

May 12, 1997
7:00 PM

Notice to Readers: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the City Council's part as issues have been discussed by Council previously. Council may defer final action on an item to a future meeting. 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 Meeting**
4. **Presentations**
 - A. Presentation re DRCOG Award
 - B. Presentation re St. Anthony Hospital North
 - C. Proclamation re Public Works Week
5. **Citizen Communication (5 minutes or Less in Length)**
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. Special Use Permit Renewal - Human Services Inc, 4335 W 76th Ave
 - B. Special Use Prmit Renewal - Colorado Locksmith College, 4991 W 80th Ave
 - C. Bids re 1997 Wastewater Collection System Improvements
 - D. Special Legal Counsel re Semper Water Treatment Facility
 - E. CB No. 25 re 1996-97 CDBG Fund Appropriation (Dixion-Merkel)
 - F. CB No. 26 re Panorama Point Easement Vacation (Scott-Allen)
 - G. CB No. 27 re Park Centre Easement Vacation (Scott-Dixion)
 - H. CB No. 28 re Westminster City Center Vacations (Allen-Merkel)
 - I. CB No. 29 re Fire Training Facility (Merkel-Dixion)
9. **Appointments and Resignations**

None
10. **Public Hearings and Other New Business**
 - A. TABLED Legacy Ridge Restaurant Lease Amendment
 - B. Public Hearing re Olson Technological Park 2nd Amended PDP
 - C. Second Amended PDP re Olson Technological Park
 - D. Resolution No. 27 re BNRR Comuter Rail Project
 - E. Resolution No. 28 re 88th Ave Street Project
 - F. Ambulance Billing Transfer to Fire Department
 - G. Resolution No. 29 re Reclaimed Water System 201 Facility Plan
 - H. Councillor's Bill No. 2 re Water & Wastewater Revenue Bonds
 - I. Councillor's Bill No. 30 re Appropriation of Bond Proceeds
 - J. Intergovernmental Agreement for Emergency Management
11. **Old Business and Passage of Ordinances on Second Reading**

None
12. **Citizen Presentations (5 Minutes + in Length) & Miscellaneous Business**
 - A. City Council
 - B. Request for Executive Session
13. **Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MAY 12, 1997 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 Allen, Harris, Merkel, Scott 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 28, 1997 with no additions or corrections. Councillor Harris requested to abstain as he was not present for the meeting. The motion carried with 6 aye votes and Councillor Harris abstaining.

A motion was made by Merkel and seconded by Dixon to accept the minutes of the meeting of May 5, 1997 with no additions or corrections. Councillor Allen requested to abstain as he was not present for the meeting. The motion carried with 6 aye votes and Councillor Allen abstaining.

PRESENTATIONS:

Jan Schench, Mayor of Golden and Vice Chair of the Denver Regional Council of Governments Board of Directors, presented the DRCOG Cooperative Service Delivery Award to the City which was accepted by Councillor Allen, the City's DRCOG representative.

Bill Burma, Director of Planned Giving of St. Anthony Hospitals Foundation gave a brief presentation to Council regarding the Healthy Communities Initiative.

Mayor Heil presented a proclamation to Street Operations Foreman Dave Cantu proclaiming the week of May 18-24 as Public Works Week in the City.

CITY COUNCIL COMMENTS:

Mayor Pro Tem Dixon reported that she attended the Law Day celebration on May 1, the Rotary sponsored New Generation Day conference on April 26, Fire Station No. 5 COG group open house, Pride Day on May 10th at which there were 805 volunteers, and the Public Works display at the Westminster Mall. Councillor Merkel reported that the Community Awareness Action Team had presented a scholarship to Connie Fleming. Mayor Heil thanked the Rotary Club, Lions Club and all other volunteers that participated in Westminster Pride Day.

CONSENT AGENDA:

The following items were considered as part of the consent agenda: Special Use Permit renewal for a one year period for Human Services Inc, 4335 W. 76th Avenue, based on the current permit of a maximum of 13 adolescents and when the new building is occupied an expansion to a maximum of 16 adolescents; Special Use Permit renewal for a one year period for Colorado Locksmith College, 4991 W. 80th Avenue;

Award of contract to the low bidder, Insituform Plains, Inc., in the amount of \$547,272.50 for the 1997 Wastewater Collection System Improvements, authorize the City Manager to execute a contract between the City and Insituform Plains, Inc., for wastewater collection system improvements, authorize a budget of \$547,272.50 with a contingency budget of \$55,000, and charge the appropriate project accounts in the 1997 Wastewater Budget; Authorize the City Attorney to execute a contract with Robert B. Douglas and Associates for special legal services in an amount not to exceed \$22,500 to assist in preparing for the likelihood of mediation and/or litigation in connection with the Semper Water Treatment Facility Clearwell and high service pump station problems; Councillor's Bill No. 25 re 1996-97 CDBG Fund Appropriation; Councillor's Bill No. 26 re Panorama Point Easement Vacation; Councillor's Bill No. 27 re Park Centre Easement Vacation; Councillor's Bill No. 28 re Westminster City Center Vacations; and Councillor's Bill No. 29 re Fire Training Facility. 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 Harris and seconded by Scott to adopt the Consent Agenda items as presented. The motion carried unanimously.

TABLED - LEGACY RIDGE RESTAURANT LEASE AMENDMENT:

A motion was made by Allen and seconded by Merkel to remove the Legacy Ridge Restaurant Lease Amendment from the Table. The motion carried unanimously.

A motion was made by Allen and seconded by Merkel to authorize the City Manager to sign a new lease with Mr. Bert Gehorsam of the Legacy Ridge Restaurant. Bert Gehorsam was present to address Council. The motion carried unanimously.

PUBLIC HEARING RE OLSON TECHNOLOGICAL PARK SECOND AMENDED PDP:

At 7:32 P.M. the meeting was opened to a public hearing regarding the proposed Second Amended Preliminary Development Plan for the Olson Technological Park PUD located at the Northeast corner of Wadsworth Parkway and 108th Avenue. David Falconieri, Planner III, entered a copy of the Agenda Memorandum, Planning Commission recommendation and other related items as exhibits. Karl Franklin of Contra Limited Engineering, representing the applicant, gave a brief presentation to Council.

A motion was made by Allen and seconded by Smith to continue the public hearing until the May 19 City Council meeting. The motion carried unanimously. At 7:58 P.M. the public hearing was declared continued until May 19, 1997.

SECOND AMENDED PDP FOR OLSON TECHNOLOGICAL PARK PUD:

A motion was made by Allen and seconded by Dixon to Table the proposed Second Amended Preliminary Development Plan for the Olson Technological Park. The motion carried unanimously.

RESOLUTION NO. 27 - BURLINGTON-NORTHERN COMMUTER RAIL PROJECT:

A motion was made by Scott and seconded by Smith to adopt Resolution No. 27 which officially states the City of Westminster's position in favor of the Burlington-Northern Commuter Rail Project between Boulder and Union Station in Denver and present the project at the May 20 Regional Transportation District Board meeting. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 28 - 88TH AVENUE, SHERIDAN TO HARLAN STREET PROJECT:

A motion was made by Harris and seconded by Merkel to adopt Resolution No. 28 authorizing the acquisition of sufficient right-of-way and easements for the construction of improvements to 88th Avenue between Sheridan Boulevard and Harlan Street; and authorize the City Manager to execute a Possession and Use Agreement with the owners of the Westminster Mall. Upon roll call vote, the motion carried unanimously.

TRANSFER AMBULANCE BILLING TO THE FIRE DEPARTMENT:

A motion was made by Allen and seconded by Dixon to authorize the transfer of \$19,500 to the Fire Department budget from the Finance Department budget to pay for the ambulance billing position. The motion carried unanimously.

RESOLUTION NO. 29 - RECLAIMED WATER SYSTEM 201 FACILITY PLAN:

A motion was made by Dixon and seconded by Merkel to adopt Resolution No. 29 adopting the City of Westminster Reclaimed Water System 201 Facility Plan amendment. Upon roll call vote, the motion carried unanimously.

ORDINANCE NO. 002 - W&WW UTILITY ENTERPRISE REVENUE BONDS:

A motion was made by Scott and seconded by Dixon to adopt Water and Wastewater Enterprise Bill No. 2 as an emergency ordinance allowing the issuance of approximately \$13,200,000 in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds to the Colorado Water Resources and Power Development Authority and authorize the Mayor, City Clerk and Finance Director to sign necessary documents on behalf of the Water and Wastewater Enterprise. Nate Eckloff, the City's Financial Advisor, was present to address Council. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 30 - APPROPRIATION OF BOND PROCEEDS:

A motion was made by Merkel and seconded by Allen to pass Councillor's Bill No. 30 on first reading appropriating the bond proceeds received from the \$23,350,000 Special Purpose Sales & Use Tax Revenue Bonds and \$30,190,000 received from the Sales & Use Tax Revenue Refunding and Improvement Bonds; and authorize the transfer of \$305,000 from the Golf Course and Debt Service Fund to the General Capital Improvement Projects Fund to fund the payment of the 1997 104th Avenue Special Improvement District assessment for the Northpoint LLC. Upon roll call vote, the motion carried unanimously.

INTERGOVERNMENTAL AGREEMENT FOR EMERGENCY MANAGEMENT:

A motion was made by Dixon and seconded by Allen to authorize the City Manager to sign the Intergovernmental Agreement for Emergency Management thereby agreeing to allow City of Westminster resources to be committed in support of any emergency which might occur throughout the Denver metro area and also providing for the City of Westminster to receive aid from other jurisdictions in an emergency situation. The motion carried unanimously.

MISCELLANEOUS BUSINESS:

Mayor Heil stated there would be an Executive Session regarding a real estate acquisition.

ADJOURNMENT:

The meeting was adjourned at 8:20 P.M.

ATTEST:

Mayor

City Clerk

Date: May 12, 1997
Subject: Presentation re DRCOG Innovation Award
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to accept the Third Place Cooperative Service Delivery Award from the Denver Regional Council of Governments (DRCOG).

Summary

Each year the Denver Regional Council of Governments (DRCOG) recognizes cost-saving and efficient management by local governments. This recognition is intended to encourage creative approaches to providing services to citizens. Awards are presented in three categories: Cooperative Service Delivery, Productivity Improvement and Public-Private Partnership.

This year the Jefferson County Mediation Services Program won third place in the Cooperative Service Delivery category. Jefferson County and several Jefferson County cities developed the Program. The award nomination was submitted by Jefferson County and the City of Arvada.

Jan Schench, Vice Chair of the Denver Regional Council of Governments Board of Directors, and Golden Mayor will be present to make these presentations.

Staff Recommendation

Council accept Denver Regional Council of Governments Cooperative Service Delivery Award from Golden Mayor Jan Schench.

Background Information

The Jefferson County Mediation Services Program was initiated in 1994, and Westminster Staff have referred people to this program on several occasions. Using volunteer mediation professionals to settle recurring disputes among county residents has saved thousands of dollars in the program's operation. This program is modeled after one used by the City of Boulder to handle landlord-tenant disputes. Jefferson County's version of the program has been adapted to aid in other areas where disputes among residents occur such as victim-offender reconciliation and small claims court cases.

The program currently serves residents in Westminster, Arvada, Golden, Lakewood, Wheat Ridge and unincorporated Jefferson County. Countywide, there are 90 mediators who handle case referrals from more than 30 county, municipal and non-project agencies as well as the Jefferson County court system.

Respectfully submitted,

William M. Christopher, City Manager

Date: May 12, 1997
Subject: Presentation by St. Anthony Hospital North
Prepared by: Michele Kelley, City Clerk

Introduction

St. Anthony Hospital North, Centura Health, located at 2551 West 84th Avenue has requested time at Monday night's Council meeting to make a presentation to the Mayor and City Council.

Summary

Bill Burma, Director of Planned Giving of St Anthony Hospitals Foundation, would like to make a 5 minute presentation regarding Healthy Communities and show City Council some of the new projects that are being planned. Handouts will be provided to City Council as part of their presentation.

Staff Recommendation

Mayor and Council listen to the presentation from St. Anthony Hospital Foundation representative.

Respectfully submitted,

William M. Christopher
City Manager

Date: May 12, 1997

Subject: Proclamation re Public Works Week

Prepared by: Sam LaConte, Street Operations Manager

Introduction

The Mayor, on behalf of City Council, is requested to proclaim the week of May 18-24, as "Public Works Week" in the City of Westminster.

Summary

The National American Public Works Association and State Chapters, dedicates one week each year to inform and educate citizens of the importance of Municipal Public Works Departments in providing clean drinking water, treatment of wastewater, public improvements, and safe, well maintained streets. The theme for National Public Works Week this year is "Communities that Work." City Staff has planned the following activities for the week:

1. Poster displays and brochures will be available at City Hall, City Recreation Centers, City Libraries and the Westminster Mall.
2. Tours of the Municipal Service Center will be available upon request throughout the week. Due to construction, tours will not be available at the Big Dry Creek Wastewater Treatment Plant or the Semper Water Treatment Plant this year. There will also be presentations at middle schools upon request.
3. There will be a display booth from 10:00 a.m. until 8:00 p.m. at the Westminster Mall on May 19 and 20, staffed by Public Works and Utilities employees. The display will provide a video presentation, posters and brochures related to municipal services provided by Westminster's Public Works and Utilities Department. Pens and keychains will be distributed, along with a drawing for a free construction toy for children under 12 years of age. In addition, the graffiti removal equipment will be on display.

Dave Cantu, Street Operations Foreman, will be in attendance to receive the Proclamation on behalf of the Department of Public Works and Utilities.

Staff Recommendation

Proclaim the week of May 18-24, as Public Works Week in the City of Westminster.

Background Information

Public Works professionals throughout the United States and Canada will celebrate National Public Works Week, May 18-24. Public Works Week Proclamation.

Proclamation re Public Works Week

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Since 1960, the annual observance has been an opportunity to increase public awareness of the role that Public Works plays in all of our daily lives. The 1997 events are being coordinated in the State by the Colorado Chapter of the American Public Works Association.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

WHEREAS, Public Works and Utilities services provided in our community are an integral part of our citizen's lives; and

WHEREAS, support of an understanding and informed citizenry is vital to the efficient operation of Public Works and Utilities and programs concerning the maintenance of water, sewers, streets and highways, public buildings, solid waste collection, and snow removal operations; and

WHEREAS, the health, safety, and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, are vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works and utilities departments is materially influenced by the people's attitude and understanding of the importance of the work they perform,

NOW, THEREFORE, on behalf of the entire Westminster City Council and Staff, I do hereby proclaim the week of May 18 through 24, 1997, as

PUBLIC WORKS AND UTILITIES WEEK

in the City of Westminster and call upon all citizens and civic organizations to acquaint themselves with the problems involved in providing our public works and utilities and to recognize the contributions which public works and utilities officials make every day to our health, safety, and comfort.

Signed this 12th day of May, 1997.

Date: May 12, 1997
Subject: Special Use Permit Renewal for Human Services Inc, 4335 West 76th Ave
Prepared by: Michele Kelley, City Clerk

Introduction

City Council action is requested on the renewal of the current residential care facility special use permit for Human Services Inc, located at 4335 West 76th Avenue.

Summary

In January, 1995, Human Services Inc, located at 4335 West 76th Avenue applied for expansion of their current residential care facility special use permit. This expansion would allow an increase from 13 adolescents to 16. Although the application for expansion was applied for and approved by the Special Permit and License Board and City Council in 1995, and approved by Planning in late 1996, the expansion has not taken place at this time. Human Services Inc. is contemplating the expansion will not occur until probably 1998.

This organization is still trying to obtain capital funds through grants and fund raising efforts.

Staff Recommendation

Approve the renewal of the residential care facility special use permit based on the current permit of a maximum of 13 adolescents and when the new building is occupied an expansion to a maximum of 16 adolescents for Human Services Inc, located at 4335 West 76th Avenue for a one year period.

Background Information

As part of the City's review process, the Police Department activity and Code Enforcement activity are reviewed. During the past year, there has been contact by code enforcement to enclose the trash container, which has been completed.

Respectfully submitted,

William M. Christopher
City Manager

Date: May 12, 1997
Subject: Colorado Locksmith College Special Use Permit
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to renew the special use permit for the Colorado Locksmith College.

Summary

Colorado Locksmith College, located at 4991 West 80th Avenue received a special use permit for a school facility in May, 1993.

This facility is allowed to have a maximum of 10 students in each class.

In accordance with City Code requirements, an annual review of all Special Use Permits is required.

Staff Recommendation

Approve the renewal of the school special use permit for Colorado Locksmith College, located at 4991 West 80th Avenue for a one year period.

Background Information

As part of the City's review process, the Police Department activity and Code Enforcement activity are reviewed. During the past year, there have been no police calls or code enforcement violations at this location.

Respectfully submitted,

William M. Christopher
City Manager

Date: May 12, 1997
Subject: 1997 Wastewater Collection System Improvements
Prepared by: Jack Rudey, Utilities Field Operations Supervisor
Abel Moreno, Utilities Management Intern

Introduction

City Council action is requested to award the bid for the 1997 Wastewater Collection System Improvements to Insituform Plains, Inc.; authorize the City Manager to execute a contract between the City and Insituform Plains, Inc., for 1997 Wastewater Collection System Improvements; and authorize a budget of \$547,272.50 for wastewater collection system improvements and \$55,000 for a contingency budget. Funds are available for these expenditures in the 1997 Wastewater Fund Budget.

Summary

Over the past ten years, trenchless technology has proven to be a more effective means of rehabilitation as compared to sewer line replacement. For example, it is estimated that sewer line replacement is twice the cost of sewer line rehabilitation and there is no excavation required for sewer rehabilitation. Since trenchless technology does not require any excavation, City residents are not inconvenienced by heavy equipment, road closures, or disruption to their sanitary sewer services.

The 1997 Wastewater Collection System Improvements project was advertised two times during consecutive weeks in the Daily Journal, the premier construction newspaper in the Rocky Mountain Region. Four addenda were issued to the bidding documents and a pre-bid meeting was held on April 9. Three bids were read publicly on April 23, in the City Council Chambers.

<u>BIDDER</u>	<u>LUMP SUM BID</u>
Insituform Plains, Inc.	\$547,272.50
Western Slope Utilities, Inc.	\$556,730.00
Tierdael Construction Company	\$595,659.50
TeleEnvironmental Sytems (a joint venture)	
ENGINEER ESTIMATE	\$600,000.00

Insituform Plains, Inc., has been determined to be the successful contractor on the basis of their bid as the lowest responsible lump sum bid within the established funds available for the contract.

Staff Recommendation

Award a contract to the low bidder, Insituform Plains, Inc., in the amount of \$547,272.50 for the 1997 Wastewater Collection System Improvements; authorize the City Manager to execute a contract between the City and Insituform Plains, Inc., for wastewater collection system improvements; authorize a budget of \$547,272.50 with a contingency budget of \$55,000; and charge the appropriate project accounts in the 1997 Wastewater Budget.

Background Information

The Utilities Division has evaluated outsourcing its sewer rehabilitation projects due to the increased number of water breaks the City has experienced over the past five years. Due to the increased level of water breaks, the Construction Crew's highest priority has been to replace deteriorated water lines rather than sewer lines. Therefore over the past twelve months, the City has evaluated using trenchless technology methods as a permanent practice for sanitary sewer mains that are deteriorated or cracked, rather than replacing the entire sanitary sewer main.

The City has experimented with trenchless technology in the past, but continued to consider sewer line replacement as its number one option. However, the increased competition in the trenchless technology industry has driven the cost of these methods to well below sewer line replacement costs.

The City's 1997 Wastewater Collection System Improvements project consists of rehabilitating approximately 10,345 linear feet of sanitary sewer mains ranging in size from 6 to 18 inch, rehabilitating approximately 26 manholes with three approved methods, and the repair of two point repairs using excavation.

The trenchless technology used by Insituform Plains, Inc., for the City's 1997 Wastewater Collection System Improvements project refers to inverting a resin-soaked felt into the sanitary sewer main from manhole to manhole. The resin-soaked felt is inverted into the sanitary sewer main using hot water, which allows for the liner to cure to the host pipe and dimple at each residential sanitary sewer service. The contractor then uses cold water to harden the liner and make it resistant to corrosive acids. This process is expected to eliminate infiltration, joints, roots, and is expected to assist grease in flowing downstream rather than sticking to the liner.

An alternative to this project would be to replace the sewer main lines through excavation. However, this alternative would be much more inconvenient to residents due to heavy construction equipment and excavation. The cost of sewer line replacement is estimated to be between \$80 and \$100 per foot, while the City's project low bid was approximately \$49 per linear foot. A second alternative is to not perform any rehabilitation or replacement services of these sewer mains. The consequences of foregoing these services would be increased treatment costs due to infiltration, increased sewer back-ups caused by roots and grease, and increased maintenance costs associated with the problem areas which would not be corrected by rehabilitation.

Services for the project are expected to commence at the end of May, with completion slated for mid-August.

Respectfully submitted,

William M. Christopher
City Manager

Date: May 12, 1997

Subject: Special Legal Counsel re Semper Water Treatment Facility Clearwell and High Service Pump Station

Prepared by: Jeff Betz, Assistant City Attorney

Introduction

City Council action is requested to authorize the City Attorney to execute a contract in an amount not to exceed \$22,500 with special legal counsel to assist in preparing for the likelihood of mediation and/or litigation in connection with the Semper Water Treatment Facility Clearwell and high service pump station problems.

Summary

Because construction law is a fairly specialized area of law, special legal counsel is necessary to assist City Staff and the City Attorney's Office on a consulting basis. Bob Douglas of Robert B. Douglas and Associates is recommended by Staff to provide the necessary legal consultant services.

Staff Recommendation

Authorize the City Attorney to execute a contract with Robert B. Douglas and Associates for special legal services in an amount not to exceed \$22,500 to assist in preparing for the likelihood of mediation and/or litigation in connection with the Semper Water Treatment Facility Clearwell and high service pump station problems.

Background Information

The Semper Water Treatment Facility clearwell and high service pump station were scheduled for operation in the summer of 1996. However, due to settling and structural damage to the pump station building and a failure at the outlet pipe-to-slab connection at the clearwell which resulted in a substantial amount of water loss, both facilities have experienced delays and difficulties in operation. Considerable Staff time and consultant effort is being put forth in an attempt to (1) identify possible repair strategies to assure long-term use and reliability of the clearwell and high service pump station, (2) assign costs necessary to make long-term repairs, and (3) seek cooperation among the design consultant and contractor to initiate and take financial responsibility.

It is recommended that Bob Douglas be retained by the City to provide the necessary legal consulting services, including putting together a team of experts to further evaluate the historic problems associated with the high service pump station and clearwell, specifically address the issue of whether the integrity of the tank has been compromised, thereby affecting the longevity of the tank, and be in a position to serve as expert witnesses and testify at mediation, arbitration or trial.

Mr. Douglas has extensive construction litigation experience and is familiar with the issues involved. A cap of \$22,500 is suggested at this time. Additional funding may be requested should the case need to proceed to a trial.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this _____ day of _____, 19__, by and between ROBERT B. DOUGLAS AND ASSOCIATES, Attorneys at Law (the "Firm") and the CITY OF WESTMINSTER, COLORADO (the "City").

RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish the following special legal services to the City (the "Services"): see Exhibit "A."
2. Robert B. Douglas of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. The City shall pay for the Services at the rates set forth in Exhibit "A."
5. This Contract may be terminated by the City with or without cause.
6. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster City Council.
7. Payments pursuant to this Contract shall not exceed \$22,500 without further written authorization by the City.
8. This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Agreement.

ROBERT B. DOUGLAS AND ASSOCIATES

By _____
Robert B. Douglas

CITY OF WESTMINSTER, COLORADO

By _____

Date: May 12, 1997

Subject: TABLED Legacy Ridge Restaurant Lease Amendment

Prepared by: Richard Dahl, Park Services Manager

Introduction

City Council tabled action on this item at the April 14 Council meeting.

City Council action is requested to authorize the City Manager to sign a new Lease Agreement between Mr. Albert Gehorsam, Legacy Grill, L.L.C. and the City of Westminster for the continued operation of the restaurant at the Legacy Ridge Golf Course.

Summary

On July 10, 1996, Council approved the transfer of the Legacy Ridge restaurant lease to Albert Gehorsam, Legacy Grill, L.L.C., based on the existing lease of the original contractor, Peter Hellerman. At the time, it was in the best interest of all parties involved to keep the lease intact with no modifications.

The transition between lease operators has gone extremely well, staff and Mr. Gehorsam are now proposing to modify the lease agreement as it relates to monthly rent, commission fees, and the length of the contract.

The Legacy Ridge Clubhouse Agreement between Albert Gehorsam, Legacy Grill, LLC and the City of Westminster is due to expire on December 31. As a condition of the contract the City is required to give written notification to renew the Agreement on, or before, August 1.

City Staff reviewed this proposal with City Council at the Study Session of January 10, 1997. Consensus was given by Councillors to have Staff prepare the necessary revisions to the lease agreement and bring it back to City Council at a later date for formal approval.

Staff Recommendation

Remove this item from the Table and authorize the City Manager to sign a new lease with Mr. Bert Gehorsam of the Legacy Ridge Restaurant.

Background Information

When the Legacy Ridge Restaurant Lease Agreement was drafted in 1994, it incorporated features of a previous document which was used as a draft model. As a starting point, this process worked well, but Staff is now recommending the lease agreement be modified to better suit the needs of the Legacy Ridge Clubhouse operations and the Legacy Grill Restaurant.

On September 12, 1994, Peter Hellerman of Gasthaus Ridgeview, Inc. became the lease owner of the Legacy Ridge Clubhouse Restaurant.

His original contract called for a three-year lease with monthly payments of \$1,500 and a 2.5% concession fee above gross sales of \$60,000.

The contract was further modified in January 1996 to remove the \$60,000 gross sales cap and go to a monthly lease payment plus 2.5% commission on gross sales. Based on 1995 sales, it is estimated the City would have realized approximately \$26,000 in revenues from Mr. Hellerman's operation if it had continued for the remainder of 1996.

To more accurately project revenues and eliminate the complexity of the percent commission fee, Staff and the new operator, Mr. Bert Gehorsam, are recommending to replace it with a higher flat rate lease payment of \$2,500 per month. This will enable Staff to accurately project concession revenues for the golf course while providing the operator an opportunity to maximize his revenue source against his investment. When compared to the estimated revenues under Mr. Hellerman's contract, the new operator will pay the City \$30,000 annually based on a \$2,500 monthly flat rate lease. This again is in comparison to Mr. Hellerman's best revenue year, which would have netted the City approximately \$26,000.

It is also the desire of the Department of Parks, Recreation and Libraries to retain an operator capable of meeting the needs of the golfing public as well as patrons using the clubhouse for its restaurant facility. Staff has been very pleased with Mr. Gehorsam's operation and, judging by the number of patrons he has entertained to date, so has the public. To this end, Mr. Gehorsam is requesting, and Staff is recommending, a five year lease with a renewal option for an additional five year term be issued to Mr. Gehorsam starting in 1997. This lease would be re-negotiated each year throughout the Agreement time period subject to the satisfactory performance by Mr. Gehorsam of the terms and conditions of the Agreement, as well as mutual agreement between the parties regarding increasing the monthly Base Lease Payment and percentage of utilities, to be paid under the Terms of the Agreement. The lease Agreement also contains language outlining the criteria required for termination of the lease prior to its completion date should this ever become necessary.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Lease Agreement

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 1997, by and between the CITY OF WESTMINSTER, a municipal corporation of the State of Colorado ("City") and Legacy Grill, L.L.C., a Colorado corporation ("Concessionaire").

Whereas, the City and Gasthaus Ridgeview, Inc. entered into an agreement for a food and beverage concession at the Legacy Ridge at Westminster Golf Course on September 12, 1994; and

Whereas, said agreement was assigned to Legacy Grill, L.L.C. on July 16, 1996; and

Whereas, said agreement will terminate on December 31, 1997; and

Whereas the City and Legacy Grill, L.L.C. wish to replace and supersede the previous agreement to be effective immediately upon execution.

Now, therefore, the City and Legacy Grill L.L.C. agree as follows:

In consideration of the payments hereinafter provided for the keeping and performance of the covenants and agreements by the Concessionaire hereinafter set forth, the City hereby grants to said Concessionaire the right to operate a food and beverage concession at the Legacy Ridge at Westminster Golf Course located in the County of Adams, City of Westminster, State of Colorado, which is shown in Exhibit A of this Agreement. The Concessionaire has reviewed the plans, drawings, and other materials relating to the Premises and Concession Facilities, and has had access to and has negotiated with various City officials, and accepts the terms and conditions of this Agreement.

1. DEFINITIONS

The following terms, as used in this Agreement, are defined as follows:

- (a) "City" - City of Westminster, Colorado
- (b) "Concessionaire" - The entity to which the City has granted the right to operate the Concession on, at, or from the Premises and Concession Facilities, subject to the terms and conditions herein. This term also includes the agents, employees, or assignees of said Concessionaire.
- (c) "Manager" - The Park Services Manager of the Department of Parks, Recreation and Libraries of the City of Westminster, Colorado or designee.
- (d) "Concession" - The right granted to the Concessionaire to sell and serve food and beverages to the general public and patrons of the Golf Course or Clubhouse on, at, or from the Premises or Concession Facilities.
- (e) "Concession Facilities" - The facilities located in the area set out in Exhibit A of this Agreement, which include the deck areas, tent sites for catering, mobile service carts, and other on-course service sites for food and beverage service at the Golf Course.
- (f) "Director" - Director of the Department of Parks, Recreation and Libraries or designee.
- (g) "Golf Course" - The area set out in Exhibit A which is designated as the Golf Course.
- (h) "Premises" - The restaurant, grill, and bar which are located in the Clubhouse area designated in Exhibit A.

2. PURPOSE

(a) It is the intent of this Agreement to provide for a complete concession operation upon the Premises and Concession Facilities covered by this Agreement, with only such exceptions and limitations as may be specifically noted herein.

(b) In interpreting this Agreement, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined, shall be construed in accordance with such well-known meaning recognized by the trade.

3. TERM OF AGREEMENT; RENEWAL

(a) The term of this Agreement shall be from February 1997 through February 2002, unless renewed for one additional five (5) year term or unless terminated earlier as provided for in Section 23 hereof.

(b) The City shall give written notice to Concessionaire on or before September 31, 2001 of its intent to renew this Agreement for an additional five (5) years. The Concessionaire shall give written notice to the City of its intent to renew on or before September 31, 2001, or this agreement shall terminate on January 31, 2002.

(c) The five year renewal shall be subject to satisfactory performance by the Concessionaire of the terms and conditions of this Agreement, as well as mutual agreement between the parties regarding the monthly Base Concession Fee and the percentage of utilities, to be paid under Paragraph 17(a) of this agreement. The Concessionaire understands and agrees that if this Agreement is not renewed for the reason that the Concessionaire has not satisfactorily complied with the terms and conditions of this Agreement, or if the parties are unable to mutually agree upon the monthly Base Concession Fee, the Percentage Concession Fee, and the percentage of utilities, to be paid under Paragraph 17(d) of this Agreement, then the City shall have the right to request bids for a new Concessionaire at the Premises.

4. SCOPE OF WORK

(a) The scope of work to be performed under this Agreement is the furnishing of a top quality Concession operation for the sale and service of food and beverages to the general public and patrons of the Premises and Concession Facilities at such prices and under such standards of operation as which will assure prompt, courteous, and convenient services to the general public and patrons. The Concessionaire shall comply with all guidelines and standards that are contained in Exhibit B of this Agreement.

(b) The privilege granted by this Agreement shall be deemed to be an exclusive right to provide for the sale of all food, beverages, and catering services on the Premises and the Concession Facilities. The City reserves the right to conduct or operate other concessions upon the Premises and Concession Facilities which do not compete with the Concessionaire. Any rights not specifically granted to the Concessionaire herein are retained by the City:

(c) The Concessionaire will:

(i) Provide all food and beverage services available on the Premises and the Concession Facilities;

(ii) Provide all food and beverage banquet, catering, and meeting services on the Premises and the Concession Facilities;

(iii) Provide all mobile cart services for food and beverages;

(iv) Provide all beverage and food stuff vending machine services;

- (v) Provide all temporary food and beverage facilities as agreed to by the Manager and the Concessionaire;
- (vi) Employ, train, staff, and manage all personnel required to properly operate and maintain the Concession;
- (vii) Provide repair and maintenance services for City-owned equipment set out in Exhibit C;

(viii) Obtain all licenses, permits, and certificates required to operate the Concession, including, but not limited to, a Hotel and Restaurant class liquor license with Optional Premises and Extended Hours license;

(ix) Operate the Concession in a manner fully supportive, and in compliance with, the quality standards and guidelines set out in Exhibit B to this Agreement;

(x) Operate the Concession Facilities as public facilities in a non-discriminatory manner at all times;

(xi) Promote and market the Concession to the general public; and

(xii) Provide any and all equipment in addition to that provided by the City which is necessary to provide the required level of services.

(d) City acknowledges that Concessionaire's anticipated operation of the Concession is based on the City's representation of Golf Course operation by the City at a minimum level of 35,000 rounds annually.

5. USE OF PREMISES

(a) Concessionaire shall the right to possession of the Premises and Concession Facilities for the purpose of the sale and service of food and beverages, including alcoholic beverages, for consumption on the Premises and Concession Facilities, subject to the standards and guidelines set out in Exhibit B of this Agreement. Nothing in this Agreement shall be construed to authorize that which prohibited under state or local law, ordinance, code, or regulation. Use of the Premises and Concession Facilities by Concessionaire for the sale and service of alcoholic beverages shall be in compliance with the Colorado Liquor Code, Section 12-47-101, et seq., C.R.S., and Chapter 9 of the Westminster Municipal Code. Concessionaire shall have control of and responsibility for the Premises and Concession Facilities with respect to the sale and service of all alcoholic beverages. Concessionaire shall not use or permit the Premises or Concession Facilities to be used for any purpose that is prohibited by any law or regulation of the State of Colorado or the City of Westminster. In the event the rights granted Concessionaire under this Agreement are insufficient to obtain a liquor license for the sale of alcoholic beverages at the Premises and the Concession Facilities, the City will grant such additional rights to Concessionaire as are required to obtain approval of the liquor license.

(b) Entertainment of any nature shall be subject to approval of the Manager, which approval shall not be unreasonably withheld. If the Manager disapproves any entertainment, the Concessionaire shall terminate said entertainment immediately. Concessionaire may appeal such decision to the Director as set out in Section 15(d) of this Agreement.

(c) City hereby grants Concessionaire a non-exclusive and limited license to use of the of the City's logos, copyrights, trademarks, and trade names existing for the Premises, Concession Facilities or Legacy Ridge at Westminster in general, on t-shirts and uniforms worn by employees of Concessionaire, and on Concession menus, napkins, matches, beverage cart signage, glassware, and any other reasonable usage in connection with operation of the Concessionaire's use of such logos, copyrights, trademarks and trade names will be in proper manner including use of any design or symbol as may be required by the City. The city retains the right to review and approve any and all uses of City logos, copyrights, trademarks, and trade names used by Concessionaire in connection with the operation of the Concession. Concessionaire warrants that any use of logos, copyrights and trademarks, and used in connection with operation of the Concession will be done without violation of any rights therein. When possible and appropriate, the City will include the name Legacy Grill in all advertising for the Legacy Ridge Golf Course.

6. RESTRICTIONS ON USE OF PREMISES

(a) Concessionaire shall not:

(i) Permit any unlawful practice to be carried on or committed on the Premises or Concession Facilities;

(ii) Make any use or allow the Premises or Concession Facilities to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by the City;

(iii) Keep or use or permit to be kept or used on the Premises or the Concession Facilities any inflammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the City or the City's insurance carriers without obtaining prior written consent of the City, except for small quantities of cleaning products incidental to their permitted uses described in this Agreement;

(iv) Use the Premises or Concession Facilities for any purpose which creates a nuisance or injures the reputation of the Premises or the City;

(v) Deface or injure the Premises or Concession Facilities, or commit or suffer any waste in or about the Premises or Concession Facilities;

(vi) Permit any odors to emanate from the Premises or Concession Facilities in violation of any local, state, or federal law;

(vii) Use any portion of the Premises or Concession Facilities for storage or other purposes except as is necessary and required with its use specified in this Agreement;

(viii) Permit its employees to park anywhere upon the Premises except in designated employee parking, as shown in Exhibit A to this Agreement; provided, however, designated employee parking may be modified from time to time by the Manager upon prior notice to Concessionaire;

(ix) Permit tobacco products to be smoked by any person in, on or at the Premises or the Concession Facilities, which locations have been designated in whole as "smoke free" by the City; provided, however, that the City will specify a limited area at the Premises which allows smoking by Premises patrons; or

(x) Conduct, or allow to be conducted, gambling on site.

7. SIGNS AND ADVERTISEMENTS

Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises or Concession Facilities without the City's prior written approval. Concessionaire shall maintain all signs or advertisements approved by the City in good and attractive condition at the Concessionaire's expense.

8. IMPROVEMENTS

The City retains the right to modify or alter the improvements of the Premises and Concession Facilities at any time and in any manner; provided, however such modifications or alterations shall only occur during "off season" periods with the exception of any emergency work deemed necessary by the City. Concessionaire shall make no improvements or alterations to the Premises or Concession Facilities without prior written approval by the City.

9. MAINTENANCE

All maintenance and repairs to the Premises and Concession Facilities including plumbing, water lines, sewer lines, and sewage disposal units shall be the responsibility of the City; provided, however, that any maintenance and repairs, regardless of cost, necessitated by the negligence or intentional acts of the Concessionaire shall be the sole responsibility of the Concessionaire. As part of the City's preventative maintenance program, the City may require an annual "closure for repairs" in order to rejuvenate the Premises and Concession Facilities; provided, however, such shall occur during "off-season" periods with the exception of emergency work deemed necessary by the City. Therefore, during the term of this Agreement, and all renewal options thereto, the Concessionaire agrees that, if requested in writing by the City, the Premises and Concession Facilities shall be closed for a reasonable period of time during "off-season" periods for the City to conduct all necessary work. The City will adjust Concessionaire's fees due hereunder for lost revenue arising from closures necessitated by such work.

10. EQUIPMENT

(a) The Concessionaire shall furnish a smallwares package, the minimum requirement of which is set out in Exhibit D attached hereto and incorporated herein by this reference. Concessionaire shall be responsible for replacing and keeping in service all items in the smallwares package. All such items shall remain the property of Concessionaire at the termination of this Agreement.

(b) The City will furnish equipment, furniture, fixtures, and personal property, as set out in Exhibit C attached hereto and incorporated herein by this reference, which items shall remain the property of the City. Concessionaire shall be responsible for maintenance and repair of all City-owned equipment, furniture, fixtures, and personal property set out in Exhibit C during the term of this Agreement, which items shall be kept in proper repair and working order, and be in good and serviceable condition at the termination of this Agreement, except for normal wear and tear. The City shall be responsible for replacement of its equipment, furniture, fixtures, and personal property when it deems such replacement is necessary.

11. UTILITIES

The City shall provide for the delivery of water, sewer, telephone, electricity, and gas to the Premises and Concession Facilities for the operation of the Concession. Concessionaire is responsible for payment of all such services as set out in Section 17(a) of this Agreement.

12. OTHER OPERATIONS AND ACTIVITIES

(a) The Concessionaire shall conduct the Concession granted to it without infringement upon the rights of others, or any interference in the operation of the Golf Course, Clubhouse in general, or any facilities adjacent thereto; it shall not engage in any business to sell any commodity upon, in, or around the Premises or Concession Facilities other than as expressly set out in this Agreement; the Concessionaire shall cooperate so as not to interfere with the holding or carrying on of any event upon the Premises or Concession Facilities, and shall not create unreasonable noise or annoyance to those participating in or attending such events.

(b) The City, the Manager, and the Director shall conduct their business without infringement upon the rights of concessionaire as granted herein and shall cooperate with Concessionaire so as not to interfere with the holding or carrying on of any Concession operation or event.

13. HOURS OF OPERATION

(a) Unless otherwise agreed to in writing, or as specified herein, Concessionaire shall operate the Concession according to the schedule set out in Exhibit E attached hereto and incorporated herein by this reference. The scheduled hours of operation are subject to reasonable revision from time to time by the Manager with thirty (30) days written notice to Concessionaire of such revisions.

(b) The Concessionaire may, in its discretion, close the Premises and Concession Facilities on Thanksgiving, Christmas, and New Year's Day. In addition, the Premises and Concession Facilities may remain closed, at Concessionaire's discretion, any time Adams School District is closed solely because of inclement weather.

(c) Concessionaire's hours of operation and level of service may be adjusted according to changes in level of Golf Course operations by the City (minimum level of 35,000 rounds annually, upon approval of the Manager, which approval shall not be unreasonably withheld.

14. PERMITS AND LICENSES

(a) The Concessionaire shall procure, supply, and post, at its own expense, in places to be designated by the City, all permits and licenses necessary for the operation of the Concession and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

(b) The Concessionaire shall apply for a Hotel and Restaurant Liquor License, with Optional Premises and Extended Colorado within five (5) days after the date this Agreement is fully executed. The Director will fully cooperate with Concessionaire in Concessionaire's application for such liquor license. The Concessionaire shall pay all expenses necessary to obtain the liquor licenses. Nothing contained in this Agreement shall be construed to guarantee that the City will approve the issuance of any license. In the event such license is issued, the Concessionaire shall be bound to comply with all local and state laws and regulations relating to the issuance of such licenses and shall take all necessary actions to review its liquor licenses as required by law during the term of this Agreement. In the event such license is denied, or in the event that such license is issued but later revoked or suspended, the City reserves the right to terminate this Agreement. In the event the City determines not to terminate this Agreement following such revocation or suspension, then all of the provisions of this Agreement shall continue and shall be binding upon the parties in exactly the same manner as though such license had not been contemplated by the parties.

No transfer of these licenses shall be made without the approval of the City, which shall not be unreasonably withheld. The City may designate a transferee of the liquor licenses and such transfer will take effect upon the effective date of the termination of this Agreement or at such other time as the parties may agree; provided, however, Concessionaire shall have no responsibility, obligation, or liability whatsoever under such transferred license, except for unpaid debts and other obligations incurred by Concessionaire, if any. Subject to the foregoing, if the City elects to designate a transferee as herein provided, the Concessionaire agrees to take all actions necessary to promptly transfer the existing licenses to the transferee.

15. AUTHORITY OF MANAGER

(a) The Manager shall develop and interpret the application of all standards and guidelines provided for in this Agreement and exhibits attached hereto. The Manager shall decide all questions which may arise as to Concessionaire's fulfillment of such standards and guidelines. The Manager may revise such standards and guidelines from time to time with thirty (30) days written notice to the Concessionaire.

(b) The Concession prices and standards of operation must be approved by the Manager in accordance with Exhibit B.

(c) If the service being performed by the Concessionaire does not meet the standards and guidelines set out in this Agreement, the Manager shall immediately notify the Concessionaire, and the Concessionaire shall comply with the pertinent standard immediately where possible, but in no event later than ten (10) days after Manager's notice.

(d) The Manager shall, upon presentation to him, make prompt decisions in writing on all requests of the Concessionaire and on all other matters relating to the performance and interpretation of this Agreement. In the event the Concessionaire disagrees with a decision of the Manager, Concessionaire shall have the right to appeal the decision to the Director, provided such appeal is in writing and filed with the Director within ten (10) days after the Concessionaire's receipt of the Manager's written decision. The Director shall make a determination within twenty (20) days after his receipt of the appeal. The decision of the Director shall be in writing and shall be sent to each party at the addresses set out in Section 30(a) of this Agreement. The decision of the Director shall be final.

(e) City acknowledges and agrees that Concessionaire is entering into this Agreement in reliance on the Manager acting reasonably in connection with the Concession and in such a manner that Concessionaire can operate the Concession in a successful and profitable manner.

16. ACCESS AND INSPECTION

The City, its designated agents, employees, servants, and any other person authorized by the City may enter the Premises and Concession Facilities at any reasonable time for the purpose of inspecting the same. Any entry onto or inspection of the Premises and Concession Facilities by the City pursuant to this section shall not constitute interference with the operations of the Concessionaire and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

17. **PAYMENTS**

(a) Monthly Base Concession Fee. THE MONTHLY BASE CONCESSION FEE IS TO BE NEGOTIATED BY THE DIRECTOR OF PARKS, RECREATION AND LIBRARIES AND THE CONCESSIONAIRE EACH YEAR NO LATER THAN DECEMBER 15 FOR THE COMING YEAR. FOR 1997 THE CONCESSIONAIRE SHALL PAY \$2,500 PER MONTH (hereinafter referred to as "Base Concession Fee") to the City as payment for the Concession commencing on January 1, 1997. The Base Concession Fee will be paid in equal quarterly installments in advance on or before the first day of each quarter of the year during the term of this Agreement. The Base Concession Fee will be paid to the City without notice or demand, and without deduction or offset, at the address specified for the City in Section 30 or such other place as the City shall designate.

(b) Utilities. Concessionaire shall pay to the City sixty (60%) of the monthly utility bill for the Premises, which is based on the square footage of the building used by the Concessionaire, payable on or before the 30th of each month for the preceding month. Within ten (10) days of a written request by Concessionaire, the City will provide Concessionaire with a written explanation of the City's calculation of utilities bills and any relevant back up documentation.

(c) Books and Records. Concessionaire and each licensee, or concessionaire of Concessionaire shall keep a permanent, accurate set of records of all Gross Sales derived from the conduct of the Concession, including all point of sale records, tapes, and printouts; sales reports and ledgers; files; computer records and disks; cash register tapes, sales slips, order records, and invoices; copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in connection with the Concession, as may be reasonably required in order to ascertain, document, or substantiate Gross Sales. All such records shall be retained for at least three (3) years after the end of the Lease Year to which they relate.

(d) Late Payment. If Concessionaire fails to pay any Base Concession Fee on the date it is due, the unpaid amount will be subject to a late payment charge equal to four percent (4%) of the unpaid amount. This late payment charge is intended to compensate the City for its additional administrative costs resulting from Concessionaire's failure, and has been agreed upon by the Concessionaire and the City, after negotiation, to be the reasonable estimate of the additional administrative costs that will be incurred by the City as a result of Concessionaire's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. This late payment charge will constitute liquidated damages and will be payable to the City together with such unpaid amount. The payment of this late payment charge will not constitute a waiver by the City of any default by the Concessionaire under this Agreement.

(e) Additional Concession Fees. All other amounts, liabilities, and obligations which Concessionaire assumes or agrees to pay pursuant to this Agreement, together with any payment of utilities, any late payment charge, or default interest, shall constitute additional concession fees (hereafter referred to as "Additional Concession Fees"). If Concessionaire fails to pay any Additional Concession Fees, the City shall have the rights, powers, and remedies provided herein or by law for nonpayment of Basic Concession Fees. Concessionaire shall pay the Additional Concession Fees upon the City's demand, unless otherwise expressly provided herein, without offset or deduction of any nature.

(f) **Default Interest.** If any payment is not received within ten (10) days after its due date for any reason whatsoever, the overdue amount shall bear interest equal to the lesser of ten and one quarter percent (10.25%) per annum or the highest lawful rate which may be charged Concessionaire under the laws of the State of Colorado. Such interest shall be in addition to any late payment under Section 17(h) above. Such interest shall accrue continuously on such unpaid amount commencing with the date such amount was due and ending on the date on which Concessionaire makes full payment of such amount. Any such interest shall be payable as Additional Concession Fees hereunder, shall not be considered as deduction from other Concession Fees, and shall be payable immediately on demand.

(g) **Place of Payment.** All payments and the statements required herein shall be delivered to the City at the address provided in Section 31 below.

(h) **Accounting Controls and Procedures.** The City shall have the right at any time, and from time to time, to review and approve the internal accounting controls and procedures utilized in connection with, or that are designed for, the operation of the Concession.

18. SECURITY DEPOSIT

The Concessionaire shall furnish a security deposit, in the form as determined by the Concessionaire, of either:

(a) a cash deposit which shall be segregated by the City in an interest-bearing account which interest shall accrue to the Concessionaire, or

(b) a letter of credit issued for the benefit of City, in the amount of Five Thousand Dollars (\$5,000.00), as security for Concession Fees, security for the return of all City-owned buildings and equipment in good condition at the termination of the Agreement, and as security for its performance of all covenants contained herein. If Concessionaire elects to provide a letter of credit or elects to replace the cash deposit with a letter of credit sometime thereafter, such letter of credit shall be irrevocable and shall not be subject to any conditions. Such a letter of credit shall be in substantially the attached hereto as Exhibit F of this Agreement and incorporated herein by this reference.

19. OTHER PAYMENT OBLIGATIONS

(a) The Concessionaire shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Concession, and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent. The Concessionaire shall furnish to the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of the social security, unemployment compensation and all taxes and fees above reference. The Concessionaire shall pay promptly when due all bills, debts, and obligations, including but not limited to its portion of charges for water, sewer, light, and electricity as set out in Section 17 herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Concession, and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the City under this Agreement.

All such costs and expenses of the Concessionaire are to be borne by the Concessionaire.

(b) The City shall promptly pay all bills, debts, obligations, and fees of whatever nature applicable to its operation of the Golf Course, in general, including but not limited to payment of its portion of the utility service provided to Concessionaire hereunder and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the Concessionaire under this Agreement. The City shall maintain all municipal, state, or federal licenses required for the conduct of the City business.

20. **INDEMNIFICATION**

The Concessionaire agrees to indemnify and hold harmless the City of Westminster, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Concessionaire's operation of the Concession and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Concessionaire, any subcontractor of the Concessionaire, or any officer, director, shareholder, member, employee, representative, or agent of the Concessionaire, or which arise out of any workers' compensation claim of any employee of the Concessionaire or of any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Concessionaire, and agrees to bear all other costs and expenses related thereto, including court costs and attorneys fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

21. **INSURANCE**

(a) Concessionaire shall procure and continuously maintain at its own expense, the minimum insurance coverages listed below, with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Comprehensive General Liability Insurance with combined single limit of \$3,000,000.00 per occurrence. This policy must include Contractor Liability, Products Liability, Broad Form Property Damage, and Personal Injury;

(ii) Owned, hired, and non-owned automobile liability coverage with \$600,000.00 limit;

(iii) Statutory workers' compensation on all employees;

(iv) All risk insurance for full insurable replacement value of City-owned equipment and personal property.

(b) The required insurance policies shall be endorsed to include the City of Westminster as an additional insured as its interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City, its elected officials, officers, employees, or others working on behalf of the City, or carried by or provided through any self-insurance pool of the City, shall be excess and not contributory insurance to that provided by Concessionaire. Each party to this Agreement agrees to waive subrogation on respective property insurance.

(c) The certificate of insurance provided to the City shall be completed by the Concessionaire's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Park Services Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

and

Risk Manager
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

A certified copy of any policy shall be provided to the City of Westminster upon its request.

(d) The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the City of Westminster, its elected officials, officers, or employees.

22. EQUAL OPPORTUNITY EMPLOYER

The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. The Concessionaire will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws. The Concessionaire will not discriminate against any customer because of race, color, religion, age, sex, disability, or national origin.

To the extent local, state, or federal laws or regulations require the Concessionaire to act in compliance with such law or regulation, Concessionaire agrees to do so.

23. TERMINATION

(a) This Agreement shall not terminate, the Concessionaire shall not be entitled to any abatement or reduction of Basic Concession Fee or Additional Concession Fee hereunder, and the Concessionaire shall not have any right to terminate this Agreement or quit all or any part of the Premises or Concession Facilities or to be released from any obligations hereunder for any reason, except upon thirty (30) days prior written notice and except by reason of:

- (i) Any damage to all or a substantial part of the Premises or Concession Facilities;
- (ii) Any condemnation or other taking of all or a substantial part of the Premises or Concession Facilities;
- (iii) Any limitation or prevention of, or any interference with, any use or possession of all or a substantial part of the Premises or Concession Facilities (whether due to any failure of City's title to all or any part of the Premises or Concession Facilities or otherwise;
- (iv) Any Event of Default or other breach by the City under this Agreement;
- (v) Force majeure causing an inability to perform, due to factors beyond Concessionaire's control such as acts of God, flood, war, riot, fire, explosion, strikes, or acts of government which last for a period greater than one hundred eighty (180) days;
- (vi) Any final order or judgment by any court, administrative agency or other governmental authority requiring such, or
- (vii) Any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding.

24. EVENTS OF DEFAULT; REMEDIES

(a) Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" by Concessionaire under this Agreement;

(i) Concessionaire fails to make any payment when due of Basic Concession Fee or Additional Concession Fee; provided, however, Concessionaire shall have a grace period of five (5) business days within which to make such payment to the City;

(ii) Concessionaire fails to observe or perform any of Concessionaire's other covenants or obligations hereunder and such failure continues for thirty (30) days after the City has given written notice to Concessionaire specifying such failure (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such thirty (30) day period, provided that Concessionaire commences to remedy such default within such thirty (30) day period and proceeds with reasonable diligence and best efforts thereafter to cure such default)' provided, however, that violations of liquor and health laws shall be cured immediately upon written notice from the City;

(iii) Concessionaire or any affiliate as defined in 11 U.S.C. Section 101(2) thereof commences (by petition, application, or otherwise) a voluntary case or other proceeding under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, self-trusteeship, receiver, custodian, or other similar official of Concessionaire or any substantial part of Concessionaire's property, or consents (by answer or failure to answer or otherwise) to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or makes an assignment for the benefit of creditors, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or takes any action to authorize any of the foregoing;

(iv) An involuntary case or other proceeding is commenced under the laws of any jurisdiction against the Concessionaire or any affiliate as defined in 11 U.S.C. Section 101(2) thereof, with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of Concessionaire or any substantial part of Concessionaire's property, and such involuntary case or other proceeding remains undismitted and unstayed for a period of sixty (60) days, or a trustee, receiver, custodian, or other similar official shall be appointed in such involuntary case; or

(v) Any governmental authority takes possession of any part of the property of, or assumes control over the affairs or operations of, or a receiver is appointed for the property of, the Concessionaire or any affiliate as defined in 11 U.S.C. Section 101(2) thereof.

(b) Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" by the City under this Agreement:

(i) City fails to observe or perform any of the City's covenants or obligations hereunder and such failure continues for thirty (30) days after the Concessionaire has given written notice to the City specifying such failure (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such thirty (30) day period, provided that The City commences to remedy such default within such thirty (30) day period and proceeds with reasonable diligence and best efforts thereafter to cure such default);

(ii) City commences (by petition, application, or otherwise) a voluntary case or other proceeding under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, self-trusteeship, receiver, custodian, or other similar official of the City or any substantial part of City's property, or consents (by answer or failure to answer or otherwise) to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or makes an assignment for the benefit of creditors, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or takes any action to authorize any of the foregoing;

(iii) An involuntary case or other proceeding is commenced under the laws of any jurisdiction against the City with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of City or any substantial part of City's property, and such involuntary case or other proceeding remains undismitted and unstayed for a period of sixty (60) days, or a trustee, receiver, custodian, or other similar official shall be appointed in such involuntary case; or

(iv) Any governmental authority takes possession of any part of the property of, or assumes control over the affairs of operations of, or a receiver is appointed for the property of the City.

(c) Remedies. Whenever an Event of Default has occurred, the non-defaulting party shall have all of the following remedies in addition to all other rights and remedies which such party may have at law or in equity:

(i) The non-defaulting party may give the defaulting party notice of intent to terminate this Agreement on a date specified in such notice, which date shall be the date of the occurrence of the Event of Default or whatever alternate date is specified in the notice. This Agreement and the rights hereby granted shall terminate as of such date with the same force and effect as if the date specified in such notice were the date fixed for the expiration of the term of this Agreement, and all rights of the Concessionaire hereunder shall expire and terminate but Concessionaire shall remain fully liable for Basic Concession Fees and Additional Concession Fees or the term of this Agreement, unless before such date all arrears in Basic Concession Fees and Additional Concession Fees, if any, have been paid in full.

(ii) The City may, if the City is the non-defaulting party, enter the Premises and Concession Facilities, remove any personal and property, and store such property in a public warehouse or elsewhere at the cost of Concessionaire.

(d) Cumulative Rights. No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. The City's receipt of any Basic Concession Fees or Additional Concession Fees with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach. Neither party shall be deemed to have made any waiver of any provision of this Agreement unless expressed in writing and signed by such party.

25. DELIVERY AFTER TERMINATION

Concessionaire will deliver the Premises and all City-owned equipment thereon to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss and damage not otherwise caused by Concessionaire.

26. ATTORNEYS FEES

If any action is brought to recover any Basic Concession Fees or Additional Concession Fees, or on account of any Event of Default or other breach of this Agreement, or for the recovery of the possession of the Premises and Concession Facilities, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.

27. VENUE AND GOVERNING LAW

Venue for any and all legal action regarding this agreement shall lie in the District Court, Adams County, Colorado, and this agreement shall be governed by the laws of the State of Colorado, the Charter and Municipal Code of the City of Westminster. Concessionaire agrees that if personal service on Concessionaire cannot be reasonably accomplished, any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail, an additional copy of the same to Concessionaire at the address shown in Section 30 herein; that said service shall be considered as valid personal service and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading, or answer is not made.

28. INDEPENDENT CONTRACTOR

For the purposes of defining Concessionaire's relationship with City, it is understood and agreed that Concessionaire is an independent contractor and nothing herein contained shall constitute or designate the Concessionaire or any of its employees or agents as agents or employees of the City, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the City. The Concessionaire understands and agrees that Concessionaire is not entitled to nor shall receive any City benefits, including vacation, worker's compensation, sick pay or any other benefits from City.

29. ASSIGNMENT

Neither Concessionaire, nor Concessionaire's successors or assigns, shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law, or otherwise, without the prior consent in writing of the City in each instance. The sale or transfer of a controlling interest, or any interest in excess of twenty-five percent (25%) of the capital shares of Concessionaire or its assigns, or any merger which effects a similar transfer of a controlling interest in Concessionaire or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement be assigned or transferred, or the Concession Facilities occupied by anyone other than Concessionaire, the City may, after default by Concessionaire, collect Concession Fees from the assignee, transferee, or occupant, and apply the net amount collected to the Concession Fees reserved herein, but no such assignment, transfer, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition of this Agreement, or the acceptance of the assignee, transferee, or occupant, or a release of Concessionaire from the performance or further performance by Concessionaire of the agreements, terms, covenants and conditions hereof, and the party originally constituting the Concessionaire under this Agreement shall continue liable under this Agreement in accordance with all the agreements, terms, covenants, and conditions of this Agreement.

The consent by the City to an assignment or transfer shall not in any way be construed to relieve Concessionaire from obtaining the express consent in writing of the City to any further assignment or transfer.

30. NOTICES

(a) All notices, demands and communications hereunder shall be personally served or given by certified or registered mail, and

(i) If intended for City, shall be addressed to City at:

City of Westminster
Attn: Director of Parks, Recreation and Libraries
4800 West 92nd Avenue
Westminster, Colorado 80030

With a copy to:

City Attorney
City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80030

(ii) If intended for Concessionaire, shall be addressed to:

Albert G. Gehorsam, Managing Partner
Legacy Grill, L.L.C.
10801 Legacy Ridge Parkway
Westminster, Colorado 80030

(b) Any notice given by mail shall be deemed delivered when sent by certified mail by a United States general or branch post office, addressed as above, with postage prepaid, or when served personally at the applicable address.

31. **ENTIRE AGREEMENT**

This is the entire agreement between the parties and there are not other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever.

Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this writing and signed by the party against whom enforcement of the change, modification, discharge, or abandonment is sought.

32. **SEVERABILITY**

If any clause or provision of this agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this agreement, then and in that event, it is the intention of the parties hereto that the remainder of this agreement shall not be affected thereby. It is also the intention of the parties to this agreement that in lieu of each clause or provision of this agreement that is illegal, invalid or unenforceable, there be added as part of this agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LEGACY GRILL L.L.C.
10801 LEGACY RIDGE PARKWAY
WESTMINSTER, COLORADO 80030

CITY OF WESTMINSTER
4800 W. 92ND AVENUE
WESTMINSTER, COLORADO 80030

ALBERT GEHORSAM
Managing Partner City Manager

WILLIAM M. CHRISTOPHER

Attest: Attest:

Title City Clerk

Approved as to Legal Form

City Attorney

EXHIBIT A

MAP

EXHIBIT B

CLEANLINESS GUIDELINES

The Concessionaire will maintain, at all times, the kitchen, food preparation, dining and banquet areas, bathrooms and all equipment, fixtures, paraphernalia, materials, utensils and other items therein, in a clean and sanitary manner, polished and waxed to the highest degree possible. Concessionaire shall keep the Concession Facilities clear of broken glass, debris, and garbage. Concessionaire shall dispose of any waste water or other waste fluid in the sanitary sewer. In the event waste fluids may not legally be disposed of in the sanitary sewer, then Concessionaire is responsible for disposing of same in an appropriate and lawful manner. Concessionaire shall comply with all applicable health and sanitation laws and regulations in effect where the food/beverage areas are located. The Concessionaire shall permit and facilitate inspection of the food/beverage areas by the City and its representatives and by public health/sanitation/building/fire authorities so authorized at all times.

The following shall establish the minimum sanitation guidelines for the contractor:

1. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
2. All State of Colorado Acts and Regulations governing food service operations.
3. All applicable county public health/sanitation regulations.
4. All applicable Federal Government Acts and Regulations.
5. Any specific guidelines established by the Manager.

SANITATION REGULATION AND JOB INSPECTION

1. Informal inspections of the food service facilities are to be conducted weekly by the Concessionaire. An inspection checklist is to be prepared and completed by the Concessionaire for each inspection, and said checklists are to be made available to the City upon its request. A complete report of corrective measures taken or to be taken for any deficiencies noted should accompany the inspection report.

2. Informal inspections of the food service facilities are to be conducted daily by the Concessionaire with immediate corrective measures taken for any deficiencies noted.

3. Formal inspections of the food service facilities are to be conducted a minimum of four (4) times per year, on a quarterly basis, by the City's designated representative, accompanied by the Concessionaire.

FOOD AND BEVERAGE STANDARDS

The Concessionaire shall serve only good, pure, wholesome food and drinks; such service shall be at reasonable prices based on prevailing prices in other restaurants serving alcoholic beverages or bar and grill establishments having the same type of business elsewhere in the community. The Manager shall have the authority to determine what is the prevailing price, and his decision in this regard shall be final. The Concessionaire will adhere strictly to all pure food laws and ordinances as adopted or promulgated by the State of Colorado, the City of Westminster and the County Health Department, and the Concessionaire will otherwise at all times abide by the rules and regulations of the Manager and the City of Westminster as herein set forth. Food shall be prepared in such a way as to be acceptable to the patrons in taste, appearance, portion, size, and doneness. Food shall retain the expected taste and hot food shall be hot and cold food shall be cold. Food shall reflect the product from which it is prepared, such as shape and color. The amount of food served shall be sufficient in relation to price and other services offered. Food shall be cooked to the extent requested and accepted by the patrons. Service shall be prompt, giving attention to the patron's needs and promoting a friendly relationship. The food shall complement the facility, and shall reflect the eating preferences of the patrons.

RESIDENT MANAGER

The Concessionaire shall be in constant daily personal supervision of the Concession and it shall name a Resident Manager, in writing, who shall be in constant daily personal supervision of the Concession and shall be the registered manager on the liquor licenses.

EMPLOYEE CONDUCT AND DRESS

The Concessionaire shall be responsible for employment and compensation of its own employees. Concession employees shall be clean and presentable in dress and person. All concession employees shall furnish prompt and courteous service to the general public, to patrons, and other employees. All Concession employees shall be of lawful working age, and the Concessionaire shall comply with all the laws, rules and regulations as an employer, and particularly but not limited to, all Labor Laws and the Workmen's Compensation Law. The Concessionaire shall at all times enforce strict discipline and good order among employees.

STORAGE

All storage of materials and equipment shall be within the buildings of the Concession Facilities. No empty bottles, crates, or containers shall be stored outside the building, except in the area designated by the Manager

PRICING GUIDELINES

All sales of food and beverages shall be at reasonable prices based on prevailing prices in other restaurants serving alcoholic beverages, or bar and grill establishments having the same type of business elsewhere in the community. The Manager shall have the authority to determine what is the prevailing price and shall have the right to approve all price changes. Manager will not unreasonably withhold approval of prices proposed by Concessionaire. In determining the prevailing prices and approving price changes, the Manager and Concessionaire will evaluate prices at other similarly positioned golf courses and caterers in the Denver Metropolitan area given the City's and Concessionaire's mutual desire to market the Golf Course, and the Concession related thereto, as the Front Range's preeminent public golf course experience.

Date: May 12, 1997
Subject: Olson Technological Park Second Amended PDP
Prepared by: David Falconieri, Planner III

Introduction

City Council is requested to hold a public hearing and take action on the Second Amended Preliminary Development Plan for the Olson Technological Park Planned Unit Development.

Summary

Applicant/Property Owner: MIE Acquisitions Co., represented by Karl Franklin of Contra Engineering.

Location: Northeast corner of Wadsworth Parkway and 108th Avenue.

Size of site: 36.5 acres

Description of Proposed Use: Light industrial and commercial uses are currently permitted on all lots except Lot 5 which is the southern-most lot. The applicant is proposing the addition of light industrial uses to that lot as well, specifically, an office/showroom/warehouse product on all of the lots along Wadsworth Parkway. The amendment would also bring the plan into conformance with current standards for setbacks and street improvements.

Major Issues -

The uses proposed on the amended plan are in general conformance with the proposed Comprehensive Land Use Plan for this area, which is designated as Business Park and allows the contemplated use.

Planning Commission Recommendation

On April 22, the Planning Commission voted unanimously to recommend approval to the City Council of the proposed Second Amended Olson Technological Park Preliminary Development Plan which would permit office/warehouse uses on Lot 5.

At the Planning Commission meeting, three adjacent property owners/residents asked questions regarding the traffic flow into the park. They were concerned that the proposed use would negatively impact traffic on 108th Avenue. One also questioned why this use would be acceptable to the Jefferson County Airport when residential uses are not permitted. While the Jefferson County Airport Critical Zone restricts residential uses within the zone, office/warehouse uses are allowed within the zone.

Staff Recommendation

1. Hold a public hearing
2. Approve the proposed Second Amended Preliminary Development Plan for the Olson Technological Park.

Background Information

Discussion of Major Issues

Specific uses will be addressed at the time of Official Development Plan (ODP) approval. The applicant has proposed an office/warehouse use for the lots along Wadsworth Parkway which would be consistent with the tenets of the proposed Comprehensive Land Use Plan.

Architectural/Building Materials

To be reviewed at the time of ODP approval.

Public Land Dedication, Parks/Trails

The City Code does not require Public Land Dedication for commercial uses. Trails associated with the two streets will be accommodated within the shown right-of-way. No new right-of-way was required for Wadsworth Parkway, but 15 additional feet was required for 108th Avenue. That right-of-way will be dedicated to the City by warranty deed since the property has already been platted.

Access and Circulation

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

Site Design

To be reviewed at the time of ODP approval.

Service Commitment Category

Service commitments will be allocated out of Category C, Non-residential.

Referral Agency Responses

None received.

Surrounding Zoning

The property is bordered by the Green Knolls Planned Unit Development to the east, the Ball Corporation property to the west, two light industrial Planned Unit Developments to the south, and property owned by the Jefferson County Airport Authority to the north.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

Date: May 12, 1997
Subject: Resolution No. re Burlington-Northern Commuter Rail Project
Prepared by: Bill Christopher, City Manager

Introduction

City Council action is requested on the attached Resolution which would officially endorse the proposed Burlington-Northern Commuter Rail Project between Boulder and Union Station in Denver.

Summary

City Councillors Gary Smith and Glenn Scott and City Engineer Dave Downing have been working with Burlington-Northern Railroad representatives in exploring the feasibility of a commuter rail service between Boulder and downtown Denver at Union Station. The project has been evaluated on a preliminary basis, and is deemed to be feasible. Considerable support has come forward in a short period of time in favor of establishing such a commuter rail service to address the growing population, expansion of jobs in the subject area, and to relieve the growing traffic congestion on U.S. 36.

Recently, this project was discussed with Regional Transportation District (RTD) General Manager Cal Marsella, and RTD Board Members Dick Rudden and Ron Nichol. RTD is receptive to the project, and encouraged Westminster Officials to present it at the May 20 RTD Board meeting.

The attached Resolution sets forth formal support for the project that would be presented to the RTD Board of Directors.

Staff Recommendation

Adopt Resolution No. which officially states the City of Westminster's position in favor of the Burlington-Northern Commuter Rail Project between Boulder and Union Station in Denver and present the project at the May 20 Regional Transportation District Board meeting.

Background Information

RTD has previously unveiled the "Guide the Ride" capital improvement program along with proposed alterations of existing bus service in certain areas. Estimated total cost of all the listed improvements is a range of \$1.804 billion to \$2.015 billion depending on the level of Federal funding. The "Guide the Ride" program is predicated on a 20-year draft transit plan using the full one-cent sales tax revenue which reflects an increase of 4/10 of 1% sales tax which would become effective January 1, 1998 if approved. The State Legislature has authorized placing the "Guide the Ride" funding package on the November 1996 ballot.

When looking at the Northwest quadrant of the Denver metropolitan area, the "Guide to Ride" program calls for HOV lane extension on U.S. 36 and I-25. Councillors Gary Smith and Glenn Scott have researched the concept of a commuter rail project between Boulder and Union Station to establish a cost effective and efficient alternative transportation mode other than keeping people in their vehicles. They and City Engineer Dave Downing have met with Burlington-Northern Railroad (BNRR) Officials who have expressed interest in working with appropriate entities to further pursue the project. BNRR operates commuter rail in Chicago and other metropolitan areas. More recently, the Burlington-Northern Commuter Rail Project was discussed with RTD General Manager Cal Marsella and RTD Board Members Ron Nichol and Dick Rudden at Monday night's Study Session presentation. RTD Officials have expressed support for the concept and Mr. Marsella indicates that he intends to amend the recommended plan to the RTD Board of Directors to include funding (\$1.0 million) for a Major Investment Study (MIS) on the Commuter Rail Project.

Other entities have already expressed their support and interest in the project. Officials from the City of Boulder, Boulder Chamber of Commerce, MetroNorth Chamber of Commerce, and the Colorado Environmental Coalition have indicated a willingness to support and endorse the project.

The attached Resolution provides a formal expression by the Westminster City Council to endorse and support the Commuter Rail Project. This Resolution would then be presented to the RTD Board of Directors at their May 20 meeting when they are scheduled to finalize the "Guide to Ride" package that will then be submitted to the voters in November.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1997

BURLINGTON NORTHERN COMMUTER RAIL PROJECT

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER TO ENDORSE A COMMUTER RAIL PASSENGER LINE FROM BOULDER TO UNION STATION IN DENVER.

WHEREAS, it is important to evaluate and implement cost effective multi modal transportation options to serve the public throughout the Denver metropolitan region, and

WHEREAS, the northwest quadrant of the Denver metropolitan area represents a rapid growing populated area with increasing retail development, and job creation which generates an increased need and demand for enhanced, efficient multi modal public transportation options, and

WHEREAS, the Regional Transportation District (RTD) has proposed the "Guide the Ride" improvement program through 2015, predicated on the successful passage of 4/10 of 1% Sales and Use tax throughout the District and has proposed a variety of specific improvements throughout each quadrant of the District, and

WHEREAS, it has been proposed that commuter rail service be implemented utilizing the existing Burlington Northern Railroad trackage and other appurtenances as the spine system between Boulder and downtown Denver at Union Station, and

WHEREAS, Burlington Northern representatives have met with Westminster Officials and have expressed support for the commuter rail project on their trackage, and

WHEREAS, this system appears on a preliminary basis to be a cost effective option to pursue and RTD, Staff, and Management have indicated the possibility of designating this project as a MIS in the "Guide the Ride" package, and

WHEREAS, it is time sensitive and important to express interest in the Burlington Northern commuter rail concept to the Regional Transportation District Board of Directors at their May 20, 1997 meeting.

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

1. The City of Westminster fully supports the concept of utilizing the existing spine track system of the Burlington Northern Railroad between Boulder and Denver to implement a cost effective commuter rail service.
2. The necessary detailed feasibility and financial studies should be initiated immediately.
3. Collaborative efforts should begin immediately with all interested parties, including the Burlington Northern Railroad, affected Cities and Counties, area Chambers of Commerce, major employers, and economic development agencies.
4. The Regional Transportation District Board of Directors is strongly encouraged to approve the MIS designation on the Burlington Northern Railroad commuter service concept and incorporate the funding for the MIS in the "Guide the Rail" package.

Passed and adopted this 12th day of May, 1997.

ATTEST:

Mayor

City Clerk

Date: May 12, 1997

Subject: Resolution No. re 88th Avenue, Sheridan Boulevard to Harlan Street Project

Prepared by: David W. Loseman, Senior Projects Engineer

Introduction

City Council action is requested on the attached resolution authorizing the acquisition of right-of-way and easements needed for the construction of the 88th Avenue, Sheridan Boulevard to Harlan Street Project through condemnation proceedings, if necessary. Further Council action is requested to authorize the City Manager to execute a Possession and Use Agreement with the Westminster Mall owners.

Summary

- > Improvements to 88th Avenue between Sheridan Boulevard and Harlan Street are currently being advertised for bids. Council will be requested to award the construction contract for this project at the June 9th Council meeting.
- > Highlights of this project include widening 88th Avenue on the north side to provide three through lanes for westbound traffic; a continuous acceleration/deceleration lane on the north side of 88th Avenue; double left-turn lanes exiting both Mall accesses; the closure of the median at Benton Street; the elimination of Benton Street on the north side of 88th Avenue; the construction of a portion of the Mall Ring Road adjacent to the Steak and Ale Restaurant and at the north end of Benton Street; and, re-landscaping the area in front of the Mall.
- > The Mall Owners have signed a Possession and Use Agreement which would convey to the City the 88th Avenue Right-of-Way necessary to construct this project. In exchange for this donation, the City, if approved by Council, will construct the entire Mall "Ring Road" in the future, possibly 1998. This improvement is predicated on conveyance of 92nd Avenue right of way by the Mall owners.
- > The cost for constructing this "Ring Road" was included in the \$15 million bond issue that was approved by voters in November 1996.

Staff Recommendation

Adopt Resolution No. authorizing the acquisition of sufficient right-of-way and easements for the construction of improvements to 88th Avenue between Sheridan Boulevard and Harlan Street; and authorize the City Manager to execute a Possession and Use Agreement with the Owners of the Westminster Mall.

Background Information

The subject of this Agenda Memorandum is the right-of-way acquisition approval necessary for only the improvements to 88th Avenue between Sheridan Boulevard and Harlan Street.

Staff strongly believes that it is imperative that this portion of 88th Avenue be improved as soon as possible. Immediate, significant benefits would be realized by eliminating the "bottlenecks" that currently occur at Benton Street and Harlan Street along 88th Avenue. The improvements consist of widening 88th Avenue on the north side to provide for three through lanes for westbound 88th Avenue as well as acceleration/deceleration lanes for all Mall access points and Harlan Street. In addition, the signal at Benton Street would be relocated to the next intersection to the west and Benton Street will be converted into a right-in/right-out access on the south side of 88th Avenue. Benton Street on the north side of 88th Avenue would be closed and would be tied into the Mall parking lot roadway system so that it would then become a "ring" road around the east side of the Mall. An improved access for the Mobile Tool International building will also be provided.

In order to construct these improvements, it is necessary to obtain right-of-way from the Mall Owners. Over the past year, Staff has negotiated with the Owner with the result being that the Mall Owner agrees to dedicate right-of-way for 88th Avenue, 92nd Avenue and Harlan Street, in exchange, the City will construct the ring road. The value of the right-of-way is approximately equivalent to the cost of the ring road.

In Staff's opinion, this Agreement is very beneficial to both parties and therefore are recommending Council approval.

Other street widening improvements adjacent to the Westminster Mall are being pursued as part of the successful November, 1996 bond issue election. The 92nd Avenue widening will take place in 1998 and the Sheridan Boulevard expansion will be done in 1999.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1997

WHEREAS, the City of Westminster has determined that it is necessary to the public, health, safety and welfare to obtain land to accommodate the construction of 88th Avenue between Sheridan Boulevard and Harlan Street;

WHEREAS, an appraisal has been prepared by a professional company experienced in performing appraisals to determine the fair market value for the parcel; and

WHEREAS, the City will make an earnest good faith agreement for the subject parcel; and

WHEREAS, a municipal public purpose exists to acquire the property. A delay in the acquisition of the right-of-way and easement could result in a delay in the construction of 88th Avenue between Sheridan Boulevard and Harlan Street thus creating a hardship on the general population of the City of Westminster wishing to access and use the proposed road; and

WHEREAS, legal counsel for the City of Westminster deems it to be in the best interest of the City to acquire the property by the City's 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 will be necessary for the public health, safety and welfare due to bidding and construction deadlines.

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

1. The City Manager is hereby authorized to enter into an Agreement with the Mall Owner for the dedication of the property; and

2. City Staff is authorized to cause and shall cause negotiations to be initiated to acquire the parcel and interest identified in Exhibit A on the basis of the appraised value should the Agreement not be consummated, or such higher amount as may seem just and reasonable to facilitate such acquisition without the necessity of condemnation, and the City Manager is hereby authorized to acquire such parcel consistent with applicable law, including the execution of all documents necessary to complete this purchase; and

3. The City Attorney of the City of Westminster is authorized to take all necessary legal measures to acquire the property in question, including proceeding with condemnation of the property in question against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such other or further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceeding required to obtain the property 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 immediate possession of the property; and

4. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the property in questions, including, without limitation, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filing fees and charges, and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property; and

5. The City Engineer is hereby authorized to amend the legal description of the parcel 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 construction.

PASSED AND ADOPTED this 12th day of May, 1997.

ATTEST:

Mayor

City Clerk

Date: May 12, 1997
Subject: Transfer Ambulance Billing to the Fire Department
Prepared by: Mary Ann Parrot, Finance Director

Introduction

City Council is requested to approve the transfer of the Ambulance Billing Clerk to the Fire Department. This position is currently part of the Finance Department.

Summary

In 1991, City Council gave Staff direction to pursue the planning and development of a public ambulance service within the operations of the Fire Department. It was decided at that time to hire an Ambulance Billing Clerk, which would be part of the Finance Department. After six years of program experience, Staff has concluded that this position is better suited to being in the Fire Department.

The Ambulance Billing Clerk works more closely with the paramedics and Emergency Medical Services Officer than Finance staff. This position deals with deciphering trip reports and medical terminology. In addition, this position works closely with the hospitals and insurance companies which is an area of expertise that the Fire Department possesses.

According to Administrative Memo 95-1, City Council approval is needed to authorize the transfer of funds between Departments. Accordingly, a housekeeping action is necessary to move the funds budgeted for ambulance billing from the Finance Department to the Fire Department.

Staff Recommendation

Authorize the transfer of \$19,500 to the Fire Department budget from the Finance Department budget to pay for the ambulance billing position.

Background Information

The Finance and Fire Departments discussed and planned for this transition in early 1997 including such issues as internal controls and backup for this position. The two Departments will continue to work closely together to develop internal control procedures which will help assure the proper billing and collection of ambulance revenue. Staff anticipates that this change will allow the ambulance billing function to operate at its fullest potential.

Accordingly, the Finance Department has proposed the transfer of \$19,500 to the Fire Department, which is detailed below:

Salaries (16 payperiods from May 30-December 26)	\$17,500
Supplies	<u>\$ 2,000</u>
Total	<u>\$19,500</u>

Alternative

Council could not approve this reorganization. However, if this occurs, it is anticipated that the ambulance billing function will not operate as efficiently as it could. The Fire Department has the staff that deals directly with the ambulance program. Communication would be enhanced and greatly improved if ambulance billing were also located in the department, alongside the paramedics and Emergency Medical Services Officer. In addition, proper management dictates matching and locating the staff and expertise with the department which has the need.

Respectfully submitted,

William M. Christopher
City Manager

Date: May 12, 1997

Subject: Resolution No. re Reclaimed Water System 201 Facility Plan

Prepared by: Dan Strietelmeier, Water Resources Engineer

Introduction

City Council action is requested on the attached Resolution which adopts the City's Reclaimed Water System 201 Facility Plan Amendment.

Summary

A facility plan is a wastewater collection and treatment planning/technical study required to obtain federal funds for construction of those facilities.

Federal funds are included in the proceeds from the loan from the Colorado Water Resources and Power Development Authority, which will be used to fund Westminster's Reclaimed Water System.

The federal requirement for facility plans is a result of Section 201 of Public Law 92-500, the Federal Water Pollution Control Act of 1972, later amended by the Clean Water Act of 1977.

The amendment to Westminster's 201 Facility Plan for the City's existing wastewater treatment facilities, evaluated the proposed reclaimed water system project and developed the most cost effective design alternatives.

The 201 Facility Plan Amendment (the Plan) was made available for public comment for 30 days, and a notice seeking public comment was included in the Westminster Window. The document was available for review at City Hall, the Municipal Service Center, and the Westminster Public Libraries.

A public hearing was held on October 30, 1996 and the only comment from the public was that the project was a good use of scarce resources and the City of Westminster should move forward with the project.

State and Federal agencies provided comments on the Plan and those comments have been incorporated and addressed in the Plan. The Plan was also presented to the Denver Regional Council of Governments.

The preliminary design of Westminster's Reclaimed Water System was completed in 1996, and the design of the advanced wastewater treatment facility has been initiated.

The 201 Facility Plan used the 1996 Westminster Reclaimed Water System Preliminary Design Report as a guide. The design of the reclaimed system components will follow the basic recommendations outlined in the preliminary design report and 201 Facility Plan Amendment.

The goal is to have the initial phase reclaimed system operational in 1999. The initial phase will supply approximately 1,100 acre feet per year to Legacy Ridge Golf Course, the proposed Countrydale Golf Course, City Park, City Hall and Hyland Hills Golf Course.

Staff Recommendation

Adopt Resolution No. adopting the City of Westminster Reclaimed Water System 201 Facility Plan Amendment.

Background Information

The Westminster Reclaimed Water System will provide from 1,100 acre-feet (first phase) to 3,000+ acre-feet (ultimate) of reclaimed water from the City's Big Dry Creek Water Reclamation Facility (BDCWRF) for irrigation of golf courses, business parks, city parks, and greenbelts. The design of the reclaimed water standpipe at the Northridge storage tanks and the advanced wastewater treatment facility at BDCWRF is underway. The design of the pipeline distribution system will be bid later this year.

The preliminary design study served as a basis for the 201 Facility Plan Amendment and included a detailed site identification study to locate potential reclaimed water users in the City of Westminster. The study also evaluated marketing reclaimed water to potential customers outside of Westminster's jurisdiction. Golf courses, parks, greenbelts, street-scapes, rights-of-way, open space, city facilities, business parks, schools, churches, hospitals, lakes, ponds, and wetlands were all considered as potential reclaimed water users. City owned landscapes that could be served by the proposed WRWS include Legacy Ridge Golf Course, Countrydale Golf Course, Westminster City Hall, City Park, and other City of Westminster parks, ponds, and wetlands areas. Other areas that could be served include the Ranch Golf Course, Hyland Hills Golf Course, and numerous commercial, industrial, and institutional sites.

A total of 195 potential reclaimed water sites were identified in this study; 104 sites controlled by the City, and 91 sites controlled by other entities. Water use for the identified sites was estimated to be 3,000+ acre feet per year. More areas can be served with reclaimed water as additional wastewater becomes available for reclamation and customer demand grows. Over 70 percent of the irrigated acreage and water use is accounted for by golf courses and parks.

The preliminary design study evaluated several alternative wastewater treatment methods needed to meet the Colorado Department of Public Health and Environment regulations. The recommended method of advanced wastewater treatment was direct filtration. Direct filtration includes chemical coagulation, sand filtration, and disinfection of the water with chlorine. In evaluating the proposals received for final design of the treatment facility, it was determined that a pilot plant study evaluating the DynaSand (Parkson), Strata-Sand (Leopold) and two conventional, granular media filtration technologies: monomedium and mixed media would be conducted. The pilot plant study was conducted during the month of April. Different filter loading rates, chemical addition and pretreatment alternatives were performed and the resulting effluent will be analyzed for esthetic, biological and chemical parameters related to customer acceptance and potential discharge permit compliance.

A preliminary design of the pipeline from BDCWRF to the sites that could potentially use reclaimed water was also completed as part of the preliminary design.

Lateral pipeline extensions, including an extension to Countrydale Golf Course, were also included in the preliminary design. The pipeline analysis also considered locations for storage tanks on the system. The location and size of storage tanks was an important factor in determining pipeline size. Two storage locations were considered in this study, City Hall and BDCWRF.

The proposed reclaimed water system components will consist of the advanced wastewater treatment facility south of the BDCWRF, a 2.5 million gallon equalizing storage reservoir at the Reclamation Facility for peak day demands, a standpipe at the existing Northridge tank site south of Westminster City Hall, and approximately 95,000 lineal feet of 2-inch to 36-inch diameter distribution system pipe.

The proposed WRWS will have a first phase capacity of 4 million gallons per day (MGD). Subsequent phases could be constructed as demand increases and additional wastewater becomes available.

The initial phase of WRWS is estimated to have probable capital costs of \$12 million and when completed, the 3,000+ acre feet ultimate WRWS is estimated to have capital costs of \$19.3 million. The proposed WRWS can be financed via loan or other debt financing pledging a combination of tap fees and user rates.

A closing on the loan from the Colorado Water Resources Power and Development Authority has been scheduled for May 22. The decision on tap fees and rates will be the subject of a future City Council action.

The proposed WRWS will be one of the largest systems in Colorado and can be "showcased" to Westminster customers and throughout the country as an example of conservation and wise stewardship of water resources. The results of the preliminary design show that the proposed reclaimed water system can provide water at a competitive cost per acre foot and should be considered as a key and feasible water supply alternative.

As an alternative, Westminster City Council could choose not to adopt the 201 Facility Plan Amendment since formal adoption by City Council is not officially required by the State, however, the City's eligibility for proceeds from the loan may be compromised.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Resolution

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1997

A RESOLUTION OF THE CITY COUNCIL ADOPTING THE CITY OF WESTMINSTER RECLAIMED WATER SYSTEM 201 FACILITY PLAN AMENDMENT.

WHEREAS, the City Council finds that in light of the City of Westminster's finite water supply and growing demand, it is prudent for the City to efficiently use its existing water resources; and

WHEREAS, efficient use of the City's water resources through water conservation measures such as reclaiming domestic wastewater to be used for landscape irrigation purposes is cost effective and preserves natural resources; and

WHEREAS, the City of Westminster developed the City of Westminster Reclaimed Water System 201 Facility Plan and submitted the Plan for public comment in accordance with the Clean Water Act of 1977.

NOW, THEREFORE, IT IS RESOLVED by the City Council of the City of Westminster that:

The City of Westminster Reclaimed Water System 201 Facility Plan Amendment is hereby adopted.

PASSED AND ADOPTED this 12th day of May, 1997

ATTEST:

Mayor

City Clerk

Date: May 12, 1997

Subject: Councillor's Bill No. 2 re Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bonds, Series 1997

Prepared by: C.L. Cargill-Warner, Financial Manager

Introduction

City Council is requested to adopt the attached Councillor's Bill as an emergency ordinance authorizing the issuance of approximately \$13,200,000 in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds, Series 1997, to finance the construction of the Westminster Reclaimed Water System initial phase. The Bonds will be issued through the Colorado Water Resources and Power Development Authority in a pooled issue with Breckenridge Water and Sanitation, Eagle Water and Sanitation, Parker Water and Sanitation, the Town of Carbondale, the Town of Sterling and the Town of Erie. All participants will have their own respective debt service schedules and will share in the cost of issuance of said bonds.

Summary

The Westminster Reclaimed Water System will provide from 1100 acre feet (first phase) to 3,000+ acre feet (ultimate) of reclaimed water from the City's Big Dry Creek Water Reclamation Facility for irrigation of golf courses, business parks, City parks, and greenbelts.

The Colorado Water Resources and Power Development Authority, a political subdivision of the State of Colorado operates the Water Pollution Control Revolving Fund created within the Authority under Senate Bill 50 in 1988. The Authority has approved the credit of the City of Westminster and this project for participation in the Colorado Water Resources and Power Development Authority Water Pollution Control Revolving Fund, 1997 Series A issue dated 5/1/97. Through this program, the City of Westminster issues bonded debt to the Authority in the form of a loan, shares in the issuance cost with other participating projects, and potentially receives a rebate of 20% of the annual interest payments. With these savings, the effective interest rate of this loan is reduced to 4.54%; an amount significantly below current market levels of 5.8%.

Staff Recommendation

Adopt Councillor's Bill No. 2 as an emergency ordinance allowing the issuance of approximately \$13,200,000 in Water and Wastewater Enterprise: Subordinate Water and Wastewater Revenue Bonds to the Colorado Water Resources and Power Development Authority and authorize the Mayor, City Clerk and Finance Director to sign necessary documents on behalf of the Water and Wastewater Enterprise.

Background Information

Since the 1980's, the Public Works and Utilities Department has been planning for and structuring a reclaimed water system as an integral part of the future water supply of the City of Westminster. The Reclaimed Water System will provide a supply of irrigation water that is cost effective, environmentally sensitive, and completely safe. The System will consist of three main components, the advanced wastewater treatment facility, the pipeline system, and a storage tank. At the present time, the City of Westminster is irrigating parks and golf courses with either ditch water or potable water at a cost of approximately \$9,000 to \$14,000 per acre foot per year. The proposed Reclaimed Water System will supply irrigation water at a cost of approximately \$6,000 per acre foot per year after payment of all expenses and debt service. By reclaiming 3,000 acre feet of water, the City frees up the existing supply and/or avoids the necessity of purchasing an additional supply. This project will treat secondary wastewater effluent, and pump (via pipeline) back into the City to irrigate. The secondary effluent will be filtered and disinfected prior to pumping to the sites to be irrigated. The reclaimed water quality will meet all criteria for reclaimed water that have been established by the Colorado Department of Public Health and Environment.

In late 1995, the Colorado Water Resources and Power Development Authority contacted Staff with information on their Authority and the Water Pollution Control Revolving Fund. The revolving fund was mandated by the Federal Clean Water Act. The fund is administered by a nine member Board of Directors representing the eight major drainage basins within the State, appointed by the Governor and confirmed by the Senate. By use of grant funds, the Authority is able to offer loans at below market interest rate for approved projects.

The Water and Wastewater Utility Enterprise is requesting a loan from the Authority in the amount of \$13,246,525 to build phase 1 of the Westminster Reclaimed Water Project. Funds are projected to be used as follows:

\$834,000	Engineering Basic Fees
\$50,000	Land, Structures, Appraisal Services, etc.
\$20,000	Startup
\$10,130,000	Construction
\$496,000	Project Inspection Fees
\$20,000	Administrative and Legal Expenses
\$246,525	Cost of Issuance, Insurance, Financial Advisor, and Bond Counsel

On April 23, 1997, the Authority took their Series 1997A bonds to market in anticipation of the loan to the City of Westminster and was able to sell these bonds at a True Interest Cost of 5.82515%. Grant funds believed to be the equivalent of 20% of the interest cost to the City of Westminster will be deposited into a special Matching Account. The revenue this account generates should allow for the 20% interest refund creating an effective interest cost to the City of Westminster of 4.54%, a savings of approximately 1.29% on the issue. The total principal, interest, issuance cost and servicing fees less anticipated project account earnings and matching account revenue should calculate to a total dollar payback of approximately \$20,900,000.

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 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 loan is scheduled to mature 9/1/17 with limited provisions for pre-payment.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

Date: May 12, 1997

Subject: Councillor's Bill No. re Appropriation of Bond Proceeds

Prepared by: Nancy Alberts, Accounting Manager

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading appropriating \$23,350,000 Special Purpose Sales & Use Tax Revenue Bonds and \$30,190,000 Sales & Use Tax Revenue Refunding and Improvement Bonds proceeds. In addition, a portion of the 1992 Sales & Use Tax Revenue Bonds were refunded to take advantage of lower interest rates. The 1992 issue was used, in part, to finance the construction of the Legacy Ridge Golf Course. Because of this refunding, there is approximately \$198,037 and \$106,963 of budgeted debt service in the Golf Course Fund and Debt Service Fund, respectively. This \$305,000 has been designated to pay the Northpoint, LLC 104th Avenue assessment which Council authorized as part of an incentive agreement earlier this year.

Summary

On March 3, 1997, the City issued two separate bond issues which had been approved by Westminster voters in November, 1996. The \$23,350,000 in Special Purpose Sales & Use Tax Revenue Bonds is being used for open space land purchases and recreation facility improvements such as constructing a City Park Recreation Center Companion Facility. The \$30,190,000 in Sales & Use Tax Revenue Refunding and Improvement bonds is being used to finance the construction of Westminster Boulevard, various other street improvements around the Westminster Mall and design money for the Harlan Street Flyover and partial interchange at U.S. 36 and 92nd Avenue.

The proceeds of these two issues now need to be appropriated. In addition, \$305,000 needs to be transferred to the General Capital Improvements Projects Fund to pay for the Northpoint assessment incurred as a result of the AMC Theater incentive agreement.

Staff Recommendation

Pass Councillor's Bill No. on first reading appropriating the bond proceeds received from the \$23,350,000 Special Purpose Sales & Use Tax Revenue Bonds and \$30,190,000 received from the Sales & Use Tax Revenue Refunding and Improvement Bonds; and authorize the transfer of \$305,000 from the Golf Course and Debt Service Fund to the General Capital Improvement Projects Fund to fund the payment of the 1997 104th Avenue Special Improvement District assessment for the Northpoint LLC.

Background Information

On March 3, 1997, the City issued \$23,350,000 in Special Purpose Sales & Use tax Revenue Bonds. With bond issuance costs, the proceeds are earmarked as follows:

Appropriation of Bond Proceeds

Page 2

\$12,182,609 for open space land purchases, \$4,060,869 for a new westside Recreation Center, and \$7,106,522 for other recreation facility improvements such as the City Park Recreation Center Companion Facility.

Also, on March 3, 1997, the City issued \$30,190,000 in Sales & Use Tax Revenue Refunding and Improvement Bonds: \$15,190,000 was used to refund a portion of the 1992 Sales & Use Tax Revenue Bonds and \$14,799,992, after bond issuance costs, will be used to fund street improvements around the Westminster area.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. _____

SERIES OF 1997

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 1997 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT PROJECT FUND, THE OPEN SPACE FUND, THE GOLF COURSE FUND, AND GENERAL DEBT SERVICE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 1997 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 1997 appropriation for the General Capital Improvement Project Fund, initially appropriated by Ordinance No. 2473 in the amount of \$11,285,000 is hereby increased by \$26,633,501, which, when added to the fund balance as of the City Council action on May 12, 1997, will equal \$38,193,451. 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 bond proceeds and a transfer from the Golf Course and General Debt Service Fund to finance the payment of a incentive agreement with Northpoint, LLC.

Section 2. The \$26,633,501 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>Final Budget</u>	<u>Current Budget</u>	<u>\$ Increase</u>	
<u>REVENUES</u>			
Bond proceeds-Post Issue 75-1477-000	\$-0-	\$11,167,391	\$11,167,391
Bond proceeds-Streets Issue 75-1477-000	-0-	15,161,110	\$15,161,110
Transfer from Golf Course Fund 75-9999-922	-0-	198,037	198,037
Transfer from Debt Service Fund 75-9999-980	-0-	<u>106,963</u>	106,963
Total change to revenues		<u>\$26,633,501</u>	
<u>EXPENSES</u>			
City Park Companion Facility 75-50-88-555-213	-0-	\$7,000,000	\$7,000,000
Bond Issuance Costs 75-50-88-581-213	-0-	106,522	106,522
Countryside Rec Center Renovation 75-50-88-555-381	-0-	4,000,000	4,000,000

Bond Issuance Costs			
75-50-88-581-381	-0-	60,869	60,869
Promenade Project			
75-30-88-540-318	-0-	305,000	305,000
Westminster Blvd			
75-30-88-555-165	-0-	3,500,000	3,500,000
Bond Issuance Costs			
75-30-88-581-165	-0-	86,668	86,668
Harlan Flyover			
75-30-88-555-204	-0-	400,000	400,000
Bond Issuance Costs			
75-30-88-581-204	-0-	10,833	10,833
Westminster Transportation Imp.			
75-30-88-555-196	-0-	10,899,992	10,899,992
Bond Issuance Costs			
75-30-88-581-196	-0-	<u>263,617</u>	263,617
Total change to Expenses		<u>\$26,633,501</u>	

Section 3. The 1997 appropriation for the Open Space Sales & Use Tax Fund, initially appropriated by Ordinance No. 2473 in the amount of \$3,276,000 is hereby increased by \$12,182,609, which, when added to the fund balance as of the City Council action on May 12, 1997, will equal \$15,458,609. The actual amount in the Open Space Sales & Use Tax 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.

Section 4. The \$12,182,609 increase in the Open Space Sales & Use Tax 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>			
Bond proceeds-Post Issue			
54-1477-000	\$-0-	<u>\$12,182,609</u>	
\$12,182,609			
<u>EXPENSES</u>			
Land Purchases			
54-10-90-501-206	-0-	12,000,000	12,000,000
Bond Issuance Costs			
54-10-90-581-000	-0-	<u>182,609</u>	182,609
Total Change to Expenses		<u>\$12,182,609</u>	

Section 5. The 1997 appropriation for the Golf Course Fund, initially appropriated by Ordinance No. 2473 in the amount of \$1,970,000 is hereby increased by \$4,799,445, which, when added to the fund balance as of the City Council action on May 12, 1997, will equal \$6,769,445.

The actual amount in the Golf Course 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 for the refunded portion of the 1992 Sales & Use Tax Revenue Bonds.

Section 6. The \$4,799,445 increase in the Golf Course Fund shall be allocated to City Revenue and Expense accounts which shall be amended as follows:

<u>Description</u> <u>Final Budget</u>	<u>Current Budget</u>	<u>\$ Increase</u>	
<u>REVENUES</u>			
Bond proceeds			
22-1477-000	\$-0-	<u>\$4,799,445</u>	
\$4,799,445			
<u>EXPENSES</u>			
Payment to escrow agent			
22-50-55-604-000	-0-	\$4,799,445	\$4,799,445
Transfer to Capital Projects Fund			
22-50-55-995-975	-0-	198,037	198,037
Interest Expense			
22-50-55-602-000	524,832	(198,037)	326,795
Total Change to expenses		<u>\$4,799,445</u>	

Section 7. The 1997 appropriation for the Debt Service Fund, initially appropriated by Ordinance No. 2473 in the amount of \$1,970,000 is hereby increased by \$10,455,291, which, when added to the fund balance as of the City Council action on May 12, 1997, will equal \$12,425,291. The actual amount in the Debt Service 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 for the refunded portion of the 1992 Sales & Use Tax Revenue Bonds.

Section 8. The \$10,455,291 increase in the Debt Service Fund shall be allocated to City Revenue and Expense accounts which shall be amended as follows:

<u>Description</u> <u>Final Budget</u>	<u>Current Budget</u>	<u>\$ Increase</u>	
<u>REVENUES</u>			
Bond proceeds			
80-0770-000	-0-	<u>\$10,455,291</u>	
\$10,455,291			
<u>EXPENSES</u>			
Payment to escrow agent			
80-10-90-604-000	-0-	10,455,291	10,455,291
Transfer to General Capital Projects			
80-10-95-995-975	-0-	\$106,963	\$106,963

Interest Expense 80-10-90-602-178	1,021,278	(<u>106,963</u>)	\$914,315
Total Change to Expenses		<u>\$10,455,291</u>	

Section 9 - Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this Ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of May, 1997.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this ____ day of _____, 1997.

ATTEST:

Mayor

City Clerk

Date: May 12, 1997

Subject: Intergovernmental Agreement for Emergency Management

Prepared by: Dan Montgomery, Police Chief
A. L. Wilson, Police Lieutenant

Introduction

City Council action is requested to enter into a formal mutual aid agreement between local jurisdictions for the purpose of emergency preparedness cooperation.

Summary

For the past several months, the Denver Office of Emergency Preparedness and the Federal Emergency Management Agency have been cooperating with local jurisdictions to reach a formal Mutual Aid Agreement regarding any sizable incident which might require multi-jurisdictional resources. The attached Intergovernmental Agreement reflects that effort. The City Attorney's Office has reviewed the agreement and approves it with regard to form.

Staff Recommendation

Authorize the City Manager to sign the Intergovernmental Agreement for Emergency Management thereby agreeing to allow City of Westminster resources to be committed in support of any emergency which might occur throughout the Denver metro area and also providing for the City of Westminster to receive aid from other jurisdictions in an emergency situation.

Background Information

The City of Denver is currently facing two situations which create the potential for a multitude of emergencies. The Denver Summit (G-7) Conference will be held in the latter part of June and the Oklahoma Bombing Trial began in March. Commensurate with these, the emergency management communities have set various plans in motion. While discussing the need to draw upon outside resources, it was decided a formal intergovernmental agreement was warranted to address mutual aid in these circumstances.

Police and fire Departments have had long standing mutual aid agreements allowed by the Colorado Revised Statutes. The emergency management community recognizes that law enforcement and fire rescue services are only two resources which might be needed in any emergency. Additional manpower and equipment may also be required. The attached agreement seeks to formalize mutual aid for the emergency management spectrum by providing some basic understandings. From a liability perspective, each agency waives all claims and causes of action against all of the other jurisdictions involved in a mutual aid incident.

Furthermore, each participating agency is responsible for its own costs, and will not be eligible for reimbursements except for third party reimbursements (e.g., a hazardous materials incident where the offender would be liable for the costs incurred by a responding agency).

Respectfully submitted,

William M. Christopher
City Manager

Attachment

Date: April 14, 1997

Subject: Community Gateway Projects

Prepared By: Bob Lienemann, Open Space Coordinator

Introduction

City Council action is requested to authorize award of a construction contract to Randall and Blake, Inc. in the amount of \$675,927, and to authorize the project budget to construct two new City "gateways" at the US36 and 104th Avenue/Church Ranch Boulevard interchange, and at 120th Avenue and Huron Street. Funds have been specifically allocated in the 1997 General Capital Improvement Project Fund for this expense.

Summary

The proposed project is part of the Community Enhancement Program. The designated funding comes from an accommodations tax, and is intended to construct priority projects throughout Westminster which improve the physical appearance of the community.

The work includes a flagstone signwall with "WESTMINSTER" in backlit raised letters at the interchange of US36 with 104th Avenue/Church Ranch Boulevard (signwall is on northwest corner, for southeast-bound traffic on US36), to match the wall at the US36 and Sheridan Boulevard exit. A footing was constructed for this signwall in 1995, along with the interchange landscaping. The City had wished to complete the signwall at that time, but the Colorado Department of Transportation's (CDOT's) policy allowed only two entry signs for Westminster along all of US36 through the City. One signwall was constructed at the Sheridan exit from US36, and the second was planned for the Federal Boulevard interchange in the future. CDOT has now relaxed their sign policy so that all three exits may be identified as important entrances to Westminster, and with the development of Church Ranch Home Place and the Promenade now underway, Staff recommends completing this signwall as originally intended.

Also included is the completion of a gateway at 120th Avenue and Huron Street. The improvement of this intersection in 1996 included the structural walls, paving and utility connections, with matching Federal funds. The federal funding would not participate in finished walls or landscape, and the street work was completed too late in the Fall to allow landscape work. The proposed completion of this project will add flagstone, lighting and landscape to the two signwalls at the northwest and southwest corners of 120th Avenue and Huron Street.

The project was advertised for bid through the Daily Journal and Rocky Mountain Construction building trade newspapers, and plans were available through their Plan Rooms. Staff and consultants also contacted qualified firms which have constructed similar work for the City previously. Bids were opened April 3, 1997. Five contractors submitted bids with the following results:

Randall and Blake, Inc.	\$675,927
Arrow J Landscape	681,575
Valley Crest Landscape	732,182
SaBell's Landscape	759,560
Western States Reclamation	770,300
(Consultant/Staff <u>Estimate</u>)	\$715,000

After carefully reviewing the bids, it was determined the low bid from Randall and Blake, Inc. is a qualified bid. This firm has built several park and drainageway projects for the City previously, and is presently the contractor for the landscaping of the Rockies new Coors Field and the I-25 and I-70 "Mousetrap" landscape and walls, which are very similar to the City's proposed projects. Staff is reasonably confident from past performance that Randall and Blake, Inc. will construct a quality project if awarded this bid.

The proposed project budget follows. A 10% contingency is recommended, since most of this work is within CDOT rights of way, soils and subsurface conditions are not fully known, and CDOT inspectors may request additional traffic control or other work based upon their visits to the project.

Construction Inspection/Testing (allow)	\$15,000
Construction by Contractor	\$675,927
Utilities - PSCo/Traffic Signals	\$12,320
<u>Contingency @ 10%</u>	<u>\$72,485</u>
TOTAL	\$809,935

The landscape work at the US36 and 104th Avenue/Church Ranch Boulevard interchange, along with award of Service Commitments and payment of water tap fees was completed with the previous work. No additional water is required for this location. The landscape work at 120th Avenue and Huron Street requires a total of two 3/4" water taps and meters, though total water use will represent less than one full Service Commitment. The award of one Service Commitment and the payment of the tap fee was completed as part of the previous street improvements project.

Alternatives

City Council could accept the bid from Randall and Blake, Inc. and authorize the work to begin immediately. It is anticipated that all work will be completed no later than September 15, 1997.

City Council could reject the bids and not proceed with this work.

City Council could reject the bids and rebid the project, which would likely discourage bidders and delay the work.

City Council could award the bid to another contractor, though Randall and Blake, Inc. is the lowest qualified bidder for this project.

Staff Recommendation

Award a construction contract to Randall and Blake, Inc. in the amount of \$675,927, and authorize the project budget of \$809,935, charging the expense to the appropriate 1994 General Capital Improvement Project Fund.

Background Information

City Council established the Community Enhancement Program in 1993, with funding provided by an accommodations tax. The program is intended to improve the physical appearance of the City of Westminster at the most visible "gateways" and "travel corridors" throughout the community. These projects promote community pride, and also improve the City's competitive edge in attracting and maintaining businesses.

City Council established a five year plan for priority enhancements in early 1993, which included an emphasis on "gateways" at US36 interchanges and at key locations around the community, arterial street median landscaping, new standard signage for City projects and facilities, and similar highly visible projects.

The five year plan for Community Enhancements is updated annually with the budgeting process as part of the Capital Improvement Program. Several additional projects are presently being pursued, including gateways at 120th Avenue at Sheridan Boulevard (Staff is presently working with the Sheridan Crossing Shopping Center developer to construct these improvements) and at 104th Avenue and Federal (Staff working with NorthPark Plaza developer to construct), Sheridan Boulevard Median Landscaping (for award at this same time), and Church Ranch Boulevard Median Landscaping (already awarded as part of the roadway improvements), Future projects will include a major gateway at US36 and Federal Boulevard (following roadway modifications), and other opportunities to improve the appearance of key areas around the community. A portion of these funds is also used for public art projects.

Respectfully submitted,

William M. Christopher
City Manager

attachment