attempt to hold the City liable for any injury or damage, including those occurring in the course of making repairs or alterations, except when such injury or damage is caused by the negligence of City, nor will the Foundation hold or attempt to hold the City liable for the negligence or default of occupants of the Premises or any other persons, nor will the Foundation hold or attempt to hold the City liable for any injury or damage occasioned by defective electric wiring or the breaking or stoppage of plumbing or sewerage upon said premises or upon adjacent premises, whether said breaking or stoppage results from freezing or otherwise.
- VI. Destruction of the Building. If the building is destroyed or substantially damaged by fire or other calamity to the extent that the building is no longer usable for the purposes of the Agreement, the City may terminate this lease and neither party shall have any further obligations to the other party. However, the funds paid by the Foundation for purposes of remodeling shall be refunded to the Foundation, depreciated on a straight –line basis over twenty years. The City shall have absolute discretion to decide whether the building is no longer usable.
- VII Insurance/Indemnification. The Foundation shall maintain liability insurance coverage on the premises in the amount of \$1,000,000 combined single limit, and shall indemnify and hold the City harmless from any liability to any person, firm or corporation for any cause arising out of Foundation’s use of said premises, including the administration of mental health treatment or counseling to any person, or for any other reason.
- VIII Continuation. Upon the expiration of the primary term, this lease shall be automatically renewed for successive two year periods unless either party shall notify the other of termination thereof, in writing, at least 90 prior to the end of the then current term.
- IX. Termination. This agreement may be terminated prior to the end of the primary or continuing terms of the lease agreement upon mutual agreement of the parties.
- X. Dispute Resolution
- A. If either party should retain counsel for the purpose of enforcing or preventing the breach of any provisions of this agreement or for any other judicial remedy relating to it, then the prevailing party shall be entitled to reimbursement by the losing party for all costs, expenses and witness fees so incurred by the prevailing party, including but not limited to reasonable attorney fees and costs.
 - B. For any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, the parties agree to mediate any such disputes prior to taking any court action.

THIS AGREEMENT shall supercede all previous agreements between the parties related to the use of the Walker Building and shall be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WESTMINSTER, a Home Rule City of Westminster

(seal)

By _____
Nancy Heil, Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM

City Attorney

ADAMS COMMUNITY MENTAL HEALTH FOUNDATION, INC.

(seal)

ATTEST

By _____
Robert Marks, Chairman
Adams Community Mental Health Foundation

Secretary



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Councillor's Bill No. 34 re Changes to the Board of Building Code Appeals Ordinance

Prepared by: Brian D. Bosshardt, Management Assistant

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading regarding changes to the Ordinance that establishes the Board of Building Code Appeals.

Summary

City Council approval is requested for the attached Councillor's Bill which would amend Title 2, Chapter 10 of the City Code governing associated provisions of the Board of Building Code Appeals.

Minor changes to 2-10-3 (A) 1 Powers and Duties and 2-10-4 Applicable Codes have been made and Sections 2-10-9 regarding procedures for an Acting Chairperson.

Staff Recommendation

Pass Councillor's Bill No. 34 on first reading amending Title II, Chapter 10 Board of Building Code Appeals to the Westminster Municipal Code.

Background

City Council directed the Council liaisons to meet with their respective Boards and Commissions to review the following two items. Since then, each Councillor has been working with their respective Boards and Commissions to discuss:

1. reviewing their powers and duties included in their enabling ordinance which established the Board or Commission to determine if they need to be updated and modified (i.e., what they do); and
2. updating the bylaws to include an attendance policy and definition of excused/unexcused absences.

Minor changes to 2-10-3 (A) 1 Powers and Duties and 2-10-4 Applicable Codes have been made and Sections 2-10-9 regarding procedures for an Acting Chairperson.

Respectfully submitted,

William M. Christopher
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **34**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE II CHAPTER TEN OF THE WESTMINSTER MUNICIPAL CODE RELATING TO THE BOARD OF BUILDING CODE APPEALS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title 2 Chapter 10 of the Westminster Municipal Code is hereby amended by the addition of the following:

CHAPTER 10 - BOARD OF BUILDING CODE APPEALS

2-10-1: CREATION

2-10-2: MEMBER QUALIFICATIONS; LEGAL ADVISOR; SECRETARY

2-10-3: POWERS AND DUTIES

2-10-4: APPLICABLE CODES

2-10-5: MEETINGS

2-10-6: RULES OF PROCEDURE

2-10-7: HEARINGS

2-10-8: APPEALS FROM DECISIONS OF THE BOARD

2-10-9: ACTING CHAIRPERSON; QUORUM; PROCEDURE

2-10-1: CREATION: There is hereby created a Board of Building Code Appeals, hereinafter referred to as "THE BOARD" consisting of five (5) regular members and two (2) alternates

2-10-2: MEMBER QUALIFICATIONS; LEGAL ADVISOR; SECRETARY:

(A) **MEMBER QUALIFICATIONS:** At least three (3) regular members and one (1) alternate member of the Board shall be either a licensed architect, a registered engineer with building related experience, or a construction company executive or superintendent with at least ten (10) years of construction experience. Board members shall not be employees of the City. No Board member may hear or vote upon any appeal in which that member has any personal, professional, or financial interest, pursuant to applicable state statutes and City Charter and ordinance provisions.

(B) **SECRETARY TO THE BOARD:** The City shall provide a secretary to the Board who shall be the custodian of the Board's records, conduct the Board's correspondence, collect all fees, and be responsible for the clerical work of the Board. The secretary to the Board shall have no voting power on any matter coming before the Board.

2-10-3: POWERS AND DUTIES:

(A) **APPEALS:** The Board shall have jurisdiction to hear the following matters:

1. The Chief Building Official or Fire Marshal has rejected or refused to approve an alternate method or material of construction which the appellant alleges to be the equivalent of that prescribed in the applicable code in terms of suitability, strength, effectiveness, fire resistance, durability, safety, or sanitation. In order to grant the appellant's request, the Board must find that test results, factual documentation, or other such data or evidence provided by the appellant substantiates the appellant's claim that the method or material of construction is equal to or superior to that prescribed in the applicable code in terms of ~~suitability-strength~~ suitability, effectiveness, fire resistance, durability, safety, or sanitation.

2. The appellant alleges that the Chief Building Official or Fire Marshal has made an error in the interpretation of a Code. In order to grant the appellant's request, the Board must find that the Chief Building Official or Fire Marshal has made an error in the interpretation of a code.

3. The appellant alleges that the Chief Building Official or Fire Marshal is imposing certain provisions of a code which do not apply to the project being constructed. In order to grant the appellant's request, the Board must find that the provisions of the applicable code do not apply to the project being constructed.

4. The appellant alleges that the Chief Building Official or Fire Marshal is imposing a wrongful requirement in a building matter that is not specifically addressed in the applicable code. In order to grant the appellant's request, the Board must find that the requirement is not addressed in the applicable code, is not appropriate, and that granting the request would be consistent with the intent of the applicable code.

5. The appellant alleges that there are practical difficulties or unnecessary hardships caused by conformance to the strict letter of a code, that the literal interpretation of a code will product undesirable results which are inconsistent with the intent of the applicable code, or that there are special individual reasons that make the strict application of the provisions of a code impractical. In order to grant the appellant's request, the Board must find that all of the following requirements would be satisfied:

a. The granting of the request would not endanger public health, safety, or welfare;

b. The granting of the request would be in compliance with the spirit and intent of the applicable code;

c. The granting of the request is site specific and shall not in any way constitute a modification of the applicable code;

d. The granting of the request would result in substantial justice being done; and

e. There are practical difficulties or unnecessary hardships involved in conforming to the strict provisions of the applicable code, the literal interpretation of the applicable code will produce undesirable results which are not consistent with the intent of the applicable code, or there are special individual reasons that make strict conformance to the provisions of the applicable code impractical.

6. The appellant alleges that an omission or error in the plans, specifications, or other data submitted to the City for review was not addressed by City Staff and has resulted in a code violation which the Chief Building Official or the Fire Marshal is now requiring to be corrected and brought into compliance with the applicable code. In order to grant the appellant's request, the Board must find that the Code violation resulting from the omission or error in the plans, specifications, or other data is not substantial in nature and that public health, safety, or welfare will not be endangered in the absence of the correction.

7. The appellant alleges that the Chief Building Official has erred in issuing a notice or order or in taking an action under the Uniform Code for the Abatement of Dangerous Buildings. In order to grant the appellant's request, the Board must find that the Chief Building Official erred in the enforcement of the Uniform Code for the Abatement of Dangerous Buildings. The procedure for appeals brought under this paragraph shall be consistent with this Chapter and with the Uniform Abatement of Dangerous Buildings. However, if a conflict exists in the provisions the latter shall control.

(B) DECISIONS OF THE BOARD: The Board shall render a written decision within fifteen (15) days after a hearing, accompanied by finding of fact and conclusions based thereon. Conclusions based upon any provision of this Chapter, a Code, or any City rule or regulation shall contain a reference to such provision, rule, or regulation and shall also contain the reason the conclusion is appropriate in light of the facts found. In rendering a decision, the Board may grant, modify, or deny the request. A decision in favor of the appellant shall grant the matter requested and shall be an order directed to the Chief Building Official or Fire Marshal to carry out such action subject to any conditions or modifications imposed by the Board.

2-10-4: APPLICABLE CODES: The provisions of this Chapter shall apply to all building, fire and rental maintenance codes and amendments thereto as adopted by reference in Chapters 9, 10, 11 and 12 of Title XI of this Code, except that the Board of Adjustment and Appeals shall hear appeals based on Section ~~11-10-5~~ ~~(D)~~ 11-9-5 (D) of this Code. References in this Chapter to “A-Code” a code refer to the codes specified in this section.

2-10-5: MEETINGS:

(A) **REGULAR MEETINGS:** The Board shall meet once a month unless there is no business before the Board and there are no requests to be heard or considered. Three (3) Board members shall constitute a quorum and shall be required for the conduct of any meeting or the taking of any action. A majority of the votes cast shall be required to grant any request. An appellant may request postponement of a hearing if fewer than a total of five (5) regular and alternate members are present. A fee of fifty dollars (\$50) shall be paid to the secretary to the Board with every application for a hearing before the Board at a regularly scheduled meeting.

(B) **SPECIAL MEETINGS:** The chairperson may schedule special meetings of the Board at such times as deemed necessary by the Board upon receipt of a written request therefor from the appellant. Such request shall be made on forms provided by the Building Official. Special hearings shall be paid for by the appellant in the amount of one hundred dollars (\$100). Upon approval of the appellant's request for a special hearing, a special hearing shall be scheduled and the appellant shall be notified of the date for the hearing.

2-10-6: RULES OF PROCEDURE: The Board shall adopt rules of procedure for the conduct of its business. A copy of all rules of procedure and amendments thereto shall be kept on file with the Building Official and made available to the public upon request.

2-10-7: HEARINGS: The Board shall conduct hearings and make decisions in accordance with the following requirements:

(A) All hearings shall be open to the public. The secretary to the Board shall notify all interested parties of the time and place of hearings.

(B) The Board shall keep a record of the proceedings, either stenographically or by sound recording. At the hearing, the secretary to the Board shall record the vote of each member on every case or, if a member is absent or fails to vote, shall record such fact. A transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any person upon request and payment in advance of the estimated cost of production.

(C) At the hearing, following the introduction of the case, the Building Official or Fire Marshal, or their designee, may present the City's position and recommendation, after which the appellant or a representative of the appellant may present any pertinent information regarding the request. The burden of proof shall be on the appellant.

(D) All witnesses shall be sworn or shall affirm their testimony in the manner required in the courts of record where the City is located.

2-10-8: APPEALS FROM DECISIONS OF THE BOARD: The City or the appellant may appeal a decision of the Board to the District Court under the Colorado Rules of Civil Procedure, Rule 106(a)(4).

2-10-9: ACTING CHAIRPERSON; QUORUM; PROCEDURE: IN THE ABSENCE OF THE ELECTED CHAIRPERSON, THE VICE-CHAIRPERSON SHALL ASSUME THE DUTIES OF THE CHAIRPERSON FOR THAT RESPECTIVE MEETING. A QUORUM SHALL CONSIST OF THREE (3) MEMBERS, AND A DECISION OF A MAJORITY OF THE MEMBERS PRESENT SHALL CONTROL. ANY ABSENT MEMBER MAY JOIN IN A PENDING DECISION OF THE BOARD SUBJECT TO SECTION 2-1-3.

ALL PUBLIC HEARINGS SHALL AT A MINIMUM BE RECORDED ELECTRONICALLY, OR AS DEEMED NECESSARY BY THE CHAIRPERSON MAY BE STENOGRAPHICALLY RECORDED BY A COURT REPORTER ENGAGED BY THE CITY AND PAID OUT OF FEES PAID BY THE APPLICANT

Section 2. This ordinance shall take effect upon its passage after the second reading. 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 24th day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of May, 2000.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Westminster Promenade Land Trade

Prepared by: David W. Loseman, Senior Projects Engineer

Introduction

City Council action is requested to authorize the Mayor to execute the necessary documents to convey City property to Inland Pacific of Colorado, LLC and WestCol Center, LLC in exchange for land of approximate equal value and area being conveyed to the City.

Summary

- Authorization of three land trades is being requested as follows:
 - ◆ A 1.24-acre parcel to WestCol Center, LLC in exchange for a 1.27-acre parcel to the City in the “Ryan” parking lot area;
 - ◆ A 0.023-acre parcel to WestCol Center, LLC in exchange for a 0.014-acre parcel to the City as part of the Dave and Buster’s project; and
 - ◆ A 0.29-acre parcel to Inland Pacific Colorado, LLC in exchange for a 0.28-acre parcel to the City to create a City-owned lot for the Lakeview Pavilion Project.
- The purpose of these land trades is to reconfigure parcels to make a better “fit” for the buildings that were designed, and, in the case of the Inland Pacific trade, to create a City-owned parcel where the Lakeview Pavilion building will be located.
- All of these land trades are of approximate equal value and area and are simply a method to improve the configurations for developing the lots.

Alternatives:

Staff could not identify any alternatives to these requested land swaps since they are all necessary for the unified development of the Promenade project.

Staff Recommendation

Authorize the Mayor to execute the necessary documents to convey City property to Inland Pacific Colorado, LLC and WestCol Center, LLC in exchange for land of approximate equal value and area being conveyed to the City.

Background

Since the beginning of the Westminster Promenade project in 1997, there have been several subdivisions of land in anticipation of creating developable lots. Since then, Dave and Buster's and Van's Skateboard Park submitted plans which required minor adjustments to the lot configurations so that the buildings could better "fit" the parcels in question. These adjustments included adjusting not only the developer's property but the City's property as well. To do this, it is requested that land be conveyed to the developer in exchange for the developer conveying land of an equal value. In the case of the Dave and Buster's property, the land trades involve less than 1,000 square feet of property. The Van's land trade involves an approximately 1.27-acre trade and is intended to re-orient the existing developer lot creating a more logical layout with the existing Promenade West development. In exchange for this trade the City will receive equal property where the parking lot north of the existing AMC parking lot is currently being constructed.

The land trade with Inland Pacific is being requested so that a City-owned lot can be created in front of the Westin Hotel which will be the location of the new Pavilion building. This trade was necessary to create a funding mechanism for the Pavilion. The City will fund this project similar to the funding for the Westminster Conference Center attached to the Westin Hotel. Since the City will fund this development, it is necessary that the Pavilion be built on a City-owned lot.

Due to the drawing sizes showing these land swaps, no attachment is available, however, Staff will have the land drawings available for Councils review at Monday's pre meeting.

Respectfully submitted,

William M. Christopher
City Manager



WESTMINSTER COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Resolution No. 34 re Lowell Boulevard Right-of-Way Acquisition

Prepared by: Dan Blankenship, Senior Civil Engineer

Introduction

City Council action is requested to adopt the attached Resolution authorizing acquisition of property interests necessary to construct street improvements for the Lowell Boulevard Improvement Project, using eminent domain proceedings, if necessary. Funds for the right-of-way acquisition activities are available in the Lowell Boulevard Improvement Project of the General Capital Improvement Fund.

Summary

Final design of the Lowell Boulevard Improvement Project from 68th Avenue to the Burlington Northern/Santa Fe Railroad track is nearing completion. The project will widen Lowell Boulevard to a three-lane cross-section (one lane in each direction with a continuous center turn lane) with curb, gutter and sidewalk on both sides of the roadway, which matches the current street cross-section south of the project. Provided that the right-of-way acquisition proceeds in a reasonable manner, construction of the roadway improvements is scheduled to begin this summer.

Within the approximate 2,000-foot project length, there are 30 properties that are immediately adjacent to Lowell Boulevard, of which, four are owned by the City and 26 are privately owned. In order to accommodate the project, right-of-way will need to be obtained from five residential properties and four business properties. The right-of-way acquisitions include the entire frontage of these properties and range in width from two feet to 12 feet. Additionally, the City will need to acquire construction easements from 22 of the 26 properties.

The attached Resolution will allow City Staff to pursue all legal and appropriate activities necessary to acquire the right-of-way and easements needed to construct the project. This includes filing condemnation actions using the City's right of eminent domain if negotiations with property owners do not result in timely possession of the parcels needed to accommodate the proposed construction.

The proposed acquisition is a statutory process therefore, there are no legal alternatives.

Staff Recommendation

Adopt Resolution No. 34 authorizing City Staff to proceed with the acquisition of the right-of-way and easements necessary to construct street improvements for the Lowell Boulevard Improvement Project, using eminent domain proceedings, if necessary.

Background

In 1995, City Council authorized an agreement with the engineering firm Drexel Barrell for the design of roadway and water line improvements on Lowell Boulevard. The project was divided into two phases with the waterline portion of the project being the first phase.

This utility work was completed in 1996. The second phase of the project, the roadway improvements, includes widening to a three-lane cross-section (one lane in each direction with a continuous center turn lane) with curb, gutter and sidewalk along each side to match the existing cross-section south of the project. The project also includes moving 69th Place ten feet north of the existing building on the southwest corner of Lowell Boulevard and 69th Place.

The final design of the project is nearly complete. Within the approximate 2,000-foot project length, there are 30 properties that are immediately adjacent to Lowell Boulevard, of which, four belong to the City and 26 are privately owned. In order to accommodate the project, the City will need to obtain rights-of-way from five residential properties and four business properties. The right-of-way acquisitions include the entire frontage of these properties and range in width from two feet to 12 feet in width. Additionally, construction easements will need to be acquired from 22 of the 26 properties. An agreement has been executed with West Terra Corporation for appraisal services, and they have been directed to proceed with appraisals of the parcels in which right-of-way acquisition is required. West Terra's agreement is for \$25,000, which was based on an appraisal for each of the 26 parcels. However, Staff anticipates that some, if not all of the easements, can be obtained through negotiation without formal appraisals. At this time, Staff is seeking proposals from acquisition agents so that the upon completion of the appraisals, the acquisition agent can prepare Value Finding Reports as a basis for negotiations of the required easements and will then begin the negotiation process to acquire the right-of-way and easements. In addition to preparing the Value Finding Reports for the easements, the acquisition agent's scope of services includes negotiations with the owners of each of the privately owned properties, documentation and file management for each parcel, assistance with closing and extended negotiations and condemnation, if necessary.

Possession of the necessary right-of-way and easements is a prerequisite to awarding a construction contract. The project will be ready to bid later this spring and provided that the right-of-way and easements have been acquired or possession has been secured, construction is scheduled to begin this summer.

The attached Resolution authorizes Staff to carry out the activities necessary to acquire property for the Lowell Boulevard Improvement Project. The total cost of these acquisitions is anticipated to be approximately \$179,000. A map of the area is attached as Exhibit A.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **34**

INTRODUCED BY COUNCILLORS

SERIES OF 2000

WHEREAS, the City of Westminster has determined that it is necessary to the public health, safety and welfare to acquire certain parcels of land to accommodate the construction of the Lowell Boulevard Improvement Project shown on the attached Exhibit A; and

WHEREAS, property appraisals are being prepared by a professional appraisal company experienced in performing appraisals to determine the fair market value of the property rights being acquired in each of the parcels; and

WHEREAS, the City will make an earnest good faith offer to purchase each of the subject parcels; and

WHEREAS, a delay in the acquisition of any of these parcels could result in a delay of the Lowell Boulevard Improvement Project, thus creating a hardship on the general population of the City of Westminster and Adams County wishing to utilize the proposed project; and

WHEREAS, legal counsel for the City of Westminster has advised that the City may exercise its right of eminent domain should normal negotiations fail; and

WHEREAS, the City finds that if acquisition by condemnation of any parcel described in this resolution is commenced, immediate possession by the City may be necessary for the public health, safety and welfare in order to keep the Lowell Boulevard Improvement Project on the desired schedule.

NOW, THEREFORE, the City Council of the City of Westminster resolves that:

1. The City Manager is hereby authorized to establish minimum just compensation for acquisition of the property interests necessary to build the Lowell Boulevard Improvement Project in the area shown in Exhibit A.
2. City Staff is authorized to proceed with negotiations to acquire the necessary property interests in the area shown on Exhibit A, including remainders pursuant to W.M.C section 15-1-11, on the basis of the appraised value, or such higher value as is considered just and necessary to facilitate the acquisition and avoid the necessity of condemnation.
3. The City Manager is hereby authorized to acquire such property interests consistent with applicable law, including the execution of all documents necessary to complete these purchases.
4. The City Attorney of the City of Westminster is authorized to take all necessary legal measures to acquire the property interests in question, including proceeding with condemnation of the properties in question against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceedings required to obtain property interests should normal negotiations fail or exceed the time constraints of the overall project. In the event that acquisition by condemnation is commenced, the City Attorney is further authorized to request a grant of immediate possession of the necessary property interests.

5. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the properties in question, including, without limitations, contractual services, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filings fees and charges and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property. The cost shall be charged to the Lowell Boulevard Improvement Project Account of the General Capital Improvement Project Fund.

6. The City Engineer is hereby authorized to call for amendment of the legal descriptions of the parcel interests to be acquired, and the nature of the interests to be acquired, including the commencement date and duration of any temporary easement, if necessary in the course of the project.

Passed and adopted this 24th day of April, 2000.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Purchase of Implementation Services for HR/Payroll and Financial Management System

Prepared by: Tammy Hitchens, Accounting Manager
Debbie Mitchell, Human Resources Manager

Introduction

City Council approval is requested to authorize City Staff to enter into contract negotiations with AMX, International for implementation services for the integrated Human Resources, Payroll and Financial Management System in an amount not to exceed \$1,048,000. This project component is included within the total project budget previously identified to City Council. Funds are identified in the five year Capital Improvement Plan and are available in the current General Capital Projects Fund and the Utility Operating Budget for part of the project. The City will be issuing an RFP for financing the remaining project costs and will return to request City Council approval of financing when such financing is secured. The contract will stipulate that AMX International will cease work if, and when, the appropriated funds are exhausted.

Summary

City Staff previously completed the planning and selection of a new fully integrated financial and human resources management system. These integrated systems are also known as Enterprise Resource Planning (ERP) systems. City Council approved negotiations with JD Edwards for their software system on February 28 and final contract approval on April 10. Since February, a Request for Proposal (RFP) was developed to solicit bids for software implementation services. The RFP outlined the project scope and necessary system implementation components. Three firms provided proposals of implementation service. AMX International provided the lowest bid on the project. They were named by JD Edwards the Public Services Area Partner of the Year in 1998 and 1999. Staff recommends that City Council award the bid to AMX International as implementation consultants. The services provided by the implementation consultant include project management consultation, software installation, technical support and software application consultation. Approximately 5,100 hours are anticipated in the AMX bid for the multi-phased, eighteen month implementation project.

Alternatives to the selection of AMX International as implementation consultants are:

1. Take no action and direct City Staff to perform the work. The obstacles to this alternative are that City Staff has no working knowledge of the JD Edwards system and inadequate internal Staff resources to complete the work.
2. Direct Staff to select one of the other bidders. The other two bids were higher than the AMX International bid and did not include technical services. If one of the other vendors were selected, JD Edwards or another qualified vendor would need to be hired for the technical installation services portion of the implementation, thus increasing the cost beyond the budget.

Staff Recommendation

Direct Staff to finalize a contract with AMX International for the purchase of implementation services of the JD Edwards Human Resources, Payroll and Financial Management System software and authorize the City Manager to sign the contract on behalf of the City for an amount not to exceed \$1,048,000, which includes a 15% contingency, with payment subject to the appropriation of funds at the completion of the financing. The contract will stipulate that AMX International will cease work if, and when, the appropriated funds are exhausted.

Background

City Council approved the selection of JD Edwards One World software on February 28, 2000. This software will replace the existing custom financial system the City has been utilizing for over 18 years. It will also replace the current HR and Payroll system, Spectrum HR/Pay, used by the City for the past 12 years. City Staff has conducted, with the assistance of JD Edwards, several work plan development meetings to define the initial function and technical scope and requirements for the entire project. This effort provided a forum to define tasks, hours of work, a high level timeline for project milestones, skills and individuals needed to complete the work, specific training requirements and server hardware, software and maintenance needed to successfully complete the project. This information was used to develop a RFP for implementation services needed to assist Staff with the development of the new integrated City system.

JD Edwards provided Staff with the names of three qualified implementation partners. All three partners elected to submit a proposal. Staff reviewed the three proposals received for implementation services and interviewed each vendor. All three firms were qualified to perform the services required. The three bids received are as follows:

	<u>Application Services</u>	<u>Technical Services</u>
AMX International	\$ 820,800	\$90,600
Deloitte and Touche	\$ 950,124	Did not bid
Access Technologies	\$1,032,100	Did not bid

Only AMX International chose to bid on the technical installation and prototyping services for the project. JD Edwards provided an estimate on these services but were unwilling to enter into a “not to exceed” contract with the City. AMX and JD Edwards both estimated these services at \$90,600. AMX International was selected as the 1998 and 1999 JD Edwards Partner of the Year for Public Services. They recently completed the implementation of JD Edwards One World product at the City of Fort Collins. The majority of the team members AMX proposed for the City project are Metro Denver residents, significantly reducing the cost of travel expenses.

Staff is recommending that City Council authorize the City Manager to enter into contract negotiations with AMX International for implementation and installation services for an amount not to exceed \$1,048,000, which includes a 15% contingency for services outside the scope of the project. City Staff queried JD Edwards and implementation vendors regarding contingency planning and all recommended 10-15% contingency budgets. This will allow for change orders if needed during implementation. Changes can include developing work-around subroutines if they are needed during the 18 month implementation period. A detailed statement of work will be included in the contract to identify the scope of the work that falls within the not to exceed bid of \$911,400.

Implementation

Staff has planned a multi-phased approach to the implementation of the One World software. The timetable takes into consideration the critical operation needs of the City, including the loss of support on the current HR/Payroll system in December, 2000.

The phased implementation will allow Staff to complete much of the implementation work with as little disruption to regular operations as possible. The JD Edwards One World software requires that the City, with the support of the implementation partner and JD Edwards, design and build the software to fit City specific operations. Each application setup will include the development of many tables, workflows, data input screens and reports based on City of Westminster information and procedures. The implementation phase involves a significant amount of data conversion from current systems and extensive testing to ensure the new system works as desired. One of the first tasks for the project team and the implementation partner will be to develop a comprehensive task project plan with assignments and completion dates. The management of the project will rest with co-project managers, Tammy Hitchens, Accounting Manager, and Debbie Mitchell, Human Resources Manager. Each functional area will involve City Staff from the respective areas of expertise, i.e. Human Resources, Payroll, Accounting and Budget. An outline of the multi-phased timeline is listed below:

Implementation Timetable

Phase Description	Start Date	Desired Go Live Date
Payroll / Human Resources	5/1/00	1/1/01
Accounts Receivable and Cash Receipts (3 rd Party)	8/1/00	1/1/01
Budget Management	12/1/00	4/1/01
Financial Management (General Ledger, Accounts Payable, Purchasing, Project Management)	2/1/01	8/1/01
Asset Management	8/1/01	10/1/01

Each module of the project will be planned in a six-phased approach suggested by JD Edwards and the implementation partner. A work plan will be developed and agreed to by the project implementation team. The planned method of implementation is the prototype approach. This allows the project team to model the City of Westminster business processes utilizing JD Edwards software. Each implementation cluster or phase will utilize this approach until each is implemented. Parallel testing is recommended wherever possible. The major milestones in this approach are as follows:

- **Define** - Project organization, definition, scope, objectives/expectations, overall project administration, and development of work and training plans.
- **Train** – Project team software application and technical training, as well as knowledge transfer as implementation consultants work with City Staff.

- **Model** - Develop business process flows, establish a general understanding of the software and how it relates to the business needs, prototype all business processes, fine tune requirements analysis, design screens and workflows; develop reports and soft coding specifications; design custom menus; validate redesigned business processes; establish change policies, test, and adjust pilot scripts.
- **Configure** - Build the necessary interfaces, modifications, conversion programs, custom menus and reports; develop business performance measurements, close security issues and load necessary data. Activities also include parallel acceptance testing, testing conversion data, testing third party vendor interfaces, fine-tuning, finalize business performance measurements, clarify and document open issues, and user acceptance. Train the trainers and train the critical mass.
- **Go Live** - Contingency plan, prepare production environment and debug issues as they arise.
- **Refine** - Audit plan/schedule, issues list, performance suggestions. Assessment, planning and installation of software upgrades.

A sample project workplan from another organization is attached. This sample illustrates the first eight weeks of tasks in a year-long project. One of the initial tasks for the implementer and the City will be to develop a similar workplan for the City's eighteen month project. The workplan will be used to manage the project.

This sample project workplan and implementation outline are provided to help define the scope of work to be undertaken and better explain why this project is planned over an eighteen month implementation schedule.

Respectfully submitted,

William M. Christopher
City Manager

Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

Date: Monday, April 24, 2000

Subject: Councillor's Bill No. 007E re Subordinate Water and Wastewater Revenue Bonds Series 2000

Prepared by: Mary Ann Parrot, Finance Director

Introduction

City Council, in its capacity as the Board of Directors of the Water and Wastewater Enterprise, is requested to adopt the attached Councillor's Bill as an emergency ordinance authorizing the issuance of approximately \$15,000,000 in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds, 2000 Series, to finance the construction of the new water treatment plant. The bonds will be issued through the Colorado Water Resources and Power Development Authority (CWRPDA) in a pooled financing for \$36.4 million with the Pueblo Board of Water Works, the Fountain Valley Authority in El Paso County, the Evergreen Metropolitan District, and the town of Limon, Colorado. All participants will have their own respective debt service schedules and will share in the costs of issuance of said bonds.

The bonds were sold on April 18 at a net interest cost of 4.450907%. Proceeds will be settled and available for expenditure on May 10. Council approval is also requested under a separate agenda memorandum included in City Council business for the supplemental appropriation to the 2000 Budget to recognize the borrowing and record the revenues and expenditures in the associated accounts.

Summary

Council has directed Staff to proceed with the borrowing of the funds from the Colorado Water Power Authority for the construction of the new Water Treatment Plant, to be located at the northeast corner of 104th Avenue at Wadsworth Boulevard, on 7.4 acres of property the City currently owns. The borrowing will be accomplished at a discount of approximately 20% from current market conditions. This discount is available to the City because of the rating on the loan pool (AAA stand-alone, with no credit enhancement necessary) and because the federal monies available for clean-water projects are invested by the Authority and serve to reduce the interest payments through credits to the various participating entities.

The Water and Wastewater Utility Enterprise will insure its portion of the bonds through AMBAC Indemnity Corporation. With the insured issue, the Authority will hold a subordinate lien on the revenues of the Enterprise; subordinate to the currently outstanding Water and Wastewater Enterprise Revenue Bonds, Series 1994, as well as future issues meeting stipulated coverage requirements. The costs of the insurance are included in the financing, along with the other costs of issuing these bonds, as with all other borrowings.

In other action scheduled for City Council approval, these monies will be appropriated in the appropriate capital project account for the new Water Treatment Plant, thus allowing the contracting initiatives to proceed.

Staff Recommendation

Adopt Councillor's Bill No. 007E as an emergency ordinance, as City Council acting in the capacity of the Board of Directors of the Water and Wastewater Enterprise, authorizing the issuance of approximately \$15 million in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds at a net interest cost of 4.450907% and authorize the Mayor, City Clerk and Finance Director to sign all necessary documents on behalf of the Water and Wastewater Enterprise.

Background Information

Staff has submitted information to the State of Colorado in order to be included on the eligibility list for State Drinking Water Revolving Loan Funds. The State Drinking Water Program is similar to the loan program that provided a lower than market interest rate in 1997 and 1998 for the Westminster Reclaimed Water System Project. This program cannot be used for new growth-related projects, but the replacement of the England Water Treatment Facility and providing sufficient capacity to allow Semper Water Treatment Facility to be taken off-line during the winter months for maintenance and upgrades are eligible for funding. Preliminary indications are that the Colorado Department of Public Health and Environment (CDPHE) Staff supports the funding for 10 MGD of capacity for Westminster's new Water Treatment Facility. The maximum loan amount is \$15.0 million in any single year.

Currently, the additional bonding capacity of the City's Utility Fund is in the range of \$65 to \$75 million. Part of this additional bonding capacity would be used to finance these improvements. Staff is also mindful of the long-range financing needs of the Water/Wastewater System, and will be discussing the long-term financing needs of the system with City Council at some other date this year. This project is included in the 5 year CIP for the Utility Fund.

The total capital costs for the new Water Treatment Facility are currently estimated at \$20.45 million for a 10 MGD initial capacity. The chemical and membrane buildings are recommended to be sized for 15 MGD capacity. Currently, the 5-year CIP includes projected funding of \$18.0 million. According to current Colorado Water Resources and Power Development Authority (CWRPDA) policies, the City is limited to a loan application of \$15.0 million per year for any given project. The CWRPDA is going into the market once this year, in April, prior to the completion of the sizing of the new Water Treatment Plant. Staff recommends applying for approval of an initial \$15.0 million in year 2000, because the sale of CWRPDA bonds is occurring so early this year. The schedule reflects completion of the design, sizing of the plant capacity, and bidding the construction this fall. After the bidding is completed this fall, Staff will be able to determine additional bonding needed in the Year 2001, to be obtained through the CWRPDA, and will return to City Council at that time for additional consideration.

The Water and Wastewater Utility Enterprise will insure its portion of the bonds through AMBAC Indemnity Corporation. With the insured issue, the Authority will hold a subordinate lien on the revenues of the Enterprise; subordinate to the currently outstanding Water and Wastewater Enterprise Revenue Bonds, Series 1994, as well as future issues meeting stipulated coverage requirements.

The City has previously approved Mr. Dee Wisor, with the law firm of Sherman & Howard, as Bond Counsel for this project.

Alternatives considered for the financing for this project include:

- Having the Enterprise issue fixed-rate revenue bonds by itself on a stand-alone basis or
- Having the Enterprise issue variable-rate revenue bonds by itself on a stand-alone basis. Neither of these alternatives is recommended, as the additional costs over the life of the borrowing range from \$532,000 to \$2.23 million. This is a reflection of the discount the City would give up by not taking advantage of the pooled financing available through the CWRPDA.
- Do not issue bonds at all, but fund the construction with cash. This alternative is not recommended, as this borrowing will cost the City approximately 4.5% per year, as opposed to our earning 6% on cash retained and invested. This means the City's advantage in leveraging this project will earn the City an extra 1.5% on its retained cash.
- Break the borrowing into two phases, to fund part of the construction for minimum capacity now and the remainder in five years when it may be needed. This alternative is also not recommended for the following reason: Staff analysis shows that the additional cost of waiting to build capacity in five years is materially impacted by construction inflation in today's market. Construction inflation is currently running at 25% per year, and expected to continue at the rate of 10% to 18% per year over the next five years, as the Colorado economy slows. This affects the costs of a project of this scale by increasing the overall costs by half on any amount needed. For example, if an additional \$5 million would be needed in today's dollars for the expansion, this would be inflated to \$7.9 million over the next five years. In short, it pays the City to build the capacity now, rather than waiting because of the very high inflation rates evident in the marketplace over the next several years.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. 7E

COUNCILLOR'S ENTERPRISE BILL NO. 7E

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF A CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, SUBORDINATE WATER AND WASTEWATER REVENUE BOND, SERIES 2000, DATED APRIL 15, 2000, IN THE PRINCIPAL AMOUNT OF \$14,998,357.36.

THE CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE ORDAINS:

Section 1. Definitions and Construction.

A. Definitions. In this Ordinance the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

- (1) Additional Parity Bonds: any Parity Securities issued after the issuance of the Bond.
- (2) Additional Superior Bonds: any Superior Securities issued after the issuance of the Bond.
- (3) Average Annual Debt Service Requirements: the aggregate of all Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues for all Fiscal Years beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable, divided by the whole number of such years.
- (4) Bond Insurance Policy: the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bond as provided therein.
- (5) Bond Insurer: Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance company, or its successors.
- (6) Bond: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 2000, dated April 15, 2000, in the principal amount of \$14,998,357.36.
- (7) Charter: the home rule Charter of the City as amended.
- (8) City: the City of Westminster, Colorado.
- (9) Combined Average Annual Debt Service Requirements: the sum of the Average Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made.
- (10) Combined Maximum Annual Debt Service Requirements: the Maximum Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made, treated as a single issue.
- (11) Commercial Bank: a state or national bank or trust company in good standing located in or incorporated under the laws of any state of the United States of America which is subject to examination by federal or state authorities, which is a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System and which has capital and surplus of \$75,000,000 or more or which is otherwise acceptable to the Bond Insurer.
- (12) Commitment: the Commitment for Municipal Bond Insurance No. 19665, dated April 17, 2000, from the Bond Insurer.
- (13) Construction Fund: the offsetting revenue and expense accounts within the Water and Wastewater Utility Fund designated by the City as the "2000 Bond Projects," created and referred to in Section 5A hereof.
- (14) Consulting Engineer: an independent consulting engineer or engineering firm or corporation having skill, knowledge and experience in analyzing the operations of municipal water and wastewater systems.

(15) Cost of the Project: all or any part of the cost of acquisition, construction or installation of all or any part of the Project, including, without limitation, all or any property, rights, easements, privileges, agreements, and franchises deemed necessary or useful and convenient therefor or in connection therewith, interest or discount on the Bond, costs of issuance of the Bond, engineering and inspection costs, legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses prior to and during such acquisition, construction and installation, and all such other expenses as may be necessary or incidental to the acquisition, construction and installation and financing of the Project or any part thereof and the placing of the same in operation, provision of reserves for operation, maintenance, or replacement expenses or for payment or security of principal of or interest on the Bond, and also reimbursements to the Enterprise or the City of any moneys theretofore expended or to the federal government of any moneys theretofore expended for or in connection with the Project.

(16) Council: the governing body of the Enterprise.

(17) Debt Service Requirements: the principal of, interest on, and any premium due in connection with the redemption of the Bond or any other Securities payable from the Pledged Revenues.

(18) Enterprise: The City of Westminster, Colorado, Water and Wastewater Utility Enterprise.

(19) Enterprise Ordinance: Ordinance No. 2264, Series of 1994, of the City, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

(20) Event of Default: one of the events described in Section 10A hereof.

(21) Federal Securities: bills, certificates of indebtedness, notes, or bonds which are direct obligations of the United States of America or, if the Bond Insurer agrees in writing, are obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

(22) Fiscal Year: the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

(23) Income: all income from rates, fees, tolls, and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from the System, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, and all income or other gain, if any, from any investment of Pledged Revenues and of the proceeds of Securities payable from Pledged Revenues (except income or other gain from any investment of moneys held in an escrow fund for the defeasance of Securities payable from the Pledged Revenues or any other similar fund) to the extent not required to be rebated to the federal government.

(24) Independent Auditor: any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Enterprise or the City, who

(a) is, in fact, independent and not under the domination of the City or the Enterprise,

(b) does not have any substantial interest, direct or indirect, in any of the affairs of the Enterprise or the City, and

(c) is not connected with the Enterprise or the City as a member, officer or employee, but who may be regularly retained to make annual or similar audits of any books or records of the Enterprise or the City.

(25) Insurance Trustee: United States Trust Company of New York, New York, New York, or its successors.

(26) Interest Payment Date: a date designated by ordinance for the payment of interest on the Bond or any other Securities.

(27) Loan Agreement: the Loan Agreement, dated as of April 15, 2000, between the Purchaser and the Enterprise.

(28) Maturity Date: a date designated by ordinance for the payment of principal on the Bond or any other Securities.

(29) Maximum Annual Debt Service Requirements: the maximum aggregate Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues in any Fiscal Year beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable.

(30) Operation and Maintenance Expenses: such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System as may be determined by the City, including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

- (a) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;
- (b) Fidelity bond and insurance premiums appertaining to public officials or the System;
- (c) The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow bank appertaining to any Securities payable from the Pledged Revenues;
- (d) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;
- (e) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;
- (f) Ordinary and current rentals of equipment or other property;
- (g) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System, the cost of water purchased for delivery through the System, and the cost of materials and supplies used for current operation of the System;
- (h) The costs incurred in the billing and collection of all or any part of the Pledged Revenues;
- (i) Any costs of utility services furnished to the System by the City or otherwise.

"Operation and Maintenance Expenses" does not include:

- (a) Any allowance for depreciation;
- (b) Any costs of reconstruction, improvement, extension, or betterment;
- (c) Any accumulation of reserves for capital replacements;
- (d) Any reserves for operation, maintenance, or repair of the System;
- (e) Any allowance for the redemption of any bonds or other Securities payable from the Pledged Revenues or the payment of any interest thereon;
- (f) Any liabilities incurred in the acquisition of any Water Facilities or Wastewater Facilities;
- (g) Any other ground of legal liability not based on contract.

(31) Operation and Maintenance Fund: the expense accounts within the Water and Wastewater Utility Fund used by the City for the payment of Operation and Maintenance Expenses referred to in Section 5C hereof.

(32) Ordinance: this Ordinance No. 7E, Series of 2000, of the Enterprise.

(33) Outstanding: as of any particular date, the Bond or any other Securities payable from the Pledged Revenues which have been authorized, executed and delivered except the following:

- (a) Any Bond or other such Security cancelled by the Enterprise, by the Paying Agent or otherwise on behalf of the Enterprise on or before such date, except any Bond described in the last paragraph of Section 9 hereof;
- (b) Any Bond or other such Security held by or on behalf of the Enterprise or the City;
- (c) Any Bond or other such Security for the payment or the redemption of which moneys or Federal Securities sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all of the Debt Service Requirements of such Bond or other such Security to the Maturity Date or specified Redemption Date thereof shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose; and
- (c) Any lost, destroyed, or wrongfully taken Bond or other such Security in lieu of or in substitution for which another Bond or other such Security shall have been executed and delivered.

(34) Owner: the holder of any bearer instrument or registered owner of any registered instrument.

(35) Parity Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the "1997 Revenue Bond Debt Service Account," the "1998 Revenue Bond Debt Service Account" and the "2000 Revenue Bond Debt Service Account" and other similar accounts hereafter established for Additional Parity Bonds or other Parity Securities created and referred to in Section 5F hereof.

(36) Parity Securities: the Prior Parity Bonds and any other bonds, warrants, notes, securities, leases or other contracts evidencing borrowings and payable from the Pledged Revenues equally or on a parity with the Bond.

(37) Paying Agent: the Treasurer of the Enterprise, or her successors.

(38) Permitted Investments: any obligations permitted by the ordinances of the City and, to the extent applicable, the laws of the State listed on Exhibit D to the Bond Insurer's Standard Package for Ambac-Insured Transactions as attached to the Commitment.

(39) Person: any individual, firm, partnership, corporation, company, association, joint stock association or body politic or any trustee, receiver, assignee or similar representative thereof.

(40) Pledged Revenues: all Income remaining after the deduction of Operation and Maintenance Expenses.

(41) Prior Parity Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1997, dated May 1, 1997, in the principal amount of \$13,246,525 and the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1998, dated April 1, 1998, in the principal amount of \$4,085,697.

(42) Prior Superior Bond Ordinance: Ordinance No. 1, Series of 1994 of the Enterprise.

(43) Prior Superior Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 1994, dated October 15, 1994, in the aggregate principal amount of \$20,000,000.

(44) Project: those Water Facilities or Wastewater Facilities for the acquisition, construction and installation of which the Bond is issued.

(45) Purchaser: Colorado Water Resources and Power Development Authority, or its successors.

(46) Redemption Date: the date fixed for the redemption prior to maturity of the Bond or any other Securities payable from the Pledged Revenues in any notice of prior redemption given by or on behalf of the Enterprise.

(47) Registrar: the Treasurer of the Enterprise, or her successors.

(48) Regular Record Date: the fifteenth day of the calendar month next preceding an Interest Payment Date for the Bond.

(49) Security or Securities: any bond issued by the Enterprise or any other evidence of the advancement of money to the Enterprise or the City.

(50) Special Record Date: the date fixed by the Paying Agent for the determination of ownership of the Bond for the purpose of paying interest not paid when due or interest accruing after maturity.

(51) State: the State of Colorado.

(52) Subordinate Bonds or Subordinate Securities: bonds or Securities payable from the Pledged Revenues having a lien thereon subordinate or junior to the lien thereon of the Bond.

(53) Superior Bonds or Superior Securities: the Prior Superior Bonds and any other bonds or Securities payable from the Pledged Revenues having a lien thereon superior or senior to the lien thereon of the Bond.

(54) Superior Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the "1994 Revenue Bond Debt Service Account" and other similar accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5D hereof.

(55) Superior Bonds Reserve Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the "1994 Revenue Bond Reserve Account" and other similar accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5E hereof.

(56) Superior Bonds Reserve Fund Requirement: the least of ten percent (10%) of the proceeds, one hundred twenty-five percent (125%) of the Combined Average Annual Debt Service Requirements or one hundred percent (100%) of the Combined Maximum Annual Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged, whether in cash or as otherwise provided in Section 5E hereof.

(57) System: the Water Facilities and the Wastewater Facilities of the City owned and operated by the City as a single utility system.

(58) Transfer Agent: the Treasurer of the Enterprise, or her successors.

(59) Trust Bank: a Commercial Bank which is authorized to exercise and is exercising trust powers.

(60) Wastewater Facilities: any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

(61) Water and Wastewater Utility Fund: the self-balancing group of accounts heretofore created by the City as an enterprise fund to record all financial activity of the Enterprise referred to in Section 5B hereof.

(62) Water Facilities: water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

B. Construction. This Ordinance, except where the context by clear implication herein otherwise requires, shall be construed as follows:

(1) Words in the singular include the plural, and words in the plural include the singular.

(2) Words in the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender refer to any gender.

(3) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Ordinance so numbered or otherwise so designated.

(4) The titles and headlines applied to articles, sections and subsections of this Ordinance are inserted only as a matter of convenience and ease in reference and in no way define or limit the scope or intent of any provisions of this Ordinance.

(5) Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the Enterprise or its agents shall consider the effect on the Owner of the Bond as if there were no Bond Insurance Policy.

Section 2. Recitals.

A. Enterprise. The City has heretofore established the Enterprise and by the Enterprise Ordinance has authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

B. Authority. Pursuant to art. X, § 20 and art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(d) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bond without voter approval in advance.

C. . Prior Superior and Parity Bonds. The Enterprise has previously issued the Prior Superior Bonds secured by a lien upon the Pledged Revenues senior or superior to the lien thereon of the Bond. The Enterprise has previously issued the Prior Parity Bonds secured by a lien upon the Pledged Revenues on a parity with the Bond. Other Securities previously issued by the City payable from the revenues of the System contain no specific pledge of such revenues and no restrictions on future pledges of such revenues.

Section 3. The Bond.

A. Authorization. The Bond, payable as to all Debt Service Requirements solely out of Pledged Revenues, is hereby authorized to be issued, the proceeds of the Bond to be used solely to pay the Cost of the Project.

B. Bond Details.

(1) Generally. The Bond shall be issuable in fully registered form and shall initially be registered in the name of the Purchaser. The Bond shall be issued so that a single Bond evidences the obligation of the Enterprise to pay all principal and interest due as set forth herein. The Bond shall mature, bear interest and be subject to redemption as provided in the Loan Agreement. The Debt Service Requirements of the Bond shall be payable in lawful money of the United States of America to the Purchaser by the Paying Agent. The principal and the final installment of interest shall be payable to the Purchaser upon presentation and surrender thereof at maturity or upon prior redemption, by check or draft mailed to the Purchaser at the address appearing on the registration books of the Enterprise maintained by the Registrar or by wire transfer to such bank or other depository as the Purchaser shall designate in writing to the Paying Agent. Except as hereinbefore and hereinafter provided, the interest shall be payable to the Purchaser determined as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Regular Record Date and prior to such Interest Payment Date, by check or draft or wire transfer directed to the Purchaser as aforesaid. Any interest not paid when due and any interest accruing after maturity shall be payable to the Purchaser determined as of the close of business on the Special Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Special Record Date and prior to the date fixed by the Paying Agent for the payment of such interest, by check or draft or wire transfer directed to the Purchaser as aforesaid. Notice of the Special Record Date and of the date fixed for the payment of such interest shall be given by sending a copy thereof by certified or registered first-class, postage prepaid mail, at least fifteen (15) days prior to the Special Record Date, to the Purchaser determined as of the close of business on the day preceding such mailing at the address appearing on the registration books of the Enterprise. Any premium shall be payable to the Purchaser upon presentation and surrender thereof upon prior redemption, by check or draft or wire transfer directed to the Purchaser as aforesaid. If the date for making or giving any payment, determination or notice described herein is a Saturday, Sunday, legal holiday or any other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed, such payment, determination or notice shall be made or given on the next succeeding day which is not a Saturday, Sunday, legal holiday or other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed.

(2) Payments Under the Bond Insurance Policy. At least one (1) day prior to each Interest Payment Date the Paying Agent shall determine whether there are sufficient funds on deposit with the Paying Agent to pay the principal of or interest on the Bond on such Interest Payment Date. If the Paying Agent determines that there are insufficient funds on deposit with the Paying Agent, the Paying Agent shall so notify the Bond Insurer. Such notice shall specify the amount of the anticipated deficiency and whether the Bond will be deficient as to principal or interest, or both. If the Paying Agent has not so notified the Bond Insurer at least one (1) day prior to an Interest Payment Date, the Bond Insurer shall make payments of principal or interest due on the Bond on or before the first day next following the date on which the Bond Insurer shall have received notice of nonpayment from the Paying Agent. The Paying Agent shall, after giving notice to the Bond Insurer as provided above, make available to the Bond Insurer and, at the Bond Insurer's direction, to the Insurance Trustee, the registration books of the Enterprise maintained by the Registrar and all records relating to the funds and accounts maintained under this Ordinance. The Paying Agent shall provide the Bond Insurer and the Insurance Trustee with a list showing the Purchaser or other Owner of the Bond entitled to receive principal or interest payments from the Bond Insurer under the terms of the Bond Insurance Policy and shall make arrangements with the Insurance Trustee to mail checks or drafts to the Purchaser or other Owner of the Bond entitled to receive full or partial payments of principal or interest. The Paying Agent shall, at the time it provides notice to the Bond Insurer as provided above, notify the Purchaser or other Owner of the Bond that it is entitled to receive the payment of principal or interest on the Bond from the Bond Insurer, that the Bond Insurer will remit to it or them all or a part of the interest payments next coming due upon proof of entitlement to interest payments and delivery to the Insurance Trustee, in form satisfactory to the Insurance Trustee, of an appropriate assignment of the Purchaser's right to payment, that should an Owner be entitled to receive

full payment of principal from the Bond Insurer, it must surrender the Bond (along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee to permit ownership of the Bond to be registered in the name of the Bond Insurer) for payment to the Insurance Trustee and not the Paying Agent and that should the Purchaser be entitled to receive partial payment of principal from the Bond Insurer, it must surrender the Bond for payment thereon first to the Paying Agent, which shall note on the Bond the portion of the principal paid by the Paying Agent and then, along with an appropriate instrument of assignment in form satisfactory to the Insurance Trustee, to the Insurance Trustee, which will then pay the unpaid portion of principal. In the event that the Paying Agent has notice that any payment of principal of or interest on the Bond which has become due for payment and which is made to the Purchaser by or on behalf of the Enterprise has been deemed a preferential transfer and theretofore recovered from the Purchaser pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Paying Agent shall, at the time the Bond Insurer is notified as provided above, notify the Purchaser that in the event that its payment is so recovered, the Purchaser will be entitled to payment from the Bond Insurer to the extent of such recovery if sufficient funds are not otherwise available, and the Paying Agent shall furnish to the Bond Insurer its records evidencing the payments of principal of and interest on the Bond which have been made by the Paying Agent and subsequently recovered from the Purchaser and the dates on which such payments were made. In addition to those rights granted the Bond Insurer under this Ordinance, the Bond Insurer shall, to the extent it makes payment of principal of or interest on the Bond, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy, and to evidence such subrogation, in the case of subrogation as to claims for past due interest, the Paying Agent shall note the Bond Insurer's right as subrogee on the registration books of the Enterprise maintained by the Registrar upon receipt from the Bond Insurer of proof of the payment of interest thereon to the Purchaser, and, in the case of subrogation as to claims for past due principal, the Paying Agent shall note the Bond Insurer's right as subrogee on the registration books of the Enterprise maintained by the Registrar upon surrender of the Bond by the Purchaser together with proof of the payment of principal thereof.

(3) Net Effective Interest Rate. The maximum net effective interest rate of the Bond shall not exceed 4.50 % per annum.

(4) Execution and Authentication. The Bond shall be executed by and on behalf of the Enterprise with the manual signature of the President of the Enterprise, shall be attested with the manual signature of the Secretary of the Enterprise and shall be countersigned with the manual signature of the Treasurer of the Enterprise. Should any officer whose manual signature appears on the Bond cease to be such officer before delivery of the Bond to the Purchaser, such manual signature shall nevertheless be valid and sufficient for all purposes.

(5) Registration and Transfer. Upon their execution and prior to their delivery, the Bond shall be registered for the purpose of payment of principal and interest by the Registrar. The Bond shall be registered in the name of the Purchaser. To the extent that a typewritten Bond, rather than a printed Bond, is to be delivered, such modifications to the form of Bond as may be necessary or desirable in such case are hereby authorized and approved. There shall be no substantive change to the terms and conditions set forth in the form of Bond, except as otherwise authorized by this Ordinance or any amendment hereto. The Bond shall be transferable only upon the registration books of the Enterprise by the Transfer Agent at the request of the Purchaser or its duly authorized attorney-in-fact or legal representative. The Registrar or Transfer Agent shall accept the Bond for registration or transfer only if the Owner is to be an individual, a corporation, a partnership, or a trust. The Bond may be transferred upon surrender thereof together with a written instrument of transfer duly executed by the Owner or his, her or its duly authorized attorney-in-fact or legal representative with guaranty of signature satisfactory to the Transfer Agent, containing written instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and the beneficiaries of the trust. The Transfer Agent shall not be required to transfer ownership of the Bond during the fifteen (15) days prior to the first mailing of any notice of redemption or to transfer ownership of the Bond on or after the date of such mailing. Transfers shall be made without charge, except that the Transfer Agent may require payment of a sum sufficient to defray any tax or other governmental charge that may hereafter be imposed in connection with any transfer of the Bond. No transfer of the Bond shall be effective until entered on the registration books of the Enterprise. In the case of every transfer, the Registrar shall authenticate and the Transfer Agent shall deliver to the new Owner a new Bond of the same aggregate principal amount, maturing in the same year,

and bearing interest at the same per annum interest rate as the Bond surrendered. Such Bond shall be dated as of its date of execution. A new Bond delivered upon any transfer shall be a valid obligation of the Enterprise, evidencing the same obligation as the Bond surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered. The Enterprise may deem and treat the Person in whose name the Bond is last registered upon the books of the Enterprise as the absolute Owner thereof for the purpose of receiving payment of the principal of, interest on, and any premium due in connection with the redemption of such Bond and for all other purposes, and all such payments so made to such Person or upon his, her or its order shall be valid and effective to satisfy and discharge the liability of the Enterprise upon the Bond to the extent of the sum or sums so paid, and the Enterprise shall not be affected by any notice to the contrary. Upon the occurrence of an Event of Default which would require payment by the Bond Insurer under the Bond Insurance Policy, the Bond Insurer and its designated agents shall be afforded access to the registration books of the Enterprise.

(6) Resignation or Removal of Agents. If, after giving prior written notice to the Bond Insurer, the Paying Agent, Registrar or Transfer Agent shall resign as such, or if the Enterprise or the Bond Insurer shall reasonably determine that the Paying Agent, Registrar or Transfer Agent has breached or become incapable of fulfilling its duties hereunder, the Enterprise may, upon notice mailed to the Purchaser at the address last shown on the registration books of the Enterprise, accept the resignation of the Paying Agent, Registrar or Transfer Agent or remove the Paying Agent, Registrar or Transfer Agent and appoint a successor paying agent, registrar or transfer agent. Every such successor paying agent, registrar or transfer agent shall be a Trust Bank approved in writing by the Bond Insurer. It shall not be required that the same institution serve as paying agent, registrar and transfer agent hereunder, but the Enterprise shall have the right to have the same institution serve as paying agent, registrar and transfer agent hereunder. Any such registration or removal shall become effective only on the appointment of a successor acceptable to the Bond Insurer and acceptance by the successor of its duties hereunder.

(7) Replacement of Bond. If the Bond shall have been lost, destroyed or wrongfully taken, the Enterprise shall provide for the replacement thereof upon the Purchaser's furnishing to the Enterprise:

- (a) proof of ownership,
- (b) proof of loss, destruction or theft,
- (c) a surety bond in the amount of all principal and interest remaining unpaid on the Bond, and
- (d) payment of the cost of preparing and issuing the new Bond.

(8) Recitals in Bond. Each Bond shall recite in substance that the Bond is a special and limited obligation of the Enterprise payable solely out of and secured by an irrevocable pledge of and second lien (but not necessarily exclusive second lien) upon the Pledged Revenues, that the Bond does not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation, that the Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and that the full faith and credit of the City is not pledged for the payment of the principal of or interest on the Bond.

(9) Form of Bond. The Bond shall be in substantially the form set forth in the Loan Agreement with the following legend attached thereto:

BOND LEGEND

Municipal Bond Insurance Policy No. _____ (the "Policy") with respect to payments due for principal of and interest on this Bond has been issued by Ambac Assurance Corporation ("Ambac Assurance"). The Policy has been delivered to United States Trust Company of New York, New York, New York, as the insurance trustee (the "Insurance Trustee") under the Policy and will be held by the Insurance Trustee or any successor insurance trustee. The Policy is on file and available for inspection at the principal office of the Insurance Trustee, and a copy thereof may be secured from Ambac Assurance or the Insurance Trustee. All payments required to be made under the Policy will be made in accordance with the provisions thereof. The owner of this Bond acknowledges and consents to the subrogation rights of Ambac Assurance as more fully set forth in the Policy.

C. Special Obligation. All of the Debt Service Requirements of the Bond shall be payable solely out of the Pledged Revenues. The Purchaser may not look to the general fund or any other fund of the City for the payment of the Debt Service Requirements thereof, except the special funds pledged therefor. The Bond shall not constitute a debt or indebtedness of the City within the meaning of any constitutional,

Charter or statutory provision or limitation, and the Bond shall not be considered or held to be a general obligation of the City but shall constitute a special and limited obligation of the Enterprise. The Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and the full faith and credit of the City is not pledged for payment of the Bond.

Section 4. Sale of Bond.

A. Purchaser's Proposal. The Purchaser has offered to purchase the Bond at a price equal to \$14,998,357.36 plus accrued interest thereon from the date thereof to the delivery date thereof, and the Treasurer of the Enterprise has recommended that said offer be accepted by the Council.

B. Award of Contract. The contract for the purchase of the Bond is hereby awarded to the Purchaser at the price specified in the Purchaser's offer and upon the terms set forth in this Ordinance.

C. Delivery. After the Bond has been duly executed, authenticated and registered as provided herein, the Treasurer of the Enterprise shall cause the Bond to be delivered to the Purchaser upon receipt of the agreed purchase price.

Section 5. Disposition of Bond Proceeds and Income; Funds Adopted or Created by Ordinance; Security for Bond. The proceeds of the Bond and the Income shall be deposited by the Enterprise in the funds described in this Section 5, to be accounted for in the manner and priority set forth in this Section 5. Neither the Purchaser nor any subsequent Owner of any Bond shall be in any manner responsible for the application or disposal by the Enterprise or the City or by any of their officers, agents and employees of the moneys derived from the sale of the Bond or of any other moneys designated in this Section 5. The Pledged Revenues and all moneys and securities paid or to be paid to or held or to be held in any fund hereunder are hereby pledged to secure the payment of the Debt Service Requirements of the Bond and any other Securities payable therefrom. This pledge shall be valid and binding from and after the date of the first delivery of the Bond, and the moneys, as received and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Enterprise or the City (except as herein otherwise expressly provided), and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Enterprise or the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

A. Construction Fund. There is hereby created the 2000 Bond Projects account within the Construction Fund, into which the Enterprise shall deposit, upon receipt from the Purchaser, the proceeds of the Bond after making the deposit required by Section 5F of this Ordinance. The proceeds of the Bond so deposited in the Construction Fund, except as herein otherwise expressly provided, shall be used and paid out from time to time solely for the purpose of paying the Cost of the Project and are pledged therefor. Any such proceeds remaining in the Construction Fund after completion of the Project shall be deposited in the Parity Bonds Principal and Interest Fund and used for the purposes of the Parity Bonds Principal and Interest Fund or shall be used to the extent feasible to call and redeem the Bond in advance of its Maturity Date. The City shall transfer any proceeds of the Bond deposited in the Construction Fund, without further order, to the Parity Bonds Principal and Interest Fund, and the Enterprise shall use the same to pay the Debt Service Requirements of the Bond as the same become due whenever and to the extent moneys in the Parity Bonds Principal and Interest Fund or moneys otherwise available therefor are insufficient for that purpose, unless such proceeds shall be needed to pay obligations accrued and to accrue under any contracts then existing and pertaining to the Project. Any moneys so used shall be restored to the Construction Fund from the first Pledged Revenues thereafter received and not needed to pay the Debt Service Requirements of the Bond.

B. Water and Wastewater Utility Fund. Except as otherwise provided herein, the entire Income, upon receipt thereof from time to time, shall be deposited immediately in the Water and Wastewater Utility Fund. Operation and Maintenance Expenses shall be paid as provided in Section 5C hereof. The

Pledged Revenues on deposit in the Water and Wastewater Utility Fund shall be applied in the following order of priority:

- (1) First, to the Superior Bonds Principal and Interest Fund in the manner set forth in Section 5D hereof;
- (2) Second, to the Superior Bonds Reserve Fund in the manner set forth in Section 5E hereof;
- (3) Third, to the Parity Bonds Principal and Interest Fund in the manner set forth in Section 5F hereof;
- (4) Fourth, to the payment of the Debt Service Requirements of Subordinate Bonds or other Subordinate Securities in accordance with Section 5G hereof
- (5) Fifth, to be used in accordance with Section 5H hereof.

C. Operation and Maintenance Fund. As a first charge on the Water and Wastewater Utility Fund there shall be paid from the Operation and Maintenance Fund the Operation and Maintenance Expenses of the System as they become due and payable.

D. Superior Bonds Principal and Interest Fund. There shall be deposited in the Superior Bonds Principal and Interest Fund from the Pledged Revenues on or before the last day of each month, the amounts required by the Prior Superior Bond Ordinance. The moneys deposited in the Superior Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds and any other Superior Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance. The Superior Bonds Principal and Interest Fund shall be maintained as a sinking fund for the mandatory redemption of Prior Superior Bonds maturing in the years 2009 and 2014. Any mandatory sinking fund redemption shall be treated as an installment of principal for purposes of this Section 5D.

E. Superior Bonds Reserve Fund. Subject to the payments required by Section 5D hereof, there shall be deposited in the Superior Bonds Reserve Fund from the Pledged Revenues moneys sufficient to accumulate in and maintain the Superior Bonds Reserve Fund at an amount equal to the Superior Bonds Reserve Fund Requirement. Said amount shall be maintained as a continuing reserve for the payment of the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged. In the event that the amount on deposit in the Superior Bonds Reserve Fund falls below the Superior Bonds Reserve Fund Requirement, there shall be deposited in the Superior Bonds Reserve Fund such Pledged Revenues as may be needed to accumulate or reaccumulate the amount therein so that at all times the amount in the Superior Bonds Reserve Fund equals the Superior Bonds Reserve Fund Requirement. The moneys in the Superior Bonds Reserve Fund shall be set aside, accumulated, and, if necessary, reaccumulated as provided herein, from time to time, and maintained as a continuing reserve to be used only to prevent deficiencies in the Superior Bonds Principal and Interest Fund resulting from failure to deposit therein sums sufficient to pay such Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged as the same become due. If at any time there shall not be deposited for any reason in the Superior Bonds Principal and Interest Fund the full amount above stipulated, then there shall be deposited in the Superior Bonds Principal and Interest Fund at such time from the Superior Bonds Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. The money so used shall be replaced to the Superior Bonds Reserve Fund from the first Pledged Revenues thereafter received and not required to be otherwise applied by Section 5D hereof.

If at any time there shall not be deposited for any reason in the Superior Bonds Reserve Fund the full amount of the Superior Bonds Reserve Fund Requirement from the Pledged Revenues, the difference between the amount deposited and the Superior Bonds Reserve Fund Requirement shall in a like manner be deposited therein from the first Pledged Revenues thereafter received and not required to be applied otherwise by Section 5D hereof in twelve (12) equal monthly installments. Nothing in this Ordinance shall be construed as limiting the right of the Enterprise to substitute for the cash deposit required to be maintained hereunder a letter of credit, surety bond, insurance policy, agreement guaranteeing payment, or other undertaking by a financial institution to ensure that cash in the amount otherwise required to be maintained hereunder will be available to the Enterprise as needed, provided that any such substitution

shall be submitted to Fitch Investors Service, Inc., Moody's Investors Service, and Standard & Poor's Corporation and shall not cause the then-current ratings of the Prior Superior Bonds to be adversely affected. The Superior Bonds Reserve Fund shall be replenished in the following priority: first, principal and interest on any funding instrument as described above shall be paid from first available Pledged Revenues on a pro rata basis; second, after all such amounts are paid in full, amounts necessary to fund the Superior Bonds Reserve Fund in an amount equal to the Superior Bonds Reserve Fund Requirement, after taking into account the amounts available under any funding instruments as described above, shall be deposited from next available Pledged Revenues.

F. Parity Bonds Principal and Interest Fund. There shall be deposited in the Parity Bonds Principal and Interest Fund, forthwith upon receipt of the proceeds of the Bond, interest accrued thereon from its date to the date of delivery thereof to the Purchaser, to apply to the payment of interest first due on the Bond. There shall also be deposited in the Parity Bonds Principal and Interest Fund from the Pledged Revenues on or before the last day of April and May, 2000, the amount of interest accruing on the Bond during April and May, 2000 (with a credit for the amount of any accrued interest deposited in the Parity Bonds Principal and Interest Fund and not theretofore credited), and on or before the last day of each month beginning June, 2000, the following amounts (with a credit for the amount of any accrued interest deposited in the Parity Bonds Principal and Interest Fund and not theretofore credited):

(1) Interest Payments. One-sixth (1/6) of the aggregate amount of the next interest due on the Bond on the next Interest Payment Date on or before the next succeeding December 1 plus any other amounts due for interest on the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding.

(2) Principal Payments. One-sixth (1/6) of the aggregate amount of the next principal due on the Bond on the next Maturity Date on or before the next succeeding December 1 plus any other amounts due for principal of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding. Such interest and principal shall be promptly paid when due. The moneys deposited in the Parity Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance.

G. Payment of Subordinate Securities. Subject to the payments required by Sections 5D, 5E and 5F hereof, any remaining Pledged Revenues may be used for the payment of Debt Service Requirements of Subordinate Securities payable from the Pledged Revenues and authorized to be issued in accordance with this Ordinance, including reasonable reserves for such Subordinate Securities; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be subordinate to the lien and pledge of the Bond, any Additional Parity Bonds and any other Parity Securities as herein provided.

H. Use of Remaining Revenues. Subject to the payments required or permitted by Sections 5D through 5G hereof, any remaining Pledged Revenues may be used after the expiration of thirty (30) days from the payment of any principal payments required hereby for any one or any combination of lawful purposes.

I. Termination of Deposits. No payment need be made into the Parity Bonds Principal and Interest Fund if the amount of cash and Permitted Investments in the Parity Bonds Principal and Interest Fund is at least equal to the remaining Debt Service Requirements of the Bond, any Outstanding Additional Parity Bonds and Outstanding Parity Securities to their respective Maturity Dates or to any Redemption Dates on which the Enterprise shall have exercised or shall have obligated itself to exercise its option to redeem, prior to their respective Maturity Dates, the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding and thereafter maturing (provided that, solely for the purpose of this Section 5I, there shall be deemed to be a credit to the Parity Bonds Principal and Interest Fund moneys, any cash or Permitted Investments accounted for in any other fund and restricted solely for the purpose of paying the Debt Service Requirements of the Bond, any Additional Parity Bonds or any other Parity Securities), in which case cash or Permitted Investments in the Parity Bonds Principal and Interest Fund in an amount, except for any known interest or other gain to accrue from any investment or deposit of moneys pursuant to Section 6B hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment, at least

equal to such Debt Service Requirements, shall be used together with any such gain from such investments and deposits solely to pay such Debt Service Requirements as the same become due.

J. Budget and Appropriation of Sums. The sums required to make the payments specified in this Section 5 are hereby appropriated for said purposes. Said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed in each year respectively while the Bond, either as to principal or interest, is Outstanding and unpaid.

Section 6. General Administration of Funds.

A. Places and Times of Deposits. Each of the special funds described in Section 5 hereof shall be maintained by the City as trust funds solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such funds pertaining to the Income. Such funds shall be continuously secured to the fullest extent required by the ordinances of the City and, to the extent applicable, the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes of such funds. Each periodic payment shall be deposited in the proper fund not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

B. Investment of Funds. Any moneys in any fund described in Section 5 hereof may be invested, reinvested or deposited only in Permitted Investments. Permitted Investments in any fund shall be deemed at all times to be a part of the applicable fund; provided that, with the exception of the Construction Fund, the interest accruing on such investments and any profit realized therefrom shall be applied, and any loss resulting from such investments shall be charged, to the Water and Wastewater Utility Fund. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given fund whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such fund.

C. No Liability for Losses Incurred in Performing Terms of Ordinance. Neither the Enterprise nor the City nor any officer thereof shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

D. Character of Funds. The moneys in any fund herein authorized shall consist of lawful money of the United States of America or Permitted Investments or both such money and Permitted Investments. Moneys deposited in a demand or time deposit account in a Commercial Bank or other depository, appropriately secured according to the ordinances of the City and, to the extent applicable, the laws of the State, shall be deemed lawful money of the United States of America.

E. Accelerated Payments Optional. Nothing contained herein prevents the accumulation in any fund herein designated of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided therefor, but no payment shall be so accelerated if such acceleration shall cause a default in the payment of any obligation of the Enterprise pertaining to the Income.

Section 7. Priorities; Liens; Issuance of Additional Bonds.

A. Liens on Pledged Revenues; Equality of the Bond, Additional Parity Bonds and Other Parity Securities. Except as expressly provided in this Ordinance with respect to Superior Bonds, Parity Securities and Subordinate Securities, the Pledged Revenues shall be and hereby are irrevocably pledged and set aside to pay the Debt Service Requirements of the Bond. The Bond constitutes an irrevocable and second lien (but not necessarily an exclusive second lien) upon the Pledged Revenues. The Bond, any Additional Parity Bonds and any other Parity Securities authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bond, any Additional Parity Bonds and any other Parity Securities, regardless of the fact that they may be actually issued and delivered at different times.

B. Issuance of Additional Parity Bonds. Nothing herein, subject to the limitations stated in Section 7F hereof, prevents the issuance by the Enterprise or the City of Additional Parity Bonds payable from the Pledged Revenues and constituting a lien on the Pledged Revenues on a parity with the lien thereon of the Bond; but before any such Additional Parity Bonds are authorized or actually issued, the following conditions shall be satisfied:

(1) Absence of Default. At the time of the adoption of the supplemental ordinance or other instrument authorizing the issuance of the Additional Parity Bonds as provided in Section 7F hereof, the

Enterprise shall not be in default in making any payments required by Section 5 hereof, and there shall not have occurred and be continuing any Event of Default.

(3) Historic Revenues Tests. Except as hereinafter provided in the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, the Pledged Revenues for the last complete Fiscal Year prior to the issuance of the proposed Additional Parity Bonds, as certified by a Consulting Engineer or Independent Auditor, must have been equal to at least one hundred ten percent (110%) of the Combined Maximum Annual Debt Service Requirements of the Bond then Outstanding, any Additional Parity Bonds then Outstanding, any other Parity Securities then Outstanding and the Additional Parity Bonds proposed to be issued. If any adjustment in water or wastewater rates, fees, tolls or charges or tap fees, or any combination thereof, is made by the City during such Fiscal Year, the Consulting Engineer or Independent Auditor shall adjust the calculation of the Pledged Revenues to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such Fiscal Year. For purposes of this Section 7B(2), when computing the Maximum Annual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the highest of

- (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding),
- (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and
- (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Internal Revenue Code of 1986, as amended, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or
(ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer. In the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, compliance with this Section 7B(2) shall not be required so long as the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding after the issuance of such Additional Parity Bonds on each Interest Payment Date does not exceed the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding prior to the issuance of such Additional Parity Bonds on such Interest Payment Dates.

C. Certification of Historic Revenues. Where certifications of historic revenues are required by this Ordinance, the specified and required written certifications of the Consulting Engineer or Independent Auditor that revenues are sufficient to pay the required amounts shall be conclusively presumed to be accurate in determining the right of the Enterprise or the City to authorize, issue, sell and deliver Additional Parity Bonds or other Parity Securities.

D. Superior Securities. Nothing herein prevents the Enterprise or the City from issuing Superior Bonds or Superior Securities for any lawful purpose, subject to the requirements of the ordinance authorizing the issuance of the Prior Superior Bonds.

E. Subordinate Securities. Nothing herein, except the limitations stated in Section 7F hereof, prevents the Enterprise or the City from issuing Subordinate Securities for any lawful purpose.

F. Supplemental Ordinances. Additional Parity Bonds, Superior Bonds or Subordinate Securities shall be issued only after authorization thereof by ordinance, supplemental ordinance or other instrument in substantially the same form as this Ordinance, stating the purpose or purposes of the issuance of such additional Securities, directing the application of the proceeds thereof to such purpose or purposes,

directing the execution thereof, and fixing and determining the date, series designation, principal amount, maturity or maturities, maximum rate or rates of interest, and prior redemption privileges with respect thereto, and providing for payments to and from the Water and Wastewater Utility Fund in accordance with this Ordinance. All additional Securities shall bear such date, shall be payable as to principal on December 1 and as to interest on June 1 and December 1 and shall be subject to redemption prior to maturity on such terms and conditions, as may be provided, and shall bear interest at such rate or rates as may be fixed by ordinance, instrument or other document. Nothing herein shall be construed to prohibit the issuance of additional Securities payable from the Pledged Revenues, the principal of which is payable more frequently than annually or the interest on which is payable more frequently than semiannually.

Section 8. Covenants.

The Enterprise hereby particularly covenants and agrees with the Purchaser and makes provisions which shall be a part of the contract with the Purchaser, which covenants and provisions shall be kept by the Enterprise or the City continuously until the Bond has been fully paid and discharged:

A. Rate Maintenance. The City shall prescribe, revise, and collect water and wastewater rates, fees, tolls, and charges and tap fees or any combination thereof, which shall produce Income sufficient, together with any other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund, to make the payments and accumulations required by this Ordinance and which shall produce Pledged Revenues in each Fiscal Year sufficient, together with all other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund after payment of Operation and Maintenance Expenses, to pay an amount at least equal to one hundred ten percent (110%) of the actual Debt Service Requirements of the Outstanding Bond and any Outstanding or proposed Additional Parity Bonds or other Outstanding Parity Securities plus any amounts required to meet then existing deficiencies pertaining to any fund relating to the Pledged Revenues or any Securities payable therefrom. For purposes of this Section 8A, when computing the actual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the actual rate applicable during said period. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer. In the event that such rates, fees, tolls, and charges and tap fees at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the City shall increase its rates, fees, tolls, and charges and tap fees to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

B. Collection of Charges. The City shall cause all water and wastewater rates, fees, tolls, and charges and tap fees to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance and any other ordinance or instrument supplemental thereto. The rates, fees, tolls, and charges and tap fees due shall be collected in any lawful manner.

C. Competent Management. The City shall employ experienced and competent management personnel for each component of the System. If the Enterprise shall fail to pay the Debt Service Requirements of the Bond promptly as the same become due, or if the Enterprise or the City shall fail to keep any of the covenants herein contained, and if such default shall continue for a period of sixty (60) days, or if the Pledged Revenues in any Fiscal Year, together with other legally available moneys deposited in the Water and Wastewater Utility Fund, shall fail to equal at least the amount of the Debt Service Requirements of the Bond and other obligations payable from the Pledged Revenues due in the same Fiscal Year, the City shall retain a firm of competent management Persons skilled in the operation of water and wastewater facilities to assist in the management of the System so long as such default continues or the said revenues, proceeds and income are less than the amount hereinabove designated.

D. Performance of Duties. The City or the Enterprise, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Income and the System required by the Constitution and laws of the State and the ordinances, resolutions and contracts of the Enterprise or the City, including, without limitation, the proper segregation of the proceeds of the Bond and the Income and their application from time to time to the respective funds provided therefor.

E. Costs of Bond and of Performance. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Bond, payment of the Debt Service Requirements thereof or the performance of or compliance with any covenant or agreement contained in this Ordinance shall be paid exclusively (but only from the appropriate special fund in the manner authorized herein) from the proceeds of the Bond, from the Pledged Revenues, or from other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general fund of the City.

F. Contractual Obligations. The Enterprise or the City shall perform all contractual obligations undertaken by them under any other agreements relating to the Bond, the Income or the System.

G. Further Assurances. At any and all times the Enterprise or the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged, or intended so to be, or which the Enterprise or the City may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Ordinance. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged hereunder and all the rights of the Purchaser and every subsequent Owner of the Bond against all claims and demands of all Persons whomsoever.

H. Conditions Precedent. Upon the date of issuance of the Bond, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter, the Enterprise Ordinance, and this Ordinance to exist, to have happened, and to have been performed precedent to or in the issuance of the Bond shall exist, have happened and have been performed, and the Bond, together with all other obligations of the Enterprise or the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America or the Constitution or laws of the State, the Charter or the Enterprise Ordinance.

I. Efficient Operation and Maintenance. The City shall at all times operate the System properly and in a sound and economical manner. The City shall maintain, preserve and keep the System properly or cause the same so to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the maintenance of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the repair, maintenance and operation of the System shall be fair and reasonable.

J. Records and Accounts. The City shall keep proper books of record and account showing complete and correct entries of all transactions relating to the funds referred to herein.

K. Rules, Regulations and Other Details. The City, acting by and through its officers, shall establish and enforce reasonable rules and regulations governing the construction, operation, care, repair, maintenance, management, control, use, commodities, and services of the System. The City or the Enterprise shall observe and perform all of the terms and conditions contained in this Ordinance and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the System or the City.

L. Payment of Governmental Charges. The Enterprise shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any portion of the Income, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System, or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Enterprise shall not create or suffer to be created any lien or charge upon the System, or any part thereof, or upon the Income, except the pledge and lien created by this Ordinance for the payment of the Debt Service Requirements due in connection with the Bond and the pledge and lien for the Prior Superior Bonds and Prior Subordinate Bonds and except as herein otherwise permitted. The Enterprise shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within ninety (90) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Income, but nothing herein requires the Enterprise to pay or to cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

M. Protection of Security. The Enterprise and the City and their officers, agents and employees shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Bond and any other Securities payable from the Pledged Revenues according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of the Bond or other Security payable from Pledged Revenues might be prejudicially and materially impaired or diminished.

N. Accumulation of Interest Claims. In order to prevent any accumulation of claims for interest after maturity, the Enterprise shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Bond or any other Securities payable from the Pledged Revenues; and the Enterprise shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of the Bond and all such securities the payment of which has not been extended.

O. Prompt Payment of Bond. The Enterprise shall promptly pay the Debt Service Requirements of the Bond on the dates and in the manner specified herein and in the Bond according to the true intent and meaning hereof.

P. Use of Funds. The funds described herein shall be used solely and only for the purposes described herein, subject to Section 9 hereof.

Q. Additional Securities. Neither the Enterprise nor the City shall hereafter issue any bonds or Securities relating to the System and payable from the Pledged Revenues, other than the Bond, without compliance with the requirements with respect to the issuance of Additional Superior Bonds, Additional Parity Bonds or Subordinate Bonds set forth herein to the extent applicable.

R. Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Pledged Revenues.

S. Disposal of System Prohibited. Subject to Section 8T hereof, except for the use of the System and the sale of commodities or services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until the Bond has been paid in full, as to all Debt Service Requirements thereof, or unless provision has been made therefor, or until the Bond has otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized. Subject to Section 8T hereof, the City shall not dispose of its title to the System or to any useful part thereof, including any property

necessary to the operation and use of the System and the lands and interests in lands comprising the System.

T. Disposal of Property. No part of the System shall be sold, leased, mortgaged, pledged, encumbered or otherwise disposed of or otherwise alienated, until the Bond has been paid in full, or unless provision has been made therefor, or until the Bond has otherwise been redeemed; provided, however, that the City may sell, exchange or lease at any time and from time to time any property or facilities constituting part of the System and not needed or useful in the construction, reconstruction or operation thereof; but any proceeds of any such sale or exchange received and not used to replace such property so sold or exchanged and any proceeds of any such lease received shall be deposited in the Water and Wastewater Utility Fund as Income.

U. Fidelity Bonds or Insurance. Each official or other person having custody of any Pledged Revenues or responsible for their handling shall be fully bonded or insured at all times, which bond or insurance shall be conditioned upon the proper application of said moneys. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

V. Loss from Condemnation. If any part of the System is taken by the exercise of a power of eminent domain, the amount of any award received by the City as a result of such taking shall be expended upon the improvement of the System or shall be applied to the redemption of the Outstanding Bond and any other Outstanding Securities payable from the Pledged Revenues in accordance with the provisions hereof and of any other ordinance authorizing the issuance of any such Securities at maturity or upon prior redemption if the authorizing ordinances authorize the prior redemption of such Securities.

W. Inspection of Records and System. The Purchaser, any subsequent Owner of the Bond or the Owner of any other Securities payable from the Pledged Revenues, any duly authorized agent or agents of the Purchaser or such Owner and the Bond Insurer shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, concerning the Bond, the System or the Income, to make copies of such records, accounts and data at their own expense, and to inspect the System and properties comprising the same. The Enterprise shall permit the Bond Insurer to discuss the affairs, finances and accounts of the Enterprise or any information the Bond Insurer may reasonably request regarding the security for the Bond with appropriate officers of the Enterprise.

X. Audits Required. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the Enterprise to be made forthwith by an Independent Auditor and order an audit report for each fund pertaining to the Income. The City shall furnish a copy of each such audit report and any other annual report or financial statement of the Enterprise to the Bond Insurer as soon as practicable after the preparation thereof. The Bond Insurer shall have the right to direct an accounting at the expense of the Enterprise, and the failure of the Enterprise to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period shall be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of the Purchaser or any subsequent Owner of the Bond.

Y. Insurance and Reconstruction. The City shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the City as is customarily maintained with respect to water and wastewater facilities of like character against loss of or damage to the System and against public and other liability to the extent at least reasonably necessary to protect the interest of the City and of the Owner of the Bond or any other Securities payable from the Net Pledged Revenues, except as herein otherwise provided. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, commence and diligently proceed with the repair or replacement of the damaged or destroyed property so as to restore the same to use. The proceeds of any insurance appertaining to the System shall be payable to the City and (except for proceeds of use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement, and to the extent not so applied shall (together with the proceeds of any such use and

occupancy insurance) be deposited in the Water and Wastewater Utility Fund as Income. If the costs of such repair and replacement of the damaged or destroyed property exceed the proceeds of such property insurance available for payment of the same, moneys in the Water and Wastewater Utility Fund shall be used to the extent necessary for such purpose. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

Z. Notices, Certificates and Information. The Enterprise shall provide to the Bond Insurer the following: notice of redemption as provided in the Loan Agreement; notice of defeasance of the Bond; any other notice given to the Owner of the Bond; copies of any certificates given pursuant to this Ordinance relating to the security for the Bond; copies of any information supplied to the Purchaser under Section 2.03 of the Loan Agreement; and such additional information as the Bond Insurer may reasonably request. The City shall notify the Bond Insurer of any failure of the Enterprise to provide such notices and certificates. Notwithstanding any other provision of this Ordinance, the Enterprise or the City shall immediately notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal or interest as required and immediately upon the occurrence of any Event of Default.

Section 9. Defeasance.

When all Debt Service Requirements of the Bond have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged, and the Bond shall no longer be deemed to be Outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment of the Bond when the Enterprise has, with the consent of the Purchaser, placed in escrow or in trust with a Trust Bank moneys or Federal Securities in an amount sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all Debt Service Requirements of the Bond, as the same become due at their Maturity Date or upon any Redemption Dates as of which the Enterprise shall have exercised or shall have obligated itself to exercise its option to call the Bond for prior redemption. The Federal Securities shall be non-callable and shall become due prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Enterprise and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the Owner thereof to assure such availability as so needed to meet such schedule. Nothing herein shall be construed to prohibit a partial defeasance of the Bond in accordance with the provisions of this

Section 9.

Notwithstanding anything herein to the contrary, in the event that the principal or interest due on the Bond shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bond shall remain Outstanding for all purposes, shall not be defeased or otherwise satisfied and shall not be considered paid by the Enterprise, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Enterprise to the Owner of the Bond shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owner.

Section 10. Default Provisions and Remedies of Bond Owner.

A. Events of Default and Remedies. The Events of Default by the Enterprise or the City and the remedies of the Purchaser shall be as set forth in the Loan Agreement.

B. Warranty Upon Issuance of Bond. The Bond, when duly executed and registered for the purposes provided for in this Ordinance, shall constitute a warranty by and on behalf of the Enterprise for the benefit of each and every future Owner of the Bond that the Bond has been issued for a valuable consideration in full conformity with law.

C. Rights of Bond Insurer. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owner of the Bond under this Ordinance.

Section 11. Amendment of Ordinance.

A. Amendment of Ordinance Not Requiring Consent of Bond Owner. The Enterprise may, without the consent of, or (except as otherwise provided herein) notice to, the Owner of the Bond, adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

- (1) To cure or correct any formal defect, ambiguity or inconsistent provision contained in this Ordinance;
- (2) To appoint successors to the Paying Agent, Registrar or Transfer Agent as provided in Section 3B(6) hereof;
- (3) To designate a trustee for the Owners of the Bond, to transfer custody and control of the Income to such trustee, and to provide for the rights and obligations of such trustee;
- (4) To add to the covenants and agreements of the Enterprise or the City or the limitations and restrictions on the Enterprise or the City set forth herein;
- (5) To pledge additional revenues, properties or collateral to the payment of the Bond;
- (6) To cause this Ordinance to comply with the Trust Indenture Act of 1939, as amended from time to time; or
- (7) To effect any such other changes hereto which do not in the opinion of nationally recognized bond counsel materially adversely affect the interests of the Owners of the Bond. Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the existence and effects on the Owner of the Bond of the Bond Insurance Policy shall be disregarded.

B. Amendment of Ordinance Requiring Consent of Bond Owner. Exclusive of the amendatory ordinances covered by Section 11A hereof, this Ordinance may be amended or modified by ordinances or other instruments duly adopted by the Enterprise, without receipt by it of any additional consideration, but with the written consent of the Purchaser or any subsequent Owner of the Bond (except as would adversely affect the rights of the Owners of any other Securities payable from the Pledged Revenues).

C. Notation on Bond. Any Bond delivered after the effective date of any action taken as provided in Section 11B hereof or Outstanding at the effective date of such action, may bear a notation thereon by endorsement or otherwise in form approved by the Council as to such action; and if any Bond so executed and delivered after such date does not bear such notation, then upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of its Bond for such purpose at the principal office of the Enterprise, suitable notation shall be made on such Bond by the Secretary of the Enterprise as to any such action. If the Council so determines, a new Bond so modified as in the opinion of the Council to conform to such action shall be prepared, executed and delivered; and upon demand of the Owner of the Bond, shall be exchanged without cost to such Owner.

D. Consent of Bond Insurer. Any provision of this Ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer. Unless otherwise provided in this Section 11, the consent of the Bond Insurer shall be required in addition to the consent of the Bond Owner, when required, for the following purposes: execution and delivery of any supplemental ordinance or any amendment, supplement, change or modification to the Loan Agreement, removal of the Paying Agent, Registrar or Transfer Agent and selection and appointment of any successor paying agent, registrar or transfer agent and initiation or approval of any other action which requires consent of Bond Owners. Any reorganization or liquidation plan with respect to the Enterprise must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of the Owner of the Bond absent a default by the Bond Insurer under the Bond Insurance Policy.

Section 12. Miscellaneous.

A. Character of Agreement. None of the covenants, agreements, representations, or warranties contained herein or in the Bond shall ever impose or shall be construed as imposing any liability, obligation, or charge against the City or against the credit of the City payable out of the general fund or any other fund

of the City (except the special funds pledged therefor). Pursuant to the Enterprise Ordinance the Enterprise is authorized to make covenants on behalf of the City and to bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in future years. Notwithstanding anything in this Ordinance to the contrary, no such covenant of the Enterprise on behalf of the City that would constitute such a direct or indirect debt or other financial obligation of the City may be enforced against the City.

B. No Pledge of Property. The payment of the Bond is not secured by an encumbrance, mortgage or other pledge of property of the City except for the Pledged Revenues. No property of the City, subject to such exception with respect to the Pledged Revenues, pledged for the payment of the Bond, shall be liable to be forfeited or taken in payment of the Bond.

C. Statute of Limitations. No action or suit based upon the Bond or other obligation of the Enterprise or the City shall be commenced after it is barred by any statute of limitations pertaining thereto. Any trust or fiduciary relationship between the Enterprise and the Owner of the Bond or the obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the Maturity Date or other due date thereof unless the Bond is presented for payment or demand for payment of such other obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit, the collection of which has been barred, shall revert to the Water and Wastewater Utility Fund, unless the Council shall otherwise provide by ordinance. Nothing herein prevents the payment of the Bond or other obligation after an action or suit for its collection has been barred if the Council deems it in the best interests of the Enterprise or the public so to do and orders such payment to be made.

D. Delegated Duties. The officers of the Enterprise are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law, including, without limitation:

(1) Preparation of Bond. The preparation of a typewritten Bond in a principal amount equal to that of the Bond, otherwise in substantially the same form and bearing the same terms;

(3) Execution, Registration and Delivery of Bond. The execution and registration of the Bond and the delivery of the Bond to the Purchaser pursuant to the provisions of this Ordinance;

(4) Information. The assembly and dissemination of financial and other information concerning the Enterprise, the City and the Bond;

(5) Documents and Closing Certificates. The execution of the Commitment, the Loan Agreement and such certificates as may be reasonably required by the Purchaser, relating, inter alia, to:

(a) The signing of the Bond;

(b) The tenure and identity of the officials of the Enterprise;

(c) If in accordance with fact, the absence of litigation, pending or threatened, affecting the validity of the Bond; and

(d) The delivery of the Bond and the receipt of the Bond purchase price.

E. Successors. Whenever herein the Enterprise or the City is named or is referred to, such provision shall be deemed to include any successors of the Enterprise or the City, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions for the benefit of the Enterprise or the City contained herein shall bind and inure to the benefit of any officer, board, district, commission, authority, agency, instrumentality or other Person or Persons to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Enterprise or the City or of its respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

F. Rights and Immunities. Except as herein otherwise expressly provided, nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon or to give or grant to any Person, other than the Enterprise and the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and the Owner of the Bond, any right, remedy or claim under or by reason of this Ordinance or any

covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the Enterprise or the City shall be for the sole and exclusive benefit of the Enterprise or the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and any Owner of the Bond. No recourse shall be had for the payment of the Debt Service Requirements of the Bond or for any claim based thereon or otherwise upon this Ordinance authorizing their issuance or any other ordinance or instrument pertaining thereto, against any individual member of the Council, or any officer or other agent of the Enterprise past, present or future, either directly or indirectly through the Enterprise, or otherwise, whether by virtue of any constitution, statute or rule of law or by the enforcement of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bond and as a part of the consideration of its issuance specially waived and released.

G. Bond Insurer as Third-Party Beneficiary. To the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance, the Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

H. Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the Enterprise and after the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Owner of the Bond; and this Ordinance, subject to the provisions of Sections 9 and 11 hereof, shall be and shall remain irrepealable until the Bond, as to all Debt Service Requirements, shall be fully paid, cancelled or discharged.

I. Ratification. All action not inconsistent with the provisions of this Ordinance heretofore taken by the Enterprise or its officers, and otherwise by the Enterprise directed toward the issuance of the Bond is hereby ratified, approved and confirmed.

J. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

K. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

L. Emergency. Due to the immediate need by the City and the Enterprise for proceeds of the Bond in order to acquire, construct and install the Project, an emergency exists which requires the immediate passage of this Ordinance as an emergency measure, and this Ordinance is immediately necessary for the preservation of the public peace, health or safety. This Ordinance shall therefore be exempt from referendum.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY MEASURE this 24 th day of April, 2000.

CITY OF WESTMINSTER, COLORADO,
WATER AND WASTEWATER ENTERPRISE

By: _____
President
Attest:

Secretary

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

I, Michele Kelley, the duly elected, qualified and acting Secretary of the City of Westminster, Colorado Water and Wastewater Utility Enterprise (the "Enterprise") do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the governing body (the "Council") of the Enterprise at a regular meeting of the Council held at the City Hall on April 24, 2000.

2. The Ordinance has been signed by the President, attested by me as Secretary and duly recorded in the books of the Enterprise; and that the same remains of record in the book of records of the Enterprise.

3. The passage of the Ordinance as an emergency was duly moved and seconded, and the Ordinance was approved by vote of Seven of Seven of the members of the Council as follows:

Those Voting Yes: Councillor Herb Atchison
 Mayor Pro Tem Sam Dixion
 Mayor Nancy Heil
 Councillor Butch Hicks
 Councillor Ann Merkel
 Councillor Ed Moss
 Councillor Suzanne Smith

Those Voting No: None

Those Abstaining: None

Those Absent: None

4. That notice of the meeting of April 24, 2000, 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.

5. That the ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on April 27, 2000. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2000.

Secretary

EXHIBIT A
(Attach Notice of Meeting)

EXHIBIT B
(Attach Affidavit of Publication)



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Councillor's Bill No. 35 re Supplemental Appropriation for Colorado Water Power Authority Bonds

Prepared by: Mary Ann Parrot, Finance Director

Introduction

City Council is requested to pass the attached Councillor's Bill on first reading appropriating the \$15 million of bond proceeds from the sale of bonds by the Colorado Water Resources and Power Development Authority (CWRPDA), sold on April 18 on behalf of the City's Water and Wastewater Enterprise. In addition, City Council is requested to authorize Staff to reimburse the City's bond counsel and financial advisor, as well as pay AMBAC for the insurance premium for the borrowing, as well as other minor additional costs of issuance required as bills are presented.

As discussed with City Council, the total project cost for the 10 million gallons per day (MGD) plant is estimated at approximately \$21 million. Because of the CWRPDA limit of issuing financing to \$15million in any given year, it would be Staff's recommendation to return in the Year 2001 to request approval of the remaining funds to be borrowed from the CWRPDA. This will allow the City to build the needed capacity of 10 MGD for producing treated water for the City, as per the City's Master Plan for Water and Wastewater.

Summary

Under separate cover, sitting as the Board of Directors of the City's Water and Wastewater Enterprise, City Council is being requested to approve the issuance of bonds for the construction of the City's new Water Treatment Plant, to be located at the northeast corner of 104th Avenue and Wadsworth Boulevard. The bonds were sold April 18 at a net interest cost of 4.450907% and the closing is scheduled for May 10. The funds will be appropriated and invested during the construction period, which is expected to commence in the fall of Year 2000, to be completed in 2002. Interest earnings will serve to supplement the construction fund, as per the bond covenants.

Staff Recommendation

Pass Councillor's Bill No. 35 on first reading appropriating \$15 million for the construction of the new Water Treatment Plant, and authorize the Finance Director to pay for the costs of issuance out of the note proceeds.

Background Information

City Council had directed Staff in an earlier action to proceed with the funding of the new Water Treatment Plant through the CWRPDA, a financing pool with a program beneficial to the City. The loan pool provides discounted interest rates and is projected to save the City \$3 million of interest costs over the 20-year life of the bonds.

The bonds were sold on April 18 at a net interest cost of 4.450907%. Funds will be settled and delivered on May 10. These funds need to be appropriated on the books of the City, to reflect the anticipated bond proceeds as revenues and anticipated construction costs as expenditures.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **35**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2000 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2000 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2000 appropriation for the Water Portion of the Utility Fund initially appropriated by Ordinance No. 2728 in the amount of \$25, 023,856 is hereby increased by \$14,999,283 which, when added to the fund balance as of the City Council action on April 24, 2000 will equal \$40,387,130. The actual amount in the Water Portion of the Utility 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 the appropriation of bond proceeds from the Colorado Water Power Authority for the construction of a new water treatment facility.

Section 2. The \$14,999,283 increase in the Water Portion of the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Bond Proceeds 20-1477-400	\$0	\$14,999,283	\$14,999,283
Total Change to Revenues		\$14,999,283	
EXPENSES			
New Water Treatment Plant 20-35-88-555-132	\$0	\$14,999,283	\$14,999,283
Total Change to Expenditures		\$14,999,283	

Section 3. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 4. This ordinance shall take effect upon its passage after the second reading.

Section 5. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of April, 2000. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this _____ day of May, 2000.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Award of Membrane Equipment Bid for the New Water Treatment Facility

Prepared by: Kent W. Brugler, Senior Civil Engineer, Water Resources and Treatment Division

Introduction

City Council action is requested to award the bid for the membrane treatment equipment to be utilized at the new Water Treatment Facility, based on the competitive proposals received on March 21, 2000, to the Pall Corporation in the amount of \$4,744,000. Funds will be appropriated and will be available in the Utility Fund CIP Project Account upon second reading of the ordinance on May 8, 2000, and a contract will be signed at that time. A Recommendation of Award letter from CH2M Hill Engineers detailing the proposals is attached for additional information.

Summary

Based on pilot testing conducted at the City’s Semper Water Treatment Plant by City Staff and CH2M Hill, membranes manufactured by both Pall Corporation and Zenon Manufacturing have proven that they will meet the City’s stringent performance and water quality requirements. Price proposals were then requested from these two manufacturers for the membrane and related equipment based on detailed design criteria established during the pilot testing. The proposals presented equipment and related facility costs as well as operating and membrane replacement costs as a present worth cost over a 20-year life cycle period. Pall presented the most cost-effective proposal on an initial cost basis as well as on a present worth basis. City Staff, including water treatment personnel, are very satisfied with the Pall system and believe it represents the more cost effective and efficient membrane system for the City. The initial capital cost for 10 MGD of membranes and related equipment and secondary clarifiers is \$4.744 million. Funds are proposed to be appropriated upon second reading of the ordinance on May 8, 2000, and a contract will be signed at that time.

While the purchase of the membrane filtration equipment was the subject of the proposals, other related capital and annual operating costs were considered in their evaluation. These proposal costs, presented as present worth values, are summarized as follows:

ITEM	PALL CORPORATION	ZENON MANUFACTURING
Initial Cost of Membrane Building	\$921,366	\$1,373,731
Membrane Filtration Equipment	\$4,744,000	\$4,973,841
Operating Costs	\$851,847	\$1,237,763
Membrane Replacement	<u>\$1,062,300</u>	<u>\$501,220</u>
Total Present Worth	\$7,579,513	\$8,086,555

Staff Recommendation

Authorize the City Manager to sign an agreement with Pall Corp, subject to City Council appropriating the funds, for the purchase of membrane treatment equipment in the amount of \$4,744,000 and charge this expense to the appropriation project account in the Utility Fund.

Alternatives

If the City does not award the bid to Pall Corporation, the following alternatives are available:

1. Delay the award of the membrane bid and procure the membranes as part of the bid for a general construction contract. This alternative could result in a project delay that would jeopardize the City's goal of completion of the Water Treatment Plant by summer 2002, due to the lead-time required to manufacture the membranes. The guaranteed price from Pall may also increase and a general contractor will likely add 10% to the cost.
2. Select Zenon Manufacturing as the membrane supplier. Zenon had higher initial and life cycle costs and the extensive Semper Water Treatment Plant pilot testing led to the recommendation to select Pall.

Background

The City of Westminster Treated Water Master Plan previously identified the need for a second Water Treatment Facility to meet the City's future potable water supply requirements. The new Water Treatment Facility will also replace the decommissioned 8 million gallons a day (MGD) England Water Treatment Facility. It will also provide enough winter production capacity to allow the Semper Water Treatment Facility to be shut down for large scope maintenance projects during the low consumption winter months.

In August 1999, the Semper Water Treatment Facility Staff commenced pilot testing of low-pressure membrane systems. The units were tested to ascertain their ability to meet the City's water quality objectives and to develop a thorough understanding of the operational complexities and costs associated with each unit. The pilot study included complex, chemical analyses on raw and finished water, monitoring the performance of the two membrane systems, and coordinating the study with the pilot vendors.

After extensive research and pilot testing that lasted from August 1999 through February 2000, Staff recommended that the new Water Treatment Facility be equipped with membrane filters. Membrane filtration is a viable, state-of-the-art technology for treating the City's water supply. Due to the small pore size of the hollow fiber membranes, chlorine resistant pathogenic cysts such as *Giardia* and *Cryptosporidium* are filtered from the water. Membrane filtration followed by ultraviolet (UV) light or chlorine disinfection provides a barrier to cysts that is superior to the conventional treatment employed at the City's Semper Water Treatment Facility.

City Staff, with input from CH2M Hill, have evaluated membrane treatment technology alongside conventional treatment technology and determined that their capital costs are comparable for the size facility being planned. However, other significant differences were identified that support the selection of membrane treatment. The membrane equipment requires less space resulting in a smaller building and can be easily expanded due to modular construction. The smaller footprint of a membrane plant will also accommodate an architectural façade that can be designed to blend into any surrounding environment. Annual chemical usage and sludge disposal costs will be less. Operationally, the membrane filters require less maintenance and attention and are well suited to remote, unattended operation.

Membrane filtration for municipal potable water production is a proven, state-of-the-art technology which has the potential to out-perform conventional treatment technologies at a comparable cost, and is better suited to meeting anticipated regulatory requirements for *Giardia* and *Cryptosporidium* removals and added barrier protection. In addition, this type of filtration system is appropriate for cost-effective, automated remote control plants, which is planned for this facility.

The Preliminary Design by CH2M Hill Engineers of the new Water Treatment Facility (WTF) is nearing completion. Construction of the first phase of this new Water Treatment Facility will replace the 8 million gallons per day (MGD) of treatment capacity lost with the retirement of the England Water Treatment Facility. The ultimate capacity of the new Water Treatment Facility will be 12-15 MGD. Construction of 10 MGD will allow the Semper Water Treatment Facility to be taken off-line during the winter months for process upgrades and building renovation. The capacity of the first phase will be 10 MGD. The preliminary design cost estimate for a 10 MGD treatment is \$18.5 million, not including construction management and inspection. The membrane system and related equipment will comprise approximately one-fourth of the total cost of the project.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Recommendation of Award letter from CH2M Hill



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: NationTax Online Sales Tax Return Filing Authorization

Prepared by: David Puntteney, Information Technology Director
Barb Dolan, Sales Tax Manager

Introduction

City Council action is requested to authorize the City Manager to sign a contract with NationTax Online to provide web-based on-line sales tax return filing for vendors submitting sales and use tax for the City of Westminster.

Summary

In an ongoing effort to enhance and expand services through the use of technology, the City implemented Web-based sales tax return filing (FAST Filing) for businesses in 1999. This year, phase two of this project will be completed to provide for electronic remittance of sales tax payments. Staff research concluded that no other home-rule City in the State was offering on-line sales tax return filing. This on-line service is provided to licensed businesses free of charge.

Since last fall, Staff has been working with the Colorado Municipal League (CML) on a project that would make electronic sales tax filing available on a Statewide basis through a company named NationTax Online (NTO). NTO intends to offer a “one-stop shop” for electronic filing and payment of business taxes via the Internet, and to provide businesses with the ability to submit returns and payments for multiple jurisdictions from one Web site. Colorado’s multi-jurisdictional vendors have complained for years about the need to send separate paper forms and checks to each jurisdiction in which they are collecting tax. If successful, the services offered by NTO will eliminate that need. NTO’s service would be a benefit for Westminster vendors with multiple business locations in the state. Information collected by NTO will be electronically submitted to the appropriate City for updating internal systems. NTO has assured organizations that information will be held confidential.

NTO will charge each taxpayer using the service a yet to be determined fee for each return filed. There is no initial or ongoing financial obligation for the City to participate. CML is emphasizing that participation by all 49 locally collecting home-rule municipalities is necessary to maximize the benefit of NTO’s services for multi-jurisdictional businesses.

Many businesses located in Westminster pay local sales and use tax to Westminster only, and therefore may not benefit significantly from using NTO’s service, and in fact, would incur a fee to use their service. Therefore, while Staff recognizes the benefit some vendors would gain from using NTO’s service, and plans to sign a mutually acceptable contract with NTO, the City will continue to offer and enhance the current no-fee online filing services available on the City’s Web site.

The City does have the alternative not to sign a contract with NationTax Online, however, staff finds no disadvantages in making this optional service available to Westminster vendors.

Recommendation

Authorize the City Manager to sign a contract with NationTax Online to provide web-based on-line sales and use tax return filing for Westminster Businesses at no cost to the City.

Background Information

In fourth quarter 1998, Information Technology Department and Sales Tax Division Staff met to discuss the benefit of using the Internet and the City's Web site to expand services to businesses. During the meeting, it was agreed that Westminster should develop and offer online sales tax return filing capabilities on the City's Web site. This creative use of Internet technology to enhance service to businesses was unique. Staff found no other City in Colorado offering such a service on their Web sites.

In April 1999, the Information Technology Department completed development of the applications needed to implement the City's "FAST Filing" sales tax return system. This collaborative effort between the Information Technology Department and Sales Tax Division resulted in a system that provides the following benefits:

- Provides online help for each line of the "electronic" sales tax return form;
- Provides automatic calculations on calculated fields, eliminating potential mathematical errors; and
- Enables the business to electronically "submit" the return for processing. This eliminates the need for Sales Tax staff to perform data entry, since information is automatically transferred from the Web page to the City's sales tax system.

In the next phase of this project, scheduled for this year, enhancements will be added to provide the ability for businesses to authorize and remit electronic payments, eliminating the need to send a check to the City after completing an on-line return.

Since April 1999, 247 users have accessed the Sales Tax return form for the purpose of using the automatic calculations or on-line help capabilities. A total of 149 sales tax returns have been submitted via the City's Web page. Staff expects the number of returns submitted electronically will continue to increase, just as use of the City's page overall has increased from less than 2,000 users per month in 1996 to over 15,000 users last month.

This innovative use of the Internet to enhance government services was recognized with innovation awards from the Colorado Government Finance Officer's Association in November 1999 and from the Colorado Association of Municipal Tax Auditors in February 2000. Staff has also demonstrated the service in presentations to both organizations and to other interested cities.

In 1999, Sales Tax Staff attended a meeting hosted by CML and viewed a demonstration from NationTax Online. This company plans to provide businesses in Colorado with the ability to complete sales tax returns and remit sales and use taxes for multiple jurisdictions through a single site on the Internet. Funds are automatically transferred, and the vendor would not be required to complete and submit separate paper forms and checks for multiple jurisdictions. Colorado's multi-jurisdictional vendors have for years complained about this requirement. NTO currently offers similar service to businesses operating in Alabama, numerous other states and the IRS.

In March 2000, CML requested Westminster, as well as 48 other locally collecting home-rule municipalities, participate in offering NationTax Online service. Participation by all home-rule municipalities would maximize the benefit for businesses choosing to use the service, in that they could submit all returns and payments electronically. Without full participation, some businesses may still be required to submit paper forms and checks to some municipalities.

There are several differences between the services proposed by NationTax and the City's current "FAST Filing" system on the City's Web site:

- ❑ NTO accepts returns for multiple jurisdictions – FAST Filing accepts only Westminster Sales Tax Returns;
- ❑ NTO provides for electronic payments – FAST Filing does not yet, but will later this year; and
- ❑ NTO charges the vendor directly for providing the service – FAST Filing is a free service for businesses.

While the City is desirous to enter into a mutually acceptable contract with NTO, it will continue to offer and enhance the City's "FAST Filing" system on the City's Web page for those businesses who do not need to file for multiple jurisdictions.

Respectfully submitted,

William M. Christopher
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Councillor's Bill No. 36 re Board and Commission Definition for Attendance

Prepared by: Michele Kelley, City Clerk

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading to establish a definition for excused and unexcused absences pertaining to all Board and Commission meetings.

Summary

The City Attorney's Office has prepared the attached Councillor's Bill to add a definition for attendance at meetings for all the Boards and Commission. This Councillor's Bill defines excused and unexcused absences and takes the place of adding this language in each Board/Commission ordinance.

Staff Recommendation

Pass Councillor's Bill No. 36 on first reading adding a definition for attendance pertaining to excused and unexcused absences for all Board and Commission members.

Background

City Council directed the Council liaisons to meet with their respective Boards and Commissions to review the following two items. Since then, each Councillor has been working with their respective Boards and Commissions to discuss:

1. reviewing their powers and duties included in their enabling ordinance which established the Board or Commission to determine if they need to be updated and modified (i.e., what they do); and
2. updating the bylaws to include an attendance policy and definition of excused/unexcused absences.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE II CHAPTER 1 THE WESTMINSTER MUNICIPAL CODE REGARDING BOARDS AND COMMISSIONS – GENERAL PROVISIONS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title 2 Chapter 1 of the Westminster Municipal Code is hereby amended by the addition of the following:

CHAPTER 1

BOARDS AND COMMISSIONS - GENERAL PROVISIONS

2-1-1: APPOINTMENT OF MEMBERS; TERMS

2-1-2: CHAIRPERSON AND VICE CHAIR OF BOARD OR COMMISSION

2-1-3: ROLE OF ALTERNATES

2-1-4: VACANCIES OF OFFICE

2-1-5: REMOVAL OF MEMBERS

2-1-6: CONDUCT OF MEETINGS

2-1-7: LEGAL ADVISOR

2-1-8: ATTENDANCE

2-1-1: APPOINTMENT OF MEMBERS; TERMS: (2068 2402)

(A) To be eligible for appointment to a Board or Commission, a person shall have been a resident of the City for at least one year immediately prior to the date of appointment and shall be a registered elector of the City on that date and throughout the appointee's tenure in office.

(B) No person appointed to a Board or Commission shall hold other City of Westminster office either appointive or elective during his term of service on the Board or Commission.

(C) Each regular member and alternate member shall be appointed by majority vote of City Council for a term of two (2) years. All terms shall expire on December 31, unless City Council has failed to appoint or reappoint a member, in which case the member's term shall be extended until Council action. Any vacancy which occurs prior to the end of a term shall be filled by the City Council within forty-five (45) days after such vacancy occurs, and the appointee shall complete the term of the member or alternate member whose term became vacant.

(D) Each member and alternate member shall serve without compensation.

(E) Terms shall be staggered as follows:

1. For five (5) member Boards or Commissions, three (3) members shall have terms that expire on even-numbered years and two (2) members shall have terms that expire on odd-numbered years.

2. For seven (7) member Boards or Commissions, four (4) members shall have terms that expire on even-numbered years and three (3) members shall have terms that expire on odd-numbered years.

3. Alternates shall have terms that expire on odd-numbered years.

This section shall not apply to the Election Commission.

(F) Member Emeritus:

1. Whereas, certain members of City Boards and Commissions have provided long-term, dedicated service to the community and its residents; and

2. Whereas, the City would like to honor these members for their long-term service and commitment to high standards of service, to acknowledge the expertise of these members, and to provide an opportunity to draw upon such members' expertise after the member's retirement from a Board or Commission.

3. Now therefore, the City Council hereby creates the office of member emeritus of the various Boards and Commissions.

4. City Council shall designate a member of a Board or Commission a member emeritus at such times and for such service as Council deems appropriate.

5. A member emeritus is welcome to continue attendance at a Board or Commission meeting, and the Chair and members of the Board or Commission may request the opinion or information of the member emeritus during the portion of the Board or Commission meeting during which members of the public customarily speak. The member emeritus will not be a voting member, or an alternate member, of the Board or Commission.

2-1-2: CHAIRPERSON AND VICE CHAIR OF BOARD OR COMMISSION: (2068 2402) Biennially, at its first regular meeting of an odd-numbered calendar year, each Board or Commission shall elect one of its members to be Chairperson and one of its members to be vice chair, each for a term of two years. In the event either position becomes vacant before the end of the term, the Board or Commission shall elect a regular member to serve as acting Chairperson or Vice Chair until the end of the term. No member shall be eligible for election as Chairperson or Vice Chair unless that member has previously served at least one year as a member of the Board or Commission' provided, however, that if no member is so eligible, the Board or Commission shall elect the member it deems best qualified. This section shall not apply to the Election Commission.

2-1-3: ROLE OF ALTERNATES: (2068 2402) The alternate members of the Board or Commission shall endeavor, to follow the same rules of conduct as regular members. The alternate members of the Board or Commission shall attend the meetings of the Board or Commission and shall have all of the rights and powers of the regular members; except that, the alternate member shall not vote or otherwise participate in a matter before the Board or Commission unless fewer than all regular members are in attendance at the meeting. If the alternate member attends a meeting in a voting capacity, and the public hearing on a matter is continued, the alternate member shall vote on the matter unless the regular member whose place was taken by the alternate listens to the tape of the prior public hearing, reviews the exhibits, and has become familiar with the matter before the Board or Commission. If a different regular member is absent at the hearing to which the public meeting has been continued, the alternate may vote on the matter in the absent member's place. The alternate may not vote on a matter in which the public hearing has been continued unless the alternate has listened to the tape of the prior public hearing, reviews the exhibits, and has become familiar with the matter before the Board or Commission.

2-1-4: VACANCIES OF OFFICE: (2068) The office of any member of any Board or Commission shall be declared vacant by the City Council:

(A) For any reason specified by Statute or by City Charter as creating a vacancy in office;

(B) If the officer shall be found guilty by a competent tribunal of any act constituting misconduct in office under the provisions of the City Charter.

(C) If such officer shall miss four (4) consecutive regular meeting of such Board or Commission, or twenty-five (25) percent of such meetings in any fiscal year of the City, unless such absences shall be excused by such Board or Commission at the time of each absence.

(D) If the officer is removed from office by the City Council in accordance with the provisions of Section 2-1-5.

2-1-5: REMOVAL OF MEMBERS: (2068) Members of any Board or Commission may be removed from office for any reason specified by Statute for removal of City officers or for any act declared by the City Charter to constitute misconduct in office or to create a vacancy. Alternate members may be removed from office without cause.

2-1-6: CONDUCT OF MEETINGS: (2068 2734)

(A) The Boards and Commissions of the City shall conduct closed executive sessions pursuant to the standards adopted in 1-11-3(C), (D), (E), and (F) of this Code, and only for the purposes stated therein. No final action may be taken in a closed executive session.

(B) Notice to the public of the meetings of Boards and Commissions shall be given as may be required by the individual by-laws adopted by each Board or Commission.

(C) Any Board or Commission which conducts a public hearing shall record such hearing stenographically or electronically. The Board or Commission may choose stenographic or electronic recording at its sole discretion. A written transcription of the record shall be made upon the request of any person and payment in advance of the estimated cost of production of the transcript. The action of a Board or Commission shall not be invalidated by any mechanical or other malfunction in the recording process.

(D) No member of a Board or Commission shall vote on any question in which he has a conflict of interest, other than the common public interest. On all other questions put to vote, each member who is present shall vote either "yes" or "no", unless excused by the unanimous consent of the remaining members present. Application to be excused from voting must be made before the vote is called by the presiding officer. The member shall briefly state the reason for his request to be excused and the decision thereon shall be made without debate.

2-1-7: LEGAL ADVISOR: (2068) Any Board or Commission, upon request, may be represented by the City Attorney's office.

2-1-8: ATTENDANCE

(A) DEFINITION: FOR THE PURPOSES OF CITY CHARTER SECTION 5.3 CONCERNING VACANCIES IN BOARD AND COMMISSION OFFICES, WHETHER AN ABSENCE IS "EXCUSED" OR "UNEXCUSED" SHALL BE DETERMINED AS FOLLOWS:

EXCUSED ABSENCE - AN ABSENCE MAY BE EXCUSED IN INSTANCES OF FAMILY EMERGENCY, WORK-RELATED COMMITMENTS, MEDICAL NECESSITY OR VACATION OUTSIDE OF THE DENVER METROPOLITAN AREA INVOLVING THE BOARD/COMMISSION MEMBER.

UNEXCUSED ABSENCE - AN ABSENCE WILL BE DEFINED AS "UNEXCUSED" WHEN NO PRIOR NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIAISON. AN ABSENCE CAN ALSO BE DEEMED UNEXCUSED WHEN NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIAISON, BUT THE REASON FOR ABSENCE DOES NOT MEET THE REQUIREMENTS OF AN EXCUSED ABSENCE. AN ABSENCE IS UNEXCUSED WHEN IT IS NOT RELATED TO THE INSTANCES OF FAMILY EMERGENCY, WORK-RELATED COMMITMENTS, MEDICAL NECESSITY OR VACATION OUTSIDE OF THE DENVER METROPOLITAN AREA INVOLVING THE BOARD/COMMISSION MEMBER.

(B) IN ORDER FOR AN ABSENCE FROM A MEETING TO BE TERMED "EXCUSED", THE MEMBER SHALL PROVIDE NOTIFICATION TO THE CHAIR OR STAFF LIAISON, BY TELEPHONE OR IN WRITTEN FORM, AT LEAST TWENTY-FOUR HOURS IN ADVANCE OF ANY REGULAR OR SPECIAL MEETING. SUCH NOTIFICATION MAY BE EXCUSED BY THE CHAIR, ONLY IN EXTENUATING

CIRCUMSTANCES, WHICH SHALL BE CONSIDERED ON A CASE BY CASE BASIS. THE MEMBER WILL BE REQUIRED TO PROVIDE A REASON FOR THE REQUESTED ABSENCE, WHICH WILL BE REVIEWED BY THE CHAIR AND DECLARED AT THE MEETING AS A EXCUSED OR UNEXCUSED ABSENCE BY THE CHAIR. UPON MOTION BY ANY UNAFFECTED MEMBER OF THE BOARD OR COMMISSION, AT THE SAME OR NEXT FOLLOWING MEETING, THE DECISION OF THE CHAIR AS TO WHETHER THE ABSENCE IS EXCUSED OR UNEXCUSED, MAY BE REVIEWED AND EITHER SUSTAINED OR OVERTURNED BY A VOTE OF THE ENTIRE BOARD OR COMMISSION. A RECORD OF THIS DECISION SHALL BE MADE IN THE MINUTES OF THE MEETING.

Section 2. This ordinance shall take effect upon its passage after the second reading. 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 24TH day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this th day of May, 2000.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Second Reading of Councillor's Bill No. 30 re Changes to the Planning Commission Ordinance

Prepared by: Brian Bosshardt, Management Assistant

Introduction

City Council action is requested to pass the attached Councillor's Bill on second reading as amended regarding changes to the Planning and Zoning Commission.

Summary

On April 10th, City Council passed Councillor's Bill No 30 which amends Title 2 Chapter 2 of the City Code relating to rules and regulations, acting Chair, quorum and procedures and attendance for the Planning And Zoning Commission.

Staff Recommendation

Pass Councillor's Bill No. 30 on second reading as amended regarding the Planning And Zoning Commission.

Background

Since first reading, the City Attorney's office has suggested that the attendance definition be included within Title 2, Chapter 1, which would apply to all Boards and Commissions. Therefore, it is unnecessary to have this policy stated within each Board and Commission ordinance. The amendment to this Councillor's Bill only deleted Section 2-2-8 Attendance and the definition of excused and unexcused absences.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **30**

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE II CHAPTER TWO OF THE WESTMINSTER MUNICIPAL CODE RELATING TO THE PLANNING AND ZONING COMMISSION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title 2 Chapter 2 of the Westminster Municipal Code is hereby amended by the addition of the following:

CHAPTER 2 - PLANNING AND ZONING COMMISSION

2-2-1: CREATION

2-2-2: POWERS AND DUTIES

2-2-3: POLICY FROM COUNCIL

2-2-4: RULES AND REGULATIONS

2-2-5: REFERRALS TO PLANNING COMMISSION

2-2-6: COMMISSION RECOMMENDATIONS

2-2-7: ACTING CHAIRPERSON, QUORUM, PROCEDURE

~~**2-2-8: ATTENDANCE**~~

2-2-1: CREATION: There is hereby created a Planning and Zoning Commission hereinafter referred to as "THE PLANNING COMMISSION" consisting of seven (7) regular members and two (2) alternate members.

2-2-2: POWERS AND DUTIES: The powers and duties of the Planning Commission shall include, but not be limited to, the following:

(A) The review and approval of a planning document regarding the future growth and development of the City considering the following, as applicable: population distribution and growth; local resources and finances; circulation and transportation; existing and future land usage; park, recreation; location and capacity of public and private utilities; subdivision regulations; and zoning regulations for the control of the height, area, bulk, location and use of buildings, structures and premises and the minimum areas, width and depth of lots; existing and proposed county and regional comprehensive plans; and any other factors specified by City Council.

(B) The review of proposed development plans within the boundaries of the City to determine their compliance with applicable ordinances, and resolutions, the City's planning document and their conformance with good planning practices. Preliminary Plats, Official Development Plans and Amended Preliminary Plats and Official Development Plans not approved administratively by the City Manager shall be decided by the Planning Commission in accordance with Title XI, Chapter 5 Section 13 of this Code.

(C) The review of all proposed annexations to the City to determine their compliance with applicable ordinances, resolutions, plans and policies of the City, and their conformance with good planning practices, and the subsequent submittal of the annexation proposals to the City Council together with the Planning Commission's recommendations for approval or rejection and any recommendations regarding the terms of an annexation agreement between the petitioners and the City.

(D) Review of all zoning and rezoning requests to determine compliance with existing ordinances, resolutions, plans and policies of the City and their conformance with good planning practices.

2-2-3: POLICY FROM COUNCIL: The City Council shall establish the policies to be followed by the Planning Commission regarding developments, the growth management plan, annexation, zoning, public hearings, and similar matters affecting the Commission, and shall from time to time review and reaffirm or revise said policies.

2-2-4: RULES AND REGULATIONS:

(A) The Planning Commission shall meet at least once each month if there are matters pending and such other times as it may deem necessary. EACH MEMBER OF THE BOARD SHALL BE REQUIRED TO VOTE ON EACH ITEM BEFORE THE BOARD UNLESS A CONFLICT OF INTEREST HAS BEEN DETERMINED TO EXIST. A MEMBER OF THE BOARD MAY VOTE ON ITEMS WHERE THEY WERE ABSENT, IF THE HEARING IS CONTINUED, PROVIDED THEY HAVE REVIEWED THE ELECTRONIC RECORDING OF THE PREVIOUS TESTIMONY PRIOR TO THE CONTINUATION OF THE HEARING. IF THE RECORDING IS NOT REVIEWED THEN THIS EFFECTED MEMBER IS TO BE EXCUSED FROM VOTING ON THE MATTER DUE TO HAVING NOT HEARD THE ENTIRE TESTIMONY PRESENTATION.

MEMBERS MAY BE EXCUSED FROM VOTING ON PREVIOUS MEETINGS MINUTES IF THEY WERE ABSENT FROM THAT RESPECTIVE MEETING. BEING EXCUSED FROM VOTING MUST BE RECOGNIZED BY THE CHAIRPERSON AND DULY NOTED IN THE MINUTES OF THE PRESENT MEETING.

(B) The Commission shall make and adopt its own bylaws, subject to the approval of the City Council, which shall include, but not be limited to, the following procedures:

1. The election of officers and establishment of the duties of such officers.
2. The scheduling and conduct of regular and special meetings and public hearings.
3. The submittal of applications and petitions for annexations, development plan approvals, amendments to development plans, zonings and rezonings, and any matter within the jurisdiction of the Planning Commission.
4. The exercise of any of the duties of the Planning Commission set forth in this Code.

2-2-5: REFERRALS TO PLANNING COMMISSION: (319 1741 1970 2068) All applications and petitions for annexations, subdivision development plan approvals, amendments to preliminary and official development plans, zonings and rezonings, plat approvals, and such other matters as the City Council or City Manager may deem pertinent shall be referred to the Planning Commission for its review and action in accordance with the provisions of Chapter 5 Section 13 of Title XI of this Code.

2-2-6: COMMISSION RECOMMENDATIONS: (319 1741 2068)

(A) When the Planning Commission is required to submit recommendations to the Council such recommendations shall be substantially in one of the following forms:

1. Approval;
2. Approval subject to specified conditions;
3. Rejection because of specified findings.

Each recommendation shall be accompanied by findings of fact sufficient to support the recommendation.

2-2-7: ACTING CHAIRPERSON; QUORUM; PROCEDURE: IN THE ABSENCE OF THE ELECTED CHAIRPERSON, THE VICE-CHAIRPERSON SHALL ASSUME THE DUTIES OF THE CHAIRPERSON FOR THAT RESPECTIVE MEETING.. A QUORUM SHALL CONSIST OF FOUR (4) MEMBERS, AND A DECISION OF A MAJORITY OF THE MEMBERS PRESENT SHALL CONTROL.

ANY ABSENT MEMBER MAY JOIN IN A PENDING DECISION OF THE BOARD SUBJECT TO SECTION 2-1-3. ALL PUBLIC HEARINGS SHALL AT A MINIMUM BE RECORDED ELECTRONICALLY, OR AS DEEMED NECESSARY BY THE CHAIRPERSON, MAY BE STENOGRAPHICALLY RECORDED BY A COURT REPORTER ENGAGED BY THE CITY AND PAID OUT OF FEES PAID BY THE APPLICANT

~~2-2-8: ATTENDANCE~~

~~(A) DEFINITION: FOR THE PURPOSES OF CITY CHARTER SECTION 5.3 CONCERNING VACANCIES IN BOARD AND COMMISSION OFFICES, WHETHER AN ABSENCE IS "EXCUSED" OR "UNEXCUSED" SHALL BE DETERMINED AS FOLLOWS:~~

~~EXCUSED ABSENCE AN ABSENCE MAY BE EXCUSED IN INSTANCES OF FAMILY EMERGENCY, WORK RELATED COMMITMENTS OR MEDICAL NECESSITY.~~

~~UNEXCUSED ABSENCE AN ABSENCE WILL BE DEFINED AS "UNEXCUSED" WHEN NO PRIOR NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIAISON. AN ABSENCE CAN ALSO BE DEEMED UNEXCUSED WHEN NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIAISON, BUT THE REASON FOR ABSENCE DOES NOT MEET THE REQUIREMENTS OF AN EXCUSED ABSENCE. AN ABSENCE IS UNEXCUSED WHEN IT IS NOT RELATED TO THE INSTANCES OF FAMILY EMERGENCY, WORK RELATED COMMITMENTS OR, MEDICAL NECESSITY.~~

~~(B) IN ORDER FOR AN ABSENCE FROM A MEETING TO BE TERMED "EXCUSED", THE MEMBER SHALL PROVIDE NOTIFICATION TO THE CHAIR OR STAFF LIAISON, BY TELEPHONE OR IN WRITTEN FORM, AT LEAST TWENTY FOUR HOURS IN ADVANCE OF ANY REGULAR OR SPECIAL MEETING. SUCH NOTIFICATION MAY BE EXCUSED BY THE CHAIR, ONLY IN EXTENUATING CIRCUMSTANCES, WHICH SHALL BE CONSIDERED ON A CASE BY CASE BASIS. THE MEMBER WILL BE REQUIRED TO PROVIDE A REASON FOR THE REQUESTED ABSENCE, WHICH WILL BE REVIEWED BY THE CHAIR AND DECLARED AT THE MEETING AS A EXCUSED OR UNEXCUSED ABSENCE BY THE CHAIR. UPON MOTION BY ANY UNAFFECTED MEMBER OF THE BOARD OR COMMISSION, AT THE SAME OR NEXT FOLLOWING MEETING, THE DECISION OF THE CHAIR AS TO WHETHER THE ABSENCE IS EXCUSED OR UNEXCUSED, MAY BE REVIEWED AND EITHER SUSTAINED OR OVERTURNED BY A VOTE OF THE ENTIRE BOARD OR COMMISSION. A RECORD OF THIS DECISION SHALL BE MADE IN THE MINUTES OF THE MEETING.~~

Section 2. This ordinance shall take effect upon its passage after the second reading. 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 10th day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24TH day of April, 2000 as amended.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000

Subject: Second Reading of Councillor's Bill No. 31 re Changes to the Special Permit and License Board Ordinance

Prepared by: Michele Kelley, City Clerk

Introduction

City Council action is requested to pass the attached Councillor's Bill on second reading as amended regarding changes to the Special Permit and License Board.

Summary

On April 10th, City Council passed Councillor's Bill No 31 which amends Title 2 Chapter 5 of the City Code relating to Acting Chairperson, Quorum, Procedure; Meetings and Attendance provisions of the Special Permit and License Board.

Staff Recommendation

Pass Councillor's Bill No. 31 on second reading as amended regarding the Special Permit and License Board.

Background

Since first reading, the City Attorney's office has suggested that the attendance definition be included within Title 2, Chapter 1 to apply to all Boards and Commission. Therefore, it is unnecessary to have this policy stated within each Board and Commission ordinance. The amendment to this Councillor's Bill only deletes Section 2-5-6 Attendance and the definition of excused and unexcused absences.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. 31

SERIES OF 2000

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE II CHAPTER FIVE OF THE WESTMINSTER MUNICIPAL CODE REGARDING THE SPECIAL PERMIT AND LICENSE BOARD

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title 2 Chapter 5 of the Westminster Municipal Code is hereby amended by the addition of the following:

CHAPTER 5 SPECIAL PERMIT AND LICENSE BOARD

2-5-1: CREATION

2-5-2: POWERS AND DUTIES

2-5-3: BYLAWS

2-5-4: ACTING CHAIRPERSON; QUORUM; PROCEDURE

2-5-5: MEETINGS

2-5-6: ATTENDANCE

2-5-1: CREATION: There is hereby created a Special Permit and License Board, hereinafter referred to as "the Board," consisting of seven (7) regular members and one (1) alternate member.

2-5-2: POWERS AND DUTIES:

(A) The SPECIAL PERMIT AND LICENSE Board ACTING AS ~~shall have~~ the LOCAL LICENSING authority PURSUANT TO SECTION 5-14-2, SHALL ~~to~~ conduct public hearings, ~~hear evidence, and present written findings of fact and recommend to the City Council the issuance or denial of a Special Permit or License pursuant to this Chapter, applicable State statutes, City policy, and the following City ordinances:~~ APPROVE OR DENY APPLICATIONS FOR LICENSES, RENEW OR DENY RENEWAL OF LICENSES, SUSPEND OR REVOKE LICENSES, AND CARRY OUT ALL OTHER FUNCTIONS AUTHORIZED BY CHAPTER 14, OF TITLE V OF THIS CODE AND COLORADO BEER LIQUOR AND SPECIAL EVENT CODES

(B) The Special Permit and License Board, ~~acting as the Local Licensing Authority, pursuant to Section 5-14-2,~~ shall conduct public hearings, approve or deny applications for licenses, renew or deny renewal of licenses, AND CANCEL, suspend or revoke licenses THE FOLLOWING LICENSES. ~~and carry out all other functions authorized by Chapter 14 of Title V of this Code and the Colorado Beer and License Codes.~~ ALL DECISIONS OF THE BOARD ON THESE LICENSES ARE FINAL, SUBJECT ONLY TO APPEAL TO A COURT OF COMPETENT JURISDICTION.

1. Massage Parlor Licenses, pursuant to Chapter 15 of Title V of this Code;
2. Escort Service Licenses, pursuant to Chapter 19 of Title V of this Code;
3. Special Use Permits, pursuant to Section 8, Chapter 4 of Title XI of this Code.
4. AMUSEMENT CENTER LICENSES, PURSUANT TO CHAPTER 9 OF TITLE V OF THIS CODE; AND
5. DANCE HALL AND CABARET LICENSES, PURSUANT TO CHAPTER 16 OF TITLE V OF THIS CODE.
6. BUSINESS LICENSE UNDER REVIEW FOR DENIAL REVOCATION, OR SUSPENSION SHALL BE REVIEWED IN A PUBLIC MEETING CONDUCTED BY THE SPECIAL PERMIT AND LICENSE BOARD.

~~(C) The Special Permit and License Board shall conduct public hearings, approve or deny applications for licenses, renew or deny renewal of licenses, and cancel, suspend or revoke the following licenses. All decisions of the Board on these licenses are final, subject only to appeal to a court of competent jurisdiction. (2229)~~

~~1. Amusement Center Licenses, pursuant to Chapter 9 of Title V of this Code; and~~

~~2. Dance Hall and cabaret licenses, pursuant to Chapter 16 of Title V of this code.~~

2-5-3: BYLAWS: (908 2068 2229) The Board shall make and adopt by resolution its own bylaws, in conformity with applicable statutes and ordinances. BYLAWS SHALL BE REVIEWED ANNUALLY FOR NECESSARY UPDATING.

2-5-4: ACTING CHAIRPERSON; QUORUM; PROCEDURE: IN THE ABSENCE OF THE ELECTED CHAIRPERSON THE VICE CHAIRPERSON SHALL ASSUME THE DUTIES OF THE CHAIRPERSON FOR THAT RESPECTIVE MEETING. ~~The Chairperson may designate a member of the Board to assume his duties in his absence.~~ A quorum shall consist of four (4) members, and a decision of a majority of the members present shall control. Any absent member may join in a pending decision of the Board subject to Section 2-1-3. All public hearings shall AT A MINIMUM be recorded electronically, or AS DEEMED NECESSARY BY THE CHAIRPERSON MAY BE stenographically RECORDED by a Court Reporter engaged by the City and paid out of fees paid by the applicant.

2-5-5: MEETINGS: The Board shall meet at least twice a month unless there is no business to conduct. EACH MEMBER OF THE BOARD SHALL BE REQUIRED TO VOTE ON EACH ITEM BEFORE THE BOARD UNLESS A CONFLICT OF INTEREST HAS BEEN DETERMINED TO EXIST. A MEMBER OF THE BOARD MAY VOTE ON ITEMS WHERE THEY WERE ABSENT, IF THE HEARING IS CONTINUED, PROVIDED THEY HAVE REVIEWED THE ELECTRONIC RECORDING OF THE PREVIOUS TESTIMONY PRIOR TO THE CONTINUATION OF THE HEARING. IF THE RECORDING IS NOT REVIEWED THEN THIS EFFECTED MEMBER IS TO BE EXCUSED FROM VOTING ON THE MATTER DUE TO HAVING NOT HEARD THE ENTIRE TESTIMONY PRESENTATION.

MEMBERS MAY BE EXCUSED FROM VOTING ON PREVIOUS MEETINGS MINUTES IF THEY WERE ABSENT FROM THAT RESPECTIVE MEETING. BEING EXCUSED FROM VOTING MUST BE RECOGNIZED BY THE CHARIPERSON AND DULY NOTED IN THE MINUTES OF THE PRESENT MEETING.

~~2-5-6: ATTENDANCE~~

~~(A) DEFINITION: FOR THE PURPOSES OF CITY CHARTER SECTION 5.3 CONCERNING VACANCIES IN BOARD AND COMMISSION OFFICES, WHETHER AN ABSENCE IS "EXCUSED" OR "UNEXCUSED" SHALL BE DETERMINED AS FOLLOWS:~~

~~**EXCUSED ABSENCE**—AN ABSENCE MAY BE EXCUSED IN INSTANCES OF FAMILY EMERGENCY, WORK-RELATED COMMITMENTS OR MEDICAL NECESSITY~~

~~**UNEXCUSED ABSENCE**—AN ABSENCE WILL BE DEFINED AS "UNEXCUSED" WHEN NO PRIOR NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIASION. AN ABSENCE CAN ALSO BE DEEMED UNEXCUSED WHEN NOTIFICATION IS PROVIDED TO THE CHAIR OR STAFF LIASION, BUT THE REASON FOR ABSENCE DOES NOT MEET THE REQUIREMENTS OF AN EXCUSED ABSENCE. AN ABSENCE IS UNEXCUSED WHEN IT IS NOT RELATED TO THE INSTANCES OF FAMILY EMERGENCY, WORK-RELATED COMMITMENTS OR, MEDICAL NECESSITY~~

~~(B) IN ORDER FOR AN ABSENCE FROM A MEETING TO BE TERMED "EXCUSED", THE MEMBER SHALL PROVIDE NOTIFICATION TO THE CHAIR OR STAFF LIAISON, BY TELEPHONE OR IN WRITTEN FORM, AT LEAST TWENTY FOUR HOURS IN ADVANCE OF ANY REGULAR OR SPECIAL MEETING. SUCH NOTIFICATION MAY BE EXCUSED BY THE CHAIR, ONLY IN EXTENUATING CIRCUMSTANCES, WHICH SHALL BE CONSIDERED ON A CASE BY CASE BASIS. THE MEMBER WILL BE REQUIRED TO PROVIDE A REASON FOR THE REQUESTED ABSENCE, WHICH WILL BE REVIEWED BY THE CHAIR AND DECLARED AT THE MEETING AS A EXCUSED OR UNEXCUSED ABSENCE BY THE CHAIR. UPON MOTION BY ANY UNAFFECTED MEMBER OF THE BOARD OR~~

~~COMMISSION, AT THE SAME OR NEXT FOLLOWING MEETING, THE DECISION OF THE CHAIR AS TO WHETHER THE ABSENCE IS EXCUSED OR UNEXCUSED, MAY BE REVIEWED AND EITHER SUSTAINED OR OVERTURNED BY A VOTE OF THE ENTIRE BOARD OR COMMISSION. A RECORD OF THIS DECISION SHALL BE MADE IN THE MINUTES OF THE MEETING.~~

Section 2. This ordinance shall take effect upon its passage after the second reading. 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 10th day of April, 2000.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of April, 2000 as amended.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

Date: April 24, 2000
Subject: Financial Report for March 2000
Prepared by: Mary Ann Parrot, Finance Director

Introduction

City Council is requested to review the attached financial statements which reflect 2000 transactions through March 2000.

Summary

There are three sections to the attached report:

1. Revenue Summary
2. Statement of Expenditures vs. Appropriations
3. Sales Tax Detail

General Fund revenues represent 25% of the total budget estimate while General Fund expenditures and encumbrances represent 26% of the 2000 appropriation.

Utility Fund revenues represent 22% of the total budget estimate. Utility fund expenditures and encumbrances represent 22% of the 2000 appropriation.

The Sales and Use Tax Fund revenues represent 28% of the total budget estimate, while expenditures and encumbrances in that fund represent 25% of the 2000 appropriation. Total Sales and Use Tax revenues for the 25 shopping centers reported increased 5% from the same period last year and increased 8% year-to-date. Audit and enforcement revenue is greater than anticipated because of a use tax audit on a large construction project within the City.

The Open Space Fund revenues represent 30% of the total budget estimate while expenditures and encumbrances in that fund represent 22% of the 2000 appropriation.

The Legacy Ridge Golf Course Fund operating revenues represent 9% of the total budget estimate while operating expenditures and encumbrances represent 28% of the 2000 appropriation. The Heritage at Westmoor Golf Course opened for business in September 1999. Operating revenues for Heritage represent 6% of the total budget estimate while operating expenditures and encumbrances represent 32% of the 2000 appropriation. The 1999 Golf Course operating revenues reflect a grant from Jefferson County. This financial activity is consistent with the seasonal nature of golf.

Theoretically, 25% of revenues and expenditures should be realized after three months in the budget year. However, it is recognized that both revenues and expenditures do not occur on an even 1/12 flow each month of the year.

Staff Recommendation

Accept the report as presented.

Background

Section 9.6 of the City Charter requires that the City Manager provide, at least quarterly, financial data showing the relationship between the estimated and actual revenue expenditures to date.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

Summary of Proceedings

Summary of Proceedings of the regular City Council meeting held Monday, April 24, 2000.

Present at roll call were Mayor Heil, Mayor Pro Tem Dixon and Councillors Atchison, Hicks, Merkel, Moss and Smith. Absent none.

The minutes of the meetings of April 10 and April 17, 2000 were approved with no additions or corrections.

The Mayor proclaimed the week of May 7-13 as National Drinking Water Week in the City.

Verlin Wolf, Cathy Dawson, Anita Hartman, Lori Harrison, Justin Hill, Ray Swindel and Joe Swindel addressed Council regarding the City's prairie dog population.

At 7:50 P.M. a public hearing was held on the Lake Arbor Industrial Park amended Preliminary and Official Development Plan.

Council approved the following: Right of Way agreement with Metricom Inc; ICG Contract for Fiber Optic Network hookup and conduit installation; First Amended PDP/ODP for Lake Arbor Industrial Park Filing No. 1; Westminster Promenade land trade; Implementation Services for HR/Payroll and Financial Management System; Membrane Equipment for new water treatment facility; and NationTax online sales tax return filing authorization.

Council Tabled Resolution No. 33 concerning the Career Enrichment Park site improvement and utilization plan.

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

A BILL FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF A CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, SUBORDINATE WATER AND WASTEWATER REVENUE BOND, SERIES 2000, DATED APRIL 15, 2000, IN THE PRINCIPAL AMOUNT OF \$14,998,357.36. Purpose: Finance construction of new water treatment plant.

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

A BILL FOR AN ORDINANCE INCREASING THE 2000 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT PROJECT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2000 ESTIMATED REVENUES IN THE FUND. Purpose: Contingency transfer for Walker Building remodel.

A BILL FOR AN ORDINANCE APPROVING A REVISED AGREEMENT BETWEEN THE CITY AND ADAMS COMMUNITY MENTAL HEALTH FOUNDATION REGARDING THE LEASE OF THE CITY'S WALKER BUILDING. Purpose: Amend lease for the Walker Building.

A BILL FOR AN ORDINANCE AMENDING TITLE II CHAPTER TEN OF THE WESTMINSTER MUNICIPAL CODE RELATING TO THE BOARD OF BUILDING CODE APPEALS. Purpose: Update Board of Building Code Appeals ordinance.

A BILL FOR AN ORDINANCE INCREASING THE 2000 BUDGET OF THE UTILITY FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2000 ESTIMATED REVENUES IN THIS FUND. Purpose: Fund appropriation for new Water Treatment Plant.

A BILL FOR AN ORDINANCE AMENDING TITLE II CHAPTER 1 OF THE WESTMINSTER MUNICIPAL CODE REGARDING BOARDS AND COMMISSIONS – GENERAL PROVISIONS. Purpose: Add definition for Attendance.

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

A BILL FOR AN ORDINANCE INCREASING THE 2000 BUDGET OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2000 ESTIMATED REVENUES IN THE FUND.

A BILL FOR AN ORDINANCE ESTABLISHING RECLAIMED WATER SYSTEM RATES AND OPERATING POLICIES.

A BILL FOR AN ORDINANCE AMENDING TITLE II, CHAPTER TWO OF THE WESTMINSTER MUNICIPAL CODE RELATING TO THE PLANNING AND ZONING COMMISSION as amended.

A BILL FOR AN ORDINANCE AMENDING TITLE II, CHAPTER FIVE OF THE WESTMINSTER MUNICIPAL CODE REGARDING THE SPECIAL PERMIT AND LICENSE BOARD as amended.

The following Resolution was adopted:

Resolution No. 34 – Lowell Boulevard Project Right of Way Acquisitions.

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

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window May 4, 2000.