



REVISED
CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (Section 7) and Citizen Presentations (Section 12) are reserved for comments on any issues or items pertaining to City business except those for which a formal public hearing is scheduled under Section 10 when the Mayor will call for public testimony. Please limit comments to no more than 5 minutes duration except when addressing the City Council during Section 12 of the agenda.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Employee Service Awards
 - B. Denver Regional Council of Governments Gold Award for Collaboration
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
 - A. Financial Report for April 2010
 - B. Special Legal Services Contract for Special Permit & License Board
 - C. Reclaimed Water Salinity Management Plan Phase II Project Contract
 - D. 2010 Wastewater Collection System Improvement Project/CIPP Lining Contracts
 - E. 2010 Update and Refinement of the Standley Lake Water Quality Models Services Agreement
 - F. Reclaimed Water Treatment Facility Improvements Engineering Services Contract Amendment
 - G. Reclaimed Water Treatment Facility Improvements Owner's Representative Services Contract Amendment
 - H. Bowles House Porch Rehabilitation and Wall Crack Repair Contract re Historic Preservation Grant
 - I. Second Reading of Councillor's Bill No. 24 re 2010 Community Development Block Grant Fund Appropriation
 - J. Second Reading of Councillor's Bill No. 25 re 2009 Final Budget Supplemental Appropriation
 - K. Second Reading of Councillor's Bill No. 26 re 2010 1st Quarter Budget Supplemental Appropriation
 - L. Second Reading of Councillor's Bill No. 27 re Lease for the Former Animal Shelter
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 29 re Lease Agreement with Adams County School District 50 re England Park Softball Field
 - B. Legal Services Agreement re Phase II Energy Performance and Financing Contracts
 - C. Resolution No. 18 re Phase II Status Energy Performance Contract Lease-Purchase Agreement
 - D. Councillor's Bill No. 30 re Phase II Status Energy Performance Contract Lease Proceeds Appropriation
 - E. Phase II Energy Performance Contract re Energy and Water Conservation and Related City Facility Improvements
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
 - A. City Council
 - B. Executive Session – Receive legal advice from the City Attorney concerning ordinance options affecting sexually violent predators, pursuant to W.M.C. § 1-11-3(C)(6) and (8) and C.R.S. § 24-6-402(b)
13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, MAY 10, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Dittman led the Council, staff and audience in the Pledge of Allegiance.

ROLL CALL

Mayor Pro Tem Chris Dittman, and Councillors Bob Briggs, Mark Kaiser, and Scott Major were present at roll call. Mayor Nancy McNally and Councillors Mary Lindsey and Faith Winter were absent and excused. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Major, to approve the minutes of the regular meeting of April 26, 2010, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reminded everyone that May 31 was Memorial Day, as well as the fifth Monday of the month. City Council would not be meeting that date and City offices would be closed in observance of the holiday.

Community Pride Day had been a huge success with more than 1,600 volunteers participating in a concentrated effort to pick up an estimated 4.5 tons of trash and debris from parks, open space and public ways. The City was noticeably cleaner at the conclusion of the event, and he thanked the volunteers, noting that all of them had met afterward in the City Hall courtyard for a picnic. In addition to being very productive, the event was lots of fun.

Following the City Council meeting, there would be meetings of the Westminster Economic Development Authority Board of Directors and the 136th Avenue General Improvement District Board of Directors.

In conclusion, Mr. McFall announced that two public hearings scheduled on the Council's agenda needed to be opened and continued to a date certain because legal notices of hearing had not been published in the *Westminster Window*. Action items associated with the public hearings would need to be postponed to the same date.

CITY COUNCIL COMMENTS

Councillor Major commented that the May 8 Blazing Bullets 5 and 10K runs, involving an estimated 300 runners, had been a success. Members of the SWAT team decked in full attire had participated and attracted attention. He congratulated the Police and Fire Departments on a fun-filled event that was sure to be held annually.

PRESENTATIONS

Councillor Kaiser presented a proclamation to Public Works & Utilities staff members to celebrate Public Works Week May 16 through 22.

Mayor Pro Tem Dittman proclaimed May to be Mental Health Month and presented proclamations to Vicki Rodgers of the Jefferson Center for Mental Health and Lindy Schultz of Adams County Community Reach.

Councillor Major presented a proclamation for National Peace Officer Memorial Day on May 15 and Police Week May 9 through 15 to Police Chief Lee Birk and other Westminster Police Officers.

CITIZEN COMMUNICATION

Bob Wilson, a candidate for District L Director of the Regional Transportation District, introduced himself and described his qualifications and reasons for seeking the office.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: find that the public interest would be best served by authorizing the City Manager to award the bid and execute a one-year, \$90,000 contract with Hays Companies of Denver for benefit broker services, with the option to renew for three years at the same cost; authorize the City Manager to execute a contract for 2010 with options for two additional one-year renewals (2011 and 2012) for Chipseal application to the low bidder, A-1 Chipseal Co., in the amount of \$796,204 and authorize a contingency of \$10,000; authorize the City Manager to enter into short-term water leases not to exceed a total of 350 Farmers Reservoir and Irrigation Company Standley Lake Division shares of surplus water in 2010; authorize the City Manager to execute an intergovernmental agreement with Adams County, in substantially the same form as distributed with the agenda packet, regarding the planning and funding for drainage and park improvements along Little Dry Creek between Lowell and Federal Boulevards; based on the City Manager's recommendation, find that the public interest would best be served by authorizing the City Manager to award and execute a \$40,530 contract with Aquacraft to develop a Water Conservation Plan, award and execute a second contract for \$46,950 with Aquacraft to perform a Water Conservation Verification Study, and authorize a 10% contingency for each project in the total amount of \$8,748, for a total expenditure of \$96,228; authorize the City Manager to execute a purchase and sale agreement between the City of Westminster and JHR Barnum LLC to acquire the 3.53-acre parcel located at 6899 Grove Street, and authorize the expenditure of \$800,000 from the City's Open Space Bond Funds and \$350,000 from the City's Stormwater Fund for this acquisition; authorize the purchase of the approximate 14.52-acre Lot 11 Northridge at Park Centre Property located at 122nd Avenue and Park Centre Drive for open space for \$1,635,000 plus closing costs not to exceed \$5,000, and authorize the City Manager to execute all documents required to close on the purchase of the property; final passage of Councillor's Bill No. 12 on second reading approving the miscellaneous Comprehensive Land Use Plan amendments identified therein; final passage of Councillor's Bill No. 13 on second reading approving the rezone of the proposed Amberwood Estates residential project from Open (O-1) to Planned Unit Development (PUD); final passage of Councillor's Bill No. 14 on second reading annexing the Feldman property into the City; final passage of Councillor's Bill No. 15 on second reading approving a Comprehensive Land Use Plan amendment for the Feldman property by designating the property City-owned open space; final passage of Councillor's Bill No. 16 on second reading changing the zoning for the Feldman property from A-3 (Adams County) to O-1 (City of Westminster Open District); and final passage of Councillor's Bill No. 17 on second reading appropriating \$1,100,000 to the 68th Avenue and Utica Street Project.

No one asked that any item be removed for individual consideration, and it was moved by Councillor Kaiser, seconded by Councillor Major, to approve the consent agenda as presented. The motion carried.

RESOLUTION NO. 13 TO FILL VACANCIES ON THE PLANNING COMMISSION

It was moved by Councillor Major and seconded by Councillor Kaiser to adopt Resolution No. 13 to fill vacancies on the Planning Commission. The motion passed unanimously on roll call vote.

PUBLIC HEARING ON 144TH AVENUE/TEJON STREET PROPERTY CONTINUED

Mayor Pro Tem Dittman opened the public hearing at 7:24 p.m. to consider annexation of the 144th Avenue/Tejon Street property and associated actions.

Based on the City Manager's recommendation, it was moved by Councillor Kaiser and seconded by Councillor Major to continue this hearing to the June 28, 2010, Council meeting. The motion passed unanimously on roll call vote.

Councillor Kaiser moved to postpone consideration of Agenda Items 10 B, C, D and E pertaining to the 144th Avenue/Tejon Street property annexation, Comprehensive Land Use Plan amendment, and rezoning to the June 28, 2010, Council meeting. The motion passed unanimously at roll call.

PUBLIC HEARING ON 144TH AVENUE/ZUNI STREET PROPERTY CONTINUED

At 7:27 p.m. the Mayor Pro Tem opened a public hearing to consider annexation of the 144th Avenue/Zuni Street property and associated actions.

Based on the City Manager's recommendation, it was moved by Councillor Major, seconded by Briggs, to continue this hearing to the June 28, 2010, City Council meeting. The motion carried with all Council members voting affirmatively at roll call.

Councillor Major moved, seconded by Kaiser, to postpone consideration of Agenda Items 10 G, H, I and J pertaining to the 144th Avenue/Zuni Street property annexation, Comprehensive Land Use Plan amendment, and rezoning to the June 28, 2010, City Council meeting. The motion carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 24 APPROPRIATING 2010 COMMUNITY DEVELOPMENT BLOCK GRANT

It was moved by Councillor Briggs and seconded by Major, to pass Councillor's Bill No. 24 on first reading to appropriate \$604,991 in Community Development Block Grant funding received from the Department of Housing and Urban Development. The motion carried with all Council members voting affirmatively at roll call.

COUNCILLOR'S BILL NO. 25 FOR 2009 FINAL BUDGET SUPPLEMENTAL APPROPRIATION

Upon a motion by Councillor Kaiser, seconded by Councillor Major, the Council voted unanimously at roll call to pass Councillor's Bill No. 25 on first reading providing for supplemental appropriation of funds to the 2009 budget of the General, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Conservation Trust, and General Capital Improvement Funds.

COUNCILLOR'S BILL NO. 26 FOR 1ST QUARTER 2010 BUDGET SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Major and seconded by Councillor Kaiser to pass Councillor's Bill No. 26 on first reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, and General Capital Improvement Funds. The motion passed unanimously at roll call.

COUNCILLOR'S BILL NO. 27 TO LEASE THE FORMER ANIMAL SHELTER

Councillor Briggs moved, seconded by Councillor Major, to pass Councillor's Bill No. 27 on first reading authorizing the City Manager to sign a lease agreement with 5 Star Pups, LLC, for the former City of Westminster Animal Shelter located at 8800 Sheridan Boulevard, Unit 100. The motion passed unanimously at roll call.

COUNCILLOR'S BILL NO. 28 TO ISSUE WATER & WASTEWATER REVENUE BONDS SERIES 2010

Upon a motion by Councillor Major, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to adopt Councillor's Bill No. 28 as an emergency ordinance, approving the sale of Water and Wastewater Utility Enterprise Revenue Bonds Series 2010, in an amount not to exceed \$33 million, and directing the Mayor, City Manager, Finance Director and City Clerk to sign necessary documents on behalf of the City.

RESOLUTION NO. 16 AUTHORIZING WATER CONSERVATION PLANNING GRANT APPLICATION

Councillor Briggs moved, seconded by Major, to adopt Resolution No. 16 authorizing the Department of Public Works and Utilities to apply for a Colorado Water Conservation Board Planning Grant to develop a Water Conservation Plan. The motion carried unanimously at roll call.

RESOLUTION NO. 17 TO ELIMINATE OPERATING RESERVE IN UTILITY FUND FISCAL POLICY

Upon a motion by Councillor Major, seconded by Councillor Kaiser, the Council voted unanimously on roll call vote to adopt Resolution No. 17 eliminating the Operating Reserve in the City's Utility Fund Fiscal Policy.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Kaiser, seconded by Briggs, to adjourn. The motion carried, and the meeting adjourned at 7:34 p.m.

ATTEST:

City Clerk

Mayor Pro Tem



WESTMINSTER
COLORADO

Agenda Item 6 A

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Presentation of Employee Service Awards

Prepared By: Debbie Mitchell, Human Resources Manager
Dee Martin, Human Resources Administrator

Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter.

Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In the third grouping of 2010, employees with 20, 25, 30, and 35 years of service will be celebrated tonight.
 - Mayor Pro Tem Dittman will present the 35-year certificate.
 - Councillor Briggs will present the 30 year certificate.
 - Mayor McNally will present the 25-year certificate.
 - Councillor Winter will present the 20 certificates.

Expenditure Required: \$ 2,500

Source of Funds: General Fund -Parks, Recreation & Libraries Operating Budget

Policy Issue

None identified

Alternative

None identified

Background Information

The following 20-year employees will be presented with a certificate and service pin:

Malgorzata Broussalian	Software Engineer II	Information Technology
Larry Garlick	Lead Software Engineer	Information Technology

The following 25-year employee will be presented with a certificate and service pin:

Cindy McDonald	Recreation Specialist	Parks, Recreation & Libraries
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The following 30-year employee will be presented with a certificate and service pin:

Mary Joy Barajas	Executive Secretary to the City Manager	City Manager's Office
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The following 35-year employee will be presented with a certificate and service pin:

Carolyn Schierkolk	Secretary	Public Works & Utilities
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On May 19, 2010, the City Manager hosted an employee awards luncheon. During that time, 3 employees received their 15 year service pin, 5 employees received their 10 year service pin, and 19 employees received their 5 year service pin. Recognition was also given to those celebrating their 20th, 25th, 30th and 35th anniversaries. This was the third luncheon in 2010 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the third luncheon was 320 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

The recognition of employee's years of service addresses Council's Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 6 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010

SUBJECT: Presentation re Denver Regional Council of Governments Gold Award for Collaboration

Prepared By: Matthew J. Lutkus, Deputy City Manager

Recommended City Council Action

Present the Gold Award for Collaboration awarded by the Denver Regional Council of Governments to the entities who comprise the US 36 Mayors/Commissioners Coalition (MCC) to City of Westminster Staff working with the MCC.

Summary Statement

- The Mayor and several Councillors recently attended the Denver Regional Council of Governments (DRCOG) bi-annual Awards Dinner at which the City was recognized as one of several entities that have worked collaboratively to garner improvements along the US 36 Corridor. The US 36 Mayors/Commissioners Coalition as a group and each participating entity including 36 Commuting Solutions were recognized with the Agency's Gold Award for Collaboration.
- City representatives have been active participants in both the MCC and 36 Commuting Solutions since both organizations were created.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

For over 12 years, City of Westminster elected officials and staff have been involved in a wide range of activities related to alleviating the current and projected traffic congestion along the US 36 Corridor. One organization in which the City has played a significant role is the US 36 Mayors/Commissioners Coalition (MCC). Currently, Mayor McNally and members of City Staff work closely with other representatives to this organization on a frequent, on-going basis to develop multi-modal solutions to these congestion concerns including the pursuit of funding necessary to accomplish these transportation enhancements over the next decades. The organization is comprised of the mayors, commissioners and staff from the Cities of Westminster, Broomfield, Superior, Louisville and Boulder and Boulder County. This organization has been very successful at building consensus among its members and obtaining support at the National, State and Regional levels for corridor improvements. The MCC is often cited as a model of intergovernmental cooperation by decision makers at all levels of government.

The Executive Director of 36 Commuting Solutions has also provided considerable staff support for the MCC. 36 Commuting Solutions is comprised of businesses and public entities located along the US 36 corridor and has as its primary focus improving mobility throughout the corridor and promoting alternative means of transportation, public education and involvement in the decision-making process.

During the past year, the organizations achieved two significant milestones - the completion of the US 36 Environmental Impact Statement and Record of Decision, and the announcement of a major grant and loan opportunity through the American Recovery and Reinvestment Act.

The DRCOG Collaborative Award recognizes the efforts of local governments to solve problems through partnerships with other local governments, the private sector and/or community/non-profit groups, and in particular, those that advance the agency's Metro Vision.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Financial Report for April 2010
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

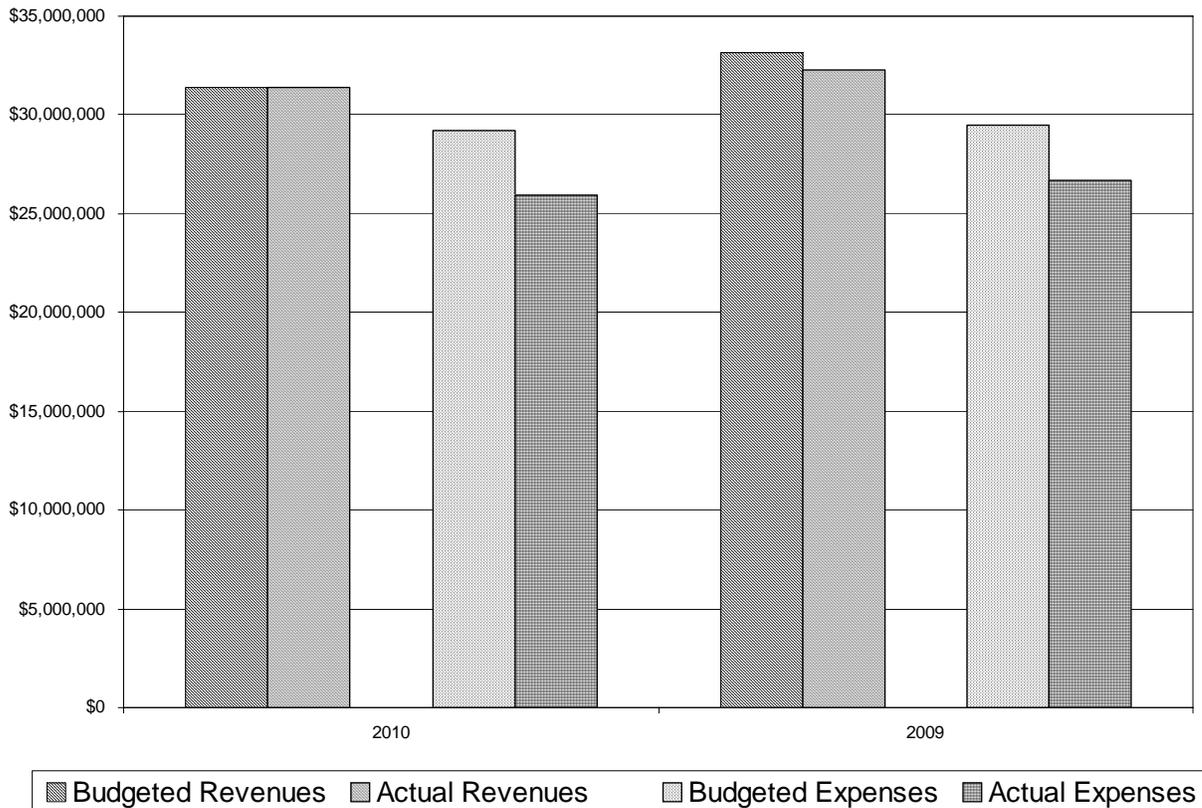
Accept the Financial Report for April as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. Revenues also include carryover where applicable. The revenues are pro-rated based on 10-year historical averages. Expenses are also pro-rated based on 5-year historical averages.

The General Fund revenues and carryover exceed expenditures by \$5,405,952. The following graph represents Budget vs. Actual for 2009-2010.

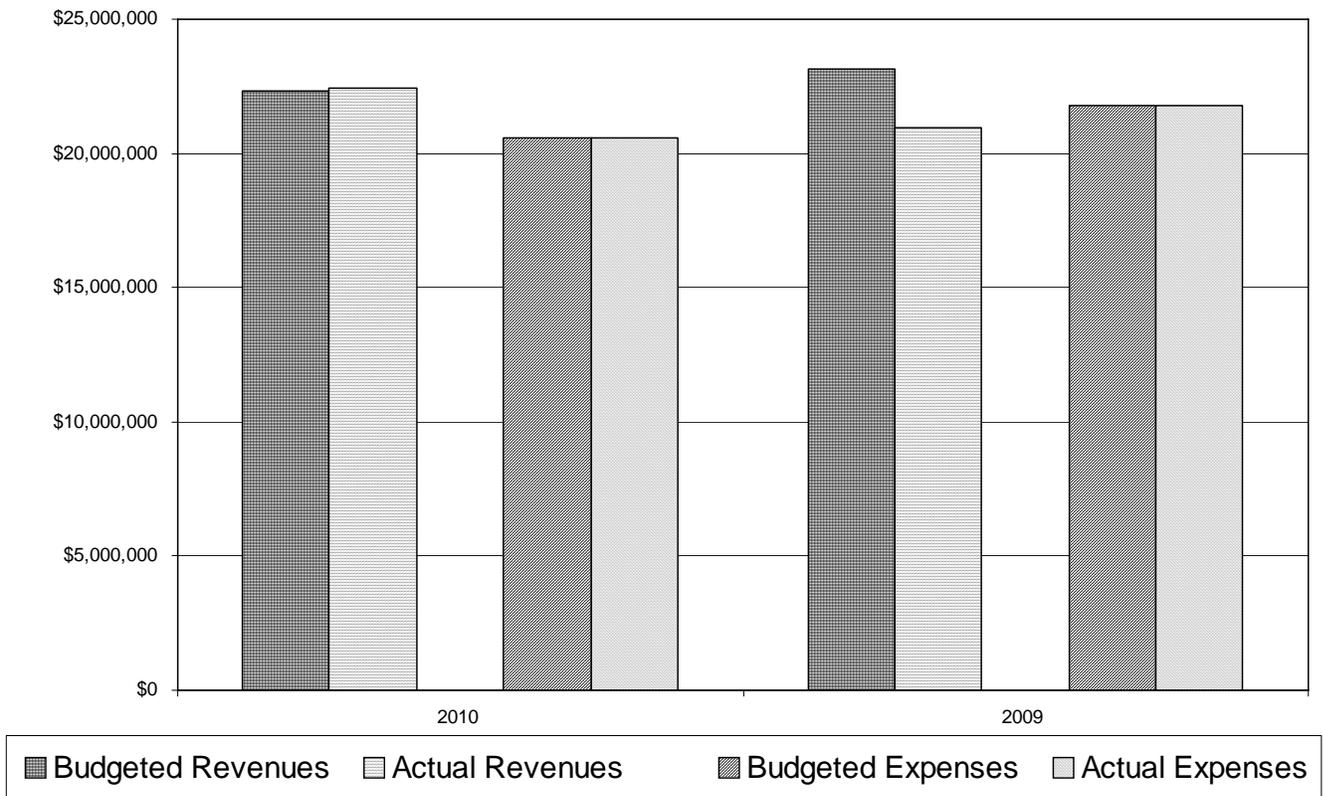
**General Fund
Budget vs Actual**



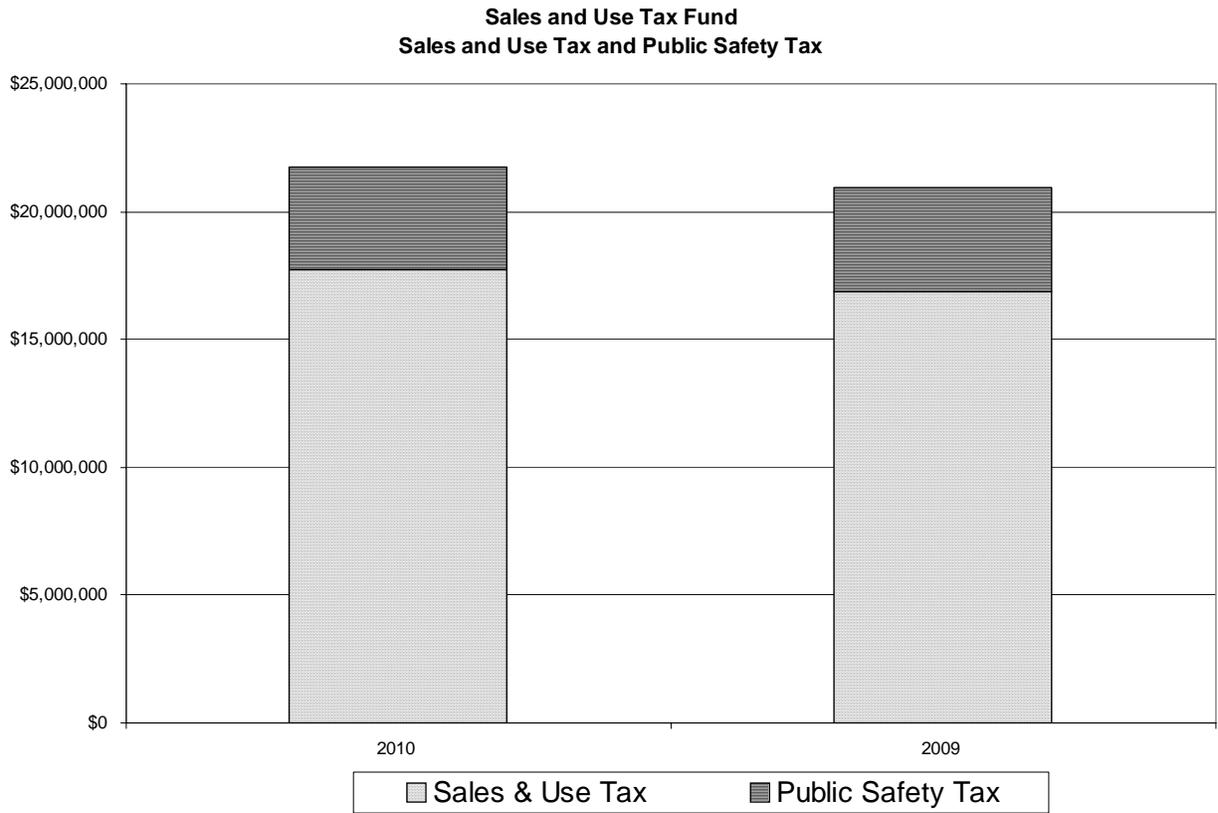
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$1,890,495.

- On a year-to-date cash basis, sales & use tax returns are up 5.6% from 2009.
- On a year-to-date basis, across the top 25 shopping centers before including Urban Renewal Area adjustments, total sales & use tax receipts are down 3.6% from the prior year.
- Sales & use tax receipts from the top 50 Sales Taxpayers, representing about 62% of all collections, were up 7.5% after Urban Renewal Area adjustments.
- Urban renewal areas make up 42.2% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 13.8% of this money is available for General Fund use.
- The Westminster Mall is down 40.0% on a year-to-date basis.
- Building Use Tax is down 14.6% year-to-date from 2009.

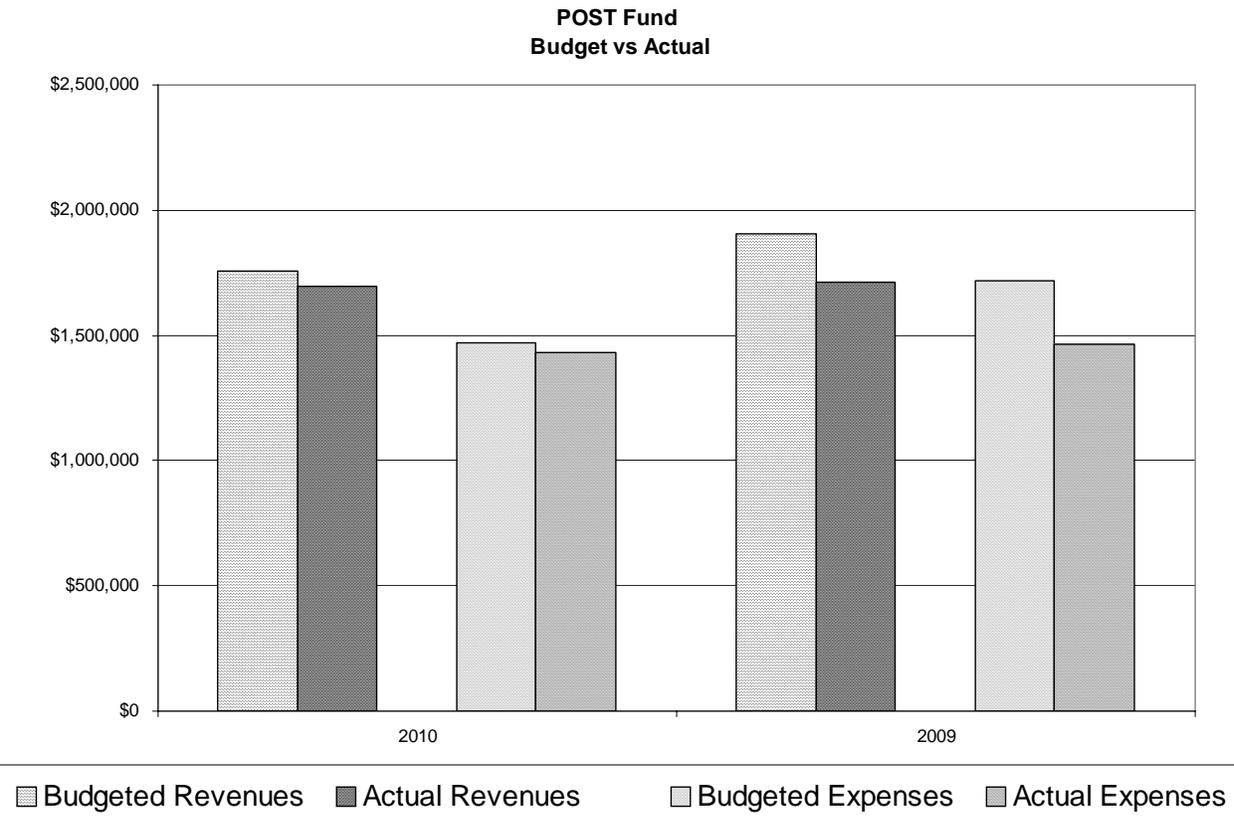
**Sales & Use Tax Fund
Budget vs Actual**



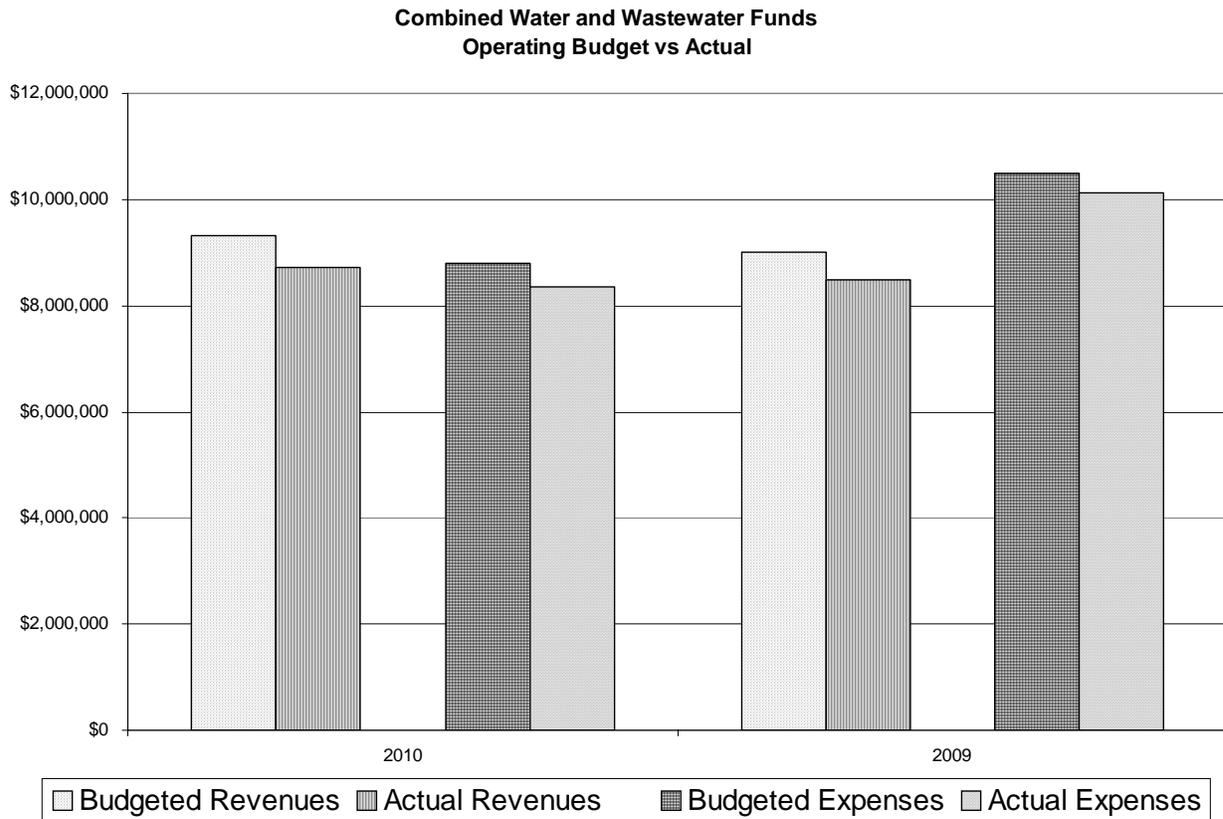
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



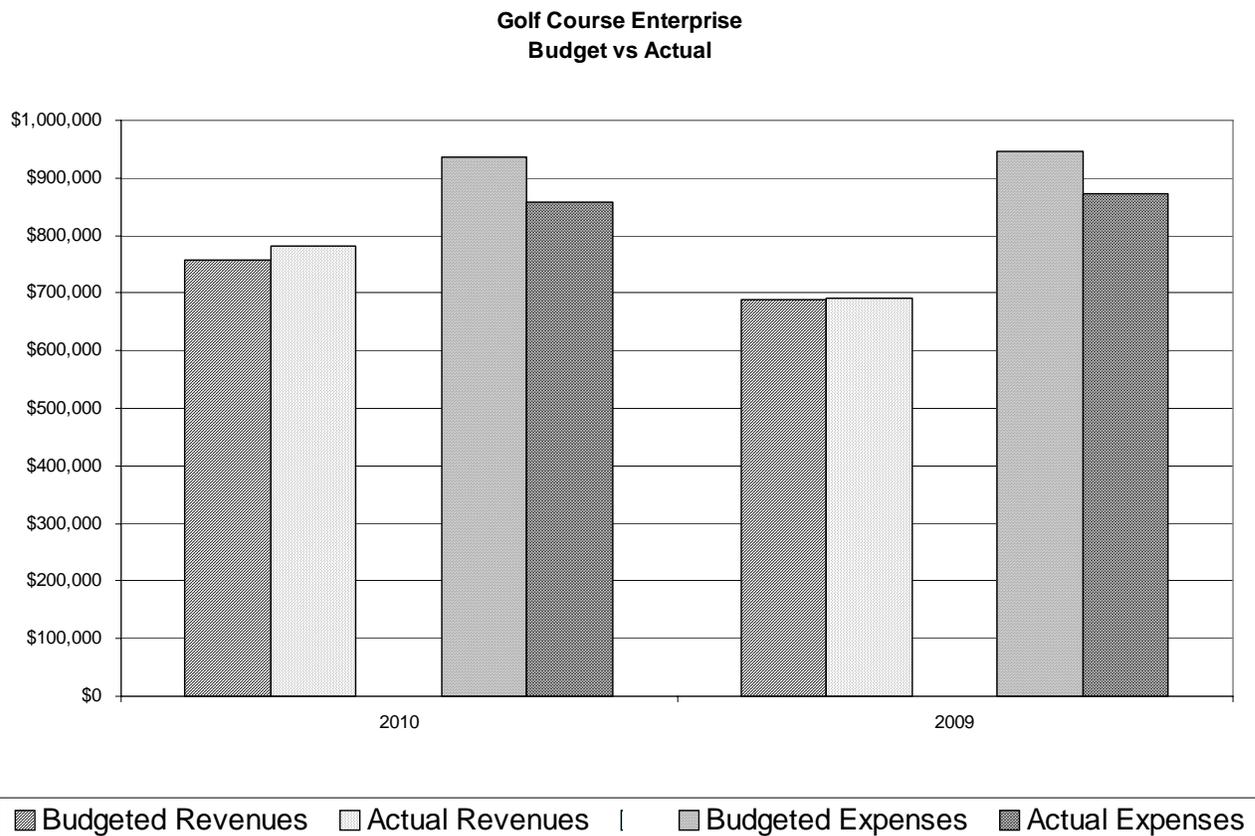
The Parks Open Space and Trails Fund revenues exceed expenditures by \$265,562.



The combined Water & Wastewater Fund revenues exceed expenses by \$1,692,162. \$38,438,000 is budgeted for capital projects and reserves.



The combined Golf Course Fund expenses exceed revenues by \$76,067.



Policy Issue

A monthly review of the City’s financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

Alternative

Conduct a quarterly review. This is not recommended, as the City’s budget and financial position are large and complex, warranting a monthly review by the City Council.

Background Information

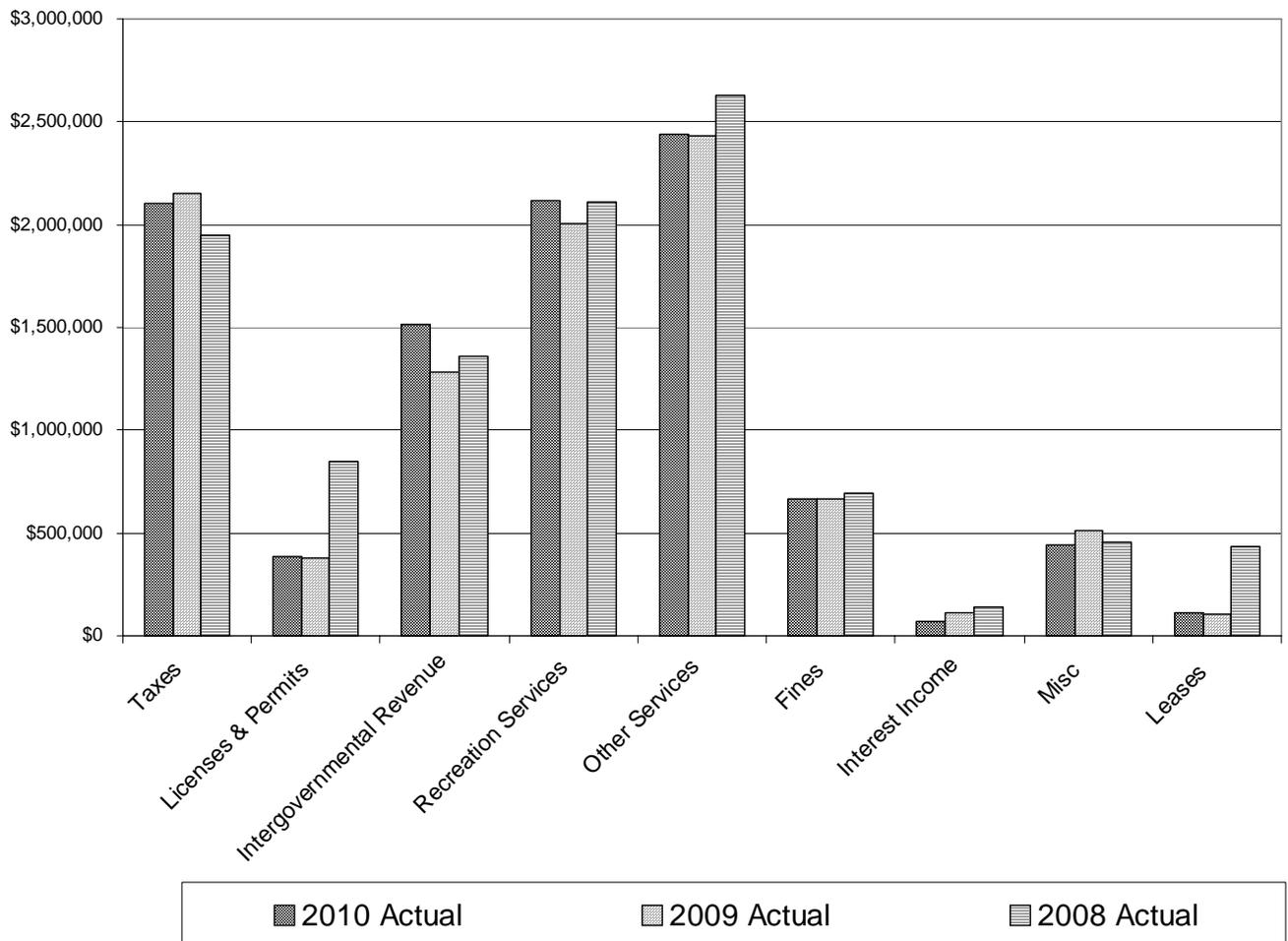
This section includes a discussion of highlights of each fund presented.

General Fund

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

The following chart represents the trend in actual revenues from 2008 – 2010 year-to-date.

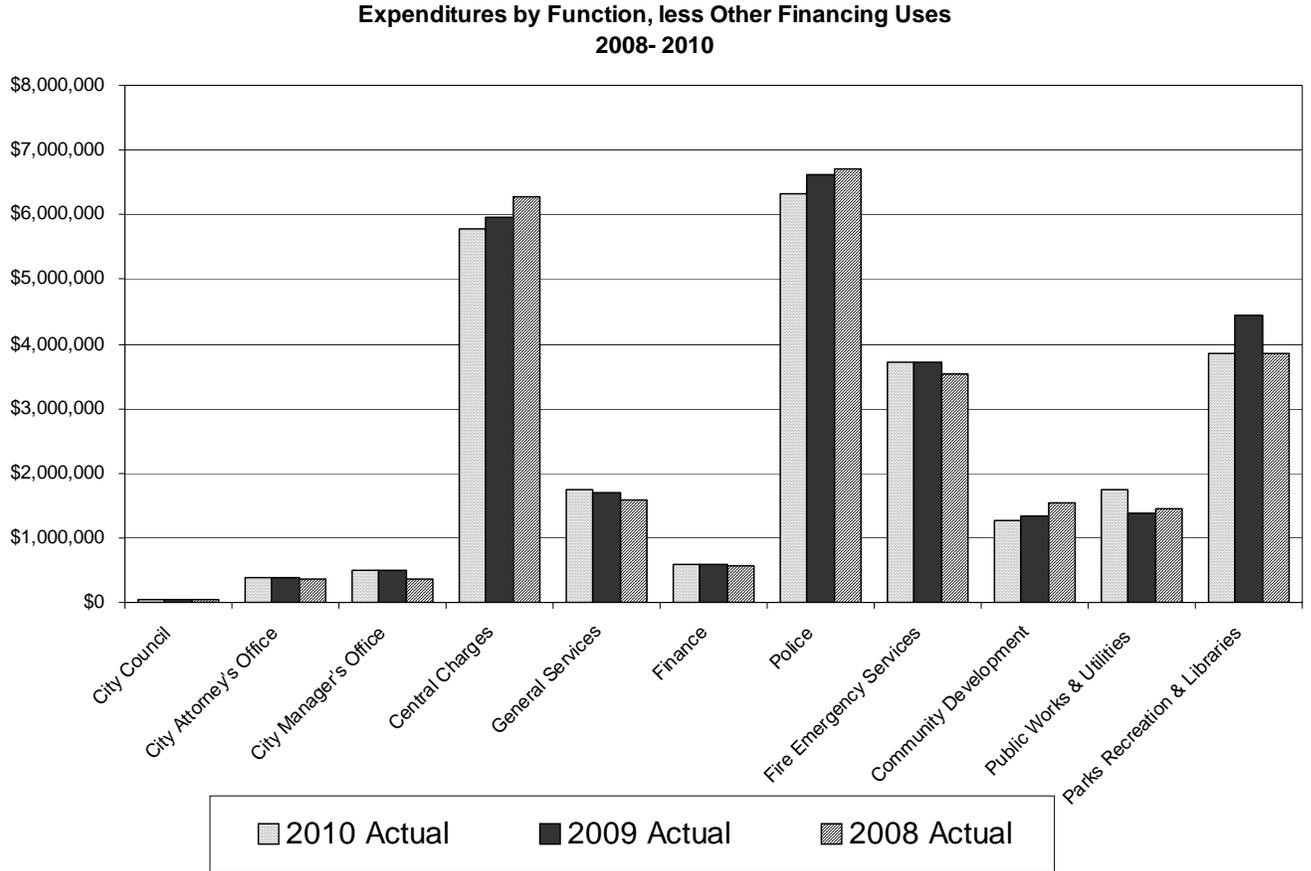
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2008- 2010**



Significant differences between years in General Fund revenue categories are explained as follows:

- Intergovernmental revenue is up due primarily to grant reimbursements.
- Recreation Services is up due mostly to facility and program fees.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2008 –2010.



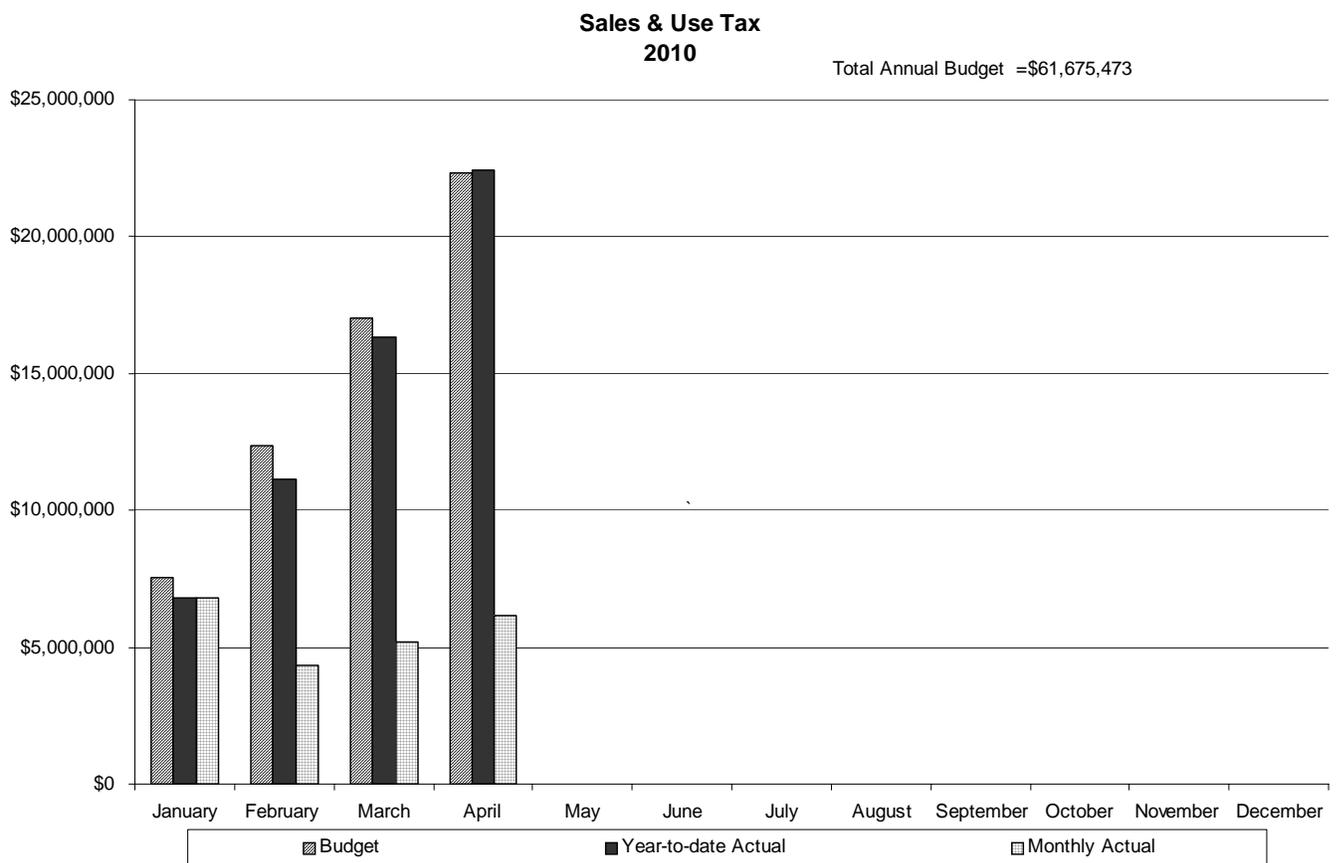
Significant differences between years in General Fund expenditure categories are explained as follow:

- Public Works & Utilities expenditures increased from 2009 due to street rehabilitation and street light costs.
- Parks, Recreation and Libraries 2009 expenditures were high due to equipment lease purchases.

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

These funds are the repositories for the 3.85% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the General Capital Improvement Fund, the Debt Service Fund and the Heritage Golf Course Fund. The Parks, Open Space, and Trails Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, buy open space land, and make park improvements on a pay-as-you-go basis. The Public Safety Tax (PST) is a 0.6% sales and use tax to be used to fund public safety-related expenses.

This chart indicates how the City’s Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Parks, Open Space, and Trails Sales & Use Tax.

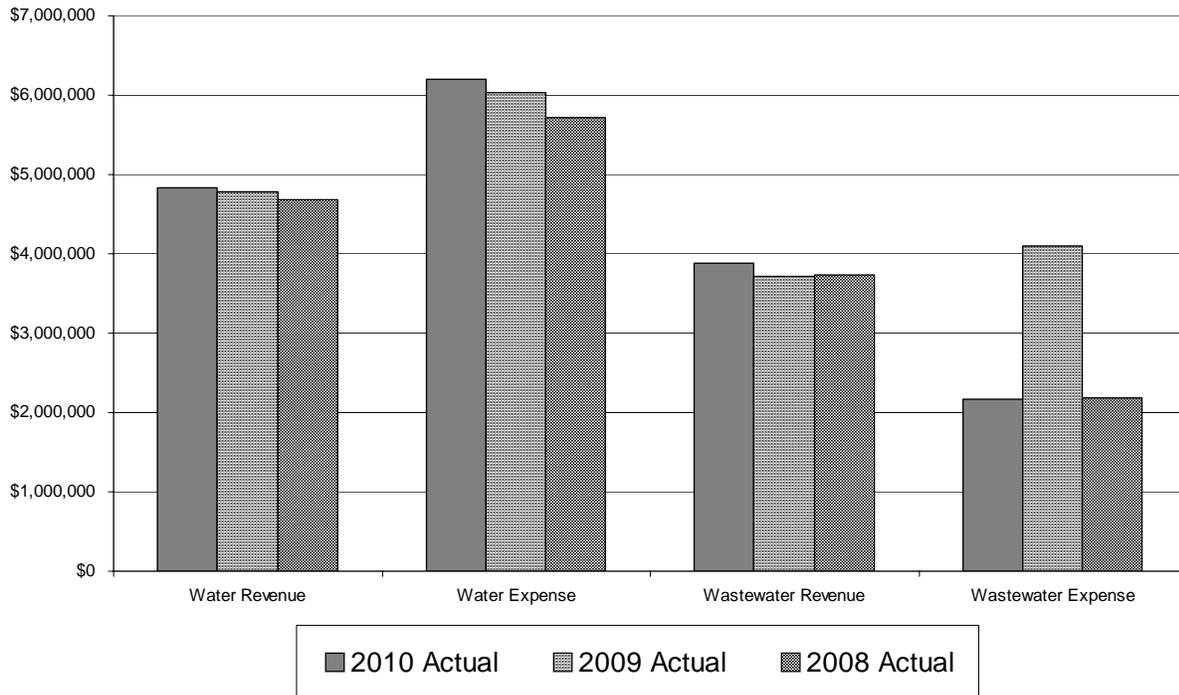


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City’s water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects and reserves.

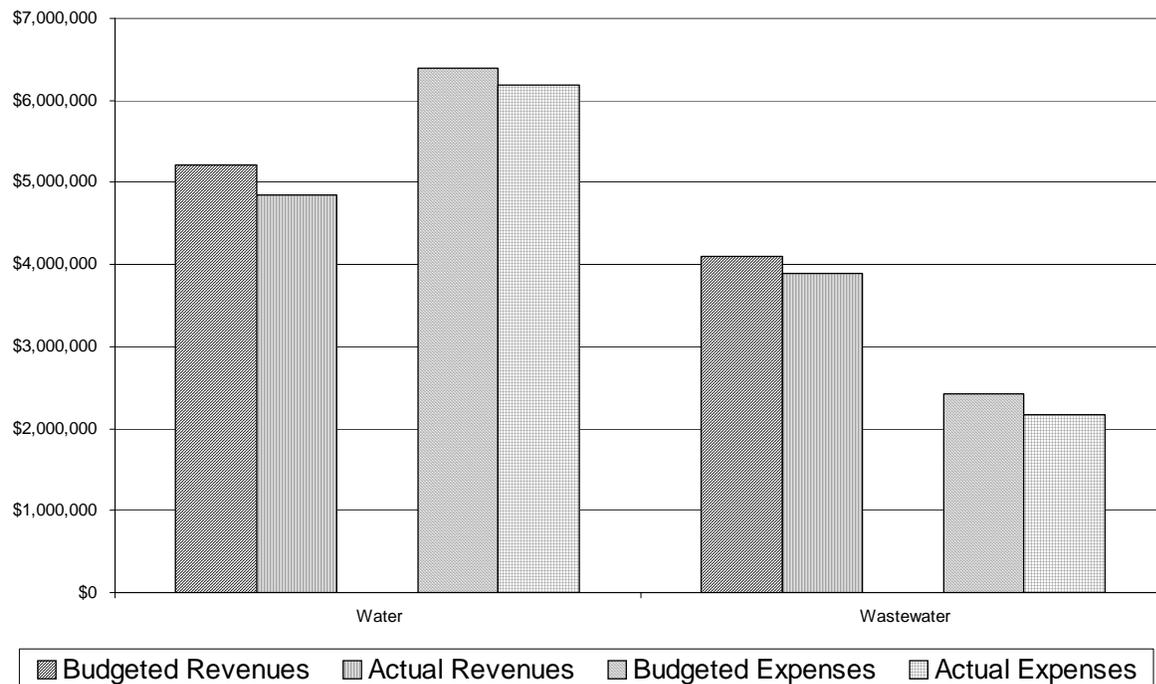
These graphs represent the segment information for the Water and Wastewater Funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2008-2010**



A one-time vendor payment of \$1.9 M to Metro to decommission the 94th and Quitman lift station is reflected in the 2009 Wastewater Fund expense.

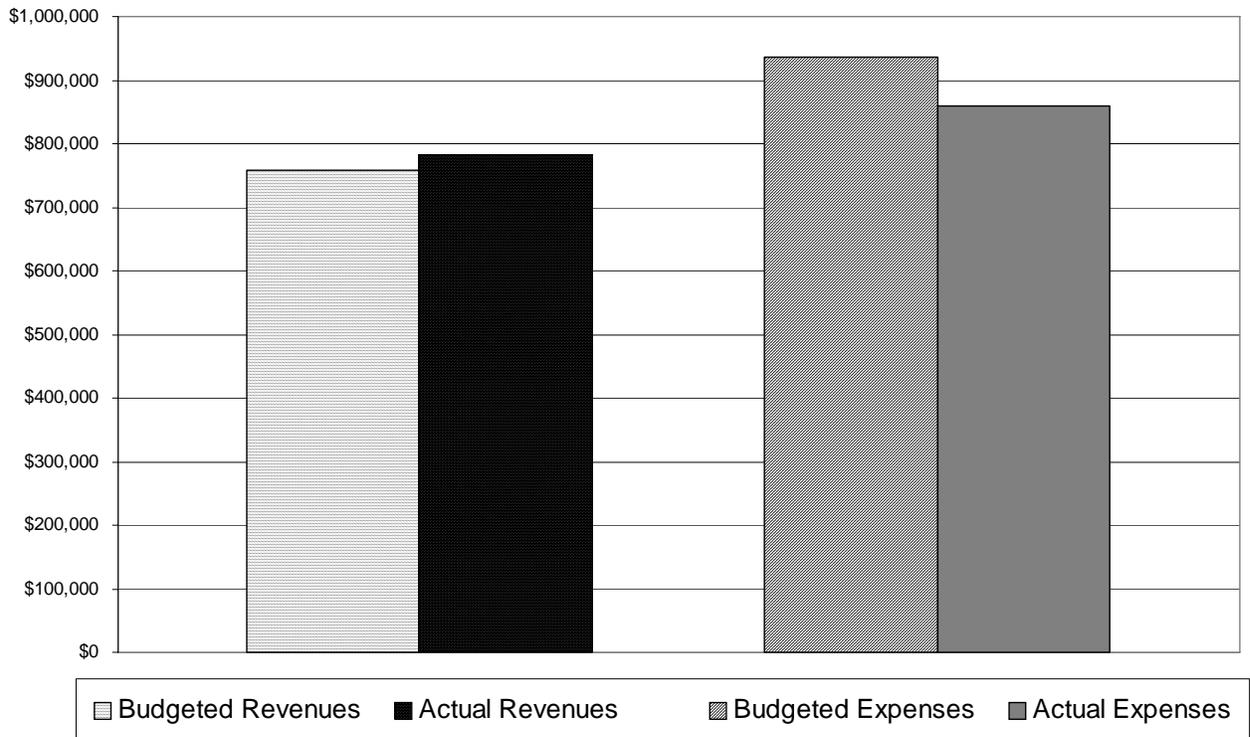
**Water and Wastewater Funds
2010 Operating Budget vs Actual**



Golf Course Enterprise (Legacy and Heritage Golf Courses)

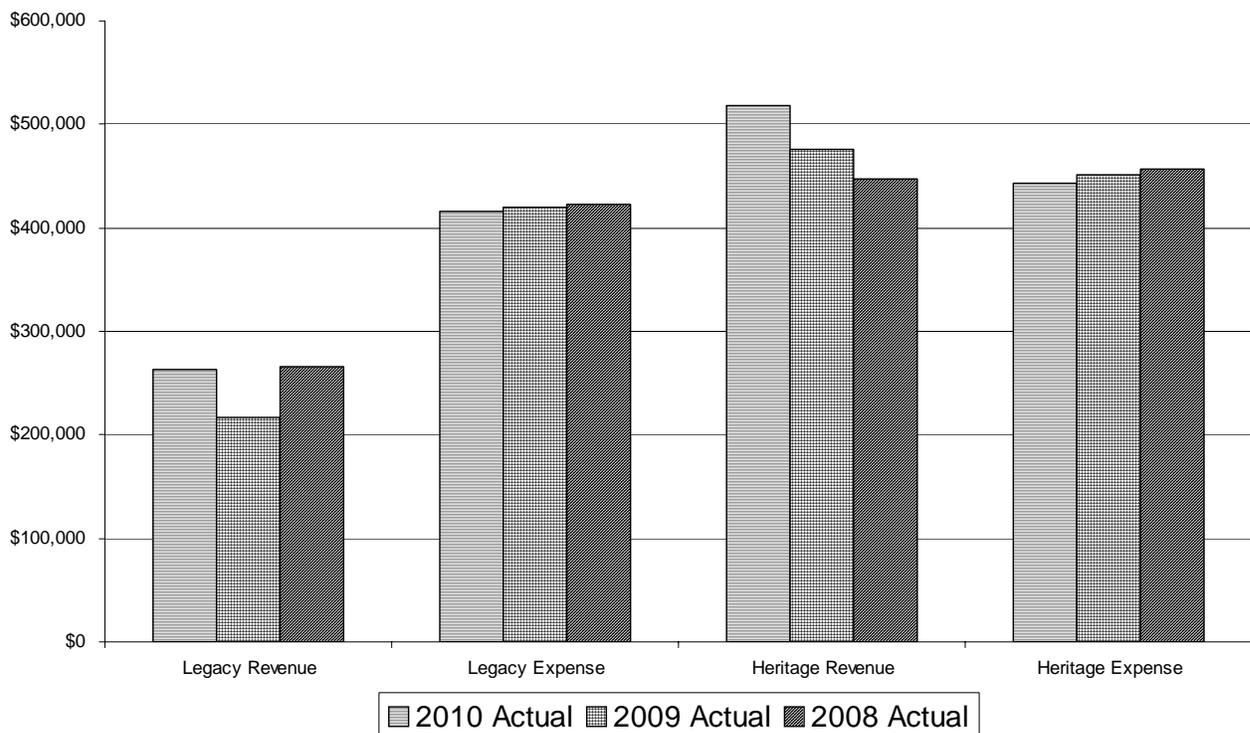
This enterprise reflects the operations of the City's two municipal golf courses.

**Combined Golf Courses
2010 Budget vs Actual**

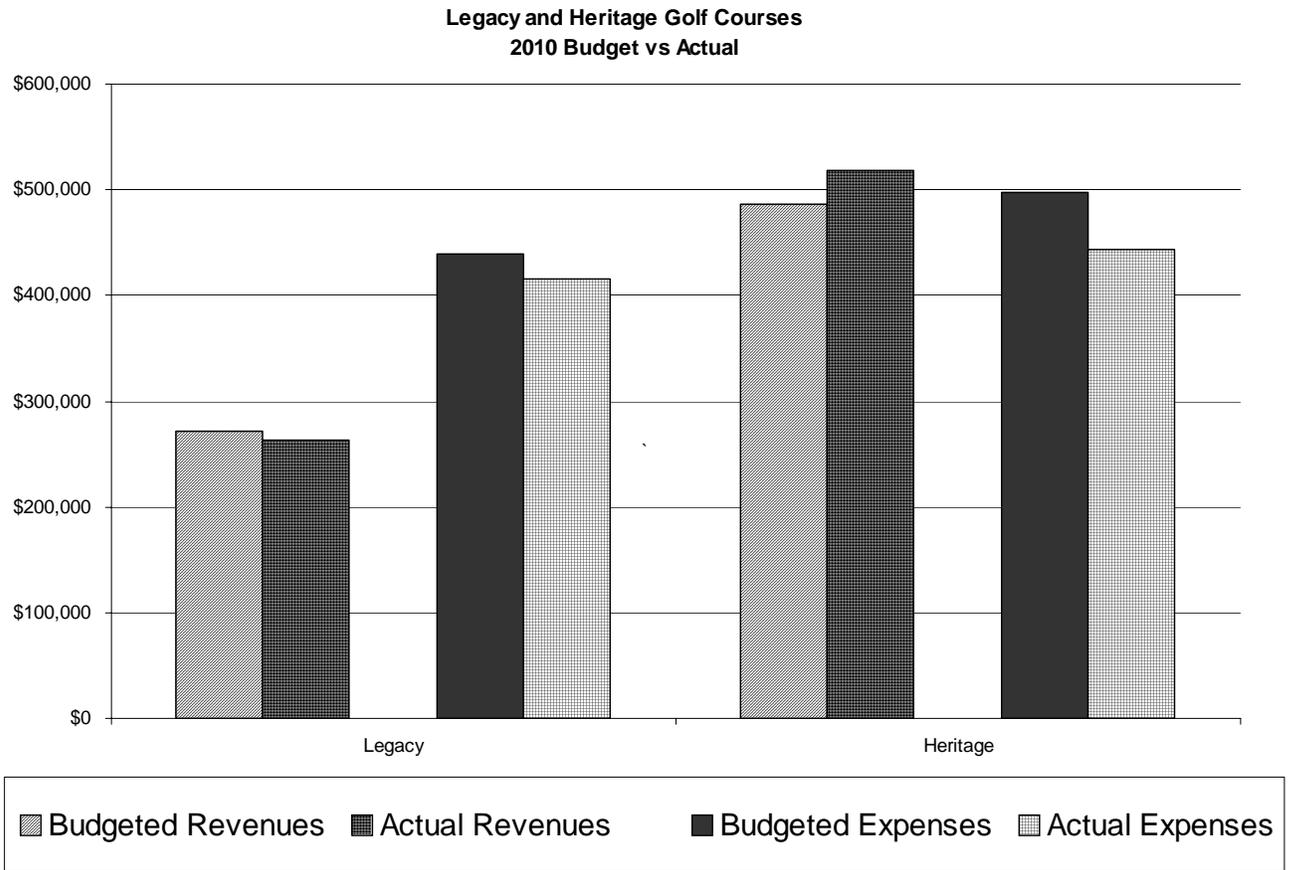


The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Courses
Revenue and Expenses 2008-2010**



Inter-fund transfers impact this revenue representation. Isolating Charges for Services revenue indicates year-to-date operating revenues decreased at Legacy by \$23,217 and increased at Heritage by \$5,092 compared to the same period in 2009.



Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	%
General Fund						
Revenues						
Taxes	5,678,400	2,141,781		2,099,653	(42,128)	98.0%
Licenses & Permits	1,371,178	445,039		388,069	(56,970)	87.2%
Intergovernmental Revenue	5,239,602	1,462,749		1,512,189	49,440	103.4%
Charges for Services						
Recreation Services	6,219,206	1,826,798		2,116,390	289,592	115.9%
Other Services	8,757,562	2,707,408		2,442,052	(265,356)	90.2%
Fines	2,262,105	747,756		668,933	(78,823)	89.5%
Interest Income	425,000	104,023		72,598	(31,425)	69.8%
Misc	1,625,161	314,332		442,895	128,563	140.9%
Leases	328,023	108,824		108,824	0	100.0%
Interfund Transfers	64,517,612	21,505,871		21,505,871	0	100.0%
Revenues	96,423,849	31,364,581		31,357,474	(7,107)	100.0%
Expenditures						
City Council	222,312	66,674		52,071	(14,603)	78.1%
City Attorney's Office	1,156,960	397,907		380,524	(17,383)	95.6%
City Manager's Office	1,611,334	542,718		495,434	(47,284)	91.3%
Central Charges	25,228,633	6,301,828		5,781,620	(520,208)	91.7%
General Services	5,937,816	1,961,079		1,748,316	(212,763)	89.2%
Finance	2,027,516	691,214		581,990	(109,224)	84.2%
Police	20,806,919	7,124,310		6,314,018	(810,292)	88.6%
Fire Emergency Services	11,847,237	4,034,355		3,724,148	(310,207)	92.3%
Community Development	4,273,620	1,461,636		1,273,352	(188,284)	87.1%
Public Works & Utilities	7,798,534	1,761,016		1,737,278	(23,738)	98.7%
Parks, Recreation & Libraries	15,512,968	4,877,528		3,862,771	(1,014,757)	79.2%
Total Expenditures	96,423,849	29,220,265		25,951,522	(3,268,743)	88.8%
Revenues Over(Under)						
Expenditures	0	2,144,316		5,405,952	3,261,636	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues and Carryover						
Sales Tax						
Sales Tax Returns	40,321,375	14,760,098		14,844,800	84,702	100.6%
Sales Tx Audit Revenues	711,876	298,792		196,833	(101,959)	65.9%
S-T Rev. STX	<u>41,033,251</u>	<u>15,058,890</u>		<u>15,041,633</u>	<u>(17,257)</u>	99.9%
Use Tax						
Use Tax Returns	7,010,205	2,057,108		2,007,676	(49,432)	97.6%
Use Tax Audit Revenues	785,000	354,035		667,713	313,678	188.6%
S-T Rev. UTX	<u>7,795,205</u>	<u>2,411,143</u>		<u>2,675,389</u>	<u>264,246</u>	111.0%
Total STX and UTX	<u><u>48,828,456</u></u>	<u><u>17,470,033</u></u>		<u><u>17,717,022</u></u>	<u><u>246,989</u></u>	101.4%
Public Safety Tax						
PST Tax Returns	11,616,517	4,023,035		3,843,313	(179,722)	95.5%
PST Audit Revenues	315,500	93,656		172,843	79,187	184.6%
Total Rev. PST	<u>11,932,017</u>	<u>4,116,691</u>		<u>4,016,156</u>	<u>(100,535)</u>	97.6%
Total Interest Income	235,000	78,333		35,808	(42,525)	45.7%
Carryover	680,000	680,000		680,000	0	100.0%
Total Revenues and Carryover	<u>61,675,473</u>	<u>22,345,057</u>		<u>22,448,986</u>	<u>103,929</u>	100.5%
Expenditures						
Central Charges	<u>61,675,473</u>	<u>20,558,491</u>		<u>20,558,491</u>	<u>0</u>	100.0%
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>1,786,566</u></u>		<u><u>1,890,495</u></u>	<u><u>103,929</u></u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	4,865,857	1,705,349		1,672,969	(32,380)	98.1%
Intergovernmental Revenue	1,635,000	0		0	0	
Interest Income	55,000	18,333		23,658	5,325	129.0%
Miscellaneous	83,977	34,990		558	(34,432)	1.6%
Interfund Transfers	209,000	0		0	0	
Total Revenues	<u>6,848,834</u>	<u>1,758,672</u>		<u>1,697,185</u>	<u>(61,487)</u>	96.5%
Expenditures						
Central Charges	6,499,646	1,377,337		1,387,223	9,886	100.7%
Park Services	349,188	95,661		44,400	(51,261)	46.4%
	<u>6,848,834</u>	<u>1,472,998</u>		<u>1,431,623</u>	<u>(41,375)</u>	97.2%
Over(Under) Expenditures	<u>0</u>	<u>285,674</u>		<u>265,562</u>	<u>(20,112)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	25,000		32,170	7,170	128.7%
Rates and Charges	41,600,438	9,143,359		8,657,497	(485,862)	94.7%
Miscellaneous	435,000	145,000		41,443	(103,557)	28.6%
Total Operating Revenues	<u>42,110,438</u>	<u>9,313,359</u>		<u>8,731,110</u>	<u>(582,249)</u>	93.7%
Operating Expenses						
Central Charges	6,051,028	2,017,010		2,009,500	(7,510)	99.6%
Finance	705,372	222,898		223,357	459	100.2%
Public Works & Utilities	20,131,933	5,618,796		5,255,277	(363,519)	93.5%
Parks, Recreation & Libraries	147,979	49,326		13,792	(35,534)	28.0%
Information Technology	2,821,595	902,910		856,482	(46,428)	94.9%
Total Operating Expenses	<u>29,857,907</u>	<u>8,810,940</u>		<u>8,358,408</u>	<u>(452,532)</u>	94.9%
Operating Income (Loss)	<u>12,252,531</u>	<u>502,419</u>		<u>372,702</u>	<u>(129,717)</u>	
Other Revenue and Expenses						
Tap Fees	3,193,061	1,301,256		999,083	(302,173)	76.8%
Interest Income	1,450,000	483,334		320,377	(162,957)	66.3%
Other Financing Sources	28,300,000	0		0	0	
Debt Service	(6,757,592)	0		0	0	
Total Other Revenue (Expenses)	<u>26,185,469</u>	<u>1,784,590</u>		<u>1,319,460</u>	<u>(465,130)</u>	73.9%
	<u>38,438,000</u>	<u>2,287,009</u>		<u>1,692,162</u>	<u>(594,847)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	25,000		32,170	7,170	128.7%
Rates and Charges	29,360,461	5,048,507		4,768,467	(280,040)	94.5%
Miscellaneous	425,000	141,667		39,343	(102,324)	27.8%
Total Operating Revenues	<u>29,860,461</u>	<u>5,215,174</u>		<u>4,839,980</u>	<u>(375,194)</u>	92.8%
Operating Expenses						
Central Charges	4,258,103	1,419,368		1,419,669	301	100.0%
Finance	705,372	222,898		223,357	459	100.2%
Public Works & Utilities	13,801,624	3,796,453		3,678,483	(117,970)	96.9%
PR&L Standley Lake	147,979	49,326		13,792	(35,534)	28.0%
Information Technology	2,821,595	902,910		856,482	(46,428)	94.9%
Total Operating Expenses	<u>21,734,673</u>	<u>6,390,955</u>		<u>6,191,783</u>	<u>(199,172)</u>	96.9%
Operating Income (Loss)	<u>8,125,788</u>	<u>(1,175,781)</u>		<u>(1,351,803)</u>	<u>(176,022)</u>	
Other Revenue and Expenses						
Tap Fees	2,600,000	1,037,000		776,467	(260,533)	74.9%
Interest Income	800,000	266,667		254,093	(12,574)	95.3%
Other Financing Sources	28,300,000	0		0	0	
Debt Service	(5,253,788)	0		0	0	
Total Other Revenues (Expenses)	<u>26,446,212</u>	<u>1,303,667</u>		<u>1,030,560</u>	<u>(273,107)</u>	79.1%
Increase (Decrease) in Net Assets	<u>34,572,000</u>	<u>127,886</u>		<u>(321,243)</u>	<u>(449,129)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,239,977	4,094,852		3,889,030	(205,822)	95.0%
Miscellaneous	10,000	3,333		2,100	(1,233)	63.0%
Total Operating Revenues	<u>12,249,977</u>	<u>4,098,185</u>		<u>3,891,130</u>	<u>(207,055)</u>	94.9%
Operating Expenses						
Central Charges	1,792,925	597,642		589,831	(7,811)	98.7%
Public Works & Utilities	6,330,309	1,822,343		1,576,794	(245,549)	86.5%
Total Operating Expenses	<u>8,123,234</u>	<u>2,419,985</u>		<u>2,166,625</u>	<u>(253,360)</u>	89.5%
Operating Income (Loss)	<u>4,126,743</u>	<u>1,678,200</u>		<u>1,724,505</u>	<u>46,305</u>	
Other Revenue and Expenses						
Tap Fees	593,061	264,256		222,616	(41,640)	84.2%
Interest Income	650,000	216,667		66,284	(150,383)	30.6%
Debt Service	(1,503,804)	0		0	0	
Total Other Revenues (Expenses)	<u>(260,743)</u>	<u>480,923</u>		<u>288,900</u>	<u>(192,023)</u>	60.1%
Increase (Decrease) in Net Assets	<u>3,866,000</u>	<u>2,159,123</u>		<u>2,013,405</u>	<u>(145,718)</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,000,000	666,667		665,387	(1,280)	99.8%
Interest Income	80,000	26,667		26,616	(51)	99.8%
Miscellaneous	0	0		18	18	
Total Revenues	<u>2,080,000</u>	<u>693,334</u>		<u>692,021</u>	<u>(1,313)</u>	99.8%
Expenses						
General Services	92,000	15,732		5,326	(10,406)	33.9%
Community Development	147,000	48,216		41,519	(6,697)	86.1%
PR&L Park Services	200,000	66,667		21,125	(45,542)	31.7%
Public Works & Utilities	291,000	66,348		41,372	(24,976)	62.4%
Total Expenses	<u>730,000</u>	<u>196,963</u>		<u>109,342</u>	<u>(87,621)</u>	55.5%
Increase (Decrease) in Net Assets	<u>1,350,000</u>	<u>496,371</u>		<u>582,679</u>	<u>86,308</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Operating Revenues						
Charges for Services	2,970,719	489,944		510,870	20,926	104.3%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	804,591	268,197		268,197	0	100.0%
Total Operating Revenues	<u>3,775,310</u>	<u>758,141</u>		<u>782,698</u>	<u>24,557</u>	103.2%
Operating Expenses						
Central Charges	230,085	75,740		72,302	(3,438)	95.5%
Recreation Facilities	3,047,135	861,469		786,463	(75,006)	91.3%
Total Operating Expenses	<u>3,277,220</u>	<u>937,209</u>		<u>858,765</u>	<u>(78,444)</u>	91.6%
Operating Income (Loss)	498,090	(179,068)		(76,067)	103,001	
Other Expense						
Debt Service	498,090	0		0	0	
Increase (Decrease) in Net Assets	<u>0</u>	<u>(179,068)</u>		<u>(76,067)</u>	<u>103,001</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Operating Revenues						
Charges for Services	1,597,500	261,990		250,394	(11,596)	95.6%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	29,433	9,811		9,811	0	100.0%
Total Operating Revenues	<u>1,626,933</u>	<u>271,801</u>		<u>263,836</u>	<u>(7,965)</u>	97.1%
Operating Expenses						
Central Charges	122,030	40,514		38,576	(1,938)	95.2%
Recreation Facilities	1,504,903	398,799		376,971	(21,828)	94.5%
Total Operating Expenses	<u>1,626,933</u>	<u>439,313</u>		<u>415,547</u>	<u>(23,766)</u>	94.6%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(167,512)</u>		<u>(151,711)</u>	<u>15,801</u>	

**City of Westminster
Financial Report
For Four Months Ending April 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Operating Revenues						
Charges for Services	1,373,219	227,954		260,476	32,522	114.3%
Interfund Transfers	775,158	258,386		258,386	0	100.0%
Total Operating Revenues	<u>2,148,377</u>	<u>486,340</u>		<u>518,862</u>	<u>32,522</u>	106.7%
Operating Expenses						
Central Charges	108,055	35,226		33,726	(1,500)	95.7%
Recreation Facilities	1,542,232	462,670		409,492	(53,178)	88.5%
Total Operating Expenses	<u>1,650,287</u>	<u>497,896</u>		<u>443,218</u>	<u>(54,678)</u>	89.0%
Operating Income	498,090	(11,556)		75,644	87,200	
Other Expense						
Debt Service	<u>498,090</u>	<u>0</u>		<u>0</u>	<u>0</u>	
Increase (Decrease) in Net Assets	<u><u>0</u></u>	<u><u>(11,556)</u></u>		<u><u>75,644</u></u>	<u><u>87,200</u></u>	

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE APRIL 2010

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	339,203	26,188	365,390	287,546	20,230	307,776	18	29	19
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	349,814	6,285	356,099	347,690	28,523	376,213	1	-78	-5
SHOPS AT WALNUT CREEK 104TH & REED TARGET	245,671	1,105	246,777	220,838	673	221,511	11	64	11
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	213,997	498	214,494	226,471	13,146	239,616	-6	-96	-10
PARK CENTRE INDUSTRIAL CENTER 123RD & PECOS ST DATA RAY	15,458	188,710	204,168	255	1,836	2,091	5973	10177	9666
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	187,230	257	187,487	179,748	1,529	181,277	4	-83	3
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	174,931	357	175,288	171,733	638	172,371	2	-44	2
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	173,073	1,048	174,121	167,324	1,809	169,133	3	-42	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	124,487	45,749	170,236	117,459	13,596	131,056	6	236	30
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	158,611	1,025	159,636	167,822	4,415	172,237	-5	-77	-7
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	138,534	1,025	139,559	183,180	1,116	184,296	-24	-8	-24
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	123,586	524	124,109	164,318	846	165,164	-25	-38	-25
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	97,171	456	97,627	98,602	537	99,139	-1	-15	-2
WESTMOOR NW OF 108TH AND WADSWORTH GE ACCESS	7,870	82,600	90,470	17,374	278,733	296,107	-55	-70	-69
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	76,027	267	76,294	79,611	462	80,073	-5	-42	-5

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE APRIL 2010

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
COMPASS BANK BUILDING SW CORNER 92ND & SHER COMPASS BANK	15,175	54,045	69,221	12,189	164	12,352	25	32895	460
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	68,421	122	68,543	66,104	29	66,134	4	319	4
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	64,855	278	65,133	59,333	290	59,623	9	-4	9
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	64,825	24	64,849	60,430	1,270	61,701	7	-98	5
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	46,149	254	46,403	46,629	203	46,832	-1	25	-1
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	4,017	40,008	44,025	6,110	35,565	41,675	-34	12	6
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	42,695	276	42,971	47,814	228	48,042	-11	21	-11
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	40,973	409	41,381	42,033	396	42,429	-3	3	-2
WILLOW RUN 128TH & ZUNI SAFEWAY	35,137	2,038	37,175	45,283	93	45,375	-22	2099	-18
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	33,100	0	33,100	33,232	0	33,232	0	*****	0
	<u>2,841,011</u>	<u>453,547</u>	<u>3,294,558</u>	<u>2,849,129</u>	<u>406,327</u>	<u>3,255,456</u>	<u>0</u>	<u>12</u>	<u>1</u>

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE APRIL 2010

Center Location Major Tenant	/----- YTD 2010 -----/	/----- YTD 2009 -----/	%Change ---/						
	General Sales	General Use	Total	General Sales	General Use	Total Sales	Use	Total	
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	1,537,672	10,414	1,548,086	1,520,623	39,637	1,560,260	1	-74	-1
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	1,379,538	85,549	1,465,088	1,171,581	65,063	1,236,644	18	31	18
SHOPS AT WALNUT CREEK 104TH & REED TARGET	943,575	5,422	948,998	883,106	9,990	893,096	7	-46	6
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	926,186	1,698	927,884	948,787	15,263	964,050	-2	-89	-4
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	808,550	1,407	809,957	796,212	4,311	800,523	2	-67	1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	753,749	1,727	755,476	720,897	5,221	726,118	5	-67	4
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	648,499	3,483	651,982	642,843	10,087	652,930	1	-65	0
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	644,115	5,106	649,222	1,083,252	5,360	1,088,612	-41	-5	-40
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	635,429	4,163	639,593	662,517	11,360	673,877	-4	-63	-5
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	505,294	2,441	507,735	770,416	3,442	773,858	-34	-29	-34
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	474,968	135,997	610,965	499,313	60,499	559,811	-5	125	9
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	470,110	2,048	472,158	487,535	2,964	490,499	-4	-31	-4
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	334,054	966	335,020	369,893	1,818	371,711	-10	-47	-10
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	325,176	463	325,639	318,608	933	319,541	2	-50	2
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	284,220	1,419	285,639	239,079	1,230	240,309	19	15	19

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE APRIL 2010

Center Location Major Tenant	/----- YTD 2010 -----/			/----- YTD 2009 -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	215,409	178	215,587	215,047	3,805	218,852	0	-95	-1
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	187,659	12,014	199,673	200,923	967	201,890	-7	1142	-1
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	167,178	1,008	168,186	194,360	2,687	197,048	-14	-62	-15
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	156,963	1,357	158,320	165,699	1,228	166,927	-5	11	-5
WILLOW RUN 128TH & ZUNI SAFEWAY	138,058	2,766	140,824	191,159	995	192,154	-28	178	-27
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	132,228	666	132,894	79,135	0	79,135	67	*****	68
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	98,806	320	99,126	98,886	540	99,427	0	-41	0
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	90,187	544	90,731	89,543	1,219	90,762	1	-55	0
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	82,643	2,020	84,663	94,445	2,263	96,708	-13	-11	-12
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	80,632	1,627	82,259	69,604	1,929	71,534	16	-16	15
	=====	=====	=====	=====	=====	=====	-----	-----	-----
	12,020,900	284,804	12,305,704	12,513,462	252,813	12,766,275	-4	13	-4



Agenda Item 8 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Special Legal Services Contract for Special Permit & License Board

Prepared By: Tami L. Cannon, Legal Administrator
Linda Yeager, City Clerk

Recommended City Council Action

Authorize the City Manager to sign a contract for legal services on an as-needed basis with Williamson & Hayashi, LLC to advise the Special Permit & Licenses Board when a conflict of interest prevents the City Attorney's Office from representing the Board in a liquor license proceeding.

Summary Statement

- Occasionally, special counsel must be appointed to represent the Special Permit & License Board (Board) when a disciplinary action is being taken by the Police Department and the City Attorney's Office is acting as legal counsel to the Police Department.
- The City Attorney's Office cannot represent both the Board and the Police Department in a disciplinary action against a licensee, and fewer hours of special counsel time are required to represent the Board at the hearing on such a matter than to assist the Police Department in preparing and presenting the City's case.
- Mr. Dave Williamson has acted as special legal counsel to the Board for several years and the Board would like him to continue when needed.
- The proposed expenditure, not to exceed \$2,000, is intended to cover these services as they are required.

Expenditure Required: Not to exceed \$2,000

Source of Funds: City Attorney's Office Professional Services Account

Policy Issue

Should the City retain special legal counsel to advise the Special Permit & License Board when a conflict of interest prevents the City Attorney's Office from representing the Board in a liquor license proceeding?

Alternative

Not hire Williamson & Hayashi, LLC as special legal counsel, or retain special counsel only at the time needed. This alternative is not recommended, as Mr. Dave Williamson has extensive experience in representing the Board and an on-going contract would allow timely retention of special counsel, as needed.

Background Information

The Special Permit & License Board is regularly advised by a member of the City Attorney's Office (CAO). However, there are times when a conflict exists that requires special counsel be appointed to represent the Board. This generally occurs when a member of the CAO is representing the Police Department in the prosecution of a liquor license violation, which would create a conflict between members of the Office representing both the prosecution and the decision-maker.

Several years ago, the Board interviewed applicants for special counsel to represent the Board on those occasions when a conflict or other circumstances prevent the CAO from acting. The Board chose David Williamson of the law firm Williamson & Hayashi, LLC, formerly Windholz & Associates. Mr. Williamson has since represented the Board and the members have indicated that they would like him to continue. Since a previous contract with Mr. Williamson has expired, Council is requested to approve a new contract authorizing the appointment of Mr. Williamson on an as-needed basis. The contract sets a maximum expenditure of \$2,000 which, given recent experience, should allow him to represent the Board for some time, unless an unusually long or complex proceeding would occur. His fee is \$110 per hour, which is reasonable in today's market for an attorney with his experience in municipal and liquor licensing law.

Funds are available for these services in the City Attorney's Office Professional Services Account.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this _____ day of May, 2010, by and between **WILLIAMSON & HAYASHI, LLC** (the "Firm") and the **CITY OF WESTMINSTER** (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 special legal services to the City of Westminster Special Permit and License Board (the Local Liquor Licensing Authority) on an as-needed basis.
2. David S. Williamson 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 hourly rate not to exceed \$110 per hour.
5. This Contract may be terminated by the City with or without cause.
6. The Westminster City Council authorized this contract on May 24, 2010.
7. Payments for legal services pursuant to this Contract shall not exceed Two Thousand Dollars (\$2,000) without further written authorization by the City.
8. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm shall not enter into a contract with a subcontractor that fails to certify to the Firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and the City within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that the Firm shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Firm certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). The Firm shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

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

WILLIAMSON & HAYASHI, LLC

By _____

CITY OF WESTMINSTER, COLORADO

By _____

Approved as to legal form:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Reclaimed Water Salinity Management Plan Phase II Project Contract

Prepared By: Jenny Fifita, Reclaimed Water System Coordinator
Josh Nims, Water Resources Engineering Coordinator

Recommended City Council Action

Based on a recommendation of the City Manager, City Council finds the public interest will best be served by authorizing the City Manager to execute a contract with Olsson Associates, Inc. in the amount of \$42,365 for completion of the Reclaimed Water Salinity Management Plan Phase II and authorize a ten percent contingency in the amount of \$4,237 for a total project budget of \$46,602.

Summary Statement

- The City's reclaimed water program has operated since 2000 and is critical to meeting the City's growing water demands. At build-out, reclaimed water will comprise more than ten percent of the City's total water supply.
- Salinity levels are higher in the City's reclaimed water than in its potable water, which has led to concern about how reclaimed water impacts landscape health.
- Staff has been working with Olsson Associates, Inc. (Olsson Associates) to develop a Salinity Management Plan. The plan was to be completed in two phases. Phase I would identify issues that the Utility anticipated could be addressed with system-wide solutions in Phase II.
- In Phase I, Olsson Associates found that soil, ground water and other environmental factors are the primary sources of salinity and vegetative stress in City landscapes. Addressing these issues will require more customer involvement because they will need to be implemented at customer sites.
- Phase II will be used to collaborate with reclaimed water customers on potential solutions. It will also establish a method to identify the specific causes of landscape stress and sources of salinity.
- Staff recommends that Council approve a sole source contract with Olsson Associates for Phase II. Olsson Associates was selected in a competitive process for Phase I with the anticipation that they would also perform the work in future phases. In Staff's opinion, Olsson Associates is the best candidate to perform the work because of its resources and experience.
- Staff is requesting this authorization from Council as the aggregate amount to be spent on all phases of the Salinity Management Plan will ultimately exceed \$50,000. Staff will return to Council to request authorization of Phase III that will result in a management plan that can be used as a guide for dealing with landscape and salinity issues. It will also focus on implementing reasonable solutions that offer the greatest benefit to the customer.

Expenditure Required: \$46,602

Source of Funds: Utility Fund - Reclaimed Water System Improvements Project Account

Policy Issue

Should the City award this sole source contract to Olsson Associates for completion of the Reclaimed Water Salinity Management Plan Phase II?

Alternatives

As an alternative to awarding this contract to Olsson Associates, the City could choose to solicit proposals from other firms to complete the work. Staff does not recommend this alternative as Olsson Associates was selected in a competitive process for Phase I with the anticipation that they would also perform the work for future phases. Staff feels that Olsson Associates is the best candidate to perform the work because of its resources and experience.

As a second alternative to completing Phase II, the City could opt not to do the project. If the City does not complete this project, it will impact the quality of service provided by the City's reclaimed water program and may impact the desire of landscape managers to use reclaimed water, ultimately impacting the ability of the City to meet build-out water demands.

A third alternative is to complete the analysis at a later date. This option is not recommended as salinity issues have emerged as a pressing concern to reclaimed water users. Staff considers this effort necessary to continue to provide excellent customer service and to meet build-out water demands.

Background Information

The City of Westminster has operated a reclaimed water program since 2000. The City has invested in the reclaimed water system because its development and use is critical to meet the City's growing water demands. At build-out, reclaimed water will comprise more than ten percent of the City's total water supply.

Council authorized Phase I of the Salinity Management Plan on June 8, 2009 to proactively address concerns that salinity in the reclaimed water was negatively impacting landscape health. Salinity exists in virtually every water supply, but in high concentrations it can impact the health of certain plants. The goal of the project is to identify the issues that landscape managers attribute to the use of reclaimed water or salinity and develop recommendations for addressing these issues. Once Phase I was completed, Staff intended to return to Council for authorization of a second phase of the project. The intent of this phase was to focus on the development of recommendations for addressing the issues identified in Phase I.

The results of Phase I indicated that environmental salinity in the soil and groundwater are the primary sources in City landscapes. The majority of the sites with landscape stress had pre-existing soil or environmental conditions that were the dominant cause of the stress. Depending on the environmental conditions at a site, the use of reclaimed water may still increase the salinity in the ground, but this is not always the case. The City's reclaimed water is relatively high quality water that compares similarly to other irrigation water used successfully across the United States.

Phase II was originally planned to address issues identified during Phase I. However, due to the fact that the vegetative stress issues are environmental in nature and because the conditions vary requiring some site-specific solutions, Staff will use Phase II to collaborate with customers on which potential solutions should be implemented. A single across-the-board solution will not address the issues identified, and therefore, a more involved response is required.

Phase II also includes the development of a sampling method that will be used to a) identify sources of salinity at reclaimed water sites; b) identify factors that could contribute to vegetative stress; and c) test this method at the new Westminster Center Park site. Monitoring this site as it begins using reclaimed water will help establish a baseline condition and provide some comparison for City Hall and other sites.

City Council is asked to approve Staff's recommendation that Olsson Associates be awarded a sole source contract to complete Phase II of the Reclaimed Water Salinity Management Plan as the aggregate amount to be spent on all phases of the Salinity Management Plan will ultimately exceed \$50,000. Olsson Associates was originally selected to complete Phase I with the anticipation that they would also be asked to complete future phases of this project. Staff identified specific requirements for choosing the best consultant to perform the work for both phases of this project, and Olsson was selected based on the team's experience and specialized knowledge of the issue, as well as their access to extensive specialized resources available from their partnership with Colorado State University. Olsson Associates has the expertise to complete the analysis required for the Phase II work and is the natural choice because of its team's familiarity with the project, the customers and the sites.

Once Phase II of the project is completed, Staff will return to Council to recommend that a sole source contract be awarded to Olsson Associates for a third phase of the project. Phase III will result in a management plan that can be used as a guide for dealing with landscape and salinity issues. It will also focus on implementing reasonable solutions that offer the greatest benefit to the customer. A broad range of solutions will be considered for incorporation in the management plan, including items such as reducing the addition of salinity to the waste stream and implementation of operational or landscaping best management practices to mitigate salinity impacts. Specific recommendations for certain existing reclaimed water sites may include irrigation and drainage improvements or the replacement of sensitive plant species. Once solutions are identified in the management plan, the Utility will work with users to provide support in implementation. The plan will also include direction for future sites that may include certain installation practices or specification of plant species that are more tolerant to salinity.

This project meets the City's goals for Financially Sustainable City Government because it helps to provide efficient and cost effective services and to secure and develop a long term water supply. It also creates a Beautiful and Environmentally Sensitive City by promoting environmentally sensitive operations.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: 2010 Wastewater Collection System Improvement Project/CIPP Lining Contracts

Prepared By: Richard A. Clark, P.E., Utilities Operations Manager
Andy Mead, Senior Management Analyst

Recommended City Council Action

Authorize the City Manager to execute contracts with Insituform Technologies, Inc. for small diameter sewer pipe lining; and with Western Slope Utilities, Inc. (WSU) for large diameter pipe lining. Authorize a project budget for the small diameter sewer pipe lining of \$1,198,227 with a 10% contingency of \$119,822; and a project budget for the large diameter sewer pipe lining of \$109,560 with a 10% contingency of \$10,956. Total project costs for the 2010 Wastewater Collection System Improvement Project/CIPP Lining, (both small and large sewer pipe) will equal \$1,438,565, including the contingency funding.

Summary Statement:

- This project consists of two-phases of sewer line rehabilitation activities. The first phase includes the lining of approximately 68,000 feet of 6 to 12 inch small diameter sanitary sewer lines. The second phase of the project will line approximately 1,200 feet of 18 to 24 inch large diameter sewer lines. Both phases include using trenchless technology, cured-in-place pipe (CIPP) repair of the sanitary sewer lines.
- Formal bids were issued and a bid opening took place on April 29, 2010. Three contractors submitted bids on this two-phase project. The lowest responsible bid for Phase One, small diameter pipe lining, was submitted by Insituform Technologies, Inc. The lowest responsible bid for Phase Two, large diameter pipe lining, was Western Slope Utilities, Inc. (WSU). Both of these contractors's have been utilized by the City in the past and have provided a satisfactory work product.
- Adequate funds are budgeted for this expenditure in the Utility Fund Capital Improvement Program (CIP) budget.

Expenditure Required: \$1,438,565

Source of Funds: Utility Fund Capital Improvements – Sewer Line Trenchless Rehabilitation

Policy Issue

Should the Council authorize the City Manager to execute contracts to rehabilitate defective small and large diameter sewers?

Alternative

Delay this sanitary sewer lining rehabilitation project. This is not recommended as the City would risk additional sewer line failures and damages that may occur due to line collapse.

Background Information

Each year, the Utility Operations Division budgets CIP funds for the rehabilitation of deteriorated sanitary sewer lines utilizing the Cured-In-Place Pipe (CIPP) trenchless technology to achieve the required pipe rehabilitation. Sewers are assigned a numerical condition rating during the annual inspection program and the most severely deteriorated lines are selected for rehabilitation first. Typically, hydrogen sulfide gas from the sewage has worn away the concrete mortar and caused joint leaks and crown corrosion along the sewer lines. This can eventually cause the sewer's structural support to fail and cause a total line collapse. The selected sewer lines related to this lining project were identified as a priority for rehabilitation due to their advanced deteriorating condition.

In 2007, the sanitary sewer line rehabilitation program funding was expanded and moved from the Utilities Division Operating Budget to the Utility Fund Capital Improvements Program portion of the budget. Funding for these types of projects was significantly increased and has allowed for an accelerated schedule of rehabilitation of the sanitary sewer lines in need of repair throughout the City.

The entire wastewater collection system of the City of Westminster consists of 10,725 individual line segments, totaling 2,016,184 feet. The entire system, with the exception of 9,000 feet of line, has now been inspected and rated. The ratings of the entire system accumulated 108,144 structural defect points and 33,482 operations and maintenance (O&M) defect points.

The project scope of work for the 2010 Wastewater Collection System Improvement Project/CIPP Lining consists of two phases of work. Phase One of the project (small sewer pipe lining) addresses 67,775 feet of line, containing 32,273 structural defect points and 3,220 O&M defect points. Phase Two of the project (large sewer pipe lining) addresses 1,205 feet of line, containing 975 structural defect points and 111 O&M defect points. Overall, the project addresses almost one-third of the total defect points in the system and should change the overall rating of the sewer collection system from 371 defects per mile to 275 defects per mile, if every defect is eliminated by the CIPP lining.

Trenchless technology has proven very successful and is minimally disruptive for residents and traffic flows. This process of rehabilitating sewer lines has been successfully utilized by the City in past years and has been a reliable method of repair. Phase One of the project, the smaller diameter sewer pipe lining, will take place in the area from 76th Avenue to 96th Avenue, between Sheridan Blvd. and Federal Blvd. Phase Two of this project, the larger pipe lining, will take place in the southern portion of the City around the intersection of 72nd Avenue and Raleigh Street and on 72nd Avenue. Attached is a project area map that illustrates the specific areas to be completed within the scope of this project.

The 2010 Wastewater Collection System Improvement Project/CIPP Lining was advertised for notice and bids were accepted until April 29, 2010, at which time bids were opened and read aloud. Three contractors submitted bids. The City has utilized the services of both of the low bidders, Insituform Technologies, Inc. and Western Slope Utilities, Inc. in the past for sewer lining projects and has been satisfied with the quality of their work.

The results of the submitted bids for each portion of this project are as follows:

CIPP Lining Project Bids

(Phase One, 6” – 12” pipe)

(Phase Two, 18”- 24” pipe)

Western Slope Utilities	\$1,678,252	Insituform Technologies Inc.	\$129,695
Wildcat Civil Services	\$1,645,908	Wildcat Civil Services	\$114,386
Insituform Technologies Inc.	\$1,198,227	Western Slope Utilities	\$109,560

Staff anticipates that both of these contractors, Insituform Technologies, Inc. and Western Slope Utilities, Inc., would commence work in June and complete this extensive sewer lining project by April of 2011.

This project helps achieve the City Council’s Strategic Plan Goals of Financially Sustainable City Government; Safe and Secure Community; and Vibrant Neighborhoods and Commercial Areas by meeting the following objectives:

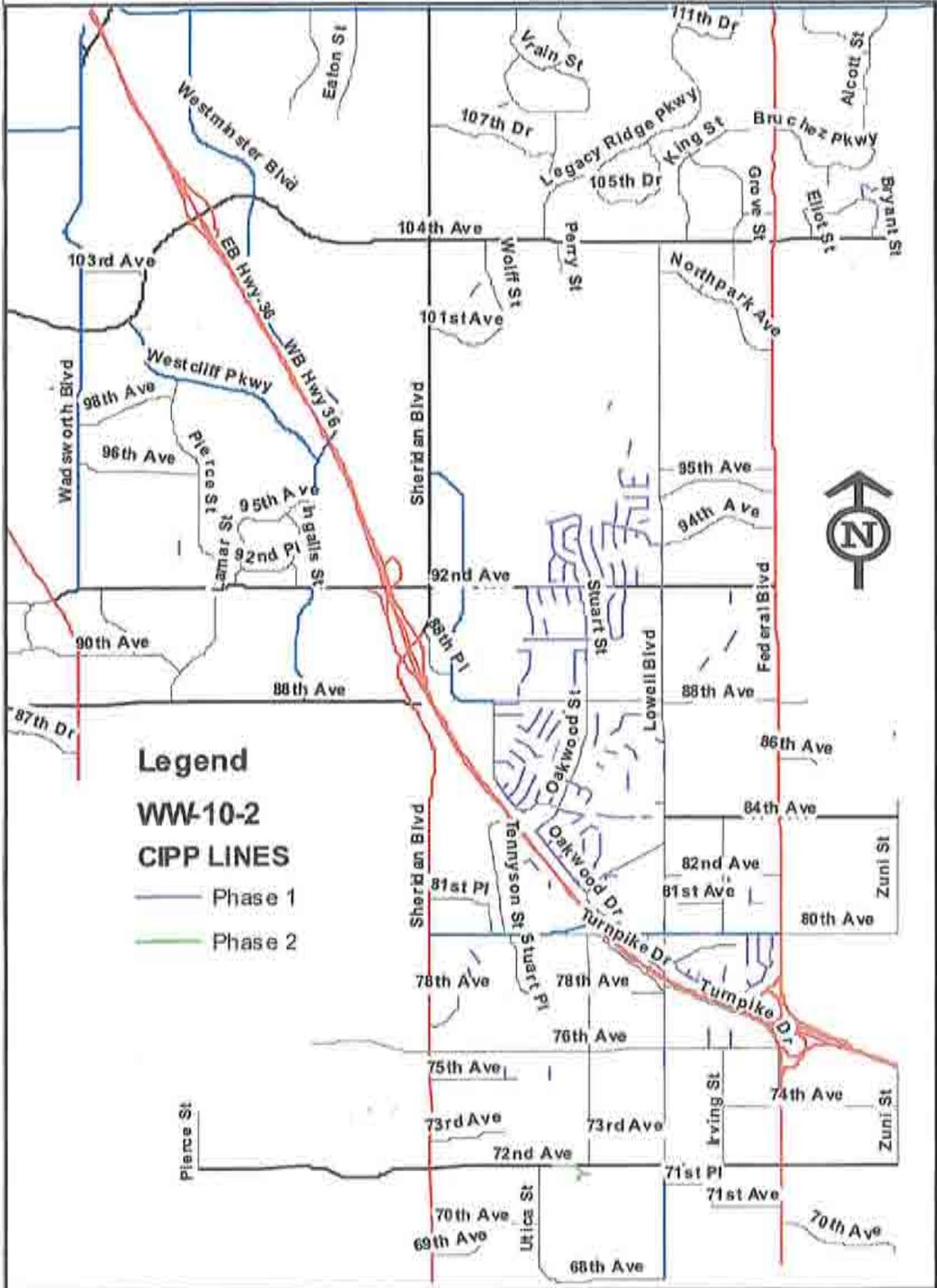
- Well-maintained City infrastructure and facilities
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Project Map

CITY OF WESTMINSTER
2010 WASTEWATER COLLECTION SYSTEM IMPROVEMENTS
CIPP LINING
PROJECT NO. WW-10-2





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: 2010 Update and Refinement of the Standley Lake Water Quality Models Services Agreement

Prepared By: Mary Fabisiak, Water Quality Administrator

Recommended City Council Action

Based on a recommendation of the City Manager, City Council finds the public interest will best be served by authorizing the City Manager to execute a sole source professional services agreement with AMEC Earth and Environmental, Inc. for the Update and Refinement of the Standley Lake Water Quality Models for a cost not to exceed \$83,455, with \$37,555 being Westminster's share of the total cost.

Summary Statement

- The protection of water quality in Standley Lake is essential to providing high quality drinking water to our customers.
- To better understand the factors that affect water quality in Standley Lake, it is important to recognize the relative contributions of nutrients and other pollutants from the watershed.
- Staff uses a watershed and lake model in making scientifically based recommendations for the protection of water quality in Standley Lake.
- The cities of Westminster, Northglenn and Thornton jointly share the Standley Lake water quality costs as outlined in the Standley Lake Water Quality Intergovernmental Agreement.
- AMEC Earth and Environmental, Inc. (AMEC) has thorough knowledge of the City's water supply system having developed the Watershed Analysis Risk Management Framework (WARMF) model and linking it to the Standley Lake Eutrophication Model to understand watershed and lake dynamics. These two models together make up the Standley Lake Water Quality Models.
- Standley Lake Cities' Staff continuously collects and analyzes water samples from the watershed and lake to incorporate into the models. AMEC will use this data to update and refine the models for recommendations.
- The Standley Lake Cities' Staff has negotiated with AMEC for a price and scope of work that will support the ongoing protection of Standley Lake. Having created both models, AMEC is uniquely qualified to perform the necessary updates and refinements.
- Westminster will enter into a contract with AMEC for the full amount of \$83,455. Under the Standley Lake Water Quality Intergovernmental Agreement (SLWQIGA), Westminster's portion of this cost will be \$37,555. Northglenn and Thornton will reimburse Westminster for the remaining costs as the other SLWQIGA partners.
- Staff believes this cost is reasonable and competitive for the level of effort required to fully update and refine the models.

Expenditure Required: \$83,455 (Westminster share not to exceed \$37,555)

Source of Funds: Utility Fund Utilities Planning and Engineering Division Operating Budget

Policy Issue

Should the Council award this sole source negotiated contract to AMEC Earth and Environmental, Inc. to provide the described consulting service?

Alternatives

As an alternative to awarding the contract to AMEC, the City could choose to solicit proposals from several engineering firms. Staff does not recommend this option for several reasons. AMEC created both of the models and therefore has a unique understanding of the City of Westminster's requirements. There would be an additional expense associated with educating a new firm about the background and specific needs for the Standley Lake models. Also, the other Standley Lake Cities' Staff would need to participate in the selection of another firm as these cities are partners with Westminster in the Standley Lake Water Quality IGA. For these reasons, developing a relationship with another consultant would consume significant time and resources to educate them sufficiently to be able to provide the requested information.

A second alternative would be to delay or not utilize the data and models to understand lake dynamics. This alternative is also not recommended as delaying or not utilizing the data would significantly restrict the City's water supply protection efforts.

Background Information

The Standley Lake Cities' Staff collects and analyzes numerous samples from the watershed and lake. The data collected are used to understand lake dynamics, identify potential threats to water quality and assess attainment of the new chlorophyll standard.

Two models are used to help Staff make operational decisions regarding the health of Standley Lake. The Watershed Analysis Risk Management Framework (WARMF) model, developed by AMEC in 2007, is used to predict pollution to the lake and to identify the most relevant sources from the watershed. The Lake Model, developed by AMEC in 2005, assesses the impact of those pollutants on Standley Lake. The combination of the two models gives the Standley Lake Cities and Upper Clear Creek Cities a better perspective on the relative impacts of various activities on Standley Lake water quality and facilitates in decision making on the most beneficial and cost effective watershed management activities. Both of these models were instrumental in proposing a chlorophyll standard for Standley Lake that was successfully adopted by the Water Quality Control Commission in 2009. This standard was designed to protect Standley Lake from future water quality degradation. The Water Quality Control Commission commended the Standley Lake Cities in presenting this information and proposal in the interest of protecting public health.

Based on all the factors detailed in this memorandum, Staff believes it is in the best interest of the City to negotiate a scope of work and cost proposal with AMEC for the update and refinement of the Standley Lake Water Quality Models. AMEC has a thorough knowledge of the City's water supply, having developed, calibrated, and run these models. Their staff has developed a relationship with the Standley Lake Cities' Staff and they have an intimate knowledge of the Standley Lake system. Staff believes that the contract costs are reasonable and is confident in AMEC's ability to continue to provide excellent customer service and results.

This contract will allow AMEC to update and refine both models using current information from the watershed and lake monitoring programs. This information is important in assessing the health of the lake and attainment of the chlorophyll standard. The data generated from both the WARMF and the Lake Model will also aid in negotiations with the Upper Clear Creek Basin towards improving water quality.

Westminster will enter into the contract for the full amount for a cost not to exceed \$83,455. Under the Standley Lake Water Quality Intergovernmental Agreement, Westminster's portion of this cost will be \$37,555. As the other agreement partners, Northglenn and Thornton will reimburse Westminster for the remaining costs. Funds for this contract were planned for and are available in the 2010 Utilities Planning and Engineering operating budget.

This recommendation supports City Council's Goals and Objectives to provide a Financially Sustainable City Government Providing Exceptional Services and a Beautiful and Environmentally Sensitive City by securing and developing a long-term water supply and providing energy efficient, environmentally sensitive city operations by protecting Standley Lake. Drinking water quality was rated as an essential City service in the 2008 Westminster Citizen Survey.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Reclaimed Water Treatment Facility Improvements Engineering Services
Contract Amendment

Prepared By: Kent W. Brugler, Senior Engineer
Steve Grooters, Senior Projects Engineer
Mike Happe, Utilities Planning and Engineering Manager

Recommended City Council Action

Based on the recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to execute a contract amendment with Black & Veatch Corporation in the amount of \$438,855 to provide engineering final design and bid services for Phase 2 of the Reclaimed Water Treatment Facility expansion.

Summary Statement

- The Reclaimed Water Treatment Facility (RWTF) capacity must be expanded to meet current and anticipated future demands.
- City Council approved a design services contract with Black & Veatch Corporation (Black & Veatch) on February 9, 2009 for design of Phase 1 of the planned improvements that included the influent storage tank and pump station currently under construction. Also included in the contract was the preliminary design of Phase 2 improvements, which involved expansion of the RWTF.
- On January 11, 2010, City Council approved an amendment to the engineering contract that authorized and funded advancing the Phase 2 preliminary design to the 30% completion level. The 30% design package facilitated more accurate construction cost estimates and an evaluation of implementation and contracting options available to complete Phase 2 of the project.
- Staff has evaluated the options available to implement Phase 2 and believes that it is in the best interest of the City to retain Black & Veatch for Phase 2 final design and subsequent bidding services using the traditional design/bid/build method. Black and Veatch is uniquely qualified to perform this work because they completed design and construction services for the original facility, are involved with Phase 1 of the expansion and completed the Phase 2 preliminary and 30% design submittals. Staff has negotiated a scope of services and a competitive fee for this work and believes the cost for this amendment is reasonable.
- City Council authorized money from the Utility Capital Reserve Fund for both Phase 1 and Phase 2 improvements up to \$15,575,000 during the 2009/2010 budget process. This authorized limit remains adequate to cover the expenditure required for this contract amendment and no new funds are requested.

Expenditure Required: \$438,855

Source of Funds: Utility Fund Capital Improvements
- Reclaimed Water Treatment Facility Expansion Project

Policy Issue

Should the City authorize an amendment to the existing agreement with Black & Veatch for Phase 2 final design and bidding services?

Alternatives

1. The City could choose to select a different engineering consulting firm to complete the design of the project. However, Black & Veatch has a history of success on current and past reclaimed water system projects for the City, including design and construction services for the original reclaimed treatment facility and the first phase of this project. In addition, Black and Veatch has already completed preliminary design and the 30% design for Phase 2 of this project that will facilitate a timely and cost-effective means of completing final design.
2. The City could choose to complete the design and construction of this project utilizing an alternate delivery method such as a negotiated design/build contract. Staff has evaluated this and other implementation options and believe that it is in the best interest of the City to leverage the current competitive construction bid climate through a conventional design/bid/build project delivery.

Background Information

Expansion of the Reclaimed Water Treatment Facility (RWTF) has been a planned component in the reclaimed water system since design of the original facility in 1998. Black & Veatch designed the facility with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to 10 mgd to accommodate growth in water demand.

In 2006, the Extended Reclaimed Water Master Plan (Master Plan) identified the RWTF expansion as one of the major improvements needed to achieve the targeted reclaimed water system capacity. Expediting the expansion was subsequently recommended in the 2008 Reclaimed Water System Evaluation and supported by a system event in July of 2008 where the demand for reclaimed water reached the existing treatment facility capacity of 6 mgd.

In 2008 and early 2009, Black & Veatch completed preliminary and final design of the Phase 1 improvements that included a 2.2 million gallon concrete influent storage tank and pump station. Phase 1 components are currently under construction and scheduled for completion in October, 2010. As part of the final design services contract for Phase 1 improvements, Black & Veatch completed the preliminary design of the Phase 2 improvements, which included identifying the required elements for expansion of the RWTF to a treatment capacity of 10 mgd.

On January 11, 2010, City Council approved an amendment to the design contract with Black & Veatch to advance the pre-design of the Phase 2 improvements to the 30% level. The 30% design effort was completed in March 2010 and cost estimates to implement the project were within the City's adopted budget. Staff subsequently evaluated options for implementing and contracting final design and construction. These options include completing the project through traditional design/bid/build means or pursuing a design/build contract for parallel completion of final design and construction. Based on the City's desired schedule for this project and the currently competitive construction bidding climate, Staff believes that it is in the best interest of the City to implement the project through a traditional design/bid/build project delivery method.

Staff believes that Black and Veatch is uniquely qualified to perform this work because they completed design and construction services for the original facility, are involved with Phase 1 of the expansion and completed the Phase 2 preliminary and 30% design submittals. Therefore, in April 2010, Staff negotiated with Black and Veatch to develop a competitive scope of work and reasonable fee for Phase 2 final design

and bidding services. The fee associated with the 30% design (\$158,152) combined with this amendment for final design (\$438,855) results in a total design fee of \$597,007. This represents approximately 7.4% of the total project cost and is within the typical range associated with projects of similar size, scope and complexity. If authorized by City Council, final design would be completed July 2010 with an August 2010 bid period, October 2010 construction kickoff and December 2011 project completion. An amendment for construction phase engineering services will be presented to City Council at the time of the construction contract award.

The Reclaimed Water Treatment Facility Expansion project helps achieve two of the City Council's Strategic Plan goals: 1) Achieving a "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities and 2) Contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the City's reclaimed water treatment, distribution and irrigation supply system.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Reclaimed Water Treatment Facility Improvements Owner’s Representative Services Contract Amendment

Prepared By: Kent W. Brugler, Senior Engineer
Mike Happe, Utilities Planning and Engineering Manager

Recommended City Council Action

Based on the report and recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute a contract amendment with J&T Consulting, Inc. in the amount of \$24,260 for owner’s representative services related to the construction of Phase 1 of the Reclaimed Water Treatment Facility expansion project for a total contract amount of \$67,086.

Summary Statement

- Numerous improvements at the Reclaimed Water Treatment Facility (RWTF) are required to adequately and reliably supply current and future reclaimed water demands from the Big Dry Creek Wastewater Treatment Facility to the Reclaimed Water Treatment Facility. Phase 1 of these improvements involves construction of a new 2.2 million gallon covered influent storage tank and pump station.
- City Council approved a design services contract with Black & Veatch Corporation on February 9, 2009 for design of Phase 1 and approved a design/build contract with Overland Contracting, Inc. on August 24, 2009 to construct these improvements. Construction began in October 2009 with completion anticipated in October 2010.
- Due to the size and complexity of the project and in accordance with the City’s Capital Improvement Project Management Process policy, Staff determined it was in the best interest of the City to hire an Owner’s Representative to assist City Staff in providing overall project observation and management during Phase 1 construction.
- Staff entered into a contract with J&T Consulting, Inc for the Owner’s Representative services on February 1, 2010 in the amount of \$44,826.
- Unforeseeable construction issues were recently discovered by City and J&T Staff. These issues have extended the construction schedule and have resulted in the need for additional owner’s representative services. An amendment to the existing owner’s representative services contract is requested to address these needs.
- The value of this amendment is \$24,260, bringing the total value of the contract to \$67,086.

Expenditure Required: \$24,260

Source of Funds: Utility Fund Capital Improvements
- Reclaimed Water Treatment Facility Expansion Project

Policy Issue

Should the City amend the contract with J&T Consulting, Inc. to provide additional Owner's Representative services related to construction of Phase 1 of the RWTF expansion project?

Alternative

The City could choose not to amend the current contract. However, Staff believes this would result in an insufficient level of assistance for the remaining duration of the project.

Background Information

Expansion of the Reclaimed Water Treatment Facility (RWTF) has been a planned component in the reclaimed water system since design of the original facility in 1998. Black & Veatch Corporation designed the facility with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to 10 mgd to accommodate growth in water demand.

In 2006, the Extended Reclaimed Water Master Plan (Master Plan) identified the RWTF expansion as one of the major improvements needed to achieve the targeted reclaimed water system capacity. Expediting the expansion was subsequently recommended in the 2008 Reclaimed Water System Evaluation and supported by a system event in July of 2008 where the demand for reclaimed water reached the existing treatment facility capacity of 6 mgd.

In 2008 and early 2009, Black & Veatch completed preliminary and final design of the Phase 1 improvements that included a 2.2 million gallon concrete influent storage tank and pump station. Phase 1 components are currently under construction and scheduled for completion in October 2010.

Due to the size and complexity of the project and in accordance with the City's Capital Improvement Project Management Process policy, Staff determined it was in the best interest of the City to hire an Owner's Representative to assist City Staff in providing overall project observation and construction management. Staff negotiated a scope of work and a competitive fee schedule with J&T Consulting, Inc. (J & T) in February 2010 for these services in the amount of \$44,826.

Unforeseeable construction issues were discovered by City and J&T staff. These issues are currently being addressed by the Contractor at the Contractor's cost, but have required additional owner's representative services beyond those originally anticipated for the project and have also resulted in an extension of the construction schedule. Additional owner's representative services are required to continue adequate monitoring of construction activities and to ensure conformance to the contract documents. Therefore, Staff has negotiated an additional scope of services and fee schedule with J&T Consulting, Inc. for continued oversight of the project in the amount of \$24,260, bringing the total value of the contract to \$67,086. Staff believes the cost of the amendment is reasonable. There is adequate funding in the capital project account and overall project budget to fund these additional services.

The Reclaimed Water Treatment Facility Expansion project helps achieve two of the City Council's Strategic Plan goals: 1) Achieving a "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities and 2) Contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the City's reclaimed water treatment, distribution and irrigation supply system.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Contract with the State of Colorado State Historic Fund re Historic Preservation Grant for the Bowles House Porch Rehabilitation and Wall Crack Repair Contract

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action

Authorize the City Manager to execute a contract with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the Bowles House Porch Rehabilitation and Wall Crack Repair.

Summary Statement

- The City has been awarded a grant in the amount of \$72,000 from the State Historical Fund for a porch rehabilitation and repair of a wall crack at the Bowles House located at 3924 West 72nd Avenue.
- The City's share of the project at a 25% match is up to \$24,000.
- The State Historic Fund will contribute up to \$72,000 or 75% of the total \$96,000 estimated cost for the construction work.
- City funds are available in the General Capital Improvement Fund – Building Operations and Maintenance Major Maintenance Account to cover this expense.

Expenditure Required: \$96,000

Source of Funds: \$72,000 – State Historical Fund
\$24,000 – City of Westminster General Capital Improvement Fund

Policy Issue

Should the City Council authorize a contract with the State of Colorado concerning the use of State Historical Fund grant money awarded for a porch rehabilitation and wall crack repair construction project at the Bowles House?

Alternative

Do not authorize a contract with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project at the Bowles House. This alternative is not recommended because the funding supports historic preservation work and requires only 25% (\$24,000) matching funds from the City. Plus the porch and wall are in need of repair.

Background Information

Since 2002, the City has received a total of \$1,400,980 in grants from the State Historical Fund and the Colorado Historical Society Certified Local Government program. These grants have funded archeological and structure assessments, the exterior restoration of the Westminster Grange Hall, repair of the exterior of the Semper Farm, rehabilitation of the Rodeo Market, and reconnaissance and intensive historical resource surveys throughout the City.

Most recently, the State Historical Fund notified the City of a \$72,000 grant to fund rehabilitation of the east porch and to repair a significant wall crack of the Edward and Mahalia Bowles home at 3924 West 72nd Avenue. The Bowles home was built between 1871 and 1876. This structure is a significant historical site and is listed on the National Register of Historic Places. The bids for the construction work on the porch and the wall crack will begin this summer (2010) and the construction phase is anticipated to begin in early 2011.

The grant does require 25% matching funds from the City. The City has allocated up to \$24,000 from the General Capital Improvement Fund – Building Operations and Maintenance Major Maintenance Account. The City will be reimbursed by the State Historical Fund for expenses after they are incurred.

The contract consists of a State-prescribed format that is used with all State Historical Fund projects and it has been reviewed by the City Attorney's Office.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments:

- Attachment 1 Contract (including Exhibits A, B, and C)
 - Exhibit A - Scope of Work
 - Exhibit B - Project Budget
 - Exhibit C - List of Submittals (2 pages)
- Attachment 2 State Historical Fund Payment Request and Financial Report Form

Department or Agency Name	
Colorado Historical Society	
Department or Agency Number	
GCA	
Routing Number	
APPROVED WAIVER FORM	#37-E

CONTRACT #2010-02-052

THIS CONTRACT, Made this _____ day of _____, _____, by and between the State of Colorado for the use and benefit of the Department of Higher Education, Colorado Historical Society, 1300 Broadway, Denver, Colorado 80203, hereinafter referred to as the State and/or the Society, and the City of Westminster, 4800 West 92nd Avenue Westminster, Colorado 80031, hereinafter referred to as the "Contractor",

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number _____ in Fund Number 401, Appropriation Account 401 and Organization SHFG; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Article 12-47.1-1201 of the Colorado Revised Statutes and Subsection (5) (b) (III) of Section 9 of Article XVIII of the state constitution, provide for the annual distribution of monies from the State Historical Fund; and

WHEREAS, the Contractor is eligible in accordance with law to receive a State Historical Fund preservation grant award for acquisition and development projects with cumulative grant awards of \$50,000 and over; and

WHEREAS, this Contract (hereinafter "Contract" or "Agreement") sets forth the Scope of Work, Budget and List of Submittals, hereinafter referred to as the "Project"; and

WHEREAS, the Contractor is a public entity and the owner in fee simple of certain real property in Adams County, Colorado, which property has been listed in the National Register of Historic Places as the Bowles House located at 3924 West 72nd Avenue, Westminster, Colorado, hereinafter referred to as the "Property," and which Property is more particularly described as follows:

SECT, TWN, RNG: 603068 DESC: BEG 30 FT S AND 5/50 FT E OF NW COR NE4 NE4 SEC 6 TH CONT E 120/55 FT TH S 57D 20M E 4/82 FT TO W ROW LN NEWTON ST TH S 163/40 FT TH W 124/29 FT TH N 166 FT TO TRUE POB 0/463A

NOW THEREFORE, it is hereby agreed that:

1. The Contractor shall use funds subject to this Contract in support of Project #2010-02-052 "Porch Rehabilitation and Wall Preservation" in accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. APPLICABLE STANDARDS: The Contractor agrees that it will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. Contractor shall perform any and all survey activities and submittals in accordance with the Survey Manual and How to Complete Colorado Cultural Resource Inventory Forms, Volumes I and II, June 1998 (Revised December 2001) for any and all survey activities and projects (copies of which are available through the Society).
3. RIGHT OF USE: All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty-free, nonexclusive, and irrevocable license to the Society to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works for Society and/or State Historical Fund purposes.
4. CONTRACT EFFECTIVE DATE: The term of this Contract shall be from July 1, 2010 through June 30, 2012.

The performance of the work must be commenced within sixty (60) days of the Contract beginning date unless a longer period is approved in writing by the State Historical Fund Administrator. The performance of the work *must* be completed no later than thirty (30) days prior to the Contract ending date.
5. COMPENSATION AND METHOD OF PAYMENT: In consideration of the project described in Exhibit A and subject to on time delivery of completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Contractor a grant not to exceed seventy-two thousand dollars (\$72,000.00).

Unless otherwise specified in Exhibit C, the State shall advance forty-percent (40%) of the total grant amount upon proper execution of this contract and upon submission of a SHF Payment Request, fifty-percent (50%) will be paid to the Contractor upon submission and approval of the Interim *SHF Financial Report*. The remaining ten-percent (10%) of the grant amount shall be paid following Contractor's submission and the State's approval of the *Final SHF Financial Report* and *SHF Payment Request Form (Attachments 1 and 2)*. All payments are subject to the satisfactory completion of milestones described in Exhibit C and submission by Contractor of either documented proof or certification of expenditures with each financial report.

Expenditures incurred by the Contractor prior to execution of this Contract are not eligible expenditures for State reimbursement. If the Project involves matching funds the SHF may allow prior expenditures in furtherance of the *Scope of Work* to be counted as part of such matching funds.

6. ACCOUNTING: At all times from the effective date of this Contract until completion of this Project, the Contractor shall maintain properly segregated books of State funds, matching funds, and other funds associated with this Project. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the *Budget* set forth in Exhibit B. Contractor may adjust budgeted expenditure amounts up to ten percent (10%) within said Budget without approval of the State and document the adjustments in the next financial report. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the State. In no event shall the State's total financial obligation exceed the amount shown in Paragraph 5 above. Interest earned on funds advanced by the State shall be applied to eligible project expenditures, and will be deducted from the final payment.
7. AUDIT: The State or its authorized representative shall have the right to inspect, examine, and audit Contractor's records, books, and accounts, including the right to hire an independent Certified Public Accountant of the State's choosing and at the State's expense to do so. Such discretionary audit may be called for at any time and for any reason from the effective date of this Contract until three (3) years after the date final payment for this Project is received by the Contractor provided that the audit is performed at a time convenient to the Contractor and during regular business hours.
8. PARTIES RELATIONSHIP: CONTRACTOR IS A GRANTEE AND NOT AN EMPLOYEE OR AGENT OF THE STATE. CONTRACTOR SHALL HAVE NO AUTHORITY, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS OR UNDERSTANDINGS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE. THE CONTRACTOR REPRESENTS THAT IT HAS OR SHALL SECURE AT ITS OWN EXPENSE ALL PERSONNEL BY THE CONTRACTOR UNDER THIS CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING WORKMEN'S COMPENSATION COVERAGE AND UNEMPLOYMENT COMPENSATION COVERAGE FOR ALL OF ITS EMPLOYEES TO THE EXTENT REQUIRED BY LAW, AND FOR ENSURING THAT ALL SUBCONTRACTORS MAINTAIN SUCH INSURANCE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING. ALL OF THE SERVICES REQUIRED HEREUNDER SHALL BE PERFORMED BY THE CONTRACTOR OR UNDER ITS SUPERVISION.
9. REPRESENTATIVES AND NOTICES: All notices required to be given by the parties hereunder shall be given by certified or registered mail to the individuals at the addresses set forth below, who are also the designated representatives for the project. Any party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

To the State: Steven W. Turner
Director
Colorado Historical Society
State Historical Fund
1560 Broadway, Suite 400
Denver, Colorado 80202

To the Contractor: Mr. Patrick Caldwell
Planner II
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

10. ADA COMPLIANCE: The Contractor assures the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.
11. DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS: Contractor agrees to provide the Society with copies of any archaeological surveys developed during the course of, or under a project financed either wholly or in part by the Society. Contractor agrees to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resource; Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from the Society.

12. REPORTS: Contractor shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SHF Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).

13. MATCHING FUNDS: Contractor agrees to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.

If the total funding set forth in the Project Budget is not expended on completion of the Project, the State may reduce its pro-rata share of the unexpended budget.

14. CONSULTANTS/SITE VISITS: The State may:

- a. Review any project planning documents and methods for conformity with the applicable standards, manuals, and guidelines;
- b. Make site visits as determined necessary by the State before, during and/or at the conclusion of the Project to provide on-site technical advice and to monitor progress.

Any exercise of the State's rights under this Paragraph 14 shall not relieve the Contractor of any of its Contract obligations.

15. PUBLIC ACKNOWLEDGMENT OF FUNDING SOURCE: In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from the Colorado Historical Society." In addition, the Society reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of the Colorado Historical Society".

16. PRESERVATION OF PROPERTY: The Contractor hereby agrees to the following for a period of twenty (20) years commencing on the date of this Agreement.

- a. Without the express written permission of the Society, no construction, alteration, movement, relocation or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would alter the architectural appearance of the Property, adversely affect the structural soundness of the Property, or encroach on the open land area on the Property; provided, however, that the reconstruction, repair, or restoration of the Property, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted subject to the prior written approval of The Society, provided that such reconstruction, repair, or restoration is performed according to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, issued and as may from time to time be amended by the U.S. Secretary of the Interior, hereinafter collectively referred to as the "Standards". In all events, the Contractor further agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property according to the Standards so as to prevent deterioration of the Property.
- b. In the event of severe damage or total destruction to the Property (defined, for the purpose of this Agreement, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of the public enemy, riot or other similar casualty) not due to the fault of the Contractor this Agreement shall terminate as of the date of such damage or destruction.
- c. The Society, or a duly appointed representative of the Society, shall be permitted to inspect the Property at all reasonable times in order to ascertain if the above conditions are being observed.
- d. Within sixty (60) days prior to completion of this Contract, Contractor covenants and agrees that the Society will record this Contract with the County clerk and recorder for the county in which the property is located. Contractor further covenants and agrees that this Contract will constitute a binding covenant that will run with the land.
- e. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses, and attorneys fees incurred as a result of any act or omission by the property owner, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

17. REMEDIES: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligation in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant, insufficient, incorrect, or improper performance, activities, or inaction by the Contractor. These remedial actions are as follows:

- a. Suspend the Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed in accordance with the *Standards*, the SHF Grants Manual and/or the terms and conditions of this Contract; and/or
- c. Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being

incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or

d. Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or

e. Declare all or part of the work ineligible for reimbursement; and/or

f. In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, the Society may, following reasonable notice to the Contractor institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by the Society. The Society shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.

g. Terminate the contract for default.

18. CUMULATIVE EFFECT: The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.
19. TERMINATION OF CONTRACT FOR DEFAULT: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor are determined.

20. TERMINATION BY STATE: The State may terminate this Contract at any time the State determines that the purposes of the distribution of State monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 19 hereof relative to termination shall apply.
21. CHANGES: This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Contractor, shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.
22. CONFLICT OF INTEREST: Contractor agrees not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
23. COMPLIANCE WITH APPLICABLE LAWS: At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
24. SEVERABILITY: To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
25. BINDING ON SUCCESSORS: Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.

26. ASSIGNMENT: No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
27. SURVIVAL OF CERTAIN CONTRACT TERMS: Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance of compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.
28. BOND REQUIREMENT: If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

SPECIAL PROVISIONS

(The Special Provisions apply to all contracts except where noted in italics.)

1. **CONTROLLER'S APPROVAL.** CRS 24-30-202 (1).
This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS 24-30-202(5.5).
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**
No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.**
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**
Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.**
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00.
State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS 24-18-201 and 24-50-507.
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS 24-30-202 (1) and 24-30-202.4. *[Not Applicable to intergovernmental contracts]*
Subject to CRS 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS 39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS 8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]*
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS 8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS 24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS 24-76.5-101 et seq., and (c) has produced one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

CONTRACT SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR:
(Grant Recipient)

STATE OF COLORADO
Bill Ritter, Jr., GOVERNOR

City of Westminster
Legal Name of Contracting Entity

BY: _____
Executive Director or Designee
Edward C. Nichols, President

*Signature of Authorized Officer

Colorado Historical Society

Date

Date: _____

Department of Higher Education

BRENT MCFALL
Print Name of Authorized Officer

STATE HISTORICAL FUND

BY: _____
Steven W. Turner, Director

CITY MANAGER
Print Title of Authorized Officer

Date: _____

WAIVER CONTRACT REVIEWER

BY: _____
Contracts Officer or Designee
Janette Vigil, State Historical Fund

Date: _____

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performances or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

BY: _____
Susan S. Riehl
CHS, Chief Financial Officer

Date: _____

Revised, June 10, 2008
X:\Document\25155923.doc
Approval/Contract B Includes Letter of Agreement

SCOPE OF WORK

I. **Project Purpose:** The purpose of this project is to rehabilitate the east porch and northeast corner of the Bowles House.

II. The scope of work is as follows:

A. Planning

1. Architectural & Engineering Services
 - a. Perform analysis and complete plans and specifications.
 - b. Provide project management, coordination, and construction administration.
 - c. Provide structural engineering.
 - d. Provide mortar and paint chip analysis.
2. Archeological Monitoring

B. Rehabilitation and Preservation

1. East Porch Rehabilitation
 - a. Deconstruct existing east porch and stairs (salvage original materials).
 - b. Excavate at existing porch and stairs foundation.
 - c. Install new foundation.
 - d. Clean porch bricks and reconstruct porch using original bricks.
 - e. Install appropriate wood framing at door and window openings.
 - f. Reinstall beaded board paneling at gable ends.
 - g. Reconstruct porch roof framing using salvaged original materials.
 - h. Install historically appropriate roofing and flashing materials.
 - i. Install historically appropriate gutter above door.
 - j. Install historically appropriate screen door.
 - k. Rehabilitate and reinstall porch door and original porch windows.
 - l. Paint wood trim, door, and windows historically appropriate colors.
 - m. Replace porch light with a historically appropriate light fixture.
2. East Entry Stairs
 - a. Reset stone stairs.
 - b. Install historically appropriate handrail.
3. Northeast corner of the building
 - a. Provide a mortar with compatible color and content to existing mortar.
 - b. Use Helifix system with reinforcement ties to pin and stitch the crack.
4. Drainage
 - a. Repair irrigation drip lines.
 - b. Repair east walk.
 - c. Install weed barrier and wood mulch to 6 ft. out from foundation.

In accordance with Section 12-47.1-12-1 C.R.S. (1999) The Limited Gaming Act which authorizes the Colorado Historical Society to administer the State Historical Fund as a statewide grants program.

PROJECT BUDGET		AMOUNT
TASK		
A. Planning		
1. Architectural & Engineering		
a. Architect Fee		\$11,444
b. Structural Engineering Fee		\$3,756
2. Archeological Monitoring		\$2,500
B. Restoration		
1. East Porch Rehabilitation		\$47,053
2. East Entry Stairs		\$440
3. Northeast Corner		\$3,800
4. Drainage		\$1,500
<hr/>		
Subtotal		\$70,493
General Conditions		\$10,231
Contractor's Fee		\$8,887
Bonding		\$1,438
<hr/>		
Project Subtotal		\$91,049
Contingency*		\$4,951
PROJECT TOTAL		\$96,000
	Cash Match (25%)	\$24,000
	Grant Award (75%)	\$72,000

*Must receive written approval from SHF Staff prior to use
 Grant Administration cannot exceed 15% of *Subtotal* amount

Grant payments will be based off *Project Subtotal* amount. Total payments will be Grant Award percentage of *Project Subtotal* up to a maximum of the Grant Award Amount.

LIST OF SUBMITTALS

<u>Project Reports</u>		
<u>Project Reports</u>	<u>Due Date</u>	<u>Society Response</u>
a. Payment Request Form Deliverables #1, 2 below must be reviewed and approved before Advance payment is made.	N/A	Advance payment of grant award \$27,314.
b. Progress Report # 1	October 1, 2010	Review*
c. Progress Report # 2	January 1, 2011	Review*
d. Progress Report # 3	April 1, 2011	Review*
e. Progress Report # 4	July 1, 2011	Review*
f. Interim Financial Report Deliverables #3-7 below must be reviewed and approved before Interim payment is made.	July 15, 2011 **	Review & Approve. Interim payment of grant award \$34,143.†
g. Progress Report # 5	October 1, 2011	Review*
h. Progress Report # 6	January 1, 2012	Review*
i. Final Financial Report	January 15, 2012***	Review & Approve. Final Reimbursement of grant award \$6,830.†

*At the discretion of the SHF technical staff, progress reports may not receive a response.

** Interim financial report due date is a guideline. Please submit Interim financial report when majority of advance has been expended and you are ready for the next payment.

*** Project period ends. All Deliverables due on or before this date.

†Payment may increase due to approval of contingency funds

PROJECT DELIVERABLES

<u>Project Deliverables</u>	<u>Society Response</u>
1. Initial Consultation with SHF Historic Preservation Specialist (within 60 days of contract start date)	Review/Comment and or Approve
2. Subcontract Certification Form - Architect	Review/Comment and or Approve
3. Before/existing condition photos of areas affected by Scope of Work	Review/Comment and or Approve
4. Historical photos/documentation of areas to be treated	Review/Comment and or Approve
5. Construction Documents/Plans and specifications	Review/Comment and or Approve

- | | |
|---|-------------------------------|
| 6. Subcontract Certification Form – Contractor | Review/Comment and or Approve |
| 7. Subcontract Certification Form - Archeologist | Review/Comment and or Approve |
| 8. Materials Testing Analysis & Results (mortar and paint) | Review/Comment and or Approve |
| 9. Mock up of repointing | Review/Comment and or Approve |
| 10. Interim meeting with SHF Historic Preservation Specialist | Review/Comment and or Approve |
| 11. Copies of Change Orders, if necessary | Review/Comment and or Approve |
| 12. OAHP Site Form, if necessary | Review/Comment and or Approve |
| 13. Copy of Archaeological Report | Review/Comment and or Approve |
| 14. After photos of areas affected by scope of work | Review/Comment and or Approve |

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Agenda Item 8 I

WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Second Reading of Councillor's Bill No. 24 re 2010 Community Development Block Grant Fund Appropriation

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Pass Councillors Bill No. 24 on second reading appropriating funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$604,991.

Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading.
- This Councillor's Bill was passed on first reading on May 10, 2010, appropriating the City's 2010 Community Development Block Grant (CDBG) funds in the amount of \$604,991, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2010 CDBG allocation was designated to fund the 2010 CDBG projects, pursuant to City Council approval on November 23, 2009.
- CDBG funding has been decreasing for several years, from \$696,000 in 2003 to \$553,850 in 2008. The 2010 allocation is \$45,621.00 more than the 2009 grant of \$559,370.

Expenditure Required: \$604,991

Source of Funds: 2010 Community Development Block Grant Funds

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Briggs - Major

A BILL

FOR AN ORDINANCE INCREASING THE 2010 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$604,991. This appropriation is amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2010.

Section 2. The \$604,991 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10K, dated May 10, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$604,991</u>
Total	<u>\$604,991</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of May, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of May, 2010.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
C O L O R A D O**

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 25 re 2009 Final Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 25 on second reading providing for supplemental appropriation of funds to the 2009 budget of the General, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Conservation Trust, and General Capital Improvement Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor’s Bill on second reading authorizing a supplemental appropriation to the 2009 budget of the General, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Conservation Trust, and General Capital Improvement Funds.
 - General Fund amendments total: (\$20,760)
 - Utility Rate Stabilization Reserve Fund amendments total: 1,288,638
 - Utility Capital Project Reserve Fund amendments total: 1,506,534
 - Conservation Trust 900,716
 - General Capital Improvement Fund amendments total: (100,000)
- This Councillor’s Bill was passed on first reading May 10, 2010.

Expenditure Required: \$3,575,128

Source of Funds: The funding sources for these budgetary adjustments include carryover, grants, and lease proceeds.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **25**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Kaiser - Major

A BILL

FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL, UTILITY RATE STABILIZATION RESERVE, UTILITY CAPITAL PROJECT RESERVE, CONSERVATION TRUST, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, Utility Rate Stabilization Reserve, Utility Capital Project Reserve, Conservation Trust, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increase in aggregate by \$3,575,128. This appropriation is due to the receipt of funds from carryover, grants, and lease proceeds.

Section 2. The \$3,575,128 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 L dated May 10, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	(\$20,760)
Utility Rate Stabilization Reserve Fund	1,288,638
Utility Capital Project Reserve Fund	1,506,534
Conservation Trust	900,716
General Capital Improvement Fund	<u>(100,000)</u>
Total	<u>\$3,575,128</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of May, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of May, 2010.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 26 re 2010 1st Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor’s Bill No. 26 on second reading providing for supplemental appropriation of funds to the 2010 budget of the General, Utility, and General Capital Improvement Funds.

Summary Statement

- City Council action is requested to adopt the attached Councillor’s Bill on Second reading authorizing a supplemental appropriation to the 2010 budget of the General, Utility, and General Capital Improvement Funds.
 - General Fund amendments total: \$8,400
 - Utility Fund amendments total: 4,727
 - General Capital Improvement Fund amendments total: 43,221
- This Councillor’s Bill was passed on first reading May 10, 2010.

Expenditure Required: \$56,348

Source of Funds: The funding sources for these budgetary adjustments include reimbursements and federal, state and foundation grants.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Major – Kaiser

A BILL

**FOR AN ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL, UTILITY AND
GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, Utility, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$56,348. This appropriation is due to the receipt of funds from a reimbursement and federal, state and foundation grants.

Section 2. The \$56,348 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 M dated May 10, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$ 8,400
Utility Fund	4,727
General Capital Improvement Fund	<u>43,221</u>
Total	<u>\$56,348</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 10th day of May, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 24th day of May, 2010.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Second Reading of Councillor’s Bill No. 27 re Lease for the Former Animal Shelter

Prepared By: Joe Lachermeier, Purchasing Officer

Recommended City Council Action

Pass Councillor’s Bill No. 27 on second reading authorizing the City Manager to sign a lease agreement with 5 Star Pups, LLC, for the former City of Westminster Animal Shelter located at 8800 Sheridan Boulevard, Unit 100.

Summary Statement

- Lease agreements are used to define the responsibilities of each party, to protect the interests of the City, and to maintain the improvements on the property.
- The current lessee of the former City of Westminster Animal Shelter, The Dog & I, is asking to be released early from the 5 year lease they signed with the City in August of 2006. The lease is scheduled to expire August 31, 2011.
- The initial intent was to assign the lease to 5 Star Pups, but the City wanted to change the lease terms as described below, thus requiring a new lease.
- The total annual payments made to the City under the terms of the new lease will decrease from \$25,200, under the Dog & I lease, to \$13,200.00 under the 5 Star Pups lease. This decrease is a result of the fact that under the Dog & I lease, the utilities costs (gas and electric) were being paid by the City with part of the lease proceeds. Under the new lease, utilities will be put in the name of the tenant, 5 Star Pups, LLC, and thus they will be responsible for paying them. The City’s Building Operations & Maintenance Division has determined the average monthly utilities to be approximately \$1,050.
- The proposed three-year lease agreement, which would run from June 1, 2010 to May 31, 2013, with an optional five-year renewal, requires 5 Star Pups, LLC, to purchase liability insurance and be responsible for all maintenance inside the building. The City would be responsible for all exterior and grounds maintenance. Annually, 5 Star Pups, LLC, would pay \$13,200 through the three-year lease term for the former Animal Shelter, parking as needed on the south side of the building, and fenced areas on the north and east sides of the building.
- Leasing of property by the City must be approved by ordinance under section 13.4 of the City’s Charter.
- The City is not responsible for making any tenant improvements to the building.
- This Councillor’s Bill was passed on first reading on May 10, 2010.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall, City Manager
Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **27**

SERIES OF 2010

INTRODUCED BY COUNCILLORS
Briggs - Major

A BILL

**FOR AN ORDINANCE APPROVING A LEASE WITH 5 STAR PUPS FOR THE LEASE OF THE
FORMER CITY OF WESTMINSTER ANIMAL SHELTER**

WHEREAS, the City of Westminster ("City") is the owner of the building at 8800 Sheridan Boulevard, Unit 100, Westminster, Colorado (the "Property"); and

WHEREAS, the property was formerly used as an animal shelter; and

WHEREAS, the City desires to lease the Property to 5 Star Pups, LLC, a Colorado for profit corporation, for use as a dog day care, dog grooming, and dog hotel; and

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

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement, attached hereto as Exhibit "A" between the City and 5 Star Pups, LLC for the lease of the main level of the former animal shelter located at 8800 Sheridan Boulevard, Unit 100, Westminster, Colorado, at a rate of \$1,100 per month for three years.

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of May, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of May, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Exhibit A

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this _____ day of _____, 2010, between the CITY OF WESTMINSTER, a Colorado home rule municipality (the "Lessor"), and 5 Star Pups, L.L.C., a Colorado limited liability company, whose registered address is 8800 Sheridan Boulevard, Unit 100, Westminster, CO 80030 (Lessee").

In consideration of the payment of the rent and the keeping and performance of the mutual promises set forth below, the Lessor hereby agrees to lease to the Lessee the premises described as the main level of the former Animal Shelter located at 8800 Sheridan Boulevard, Unit 100, Westminster, Colorado associated parking spaces ("the Premises").

This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all 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.

B. TERM OF LEASE

1. Lessor leases to Lessee the described Premises, for a term of three (3) years commencing June 1, 2010, unless sooner terminated pursuant to Paragraph B.3. below.

2. At the end of said Term, the Lease may be renewed by Lessee for a further period of five (5) years and such renewal shall be upon all of the same terms and conditions applicable during the initial term, except that the lease rate shall be mutually agreed upon by the parties prior to the end of the 35th month of the Lease.

3. Lessee shall use and occupy the premises for a dog day care, grooming and dog hotel. The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose under its zoning regulations. However, Lessor discloses and Lessee expressly acknowledges that the real property upon which the Premises are located is subject to a lease agreement between Lessor and the Colorado Department of Transportation (CDOT) that may require the Lessor to terminate the Lease prior to the expiration of the lease term. In such event, Lessor shall provide no less than thirty days written notice to Lessee of the need for Lessee to vacate the Premises and Lessee will not be obligated to pay the monthly rental installment or pro-rata portion thereof for that period.

C. RENTAL PAYMENTS

1. Lessee shall pay rent to Lessor at the annual rate of \$13,200.00 dollars for each of the three (3) years.

2. Payments shall be due on the first day of each month and payable in advance, at the City Hall of the Lessor at 4800 West 92nd Avenue, Westminster, Colorado 80031, in monthly installments of \$1,100.00, payable on the first day of each month and continuing thereafter in monthly installments for the entire term of the Lease. Payments not received by the tenth of the month shall be subject to a late fee, until such payment is received, equal to ten (10) percent of the amount unpaid per month. The late fee may be abated in whole or in part by the City Manager for good cause.

The first two monthly payments shall be reduced to \$ 600.00 each.

3. If Lessee vacates the Premises for any reason before the end of the Term and ceases to pay rent to Lessor as provided in this Lease, Lessor may, at its option and without notice, and using such force as may be necessary, enter said Premises, remove any equipment, fixtures, personalty and effects of Lessee therefrom, and re-let the same, or any part thereof, as it may see fit, for the account of Lessee, without thereby avoiding or terminating this Lease, and for the purpose of such re-letting, Lessor is authorized to make any repairs, changes, alterations or additions in or to said premises, as may, in the opinion of Lessor, be necessary or desirable for the purpose of such re-letting, and if a sufficient sum shall not be realized from such re-letting each month to equal the quarterly installments agreed to be paid

by Lessee under the provisions of this Lease, then Lessee agrees to pay such deficiency each quarter. However, Lessor shall have no obligation to re-let the Premises. Lessee shall remain obligated to continue Lease payments for the full three (3) year term. Lessor may, at its option, terminate the Lease upon terms negotiated and agreed to by both Parties. Notwithstanding any provision of this Lease to the contrary, in the event that Lessor is required pursuant to Paragraph B.3 above to turn over the property of which the Premises is a portion to the Colorado Department of Transportation, then Lessee's liability under this Lease shall end.

D. OBLIGATIONS OF LESSEE

In consideration of the lease of the Premises, the Lessee covenants and agrees as follows:

1. To use the Premises for the operation of a dog day care, grooming and hotel.
2. To pay the rent for said Premises as provided above.
3. To use the Premises for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster.
4. To allow the Lessor at any reasonable hour of the day to enter into and go through the Premises. Except in cases of emergency, Lessor will provide notice of entry, such notice to be reasonable under the circumstances. Lessor shall not interfere with the operations of Lessee during such entry. Notwithstanding this paragraph, Lessor shall have no duty to inspect the premises or make repairs except as provided herein.
5. Not to permit the Premises, or the walls or floors thereof, to be endangered by overloading, or the Premises to be used for any purpose that would render the insurance thereon void or the insurance risk more hazardous. Lessee shall take all such action as may be necessary to prevent the Premises from ever being occupied in excess of City and State limits of occupancy.
6. Not to make any alterations to, or modifications in or upon the Premises, including the installation or removal of attached fixtures, without first obtaining the Lessor's written consent, which will not be unreasonably withheld and which shall include provisions for removal of the alterations or modifications if desired by Lessor. No such alterations or modifications shall be made, except pursuant to plans submitted by Lessee to the City Manager or his designee. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the City and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. All such expenses shall be the sole financial responsibility of the Lessee.
7. To exercise reasonable care in the supervision of its employees, officers, directors, and staff coaches at all times when they are in or upon the Premises.
8. To reimburse Lessor for any expense incurred by it in repairing any damage to the Premises caused by Lessee, its directors, officers, employees or agents, or any person in their care, or present with their permission, unless Lessee makes the repairs, to the reasonable satisfaction of Lessor.
9. To indemnify, defend, and hold harmless the Lessor from and against any claim for personal injury or property damage resulting from any negligent act or omission of Lessee or its employees or agents, to carry liability insurance covering bodily injury and property damage in the minimum amount of \$1,000,000 per occurrence, and to make Lessor an additional insured under its policy of liability insurance, and to provide the Lessor with a certificate of insurance as evidence of coverage prior to Lessee's occupancy of the Premises.
10. To sublet no part of the Premises, nor assign this Lease or any interest therein without Lessor's specific written consent.

11. Not to permit any disorderly conduct or nuisance whatever about the Premises, the building in which they are located, or on the building grounds, having a tendency to annoy, disturb or interfere with other occupants of the building.
12. At the expiration or termination of this Lease, to surrender and deliver up the Premises in as good order and condition as when the same were entered upon, loss by fire or other casualty, inevitable accident and ordinary wear excepted.
13. To furnish and equip the space it occupies on the Premises. Lessee may remove fixtures it has installed if removal can be done so that floors, walls, or structures are in substantially the same condition as at the beginning of Lease, fire or other casualty, inevitable accident and ordinary wear excepted.
14. If Lessee desires such signage, to pay for and place signage on the Premises building designating it as the "5 Star Pups" after receiving approval of sign design and quality by the City of Westminster.
15. To repair and maintain at Lessee's expenses standard items such as paint and tile surfaces, window glass, lighting fixtures and plumbing fixtures, which are not the responsibility of Lessor as provided below.
16. Notwithstanding any provision in this Lease Agreement to the contrary, to perform all repairs of an emergency nature necessary to protect the Premises from undue and avoidable injury or damage.
17. To arrange and pay for all gas and electric, trash service, telephone installation and internet connections that Lessee deems necessary for its use and the service charges therefore.
18. Lessee accepts the Premises "as is" and acknowledges that Lessor shall have no obligation for maintenance or repair of the Premises except as described in Paragraph E.

E. OBLIGATIONS OF LESSOR

In consideration of the receipt of rent and the covenants of Lessee, the Lessor covenants and agrees as follows:

1. To provide free parking for the use of Lessee adjacent to the Premises site.
2. To provide or cause to be provided for the Premises, water and sanitary sewer services. Lessor will also provide adequate heating and ventilation systems for the Premises, as well as smoke alarms and fire sprinklers to the extent required by the International Building Code. The Lessor will pay all charges for insurance, taxes and water used on the premises, except as otherwise herein provided.
3. To provide grounds maintenance and exterior building maintenance.
4. To provide maintenance and repair for structural systems, heating and ventilation systems, water supply lines, waste water lines and electrical and gas systems.
5. Lessee may quietly hold and enjoy the premises without any interruption by the Lessor or any person claiming under the Lessor.

F. MISCELLANEOUS TERMS

1. Lessor shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee.

2. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere in the Premises.
3.
 - (a) If the Premises becomes so damaged by fire, flood, act of God or any other casualty so as to render the Premises untenable, the Lessee may terminate this Lease without further obligation, unless the repairs for damage are started within sixty (60) days, in which case the Lease will continue under the existing terms and conditions.
 - (b) The rent payable under this Lease shall abate following any damage to the Premises, to the extent all or part of the Premises is rendered untenable, until such damage has been repaired by Lessor.
 - (c) Within thirty (30) days after the occurrence of the damage, Lessor shall give written notice to Lessee of Lessor's best estimate of the time that will be required to repair, the damage (without the payment of overtime or any premium). Lessor may also notify Lessee of the availability of other portions of the Facility or other temporary premises, if any. Notwithstanding the offer of alternate premises, if the estimated time to repair is more than ten (10) months, and Lessee rejects alternate premises, Lessee may terminate this Lease without further obligation. If Lessee does not so terminate, this Lease will continue under the existing terms and conditions, subject to paragraph (b) above.
 - (d) Notwithstanding the above paragraphs, if the Premises are damaged more than fifty percent (50%) of its full insurable value, as reasonably determined by Lessor, Lessor may terminate this Lease. Lessor shall give Lessee written notice of termination or Lessor's decision to continue the Lease within thirty (30) days of the occurrence of the damage. If Lessor chooses to continue the Lease, Lessee may terminate the Lease by giving notice to Lessor in writing within thirty (30) days of Lessor's notice to continue.
4. If the Premises are left vacant and Lessee ceases to pay rent to Lessor, the Lessor may, at its option, either retake possession of the Premises, terminating the Lease and Lessor's and Lessee's obligations thereunder, or it may re-rent the Premises, subject to the provisions of paragraph C.3 above.
5. If the Lessee becomes insolvent, or is declared bankrupt, the Lessor may terminate this Lease forthwith, and all rights of the Lessee hereunder shall thereupon terminate, subject to the provisions of paragraph C.3 above.
6. At the expiration of the term of this Lease, whether by passage of time or by act of the Lessor as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Premises peaceably to the Lessor, and if the Lessee shall remain in possession after termination of this Lease, the Lessee shall be deemed guilty of a forcible detainer of the Premises under the statute, and shall be subject to eviction and removal in accordance with state law.
7. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, Lessor shall provide written notice to Lessee of the default. Lessee shall have thirty (30) days after the notice to cure the default. If Lessee fails to cure the default within said thirty days, Lessor may, but need not, declare the term ended and repossess the Premises in accordance with state law. If the nature of the default is such that it cannot be cured with reasonable diligence within thirty (30) days, then Lessee shall not be in default if it commences to cure such default within thirty (30) days and thereafter diligently prosecutes such cure.
8. No failure to act nor any assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.
9. Nothing herein contained, either in the method of computing rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating any relationship of partnership, association, joint venture, or otherwise. The sole relationship of the parties hereto shall be that of

Landlord and Tenant.

10. There are no oral agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter hereof.
11. If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.
12. Except as otherwise provided in this Lease, any prevention, delay or stoppage due to strike, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.
13. The following persons are hereby designated by the parties as the persons responsible for the implementation of this Lease. Should Notices need to be sent or problems arise concerning this Lease, the parties agree to contact:

For the Lessee: _____

For the Lessor: _____

14. Eminent Domain. If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, and may not file a claim for any taking of fixtures and improvements owned by Lessee, nor for moving expenses.
15. Security Deposit. Lessee shall deposit with Lessor on the signing of this Lease the sum of \$2,100.00 as security for the performance of Lessee's obligations under this Lease including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this Lease.
16. Radon Gas Disclosure. As required by law, Lessor makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Colorado. Additional information regarding radon and radon testing may be obtained from your county public health unit.
17. Lessee agrees to execute any and all documents subordinating this Lease as requested by Lessor.
18. This Lease shall bind the Lessor and the Lessee and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this _____ day of _____, 2010.

LESSEE: 5 Star Pups, L.L.C.

LESSOR: CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Approved as to legal form:

By: _____
City Attorney's Office



Agenda Item 10 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Councillor's Bill No. 29 re Lease Agreement with Adams County School District 50 for the use of the England Park Softball Field

Prepared By: Marty McCullough, City Attorney
Bill Walenczak, Director of Parks, Recreation and Libraries

Recommended City Council Action

Pass Councillor's Bill No. 29 on first reading authorizing the City Manager to sign a 25-year lease agreement with Adams County School District 50 for the use of the England Park Softball Field.

Summary Statement

- Staff from Adams County School District 50 approached City Staff last December to see if the City would be interested in leasing the England Park ball field in exchange for the School District investing the necessary funds to completely renovate the softball field, irrigation system, lighting and build a new concession/restroom building (see attached plan).
- In exchange for their capital investment in the field renovation, the District has requested that the City enter into a 25-year lease so that the School District could use the softball field for their girls' softball program as well as the use of the field for physical education classes throughout the year.
- The City then would have guaranteed use of the field for such things as the Old Timers softball game each year in July, as well as other City programs as needed. The lease agreement includes a no cancellation clause for City scheduled events.
- The District would be responsible for maintenance and scheduling of the ball field.
- By leasing the England Park ball field from the City, the District would be able to keep the school bus garage in its present location on the high school site.
- The renovation of the ball field also fits into the proposed Master Plan for the Little Dry Creek corridor park.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to lease the England Park ball field to Adams County School District 50 for a period of 25 years?

Alternatives

1. City Council could direct Staff to revise the lease for a shorter period of time. Staff does not recommend this option because the District is willing to invest between \$300,000 and \$400,000 to renovate the ball field and cannot justify a shorter lease term based on the amount of the investment.
2. City Council could deny approving the lease agreement. Staff does not recommend that action because the England Park ball field is in dire need of renovation and the City currently does not have funds available to do the necessary improvements.

Background Information

The England Park ball field was built in the 1970s and is in need of a complete renovation. The City has not had the necessary funds to renovate the field. In addition, the City has built new multi-field ball field complexes at City Park, Westfield Village Park and Big Dry Creek Park with grants from Jefferson County, Adams County and Hyland Hills Park and Recreation District. These fields allow City Staff the opportunity to schedule from two to four games at once, which makes it more efficient to operate the City's softball programs. The City is currently leasing this field to the School District so that their programs can continue while the new District 50 high school and site improvements are being contracted.

Also, by leasing this softball field to the School District, the controversy over relocation of the school's bus yard is resolved by leaving the facility in its current location. The original school master plan showed a new girls' softball field being constructed where the bus yard is located. Although this is not a City issue, it is the main reason why the District is willing to invest significant dollars to renovate the England Park ball field.

Staff believes this is a good arrangement for the City. While the School District will pay for all the field renovations, construct a new restroom/concession building, install new lighting, irrigation system, fencing, and construct a new regulation softball field, they will also pay for ongoing maintenance and improvements while allowing the City free use of the field when district programs are not scheduled.

This meets the City's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **29**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE APPROVING A LEASE AGREEMENT WITH ADAMS COUNTY
SCHOOL DISTRICT 50 FOR THE USE OF THE ENGLAND PARK SOFTBALL FIELD**

WHEREAS, the City owns the England Park Softball Field, located at 7190 Osceola Street; and

WHEREAS, it is in the City's best interest to enter into this agreement with Adams County School District 50 whereby the School District agrees to renovate and maintain the England Park Softball Field, at no cost to the City, in exchange for their use of the facility.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Pursuant to City Charter Section 13.4, the Lease Agreement attached hereto as Exhibit A is hereby approved.

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The lease agreement attached hereto as Exhibit A shall be executed by the lessee prior to consideration of this ordinance on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of May, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of June, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**INTERGOVERNMENTAL AGREEMENT
AND LEASE**

Between the City of Westminster and Adams County School District #50

This Intergovernmental Agreement and Lease (“Agreement and Lease”) is made and entered into this _____ day of _____, 2010, by and between the **CITY OF WESTMINSTER**, a Colorado home-rule municipality, hereinafter called the “City,” and **ADAMS COUNTY SCHOOL DISTRICT NO. 50**, a Colorado school district, hereinafter called the “School District.” The City and School District may be referred to collectively or separately as “Parties” or “Party.”

RECITALS

WHEREAS, this Agreement and Lease is authorized by Colorado Constitution, Article XIV, Section 18(2)(a), Article XX and Article XI, Section 7, and Part 2 of Article 1 of Title 29, C.R.S.; and

WHEREAS, the City and the School District have a long-standing history of working cooperatively to provide functions, services and facilities that assist their respective constituencies and maximize the use of taxpayers’ funds; and

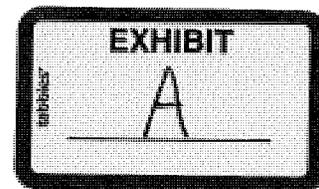
WHEREAS, the City owns, operates, and maintains a public park located at 7190 Osceola Street commonly known as England Park, which includes a regulation softball field and associated facilities and improvements; and

WHEREAS, the School District has commenced construction of a new Westminster High School, administrative offices, and related athletic and parking facilities generally located north of 68th Avenue, south of 70th Avenue and east of Utica Street; and

WHEREAS, the School District wishes to lease the City’s softball field, and related facilities and improvements located in England Park; and

WHEREAS, the City is willing to lease said field, facilities, and improvements to the School District pursuant to the terms of this Agreement and Lease.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree and contract as follows:



AGREEMENT

1. The City hereby leases to the School District the real property and improvements defined and described in Exhibit "A" attached hereto and incorporated by this reference (the "Premises").
2. In lieu of rent, and as partial consideration for this Agreement and Lease, the School District agrees to pay the cost of architectural services, engineering, demolition, and construction of a new softball facility on the Premises, to include a softball field, lawn irrigation system, restrooms, fences and related facilities. The Parties agree that the new softball facilities will be constructed with the specifications designated in the plan attached hereto as Exhibit "B," and incorporated herein by this reference (the "New Facility"). Any changes in material or fixtures designated in the plan shall be approved by the City.
3. The City and the School District shall cooperate and agree on the final design of the New Facility. The School District shall be responsible for the construction of the New Facility. The New Facility shall be substantially complete no later than August 31, 2011.
4. The School District agrees to operate and maintain the Premises and to pay the ongoing costs for mowing, field preparation, water, electricity, sewage and other expenses incidental to the operation of the New Facility and the maintenance of the Premises throughout the term of this Agreement and Lease. In addition, the School District agrees to maintain the areas shown on Exhibits "C" and "D." City hereby grants to School District a pedestrian and maintenance right of access through and across the areas shown on Exhibits "C" and "D," provided, however, that either or both rights of access may be terminated by the City in connection with the City's implementation of the Little Dry Creek Park Development Master Plan described in paragraph 17, below. In the event that the City terminates School District's right of access through and across the area shown on Exhibit "D," the City agrees to provide a reasonable substitute right of access on request by the School District.
5. The School District may permit others to use the Premises. The School District shall be solely responsible for receiving and processing requests for use of the Premises, including, without limitation, scheduling activities, establishing reasonable rules and procedures relating to maintenance, operations, requests for and uses of the Premises, and charging and receiving fees for use of the Premises. The City shall direct all inquiries by third parties regarding use of the Premises to the School District. The School District shall notify the City promptly each time it reserves the Premises for any function or event.
6. Not later than December 15th of each year, the City shall submit a written request for the use of the Premises for the ensuing 12 months. All requests submitted by the City shall be scheduled in accordance with the provisions of this paragraph and paragraphs 7, 8, and

9 of this Agreement and Lease. The School District agrees not to schedule the Premises for the ensuing 12-month time period until it has reviewed the City's proposed schedule of use. The City may present additional written requests to the School District at any time it desires to use the Premises for any City-related function or event. All other requests shall be scheduled on a first-come, first-served basis.

7. The Parties agree that, once accepted by the School District, all activities scheduled by the School District at the request of the City shall take precedence over all other subsequent requested uses by the School District or by members of the community, but every effort will be made to facilitate other reasonable and timely requests for the utilization of such facilities by both Parties and by members of the community. Notwithstanding anything in this Agreement and Lease to the contrary, the Parties agree that the City shall have guaranteed use of the Premises on a date to be determined in July for a vintage old-timers softball game.
8. Subject to the provisions of Paragraphs 6 and 7 above, the School District shall have the exclusive right and first priority to use the Premises for its academic and extracurricular activities, including, without limitation, physical education classes and girls' softball. These activities shall be limited to regular school hours, practice and game times for girls' softball.
9. Subject to the relative rights and priorities set forth in Paragraphs 7 and 8 above, the City shall have the right and priority to reserve and use the Premises for all open times upon presenting a written request to the School District. For the purposes of this Agreement and Lease, the term "open times" shall mean all times for which the School District has not informed the City that the Premises is reserved, pursuant to Paragraph 5 above. The School District may scheduled any such open times for City use, outside groups, Hyland Hills, community groups, the public, and the School District. However, once a City group reserves the Premises with confirmation for a particular date and time, the District shall not cancel the City's reservation for a School District function at the same date and time.
10. All fees, compensation, rents and other moneys received by the School District for use of the Premises shall remain the sole and exclusive property of the School District.
11. The City shall not be required to pay any permit fees or rent for the Premises, provided the City shall be responsible for any other cost related to its use of the Premises, such as field preparation, staff expenses, and concession operations.
12. (a) This Agreement and Lease shall be in effect from and shall cover the period May 1, 2010, through April 30, 2035. The School District may terminate this Agreement and Lease at any time upon giving, in writing, the City six (6) months notice of its intention to terminate same. Following the initial period ending April 30, 2035, this Agreement and Lease shall continue in effect from year to year, unless either party notifies the other, in writing, of intent to terminate, or modify, at least ninety (90) days prior to the expiration date.

- (b) At the end of the fifteenth (15th) year, both parties shall meet to examine the physical infrastructure of the Premises to determine if major repairs or renovations are necessary to restore the Premises to their condition at the time of the completion of the improvements described in Paragraph 2. It shall be the School District's sole responsibility to make any needed repairs or upgrades to the facility at that time. Repairs, modifications or upgrades will be agreed upon by both Parties. In the event the Parties are unable to agree on such repairs and a timeline for completing them, this Agreement and Lease may be terminated pursuant to the provisions of paragraph 18 below.
13. To the extent allowable by law, the City shall hold harmless and free from liability the School District, its Board of Education, officers, agents, servants or employees, while acting as such, from all damages, costs or expenses which any of them shall become obligated to pay by reason of liability imposed by law because of damage to property or injury to or death of persons, received or suffered by reason of the City's use of the Premises pursuant to this Agreement and Lease; and, the School District shall hold harmless and free from liability the City, its Council members, officers, agents, servants or employees, while acting as such, from all damages, costs or expenses for which any of them shall become obligated to pay by reason of liability imposed by law because of damage to property or injury to or death of persons, received or suffered by reason of the School District's operation and maintenance of the Premises pursuant to this Agreement and Lease; provided, however, that each Party shall be responsible for its own negligence and shall not be responsible for any negligent act or omission of the other. The School District and the City agree that in the event any claim or suit is brought against both Parties or either of them by any third party as a result of any activity conducted pursuant to this Agreement and Lease, both Parties will reasonably cooperate with each other in defending such claim or suit. Any provisions herein to the contrary notwithstanding, nothing in this Agreement and Lease shall be deemed or construed as a waiver of any rights or protections either Party may enjoy under Colorado law, including, without limitation, the Colorado Constitution and the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
14. Each Party shall be responsible to the other for any and all damage proximately caused by its employees, guests, invitees or contractors as a result of any activity conducted at the Premises, excepting wear and tear due to normal use of the property. The Party responsible for any damage to the Premises shall cause the damage promptly to be repaired and the condition of the Premises to be restored to the same general state of being, repair or efficiency as it was following the School District's improvements and renovations pursuant to paragraph 3 above. In the event of damage for which the City is responsible, the School District shall have the right to make whatever repairs are necessary and shall be entitled to reimbursement from the City within thirty (30) days of presenting an itemized statement to the City for such repairs.
15. The School District shall carry appropriate liability insurance for its operation of the Premises, and a certificate of insurance covering the current year shall be filed and/or reviewed annually with the City.

16. The City shall be required to carry appropriate insurance covering its use of and responsibility for damage at the Premises.
17. The Parties acknowledge that the Premises is located within the boundaries of the Little Dry Creek Park Development Master Plan (the "Master Plan"), and that land adjacent to or near the Premises may be subject to development, improvement, regulation and oversight by the City consistent with the terms of the "Master Plan." The City represents that, pursuant to the terms of the Master Plan, it is not the present intent of the City that the Premises will be sold, developed or used for any purpose other than as a recreational area.
18. Notwithstanding anything in this Agreement and Lease to the contrary, the City shall have the right to terminate this Agreement and Lease by 1) providing twelve (12) months advance written notice to the School District, and 2) paying the School District an amount to be commensurate with the School District's investment in the design and construction of the Premises and any improvements to the Premises less an amount commensurate to the School District's benefit from this Agreement and Lease during the time this Agreement and Lease was in effect. In the event the Parties cannot agree on the amount to be paid as the result of the City's termination of this Agreement and Lease, the School District shall be entitled to compensation in the amount of the sum of:
 - a) the School District's actual expenses in 2010 for architectural services, remodeling, improvements and construction, which amount shall be reduced each year on May 1 on a *pro rata* basis over the initial 25-year term of this Agreement and Lease, and
 - b) the School District's actual expenses after 2010 for upgrades, remodeling, improvements and construction, which amount shall be reduced each year on March 1 on a *pro rata* basis from the date of the School District's expense through April 30, 2035.

In the event of termination of this Agreement and Lease by the City pursuant to paragraph 12(b) above, the amount of compensation to the School District shall be reduced by the estimated design and construction cost of any major repairs or renovations determined at the end of the fifteenth (15th) year of this Agreement and Lease to be needed to restore the Premises to their condition at the time of the completion of the improvements described in Paragraph 2. In the event the Parties are unable to agree on such costs, the Parties will refer the matter to an independent construction professional selected by mutual agreement.

19. The Parties shall meet regularly, but no less frequently than quarterly, to review the operations, maintenance, use and condition of the Premises. A review committee composed of the City's Park Services Manager and the School District's Director of Maintenance and Operations or their respective designees shall serve this function.

20. This Agreement and Lease may not be modified, revised, altered, added to, or extended in any manner, or superseded, except by an instrument in writing signed by the parties hereto.
21. The failure of a Party to enforce any provision or provisions of this Agreement and Lease shall not be in any way construed as a waiver of any such provision or provisions nor prevent that party thereafter from enforcing each and every provision of this Agreement and Lease.
22. The invalidity or unenforceability of any provision of this Agreement and Lease shall not affect the other provisions hereof, and this Agreement and Lease shall be construed in all respects as if such invalid or unenforceable provision was omitted.
23. Any conflicting provisions of this Agreement and Lease shall supersede and take precedence over the provisions of any prior agreements between the Parties regarding the subject matter of this Agreement and Lease, and shall be binding upon and inure to the benefit of the Parties hereto.
24. This Agreement and Lease may be enforced by a Party only by an action for specific performance, provided, however, that prior to bringing any such action, the Parties agree to attempt to resolve any dispute they are unable to resolve by negotiation through the use of a mutually acceptable third-party mediator for a period of time not less than sixty (60) days prior to the filing of any such action, unless the bringing of an action before that time is required by an applicable statute of limitations. Any action for specific performance may include an action to enforce the City's payment obligations under this Agreement and Lease.
25. In the event it becomes necessary for either Party to bring an action to enforce this Agreement and Lease, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees. Venue for any such action shall be in the District Court for Adams County, Colorado.

IN WITNESS WHEREOF, the City and the School District have caused this Agreement and Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this _____ day of _____, 2010.

ADAMS COUNTY SCHOOL DISTRICT NO. 50

APPROVED AS TO FORM:

SEMPLE, FARRINGTON & EVERALL, P.C.

By: _____
Matt Ratterman

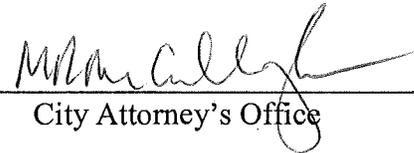
By: _____
Vicky Marshall
President, Board of Education

ATTEST

By: _____
Sharon Whitehair
Secretary, Board of Education

CITY OF WESTMINSTER, COLORADO

APPROVED AS TO FORM:

By: 
City Attorney's Office

By: _____
J. Brent McFall
City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

Note:

THESE DOCUMENTS ARE A PROGRESS SET TOWARDS FINAL CONSTRUCTION DOCUMENTS. BY THEIR NATURE, THEY ARE INCOMPLETE. THEY ARE NOT SUITABLE FOR BIDDING OR CONSTRUCTION. ANY ATTEMPT TO ESTABLISH CONSTRUCTION COSTS FROM THESE DOCUMENTS MUST BE DONE WITH EXTREME CAUTION. COST ALLOWANCES MUST BE PROVIDED FOR DESIGN ELEMENTS AND MATERIALS NOT YET INDICATED ON THESE DOCUMENTS. H+L ARCHITECTURE AND OUR CONSULTANTS HAVE NO RESPONSIBILITY OR LIABILITY FOR COSTS OF CONSTRUCTION ASSOCIATED WITH DESIGN ELEMENTS AND MATERIALS NOT YET SHOWN ON THESE DOCUMENTS.

ARCHITECT OF RECORD

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 4582 South Ute St. Pkwy., Suite 1501
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IT CONSULTANT

Rimrock Group
 2060 Briargate Parkway, Suite 220
 Colorado Springs, Colorado 80920
 (p) 719.533.1112 (f) 719.533.1113

GENERAL NOTES

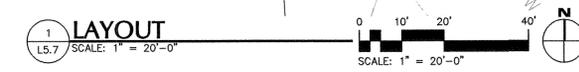
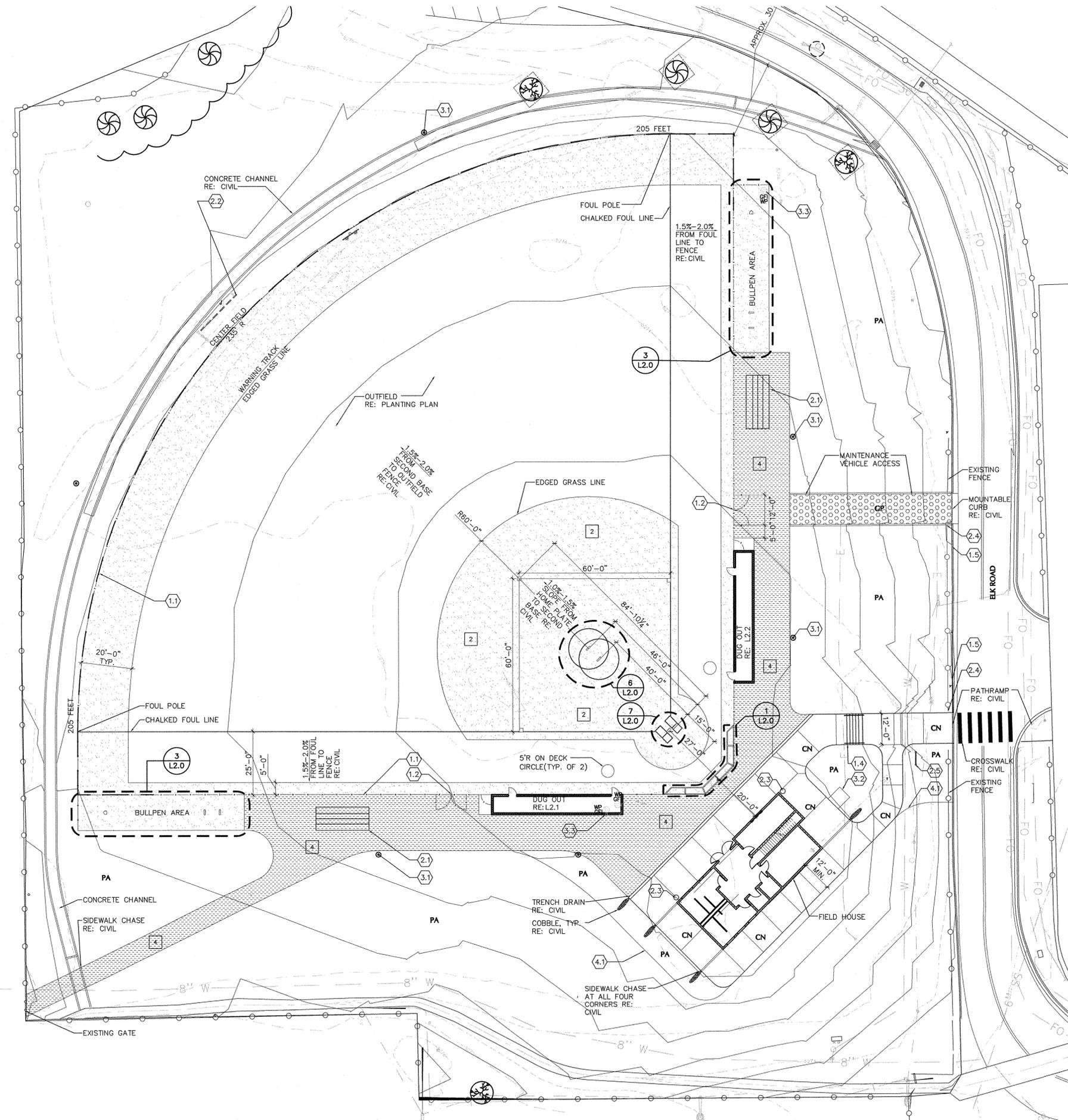
1. THE LANDSCAPE DRAWING SERIES SHALL BE USED IN CONJUNCTION WITH THE CIVIL, ARCHITECTURAL, STRUCTURAL, MECHANICAL, AND ELECTRICAL DRAWINGS TO PROVIDE COMPLETE INFORMATION REGARDING SITE WORK.
2. CONTRACTOR SHALL INSPECT EXISTING PROJECT WORK IN PLACE AND SITE CONDITIONS AFFECTING HIS WORK FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND ADVISE THE ARCHITECT OF ANY INCONSISTENCIES WITH SAID CONDITIONS FOR RESOLUTION, PRIOR TO COMMENCING LANDSCAPE WORK.
3. ALL EXISTING AND NEW UTILITIES SHALL BE LOCATION PRIOR TO COMMENCING PLANTING.
4. EXISTING AND NEW UTILITIES SHOWN FOR REFERENCE ONLY. REFER TO CIVIL FOR UTILITY PLANS.
5. ELEVATIONS FOR BASES AND PITCHER'S RUBBER ARE RELATIVE; CONTRACTOR TO SUBMIT SPECIFIC ELEVATIONS FOR ARCHITECT'S REVIEW.
6. RE: ELECTRICAL AND PLUMBING FOR POWER AND WATER REQUIREMENTS AT FIELDS.

SURFACING LEGEND

- 1 WARNING TRACK MIX
- 2 INFIELD MIX
- 3 HILLTOPPER MOUND CLAY
- 4 BASE BID ASPHALT ALTERNATE 1. CONCRETE
- GR GRASS PAVE RE: X/LX.X
- CN CONCRETE PAVING WITH CONTROL JOINTS RE: CIVIL
- PA PLANTING AREA
- E EXPANSION JOINT

DETAIL KEYNOTES

KEYNOTE	DESCRIPTION	DETAIL # / SHEET #
1.0	1.1 6'-0" TALL CHAIN-LINK FENCE	4/L2.0
	1.2 CHAIN LINK DOUBLE SWING GATE 6'-0" TALL	RE: SPEC
	1.3 CHAIN LINK SINGLE SWING GATE 6'-0" TALL	RE: SPEC
	1.4 STAIRS WITH RAILING & CHEEK WALL	1&2/L2.2
	1.5 CONCRETE CURB	RE: CIVIL
2.0	2.1 PREFABRICATED BLEACHERS (SEATING 50)	RE: SPEC
	2.2 ATHLETIC SCOREBOARD	RE: SPEC
	2.3 TRASH RECEPTACLE	7/L2.2, RE: SPEC
	2.4 WOODEN FENCE	3&4/L2.2, RE: SPEC
	2.5 PARK RULES SIGNAGE	5/L2.2, RE: SPEC
3.0	3.1 STADIUM LIGHTING	RE: ELECTRICAL
	3.2 ELECTRICAL TRANSFORMER	RE: ELECTRICAL
	3.5 ELECTRICAL OUTLET	RE: ELECTRICAL
4.0	4.1 STEEL EDGER	RE: SPEC



Adams County School District No. 50
England Park
 7150 OSCEOLA ST. WESTMINSTER, CO 80030

The District of Choice
 Adams County School District 50

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Project Number	405.03
Issued For	PR 014
Date:	05 APRIL 2010
Revision	Date

OVERALL SITE PLAN

L 1.0



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 24, 2010



SUBJECT: Siemens Industry, Inc, Building Technologies Energy Audit, Phase II Energy Performance and Financing Contracts

Prepared By: Jerry Cinkosky, Facilities Manager
Tom Ochterski, Energy & Facilities Project Coordinator
Barbara Opie, Budget & Special Projects Manager
Bob Byerhof, Senior Financial Analyst

Recommended City Council Action

1. Authorize a legal services agreement in an amount not to exceed \$2,000 with Mr. Dee Wisor, with the law firm of Sherman and Howard, for bond counsel services in connection with this financing.
2. Pass Resolution No. 18 authorizing the City to enter into a lease-purchase agreement with Municipal Services Group, Inc. with a principal amount not to exceed \$2,517,094 and authorizing the City Manager to sign the contract and all necessary documents.
3. Pass Councillor's Bill No. 30 as an emergency ordinance appropriating lease proceeds totaling \$2,517,094 in the General Fund.
4. Authorize the City Manager to sign all necessary documents to enter into an energy performance contract with Siemens Industry, Inc. Building Technologies (Siemens) for energy and water conservation and other related improvements in City facilities in an amount not to exceed \$3,384,282. In addition, authorize the City Manager to enter into a separate energy performance agreement with Siemens for providing facility improvements with the use of ARRA/EECBG Federal Stimulus Funding in an amount not to exceed \$468,700. The total contract with Siemens is an amount not to exceed \$3,852,982.

Summary Statement

- City Council's actions will permit the following:
 - Fund the purchase, installation and calibration of more energy efficient and/or water conserving technologies and devices in 21 City facilities, parking lots and irrigated properties.
 - Provide essential tools to improve the operations within these facilities, generate both energy and water conserving savings.
 - Provide a single contractor to conduct these multi-facility energy and water renovations and improvements, improving accountability and increasing standardization, and enhancing and reducing costs for maintenance operations in the long term.
- The total City cash-funded contribution to the project is \$828,051, which includes a one-time \$8,768 financing payment, and legal fees not to exceed \$2,000.
- The associated lease payments will be included in the 2011/2012 budgets with a portion of these payments funded from the guaranteed energy savings that these improvements generate.
- The total financing cost, including principal borrowed, is estimated to be \$3,173,345 at an effective interest rate of 4.27%, assuming the financing closes by May 29, 2010.
- The proposed ordinance is being taken as an emergency action to meet the approval deadline of May 29th in an expeditious manner.

Expenditure Required: Not to exceed \$3,852,982 in project construction costs plus total financing and legal costs not to exceed \$667,100

Source of Funds: \$2,497,094 in lease proceeds (excluding closing costs) from a 10-year lease-purchase agreement paid by General Fund operating budget energy and water savings annually to offset the annual financing cost plus a lump sum of General Capital Improvement Fund Building Operations & Maintenance major maintenance capital improvement funds for general, recreation and public safety facilities in the amount of \$817,288, plus Xcel Energy rebates in the amount of \$69,900; and \$468,700 American Recovery Reinvestment Act (ARRA) Stimulus Funding through the City's Energy Efficiency & Conservation Block Grant (EECBG) allocation.

Policy Issue

Does City Council wish Staff to proceed with energy performance contracts for Phase II to further implement energy and water saving measures in various City parks and facilities?

Alternatives

1. Do not proceed with the energy performance contract. This option is not recommended as energy and water savings opportunities exist that will potentially result in a savings of more than \$292,127 per year.
2. City Council could direct Staff to proceed with contract negotiations for a performance contract for a lesser scope of work than is being proposed and direct Staff to include equipment replacements/upgrades to only those City parks and facilities that produce enough energy and water savings to efficiently offset the expense of the improvement measures. This alternative is not being recommended as several City parks and facilities have equipment that have surpassed their expected useful life and replacement costs would require capital improvement funds that are not currently available. In addition, this equipment is now requiring the use of creative technologies and increasingly expensive maintenance costs to keep the equipment operational.

Background Information:

Staff began placing a greater emphasis on energy savings opportunities in 2004 by exploring options that would aid the City in becoming more efficient in energy consumption as energy costs continued to escalate. In 2005, with the assistance of the Governor's Office of Energy Management, Staff began the selection of an energy services company (ESCO) for the purpose of conducting a comprehensive Citywide facility energy usage audit. Ultimately, Siemens Industry, Inc. Building Technologies was selected from a field of three pre-qualified energy savings companies. In December 2005, City Council authorized a Phase I Energy Performance Contract (EPC) with Siemens for the purpose of reducing utility costs and negative environmental impacts associated with City operations. The original EPC included improving HVAC mechanical systems in a number of facilities, installation of energy efficient lighting and other improvements to equipment and operations.

In December 2006, all energy savings retrofits and improvements were completed resulting in annual energy savings and cost avoidance of \$189,383 in 2007 and \$187,385 in 2008. Measurement and verification results for 2009 are due in May of this year and are expected to achieve the guaranteed annual savings of \$187,000.

Although utility rates fluctuate, the potential for energy cost increases remains. In June 2009, Staff contracted with Siemens Industry, Inc. Building Technologies for a Phase II energy audit to investigate further energy-reducing enhancements not included in the Phase I EPC.

The traditional way that an ESCO conducts an audit is to assess all of the energy and water consuming systems or facilities in the City and then propose modifications and upgrades. Staff reviews the audit and identifies projects to recommend for implementation, focusing on projects with a high rate of return in potential savings and/or greatest need based on age and stability of existing equipment. Projects that may be identified by an ESCO include the installation of central controls, lighting, electrical upgrades, HVAC upgrades, and irrigation improvements. The identified upgrades would be paid for with the savings in energy and water costs as outlined by the ESCO. The City pays for a project up front through a financing, and pays back that financing with money from annual energy and water cost savings through a lease arrangement. The ESCO provides contractors through a formal and open bidding process, keeping in mind that projects need to be completed with minimal impact to City operations. It is important to note that if projected savings are not achieved, the ESCO guarantees the savings by paying the difference. The end result is a low risk opportunity for the City to upgrade equipment while simultaneously reducing energy and water consumption, thereby reducing the City's ongoing operating costs.

Staff has worked with Siemens since June 2009, conducting an assessment of City facilities and identifying opportunities for energy and water saving enhancements as well as evaluating antiquated equipment. Siemens concluded their audit in November 2009 and has been working with Staff to identify the best performing projects should the City pursue a performance contract.

Staff is recommending an EPC with Siemens structured as two separate energy performance contracts. The first EPC is proposed as a traditional energy performance contract financed over a 10 year period utilizing the energy and water cost savings for annual lease payments (noted on the attachments as “Capital Funded Project”) with a total project cost of \$3,384,282 of which \$2,497,094 will be lease financed. The residual project costs will be cash funded by the City in the amount of \$817,288 and by Xcel rebates totaling \$69,900. The second EPC is proposed with no additional financing utilizing a portion of the City’s EECBG allocation (noted on the attachments as “ARRA Funded Project”). The use of EECBG funds was part of the City’s Energy Efficiency and Conservation Strategy approved by City Council in June 2009 and approved by the Department of Energy in September 2009.

Although both contracts are designed for the same purpose of implementing energy and water saving improvements, Department of Energy guidelines prevent the use of EECBG stimulus funds at aquatic centers and golf courses. As several of the upgrades and improvements are recommended for recreation centers with pools and golf courses, Staff separated facility improvement measures that comply with these federal guidelines and therefore can be paid with the federal stimulus funds. The EECBG funded energy performance contract was purposely designed for a one-time payment with use of the City’s EECBG allocation in the amount of \$468,700.

The remaining facility improvement measures have been included in the energy performance contract by using energy and water cost savings to pay for energy and water conservation improvement measures over a 10 year lease-purchase payback period. This proposal also includes a capital contribution at the front of the project of \$817,288 plus a first year of financing capital contribution of \$8,763 (for a total of \$826,051), these funds are proposed to be utilized from the existing General Capital Improvement Fund (GCIF) Building Operations & Maintenance (BO&M) Major Maintenance project accounts for general, recreation and public safety facilities. The project funding also includes \$69,900 in Xcel rebates that will be assigned to Siemens. These funds are scheduled to complete much of the work identified through the energy audit, allowing the work to be completed in a more timely fashion with one primary contractor guaranteeing the work and allowing BO&M to be more proactive in addressing some equipment needs not currently funded. This financing format (i.e., a capital contribution plus 10-year lease-purchase financing) was utilized with the Phase I EPC.

Audit Highlights

The audit addressed lighting, vending, water, water delivery systems (irrigation) and mechanical systems in all BO&M maintained facilities with the exception of utility pump stations. Pump stations are presently monitored as part of the City’s Public Works and Utilities Department’s SCDA system.

Attached are two separate energy performance project lists that include all of the projects proposed for inclusion in the proposed energy performance contract. There are two lists simply due to the fact that one list reflects the projects proposed to be financed through a traditional lease-purchase agreement utilizing the energy and water cost savings for annual lease-purchase payments and the second reflects the projects proposed to be funded using the ARRA/EECBG funds. The charts show facilities, projected costs and projected savings. Not every project listed necessarily has a payback period. More information on this component is explained below.

In general, the recommended lighting retrofit will consist of the following types of measures:

- Replacing T-12 fluorescent lamps and magnetic ballasts with Super T-8 fluorescent lamps and electronic ballasts;
- Installing compact fluorescent lamps in existing incandescent fixtures or replacing the fixtures where appropriate;
- Replacing the incandescent or fluorescent exit signs with LED exit signs;

- Replacing light fixture lenses where they are damaged;
- Replacing outdoor HID pole lights with pulse start metal halide or induction (fluorescent);
- Reducing maintenance costs by having new lamps and ballasts, and by stocking the same types of lamps and ballasts for all the facilities; and
- Standardizing fixtures to Osram-Sylvania products whenever possible.

The 2009 audit reviewed potential energy and irrigation upgrades at 80 locations throughout the City. Locations included in the water audit were all City parks, irrigation systems at City facilities, golf courses and medians.

Irrigation system improvements recommended include energy efficient pumps and motors. The audit noted that many of the City's park irrigation systems underground infrastructure systems were 25 years or older. In several of the City's older parks, recommendations in the audit include major underground renovations because of rising maintenance costs and numerous leaks that contribute to an increase in water consumption. The audit recommends replacing aging time-clock watering devices and controllers with wireless web-based systems on the City's Maxicom-based irrigation system. The audit also noted the current time-clock control systems at some median and right of way locations do not allow for shutting down irrigation systems when they are not needed or during inclement weather.

Other major facility improvement projects in the EPC includes:

- Upgrading building automation systems at City Hall and the Public Safety Center;
- Installing golf cart charging optimization equipment;
- Implementing the use of a liquid pool cover system at the Swim & Fitness Center;
- Installing ice machine optimization equipment at Park Operations, Heritage and Legacy Ridge Golf Courses; and
- Replacing water heat-pump controls, flat-plate heat exchangers, seven boilers and adding destratification fans; installing supplemental heating in void spaces below the north facing City Hall offices; and replacing the three-way valve in the heating loop at City Hall.

Note in the attached proposed project list that the building automation system (BAS) upgrades at Public Safety Center and City Hall do not reflect any energy savings. Although they reflect no quantifiable savings, this type of equipment and building upgrades have proven industry results in obtaining anywhere from 15–30 percent annual reduction in energy costs. An EPC cannot stipulate or guarantee this type of equipment performance as City Staff will have all programming rights for reducing heating and cooling loads in each facility. In addition to controlling space temperatures with automation, BAS can be programmed to reduce energy demand costs (load shedding), which typically account for 10 percent of each facility's energy charges.

During a 2007 facility needs assessment by BornEngineering, the BAS at the Public Safety Center was identified for replacement based on its remaining two years of useful life before needing replacement. City Hall and the Public Safety Center presently have obsolete BAS. City Hall's BAS is outdated (22 years old) and City Staff has to rely on outside HVAC Technicians to program this type of software. Although the BAS system is approximately ten years old at the Public Safety Center, parts have become obsolete and only Trane service technicians can repair and service the energy software program at a cost of anywhere from \$120-\$180 per hour. The proposed BAS for City Hall and the Public Safety Center is a state of the art system that includes training for in-house maintenance Staff, thus eliminating the need to pay outside contractors for repairs and programming. With a new BAS in place at City Hall, the savings are estimated at \$24,000/year based on current energy costs. It is estimated that a new BAS in the City's Public Safety Center will save \$18,500/year.

Financing

The proposed scope of work outlined would be paid for through an EPC. An EPC is structured to provide the funding stream to pay for energy and water saving improvements. Siemens guarantees that the City will reduce energy and water consumption with savings achieved through performance and equipment improvements to cover costs associated with the improvements as part of the EPC.

In March 2010, a request for proposals for financing was sent to seven Finance companies with four response proposals received. After thorough review by the City Finance Department, Municipal Services Group, a vendor specializing government lease financing was chosen based on offering the lowest interest rate. Staff is proposing cash funding a portion of the Capital Funded Project in the amount of \$817,288, assigning Xcel rebates of \$69,900 to the contractor, and financing the balance of \$2,497,094 over a 10-year horizon. This financing term was chosen primarily to ensure that payments do not extend beyond the life expectancy of the equipment. The annual payments on the lease financing would be covered by the savings from energy and water consumption reductions projected and guaranteed by Siemens as part of the EPC.

To fund the ARRA/EECBG energy performance project (i.e., the \$468,700 ARRA Funded Project list attached), Staff is proposing to use \$468,700 of federal stimulus funds through the EECBG allocation received in September 2009. City Council will note the recommended facility improvement measures included in the ARRA funded projects are estimated to achieve an annual energy savings of \$3,643, which translates to a long pay back period. If the facility improvement measures identified in the ARRA funded projects were to be combined with the capital energy performance contract improvements noted previously, the estimated savings would not be enough to generate an annual positive cash flow required by State regulations for financing energy performance contracts. Staff is therefore recommending a separate cash funded project with the use of federal stimulus dollars through the City's EECBG allocation. While there are not quantifiable savings projected through the Siemens audit for the ARRA funded projects, Staff does anticipate some energy savings as well as the ongoing maintenance savings as a result of these improvements.

Staff is proposing that savings created by some equipment replacement (such as lighting and irrigation) be utilized to help fund the replacement of other outdated equipment that do not have similar energy or water savings (i.e., less than a 10 year payback period). Energy and water savings alone will not pay for the current proposed scope of the project. The current proposed scope of work has an approximate 14 year payback period if the energy and water savings alone are to be used to cover the entire project. In order to get to a 10 year financing payback period, which Staff believes is more practical based on the potential useful life of some of the equipment included, some additional initial infusion of funding will be required to cover the costs associated with the project (i.e., \$826,051). Staff believes that combining the individual projects identified in the proposed scope of work is prudent to maximize the benefit of having one contractor completing the scope of work that impacts multiple facilities throughout the City. Additionally, Staff is pleased with the quality of work and responsiveness of Siemens for the work conducted on the Phase I EPC.

The proposed upgrades and replacements would reduce the City's operating expenses. For example, as part of the performance contract, the City will not have to replace light bulbs or ballasts for five years saving approximately \$10,000 a year plus soft costs for these items.

The benefits of the proposed scope of work will enhance the City's customer service by lessening the amount of down time of City operations by contracting through one provider to do these facilities improvements. In addition, these improvements will enhance the reliability of equipment, thus reducing the impact of indoor environmental issues in facilities, such as down time to the City's Information Technology Department server room.

Performance Contracts

Siemens has a proven track record with EPC's in Colorado and around the nation. They have successfully completed EPC's with the City of Westminster Phase I, the City of Arvada, Thompson Valley School District (Loveland), Canon City School District, Red Rocks Community College, and Colorado Department of Human Services.

The State of Colorado has strict laws governing how performance contracts may be designed and minimum requirements on amount of time for Measurement and Verification (M&V) and other components associated with EPC's. In entering an EPC, the City is required to retain Siemens under contract for a minimum of two years for M&V to ensure that the City is achieving the energy savings

guaranteed within the EPC. The cost of the EPC M&V is estimated to be a total of \$30,660 in the first year and \$30,967 in the second year while the cost of the ARRA funded project M&V is \$3,787 for the first year and \$3,825 for the second year. Staff proposes utilizing some of the savings from reduced supplies and contractual maintenance costs resulting from this EPC in the BO&M Division operating budget to cover these two years of contract M&V costs.

The Phase II of energy facility improvement measures using energy performance contracting directly relates to the City Council’s Strategic Goal of a “Financially Sustainable City Government Providing Exceptional Services” by identifying and pursuing a series of projects that will result in significant long-term energy and water cost savings. In addition, these actions coincide with global efforts to reduce dependence on fossil fuels and increase water conservation, which are in line with Council’s goal of “Beautiful and Environmentally Sensitive City.”

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Source	1000.46000.0225	\$0	\$2,517,094	\$2,517,094
Total Change to Revenues			\$2,517,094	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers to GCIF	10010900.79800.0750	\$79,000	\$2,517,094	\$2,596,094
Total Change to Expenses			\$2,517,094	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers General Fund	7500.45000.0100	\$79,000	\$2,517,094	\$2,596,094
Total Change to Revenues			\$2,517,094	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Energy Performance Contract-Phase 2	81075012956.80400.8888	\$0	\$2,517,094	\$2,517,094
Total Change to Expenses			\$2,517,094	

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **18**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO
A LEASE-PURCHASE AGREEMENT FOR THE IMPLEMENTATION
OF THE ENERGY PERFORMANCE CONTRACT**

WHEREAS, City of Westminster, CO (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Colorado, is authorized by the laws of the State of Colorado to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into a certain Equipment Lease-Purchase Agreement (the "*Agreement*") with Municipal Services Group, Inc., or its designee, U.S. Bank, National Association (the "*Lessor*") and Disbursement Agreement (the "Disbursement Agreement") with the Lessor, which Agreements are on file with the City Clerk's Office; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Disbursement Agreement for the purchase, acquisition and leasing of the equipment therein described on the terms and conditions therein provided.

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

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the Disbursement Agreement are hereby approved, subject to such insertions, omissions and changes as shall be approved by counsel of the Lessee, the execution of such documents being conclusive evidence of such approval; and the City Manager of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and the Disbursement Agreement and any related exhibits attached thereto, and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee are authorized to take all action necessary or reasonably required by the parties to the Agreement and the Disbursement Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance Certificate contemplated in the Agreement, including appropriate arbitrage certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Disbursement Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, the Disbursement Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Disbursement Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 4. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

PASSED AND ADOPTED this 24th day of May, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **30**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

A BILL

FOR AN EMERGENCY ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General and General Capital Improvement Funds initially appropriated by Ordinance No. 3432 is hereby increased by \$5,423,364. This is an appropriation of a lease proceeds for the energy audit.

Section 2. The \$5,034,188 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 B-D, dated May 24, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$2,517,094
General Capital Improvement Fund	<u>2,517,094</u>
Total	<u>\$5,034,188</u>

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

Section 4. Notwithstanding any provision of C.R.S. 31-15-801, to the contrary, the lease purchase agreement, as approved by City Council pursuant to Resolution No. 18 shall be effective on May 24, 2010, as provided for by C.R.S. 31-1-102. It is the intent of the City Council that this lease purchase agreement shall not be subject to the procedural requirements of C.R.S. 31-15-801.

Section 5. Because the financing for this lease purchase agreement must be completed before May 29, 2010 in order to avoid increased costs to the City, and the intervention of the holidays prevents the normally scheduled sequence of City Council meetings, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on May 24, 2010, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by the affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 6. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, PASSED AND ADOPTED AS AN EMERGENCY
ORDINANCE this 24th day of May, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**SCHEDULE R:
PROJECTED FINANCIAL PERFORMANCE
For
ARRA Funded Project**

Table R.1 shows the schedule of values and Table R.2 shows the expected financial performance of the project.

Table R.1

FIM Description	Implementation Price	Energy Savings	Associated Savings	Incentive
Boiler Replacement	\$0	\$1,451	\$0	\$0
Boiler Replacement	\$160,942	\$816	\$0	\$0
Pump Motor Replacement	\$6,225	\$557	\$0	\$0
Destratification Fans	\$14,657	\$282	\$0	\$0
Provide heating in void space below offices	\$34,258	\$410	\$0	\$0
Utility Tracking Software System	\$43,259	\$0	\$0	\$0
Refrigeration System Conditioner	\$1,365	\$127	\$0	\$0
Low Voltage for BAS	\$33,329	\$0	\$0	\$0
Low Voltage for BAS	\$69,831	\$0	\$0	\$0
Base Construction Costs	\$363,866	\$3,643	\$0	\$0

Non Construction Items	Implementation Price	Energy Savings	Op Savings	Percentage of Total Cost
Direct Labor	\$59,709	\$0	\$0	12.7%
<i>Engineering</i>	\$17,436	\$0	\$0	3.7%
<i>Construction Management</i>	\$31,821	\$0	\$0	6.8%
<i>Commissioning</i>	\$9,622	\$0	\$0	2.1%
<i>Training</i>	\$830	\$0	\$0	0.2%
Contract Development/O&Ms	\$20,095	\$0	\$0	4.3%
<i>Non Construction Subtotal</i>	\$79,803	\$0	\$0	17.0%

Owner Variable	Implementation Price	Energy Savings	Op Savings	Percentage of Total Cost
Contingency	\$19,023	\$0	\$0	4.1%
Audit	\$3,000	\$0	\$0	0.6%
Bond	\$3,007	\$0	\$0	0.6%
<i>Owner Variable Subtotal</i>	\$25,030	\$0	\$0	5.3%

Total Project Cost	\$468,700	\$3,643	\$0	\$0
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Table R.2

Siemens Building Technologies, Inc.

10 Year Cash Flow Projection

Yr					Liabilities				Net Annual Benefit	Cum Cash Flow
	Energy Savings	Associated Savings (1)	Capital Aid	Total	Payment	Ongoing Service and M&V	Non-M&V TSP	Total		
1	\$3,643	\$0	\$0	\$3,643	\$0	\$0	\$0	\$0	\$3,643	\$3,643
2	\$3,752	\$0	\$0	\$3,752	\$0	\$0	\$0	\$0	\$3,752	\$7,395
3	\$3,865	\$0	\$0	\$3,865	\$0	\$0	\$0	\$0	\$3,865	\$11,259
4	\$3,981	\$0	\$0	\$3,981	\$0	\$0	\$0	\$0	\$3,981	\$15,240
5	\$4,100	\$0	\$0	\$4,100	\$0	\$0	\$0	\$0	\$4,100	\$19,340
6	\$4,223	\$0	\$0	\$4,223	\$0	\$0	\$0	\$0	\$4,223	\$23,563
7	\$4,350	\$0	\$0	\$4,350	\$0	\$0	\$0	\$0	\$4,350	\$27,912
8	\$4,480	\$0	\$0	\$4,480	\$0	\$0	\$0	\$0	\$4,480	\$32,392
9	\$4,615	\$0	\$0	\$4,615	\$0	\$0	\$0	\$0	\$4,615	\$37,007
10	\$4,753	\$0	\$0	\$4,753	\$0	\$0	\$0	\$0	\$4,753	\$41,760
Total	\$41,760	\$0	\$0	\$41,760	\$0	\$0	\$0	\$0	\$41,760	\$41,760

Total Project Cost:	(\$468,700)	Capital Aid Rate:	0.0%
Other Credits (Rebates/Incentives/Capital Con	\$468,700	Guarantee Period(yrs):	2
Other Costs(Construction Interest net Escrow	\$0	Service Inflation Rate:	1.0%
Net Financed Investment:	\$0	Energy Inflation Rate:	Variable
Financial Term in Years:	10	Operational Savings Inflation Rate:	Variable
Interest Rate:	0.00%	Cumulative Savings:	\$41,760
Payment Period:	In Arrears		
No. of Payments:	0		
Annual Payment:	\$0		

Notes:

1. Associated Savings include operational and cost avoidance
2. Payment represents an annual sum of periodic payments.
3. Technical Support Program (tsp) is escalated at Service Inflation
4. Performance Assurance required during guarantee period or
5. Interest Rate Subject to Change.
6. Measurement and Verification costs to be paid out of City O&M cost center.
7. **Measurement and Verification costs for year 1 = \$3,787.00 and year 2 = \$3,825.00**
8. Model Cash Flow will not match financing amortization exactly

**SCHEDULE R:
PROJECTED FINANCIAL PERFORMANCE
for
Capital Funded Project**

Table R.1 shows the schedule of values and Table R.2 shows the expected financial performance of the project.

Table R.1

FIM #	Y/N	Facility	FIM Description	Implementation Price	Energy Savings	Associated Savings	Incentive
1.01	Y	Various	Lighting Retrofits - Int, Sensors, MH Outside, MH Parking	\$514,017	\$44,093	\$11,355	\$60,261
4.00	Y	Anim/Brauch/Pk Ops/Stand/West Hist	Water Conservation	\$0	\$439	\$0	\$800
5.01	Y	Parks	Irrigation System Upgrades	\$1,553,084	\$227,539	\$0	\$0
5.02	Y	Parks	Additional Irrigation Upgrades	\$0	\$0	\$0	\$0
6.02	Y	Countryside Rec Center	Pump Motor Replacement	\$1,480	\$51	\$0	\$400
6.03	Y	Various Parks	Irrigation Pump Motor Replacement	\$46,986	\$1,636	\$0	\$8,440
7.00	Y	Countryside/Heritage/Park Ops	Vending Misers	\$0	\$323	\$0	\$0
8.00	Y	Parks Ops / Heritage / Legacy Ridge	Ice Machine Optimization	\$4,786	\$1,440	\$0	\$0
9.02	Y	City Hall	Repl City Water Heat Pump Ctrl Valve	\$9,223	\$0	\$0	\$0
9.03	Y	City Hall	Replace Flat Plate Heat Exchanger Plates	\$28,982	\$0	\$0	\$0
9.05	Y	City Hall	Replace 3-Way valve in heating loop	\$4,805	\$0	\$0	\$0
9.06	Y	Park Operations Center	Interlock UH's at Veh Storage Bldg	\$4,422	\$158	\$0	\$0
9.07	Y	Parks Operation Center	Remote Prog T-Stat on 3 elec cab htrs	\$2,288	\$0	\$0	\$0
10.01	Y	Swim Fit	Liquid Pool Cover	\$2,684	\$4,283	(\$2,020)	\$0
12.00	Y	Heritage and Legacy Ridge Golf Course	Golf Cart Charging Optimization	\$31,510	\$6,627	\$0	\$0
13.00	Y	Heritage and Legacy Ridge Golf Course	Refrigerator Evap Fan Optimization	\$1,419	\$820	\$0	\$0
14.00	Y	Legacy Ridge Golf Course	Refrigerated Merchandise Optimization	\$23,138	\$1,075	\$0	\$0
15.01	Y	Public Safety Building	Building Automation Upgrades	\$211,500	\$0	\$1,515	\$0
15.02	Y	City Hall	Building Automation Upgrades	\$204,075	\$0	\$0	\$0
Base Construction Costs				\$2,644,399	\$288,484	\$10,850	\$69,901

#		Non Construction Items	Implementation Price	Energy Savings	Op Savings	Percentage of Total Cost
1		Direct Labor	\$405,328	\$0	\$0	12.0%
1a		Engineering	\$103,619	\$0	\$0	3.1%
1b		Construction Management	\$239,600	\$0	\$0	7.1%
1c		Commissioning	\$58,654	\$0	\$0	1.7%
1d		Training	\$3,456	\$0	\$0	0.1%
2		Contract Development/O&Ms	\$106,560	\$0	\$0	3.1%
Non Construction Subtotal			\$511,888	\$0	\$0	15.1%

#		Owner Variable	Implementation Price	Energy Savings	Op Savings	Percentage of Total Cost
1		Contingency	\$177,293	\$0	\$0	5.2%
2		Audit	\$27,000	\$0	\$0	0.8%
3		Bond	\$23,702	\$0	\$0	0.7%
Owner Variable Subtotal			\$227,995	\$0	\$0	6.7%

Total Project Cost				\$3,384,282	\$288,484	\$10,850	\$69,901
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Table R.2

Siemens Building Technologies, Inc.

10 Year Cash Flow Projection

Yr	Energy Savings			Total	Liabilities			Net Annual Benefit	Cum Cash Flow	
	Energy Savings	Associated Savings (1)	Capital Aid		Payment	Ongoing Service and M&V	Non-M&V TSP			
1	\$288,484	\$10,850	\$8,763	\$308,097	(\$308,096)	\$0	\$0	(\$308,096)	\$1	\$1
2	\$297,138	\$10,959		\$308,097	(\$308,096)	\$0	\$0	(\$308,096)	\$1	\$2
3	\$306,053	\$11,178		\$317,231	(\$308,096)	\$0	\$0	(\$308,096)	\$9,135	\$9,137
4	\$315,234	(\$531)		\$314,703	(\$308,096)	\$0	\$0	(\$308,096)	\$6,607	\$15,744
5	\$324,691	(\$541)		\$324,150	(\$308,096)	\$0	\$0	(\$308,096)	\$16,054	\$31,798
6	\$334,432	(\$552)		\$333,880	(\$308,096)	\$0	\$0	(\$308,096)	\$25,784	\$57,582
7	\$344,465	(\$563)		\$343,902	(\$308,096)	\$0	\$0	(\$308,096)	\$35,806	\$93,388
8	\$354,799	(\$574)		\$354,224	(\$308,096)	\$0	\$0	(\$308,096)	\$46,128	\$139,516
9	\$365,443	(\$586)		\$364,857	(\$308,096)	\$0	\$0	(\$308,096)	\$56,761	\$196,277
10	\$376,406	(\$598)		\$375,808	(\$308,096)	\$0	\$0	(\$308,096)	\$67,712	\$263,989
Total	\$3,307,144	\$29,042	\$8,763	\$3,344,949	(\$3,080,960)	\$0	\$0	(\$3,080,960)	\$263,989	\$263,989

Total Project Cost:	(\$3,384,282)	Capital Aid Rate:	0.0%
Other Credits (Utility Rebates/Incentives):	\$69,901	Construction Interest Payment:	\$86,942
Capital Contribution (City Capital):	\$817,288	Guarantee Period(yrs):	10
Net Financed Investment:	(\$2,497,094)	Service Inflation Rate:	1.0%
Financial Term in Years:	10	Energy Inflation Rate:	Variable
Interest Rate:	4.27%	Operational Savings Inflation Rate:	Variable
Payment Period:	In Arrears	Cumulative Savings:	\$263,989
No. of Payments:	40		
Annual Payment:	(\$308,115)		

Notes:

1. Associated Savings include operational and cost avoidance savings.
2. Payment represents an annual sum of periodic payments.
3. Technical Support Program (tsp) is escalated at Service Inflation Rate.
4. Performance Assurance required during guarantee period only.
5. Interest Rate Subject to Change.
7. Measurement and Verification costs to be paid out of City O&M cost center.
8. Measurement and Verification costs for year 1 = \$30,660.00 and year 2 = \$30,967.00
9. Model Cash Flow will not match financing amortization exactly