



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) is 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.

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meeting
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Employee Service Awards
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 June 2011
 - B. Quarterly Insurance Claims Report: April – June 2011
 - C. Swim and Fitness Center Renovation Contract Amendment
 - D. Big Dry Creek Wastewater Treatment Facility Water Quality Building Roof Replacement
 - E. Savery Farm Open Space Rehabilitation Construction Contract Award
 - F. Second Reading of Councillor's Bill No. 23 re Savery Farm Estates Master Plan Implementation Appropriation
 - G. Second Reading of Councillor's Bill No. 24 re 2011 Community Development Block Grant Fund Appropriation
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Councillor's Bill No. 25 re FY2010 Carryover Appropriation into FY2011
 - B. Councillor's Bill No. 26 re Westminster Reformed Presbyterian Church Open Space Grant Supplemental Appropriation
 - C. Resolution No. 24 re Fall 2011 Adams County Open Space Grant Application
11. Old Business and Passage of Ordinances on Second Reading
12. Miscellaneous Business and Executive Session
 - A. City Council
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

WESTMINSTER HOUSING AUTHORITY (separate agenda)



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, JULY 11, 2011, AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Cub Scout Pack 216 led the Mayor, Council, staff and audience in the Pledge of Allegiance.

ROLL CALL

Mayor Nancy McNally, Mayor Pro Tem Chris Dittman, and Councillors Bob Briggs, Mary Lindsey, Scott Major, and Faith Winter were present at roll call. Councillor Kaiser was absent and excused. Steve Smithers, Acting City Manager, Marty McCullough, City Attorney, and Carla Koeltzow, Deputy City Clerk, also were present.

CONSIDERATION OF MINUTES

Mayor Pro Tem Dittman moved, seconded by Councillor Lindsey, to approve the minutes of the regular meeting of June 27, 2011, as presented. The motion passed unanimously.

ACTING CITY MANAGER'S REPORT

Mr. Smithers reported that due to the recent storms, a special tree limb drop-off will be available from 8 a.m. to noon on Saturday, July 16, at the tree limb drop-off site located on the south side of Standley Lake on 88th Avenue between Kipling Street and Independence Drive.

Following this City Council meeting, two items will be discussed at the Council post briefing upstairs. One item is the Rocky Flats Environmental Technology Site update and the other is the sale of the Westminster Commons senior housing facility. The public is welcome to attend.

COUNCIL REPORTS

Councillor Major commented on the terrific Westminster 4th of July celebration and thanked all the City departments who worked, while others had the day off, to put on a great event. He also complimented the Public Works crews for their quick response to the needs for road clean up after the recent storms.

Councillor Briggs reported that he has been on a campaign for a year and a half to have a room named Westminster in the Jefferson County Administration and Courts Facility in Golden. When the building was constructed in 1993/94 there were rooms named after all but two of the Jefferson County cities, Westminster being one of them. Mr. Briggs wanted everyone to know that his campaign has been successful and there is now a room named Westminster that holds 32 people, at the facility.

CITIZEN COMMUNICATION

Neighbors, Karen Smardo, 1327 W. 133rd Circle, and John Greaves, 1331 W. 133rd Circle, both spoke to Council about their concerns regarding the constant use of illegal fireworks in their neighborhood. This activity goes on all day long for about 2 weeks around the 4th of July holiday. They both expressed safety issues and distress over the loud noise. The police do respond when called and are trying their best but are very limited in enforcing the law unless they can catch the users in the act. They requested that Council research others ways of enforcing and educating citizens about the laws regarding illegal fireworks. They would really like a quieter and safer 4th of July next year.

CONSENT AGENDA

The following items were submitted for Council’s consideration on the consent agenda: based on the recommendation of the City Manager, find that the public interest is best served by authorizing the City Manager to execute a contract with Stantec Consulting Services, Inc. for a study of five sewer lift stations in the amount of \$208,541 with a ten percent contingency of \$20,854 for a total project budget of \$229,395; based on the recommendation of the City Manager, determine that the public interest is best served by awarding contracts and approve 2011 expenditures to the following vendors: Titleist up to a maximum of \$70,000, Nike U.S.A. Golf Division up to a maximum of \$60,000, and Oakley up to a maximum of \$60,000; designate Kendra Carberry of the law firm Hayes, Phillips, Hoffman and Carberry, P.C., as special legal counsel for the review and update of employment agreements with the City Manager, City Attorney and Presiding Judge at the rate of \$185 per hour; pass Councillor’s Bill No. 19 on second reading amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans ordinances; pass Councillor’s Bill No. 20 on second reading appropriating monies received from the Westminster Center East Urban Renewal Subarea; pass Councillor’s Bill No. 21 on second reading amending Section 11-4-11(F) of the Westminster Municipal Code requiring a final Federal Communications Commission (FCC) license and consent to independent testing as part of an application for a telecommunications facility; and pass Councillor’s Bill No. 22 on second reading authorizing the execution of a lease with Johnny Chavez (“Lessee”) for property located at 7225 Bradburn Boulevard.

No items were removed from the consent agenda for individual consideration. It was moved by Councillor Major and seconded by Mayor Pro Tem Dittman to approve the consent agenda as presented. The motion carried unanimously.

COUNCILLOR’S BILL NO. 23 RE SAVERY FARM ESTATES MASTER PLAN APPROPRIATION

Councillor Briggs moved, seconded by Councillor Lindsey, to pass on first reading Councillor’s Bill No. 23 to authorize a supplemental appropriation in the amount of \$232,000 reflecting the City’s receipt of an Adams County Open Space Grant for implementation of the Savery Farm Estates Master Plan (approximately 110th and Federal). The motion was unanimously passed on roll call vote.

COUNCILLOR’S BILL NO. 24 RE 2011 CDBG FUND APPROPRIATION

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass on first reading Councillor’s Bill No. 24 to appropriate funds received from the United States Department of Housing and Urban Development, Community Development Block Grant program, in the amount of \$506,907.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Mayor Pro Tem Dittman and seconded by Councillor Winter to adjourn. The motion carried and the meeting adjourned at 7:20 P.M.

Mayor

ATTEST:

Deputy City Clerk



Agenda Item 6 A

Agenda Memorandum

City Council Meeting
July 25, 2011



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 fourth grouping of 2011, employees with 20, 25, 30 and 35 years of service will be celebrated.
 - Presentation of 20-year certificates and pins – Councillor Bob Briggs
 - Presentation of 25-year certificates, pins and checks – Mayor Nancy McNally
 - Presentation of 30-year certificates and pins – Councillor Scott Major
 - Presentation of 35-year certificate and pin – Councillor Chris Dittman

Expenditure Required: \$5,000

Source of Funds: General Fund - Fire Department



Policy Issue

None identified

Alternative

None identified

Background Information

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

John Bazzanella	Fire Captain	Fire
Karen Elrod	Accounting Technician	Finance
Kate Skarbek	Library Services Manager	Parks, Recreation & Libraries

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

Donna Kimble	Fire Lieutenant	Fire
Joel Sherry	Fire Lieutenant	Fire

The following 30-year employees will be presented with a certificate and service pin:

David DeCarlo	Equipment Operator II	Public Works & Utilities
Rick Spahn	EMS Coordinator	Fire
Chris Venters	Secretary	Parks, Recreation and Libraries

The following 35-year employee will be presented with a certificate and service pin:

Tom Settle	Water Treatment Superintendent	Public Works & Utilities
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On July 20, 2011, the City Manager hosted an employee awards luncheon. During that time, three employees received their 15-year service pin, three employees received their 10-year service pin, and eight employees received their 5-year service pin. Recognition was also given to those celebrating their 20th, 25th, 30th and 35th anniversaries. This was the fourth luncheon in 2011 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the fourth luncheon was 325 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.

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 was 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,

Stephen P. Smithers
Acting City Manager



Agenda Memorandum

City Council Meeting
July 25, 2011

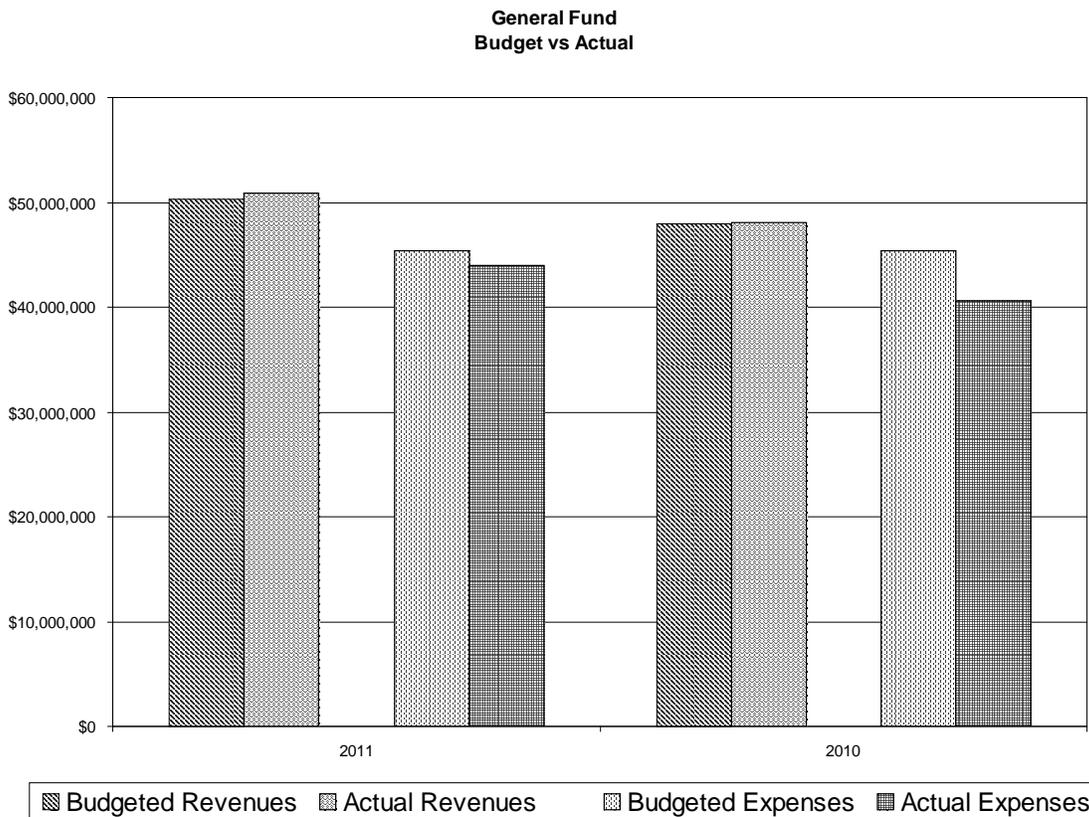


SUBJECT: Financial Report for June 2011
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action
Accept the Financial Report for June 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 9-year historical averages.

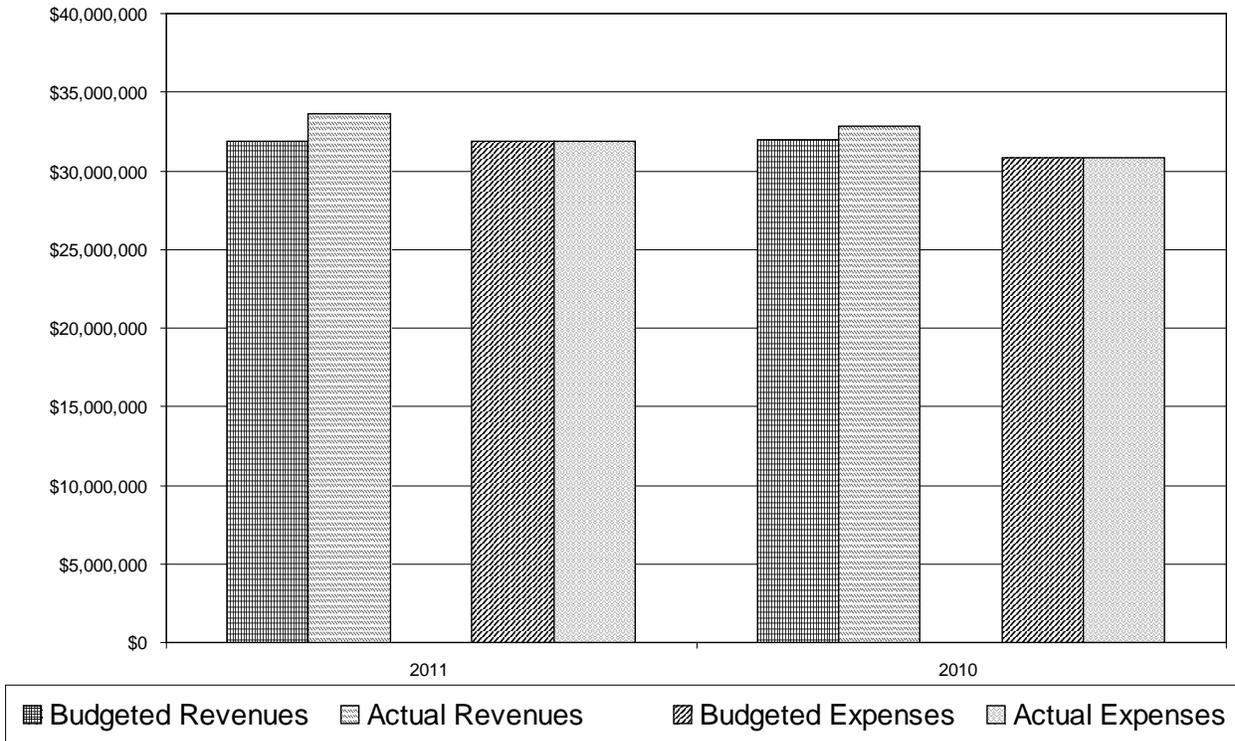
The General Fund revenues and carryover exceed expenditures by \$6,836,200. The following graph represents Budget vs. Actual for 2010-2011.



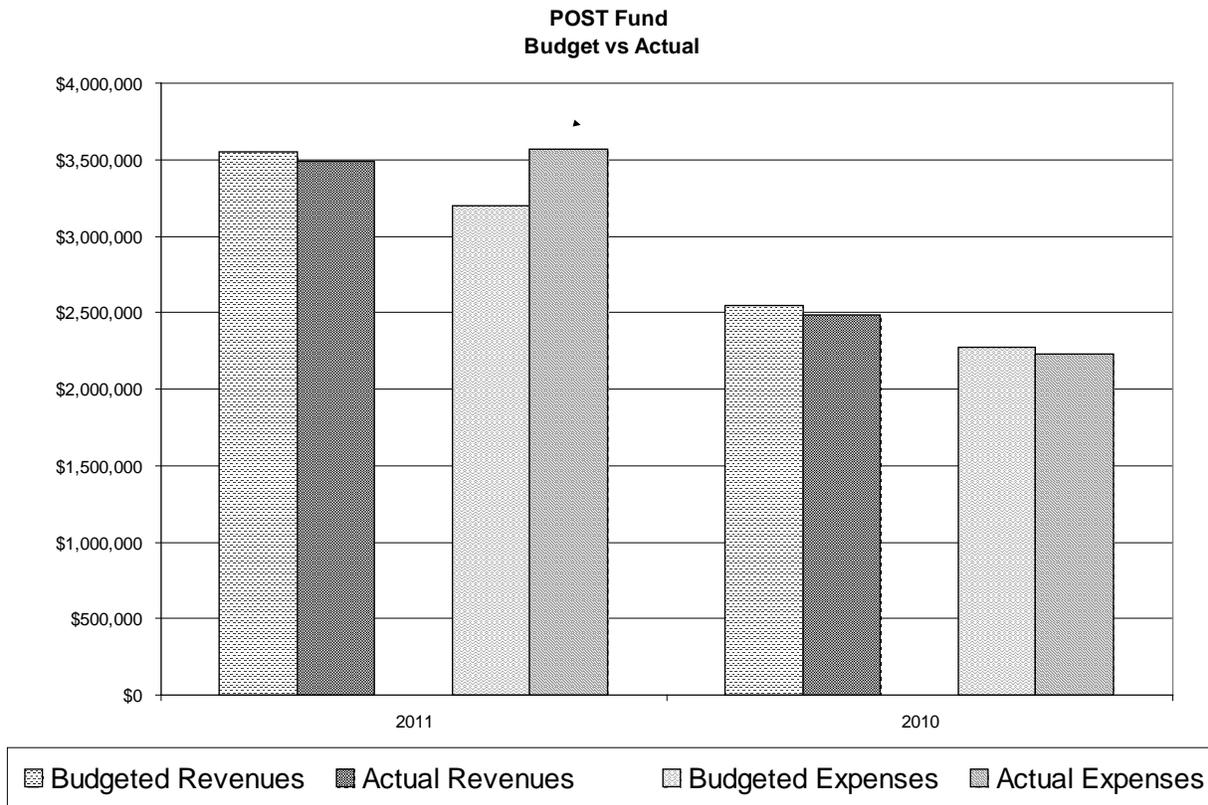
The Sales and Use Tax Fund revenues exceed expenditures by \$1,735,415. On a year-to-date cash basis, total sales and use tax is up 5.0%. Key components are listed below:

- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are even with the prior year.
- Sales tax receipts from the top 50 Sales Taxpayers, representing about 62.0% of all collections, are up 3.4% for the month.
- Urban renewal areas make up 40.9% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 82.0% of this money is being retained for General Fund use.

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



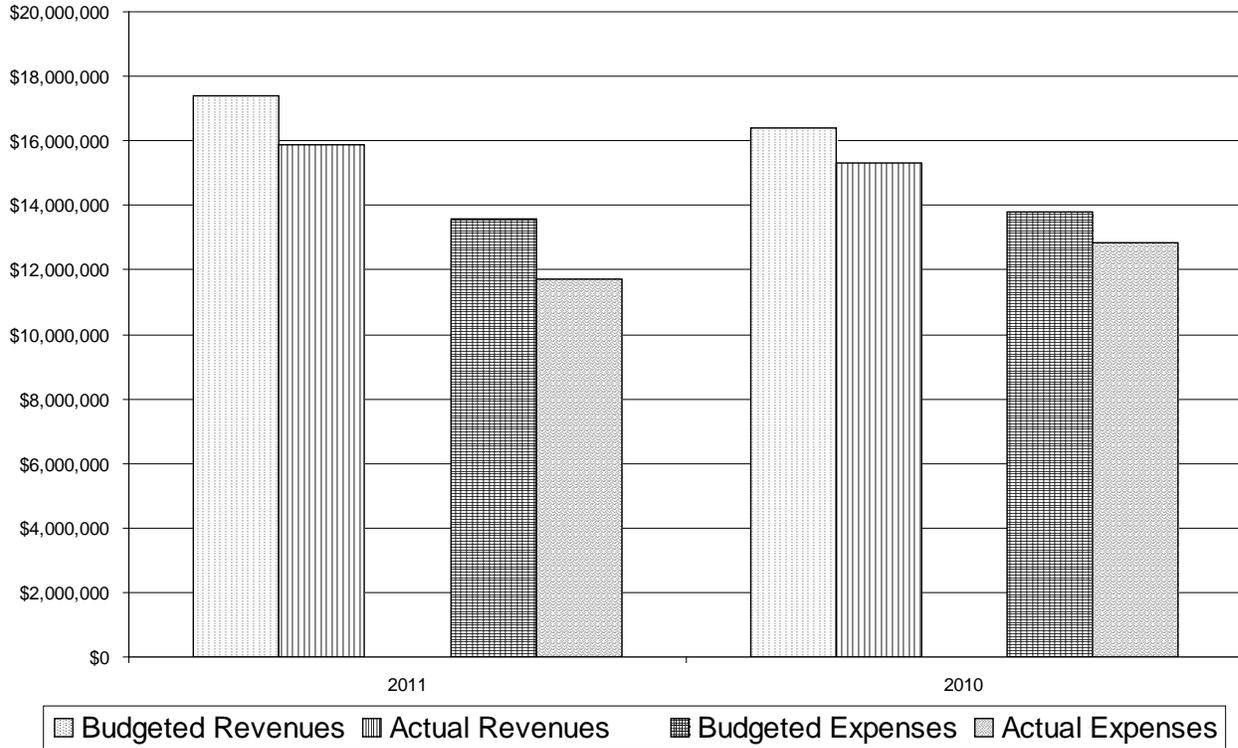
The Parks Open Space and Trails Fund expenditures exceed revenues by \$79,290.



Revenues increased in 2011 compared to 2010 due to intergovernmental receipts and the timing of a transfer payment from the General Capital Improvement Fund for reimbursement of prior year right of way purchases. The 2010 transfer was not made until December. In 2011, expenditures exceed budget primarily due to the spend down of anticipated grant funding not yet appropriated. The grant award is expected within the next few months and will be presented to Council for appropriation at that time.

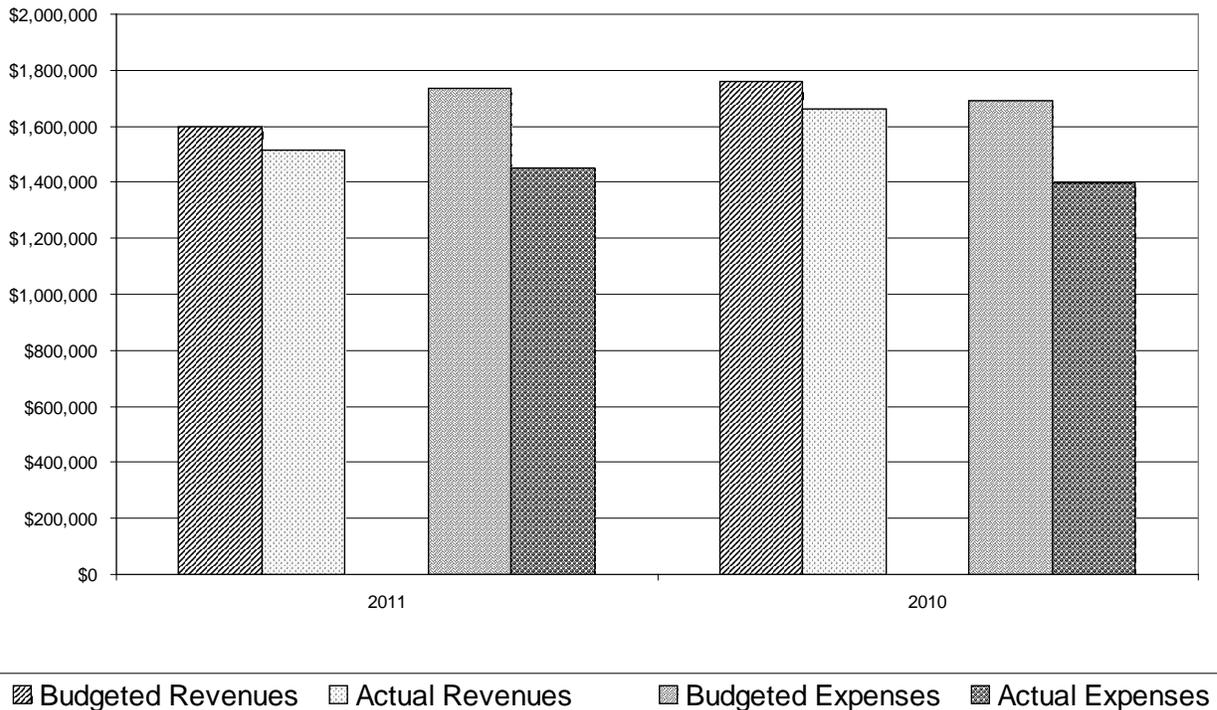
The combined Water & Wastewater Fund revenues exceed expenses by \$6,051,131 primarily due to tap fees coming in higher than anticipated. Operating revenues exceed operating expenses by \$4,171,127. \$11,752,000 is budgeted for capital projects and reserves.

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



The combined Golf Course Fund revenues exceed expenses by \$61,727.

**Golf Course Enterprise
Operating Budget vs Actual**



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

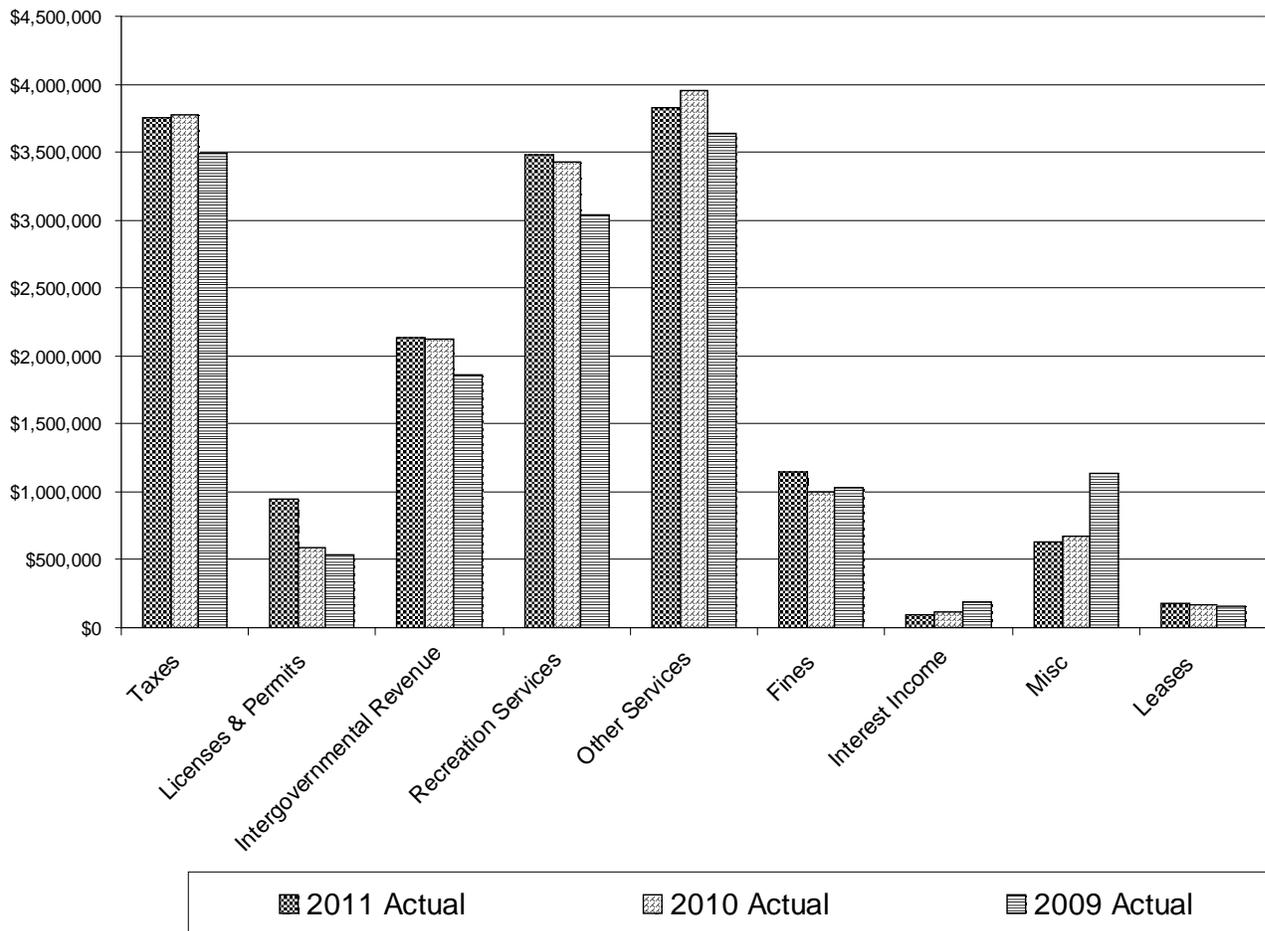
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the result of the City’s operating departments: Police, Fire, Public Works (Street Division), 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 2009-2011 year-to-date.

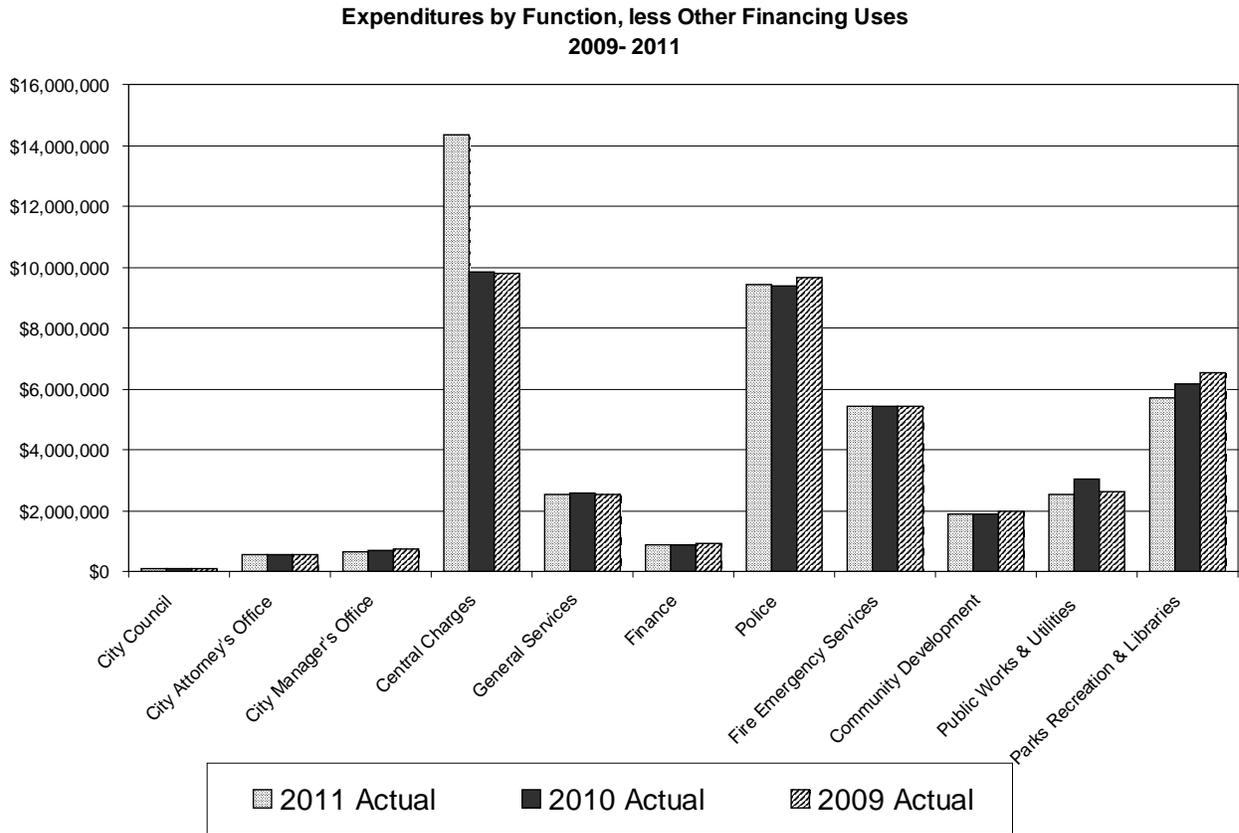
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2009- 2011**



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

- o License and Permits is up primarily due to commercial and Adams County residential building permit revenue.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2009 –2011.



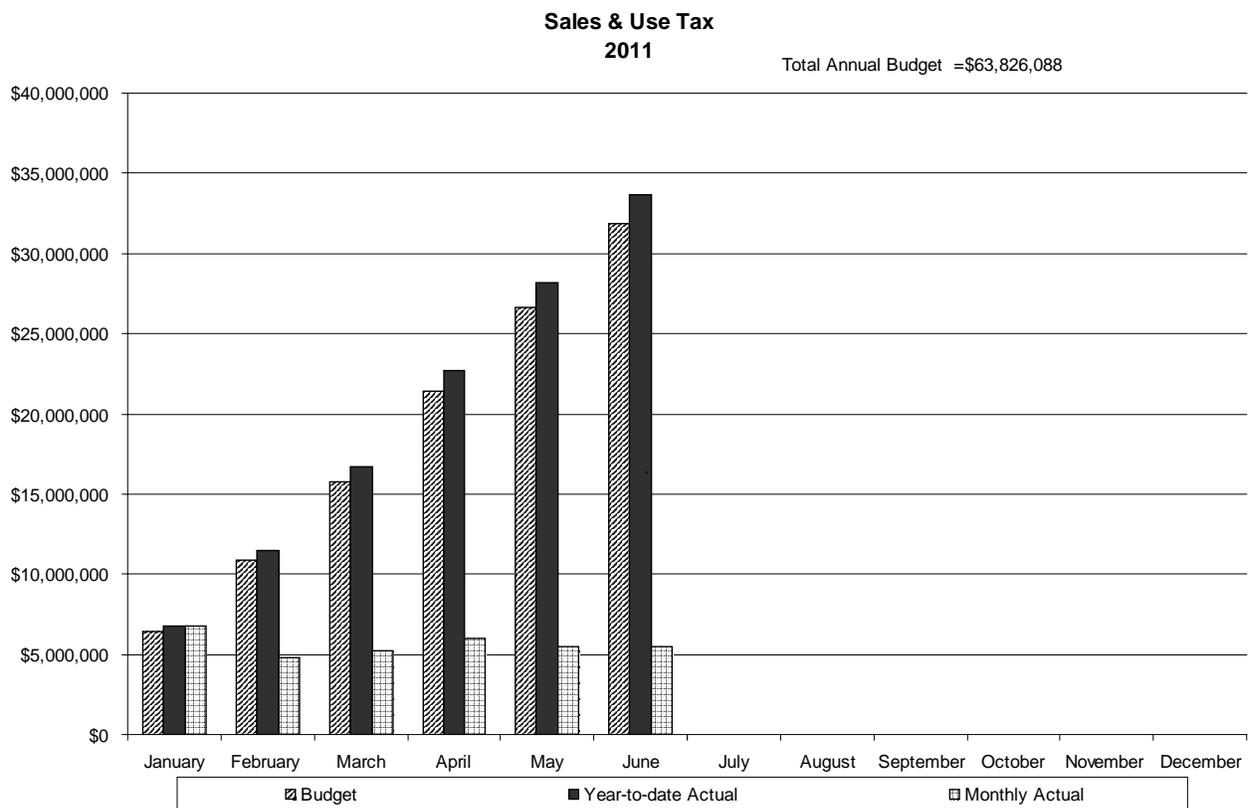
Significant differences between years in General Fund expenditure categories are explained as follows:

- o Central Charges reflects a \$4 million transfer to WEDA for the purchase of the Westminster Mall.

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, and the Debt Service Fund. The Parks, Open Space, and Trails (POST) Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, pay bonds related to the Heritage Golf Course, 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 that funds 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.

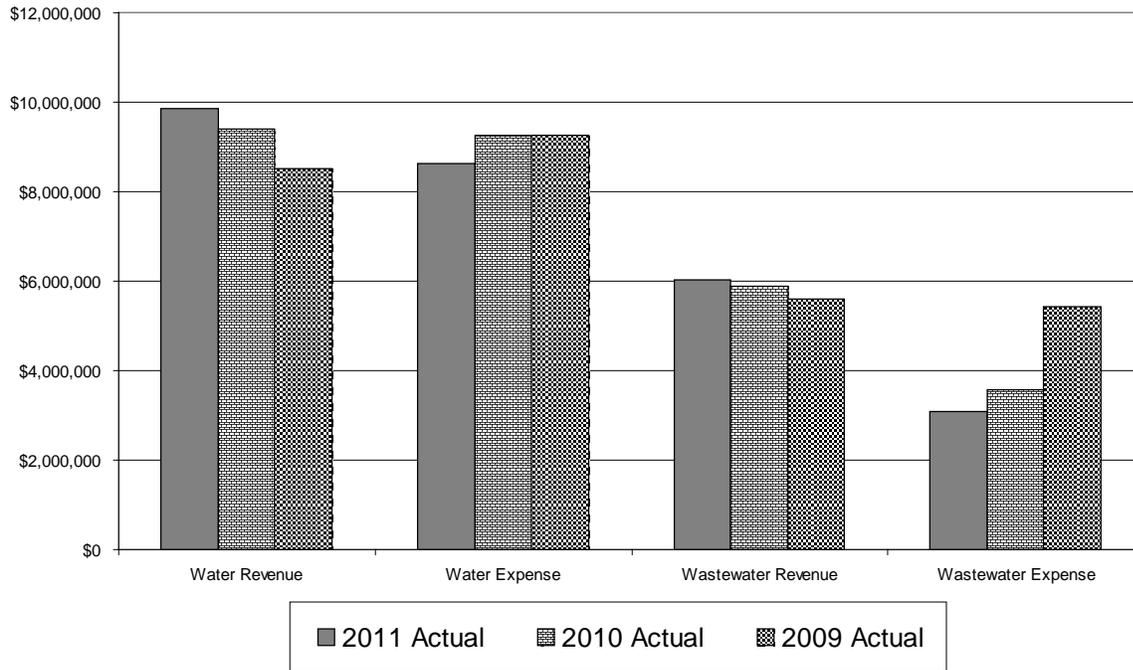


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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.

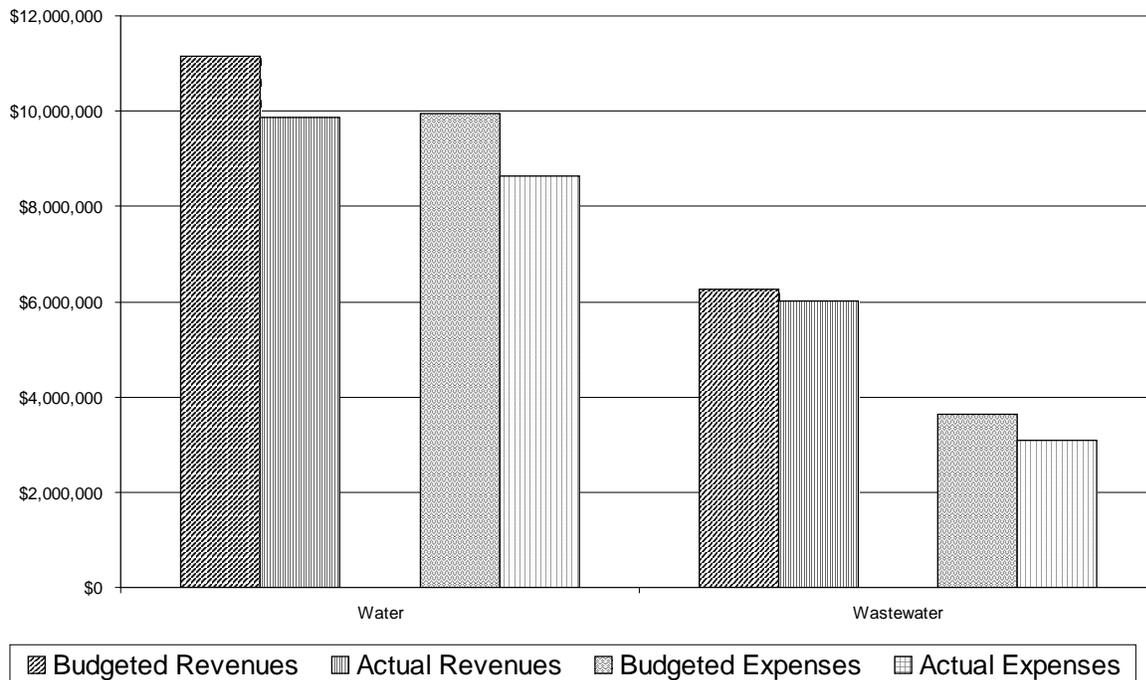
These graphs represent segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2009-2011**



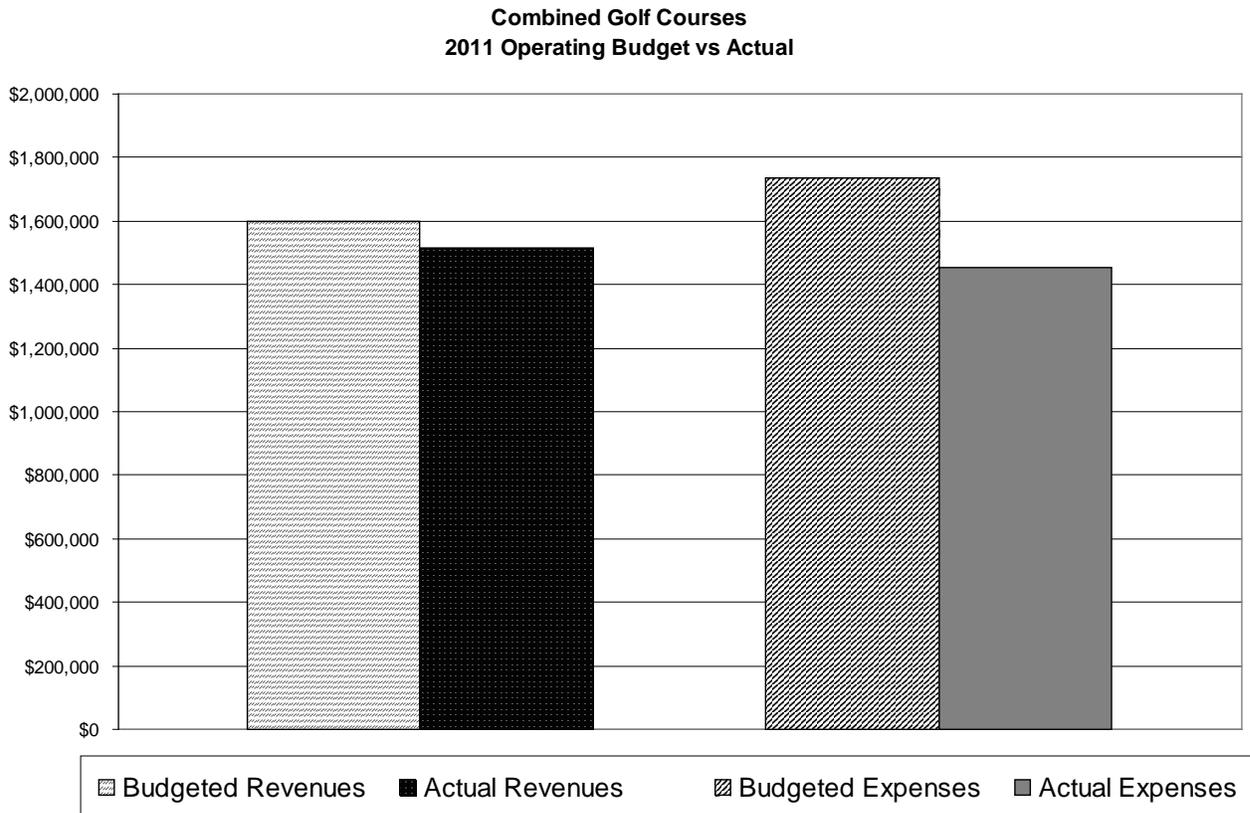
The water revenue annual variance is due to the effect of climatic variations on water consumption as well as changes in billing rates. A one-time vendor payment to decommission the 94th and Quitman lift station is reflected in the 2009 Wastewater Fund expense.

**Water and Wastewater Funds
2011 Operating Budget vs Actual**

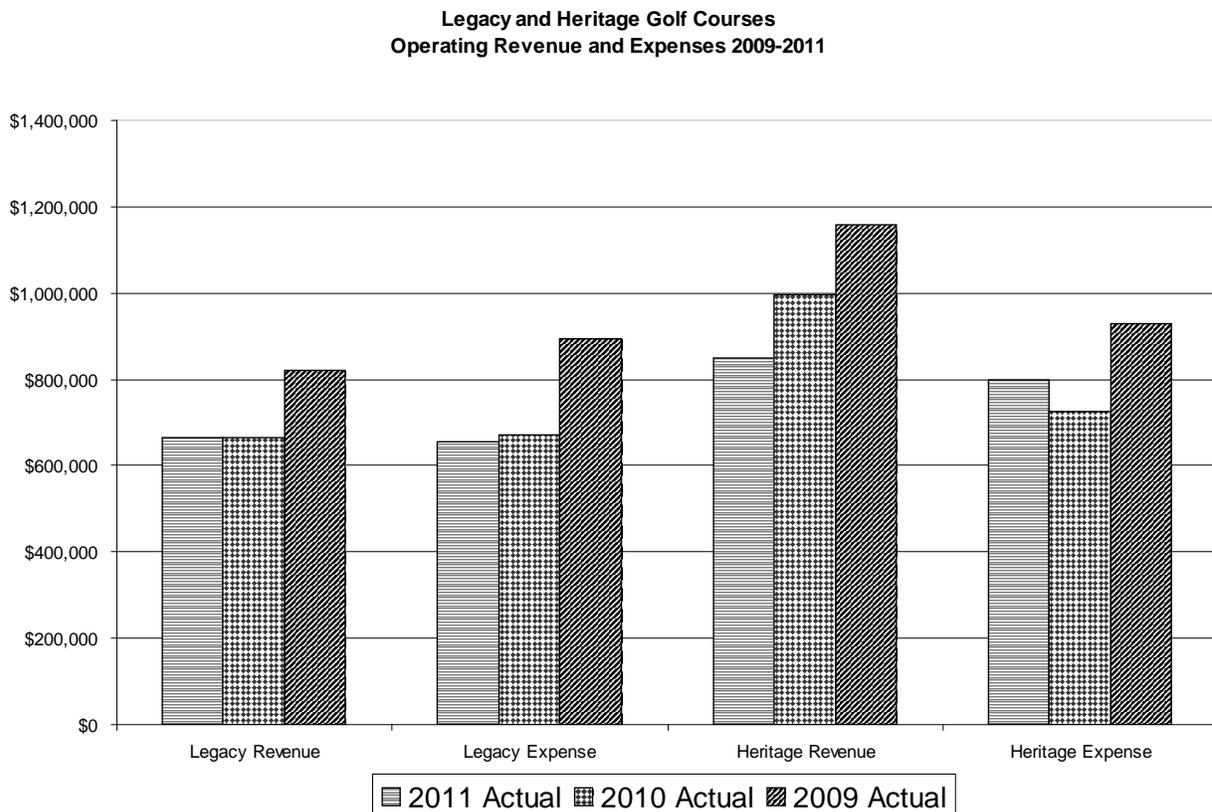


Golf Course Enterprise (Legacy and Heritage Golf Courses)

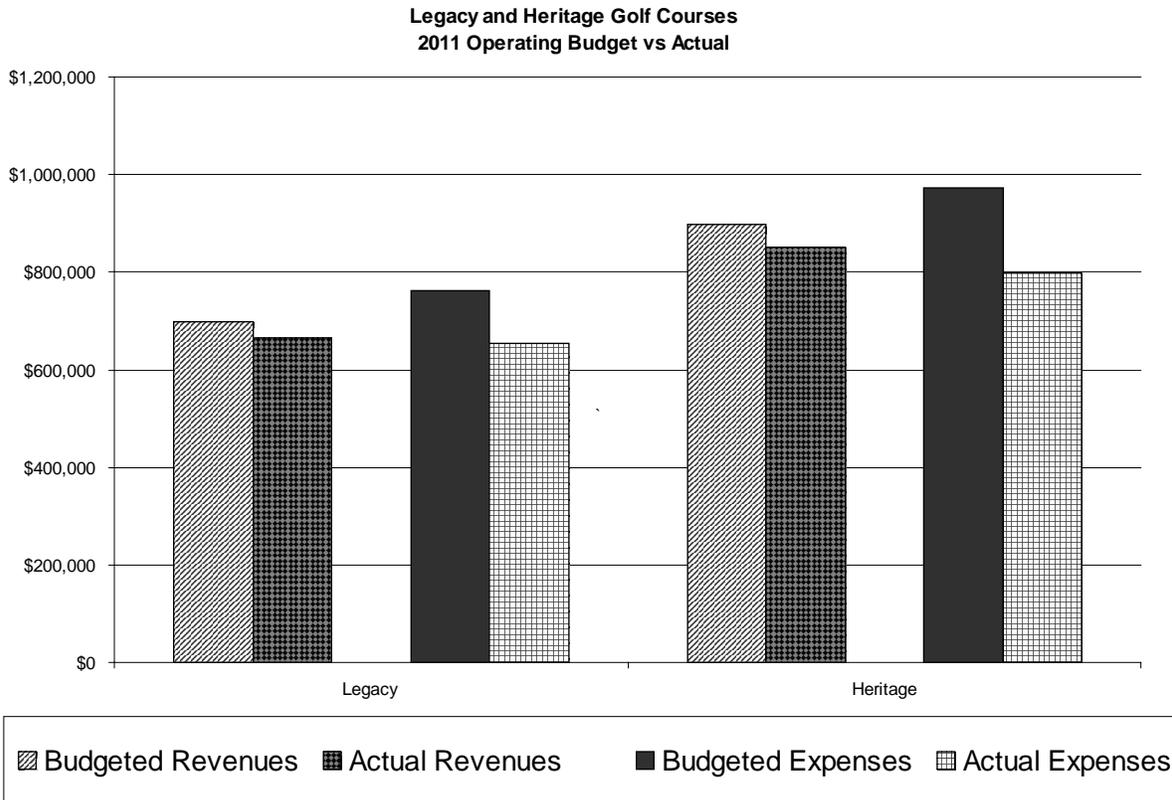
This enterprise reflects the operations of the City's two municipal golf courses.



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



- Capital lease financing in 2009 account for the variances between years in revenues and expenditures for both courses.
- Heritage revenue is also down from prior years due to a decrease in budgeted transfers.



This financial report supports City Council’s Strategic Plan Goal of Financially Sustainable City Government Providing Exceptional Services by communicating timely information on the results of City operations and to assist with critical decision making.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachments

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues and Carryover						
Taxes	5,631,761	3,691,148		3,757,757	66,609	101.8%
Licenses & Permits	1,336,000	652,852	(1)	946,126	293,274	144.9%
Intergovernmental Revenue	4,900,378	1,859,127		2,139,102	279,975	115.1%
Charges for Services						
Recreation Services	6,232,983	3,180,970		3,474,944	293,974	109.2%
Other Services	9,458,827	4,093,104		3,822,108	(270,996)	93.4%
Fines	2,334,000	1,166,519		1,143,680	(22,839)	98.0%
Interest Income	292,900	109,192		93,411	(15,781)	85.5%
Miscellaneous	1,724,144	697,061		632,552	(64,509)	90.7%
Leases	369,181	178,036		178,036	0	100.0%
Interfund Transfers	61,335,994	30,667,997		30,667,997	0	100.0%
Sub-total Revenues	<u>93,616,168</u>	<u>46,296,006</u>		<u>46,855,713</u>	<u>559,707</u>	<u>101.2%</u>
Carryover	4,000,000	4,000,000		4,000,000	0	100.0%
Total Revenues and Carryover	<u>97,616,168</u>	<u>50,296,006</u>		<u>50,855,713</u>	<u>559,707</u>	<u>101.1%</u>
Expenditures						
City Council	240,119	129,253		89,510	(39,743)	69.3%
City Attorney's Office	1,166,119	537,001		555,607	18,606	103.5%
City Manager's Office	1,441,705	670,408		652,179	(18,229)	97.3%
Central Charges	29,950,457	14,354,583		14,355,786	1,203	100.0%
General Services	5,691,531	2,665,166		2,527,736	(137,430)	94.8%
Finance	1,943,482	916,054		886,683	(29,371)	96.8%
Police	19,911,011	9,657,583		9,417,568	(240,015)	97.5%
Fire Emergency Services	11,528,773	5,381,787		5,418,505	36,718	100.7%
Community Development	4,003,892	1,915,003		1,867,690	(47,313)	97.5%
Public Works & Utilities	7,560,378	2,812,206		2,539,721	(272,485)	90.3%
Parks, Recreation & Libraries	14,178,701	6,389,988		5,708,528	(681,460)	89.3%
Total Expenditures	<u>97,616,168</u>	<u>45,429,032</u>		<u>44,019,513</u>	<u>(1,409,519)</u>	<u>96.9%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>4,866,974</u>		<u>6,836,200</u>	<u>1,969,226</u>	

(1) Reflects building development activity in the north area of the City

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

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	43,674,740	22,056,119		23,069,958	1,013,839	104.6%
Sales Tx Audit Revenues	714,000	357,000		380,783	23,783	106.7%
S-T Rev. STX	<u>44,388,740</u>	<u>22,413,119</u>		<u>23,450,741</u>	<u>1,037,622</u>	104.6%
Use Tax						
Use Tax Returns	6,647,234	3,012,473		3,787,411	774,938	125.7%
Use Tax Audit Revenues	785,000	392,500		336,927	(55,573)	85.8%
S-T Rev. UTX	<u>7,432,234</u>	<u>3,404,973</u>		<u>4,124,338</u>	<u>719,365</u>	121.1%
Total STX and UTX	<u>51,820,974</u>	<u>25,818,092</u>		<u>27,575,079</u>	<u>1,756,987</u>	106.8%
Public Safety Tax						
PST Tax Returns	11,374,614	5,725,012		5,782,324	57,312	101.0%
PST Audit Revenues	305,500	152,750		143,487	(9,263)	93.9%
Total Rev. PST	<u>11,680,114</u>	<u>5,877,762</u>		<u>5,925,811</u>	<u>48,049</u>	100.8%
Interest Income	122,000	61,000		46,069	(14,931)	75.5%
Interfund Transfers	203,000	101,500		101,500	0	
Total Revenues and Carryover	<u>63,826,088</u>	<u>31,858,354</u>		<u>33,648,459</u>	<u>1,790,105</u>	105.6%
Expenditures						
Central Charges	<u>63,826,088</u>	<u>31,913,044</u>		<u>31,913,044</u>	0	100.0%
Revenues Over(Under) Expenditures	<u>0</u>	<u>(54,690)</u>		<u>1,735,415</u>	<u>1,790,105</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues						
Sales & Use Tax	4,929,147	2,491,853		2,468,454	(23,399)	99.1%
Intergovernmental Revenue	771,000	771,000		771,000	0	100.0%
Interest Income	45,000	22,500		706	(21,794)	3.1%
Miscellaneous	92,337	46,169		24,620	(21,549)	53.3%
Interfund Transfers	230,000	222,500		222,500	0	100.0%
Total Revenues	<u>6,067,484</u>	<u>3,554,022</u>		<u>3,487,280</u>	<u>(66,742)</u>	<u>98.1%</u>
Expenditures						
Central Charges	5,739,248	3,055,071		3,480,900	425,829	113.9%
Park Services	328,236	141,627		85,670	(55,957)	60.5%
	<u>6,067,484</u>	<u>3,196,698</u>		<u>3,566,570</u>	<u>369,872</u>	<u>111.6%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>357,324</u>		<u>(79,290)</u>	<u>(436,614)</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Funds - Combined						
Operating Revenues						
License & Permits	75,000	37,500		50,220	12,720	133.9%
Intergovernmental Revenue	0	0	(1)	258,630	258,630	
Rates and Charges	43,593,344	17,155,796		15,496,067	(1,659,729)	90.3%
Miscellaneous	425,000	212,500		78,931	(133,569)	37.1%
Total Operating Revenues	<u>44,093,344</u>	<u>17,405,796</u>		<u>15,883,848</u>	<u>(1,521,948)</u>	91.3%
Operating Expenses						
Central Charges	5,947,788	2,973,895		2,931,992	(41,903)	98.6%
Finance	654,410	313,462		288,018	(25,444)	91.9%
Public Works & Utilities	19,790,642	8,922,358		7,300,468	(1,621,890)	81.8%
Parks, Recreation & Libraries	132,272	62,565		28,483	(34,082)	45.5%
Information Technology	2,704,158	1,314,221		1,163,760	(150,461)	88.6%
Total Operating Expenses	<u>29,229,270</u>	<u>13,586,501</u>		<u>11,712,721</u>	<u>(1,873,780)</u>	86.2%
Operating Income (Loss)	<u>14,864,074</u>	<u>3,819,295</u>		<u>4,171,127</u>	<u>351,832</u>	
Other Revenue and Expenses						
Tap Fees	3,700,000	1,922,400	(2)	5,072,846	3,150,446	263.9%
Interest Income	1,015,000	507,500		209,345	(298,155)	41.3%
Debt Service	(7,222,079)	(3,099,689)		(3,099,689)	0	100.0%
Reserve Transfer	(604,995)	(302,498)		(302,498)	0	100.0%
Total Other Revenue (Expenses)	<u>(3,112,074)</u>	<u>(972,287)</u>		<u>1,880,004</u>	<u>2,852,291</u>	-193.4%
Increase (Decrease) in Net Assets	<u>11,752,000</u>	<u>2,847,008</u>		<u>6,051,131</u>	<u>3,204,123</u>	

(1) Reflects Build America Bond interest rate subsidy

(2) Reflects building development activity in the north area of the City

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	37,500		50,220	12,720	133.9%
Intergovernmental Revenue	0	0	(1)	258,630	258,630	
Rates and Charges	31,044,728	10,900,230		9,487,523	(1,412,707)	87.0%
Miscellaneous	415,000	207,500		72,081	(135,419)	34.7%
Total Operating Revenues	<u>31,534,728</u>	<u>11,145,230</u>		<u>9,868,454</u>	<u>(1,276,776)</u>	88.5%
Operating Expenses						
Central Charges	4,204,923	2,102,462		2,075,082	(27,380)	98.7%
Finance	654,410	313,462		288,018	(25,444)	91.9%
Public Works & Utilities	13,909,049	6,155,063		5,080,531	(1,074,532)	82.5%
PR&L Standley Lake	132,272	62,565		28,483	(34,082)	45.5%
Information Technology	2,704,158	1,314,221		1,163,760	(150,461)	88.6%
Total Operating Expenses	<u>21,604,812</u>	<u>9,947,773</u>		<u>8,635,874</u>	<u>(1,311,899)</u>	86.8%
Operating Income (Loss)	<u>9,929,916</u>	<u>1,197,457</u>		<u>1,232,580</u>	<u>35,123</u>	
Other Revenue and Expenses						
Tap Fees	3,000,000	1,539,400		4,008,003	2,468,603	260.4%
Interest Income	870,000	435,000		148,185	(286,815)	34.1%
Debt Service	(5,717,453)	(2,497,635)		(2,497,635)	0	100.0%
Reserve Transfer	(218,463)	(109,232)		(109,232)	0	100.0%
Total Other Revenues (Expenses)	<u>(2,065,916)</u>	<u>(632,467)</u>		<u>1,549,321</u>	<u>2,181,788</u>	-245.0%
Increase (Decrease) in Net Assets	<u>7,864,000</u>	<u>564,990</u>		<u>2,781,901</u>	<u>2,216,911</u>	

(1) Reflects Build America Bond interest rate subsidy

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	12,548,616	6,255,566		6,008,544	(247,022)	96.1%
Miscellaneous	10,000	5,000		6,850	1,850	137.0%
Total Operating Revenues	<u>12,558,616</u>	<u>6,260,566</u>		<u>6,015,394</u>	<u>(245,172)</u>	96.1%
Operating Expenses						
Central Charges	1,742,865	871,433		856,910	(14,523)	98.3%
Public Works & Utilities	5,881,593	2,767,295		2,219,937	(547,358)	80.2%
Total Operating Expenses	<u>7,624,458</u>	<u>3,638,728</u>		<u>3,076,847</u>	<u>(561,881)</u>	84.6%
Operating Income (Loss)	<u>4,934,158</u>	<u>2,621,838</u>		<u>2,938,547</u>	<u>316,709</u>	
Other Revenue and Expenses						
Tap Fees	700,000	383,000	(1)	1,064,843	681,843	278.0%
Interest Income	145,000	72,500		61,160	(11,340)	84.4%
Debt Service	(1,504,626)	(602,054)		(602,054)	0	100.0%
Reserve Transfer	(386,532)	(193,266)		(193,266)	0	100.0%
Total Other Revenues (Expenses)	<u>(1,046,158)</u>	<u>(339,820)</u>		<u>330,683</u>	<u>670,503</u>	-97.3%
Increase (Decrease) in Net Assets	<u>3,888,000</u>	<u>2,282,018</u>		<u>3,269,230</u>	<u>987,212</u>	

(1) Reflects building development activity in the north area of the City

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues						
Charges for Services	2,047,000	1,023,500		990,118	(33,382)	96.7%
Interest Income	81,000	40,500		25,960	(14,540)	64.1%
Miscellaneous	0	0		423	423	
Total Revenues	<u>2,128,000</u>	<u>1,064,000</u>		<u>1,016,501</u>	<u>(47,499)</u>	95.5%
Expenses						
General Services	92,000	35,144		35,913	769	102.2%
Community Development	161,000	78,085		74,488	(3,597)	95.4%
PR&L Park Services	200,000	38,000		37,093	(907)	97.6%
Public Works & Utilities	323,000	132,430		71,777	(60,653)	54.2%
Total Expenses	<u>776,000</u>	<u>283,659</u>		<u>219,271</u>	<u>(64,388)</u>	77.3%
Increase (Decrease) in Net Assets	<u>1,352,000</u>	<u>780,341</u>		<u>797,230</u>	<u>16,889</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Course Funds - Combined						
Revenues						
Charges for Services	2,949,625	1,354,053		1,271,337	(82,716)	93.9%
Interfund Transfers	485,794	242,897		242,897	0	100.0%
Total Revenues	<u>3,435,419</u>	<u>1,596,950</u>		<u>1,514,234</u>	<u>(82,716)</u>	94.8%
Expenses						
Central Charges	239,008	120,178		97,215	(22,963)	80.9%
Recreation Facilities	3,196,411	1,614,177		1,355,292	(258,885)	84.0%
Total Expenses	<u>3,435,419</u>	<u>1,734,355</u>		<u>1,452,507</u>	<u>(281,848)</u>	83.7%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(137,405)</u>		<u>61,727</u>	<u>199,132</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues						
Charges for Services	1,551,299	699,636		664,436	(35,200)	95.0%
Total Revenues	<u>1,551,299</u>	<u>699,636</u>		<u>664,436</u>	<u>(35,200)</u>	95.0%
Expenses						
Central Charges	130,269	65,265		56,542	(8,723)	86.6%
Recreation Facilities	1,421,030	696,305		598,860	(97,445)	86.0%
Total Expenses	<u>1,551,299</u>	<u>761,570</u>		<u>655,402</u>	<u>(106,168)</u>	86.1%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(61,934)</u>		<u>9,034</u>	<u>70,968</u>	

**City of Westminster
Financial Report
For Six Months Ending June 30, 2011**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Charges for Services	1,398,326	654,417		606,901	(47,516)	92.7%
Interfund Transfers	485,794	242,897		242,897	0	100.0%
Total Revenues	<u>1,884,120</u>	<u>897,314</u>		<u>849,798</u>	<u>(47,516)</u>	94.7%
Expenses						
Central Charges	108,739	54,913		40,673	(14,240)	74.1%
Recreation Facilities	1,775,381	917,872		756,432	(161,440)	82.4%
Total Expenses	<u>1,884,120</u>	<u>972,785</u>		<u>797,105</u>	<u>(175,680)</u>	81.9%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(75,471)</u>		<u>52,693</u>	<u>128,164</u>	

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF JUNE 2011

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	385,518	5,259	390,777	188,742	1,094	189,836	104	381	106
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	332,741	19,970	352,711	316,399	32,411	348,810	5	-38	1
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	308,162	1,838	309,999	317,758	3,642	321,400	-3	-50	-4
SHOPS AT WALNUT CREEK 104TH & REED TARGET	210,314	2,173	212,487	230,059	51,900	281,959	-9	-96	-25
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	190,907	1,048	191,955	185,928	2,036	187,964	3	-49	2
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	190,744	690	191,434	198,026	323	198,349	-4	114	-3
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	158,668	700	159,368	228,617	387	229,004	-31	81	-30
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	120,438	31,242	151,680	116,762	27,992	144,754	3	12	5
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	143,468	191	143,660	153,819	375	154,194	-7	-49	-7
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	119,145	205	119,350	110,402	1,433	111,835	8	-86	7
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	117,665	1,115	118,780	134,225	1,145	135,369	-12	-3	-12
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	101,544	2,901	104,445	99,140	299	99,440	2	869	5
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	79,635	653	80,288	83,796	29	83,825	-5	2142	-4
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	77,926	194	78,120	86,524	108	86,632	-10	80	-10
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	77,195	542	77,738	69,967	185	70,152	10	193	11

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
MONTH OF JUNE 2011

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	8,297	62,132	70,429	2,653	24,216	26,869	213	157	162
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	63,373	158	63,531	62,291	146	62,437	2	9	2
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	50,616	655	51,270	44,680	215	44,895	13	204	14
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	49,662	66	49,728	47,562	120	47,682	4	-45	4
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	41,671	158	41,829	42,574	227	42,802	-2	-30	-2
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	40,461	644	41,105	42,531	190	42,722	-5	239	-4
PARK CENTRE INDUSTRIAL CENTER 123RD & PECOS ST DATA RAY	12,118	23,648	35,767	255	1,032	1,287	4661	2191	2680
WILLOW RUN 128TH & ZUNI SAFEWAY	32,057	182	32,239	36,074	224	36,298	-11	-19	-11
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	30,590	72	30,662	20,094	14,442	34,536	52	-100	-11
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	28,440	0	28,440	32,729	0	32,729	-13	*****	-13
	2,971,354	156,437	3,127,791	2,851,606	164,172	3,015,779	4	-5	4

CITY OF WESTMINSTER
GENERAL RECEIPTS BY CENTER
JUNE 2011 YEAR-TO-DATE

Center Location Major Tenant	YTD 2011			YTD 2010			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,198,496	108,377	2,306,873	1,965,946	133,451	2,099,398	12	-19	10
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	2,037,758	9,282	2,047,040	2,164,433	33,914	2,198,347	-6	-73	-7
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,381,107	8,959	1,390,066	1,175,981	2,666	1,178,647	17	236	18
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,369,264	25,452	1,394,716	1,371,559	59,097	1,430,656	0	-57	-3
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,150,965	3,361	1,154,326	1,128,701	2,419	1,131,120	2	39	2
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,056,520	7,703	1,064,224	1,004,151	8,332	1,012,483	5	-8	5
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	970,756	3,410	974,166	1,370,530	2,417	1,372,947	-29	41	-29
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	946,008	3,962	949,970	944,037	4,167	948,203	0	-5	0
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	794,844	19,201	814,045	898,674	7,372	906,046	-12	160	-10
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	761,856	5,355	767,211	731,040	4,287	735,327	4	25	4
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	733,003	171,757	904,760	702,741	190,729	893,470	4	-10	1
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	682,093	35,521	717,614	667,039	2,641	669,679	2	1245	7
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	521,953	6,432	528,385	463,841	842	464,683	13	664	14
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	486,312	2,221	488,533	504,441	1,711	506,152	-4	30	-3
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	387,098	1,191	388,289	411,019	3,344	414,363	-6	-64	-6

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 JUNE 2011 YEAR-TO-DATE

Center Location Major Tenant	YTD 2011 General Sales	YTD 2011 General Use	Total	YTD 2010 General Sales	YTD 2010 General Use	Total	%Change Sales	%Change Use	%Change Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	360,625	2,052	362,678	375,316	333	375,649	-4	517	-3
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	311,753	2,094	313,847	279,157	12,385	291,542	12	-83	8
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	253,636	1,046	254,682	250,935	1,494	252,429	1	-30	1
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	241,367	5,016	246,383	242,761	1,721	244,482	-1	192	1
WILLOW RUN 128TH & ZUNI SAFEWAY	191,729	1,870	193,598	208,496	3,174	211,669	-8	-41	-9
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	172,730	30	172,760	196,646	666	197,312	-12	-96	-12
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	162,405	2,884	165,289	129,442	2,669	132,110	25	8	25
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	161,527	28,388	189,915	64,833	20,409	85,242	149	39	123
BROOKHILL IV E SIDE WADS 90TH-92ND MURDOCH'S	158,883	12,001	170,884	115,618	31,857	147,475	37	-62	16
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	150,263	2,337	152,600	139,071	1,112	140,183	8	110	9
	17,642,950	469,902	18,112,852	17,506,405	533,207	18,039,613	1	-12	0



Agenda Item 8 B

Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Quarterly Insurance Claims Report: April - June 2011

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the Second Quarter 2011 Insurance Claims Report.

Summary Statement

- The attached report provides detailed information on each claim including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Management Officer, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Management Officer. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 2nd quarter of 2011 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow-up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the second quarter of 2011, Staff has noted the following summary information:

- Five of the nine claims reported in the second quarter of 2011 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

Department	2nd Qtr 2011			YTD
	Total Claims	Open	Closed	Total
Police	3	1	2	4
PR&L	2	2	0	5
PWU - Streets	1	0	1	1
PWU - Utilities	0	0	0	2
PWU - Water	3	1	2	3
TOTAL	9	4	5	15

The Risk Management Program addresses Council’s Strategic Plan goals of Financially Sustainable City Government and Safe and Secure Community by working to mitigate the cost of claims to the City and maintaining a loss control program to keep City streets and facilities safe for the general public.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment - Report

**Quarterly Insurance Report
April - June 2011**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2011-088	4/5/2011	PD	Flor Lucio Saucedo	7450 Dakin St. #J-302, Denver CO 80221	Claimant alleges that she and her son sustained injury and property damages when her vehicle was rear ended by an Adams County District 50 school bus.	\$ -	Closed	Claim denied as the City found no evidence of negligence on the part of the City.
2011-125	5/8/2011	PWU - Water Infrastructure	Kent Replogle	10550 Bryant Way, Westminster CO 80234	Claimant's home was damaged when city staff turned water service back on after work on a water line project, causing a pressure surge that caused the ice maker water line in the claimant's refrigerator to leak.	\$ -	Open	City is accepting liability.
2011-120	5/14/2011	PD	Susan Kjoller	10065 Lee St., Westminster CO 80021	Claimant alleges officer assisting citizens at the Shred-a-Thon damaged the tailgate trim on her vehicle.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2011-137	5/26/2011	PD	Zachary Gaines	8300 Sheridan #31-F, Arvada CO 80003	Claimant's vehicle was damaged when a Westminster police officer backed his patrol vehicle into the claimant's vehicle.	\$ 586.30	Open	
2011-144	6/1/2011	PWU - Streets	Dave McDuffee	2895 W 115th Dr., Westminster CO 80031	Claimant alleges his lawn was significantly damaged when two sections of the sidewalk in front of his home were replaced.	\$ -	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2011-155	6/7/2011	PWU - Water Infrastructure	Steven and Janet Perez	10570 Bryant Way, Westminster CO 80234	Claimants' home and vehicle were damaged when the city's contractor, working on a city waterline project, hit claimants' water line service.	\$ -	Closed	Claimant was referred to the contractor that performed the water line project work.
2011-164	6/22/2011	PRL - Parks	Dave Otero	3947 W 73rd Ave., Westminster CO 80030	City employee towing a large trailer to the Rodeo Market, hit and damaged the claimant's parked car with the trailer.	\$ 1,840.45	Open	
2011-173	6/22/2011	PRL - Parks	Raquel Stone	5045 W. 61st Dr., Arvada CO 80003	Claimant alleges her 20 month old child fell while walking in the grass at Westminster Center Park and landed on a metal cistern lid that was so hot it burned the child's leg.	\$ -	Open	CIRSA Investigating
2011-170	6/27/2011	PWU - Water Infrastructure	Marcus Medrano	2576 W 104th Cr., Westminster CO 80234	Claimant alleges his driveway was damaged during a recent waterline project outside his home.	\$ -	Closed	Claimant was referred to the contractor that performed the water line project work.
					TOTAL PAYMENTS	\$ 2,426.75		



Agenda Item 8 C

Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Swim and Fitness Center Renovation Contract Amendment

Prepared By: Kathy Piper, Landscape Architect II-Project Manager

Recommended City Council Action

Authorize the City Manager to execute a contract amendment with Dohn Construction, Inc. establishing the Guaranteed Maximum Price (GMP) of \$1,515,000, which includes previously Council-approved preconstruction and construction fees of \$137, 115, for the renovations to the Swim and Fitness Center and a project contingency of 15%, which totals \$227,250, bringing the total cost to \$1,742,250.

Summary Statement

- On March 8, 2010, Council approved a contract with Sink Combs Dethlefs for architectural services for master planning of the Swim and Fitness Center and locker room renovation in the amount of \$102,874.
- In July of 2010, Staff received City Council's approval to submit a request of \$999,117 to Adams County Open Space to help fund the renovation of the Swim and Fitness Center. Staff presented the grant request on August 26, 2010, and on November 17, 2010, the City was awarded \$205,000 for the outdoor spray ground only.
- On January 24, 2011, City Council approved an amendment to the architectural services contract of Sink Combs Dethlefs in the amount of \$123,933 to include the additional work required to design the splash feature in the renovation project.
- On April 11, 2011, Council approved a Construction Manager/General Contractor (CM/GC) contract with Dohn Construction Inc., identifying preconstruction fees of \$6,250 and estimated construction fees not to exceed \$130,865 for the Swim and Fitness Center Renovation.
- As part of the CM/GC agreement, Staff was to return to Council to amend this existing contract to include a Guaranteed Maximum Price (GMP) for construction of this project.
- Each component of this project requiring a subcontractor has been competitively bid by the general contractor.
- Staff believes a 15% contingency for this project is needed due to the many unknowns associated with a renovation project. These can include opening up walls and floors, old electrical and outdated plumbing.

Expenditure Required: \$1,742,250

Source of Funds: General Capital Improvement Fund –
Swim and Fitness Center Renovation Project



Policy Issue

Should the City proceed with the Swim and Fitness Center Renovation?

Alternatives

1. City Council could reject Staff's recommendation to authorize the contract amendment for the Guaranteed Maximum Price (GMP) for construction of this project.
2. City Council could suspend the project. Staff does not recommend this alternative due to the many commitments made to the public and an Adams County Open Space Grant has been received for partial funding of the splash pad amenity. Additionally, many of the upgrades to the facility, such as locker rooms and hot tub, will help with numerous ongoing maintenance issues.

Background Information

On November 12, 2007, City Council passed Councillor's Bill No. 62 approving the sale of up to \$20 million dollars in Parks, Open Space, and Trails (POST) Special Purpose Sales and Use Tax Revenue Bonds to fund open space land purchases and to fund improvements to parks and recreation facilities, including the renovation of the Swim and Fitness Center. Originally, the Swim and Fitness Renovation was allocated \$1 million, but in April of 2009 \$750,000 was reallocated to the City Park Recreation Center aquatics renovation and remodel. In 2008, carryover appropriation into FY 2009 allocated funds to assist in building back up the budget necessary to complete the expansion project as originally proposed.

The Swim and Fitness Center opened in the 1970's and over the past 40 years has had several renovations to accommodate the changing needs of the community. On March 8, 2010, City Council approved a contract with Sink, Combs, and Dethlefs architects to provide a conceptual facility master plan for future expansion and improvements to the facility. The conceptual master plan encompasses upgraded locker room facilities; a family changing room; evaluation of the core area to eliminate the various levels to help with accessibility for various abilities; the addition of areas for party rooms; upgrading of swim features; and providing a gymnasium, indoor track, and parking accessibility from the north and south ends of the facility. The conceptual master plan is a preliminary document that is subject to change and is dependent on the availability of adequate funding.

Phase one of the Swim and Fitness Center conceptual master plan will concentrate on renovating the current restroom and shower facilities to include family changing rooms and rearranging the existing pedestrian circulation for better patron access to the lockers and pool area. The sauna, steam room and hot tub will be relocated to the pool area to help with user conflicts in the tot pool and front lobby. An outdoor splash feature will be added to the south end of the facility and will be designed to allow the space to be enclosed in the future. On January 3, 2011, Staff presented Council with a Staff Report and presentation detailing a proposed breakdown of the project costs and proposed funding sources for this project. A breakdown of the costs is as follows:

Locker Room	\$779,000
Sauna	\$51,000
Steam Room	\$61,000
Outdoor Waterplay	\$413,000
Hot Tub/Lifeguard Office	\$211,000
Total *	\$1,515,000
15% Contingency	\$227,250
Grand Total	\$1,742,250

* Includes \$137,115 construction fees

Staff has been working since March of 2010 with the project team to complete the design of the renovations hand in hand with cost estimating to keep the project costs within a reasonable range. Staff anticipates receiving building permits and beginning construction in August 2011 and having substantial completion by January 2012.

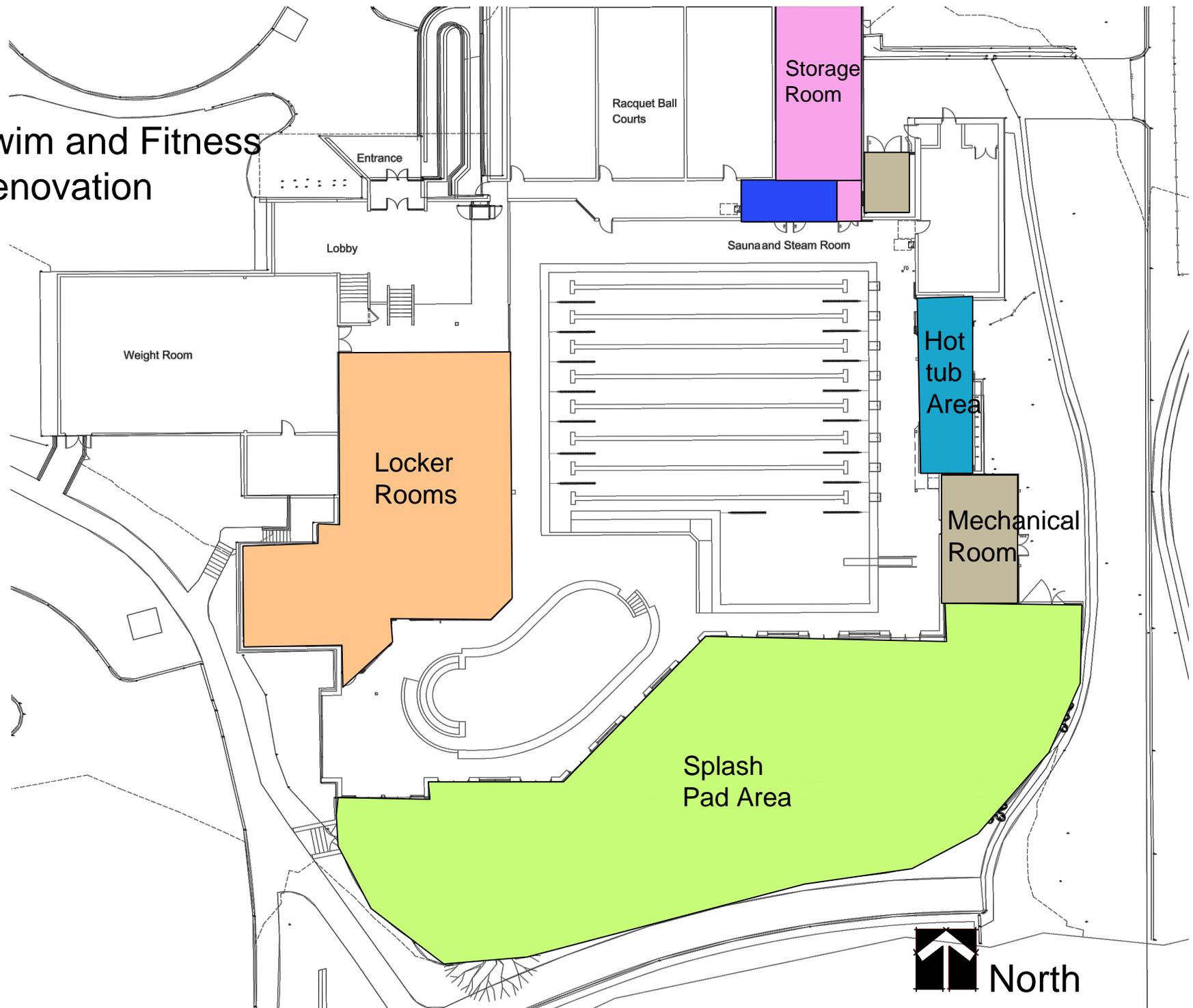
This project supports the City Council Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful and Environmentally Sensitive City.”

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment - Diagram

Swim and Fitness Renovation





Agenda Item 8 D

Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Big Dry Creek Wastewater Treatment Facility Water Quality Building Roof Replacement

Prepared By: Dan Strietelmeier, Senior Engineer
Steve Grooters, Senior Projects Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder B & M Roofing of Colorado, Inc. in the amount of \$71,890 for the roof replacement at the Big Dry Creek Wastewater Treatment Facility Water Quality Building; authorize a 10% contingency amount of \$7,189 bringing the total project budget to \$79,079; and authorize the transfer of \$79,079 from the Critical Sewers Repairs Capital Improvement Account to a new Big Dry Creek Wastewater Treatment Facility Water Quality Building Roof Replacement Capital Improvement Account.

Summary Statement

- The Big Dry Creek Wastewater Treatment Facility Water Quality building houses the testing laboratory and offices for water quality laboratory staff. The existing roof is showing signs of major deterioration and leaks have developed over the past year.
- The building was constructed in 1974, with an addition that occurred in 1982. The roof has reached the end of its useful life and is in need of replacement.
- Replacement of the roof was planned for 2012, but due to the advanced deterioration of the roof, the project timing is being accelerated for construction this summer.
- In April 2011, Staff contacted the roofing asset management firm of the Garland Company who inspected the roof and confirmed the need for replacement. The Garland Company also assisted in identifying five qualified roofing contractors who were invited to submit bids on the roof replacement.
- City Council is being requested to approve a contract with the lowest responsive and responsible bidder, B & M Roofing of Colorado, Inc. for the replacement of the roof.
- The Critical Sewers Repair Capital Project was completed under budget and remaining funds are available to apply towards this roof replacement project.

Expenditure Required: \$79,079

Source of Funds: Utility Fund – Critical Sewers Repairs Capital Project Account



Policy Issues

1. Should City Council award a contract to B & M Roofing of Colorado, Inc. for the replacement of the Water Quality Building roof at the Big Dry Creek Wastewater Treatment Facility?
2. Should City Council authorize the transfer of monies to fund the project?

Alternatives

City Council could choose from the following alternatives:

1. Reject all bids and rebid the project. The City received bids from five roofing contractors, and it is unlikely that new bids would be less costly. The low bid amount was below Garland Company’s estimate for roof replacement.
2. Do not proceed with the roof replacement at the Water Quality Building at this time and wait until 2012 as originally budgeted. The present condition of the existing roof could become a safety hazard and the existing leaks may cause permanent damage to the building.
3. Choose not to authorize the transfer of funds to finance this project. Without transferring capital budget savings into the project account, there would be insufficient funds to complete the roof replacement project. The funds are not needed in the Critical Sewers Repair project, and this is the highest priority use of these funds.

Staff does not recommend any of these alternatives since the bids are competitive, and the transferring of budget savings into the capital account will allow the roof replacement project to be fully funded.

Background Information

The City’s Big Dry Creek Wastewater Treatment Facility (BDCWWTF) is located at 13150 Huron Street. The Water Quality building, located at the facility, contains the laboratory used by water quality staff to perform water testing required by the Colorado Department of Public Health and Environment and the U.S. Environmental Protection Agency. The building roof is over 30-years old and has reached the end of its useful life. Replacement of the roof was scheduled and budgeted as part of the 2012 capital improvement plan. However, roof leaks have developed over the past year triggering the need to accelerate the project and replace the roof at this time.

As has been done with successful roof replacement projects throughout the City, Staff worked with the Garland Company to prepare a bid package and issue a request for bids to five qualified and reputable roof installation companies. On June 23, 2011, bids were received from all five roofing contractors as follows:

<u>Contractor</u>	<u>Bid Amount</u>
B & M Roofing of Colorado, Inc.	\$71,890
Front Range Roofing Systems, LLC	\$77,724
Superior Roofing	\$86,458
D and D Roofing	\$86,789
CMC Roofing	\$97,143
 Garland Company’s Estimate	 \$86,000

Staff is recommending award of the construction contract to B & M Roofing of Colorado, Inc. They are the lowest bid and the company has a history of successfully completing several roofing projects in the area, including City of Westminster projects.

Replacement of the Water Quality Building Roof was identified and budgeted for construction in 2012 as part of the budgeting and planning process. However, savings in the Critical Sewers Repairs Capital account are sufficient to fully fund this contract now and no new funds are requested. Staff requests the transfer of these savings to a new BDCWWTF Water Quality Building Roof Replacement account.

This project helps achieve two of the City Council's Strategic Plan goals: achieving a "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities and contributing to a "Beautiful and Environmentally Sensitive City" by enhancing the reliability of the City's wastewater treatment facilities.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager



Agenda Item 8 E

Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Savery Farm Open Space Rehabilitation Construction Contract Award

Prepared By: Sarah Washburn, Landscape Architect II
Rich Dahl, Park Services Manager

Recommended City Council Action

Authorize the transfer of \$107,785.74 from two existing Capital Improvement Project accounts into the Savery Farm Open Space Rehabilitation account to fund the construction and rehabilitation of the Savery Farms Open Space Master Plan. Authorize the City Manager to execute a contract with the low bidder ECI Site Construction Management, Inc., in the amount of \$316,938.80 for engineering design and construction of improvements at the 8.1-acre Savery Farm Open Space and authorize a 10-percent contingency in the amount of \$31,693.88. Authorize Staff to purchase a portion of site amenities (signage, trash receptacles) in the amount not to exceed \$7,000 with various vendors for a total project cost of \$355,632.68.

Summary Statement

- In January 2010, the City of Westminster acquired the Savery Farm Open Space parcel with financial assistance from Adams County. Once a working mushroom farm, the site requires extensive work to restore the open space and make it usable to the public.
- On May 11, 2011, the Adams County Open Space Board approved a grant in the amount of \$232,000 for implementation of the Savery Farm Master Plan. Matching funds are available from POST Trail Development and General Capital Improvement – Sidewalk accounts.
- Bids were solicited on May 16, 2011, from five reputable construction companies, with ECI Site Construction Management, Inc. offering the lowest bid.
- The funds being requested to be transferred from two existing capital improvement projects are available to be transferred for this project.
- Upon City Council approval, Staff will work with the contractor to coordinate necessary construction permitting. Construction is expected to be completed in the fall of 2012.

Expenditure Required: \$355,632.68

Source of Funds: Adams County Open Space Grant; and funds available in the capital project POST Trail Development and GCIF
Community Development - Sidewalk Accounts



Policy Issue:

Should the City proceed with implementation of the Master Plan at Savery Farm by combining project funds and using Adams County Open Space Grant funds?

Alternative:

The City could choose to not authorize the construction improvements described. Staff does not recommend this, however, as the City has already procured Adams County Open Space Grant funding specifically for this project and development of this project will be a valuable addition to Westminster's existing Open Space network. Forgoing implementation of this project is not recommended due to the grant funding procured and available, and the likelihood that this project would not be fully funded exclusively by the City in the near future.

Background Information:

This 8.1-acre project site is part of the original 80-acre Savery "Savory" Mushroom Farm owned by Charles Savery and developed for mushroom growing and canning operations in the 1930's. Over the next 20 years, Savery's enterprise, marketed as "Great Western Mushroom Company," became the largest of its kind west of the Mississippi. Savery retired in 1953 and as the property exchanged hands, the agricultural use of the site came to a close. Eventually, all the infrastructure of the farm, including mushroom-growing bunkers, residences, general store and more were demolished, with exception of the iconic water tower. The water tower is now a Westminster historic landmark, paying tribute to the rich agricultural history and advertising of that era. Although the property underneath the water tower is not owned by the City, the water tower itself is. In 2006, the City commissioned the historically accurate tower repainting. Subsequently in January 2010, the City was finally able to purchase, with Adams County Grant assistance, the Savery Open Space site directly south of the water tower, which housed some of the mushroom bunkers lined up along Federal Boulevard. The City already owns adjacent Mushroom Pond Open Space to the east.

Acquisition of the parcel initiated an opportunity for the Department of Parks, Recreation and Libraries to draw from the wealth of site opportunities in creation of a Master Plan. The Plan highlights the site's history and the water tower itself, takes advantage of excellent site access via Federal Boulevard and proximity to the regional Farmer's High Line Canal Trail, and enhances the vibrant quality of adjacent Mushroom Pond Open Space. The Parks, Open Space, and Trails (POST) Committee agreed on the Master Plan design, which was then used for communication to surrounding homeowners and as reference in the grant request to Adams County.

In the Adams County spring 2011 grant cycle, Staff identified an additional \$50,000 from the City's General Capital Improvement Fund Community Development - Sidewalk Account, to supplement the \$50,000 cash match from the POST Trail Development funds. Adams County approved this grant request in full in the amount of 69.9% of the project cost, up to \$232,000. This is an opportunity to restore a unique site with a link to Westminster's agricultural history into a natural area once again, and to provide new recreation amenities for the public. This is a high-visibility property directly adjacent to Federal Boulevard, and the improvements would be noticed, appreciated, and used by the public. The public opportunities proposed include:

- Trailhead parking, trails within the site, and trail access to Farmer's High Line Canal Trail for commuters, recreational bicyclists and pedestrians
- Rehabilitated open space and access for wildlife and birdwatching enthusiasts
- Access to the Westminster local historic landmark, Savery Savory Mushroom Farm Water Tower (repainted in 2006), and proposed educational signage highlighting this landmark

Staff refined and added further detail to the Master Plan (see attached) prior to soliciting construction bids. The bid request included final development of drawings for submittal to and approval by the State, consisting of Construction Drawings for the access drive onto Federal Boulevard permitted through the Colorado Department of Transportation (CDOT), and for permitting through the Colorado Department of Public Health and Environment (CDPHE) for land disturbance and grading activities. The bid request also included construction of the improvements shown on the Plan, consisting of extensive earthwork to redistribute the existing soil stockpile on-site, a 22-vehicle asphalt parking lot, almost 1 mile of concrete trails, wood open space fencing, and re-vegetation.

Bids for the work were solicited on May 16, 2011. The bids received on June 28, 2011, are described as follows:

Contractor	Base Bid	Base Bid + alternate (incl. wildflower seeding)
ECI Site Construction Management, Inc.	\$315,849.80	\$316,938.80
GoodLand Construction	\$363,511.43	\$371,134.43
American Civil Constructors	<i>no bid</i>	
LandTech	<i>no bid</i>	
Mortenson Construction	<i>no bid</i>	
Western States Rehabilitation	<i>no bid (subcontractor to ECI)</i>	

ECI Site Construction Management, Inc., has successfully completed projects for the City in the past, including Cobblestone Park. The contractor also has constructed many other successful projects of similar scope to the Savery Farm Open Space Rehabilitation across the state of Colorado.

Staff will create and separately purchase interpretive signage for the site. These signs were budgeted within the Adams County grant and will be separately purchased by Staff outside of the construction contract. The total project budget is therefore described as follows:

Description	Project Budget
Contractor Base Bid + Add Alternate	\$316,938.80
Contractor 10% Contingency	\$31,693.88
Signage	\$7,000.00
Total	\$355,632.68

At the time of the grant request, Staff estimated a total project cost of \$332,000. The lowest qualified bid, plus 10-percent contingency and separate expenses for signage total \$355,632.68. This sum is more than the original estimated project budget at the time of the Adams County Grant request; however, these additional funds are available in the POST Trail Development account for use on this project.

Pending City Council approval, the following funding sources are available to allocate toward the Savery Farm Open Space Rehabilitation construction project:

Adams County Open Space Grant: Savery Farm OS Rehabilitation	\$232,000.00
POST Trail Development Funds	\$73,632.68
General Capital Improvement Fund Community Development - Sidewalk Account	\$50,000.00
Total Available Funding	\$355,632.68

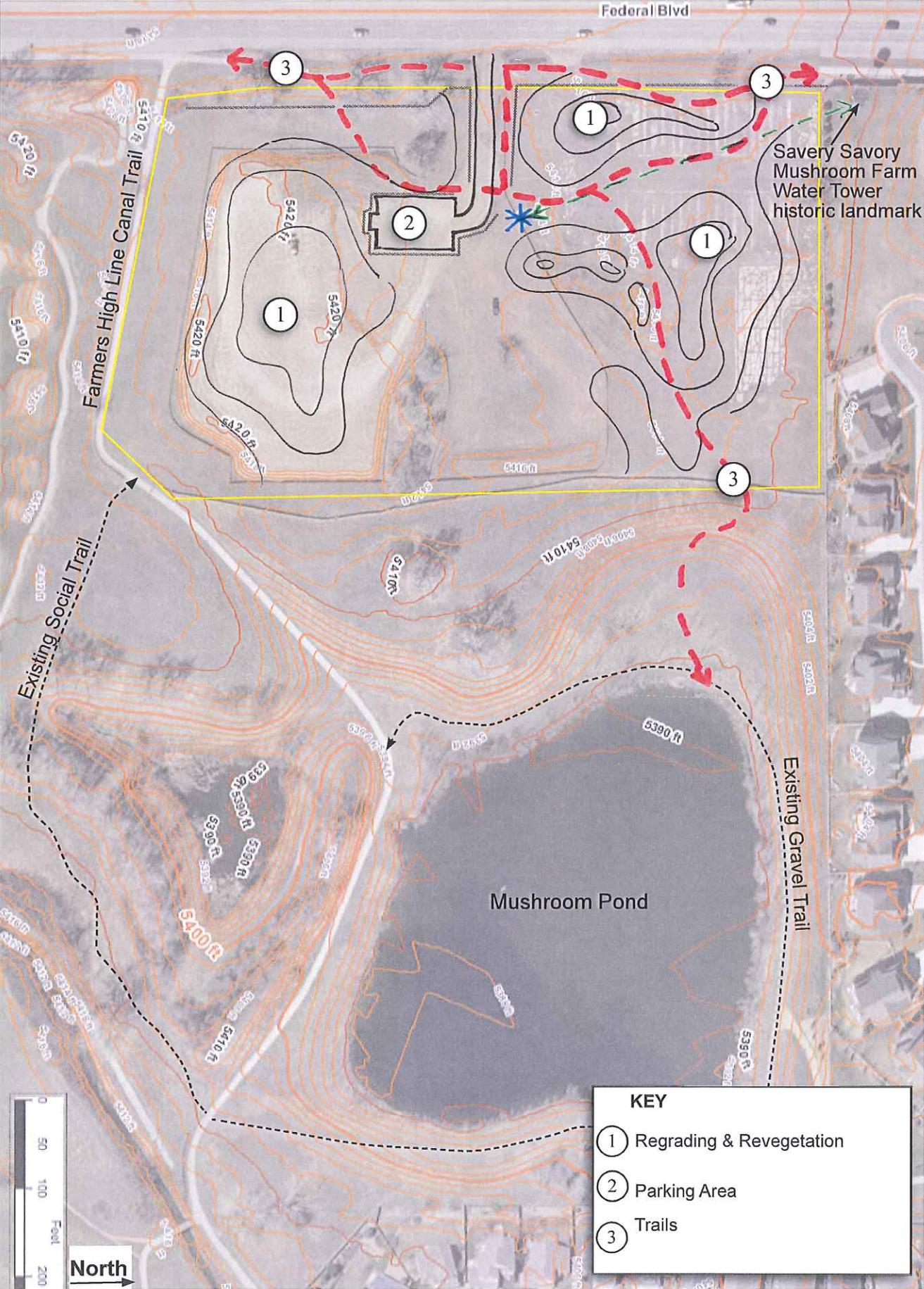
This project supports the City's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services," "Vibrant Neighborhoods in One Livable Community," and "Beautiful and Environmentally Sensitive City" by increasing revenues that support defined City projects, by preserving, restoring, and actively highlighting historic assets, and by providing the City with increased access to trails and open space.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Master Plan Diagram

Savery Farm Master Plan



KEY	
①	Regrading & Revegetation
②	Parking Area
③	Trails



Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Second Reading of Councillor’s Bill No. 23 re Savery Farm Estates Master Plan Implementation Supplemental Appropriation

Prepared By: Richard Dahl, Park Services Manager
Sarah Washburn, Landscape Architect II

Recommended City Council Action

Pass Councillor’s Bill No. 23 on second reading authorizing a supplemental appropriation in the amount of \$232,000 reflecting the City’s receipt of an Adams County Open Space Grant for implementation of the Savery Farm Estates Master Plan.

Summary Statement

- In July 2010, Staff received City Council’s approval to submit a request of \$282,000 to Adams County Open Space to assist with the master plan implementation of the Savery Farm Open Space. Staff presented the grant request on August 26, 2010, but was denied recommendation for funding at that time.
- In January 2011, Staff received City Council’s approval to submit a second request of \$232,000 to Adams County for the Savery Farm Open Space project. Staff presented this grant request on February 24, 2011, and on May 11, 2011, the City was awarded the full request of \$232,000 to implement the master plan at this site.
- The master plan of this open space will include re-grading of the fill dirt located on site, construction of a small parking lot and concrete trails, installation of open space fencing and signage along Federal Boulevard, and revegetation of the site with native grasses.
- Staff will bring the recommended construction bid to City Council for approval later this year. Construction is expected to be complete in the summer of 2012.
- This Councillor’s Bill was passed on first reading July 11, 2011.

Expenditure Required: \$232,000
Source of Funds: Adams County Open Space Grant

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachment - Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2011

INTRODUCED BY COUNCILLORS
Briggs - Lindsey

A BILL

FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED REVENUES IN THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$232,000. This appropriation is due to the receipt of an Adams County Open Space Grant.

Section 2. The \$232,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10A dated July 11, 2011, (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$232,000</u>
Total	<u>\$232,000</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 11th day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of July, 2011.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Second Reading of Councillor's Bill No. 24 re 2011 Community Development Block Grant Fund Appropriation

Prepared By: Signy Mikita, Community Development Program Planner

Recommended City Council Action

Pass Councillor's 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 \$506,907.

Summary Statement

- This Councillor's Bill was passed on first reading on July 11, 2011, appropriating the City's 2011 Community Development Block Grant (CDBG) funds in the amount of \$506,907, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2011 CDBG allocation was designated to fund the 2011 CDBG projects, pursuant to City Council approval on November 22, 2010.
- CDBG funding has been decreasing for several years, from \$696,000 in 2003 to \$559,370 in 2009. Although the 2010 allocation of \$604,991 was a one time increase of 8% (\$45,621 more than the 2009 grant), the 2011 allocation was decreased by 16% or \$98,084.

Expenditure Required: \$506,907

Source of Funds: 2011 Community Development Block Grant Funds

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Ordinance



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2011

INTRODUCED BY COUNCILLORS
Dittman - Major

**A BILL
FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE COMMUNITY
DEVELOPMENT BLOCK GRANT FUND AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2011 ESTIMATED REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$506,907. This appropriation is the amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2011.

Section 2. The \$506,907 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10B, dated July 11, 2011 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$506,907</u>
Total	<u>\$506,907</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 11th day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of July, 2011.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Councillor's Bill No. 25 re FY2010 Carryover Appropriation into FY2011

Prepared By: Steve Smithers, Assistant City Manager
Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Pass Councillor's Bill No. 25 on first reading, appropriating FY2010 carryover funds into the FY2011 budgets of the General, General Fund Stabilization Reserve, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, General Capital Outlay Replacement and Conservation Trust Funds.

Summary Statement

- The City Council annually reviews and appropriates carryover funds from the previous year's budget into the current year budget for the following:
 - those items and services included in the previous year's budget but not received or provided until the current year's budget;
 - new items and services not included in the previous year's budget or funds that were identified as available for these new priorities in late 2010, but the items or services were not received or provided until the current year's budget;
 - existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Total funding of \$9,426,120 to be appropriated for the items recommended in this memo comes from unrestricted revenues and unexpended 2010 funds in the various amounts identified.
- The carryover appropriation takes place annually once the audit is completed for the prior year and carryover amounts are finalized.

Expenditure Required: \$9,426,120

Source of Funds: 2010 Carryover from the General, Fleet, Utility, Storm Drainage, Sales & Use Tax, General Capital Outlay Replacement, Community Development Block Grant and Conservation Funds



Policy Issue

Should the City appropriate carryover funds as proposed?

Alternatives

1. City Council could decide not to appropriate any of these funds at this time. This is not recommended as many of the carryover requests are for items and services that have already received City Council approval during the FY2010 Budget process as priority expenditures for the City.
2. City Council could choose to approve the carryover appropriation for only previously appropriated operating items. Staff recommends utilizing the carryover funds for the previously appropriated operating items as well as the new operating and capital improvement projects noted in this memorandum to maximize the use of these funds in providing services to residents and businesses.

Background Information

Total funding of \$9,426,120 is recommended to be appropriated for the items included within this memo from available revenues and unexpended 2010 funds in the various amounts identified.

PROPOSED RE-APPROPRIATION OF OPERATING ITEMS PREVIOUSLY APPROVED IN 2010

Certain items were budgeted and ordered in 2010 but were not received until 2011. In addition, certain services, authorized in 2010, were not fully performed by the end of the year. Under standard accounting procedures, these remaining funds should be re-appropriated in the new year to complete the desired purchase or service. Staff recommends the funds described below be re-appropriated in 2011.

GENERAL FUND

Central Charges – One item totaling \$8,968 for legal services for Barbara Banks' work (\$6,316) on development agreements and Ken Fellman's work (\$2,652) on the Xcel franchise that arise throughout the year. Ms. Banks is a respected real estate attorney who provides unique expertise on certain City development projects. One of Mr. Fellman's specialties is in public utilities franchising; he assisted the City in the development of most recent franchise agreement with Xcel Energy.

Community Development – One item totaling \$9,000 for the development of Transit Oriented Development (TOD) Design Guidelines for South Westminster by the architecture and urban design firm, Van Meter Williams Pollack. Work commenced in 2009 but was not completed in 2010 due to aligning efforts with the Regional Transit District (RTD) negotiations on the South Westminster Intergovernmental Agreement, which is still under negotiations.

Fire Department – One item totaling \$13,959 from the annual Emergency Management Performance Grant (EMPG) used for planning and exercise improvements. Planning and guidelines were completed in 2010 and exercises will be held in 2011. The EMPG 2010 grant performance period extends to 6/30/2011 and these funds will be expended by the end of the performance period.

Parks, Recreation & Libraries – One item totaling \$6,824 in scholarship funds, received in 2010 from citizens and recreation program participants, for the Youth Sports Program. These funds are intended to supplement registration fees for City-sponsored recreation programs for individuals needing financial assistance. These funds will be available for scholarships in 2011.

Police Department – One item totaling \$28,640 for installation of the Gregory Hill radio building. The project commenced mid-2010 but encountered unanticipated delays, which resulted in the project being completed in 2011. This radio building improved radio communications for police and fire in the southern part of Westminster.

UTILITY FUND

Finance Department – One item totaling \$3,859 for a chair and workspace reconfiguration. The workspace reconfiguration was to the Utility Billing area within the Finance Department and commenced, but was not completed, prior to December 31.

Public Works & Utilities Department – One item totaling \$36,000 for repairs to High Service Pump #3 at the Semper Water Treatment Facility. Pump repairs were not completed in 2010 due to availability of parts; the parts were ordered but not delivered in time to complete the repairs in 2010.

PROPOSED APPROPRIATION OF NEW OPERATING ITEMS

Staff recommends utilizing some of the General and Utility Funds' carryover moneys available to help address new spending needs in the funds identified below. The items listed below are intended to be proactive measures to help minimize the impact on future budgets for needed items.

GENERAL FUND

Central Charges – Three items totaling \$1,092,678 as follows:

1. \$50,000 for miscellaneous studies and projects unanticipated in 2011. A total of \$129,000 was originally budgeted in the professional services account in 2011. These funds represent savings in the Central Charges 2010 operating budget and are proposed to offset additional costs associated with special projects, centennial activities, executive team recruitments, facilitation services, federal lobbyist and special studies that might arise per City Council and Staff requests.
2. \$175,000 for South Westminster Urban Renewal Area (URA). For 2011, it is anticipated that the cash available in South Westminster URA will not be sufficient to cover all of the obligations for the URA. Obligations include debt service, economic development agreement payments and interfund loan payments. In order to have sufficient cash to fulfill the listed obligations for 2011, Staff proposes that the General Fund transfer these funds to the Westminster Economic Development Authority Fund for the South Westminster URA and assist with these obligations.
3. \$867,678 to replenish the General Fund Stabilization Reserve (GFSR) created in 2009. Funds from this reserve were needed to help balance the 2010 Budget and its current balance is \$2,323,626, according to the 2010 audit. Per City Council adopted policy, the GFSR target range is between 5% and 10% of the total Sales and Use Tax Fund revenues budgeted for the year, as funding allows. For 2011, the Sales and Use Tax Fund revenues budgeted totals \$63,826,088; the target range is between \$3,191,304 (5%) to \$6,382,608 (10%). The current GFSR balance is 3.6% of the 2011 Sales and Use Tax Fund total. The funds proposed through carryover will bring the total GFSR balance \$3,191,304, which is equal to 5%.

Community Development – One item totaling \$20,108 for engineering services for two Colorado Department of Transportation (CDOT) projects – the 120th Avenue improvement project (\$9,108) and Lowell Boulevard/US 36 bridge replacement project (\$11,000). For the 120th Avenue improvement project, CDOT required that the City conduct traffic and air quality studies and prepare reports. For the Lowell Boulevard/US 36 bridge replacement, CDOT required that any proposed City of Westminster enhancements be designed in time to be included within their issuance of the RFP this summer.

Finance Department – Two items totaling \$14,000 as follows:

1. \$2,000 for two replacement scanners associated with the laserfische records retention computer system. The current scanners, which were issued with the original laserfische project, cannot communicate with the Microsoft 7 operating system and need to be replaced.
2. \$12,000 for lockbox services associated with sales and use tax filings. As noted in the June 27 Post City Council Meeting Staff Report on Core Services, the Sales Tax Division included mandatory electronic sales and use tax return filing in the Adopted 2011 Budget. This included the elimination of funds associated with sales and use tax coupon printing, postage and a lock box to receive payments. Due to the time involved in setting up the ACH credit option and the elimination of the vendor's fee, Staff distributed 2011 sales and use tax coupon books to existing businesses as in years

past. The cost for postage and printing the 2011 coupon books was absorbed within the Finance Department budget in 2010. However, the cost of the 2011 lock box is being requested as 2010 carryover into 2011. Recognizing that only approximately 16% of returns are currently being filed electronically and that the ACH credit payment method will not be available until later this year (a preferred business payment method as noted in the June 6 Staff Report), Staff is recommending to delay mandatory electronic sales and use tax filing until a future date. Staff will revisit funding of the lock box in the Sales Tax Division budget with the mid-year 2012 Budget review.

UTILITY FUND

Public Works & Utilities – One item totaling \$28,059 to replace the computer and associated software used for reading meters. National Meter and Automation, Inc., who provides the meter reading application and Orion Reading laptop and software, notified the City in May that they will no longer support the City's current application and laptop. The cost for the new laptop and software is \$25,508, plus a 10% contingency of \$2,551 for the total of \$28,059. This is a very important software application that is critical for efficient and accurate meter reading throughout the City.

UTILITY RESERVE FUND – WATER AND WASTEWATER

Staff proposes appropriating a total of \$332,911 to the Rate Stabilization Reserve (RSR) and \$3,388,566 to the Capital Project Reserve (CPR). No additional funds are recommended to be added to the Water Fund portion of the RSR Fund as the fund is exceeding the maximum funding level established by Council policy; a total of \$332,911 is recommended to be added to the Wastewater Fund portion of the RSR.

1. Rate Stabilization Reserve – The RSR was established and funded to meet a specific risk such as revenue loss related to a certain level of demand curtailment. The reserve is designed to minimize or mitigate rate impacts. Impacts to the rate stabilization reserves are determined by the annual performance of rates versus the budgeted rate revenue. The target level for this reserve is set at 25% of budgeted revenues for the Water Fund and 10% of budgeted revenues for the Wastewater Fund. The RSR has an upper limit of 140% of the target and a lower limit of 70% of the target. Staff recommends appropriating \$332,911 in carryover for the RSR for the Wastewater Fund to bring the Wastewater balance within the reserve balance target range. The current Wastewater balance is \$34,288 above the minimum target (70% or \$856,799); adding the \$332,911 will bring the balance to 100% or \$1,223,998). No changes are recommended to the Water RSR, which is currently \$129,453 above the maximum target (140% or \$10,276,191).
2. Capital Project Reserve – This reserve was created to establish and maintain a Capital Improvement Program capable of sustaining long-term utility capital requirements. The City established the CPR to accumulate funds in excess of near-term needs. This policy is intended to foster timely system reinvestment, while providing resources for periodic increases in outlays without undue rate burden. Staff recommends appropriating \$3,241,387 in carryover to the CPR in the Water Fund and appropriating \$147,179 to the CPR in the Wastewater Fund.

SALES & USE TAX FUND

One item totaling \$1,497,134 for the Westminster Center Urban Reinvestment Project. As City Council is aware, Staff is continuing efforts for redeveloping and reinvigorating the Westminster Mall site. At City Council's recent Strategic Planning retreat, Council again identified the Westminster Mall Strategy as the top policy action for 2011 under the goal "Strong, Balanced Local Economy." If approved, these funds would be transferred to the Westminster Economic Development Authority (WEDA) Fund and added to the existing project fund to pay for demolition, maintenance for remaining tenants, and redevelopment costs that will arise.

PROPOSED APPROPRIATION FOR EXISTING OR NEW CAPITAL PROJECTS

Staff has completed a review of potential capital improvement projects for the balance of carryover funds. Staff is recommending that the following new or existing capital projects be appropriated as Capital Improvement Program (CIP) projects. Higher than anticipated revenues and better than anticipated

expenditure savings in the General, Sales & Use Tax, Fleet Maintenance, Community Development Block Grant and Conservation Trust Funds are proposed to be utilized for these projects.

GENERAL CAPITAL IMPROVEMENT FUND

A total of \$2,485,805 for capital projects is proposed to be appropriated into the General Capital Improvement Fund (GCIF) as follows:

1. \$909,919 to offset the revenue shortfall that occurred during 2010 that was primarily the result of less than projected/budgeted interest earnings for the fund. The alternative to backfilling this revenue shortfall would be to un-appropriate Capital Improvement Program projects approved for 2010, which would simply delay needed infrastructure investments. City Council will note a negative carryover number being appropriated in the ordinance component of this agenda memorandum for the GCIF; this is due to the fact that the expenditures have already been appropriated in 2010 and these funds are simply intended to backfill the shortfall in revenues.
2. \$95,798 from the General Fund to the GCIF for the Standley Lake Regional Park improvement project. Per City Council direction, when the boating permit fees were increased a few years ago, any funds not utilized for operations would be applied towards capital improvements needed at the regional park. The funds proposed to be allocated are the result of higher than anticipated revenue collections at Standley Lake plus operational savings from the regional park. This project funds improvements that upgrade, update or renovate existing facilities at the Standley Lake Regional Park.
3. \$300,000 to offset the anticipated revenue shortfall in the Adopted 2012 GCIF Budget. In the Adopted 2012 GCIF, \$800,000 is projected for interest earning revenues. Based on experience in 2010 and year-to-date interest earnings in 2011, Staff does not anticipate generating the interest earnings that were projected in the Adopted 2012 Budget. As such, Staff is recommending that part of the 2010 carryover be placed in fund balance and appropriated with the amendment to the Adopted 2012 Budget as an offset to revised revenue projections, specifically the projected interest earnings. City Council will note a negative carryover number being appropriated in the ordinance component of this agenda memorandum; this is due to the fact that the expenditures have yet to be appropriated and these funds are simply intended in anticipation of less than currently budgeted interest earnings projected for 2012.
4. \$60,000 is proposed for a study to develop street lighting spacing standards for the City. Additionally, if funding permits, an initial street lighting technology review would be included in this study (e.g., the possibility of placing solar on each street light to take them off of the electrical grid). As City Council is aware, the street light energy and ongoing maintenance/repair costs continue to escalate. Staff is researching various ways to help control the street light costs and this study will hopefully provide some guidance on ways to do so.
5. \$582,596 is proposed to go towards the City's local match for the Bradburn Boulevard Realignment project. This project will create a four-legged intersection at the currently signalized junction of 72nd Avenue and Raleigh Street. The total project is estimated to cost over \$4.0 million. A \$1,843,400 grant from the Colorado Off-System Bridge Program in 2013 will assist in the reconstruction of the Little Dry Creek drainage crossing at this intersection. Approximately \$225,000 in excess funds from the 68th Avenue/Utica Street project are also committed to the project. Funding for the initial work is from the City's share of Adams County road tax revenues and 2010 Community Development Block Grant (CDBG) funds, which are also anticipated to be used on this project in 2011 and 2012. Of the total carryover proposed, \$488,190 is from GF carryover and \$94,406 is proposed from Community Development Block Grant (CDBG) carryover. The CDBG carryover is cash the City originally infused in the City's CDBG Fund when the City first began receiving money through this federally funded program; this carryover is City cash and not federal dollars. Staff recommends using these City dollars now rather than allowing the funds to remain unutilized in fund balance.

6. \$62,691 is proposed to reimburse the New Traffic Signals account for the installation of traffic signals at the 120th Avenue and Zuni Street intersection. This amount reflects the Cornerstone Christian Academy's share of the traffic signal installation that the City up fronted to get the project installed in a timely fashion. These funds will pay for upgrades to the remaining half of the existing school crossing flashers within the City.
7. \$27,507 is proposed to fund the Railroad Crossing Surface Replacement Program. This program replaces railroad crossing surfaces at several crossing locations throughout the City with concrete crossing pad materials. Burlington Northern Santa Fe (BNSF) Railway Company recently submitted an invoice to the City for \$30,000 for the crossing surface replacement of 112th Avenue for work completed in October 2009. The funds currently budgeted were proposed to complete two projects: Lowell Boulevard crossing for \$40,316 and 88th Avenue for \$105,543. As a result of this late invoice for 112th Avenue, the project budget is now short \$27,507. Staff recommends the use of carryover funds to allow both projects proposed for 2011 to be constructed rather than incur potential delays and/or cost increases by BNSF in future years.
8. \$5,508 for the New Art Participation project. Funds for new art were deposited for one project completed in 2010. This project serves as a "holding account" for developer contributions toward new art requirements. These funds will be utilized throughout the City towards new art projects.
9. \$3,300 for the Tree Mitigation project. Funds for tree mitigation were deposited in November 2010 for the Murdoch's Ranch and Home Supply Store. This project serves as a "holding account" for developer contributions toward landscaping requirements. These funds will be utilized throughout the City towards forestry projects, including tree replacements and new tree plantings as needed. The tree mitigation money is used to replace trees that have been removed from public grounds across the City.
10. \$14,393 is proposed to be un-appropriated from the Swim and Fitness Center Renovation project. These funds were appropriated during 2010 as net interest earnings associated with the 2007D POST bond; interest earnings were over-appropriated and un-appropriating these funds is intended as a corrective action. A corresponding appropriation of \$14,393 is recommended in the Conservation Trust Fund below to keep the Swim and Fitness Center Renovation project funding whole.
11. A total of \$34,928 is proposed to be appropriated into the Golf Course Improvements for cart path repair at both golf courses. \$4,928 is from Adams County open space attributable share revenues and \$30,000 is from unrestricted Park GCIF revenues.
12. A total of \$382,638 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project. \$343,116 is from Jefferson County open space attributable share revenues and \$39,522 is from unrestricted Park GCIF revenues. These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport. This lease has an escalator built into it that continues to strain the finances of the golf course operations.
13. \$6,527 of accommodations tax revenues into the Community Enhancement Fund. Staff proposes starting to build a balance in the gateway signs capital project account for future installation of a gateway sign at 144th Avenue. It will take several years to build a balance in the account to pay for this gateway sign.

CONSERVATION TRUST FUND

A total of \$117,406 is proposed to be appropriated as follows:

1. \$14,393 is proposed to be appropriated to the Swim and Fitness Center Renovation project from the Conservation Trust Fund. These monies are proposed to offset the reduction noted in the GCIF associated with net 2007D POST bond interest earnings over-appropriated in 2010 noted above.

- 2. \$103,013 is proposed to be appropriated into The Heritage Golf Course Back Nine Land Acquisition capital project. These would be in addition to the \$343,116 from Jefferson County open space attributable share revenues and \$39,522 from unrestricted Park GCIF revenues noted above. These funds will be utilized towards purchasing the land associated with the back nine holes owned by and leased from the Rocky Mountain Metropolitan Airport.

UTILITY FUND

One item totaling \$200,000 for the creation of Facility and Infrastructure Stewardship capital accounts in the Water and Wastewater Funds (\$100,000 is proposed in each of the funds). A similar account has been created in the General Capital Improvement Fund due to savings realized in the BO&M Major Maintenance capital account. This account was created to encourage the utilization of higher efficiency equipment or design alternatives for appropriate capital improvement projects. The purpose of these accounts is to provide funding for all or part of the incremental cost for utilizing higher efficiency equipment or design alternatives for appropriate capital improvement projects.

STORM DRAINAGE FUND

One item totaling \$25,454 for the Stormwater Utility Miscellaneous Capital Improvement Project Account. Staff utilizes this account to fund unanticipated studies and stormwater construction costs.

GENERAL CAPITAL OUTLAY REPLACEMENT FUND (GCORF)

A total of \$145,535 is proposed to be distributed as follows:

- 1. \$39,624 into the general vehicle purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City’s ability to fund replacement vehicles in a given year. These funds are for those vehicles that are non-public safety and serve operations in the General Fund.
- 2. A total of \$97,055 is proposed for the public safety vehicle purchase account. Of this total, \$80,471 is from interest earnings in the GCORF account credited towards the public safety vehicle account balance and \$16,584 is from the Sales and Use Tax Fund associated with public safety tax revenues that were higher than anticipated in 2010. These funds will be added to the current balance within this account and be authorized for use by City Council at a future time when revenues impact the City’s ability to fund replacement vehicles in a given year. These funds are for vehicles that serve public safety operations in the General Fund.
- 3. \$8,856 into the PC replacement purchase account. These funds will be added to the current balance within this account and be authorized for use by City Council as PC replacement needs require. These funds are for all PCs citywide that contribute to future replacements through the PC replacement fee on an annual basis.

REVENUE/EXPENDITURE DETAIL BY FUND

The attached ordinance reflects a total increase of \$10,276,804. This amount differs from the \$9,426,120 noted in the Expenditure Required on the front of this agenda memorandum due to the accounting of transfers required to properly reflect the transactions on the City’s books.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	1000.40020.0000	\$4,000,000	<u>\$2,742,912</u>	\$6,742,912
Total Change to Revenues			<u>\$2,742,912</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Professional Services	10010900.65100.0000	\$129,000	\$50,000	\$179,000
Prof Svcs-Legal Council	10010900.65100.0258	15,000	8,968	23,968
Transfers Stabilization Reserve	10010900.79800.0120	0	867,678	867,678
Transfers WEDA	10010900.79800.0680	4,000,000	175,000	4,175,000
Transfers GCIF	10010900.79800.0750	852,000	1,548,735	2,400,735
Comp Soft/Hard FIN Admin	10015050.75400.0000	0	2,000	2,000
Contract Svcs-FIN Sales Tax	10015250.67800.0000	0	12,000	12,000
Other Equip-Comm Section	10020300.76000.0345	89,000	28,640	117,640
Contract Svcs-EM Grant	10025260.67800.0545	0	13,959	13,959
Prof Svcs-CD Planning	10030360.65100.0000	27,148	9,000	36,148
Prof Svcs-CD Engineer	10030380.65100.0000	33,025	20,108	53,133
Spec Promo-Youth Scholarship	10050760.67600.0528	0	<u>6,824</u>	6,824
Total Change to Expenses			<u>\$2,742,912</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	3000.40020.0000	\$0	<u>\$72,762</u>	\$72,762
Total Change to Revenues			<u>\$72,762</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	30010900.79800.0750	\$0	<u>\$72,762</u>	\$72,762
Total Change to Expenses			<u>\$72,762</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2000.40020.0000	\$0	<u>\$3,409,305</u>	\$3,409,305
Total Change to Revenues			<u>\$3,409,305</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Capital Reserve	20010900.79800.0207	\$218,463	\$3,241,387	\$3,459,850
Maint/Repair Equip	20015240.66100.0000	6,140	3,859	9,999
Utility System Mtrls	20035470.72800.0000	110,000	28,059	138,059
Contract Services	20035490.67800.0000	51,000	36,000	87,000
Water Facility & Infra Stewardship	81120012300.80400.8888	0	<u>100,000</u>	100,000
Total Change to Expenses			<u>\$3,409,305</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2100.40020.0000	\$0	<u>\$580,090</u>	\$580,090
Total Change to Revenues			<u>\$580,090</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers Rate Reserve	21010900.79800.0205	\$0	\$332,911	\$332,911
Transfers Capital Reserve	21010900.79800.0207	0	147,179	147,179
Wastewater Facility & Infra Stewardship	81121012300.80400.8888	0	<u>100,000</u>	100,000
Total Change to Expenses			<u>\$580,090</u>	

These appropriations will amend the Storm Drainage Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2500.40020.0000	\$0	<u>\$25,454</u>	\$25,454
Total Change to Revenues			<u>\$25,454</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Misc Storm Drainage Improvements	80125030082.80400.8888	\$1,129	<u>\$25,454</u>	\$25,454
Total Change to Expenses			<u>\$25,454</u>	

These appropriations will amend the GCORF revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	4500.40020.0000	\$0	\$128,951	\$128,951
TRF Sales Tax	4500.45000.0530	0	<u>16,584</u>	16,584
Total Change to Revenues			<u>\$145,535</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Capital Outlay General	80645010900.80400.8888	\$982,565	\$39,624	\$1,022,189
Capital Outlay – PST	80645010911.80400.8888	1,730,002	97,055	1,827,057
PC Replacement Outlay	80645010921.80400.8888	175,354	<u>8,856</u>	184,210
Total Change to Expenses			<u>\$145,535</u>	

These appropriations will amend the Sales & Use Tax Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5300.40020.0000	\$0	<u>\$1,841,834</u>	\$1,841,834
Total Change to Revenues			<u>\$1,841,834</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCORF	53010900.79800.0450	\$0	\$16,584	\$16,584
Transfers WEDA	53010900.79800.0680	0	1,497,134	1,497,134
Transfers GCIF	53010900.79800.0750	1,264,000	<u>328,116</u>	1,592,116
Total Change to Expenses			<u>\$1,841,834</u>	

These appropriations will amend the Conservation Trust Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	5500.40020.0000	\$0	<u>\$117,406</u>	\$117,406
Total Change to Revenues			<u>\$117,406</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Heritage Back 9 Land Acquisition-CTF	81155050324.80400.8888	\$0	\$103,013	\$103,013
Swim & Fitness Center Pool Renovation	81055050965.80400.8888	165,340	<u>14,393</u>	179,733
Total Change to Expenses			<u>\$117,406</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7500.40020.0000	\$500,000	(\$1,209,919)	(\$709,019)
TRF General Fund	7500.45000.0100	0	1,452,937	1,452,937
TRF Fleet	7500.45000.0300	0	72,762	72,762
TRF Sales Tax	7500.45000.0530	1,264,000	328,116	1,592,116
TRF CDBG	7500.45000.0760	0	94,406	94,406
Carryover	7501.40020.0000	0	413,000	413,000
TRF General Fund	7501.45000.0100	102,000	<u>95,798</u>	197,798
Total Change to Revenues			<u>\$1,247,100</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Traffic Signal System Improvements	80175030143.80400.8888	\$0	62,691	62,691
CE-Gateways	80175050330.80400.8888	0	6,527	6,527
Heritage Back 9 Land Acquisition	80375050324.80400.8888	0	39,522	39,522
New Art Participation	80575030426.80400.8888	38,862	5,508	44,370
Tree Mitigation Program	80575050425.80400.8888	0	3,300	3,300
Golf Course Impr	80675050045.80400.8888	53,170	30,000	83,170
SL Regional Park	80775050747.80400.8888	107,229	95,798	203,027
Swim & Fit Renovation Bond	80775050817.80400.8888	534,589	(14,393)	520,196
Railroad Crossing Surface Replace	80975035843.80400.8888	88,000	27,507	115,507
Golf Course Impr-ACOS	80975050145.80400.8888	0	4,928	4,928
Bradburn Blvd Realignment	81175030962.80400.8888	0	582,596	582,596
Street Light Standards Study	81175030981.80400.8888	0	60,000	60,000
Heritage Back 9 Land Acquisition-JCOS	81175050324.80400.8888	0	<u>343,116</u>	343,116
Total Change to Expenses			<u>\$1,247,100</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	7600.40020.0000	\$0	<u>\$94,406</u>	\$94,406
Total Change to Revenues			<u>\$94,406</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	76010900.79800.0750	\$0	<u>\$94,406</u>	\$94,406
Total Change to Expenses			<u>\$94,406</u>	

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **25**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE INCREASING THE 2011 BUDGET OF THE GENERAL, FLEET,
WATER, WASTEWATER, STORM DRAINAGE, SALES & USE TAX, GENERAL CAPITAL
OUTLAY REPLACEMENT, CONSERVATION TRUST, GENERAL CAPITAL
IMPROVEMENT, AND COMMUNITY DEVELOPMENT BLOCK GRANT FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED
REVENUES IN THESE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the General, Fleet, Water, Wastewater, Storm Drainage, Sales & Use Tax, General Capital Outlay Replacement, Conservation Trust, General Capital Improvement, and Community Development Block Grant Fund, initially appropriated by Ordinance No. 3550 is hereby increased by \$10,276,804. This appropriation is due to the appropriation of 2010 carryover.

Section 2. The \$10,276,804 increase in the General, Fleet, Water, Wastewater, Storm Drainage, Sales & Use Tax, General Capital Outlay Replacement, Conservation Trust, General Capital Improvement, and Community Development Block Grant Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item #10 A dated July 25, 2011(a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$2,742,912
Fleet Fund	72,762
Water Fund	3,409,305
Wastewater Fund	580,090
Storm Drainage Fund	25,454
General Capital Outlay Replacement Fund	145,535
Sales & Use Tax Fund	1,841,834
Conservation Trust Fund	117,406
General Capital Improvement	1,247,100
Community Development Block Grant Fund	<u>94,406</u>
Total	<u>\$10,276,804</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 25th day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of August, 2011.

ATTEST:

Mayor

City Clerk



Agenda Item 10 B

Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Councillor's Bill No. 26 re Westminster Reformed Presbyterian Church Open Space Acquisition Grant Supplemental Appropriation

Prepared By: Lauren Schevets, Open Space Technician
Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 26 on first reading appropriating funds received from Adams County in the amount of \$81,229 for the Westminster Reformed Presbyterian Church open space acquisition grant.

Summary Statement

- City Council previously approved the acquisition of the 2.24-acre Westminster Reformed Presbyterian Church property located at 4455 West 112th Avenue for \$160,760. Council also authorized the Department of Community Development to pursue a grant in the amount of \$81,229 with Adams County Open Space for the acquisition of the Church parcel and for the installation of a fence along the new boundary. Adams County recently forwarded the formal grant award documents to the City of Westminster for a grant in the amount of \$81,229 towards the acquisition of the Church parcel.
- City Council action is needed to appropriate these grant funds.
- In order to complete the acquisition, the City is required to contribute a cash match of up to \$81,229 for the Westminster Reformed Presbyterian Church acquisition and fence installation, which will come from the City's Parks, Open Space and Trails bond funds.

Expenditure Required: \$81,229. These are the grant amounts received from Adams County which are being appropriated.

Source of Funds: Adams County Open Space Grants



Policy Issue

Should the Adams County grant be appropriated to the Parks, Open Space and Trails Fund land purchase account to help pay for the acquisition of the Westminster Reformed Presbyterian Church property?

Alternative

The alternative would be to decline the Adams County Open Space grant money. Staff does not recommend this alternative as the grant was awarded to the City to assist with the acquisition of the Westminster Reformed Presbyterian Church property.

Background Information

City Council previously approved the acquisition of the 2.24-acre Westminster Reformed Presbyterian Church property located at 4455 West 112th Avenue for \$160,760. Council also authorized the Department of Community Development to pursue a grant in the amount of \$81,229 with Adams County Open Space for the acquisition of the Church parcel and installation of a fence along the new property boundary. The acquisition was contingent upon receipt of grant funds from Adams County. Adams County recently forwarded the formal grant award documents to the City of Westminster for a grant in the amount of \$81,229 towards the acquisition of the Church parcel. The City is currently under contract to purchase the Westminster Reformed Presbyterian Church property, with an anticipated closing in Fall 2011.

These appropriations will amend the Parks, Open Space and Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Adams County Grant	5400.40640.0010	\$0	<u>\$81,229</u>	\$81,229
Total Change to Revenues			<u>\$81,229</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchase	54010900.76600.0000	\$797,259	<u>\$81,229</u>	\$878,488
Total Change to Expenses			<u>\$81,229</u>	

Respectfully submitted,

Stephen P. Smithers
Acting City Manager

Attachment – Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2011

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2011 BUDGET OF THE PARKS, OPEN SPACE AND TRAILS FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2011 ESTIMATED REVENUES IN THE FUNDS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2011 appropriation for the Parks, Open Space and Trails Fund initially appropriated by Ordinance No. 3550 is hereby increased by \$81,229. This appropriation is due to the receipt of Adams County grant funds.

Section 2. The \$81,229 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item # 10 B, dated July 25, 2011 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Parks, Open Space and Trails Fund	<u>\$81,229</u>
Total	<u>\$81,229</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 25th day of July, 2011.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of August, 2011.

ATTEST:

Mayor

City Clerk



Agenda Memorandum

City Council Meeting
July 25, 2011



SUBJECT: Resolution No. 24 re Fall 2011 Adams County Open Space Grant Application

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Adopt Resolution No. 24 authorizing the Department of Community Development to pursue a grant from the Adams County Open Space grant program during the 2011 fall cycle for the acquisition of the Westminster Hills Elementary School Site located at 4105 West 80th Avenue for open space.

Summary Statement

- The Department of Community Development wishes to pursue a grant from the Adams County Open Space grant program for funding assistance with the acquisition of approximately 5.12 acres from the Westminster Hills Elementary School site, which is owned by Adams County School District 50.
- The total purchase price for 5.12 acres is \$730,000 based on an appraisal authorized by the District and paid for by the City. Staff recommends requesting up to \$408,564 for the acquisition which represents a 56% request. The school district has agreed to remove the school building along with all improvements and revegetate the site with native grasses prior to the sale.
- Acquiring this property will provide much needed open space in South Westminster. The site includes over 1,000 feet along the Allen Ditch, abuts US 36, and is adjacent to the 2.4-acre Westminster Hills Park. A perimeter trail could be built around the combined park/open space area which could eventually become part of the planned US 36 bike trail extending from 80th Avenue north to Boulder.

Expenditure Required: Cash matching funds in the amount of \$321,436

Source of Funds: Cash-In-Lieu of School Site Dedication Fund- \$66,436
Open Space Bond Funds- \$255,000



Policy Issue

Should the City attempt to seek assistance with the acquisition of the Westminster Hills Elementary School site from the Adams County Open Space Grant Program?

Alternative

Council could choose not to pursue additional funding for the acquisition. This is not recommended because the City does not have the funds to purchase the Westminster Hills Elementary School site without funding assistance from Adams County.

Background Information

The City has been successful in applying for and receiving grants from a variety of sources in the past. In recent years, the City has received grant money from the Adams County Open Space program for park and trail development projects as well as open space acquisitions. The City has developed a strong partnership with Adams County in its successful use of these grant funds. Since 2003, the City has been successful in being awarded more than \$4.8 million for open space acquisitions.

Acquiring the Westminster Hills Elementary School site will provide much needed open space in South Westminster. The 5-acre site has about 1,130 feet of linear frontage along the tree lined Allen Ditch, 540 feet along US 36, and 550 feet along the Westminster Hills Park. The school district has agreed to demolish the school building and all improvements on the site and revegetate it with native grasses prior to the sale of the property to the City. The sound wall next to US 36 could be removed and replaced with a much more attractive landscaped berm extending across both the school site and the park. This would provide a much more inviting green edge along US 36.

A perimeter trail could be built around the combined park/open space. The trail would be approximately ½ mile in length. A portion of this trail could become a part of the planned US 36 trail extending from 80th Avenue north to Boulder. This portion of the US 36 trail would be constructed as a part of the planned US 36 improvements to be built between 2012-2015.

Staff is currently negotiating the timeframe of the purchase but expects the acquisition to occur early in 2012. The appraisal valued the property at \$730,000; however this number includes \$211,000 in water and sewer tap credit from the existing building. Staff proposes selling these tap credits to a developer to allow the open space fund to recover this portion of the acquisition price. The other source of funds is \$66,436 that is currently in the cash-in-lieu of school site dedication fund for School District 50. Staff proposes to use these funds towards this purchase. Combining the \$66,436 with the \$211,000 in tap fee credit, this leaves only \$87,564 that may have to come from the open space fund to purchase over 5 acres of open space.

Staff will bring a request to Council to consider approval of the acquisition of this property after a response is received from the Adams County Open Space Advisory Board regarding the grant request which should occur by November, 2011.

This grant request supports the City's Strategic Plan Goals of "Financially Sustainable City Government" and "Beautiful City" by increasing revenues that support defined City projects and by providing the City with increased open space and trails.

Respectfully submitted,

Stephen P. Smithers
Acting City Manager
Attachments – Resolution & Site Map

RESOLUTION

RESOLUTION NO. **24**

INTRODUCED BY COUNCILLORS

SERIES OF 2011

**A RESOLUTION
TO PURSUE A GRANT REQUEST FROM THE
2011 ADAMS COUNTY OPEN SPACE GRANT PROGRAM
FOR THE WESTMINSTER HILLS ELEMENTARY SCHOOL SITE ACQUISITION**

WHEREAS, Adams County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements and open space acquisitions; and

WHEREAS, the City of Westminster has budgeted for the acquisition of the Westminster Hills Elementary School; and

WHEREAS, grant money received from Adams County will assist the City in securing this property for its open space and recreation program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Staff shall submit a grant application to the Adams County Open Space Grant program for the Fall funding cycle of 2011, requesting funding not to exceed \$408,564 towards the purchase of the Westminster Hills Elementary School property.

PASSED AND ADOPTED this 25th day of July, 2011.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

City of Westminster

Westminster Hills Elementary Proposed Acquisition

Alternative US36 Trail Alignment

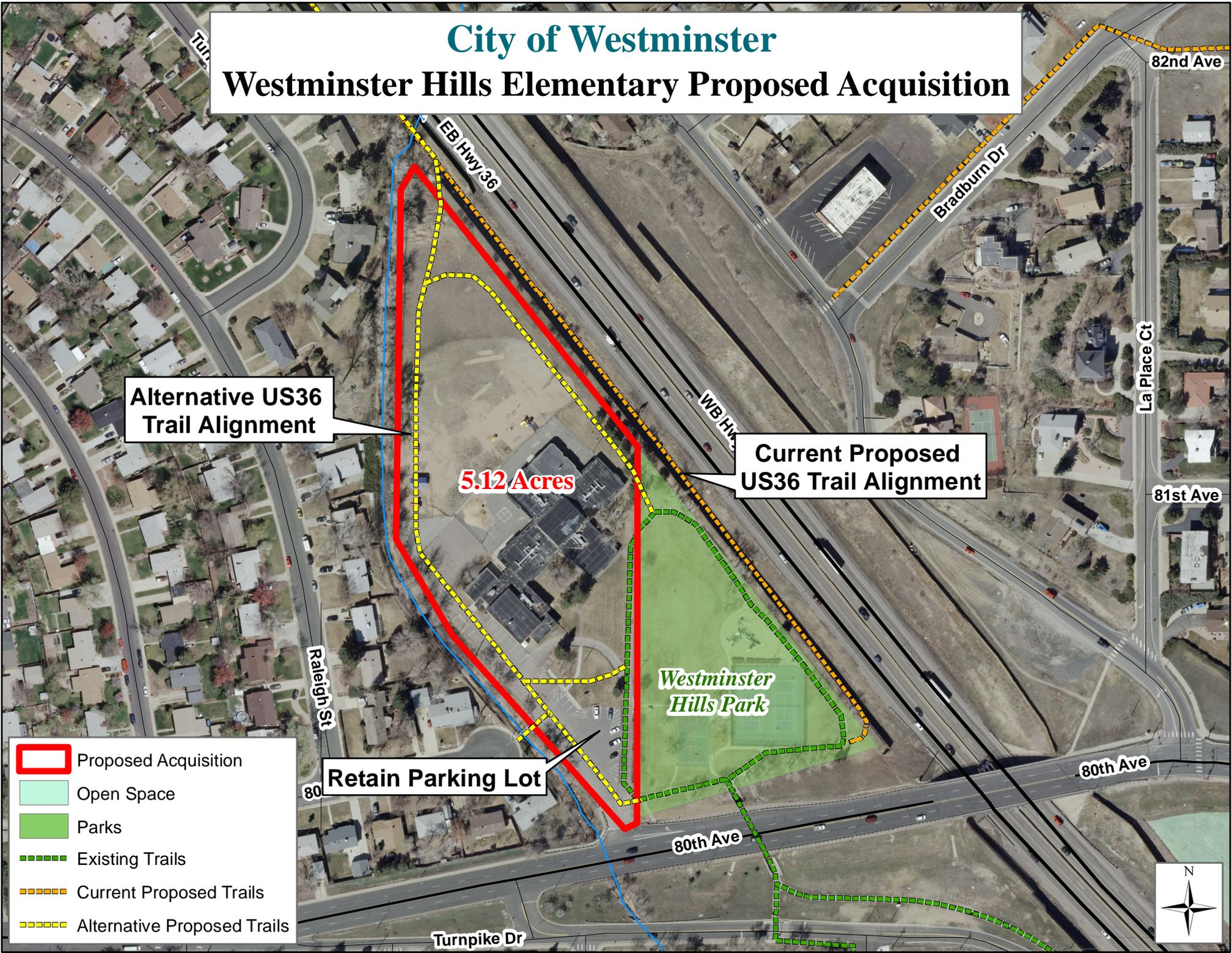
5.12 Acres

Current Proposed US36 Trail Alignment

Retain Parking Lot

Westminster Hills Park

-  Proposed Acquisition
-  Open Space
-  Parks
-  Existing Trails
-  Current Proposed Trails
-  Alternative Proposed Trails



AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, JULY 25, 2011

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (June 27, 2011)
- 3. Purpose of Special WEDA Meeting is to**
 - A. Consider Authorizing an Addendum to the Authority's Agreement for Special Legal Counsel for the Westminster Center Urban Reinvestment Project
- 4. Adjournment**



WESTMINSTER

July 18, 2011

Linda Yeager, WEDA Secretary
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Linda:

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor

I wish to call a special meeting of the Westminster Economic Development Authority (WEDA) on Monday, July 25, 2011, to begin at 7 p.m. and to be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, for the purpose of considering amendment of a contract for special legal counsel.

Sincerely,

Nancy McNally
Chair

cc: WEDA Board Members
J. Brent McFall, Executive Director



CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JUNE 27, 2011, AT 7:35 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, and Board Members Briggs, Kaiser, Lindsey, Major and Winter. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Kaiser moved, seconded by Board Member Lindsey, to approve the minutes of the meetings of May 23, 2011, as written. The motion carried.

PUBLIC HEARING RE 2ND QUARTER 2011 BUDGET AMENDMENT

At 7:35 p.m., the Chair opened a public hearing to consider the 2nd quarter 2011 Budget amendment. Staff was present to answer any questions. There were no questions. The Chair invited public testimony. No one wished to speak, and the hearing was closed at 7:36 p.m.

RESOLUTION NO. 133 AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO 2011 BUDGET

Upon a motion by Vice Chairperson Dittman, seconded by Major, the Authority voted unanimously at roll call to adopt Resolution No. 133 authorizing a supplemental appropriation of \$623,666 to the 2011 Budget.

WESTMINSTER CENTER COOPERATION AGREEMENT BETWEEN WEDA AND CITY

Board Member Briggs moved, seconded by Major, to authorize the Executive Director to execute the Westminster Center Cooperation Agreement between the Westminster Economic Development Authority and the City of Westminster. The motion carried unanimously.

PUBLIC HEARING RE SUPPLEMENTAL APPROPRIATION TO 2011 BUDGET

At 7:37 p.m. Chairperson McNally opened a public hearing to consider a supplemental appropriation to the 2011 Budget. Mr. McFall and other staff members were available to answer any questions. Hearing no questions from the Authority, the Chairperson invited public comment. There was none, and the public hearing was closed at 7:37 p.m.

RESOLUTION NO. 134 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2011 BUDGET

Board Member Briggs moved to adopt Resolution No. 134 appropriating monies from carryover, tax increment and repayment of an Economic Development Agreement. Board Member Major seconded the motion, and it passed unanimously on roll call vote.

WESTMINSTER MALL DEMOLITION PROJECT CONSTRUCTION CONTRACT

Upon a motion by Board Member Winter, seconded by Vice Chairperson Dittman, the Authority voted unanimously to authorize the Executive Director to execute a \$215,700 contract with American Demolition, Inc., the lowest responsible bidder, for the Westminster Mall Demolition Project (partial) and authorize a construction contingency in the amount of \$25,000.

ADJOURNMENT

There was no further business to be conducted, and it was moved by Dittman, seconded by Major, to adjourn. The motion carried and the meeting adjourned at 7:39 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
July 25, 2011



SUBJECT: Addendum to Agreement for Special Legal Counsel –
Westminster Center Urban Reinvestment Project

Prepared By: Susan Grafton, Economic Development Manager
Marty McCullough, City Attorney

Recommended Board Action

Authorize the Executive Director to amend the Authority's special counsel contract with Murray Dahl Kuechenmeister & Renaud, LLP to reflect a fee increase from \$200 to \$250 per hour.

Summary Statement

- Malcolm Murray has served as special legal counsel in the past in connection with the Westminster Center Urban Reinvestment Project (WURP), and the Authority's various other urban renewal projects, including Mandalay and Orchard Town Center Urban Renewal Projects.
- Mr. Murray has notified the Westminster Economic Development Authority (WEDA) of an increase to the rate charged to urban renewal clients from \$200 to \$250 per hour. Mr. Murray has not increased his rate to WEDA in over 10 years of service to the City and the Authority.
- The Authority previously authorized the agreement being amended on February 14, 2011, in an amount not to exceed \$120,000.
- Funds for this expense were previously budgeted, and adequate funds remain available for these services as part of the WURP CIP account.
- The proposed fee increase remains at or below the prevailing rate for similarly specialized legal services in the Denver metropolitan area.

Expenditure Required: No additional funds are needed at this time.

Source of Funds: 2011 WEDA Budget
– Westminster Center Urban Reinvestment Project



Policy Issue

Should WEDA approve a fee increase for special legal services to assist the City and WEDA in connection with WURP?

Alternative

Do not approve the proposed fee increase and seek such assistance from another source. This alternative is not recommended given Mr. Murray's familiarity with the WURP Project, the fact that Mr. Murray's proposed fee of \$250 per hour is well within the Denver area market for such services, the critical timing of these services, and the extremely limited number of attorneys available for this kind of work who are not representing private sector clients.

Background Information

Malcolm Murray is a partner in the firm of Murray Dahl Kuechenmeister & Renaud LLP. His practice specializes in urban renewal and land use matters and eminent domain litigation for both public and private entities. In addition to WEDA, he currently advises the Denver Urban Renewal Authority, the Lakewood Reinvestment Authority, the Steamboat Springs Redevelopment Authority, and the Parker Authority for Reinvestment on urban renewal matters. Mr. Murray is a graduate of the University of Denver College of Law and has a M.A. in Government from Georgetown University and a B.S. from the United States Military Academy at West Point.

Mr. Murray's expertise is in redevelopment projects pursuant to the Colorado urban renewal law. Mr. Murray has been providing a significant amount of critical legal work to the City and WEDA related to the negotiation and drafting of one or more WEDA redevelopment agreements with the WURP redeveloper, addressing the various leasehold interests in the Mall, and the recent acquisition of the Westminster Mall property. The Authority will be actively engaged in negotiations in the upcoming months of a redevelopment agreement for the design, construction, and financing of the WURP Project, and Mr. Murray will provide valuable assistance in those negotiations.

Respectfully submitted,

Stephen P. Smithers
Acting Executive Director

Attachment – Contract Addendum #1

**ADDENDUM NO. 1 TO THE
CONTRACT FOR LEGAL SERVICES BETWEEN
MURRAY DAHL KUECHENMEISTER RENAUD LLP
AND THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
FOR WESTMINSTER CENTER URBAN REINVESTMENT
DATED FEBRUARY 15, 2011**

The Westminster Economic Development Authority (hereinafter referred to as "WEDA") and Murray Dahl Kuechenmeister Renaud, L.L.P., (hereinafter referred to as "the Firm") agree to amend the Contract described above as follows:

1. Paragraph 4 is hereby amended to read as follows: WEDA shall pay for the Services at the rate not to exceed \$250 per hour.
2. All other terms and conditions of this Contract shall remain in effect.

This Addendum is dated July _____, 2011.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
J. Brent McFall, Executive Director

**MURRAY DAHL KUECHENMEISTER
RENAUD L.L.P.**

By _____
Malcolm M. Murray

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, July 25, 2011

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (February 14, 2011)
- 3. Purpose of Special WHA Meeting is to**
 - A. Consider Authorizing the Sale of the Westminster Commons Senior Apartments at 3180 West 76th Avenue to the Volunteers of America
- 4. Adjournment**



WESTMINSTER

July 18, 2011

Linda Yeager, WHA Secretary
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

City of Westminster
Office of the
Council

4800 West 92nd Avenue
Westminster, Colorado
80031

303-658-2006
FAX 303-706-3921

Nancy McNally
Mayor

Chris Dittman
Mayor Pro Tem

Bob Briggs
Councillor

Mark Kaiser
Councillor

Mary Lindsey
Councillor

Scott Major
Councillor

Faith Winter
Councillor

Dear Linda:

I wish to call a special meeting of the Westminster Housing Authority (WHA) for Monday, July 25, 2011, to consider authorizing the sale of the Westminster Commons Senior Apartments at 3180 West 76th Avenue to the Volunteers of America. The meeting will be held in the Council Chambers of City Hall, 4800 West 92nd Avenue, beginning at or about 7 p.m.

Sincerely,

Nancy McNally
Chair

cc: WHA Board Members
J. Brent McFall, Executive Director



CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, FEBRUARY 14, 2011 AT 7:20 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, and Members Briggs, Kaiser, Lindsey, Major and Winter.. Also present were J. Brent McFall, Executive Director, Jane Greenfield, Assistant Attorney for the Authority, and Linda Yeager, Secretary.

MINUTES OF PRECEDING MEETING

Member Briggs moved, seconded by Dittman, to accept the minutes of the meeting of January 10, 2011 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 42 LEASING RODEO SUPER MARKET BUILDING TO SWAG

It was moved by Member Winter, seconded by Kaiser, to adopt Resolution No. 42 authorizing the Chairperson to execute a one-year lease for the South Westminster Arts Group to occupy the Rodeo Super Market building located at 3915 West 73rd Avenue. At roll call, the motion passed unanimously.

2010 UTILITY BALANCE DUE FROM SWAG FORGIVEN

Vice Chairperson Dittman moved, seconded by Lindsey, to authorize forgiveness of payment by the South Westminster Arts Group for the utility balance due from 2010. The motion passed with all members voting affirmatively.

ADJOURNMENT:

There being no further business to conduct, it was moved by Dittman, seconded by Major, to adjourn. The motion carried and the meeting adjourned at 7:22 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
July 25, 2011



SUBJECT: Westminster Commons Purchase and Sale Agreement with Volunteers of America

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Authorize the Executive Director to execute a purchase and sale agreement, in substantially the same form as the attached agreement, with the Volunteers of America relative to a sale of the Westminster Commons Senior Apartments at 3180 West 76th Avenue.

Summary Statement

- The Board authorized Staff to solicit proposals relative to the possible sale and rehabilitation of the Westminster Commons senior apartments at 3180 W. 76th Avenue, by a qualified housing provider.
- Staff distributed a Request for Qualifications (RFQ) to eighteen qualified prospective affordable senior housing buyers/operators and received seven responses, one from the Adams County Housing Authority, three from private non-profits, and three from for-profit affordable housing providers.
- Staff invited the Adams County Housing Authority, Brothers Redevelopment, Inc., Mercy Housing, Inc., and Volunteers of America (VOA) to submit financial proposals for further consideration.
- From three proposals submitted, and based upon a recommendation of its consultant, S.B. Clark Company, the Westminster Housing Authority (WHA) Board authorized Staff to proceed with negotiations to sell the property to VOA.
- VOA is proposing to acquire the Westminster Commons for a purchase price of \$7.0 million and will invest an estimated \$6.2 million in improvements and rehabilitation to the property. VOA will use tax exempt bond financing and low income housing tax credits as its primary financing mechanism.
- An executed purchase and sale agreement is required for VOA to lock in a tax credit rate, which is critical to funding the project.
- As previously discussed with the WHA Board, a meeting was held with Westminster Commons' residents to review the current status of the physical condition of the Commons and to discuss this potential change of ownership. Staff and potential bidders answered questions and received input. Additional follow up communication with residents will take place after Staff receives Board direction on proceeding with this Agreement.

Expenditure Required: \$0

Source of Funds: N/A



Policy Issue

Should the WHA proceed with the sale of the Westminster Commons Senior Apartments to a private not-for-profit affordable housing provider?

Alternatives

As alternatives, the Board could choose not to proceed with the sale or choose to reopen the solicitation process to seek alternative proposals. Staff recommends that the first option not be given consideration as the sale of the apartments provides the most financially responsible option to complete a major rehabilitation of the units while preserving them as affordable senior units well into the future. The option to reopen the process is not recommended given the high quality of the selected buyer and the strength of the buyer's respective financial proposal as compared to the other bidders.

Background Information

The WHA owns the property known as the Westminster Commons Senior Apartments at 3180 W. 76th Avenue. The complex consists of three buildings providing 130 residential units available to rent for qualified low income seniors. The complex was constructed in 1980 and remains in generally good shape; however, given its age and a gradual increase in maintenance needs, the City hired Borne Engineering, a construction engineering firm, to conduct a comprehensive assessment of the facilities physical condition. Borne Engineering evaluated present and near-future rehabilitation needs, and provided cost estimates and implementation strategies. The study concluded that more than \$3.6 million in capital investment was required in the relatively near future to ensure that the Commons remain livable and viable for the next 20 years. The identified improvements included major replacement of siding, roofing, windows and the HVAC system.

Due to the high cost estimate from the Borne report and a determination that substantial improvements needed to be made relatively soon, Staff brought in S.B. Clark Company, a public finance consultant specializing in affordable housing, to evaluate funding options for the required reinvestment and to identify alternative asset management and ownership strategies for the WHA. In May 2009, Staff made a presentation to the Housing Authority Board regarding the physical condition and financial sustainability of the Westminster Commons Senior Apartments based on the Borne Engineering and S.B. Clark findings. The S.B. Clark report evaluated three alternatives:

Alternative One – Have the WHA continue to own and operate the facility by adding to, or refinancing and adding additional debt to the Common's existing debt to obtain the required capital investment to make the improvements;

Alternative Two – Pursue a financing/ownership partnership to secure private financing to provide the capital investment with the Authority remaining as the general partner and as continued long-term owner;

Alternative Three – Sell the Commons to another qualified affordable housing provider that would be committed to rehabilitating and maintaining the affordability for the long term benefit of the Westminster community.

It was concluded that the first two options had limited viability given the financial and operational capacity of the WHA, thereby leading the WHA Board to authorize Staff to proceed with solicitation of a qualified buyer for the property. In consultation with S.B. Clark, Staff proceeded to prepare a Request-For-Qualifications (RFQ) and identified 18 prospective buyers that could meet the requirements and goals of the WHA relative to a sales transaction.

The RFQ was distributed and resulted in the WHA receiving seven responses from the following entities:

- Adams County Housing Authority (ACHA) – a State of Colorado public housing authority;
- Phoenix Development – a private, for-profit affordable housing developer;
- Brothers Redevelopment, Inc. (BRI) – a private, non-profit affordable housing provider;
- Mercy Housing, Inc. - a private, non-profit affordable housing provider;
- Volunteers of America (VOA) - a private, non-profit affordable housing provider;
- Steele Properties, Inc. - a private, for-profit affordable housing developer/owner/operator; and,
- Capital Realty Group – a private, for-profit affordable housing owner/operator.

Based on the submittals and an affirmation of the WHA goals, Staff chose to only invite the non-profits and the Adams County Housing Authority (ACHA) to submit a detailed acquisition proposal. This decision was based on Staff’s belief that a sale to a non-profit provider would more closely meet the mission of the prospective sale and bring a more diverse range of financing resources. Plus, the non-profits demonstrated good experience and the ability to successfully take on the project.

To assist Staff in the evaluation process and to ensure consistency between the proposals, the four prospective finalists were required to prepare their proposals based upon a standard set of assumptions pertaining to outstanding debt to be paid, the value of the low-income housing tax credits, the amount of funding needed for rehabilitation, and an estimated HUD rental allowance per unit. Using the standardized variables, the ACHA, BRI and VOA submitted acquisition and renovation proposals. Following are the resulting financial details of each proposal:

	ADCO	BRI	VOA
Acquisition Price	\$7,000,000	\$7,100,000	\$7,000,000
WHA Carry Back Loan	\$4,530,000	\$4,000,000	\$1,424,715
Cash to WHA (estimated)	\$500,000 after rehab	\$630,000 at closing*	\$3,105,285
Net Cash Flow Payments over 15 years	\$775,000 (est.)	\$1,170,000 (est.)	\$225,000
Primary Financing	4% Tax Credits	Federal HUD Loans	4% Tax Credits

* The BRI proposal does not explicitly call for a cash payment, but is implied in the financial calculations. It is possible that BRI does not propose to provide any cash payment at closing.

As reflected in the table, the VOA proposal was determined to be in the best interest of the WHA. It should be noted that the numbers presented in all of the proposals were known to be subject to change dependant upon market conditions for the tax credit sale, the actual cost of agreed to improvements and the rental rate allowance to be approved by HUD. Based on the aforementioned assessment and Staff recommendation, the WHA Board authorized Staff to enter into exclusive negotiation with VOA to prepare a purchase and sale agreement.

Since the Board’s authorization to proceed with negotiations, VOA has prepared a purchase and sale agreement with the WHA formally offering to purchase the Westminster Commons property for \$7.0 million as presented in their initial proposal. This offer is premised on the following conditions:

- The HUD assigned Housing Assistance Program (HAP) rental subsidy currently tied to the Westminster Commons is transferred to VOA and increased to a viable rate;
- VOA is able to obtain sufficient Private Activity Bond (PAB) capacity for a tax credit sale;
- VOA is able to sell the affordable housing tax credits at a viable rate;
- WHA is agreeable to providing VOA with a carry-back loan of approximately \$2.2 million; and,
- VOA and the WHA come to a mutually agreeable level of improvements and rehabilitation of the Westminster Commons property.

Following is the proposed financial pro-forma currently presented by VOA and under final negotiation:

FINANCING

Debt Sources

1 st Mortgage – Tax exempt private placement	\$ 7,146,064
Federal Home Loan Bank Loan	\$ 300,000
WHA Subordinated Loan – Seller Carry-back Note	<u>\$ 2,231,377</u>
	\$ 9,677,441

Equity Sources

VOA Project Grant	\$ 500,000
State of Colorado Grant (possibly HOME funds)	\$ 500,000
LIHTC 4% Credits	\$ 4,067,994
Developer Fee Deferred	\$ 558,189
Operating Income during renovation	\$ 519,343
Replacement Reserves (existing)	<u>\$ 270,000</u>
	\$ 6,415,526

Total Funding \$16,092,967

EXPENDITURES

Property Acquisition	\$ 7,000,000
Soft Costs	\$ 203,500
Rehabilitation and Hard Costs	\$ 6,164,945
Financing and Legal Costs	\$ 866,333
Developer Fee	\$ 1,558,189
Funded Reserves	\$ 300,000

Total Expenditures \$16,092,967

VOA’s current proposal would net the WHA about \$2.32 million in cash at closing based on the following calculation. The Seller carry-back note would be paid back from net cash flows of the Westminster Commons. The actual revenues generated to the WHA will be based on the following variables and are subject to change until such values can be locked in by VOA. The final details regarding the WHA’s cash proceeds will be brought back to the WHA Board in a future agreement for consideration.

HUD HAP Contract

VOA and WHA representatives met with representatives from the U.S. Department of Housing and Urban Development (HUD) to discuss transfer of the Housing Assistance Plan (HAP) contract. The HUD staff determined that there would be not problem with transferring the HAP contract to VOA as part of the sale. In addition to the issue pertaining to the transfer, VOA is seeking an increase in the amount of subsidy per unit. In preparation for this request with HUD, VOA hired a consultant to prepare the required rental market assessment by which HUD will establish the new rate once the rehabilitation of the property has been completed. For the purposes of estimating the value of the Westminster Commons, VOA is estimating an eventual subsidy of \$775 per month per unit based upon the results of the rental market assessment. The current HUD subsidy provided to WHA is \$750 per month per unit.

Private Activity Bond Allocation

VOA intends to use tax-exempt bond financing (1st mortgage) and affordable tax credits (equity) to assist in financing the acquisition of and improvements to the Westminster Commons property. This will require VOA to obtain about \$10-11 million in Private Activity Bond (PAB) capacity. The City has already set aside its full allotment of \$4.1 million in 2010 to facilitate the sale of the property. The City also has \$5,169,425 of 2011 PAB capacity to apply towards the sale if the Westminster City Council so chooses. This would leave approximately \$1-2 million that the VOA would need to find elsewhere to close on the acquisition in 2011. VOA is in discussions with the State of Colorado, the Colorado Housing Finance Authority (CHFA) and Adams County regarding the remaining PAB allocation.

Low Income Housing Tax Credits (LIHTC)

The acquisition proposal is premised on VOA getting an infusion of about \$4.1 million in equity using an allocation of 4% Low Income Housing Tax Credits from the Colorado Housing and Finance Authority (CHFA). CHFA administers both 4% and 9% low income tax credits. The 9% tax credits can provide a substantially higher level of equity into a project, thereby reducing the debt on a project. However, prospective applicants must go through a highly competitive process to attain some of the limited credits. It is estimated that it could take up to two years to obtain the 9% credits. However, the 4% low income tax credits are readily available and not allocated on a competitive basis. Accordingly, the VOA has chosen to structure a deal taking advantage of the 4% credits thereby allowing them to close on the acquisition in a timely manner. For the purposes of the current proposal, VOA is estimating receipt of a value of \$0.84 per dollar of tax credit, which results in an estimated equity value of \$4,067,994. This number is subject to change until such time as VOA locks in the LIHTC rate with the prospective tax credit buyer. VOA needs a signed purchase and sale agreement before it can lock in the LIHTC rate. VOA has already identified the tax credit buyer(s) at the favorable \$0.84 rate. The market is currently holding for the \$0.84 rate, but VOA is concerned that a prolonged negotiation on a purchase and sale agreement could result in a less favorable rate, thereby effecting the current proposal. VOA proposes to lock in the rate immediately upon receiving a signed purchase and sale agreement from the WHA.

WHA Issuance of Subordinate Debt

VOA is proposing to carry total debt of about \$9.67 million against the property of which \$7.45 million would come from a private placement using tax exempt bonds and a loan from the Federal Home Loan Bank (FHLB). VOA is requesting that the WHA carry-back about \$2.2 million of remaining debt via a 40-year note that would be subordinate to the other loans. Repayment of the note would be based upon future net cash flow from Westminster Commons operations. The proposed repayment schedule under negotiation is based on a conservative future cash flow from operations provided by VOA. The issuance of subordinate debt is a typical mechanism used in the funding of low income housing projects. All proposals received by the City included some level of subordinated debt allowance by the WHA.

Other Third Party Financial Equity Contributions

VOA's proposal also calls for a minimum of \$500,000 in grants from other sources. The most likely source VOA intends to pursue is an allocation of federal HOME funds available from the State of Colorado. VOA is proposing to provide a \$500,000 grant using its own funds that can be applied towards any match requirement of the State of Colorado or other funding agency. VOA is also proposing to defer \$558,189 of its developer fee as a contribution towards the project. Remaining funding would come from existing replacement reserves and operating income generated during the term of rehabilitation.

Improvements to the Westminster Commons

VOA is proposing substantial improvements to the Westminster Commons buildings and parking area. Based upon a building condition assessment that was conducted by VOA, the required improvements were estimated at about \$6.2 million. (See attachment A) This is about \$2.2 million more than the estimated cost of \$4.0 million provided to the prospective buyers in the request for proposals. This increased cost effectively reduced the potential \$3.1 million cash out to the WHA provided for in the initial proposal submitted by VOA to the current estimate of \$2.25 million.

An initial outline of proposed improvements is attached for review and generally includes the following:

Site Work, Signage, and Trash Enclosures

The most significant cost item relative to site work is the replacement and installation of exterior lighting and asphalt repair accounting for \$143,500 of a total of \$249,070 in site work costs. The other major site work cost is for courtyard landscaping. The cost for signage is estimated at \$89,000 with most of the cost associated with improvements to the apartment entries and signage pertaining to the change in ownership. Another \$42,750 is proposed to replace and construct new trash enclosures.

Building Exterior

Balconies

VOA is proposing to improve the exterior decks with new railings and decking material at a cost of \$171,975. The existing decking would be removed and replaced with Trex decking material. The rails need replacing as many of the existing rails are rusted and improperly secured.

Building Exterior Siding, Windows and Building Entry Doors

The exterior siding is about 30 years old and was noted as in generally poor condition based upon a structural assessment conducted for the WHA by Borne Engineering a few years ago. While the assessment did not indicate all the siding needed to be replaced immediately, it was strongly suggested by City Staff that an entire replacement be made over a relatively short period of time.

A more recent assessment conducted by VOA determined that only the north facing walls required replacement at this time. Accordingly, VOA's proposal reflects only partial replacement of the siding and painting of all the buildings at a cost of \$199,840. City staff is of the opinion that ALL of the siding should be replaced given its age and unknown subsurface conditions that may exist. Plus, replacement of the siding would significantly improve the physical appearance of the buildings. The additional cost to fully reside the buildings is estimated at about \$200,000. Staff is continuing to work with VOA to offset this additional cost with potential savings related to roof-top architectural enhancements and landscaping. Any agreed to improvement costs above the proposed \$6.2 million could result in a reduction in the cash payout to WHA at closing.

VOA is proposing to replace all windows in all units and common areas at an estimated cost of \$190,650. VOA is also proposing to replace all building entry doors. However, the proposed budget does not reflect any architectural enhancements or changes to the entryways themselves. VOA does note this as an optional choice with an additional cost of about \$105,000.

The complex is currently does not have sheltered walkways interconnecting the buildings. Given the senior residential population, VOA sees this as a "must have" safety feature for pedestrian movement, particularly between the residences and the common area in the main building. Accordingly, VOA is proposing a sheltered walkway area in the courtyard at a cost of about \$50,000.

Rooftop Mechanical, Elevators, Security and Fire

VOA is proposing minimal repairs to the platform and curb areas around the existing swamp cooling systems. VOA offers an option to construct architectural elements that would hide the swamp coolers. However, City staff is advising against making these improvements and applying these funds toward the replacement of the exterior siding.

The elevators need substantial repair and/or replacement. VOA is estimating a cost of \$597,300 for the six elevators serving the complex. These elevator repairs need to be made regardless of other improvements. Another \$110,000 of improvements related to security and fire are also proposed.

Building Interior

Common Area Improvements and HVAC Systems

VOA is estimating \$621,670 in expenses related to fully refurbishing the common areas in all three buildings. About \$395,720 of this amount would be used to remove existing wall covering in corridors and lobby areas, add architectural accents, and fully repaint the interior common area space. VOA is not proposing to replace ceiling tile, flooring or bathroom fixtures in common areas. VOA is also proposing to spend about \$59,950 to replace lighting fixtures and fans with more energy efficient units.

As proposed, VOA would also replace all common area furnishings and décor at an estimated cost of \$75,000.

Relative to the HVAC system, the most significant cost is for the replacement of 6 of the 12 boiler units with much more energy efficient units at an estimated cost of \$420,000. The remaining six units are relatively new having been replaced beginning in 2006. Another \$57,725 in expense is proposed for swamp cooler repair/replacement and other heating improvements.

Apartment Renovations

VOA has provided a budget estimate of \$2,221,750 for renovations to each of the 130 living units. Each of the rooms would be fully renovated including the replacement and improvements as follows:

- Painting of all rooms and doors;
- Door, closet and cabinet hardware;
- Vinyl flooring in entry, kitchen and bathrooms;
- Carpeting;
- Energy efficient lighting;
- Bathroom and kitchen plumbing fixtures and hardware;
- Kitchen remodel and new cabinetry;
- Closet shelving system;
- Smoke detectors;
- Air conditioning units serving both the living room and bedroom;
- Baseboard heating valves and digital thermostats;
- Energy efficient bathroom fan;
- Window coverings; and,
- Insulation and weatherization.

The total estimated cost for the proposed site work and building improvements is \$4,962,945 with another \$380,000 in general requirements. Another \$522,000 is estimated for contractor insurance, bonding and overhead and profit. VOA has also included a \$300,000 contingency.

Upon execution of a purchase and sale agreement, VOA will be better able to lock in on a tax credit value that will thereafter drive the remaining financial numbers. This in turn will permit City staff and VOA representatives to better establish an agreed to level of improvements that will be agreed to under separate agreement that will be brought back to the WHA Board for approval. VOA anticipates closing on the purchase by the end of 2011. The contract, however, stipulates that a closing can occur as late as December, 2012. This length of time was incorporated into the contract to give VOA the necessary time to sell the tax credits at a viable rate. The rate currently is at about \$0.84 cents which VOA anticipates to remain stable in the near future. This rate would permit VOA to close in 2011. Should the rate drop significantly, VOA could take up until December 2012 to sell the tax credits and close on the property.

The proposed sale of the Westminster Commons meets the City of Westminster's goal of Safe and Secure Community with the objective of maintaining safe buildings and homes. The proposed sale and improvements will extend the life and enhance the livability of the Westminster Commons as affordable senior housing for many years into the future.

Respectfully Submitted,

Stephen P. Smithers
Acting Executive Director

Attachments - Purchase and Sale Agreement with Exhibits A&B

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS (*Agreement*) is made this ___ day of March, 2011 (the *Effective Date*) by and between the **HOUSING AUTHORITY OF THE CITY OF WESTMINSTER** a/k/a **WESTMINSTER HOUSING AUTHORITY**, a non-profit public housing authority organized pursuant to Colorado Revised Statutes, Sections 29-4-201 *et seq.* (the *Seller*), and **VOLUNTEERS OF AMERICA NATIONAL SERVICES**, a Minnesota non-profit corporation, or its assigns (the *Buyer*), in contemplation of the following facts and circumstances:

A. Seller is the owner of that certain real property and all improvements located at 3170-3190 West 76th Avenue, Westminster, Colorado 80031, as more particularly described in Exhibit "A" attached hereto (the *Subject Property*). Said Subject Property is improved with an apartment complex consisting of three (3) three-story buildings of 130 residential units and related landscaping, parking and amenities which is commonly known as "Westminster Commons." The Subject Property, the apartments and the other improvements located thereon shall be collectively referred to herein as the *Project*.

B. Buyer desires to purchase the Project and all other rights and privileges associated therewith on the terms and conditions set forth herein.

C. Seller and Buyer desire to set forth in writing their agreements regarding the sale and purchase of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as part of the agreement of the parties, the mutual covenants contained below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **Purchase and Sale.** Upon all the terms and conditions contained herein, Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer (i) the Subject Property and the Project, (ii) all easements, covenants, rights and privileges now or hereafter belonging or appertaining to the Subject Property, (iii) any and all equipment, appliances, tools, machinery, supplies, furnishings, fixtures, signs, building materials and other personal property of every kind and character owned by Seller and attached to or located on and used in connection with the Subject Property as of the date of this Agreement (the *Personal Property*), (iv) Seller's interest as landlord or lessor in any and all leases, rental agreements or other agreements, however denominated, which provide for the occupancy of the Project or any portion thereof, including specifically, but without limitation, leases or other agreements which provide for the actual occupancy by persons (the *Tenants*) of the apartment units within the Project, together with any and all agreements which shall guarantee the performance thereof (collectively the *Leases*), (v) all Tenants' security deposits, reserves of any kind, residual receipts and accounts related to the Project, and (vi) any transferable licenses, permits, subsidies, authorizations and approvals pertaining to the ownership and/or operation of the Project, trade names, logos and all other assignable intangible personal property, if any, (the *Intangible Property*); all of which, including

without limitation, all real and personal property and the incidents of ownership being conveyed hereby, shall be collectively referred to herein as the **Property**.

2. **Binding Contract.** Upon full execution, this Agreement shall be a binding agreement between Seller and Buyer for the purchase and sale of the Property on the terms, conditions and provisions of this Agreement. Seller is prohibited herein from continuing to offer the Property for sale to others or to enter into any other binding agreement for the sale of the Property to such third parties.

3. **Deed.** The conveyance of the real property components of the Property from Seller to Buyer shall be by special warranty deed (the **Deed**) in form customary for similar conveyances in Adams County, Colorado.

4. **Escrow Instructions.** This Agreement shall also constitute instructions to **First American Heritage Title Company**, through its office located at 1600 Stout Street, Suite 800, Denver, CO 80202, or another escrow company which is acceptable to Seller and Buyer (the **Escrow Agent**).

4.1 **Opening of Escrow.** Within five (5) business days of the execution of this Agreement, Seller shall cause an executed original of this Agreement to be delivered to Escrow Agent and Escrow Agent shall open an escrow account for the transaction contemplated by this Agreement (the **Escrow**).

4.2 **Closing of Escrow.** **Closing** shall be deemed to have occurred upon the recording of the Deed. The date upon which a Closing shall occur shall be referred to herein as the **Closing Date**. Closing shall occur on or before **ninety (90)** calendar days after Buyer has obtained written approval from the U.S. Department of Housing and Urban Development (**HUD**) of either (a) an assignment of the current Housing Assistance Payments Contract for the Project (the **HAP Contract**) from Seller to Buyer and a renewal of the HAP Contract for a period of no less than twenty (20) years, or (b) execution of a new Housing Assistance Payments Contract for the Project with a term of no less than twenty (20) years (the **New HAP Contract**) during the Closing, with a sufficient initial gross rent, all as determined by the Buyer in its sole discretion (the **HAP Transfer**), and Buyer has delivered to Seller a Notice of Intent to Close, as further defined in Section 12.

4.3 **Tax Reporting Person.** In order to comply with applicable provisions of the Internal Revenue Code, Escrow Agent is hereby designated as the “person responsible for closing the transaction” and also as the “reporting person” for purposes of filing any required information returns with the Internal Revenue Service concerning this transaction.

5. **Purchase Price.** The **Purchase Price** for the Property shall be **SEVEN MILLION AND NO/100THS UNITED STATES DOLLARS (\$7,000,000.00)**.

5.1 **Deposit/Earnest Money.** Within five (5) business days of this Agreement being fully-executed, Buyer shall deliver to Escrow Agent a cash deposit in the amount of **One Hundred and no/100ths Dollars (\$100.00)** (the *Earnest Money Deposit*). Buyer can extend the Closing Notice Deadline (as defined in Section 12.1 herein) from September 30, 2012 to December 31, 2012 by delivering an additional cash deposit in the amount of **One Hundred and no/100ths Dollars (\$100.00)** (the *Additional Deposit*) prior to the Closing Notice Deadline, which Additional Deposit shall be added to the initial deposit of **One Hundred and no/100ths Dollars (\$100.00)** such that the Earnest Money Deposit shall total **Two Hundred and no/100ths Dollars (\$200.00)**.

5.2 **Cash at Closing.** Not later than the Closing Date, Buyer shall deposit with Escrow Agent, an amount which, when added to the Earnest Money Deposit and the Seller Loan (as defined in this Section 5.2 below), shall equal the Purchase Price, plus any other closing costs and proration chargeable to Buyer. Such deposit shall be made in cash, by wire transfer or another method which will provide that the Escrow Agent shall have in its possession at the time of Closing, funds available for immediate disbursement in accordance with applicable laws and regulations. At the Closing, the Purchase Price shall be disbursed to Seller, except that Escrow Agent is instructed to deduct from Seller's proceeds prior to disbursement to Seller, the outstanding loan balance of the Seller Loan and the closing costs and proration chargeable to Seller in accordance with the terms of this Agreement. The *Seller Loan* shall mean a subordinate secured carry-back loan made by the Seller to the Buyer at Closing with a term of forty (40) years, at an interest rate equal to the Long-term Applicable Federal Rate, which is the interest rate for loans having a term of greater than nine (9) years as published every month in a Revenue ruling by the Internal Revenue Service, for the month in which Closing occurs, in an amount mutually-agreed upon by Buyer and Seller after good faith negotiations based upon the scope of the renovations to the Project, the costs of funds, including, without limitation, the interest rates, and other terms and conditions of the construction and permanent debt and equity financing required to complete and operate the Project, which loan is to be paid back from net cash flow of the Project to be further specified in the applicable loan documents and a balloon payment of the remaining outstanding principal balance at maturity of the loan, which loan will be evidenced by a promissory note and deed of trust on terms reasonably acceptable to the Seller and Buyer.

5.3 **Deposit Account.** Any cash portions of the Earnest Money Deposit shall be deposited in an FDIC insured interest-bearing account approved by the Buyer with all interest accruing thereon to remain in the account. Interest which shall accrue on the Earnest Money Deposit shall be disbursed to or for the credit of the party entitled to receive the Earnest Money Deposit. In other words, if the Closing occurs as contemplated, then any cash portions of the Earnest Money Deposit, plus accrued interest, shall be applied for the benefit of Buyer as a credit to the Purchase Price, or if this Agreement is terminated for any reason, the party entitled to receive the Earnest Money Deposit upon such termination

shall also receive any and all accrued interest thereon. The tax identification number of Buyer shall be used for such account.

5.4 **Reserves.** Seller shall transfer any and all reserve account funds held by HUD, Vectra Bank Colorado, National Association (the *Current Lender*), any other party, and/or in the name of the Seller, to Buyer at Closing, for no additional consideration, which reserve account funds shall be fully funded in accordance with the requirements of HUD and other applicable governmental authority, but in no event shall be less than the balances in each such account as of the Effective Date, other than disbursements that are approved by HUD, any other applicable governmental authority and Buyer, which approval of buyer shall not be unreasonably withheld, conditioned or delayed.

6. **Costs and Prorations.** Escrow Agent is hereby instructed to allocate costs and expenses which shall be incurred in the closing of the Escrow and to make prorations as set forth in this section.

6.1 **Escrow and Closing Fees.** Seller and Buyer shall each pay their respective escrow and closing fees charged by Escrow Agent, which are estimated to be as follows:

Real Estate Closing Fees	-	\$ 500
Loan Fees	-	\$ 400
Recording Fees	-	\$2,500
Miscellaneous	-	<u>\$ 600</u>
Total Estimate		\$4,000

6.2 **Title Fees.** Seller shall bear the cost of the premiums for standard owner's policies of title insurance in the aggregate amount of the Purchase Price (the *Title Policies*). In the event Buyer shall elect to obtain extended coverage ALTA owner's or any other title insurance coverages or endorsements other than the standard owner's policies to be provided by Seller, Buyer shall pay the additional cost thereof, together with any and all costs and expenses that may be required in order to provide such coverage.

6.3 **Miscellaneous Costs.** Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow. Seller shall pay all recording costs or fees payable in connection with the recording of the Deed, all recording costs or fees payable in connection with recording the reconveyance of existing monetary encumbrances on the Property, and all other costs or expenses not otherwise provided for in this Agreement related to the Closing and transfer of the Property, but not including any costs associated with the Buyer obtaining financing for the Project, including, without limitation, the costs of utilizing LIHTC (as such term is defined in Section 12.1 hereto) or the issuance of tax-exempt private activity bonds.

6.4 **Taxes and Assessments.** Subject to the requirements of this section, Seller shall be responsible to pay any and all property taxes and all general and special bonds and assessments which shall accrue through and including the Closing Date. Municipal assessments which may exist against the Property shall be paid current through and including the Closing Date, but not paid in full. Seller shall be responsible to pay, either before or after Closing, any and all property taxes which accrue against the Property prior to and including the Closing Date. Such payment shall be made within ten (10) days of receipt of a written demand from Buyer. Buyer will be responsible for any and all property taxes and/or assessments accruing after the Closing Date.

6.5 **Allocation of Rents.** Subject to conditions and requirements set forth by HUD or any other applicable statute, rents or other consideration required to be paid by Tenants or any other party in occupancy of any portion of the Property (***Rents***) shall be prorated as of the Closing Date. The term ***Rents***, as used herein, includes fixed monthly rentals, additional rentals and all other sums and charges payable by Tenants under the Leases. Rents are delinquent (***Delinquent Rent***) when payment thereof is due on or prior to the Closing, but has not been made by the Closing. Delinquent Rents shall not be prorated at Closing. Buyer shall keep any Delinquent Rents that it collects following the Closing Date.

6.6 **Tenant Deposits.** Subject to conditions and requirements set forth by HUD or any other applicable statute, at Closing, Buyer shall be credited and Seller shall be debited with an amount equal to all unapplied, refundable security deposits paid under the Leases by Tenants to Seller and for which the Seller, as landlord under any Lease, shall or should have as of the Closing Date, or may in the future have, legal responsibility to refund same to Tenant (***Tenant Deposits***), plus, all interest earned on such Tenant Deposits. Except as specifically noted in the preceding sentence, all non-refundable deposits, however denominated, made by Tenants to Seller as the landlord/lessor under a Lease shall be retained by Seller and no credit for same shall be given to Buyer. Seller shall indemnify and defend Buyer and hold Buyer harmless from and against any and all claims made by any of the Tenants with respect to any Tenant Deposits, security, cleaning or other deposits not transferred or credited to Buyer. Buyer shall indemnify and defend Seller and hold Seller harmless from and against any and all claims made by any of the Tenants with respect to any Tenant Deposits transferred or credited to Buyer.

6.7 **Prepaid Credits.** At Closing, Buyer shall be credited and Seller shall be debited with an amount equal to all credits for Rent or other credits (collectively, ***Prepaid Credits***) which under the terms of the agreement with the applicable Tenant are to be applied to a period after the Closing Date. Seller shall indemnify and defend Buyer and hold Buyer harmless from and against any and all claims made by any of the Tenants with respect to any Prepaid Credits not credited to Buyer at Closing. Buyer shall indemnify and defend Seller and hold Seller harmless from and against any and all claims made by any of the Tenants

with respect to any Prepaid Credits credited to Buyer at Closing and not properly applied by Buyer.

6.8 **Service Contract Costs.** Seller shall be responsible for the payment of all costs and expenses incurred on Service Contracts, as defined in Section 8.3 herein, which shall be incurred prior to and on the Closing Date. At Closing, Buyer shall be credited and Seller shall be debited with an amount equal to all costs, expenses and charges related to Service Contracts which have been incurred through and including the Closing Date and which remain unpaid (collectively, *Service Contract Costs*).

6.9 **Operating Expenses.** All utility service charges for electricity, heat and air conditioning service, other utilities, elevator maintenance, common area maintenance, taxes (other than real estate taxes) such as rental taxes, any other expenses incurred, if applicable, in operating the Property that are directly paid by Seller and not reimbursed by Tenants, and any other costs incurred in the ordinary course of business or the management and operation of the Property shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue up to and including the Closing Date and Buyer shall pay all such expenses accruing after the Closing Date. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Closing Date to aid in such prorations. To the extent permitted by law, Seller shall indemnify and hold Buyer harmless from any liability for any operating expenses accruing up to and including the Closing Date and Buyer shall indemnify and hold Seller harmless from any liability for any operating expenses accruing after the Closing Date.

7. **Delivery of Documents.** Not later than five (5) calendar days after the date of this Agreement has been fully-executed, Seller shall deliver to Buyer a true and complete copy of all documents (the *Project Documents*) which are identified on Exhibit "B" attached hereto; provided, however, that if any of the Project Documents are not in the possession or control of Seller, including without limitation, its officers, directors, employees, consultants or agents, Seller's property manager(s) of the Project or Seller's accountants, Seller shall so indicate in writing to Buyer. The Project Documents are being delivered as a convenience to Buyer to assist Buyer in its evaluation of the Property and such delivery shall not relieve Buyer of its obligation to make its own inquiries into the status and condition of the Property. Seller makes no warranty, express or implied, as to the completeness or accuracy of any Project Document not prepared by Seller or its officers, directors, employees, consultants or agents who manage the Property. The date that Seller delivers to Buyer either all Project Documents or all available Project Documents and a written indication that any unavailable Project Documents are not in Seller's possession or control as set forth in the proviso to the first sentence of this Section 7 shall be the *Document Delivery Date*.

8. **Buyer's Contingencies.** Buyer's obligation to purchase the Property shall be subject to the satisfaction of certain contingencies as set forth below (*Buyer's Contingencies*). Such contingencies, however, can be waived by Buyer as a condition precedent to Buyer's obligation to purchase the Property. Buyer's Contingencies shall be (i) acceptance of the status of title to the Property (*Buyer's Title Approval*), (ii) approval of the physical condition of the

Property, including without limitation, the real property and the improvements located thereon (**Buyer's Site Approval**) (iii) review and approval of the existing operating statements, books and records for the Project (**Buyer's Approval of Project Operations**), (iv) procurement of tax-exempt bonds and low-income housing tax credits for the acquisition and renovation of the Property upon terms and conditions acceptable to Buyer (**Bond and Tax Credit Approval**) as further defined in Section 12, (v) acceptance of the HAP Transfer (**HAP Transfer Approval**), and (vi) procurement of any additional financing determined by Buyer to be necessary for the acquisition and rehabilitation needs of the Property, including, without limitation, paying off in full the unpaid principal balance and any accrued unpaid interest and other fees and charges of the current loan secured against the Property made by the Current Lender to Seller (the **Current Loan**), upon terms and conditions acceptable to Buyer (**Financing Approvals**). All of Buyer's Contingencies, except the Bond and Tax Credit Approval, HAP Transfer Approval and Financing Approvals, must be satisfied or waived not later than the **Property Approval Deadline**, which shall be 5:00 p.m., Mountain Time, on the day that is one hundred twenty (120) days after the Document Delivery Deadline. Deadlines for approval of Bond and Tax Credit Approval and Financing Approvals are set forth in Section 12 below.

8.1 **Status of Title and Survey.** Buyer shall have the sole and absolute responsibility, at its sole expense, to review any and all conditions that shall exist with respect to the title to the Property and any exceptions to such title or easements, liens or other encumbrances upon such title, and any discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other facts which a correct survey of the Property would disclose, whether or not such matters are shown on the public record. Buyer's review of same and right to object to such conditions shall be conducted in accordance with this section.

8.1.1 **Survey.** Buyer shall have the right to have the Property surveyed, at Buyer's sole cost and expense. Any such survey shall be prepared by a surveyor licensed by the State of Colorado. If Buyer shall elect to obtain a new survey, the completion and delivery of the survey shall not extend the Property Approval Deadline. The survey reviewed by Buyer, if any, as part of Buyer's investigation of title to the Property shall be referred to herein as the **Survey**. A copy of any Survey prepared by Buyer shall be provided to Seller.

8.1.2 **Title.** Within five (5) calendar days of the date of this Agreement being delivered to Escrow Agent, Seller shall deliver or cause to be delivered to Buyer a preliminary title report or commitment for the issuance of title insurance, together with legible copies of all documents referred to in said preliminary title report, (the **Title Report**) from First American Heritage Title Company, located in Denver, Colorado (the **Title Company**) covering the Property. Such Title Report shall be deemed part of the Project Documents. Buyer may disapprove of any title matter shown in the Title Report in Buyer's sole and exclusive judgment. Buyer shall take title to the Property subject to the Permitted Exceptions (as defined in Section 8.1.5 herein), which shall include (i) matters described in this Agreement, (ii) matters disclosed on the Survey, except any such matter that Buyer expressly disapproves in writing to Seller, and (iii) all items shown on the Title Report, except any such matter that Buyer expressly disapproves in writing

to Seller, as provided in Section 8.1.3. Buyer shall not be obligated to close the purchase of the Property unless and until the Title Company shall be unconditionally committed to deliver to Buyer the Title Policy described in Section 6.2 including the additional coverages and endorsements that Buyer elects to obtain, provided Buyer has complied with any reasonable and customary requirements for the issuance of same. Seller shall be required to provide to the Title Company such evidence as may be reasonably necessary to confirm that there are and will be no claims against the Property arising from work performed in connection with the Property prior to Closing.

8.1.3 **Approval of Title and Survey Matters.** Buyer shall be responsible to determine prior to the Property Approval Deadline, if Buyer objects to any matters shown in the Title Report or on the Survey, if any. If Buyer shall object to any matters shown on the Survey or in the Title Report, Buyer shall deliver written notice of its objections (collectively, the *Title Objections*) not later than the earlier to occur of (i) sixty (60) days of the later of its receipt of the Title Report and the Survey (if Buyer elects to obtain the Survey), but in no event later than the Property Approval Deadline. Failure to deliver notice of Title Objections shall be deemed approval of all matters disclosed on the Survey and the Title Report.

8.1.4 **Response to Title Objections.** Seller shall have five (5) business days following its receipt of the Title Objections to correct the Title Objections or to provide written notice to Buyer that such Title Objections will be corrected by Seller prior to Closing. If Seller notifies Buyer it cannot or will not correct the Title Objections prior to Closing, Buyer shall have the option to either terminate this Agreement or waive the applicable Title Objection(s). Said option shall be exercised within ten (10) business days after receipt of Seller's notice that Seller cannot or will not correct the Title Objections. If Buyer fails to give notice of cancellation of this Agreement or waiver of its Title Objections within the required time period, Buyer shall be deemed to have terminated this Agreement. If Buyer terminates this Agreement under this section, the Earnest Money Deposit shall be returned to Buyer, and Buyer and Seller shall be released from further liability under this Agreement. In the event of such termination, Seller shall pay any and all cancellation charges levied by Escrow Agent or the Title Company.

8.1.5 **Permitted Exceptions.** The matters which shall as of Closing be permitted to constitute exceptions to title to the Property after the implementation of the provisions of this Section 8.1 shall be *Permitted Exceptions*. Notwithstanding any other provision of this Agreement, Seller shall be required to cause any and all monetary liens or encumbrances (except non-delinquent real property taxes and municipal assessments) to be paid in full on or before the Closing Date and released as a lien or encumbrance against the Property.

8.2 **Approval of Site Conditions.** From the Effective Date until the Property Approval Deadline (the *Inspection Period*), Buyer shall be permitted to conduct such studies, surveys, inquiries and other investigations (collectively, *Investigations*) of the

physical condition of the Property as Buyer shall determine to be prudent and necessary prior to its acquisition of the Property. Buyer shall conduct such Investigations under its sole and absolute responsibility and at its sole expense. During the Inspection Period, Buyer shall have the right to enter at reasonable times upon the Property and conduct, at its sole expense, such Investigations as Buyer deems necessary or desirable to evaluate any and all conditions related to the Property, including without limitation, (i) the physical condition of any and all improvements located upon the Property, including, without limitation, interior, exterior and structural components thereof such as roofs, foundations, and apartment interiors based upon an actual inspection of all units, (ii) the condition of all water heaters, appliances, furnaces, air conditioning compressors and other equipment, (iii) surface, soil, subsoil, geologic or ground water conditions or other physical conditions of or affecting the Property, (iv) the existence of any contaminants or hazardous materials on or in the soil or ground water of the Property, and/or (v) the existence of any special environmental, archaeological, botanical, or other condition on or affecting the Property which might impair Buyer's contemplated use thereof. During the Inspection Period, Buyer shall have the right to perform a walk-through inspection of each of the one hundred thirty (130) apartment units and to have day time (8:00 AM to 6:00 PM) access to all vacant units. Additionally, Seller shall cooperate with Buyer to help Buyer obtain a resident profile for each of the residents living at the Property; provided, however, the information to be provided by Seller shall be limited to that information found in Seller's property management files only, and Seller will not be required to disclose any information protected by law. Buyer shall indemnify, defend and hold Seller and the Project, harmless from all damage, loss or liability, including without limitation reasonable attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof which shall be actually incurred by Seller as a result of the Investigations and such indemnification obligations shall survive any termination or cancellation of this Agreement, unless caused by Seller's gross negligence or willful misconduct. So long as this Agreement shall remain in effect, Buyer's right to enter the Property for purposes necessary for Buyer to obtain Bond and Tax Credit Approval, HAP Transfer Approval and Financing Approvals and prepare for Closing shall continue; provided, however, that Buyer's right to terminate this Agreement by reason of circumstances discovered after the Inspection Period shall be strictly governed by the terms of this Agreement.

8.3 **Service Contracts.** As part of the Project Documents, Seller shall deliver to Buyer a copy of all contracts and agreements which provide for the delivery of services to the Property (collectively, the *Service Contracts*) including, without limitation, property management, maintenance, repair, advertising, yellow pages, equipment leasing, laundry, telephones, cable or other television, snow removal, landscaping and utilities. Buyer shall have the option, which option shall be exercised in the sole and absolute discretion of Buyer, to elect to assume all or part of said Service Contracts; provided, however, that Buyer shall assume any and all contracts which provide essential utility services to the Property or which, in accordance with the terms thereof, cannot be terminated by Seller without payment of a fee or other termination charge, unless Buyer shall be responsible for the payment of any such fee or charge.

8.4 **Assumption of Contracts.** Not later than the expiration of the Inspection Period, Buyer shall provide written notice to Seller as to which Service Contracts, if any, shall be assumed by Buyer effective as of the Closing Date. In the event that the Buyer shall not elect to assume a Service Contract, then within five (5) days of the date of the notice from Buyer, Seller shall advise Buyer whether or not Seller will cancel prior to the Closing Date, any Service Contract(s) not assumed by Buyer. If Seller notifies Buyer that it elects not to terminate a Service Contract prior to the Closing Date, then within five (5) days of Seller's notice, Buyer shall elect to either (i) agree to assume the subject Service Contract at Closing and close as scheduled, or (ii) cancel this Agreement in which event, effective as of the date of such notice, this Agreement shall be deemed canceled, the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations hereunder. Any payments made by Seller pursuant to a Service Contract which shall be assumed by Buyer and which constitutes payment for services to be provided under the assumed Service Contract(s) for a period after the Closing Date shall be prorated at Closing.

8.4.1 **Performance of Obligations.** Seller shall remain responsible for the performance of any obligations of Seller under the Service Contracts required prior to and on the Closing Date. So long as this Agreement shall remain in effect, Seller shall not enter into a new or renew an existing Service Contract whose term shall extend beyond the **Property Approval Deadline** without the prior written consent of Buyer, unless such Service Contract may be cancelled without cause and without penalty upon no more than thirty (30) days prior notice. On or before the Closing Date, Seller shall pay any and all Service Contract Costs which shall accrue under any Service Contracts which shall be assumed by Buyer for any period prior to and on the Closing Date. Buyer shall pay any and all amounts and perform any and all Service Contract Costs which shall accrue under the assumed Service Contracts after the Closing Date. To the extent permitted by law, Seller shall indemnify and hold Buyer harmless from any claims for payment incurred in connection with any Service Contract Costs accruing prior to or on the Closing Date. Buyer shall indemnify and hold Seller harmless from any claims for payment incurred in connection with Service Contract Costs accruing under each assumed Service Contracts after the Closing Date.

8.5 **Approval of Operating Condition.** Buyer shall have the sole and absolute responsibility, at its sole expense, to conduct an examination of the operating and financial books and records of the Project, including review and examination of operating reports, income and expense reports, rent rolls, collection reports, maintenance reports, Leases, etc. as Buyer shall determine to be prudent and necessary prior to its acquisition of the Property. All such inquires shall be completed prior to the expiration of the Inspection Period. Prior to the expiration of the Inspection Period, Buyer shall have the right to inspect and copy any and all records related to the ownership and operation of the Project for the immediately preceding thirty-six (36) months. After expiration of the Inspection Period, Seller shall provide the following documents to Buyer: (a) audited financial statements of Seller, within 30 days after being finalized and being made available to the Current Lender, (b) monthly rent rolls for each month, within

20 days after the end of such month, (c) monthly unaudited operating statements for each month, within 20 days after the end of each month, and (d) any other reports that are provided to the Current Lender or HUD, within five (5) days of having such reports submitted to the Current Lender or HUD. Seller shall deliver copies of all such documents to Buyer. In addition, Buyer shall have the right to inspect and copy any and all Leases.

9. **Disapproval of Buyer's Contingencies.** If Buyer determines in its sole and absolute discretion that any of Buyer's Title Approval, Buyer's Site Approval or Buyer's Approval of Project Operations have not been satisfactorily resolved, Buyer may terminate this Agreement by giving written notice to Seller and Escrow Agent before the Property Approval Deadline, in which event this Agreement shall be canceled and the Earnest Money Deposit shall be returned to Buyer. If Buyer provides Seller with a written notice of such disapproval in accordance with the provisions of this Section, then effective as of Seller's receipt of notice of disapproval, this Agreement shall be deemed canceled and the Earnest Money Deposit shall be returned to Buyer. In the event of such termination, Seller shall pay any and all cancellation charges levied by Escrow Agent or the Title Company. In the event Buyer shall fail to provide such written notice of disapproval, Buyer shall be deemed to have accepted all conditions related to Buyer's Title Approval, Buyer's Site Approval and Buyer's Approval of Project Operations and Buyer shall have no right to terminate this Agreement by reason of Buyer's Title Approval, Buyer's Site Approval and/or Buyer's Approval of Project Operations.

10. **Seller's Contingencies.** Seller's obligation to sell the Property shall be subject to the satisfaction of prior written approval from HUD for the HAP Transfer (*Seller's Contingencies*).

10.1 **Buyer's Commitment.** Buyer agrees to operate the Project as affordable housing for seniors for no less than twenty-five (25) years after the date of Closing.

11. **Intentionally Omitted.**

12. **Buyer's Bond and Tax Credits Approvals and Financing.**

12.1 **Bond and Tax Credit Approval.** Buyer's obligation to purchase the Property is subject to Buyer obtaining private activity tax-exempt bond financing (*Bond Financing*) and accompanying 4% low income housing tax credits (*LIHTCs*) for the acquisition and renovation of the Property upon terms and conditions acceptable to Buyer, in its sole and absolute discretion, which shall be referred to herein as *Bond and Tax Credit Approval*.

12.1.1. Buyer agrees to submit an application for private activity tax-exempt bond financing (the *Bond Application*) to be issued by the City of Westminster, Colorado and privately placed with a private entity as the bond holder in an amount that will finance over fifty percent (50%) of the aggregate basis of the acquisition and renovation of any buildings and land on which the buildings are located of the Property, which amount is currently expected to be

not less than \$7,771,500 and not more than \$8,000,000, so the Project will qualify for LIHTCs for 100% of the units of the Property and submit an application to the Colorado Housing and Finance Authority (**CHFA**) for the LIHTCs (the **TC Application**) as soon as practicable in the 2011 calendar year (but most likely on or after the Property Approval Deadline). Seller shall provide reasonable cooperation to Buyer and such information as shall be reasonably required concerning the Property and Seller in order for Buyer to submit a Bond Application and TC Application in calendar year 2011. If Buyer is successful in obtaining Bond Financing in an acceptable amount and on acceptable terms, as determined by Buyer in its sole discretion, and an accompanying amount of LIHTCs from CHFA, as determined by Buyer in its sole discretion, from the TC Application (the **Bond and TC Acceptance**), then Buyer agrees to furnish Seller with evidence of the amount and terms of the Bond and TC Acceptance within fifteen days of its receipt of same. Upon delivery to Seller of a copy of such evidence, it will be deemed Bond and Tax Credit Approval, pending only requirements for closing on the Bond Financing and LIHTCs.

12.1.2. If Buyer does not obtain a Bond and TC Acceptance by March 31, 2012, then within thirty (30) days of such date, Buyer and Seller agree to meet and attempt to reach a common understanding in writing on how to proceed with this transaction. If, after having failed to reach a common understanding or if the Buyer and Seller fail to meet within such 30 day period, this Agreement will be considered null and void and be of no further force and effect and the Earnest Money Deposit shall be returned to Buyer. In the event of such termination, Buyer and Seller shall each pay one-half of any and all escrow and title cancellation charges levied by Escrow Agent or the Title Company.

12.1.3. Any and all costs and expenses incurred to both submit the Bond Application and TC Application and obtain the Bond and Tax Credit Acceptance shall be paid solely by Buyer. If prior to Bond and Tax Credit Approval, Buyer delivers a written notice to Seller of Buyer's intention to proceed with the purchase of the Property (the **Notice of Intent to Close**), then the parties shall proceed with the Closing by the date set forth in Section 4.2. If Buyer has not delivered to Seller such Notice of Intent to Close on or before September 30, 2012 (the **Closing Notice Deadline**), this Agreement shall be deemed canceled and the Earnest Money Deposit shall be returned to Buyer, unless Buyer delivers the Additional Deposit to Escrow Agent as set forth in Section 5.1 whereby the Closing Notice Deadline shall be extended to December 31, 2012. In the event of such termination, Buyer and

Seller shall each pay one-half (½) of any and all title and escrow cancellation charges due to Escrow Agent or the Title Company.

12.2 **Financing Approvals.** Buyer's obligation to purchase the Property is subject to Buyer obtaining financing for the acquisition and renovation of the Property upon terms and conditions acceptable to Buyer, in its sole and absolute discretion, and which shall be referred to herein as the *Financing Approvals*.

12.2.1 Buyer shall use reasonable and diligent efforts to obtain additional financing for the Project, consisting of:

12.2.1.1 The Seller Loan,

12.2.1.2 A loan from the City of Westminster, Colorado in an amount of not less than \$500,000, which funds shall be sourced from Volunteers of America, Inc. or its affiliate and which funds shall be a match for the funds specified in Section 12.2.1.3, and

12.2.1.3 Additional financing in an amount not less than \$850,000, which financing may come from the Federal Home Loan Bank Affordable Housing Program, the State of Colorado Department of Housing and/or one or more other sources.

12.2.2 Seller shall cooperate with Buyer and provide such information as shall be reasonably required concerning the Property and Seller so as to allow Buyer to obtain such financing as is set forth in this Section 12.2.

12.2.3 Any and all costs and expenses incurred to obtain the Financing Approvals shall be paid solely by Buyer. If prior to Financing Approvals, Buyer delivers the Notice of Intent to Close, then the parties shall proceed with the Closing by the date set forth in Section 4.2. If Buyer has not delivered to Seller such Notice of Intent to Close on or before the Closing Notice Deadline, this Agreement shall be deemed canceled and the Earnest Money Deposit shall be returned to Buyer, unless Buyer delivers the Additional Deposit to Escrow Agent as set forth in Section 5.1 whereby the Closing Notice Deadline shall be extended to December 31, 2012. In the event of such termination, Buyer and Seller shall each pay one-half (½) of any and all title and escrow cancellation charges due to Escrow Agent or the Title Company.

12.3 **Receipt of Approvals.** Buyer's receipt of Bond and Tax Credit Approval and Financing Approvals will be deemed the Notice of Intent to Close, which Buyer shall promptly deliver to Seller per Section 12.2.3 above; provided, however, that Buyer shall have no obligation to close unless and until the HAP Transfer Approval has occurred.

13. **Purchase "AS IS"**. Buyer is purchasing the Property on an "AS IS, WHERE IS" basis, in its present state and condition and with all faults and defects, whether known or unknown, in reliance solely upon Buyer's own investigation of the Property during the Inspection Period, including by way of illustration and not of limitation, the present state and condition of all (i) structural components of improvements which exist upon the Property, (ii) general mechanical equipment, (iii) floor and wall coverings, (iv) amenities located within the Project and any and all equipment associated therewith, (v) sidewalks, driveways and parking surfaces and improvements, and (vi) landscaping, sprinkling systems and related improvements. Neither Seller nor any agents, employees, or affiliates of Seller have made representations or warranties, expressed or implied, which concern the Property or the condition thereof, which have induced Buyer to enter into or to consummate this Agreement, except as are expressly set forth in this Agreement. Except for Seller's express representations and warranties set forth in Section 20, neither Seller nor any agent, employee, officer, director, broker, contractor or representative of Seller has made, and Seller specifically disclaims, any representations or warranties of any kind or nature whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property, including, without limitation, any representation or warranty of condition, suitability, income potential, merchantability or fitness for a particular purpose. All representations and warranties, other than those expressly contained in this Agreement, are hereby disclaimed by Seller and waived by Buyer. The recording of the Deed shall constitute irrevocable evidence of Buyer's acceptance of the then existing condition of the Property.

14. **Disclaimer**. Except as specifically set forth in this Agreement and/or the Deed delivered at Closing, Seller has not made and shall not make, and Buyer acknowledges that Seller has not made and will not make, any warranty or representation, express or implied, written or oral, statutory or otherwise concerning the Property, including, but not limited to, the following: (i) the condition of title to the Property, (ii) the nature, physical condition or other tangible aspects of the Property, (iii) the economic condition of the Property, (iv) the existence of hazardous materials in, on, about, under or affecting the Property, or (v) the compliance of the Property with environmental laws or any other federal, state or local laws, ordinances, statutes, rules or regulations.

15. **Affirmative Covenants of Seller**.

15.1 **Maintain Property**. From the Effective Date of this Agreement to the Closing Date or earlier termination of this Agreement, Seller shall at its own cost and expense (i) operate and maintain the Property in the same manner as it has been operated and maintained heretofore, free from waste and neglect, reasonable wear and tear excepted, and (ii) keep and perform or cause to be performed all obligations of the Property under all Service Contracts and Leases and in compliance with all applicable laws, statutes, requirements and regulations of any applicable governmental authority, including without limitation, HUD.

15.2 **Maintain Insurance**. From the Effective Date to the Closing Date or earlier termination of this Agreement, Seller shall at its own cost and expense maintain or cause to be maintained in full force and effect liability, casualty and other

insurance upon and with respect to the Property against such hazards and in such amounts as exist on the Effective Date.

15.3 **Change in Circumstances.** If, between the Effective Date and the Closing Date, an event occurs that would have a materially adverse effect on the operations or the physical condition of the Property, Seller shall immediately notify Buyer of such event and specify the circumstances or event that occurred and, if known, the reason therefor, and Seller shall have up to thirty (30) days to remedy such event if caused by Seller. If the period of time for Seller to remedy such event ends within fourteen (14) days of the scheduled Closing Date, the Closing Date shall be extended so that it will occur no earlier than fourteen (14) days after such event is deemed by Buyer to be remedied. If the event is caused by the act or omission of Seller, Buyer may pursue any and all rights and remedies available to Buyer under this Agreement for a default by Seller. If the event is not caused by the act or omission of Seller, then Buyer may, as its sole and exclusive remedy, terminate this Agreement by providing notice to Seller within fourteen (14) days of being notified of such event, in which case, the Earnest Money Deposit shall be returned to Buyer and both parties shall be released from all further obligations under this Agreement. In the event of such termination, Seller shall pay any and all cancellation charges levied by Escrow Agent or the Title Company.

16. **Deliveries to Escrow by Seller.** Seller hereby covenants and agrees to deliver or caused to be delivered to Escrow Agent on or prior to the Closing Date the instruments and documents set forth in this section, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under the terms of this Agreement.

16.1 **Deed.** The Deed duly executed and acknowledged in recordable form by Seller, conveying the Property to Buyer.

16.2 **Bill of Sale.** A bill of sale duly executed and acknowledged by Seller in favor of Buyer, assigning and conveying to Buyer all of Seller's right, title and interest in and to the Personal Property, which Personal Property shall be listed with specificity and agreed upon by Seller and Buyer.

16.3 **Assignment of Leases.** An assignment of Leases duly executed by Seller wherein Seller shall assign to Buyer all of Seller's interest as Landlord under the Leases and Tenant Deposits and Buyer shall assume all of the landlord/lessor's obligations under the Leases (the *Assignment of Leases*).

16.4 **General Assignment.** A general assignment duly executed by Seller, assigning to Buyer all of Seller's right, title and interest in and to all Service Contracts, Intangible Property and any other property related to or concerning the Property.

16.5 **Non-Foreign Certification.** A non-foreign certification duly executed by Seller under penalty of perjury in the form of, and upon the terms required by, law.

16.6 **Proof of Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Buyer and/or the Title Company.

The form of each of the foregoing documents shall be reasonably acceptable to Seller and Buyer. The failure of Seller to deliver to Escrow Agent any one of the required documents shall constitute a default of Seller under this Agreement.

17. **Deliveries to Escrow by Buyer.** Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Agent on or prior to the Closing Date the instruments and documents set forth in this section, the delivery of each of which shall be a condition to the performance by Seller of its obligations under the terms of this Agreement.

17.1 **Purchase Price.** The Purchase Price, less the Earnest Money Deposit and the principal amount of the Seller Loan, as adjusted by any prorations provided for in this Agreement.

17.2 **Assignment of Leases.** The Assignment of Leases duly executed by Buyer.

17.3 **General Assignment.** The general assignment duly executed by Buyer, if applicable.

17.4 **Proof of Authority.** Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Buyer to act for and bind Buyer as may be reasonably required by Seller and/or Title Company.

The form of each of the foregoing documents shall be reasonably acceptable to Seller and Buyer. The failure of Buyer to deliver to Escrow Agent any one of the required documents shall constitute a default of Buyer under this Agreement.

18. **Deliveries to Buyer upon Close of Escrow.** Seller shall deliver possession of the Property to Buyer upon the Closing Date. Further, Seller hereby covenants and agrees to turn over to Buyer at or promptly following the Closing (i) originals of all of the Leases or, to the extent an original Lease is unavailable, a duplicate original thereof with a certificate executed by Seller warranting the authenticity of such duplicate original, (ii) originals of all Service Contracts approved to be assumed or deemed to be assumed or, to the extent an original Service Contract is unavailable, a duplicate original thereof with a certificate executed by Seller warranting the authenticity of such duplicate original, (iii) the Personal Property and evidence, documentation or other proof of ownership of the Intangible Property, (iv) all keys and other such property necessary for the ownership, operation and maintenance of the Project, and (v) a letter to the Tenants duly executed by Seller and dated as of the Closing Date, notifying each Tenant that (a)

the Property has been sold to Buyer; (b) all of Seller's right, title and interest in and to the Leases and Tenant Deposits have been assigned to Buyer; and (c) commencing immediately, all rent and other payments and any notices under the Leases are to be paid and sent to Buyer. The form and content of such letter shall be reasonably satisfactory to Seller and Buyer.

19. **Escrow Cancellation.** Upon any cancellation or termination of this Agreement and the cancellation of Escrow by reason thereof, allocation of costs and expenses incurred in such cancellation and the refund of the Earnest Money Deposit shall be governed by the provisions of the Section pursuant to which such cancellation or termination shall be authorized.

19.1 **Buyer's Termination.** In the event of any default in the performance of any of Seller's obligations under this Agreement and so long as Buyer is not in default hereunder, Buyer may terminate this Agreement by giving written notice to Escrow Agent and Seller at any time prior to Closing. Failure of Buyer to terminate as provided in this Section and Closing by Buyer shall be deemed a waiver of the existence of the default. If such condition required approval by Buyer, Closing shall also be deemed an approval of the previously disapproved item. In the event a cancellation is made pursuant to any default by Seller, Seller shall pay all title and escrow cancellation charges and the provisions of Section 19.5 shall be applicable.

19.2 **Seller's Termination.** In the event of any default in the performance of any of Buyer's obligations under this Agreement and so long as Seller is not in default hereunder, Seller may terminate this Agreement by giving written notice to Escrow Agent and Buyer at any time prior to the Closing. Failure of Seller to terminate as provided in this Section and Closing by Seller shall be deemed a waiver by Seller of the existence of the default. If such condition required approval by Seller, Closing shall also be deemed an approval of the previously disapproved item. If Seller terminates based upon any default by Buyer, Buyer shall pay all title and escrow cancellation charges and the provisions of Section 19.4 shall be applicable.

19.3 **Other Cancellations.** In the event that this Agreement shall be canceled in accordance with any provision of this Agreement where an allocation of payment of cancellation charges has not been specifically set forth, then Seller and Buyer shall each pay one-half (1/2) of any and all title and escrow cancellation charges due to Escrow Agent or the Title Company.

19.4 **Buyer's Failure.** Notwithstanding anything to the contrary contained in this Agreement, if Buyer fails to perform in accordance with the terms of this Agreement, Seller may elect, in the exercise of its sole and absolute discretion, but as its sole remedy, to either (i) terminate this Agreement in which event the entire Earnest Money Deposit shall be provided to Seller and neither party shall have any rights or obligations under this Agreement, or (ii) sue for specific performance of the conveyance of the Property to Buyer in accordance with the provisions of this Agreement; provided, however, that any action for specific performance shall be commenced by the filing of a complaint as required

by law for the commencement of an action in the State of Colorado, not later than six (6) months after the date of Buyer's default or such right to sue for specific performance shall be deemed irrevocably waived by Seller. In no event shall Buyer be responsible for the payment to Seller of any damages, including lost profits, sustained by Seller by reason of a default hereunder by Buyer. Seller hereby waives and relinquishes all other claims for damages, including but not limited to lost profits, consequential damages, costs or reasonable attorney's fees (except costs and reasonable attorney's fees in connection with an action for specific performance) arising by reason of Buyer's default.

19.5 **Seller's Failure.** Notwithstanding anything to the contrary contained in this Agreement, if Seller fails to perform in accordance with the terms of this Agreement, Buyer may elect, in the exercise of its sole and absolute discretion, but as its sole remedy, to either (i) terminate this Agreement in which event the entire Earnest Money Deposit shall be returned to Buyer and neither party shall have any rights or obligations under this Agreement, or (ii) sue for specific performance of the conveyance of the Property to Buyer in accordance with the provisions of this Agreement; provided, however, that any action for specific performance shall be commenced by the filing of a complaint as required by law for the commencement of an action in the State of Colorado, not later than six (6) months after the date of Seller's default or such right to sue for specific performance shall be deemed irrevocably waived by Buyer. In no event shall Seller be responsible for the payment to Buyer of any damages, including lost profits, sustained by Buyer by reason of a default hereunder by Seller. Buyer hereby waives and relinquishes all other claims for damages, including but not limited to lost profits, consequential damages, costs or reasonable attorney's fees (except costs and reasonable attorney's fees in connection with an action for specific performance) arising by reason of Seller's default.

20. **Seller Representations and Obligations.** Seller represents and warrants to Buyer as set forth in this Section, which representations and warranties shall survive the Closing, and Seller acknowledges that but for such representations and warranties, Buyer would not execute this Agreement.

20.1 **Organization; Authority.** Seller is at the time of the execution of this Agreement and will be at Closing duly organized and existing, qualified to do business in Colorado and in good standing under and by virtue of the laws of the State in which it was formed, and it has full right, power and authority to carry on its business. Seller has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Seller pursuant hereto, and all required partnership actions and approvals therefore have been duly taken and obtained. The individual signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller is and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement and all documents to be executed hereto by Seller are and shall be binding upon and enforceable against Seller in accordance with their respective terms.

20.2 **Pending Claims.** That there are no claims, causes of action or other litigation or proceedings initiated by or pending against Seller or, to the best of Seller's knowledge, threatened against Seller in respect to Seller's ownership or operation, or the environmental condition, of the Property.

20.3 **Environmental Conditions.** Except as may be otherwise specifically disclosed in any environmental disclosure delivered to Buyer from Seller, to the best of Seller's knowledge (as defined in this Section 20.3 below) (i) there has not been, and does not exist, any violation of Environmental Laws (as defined in this Section 20.3 below) related to the Property or the presence or release of Hazardous Material (as defined in this Section 20.3 below) on or from the Property, (ii) Seller has not manufactured, introduced, released or discharged from or onto the Property any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos), (iii) Seller, has not used the Property or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials in violation of any Environmental Laws, (iv) there are no underground storage tanks located on the Property nor have there been such tanks located on the Property, (v) there have been no claims made or threatened by any third party against Seller or the Property relating to damage, cost recovery compensation, contribution, loss or injury resulting from any Hazardous Materials, and (vi) there are and have been no enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state or local laws relating to any Hazardous Materials and affecting the Property. The term ***Environmental Laws*** includes, without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the date of this Agreement, together with their implementing regulations, guidelines, rules or orders as of the date of this Agreement, and all state, regional, county, municipal and other local laws, regulations, ordinances, rules or orders that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. The term ***Hazardous Materials*** includes, without limitation, petroleum, including, without limitation, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), and any substance, material, waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law. As used in this Agreement, the term ***to the best of Seller's knowledge*** means the actual knowledge (as contrasted with implied, imputed or constructive knowledge) of Seller, including any of their officers, directors, employees, agents or consultants, but without any duty of investigation or inquiry by same.

20.4 **Local Ordinances.** Seller has been provided no written notice of violation of any Municipal Ordinances (as defined in this Section 20.4 below) applicable to the Property. The term **Municipal Ordinances** includes, without limitation, any and all present local ordinances of any governmental authority in

any way applicable to Seller or the Property, including, without limitation, the ownership, use, occupancy, possession, transfer, operation, maintenance, alteration, repair or reconstruction thereof, or regulation of the Property and any and all improvements located thereon.

20.5 **Bankruptcy Issues.** Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

20.6 **Non-Foreign Status.** In accordance with Section 1445 of the Internal Revenue Code, Seller is not now, and at Closing will not be, a "foreign person" (including being a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and income tax regulations).

20.7 **No Actions.** There are no (i) condemnation, judicial or administrative actions or other proceedings pending or, to the best of Seller's knowledge, threatened by any person or entity against Seller or the Property, or (ii) violations of any law, statute, government regulation or requirement that in any manner or to any extent may materially affect the value or the operations of the Property.

20.8 **No Transfers.** Seller has not and shall not sell, convey, assign, lease (other than to Tenants in actual occupancy of apartment units) or otherwise transfer all or any part of the Property, including, without limitation, any easement or development rights, except as may result or exist by reason of any Permitted Exception.

20.9 **Ownership and Possession.** Subject to limitations on warranties set forth in the Deed, Seller is the owner of the Property, has good marketable, insurable and indefeasible fee simple title to the Property, and has full power and authority to enter into and perform this Agreement in accordance with its terms and there is no other person or entity that has an ownership interest in the Property. Except for Tenants in actual occupancy of apartment units under Leases, no party is in possession of any portion of the Property. The provisions of this section shall not be construed to expand warranties as to title contained within the Deed and the limitations of warranties contained within a special warranty deed under the laws of the State of Colorado shall limit Seller's warranties with respect to the conveyance of title to the Project.

20.10 **No Encumbrances.** At Closing, the Property shall be free and clear of all liens, encumbrances, claims, rights, demands, easements, leases (other

than to Tenants in actual occupancy of apartment units), agreements, covenants conditions and restrictions of any kind or character other than the Permitted Exceptions and those liens, encumbrances, claims, rights, demands, easements, Leases, agreements, covenants, conditions and restrictions contemplated by this Agreement or caused by the acts of Buyer.

20.11 **Zoning and Licenses.** The Property is zoned properly for multifamily residential housing. To the best of Seller's knowledge, Seller has received all licenses, permits, approvals, authorizations, consents or orders of any governmental bodies and agencies, including, without limitation, HUD, having jurisdiction over the Property (each an ***Authority***) necessary for the present ownership and operation of the Property, including, without limitation, a certificate of occupancy, required by any Authority (collectively, the ***Permits***). Seller has received no notice of any revocation or unwillingness to renew any of the Permits.

20.12 **Utilities.** All water, sewer, gas, electric and other utility facilities serving the Property are, to the best of Seller's knowledge, installed to the boundary lines of the Property, adequate to permit multifamily residential use of the Property, and currently serving the Property in an adequate and normal manner for properties such as the Project located in this general area.

20.13 **Rent Rolls and Leases.** To the best of Seller's knowledge, the rent rolls previously delivered to Buyer are true, complete and correct in all material respects and contain all of the Leases and tenancies of the Property as of the Effective Date, which Leases have not been modified or amended except as indicated on the rent rolls (such rent rolls to be updated as of Closing so as to be true, complete and correct in all material respects).

21. **Buyer's Representations and Obligations.** Buyer represents and warrants to Seller as follows, which representations and warranties shall survive Closing, and Buyer acknowledges that but for such representations and warranties, Seller would not execute this Agreement.

21.1 **Organization; Authority.** Buyer is duly organized and existing and is in good standing under and by virtue of the laws of the State in which it is formed, and has full right, power and authority to carry on its business. Buyer warrants it has full authority and power to execute this Agreement, along with the authority and ability to close the purchase of the Property in accordance with the terms hereof. Any individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign same on behalf of Buyer and to bind Buyer thereto. This Agreement and all documents to be executed hereto by Buyer are and shall be binding upon and enforceable against Buyer in accordance with their respective terms and conditions. Further, any assignment(s) made by Buyer of Buyer's rights, title and interests in this Agreement shall be binding upon any assignee of Buyer with respects to all terms and conditions referenced within this section.

21.2 **Buyer's Qualification.** Buyer is experienced in the ownership, operation and maintenance of apartment complexes and is experienced in obtaining public and/or private financing for the acquisition and operation of multi-family housing.

22. **Further Documents and Acts.** Each of the parties hereto agrees to cooperate in good faith with each other, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

23. **No Recordation.** Neither Buyer nor Seller shall, without the prior written consent of the other, record or cause to be recorded against the Property any notice or memorandum of this Agreement or any option to any interest in the Property.

24. **Assignment.** The rights and obligations of Buyer under this Agreement may be assigned in whole or in part, without the prior consent of Seller, to any affiliate of Buyer or partnership controlled by Buyer or any such affiliate, which will be created to serve as the owner for the Property, or with the written consent of Seller, which shall not unreasonably be withheld, to any other person or entity. The Seller and the Buyer may assign this Agreement to a third party only with the prior written consent of the other party. Any assignment made in violation of this provision shall be null and void.

25. **Eminent Domain Proceedings.** If at any time during the term of this Agreement all or any portion of the Property or an interest therein is threatened with condemnation or legal proceedings are commenced under the power of eminent domain or any notice of intended condemnation or proceedings in the nature of eminent domain are filed, then Seller shall notify Buyer of same in writing and, Buyer shall, within fifteen (15) days of the date of such notice, elect to either (i) proceed to Closing, in which event Seller shall assign to Buyer all rights to receive condemnation proceeds and awards, or (ii) terminate this Agreement and cancel the Escrow by giving written notice to Escrow Agent and the other party. In the event that Buyer shall not have made such election within said fifteen (15) days, then Buyer shall be deemed to have cancelled pursuant to this section. Upon any termination of this Agreement in accordance with the provisions of this Section, all documents held by Escrow Agent shall be returned to the respective parties who deposited the same, Seller and Buyer shall each pay one-half (1/2) of all title and escrow cancellation charges, the Earnest Money Deposit shall be returned to Buyer and each party shall be excused from any further obligations hereunder or liability to the other party.

26. **Fire or Casualty.** Prior to the Closing, and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, flood, landslide, fire or other casualty shall be borne and assumed by Seller, except as otherwise provided in this Section. If, prior to the Closing, any part of the improvements which is part of the Project is damaged or destroyed by earthquake, flood, landslide, fire or other casualty, Seller shall immediately notify Buyer of such fact. If such damage or destruction is Material (as such term is defined in this Section 26 below) and the damage or destruction cannot reasonably be repaired prior to the anticipated Closing Date, Seller or Buyer shall have the option to terminate this Agreement upon written notice to the other party given not later than thirty (30) days after receipt of either party's

notice. For purposes of this Section 26, **Material** shall be deemed to be any damage or destruction to the Property where the cost of repair or replacement is estimated to be One Hundred Thousand Dollars (\$100,000.00) or more. If this Agreement is terminated in accordance with the provisions of this Section, then effective as of the date of such notice, this Agreement shall be deemed canceled, the Earnest Money Deposit shall be returned to Buyer and the parties shall have no further obligations hereunder. In the event of such termination, Seller and Buyer shall each pay one-half of any cancellation charges levied by Escrow Agent or the Title Company. If the casualty is not Material, neither party shall have the right to terminate this Agreement, but Seller shall pay any deductible associated with such loss and shall assign and turn over, and Buyer shall be entitled to receive and keep, all insurance proceeds payable to Seller or Buyer with respect to such damage or destruction (which shall then be repaired or not at Buyer's option and cost), and the parties shall proceed to the Closing pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price. If Buyer does not elect to terminate this Agreement by reason of any casualty, Buyer shall have the right to participate in and direct any adjustment of the insurance claim. In the event that any loss, Material or otherwise is uninsured or the insurance company denies payment of just compensation for such loss, Buyer shall have the right to terminate this Agreement. Upon such termination, the Earnest Money Deposit shall be returned to Buyer, the parties shall have no further obligations hereunder and Seller shall pay any cancellation charges levied by Escrow Agent or the Title Company.

27. **Time of Essence.** Time is of the essence of every provision of this Agreement in which time is an element. However, if all conditions to Closing have not been met by the agreed Closing Date, Escrow Agent shall continue to comply with the instructions contained herein until a written demand has been made by a party entitled to do so for the cancellation of Escrow. Upon receipt of any such demand, Escrow Agent shall notify the other party of said demand, shall immediately cancel the Escrow without any further instruction from any party, and the Earnest Money Deposit shall be released in accordance with the terms of this Agreement.

28. **Survivability.** All covenants of Buyer or Seller which are expressly intended hereunder to be performed in whole or in part after the Closing and all representations, warranties and indemnities by either party to the other, shall survive the Closing and be binding upon and inure to the benefit of the respective parties hereto and their respective heirs, successors and permitted assigns. Any agreements, understandings, warranties or representations not expressly contained herein shall in no way bind either Seller or Buyer. Seller and Buyer each expressly waives any right of rescission and all claims for damages by reason of any statement, representation, warranty, promise and/or agreement, if any, not contained in or attached to this Agreement.

29. **Broker's Commission.** Seller and Buyer each represent to the other that, to the best of its knowledge, no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with the transactions covered by this Agreement. Each party agrees to and does hereby indemnify, defend, save and hold harmless the other from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of such indemnifying party in connection with the transactions covered by this Agreement.

30. **Waiver, Consent and Remedies.** Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision voluntarily waived under this section where such rescission of waiver is not otherwise inconsistent with this Agreement. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. Except as otherwise specified in this Agreement, (i) all rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other, and (ii) either party may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

31. **Attorney's Fees.** If either Buyer or Seller shall obtain legal counsel or bring an action against the other by reason of the breach of any covenant, provision or condition hereof, or otherwise arising out of the Agreement, the unsuccessful party shall pay to the Prevailing Party (as such term is defined in this Section 31 below) the Prevailing Party's reasonable attorney's fees, which shall be payable whether or not any action is prosecuted to judgment. The term ***Prevailing Party*** shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

32. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and (i) delivered to an officer or duly authorized representative of the other party in person or (ii) by Federal Express or other national commercial delivery or courier service that provides written confirmation of delivery for next business day delivery, and addressed to the party for whom intended, as follows:

If to Seller: Housing Authority of the City of Westminster
Attention: Brent McFall
c/o City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031
Facsimile No: 303-658-2010
Email: bmcfall@cityofwestminster.us

If to Buyer: Volunteers of America National Services
c/o Volunteers of America, Inc.
1660 Duke Street
Alexandria, Virginia 22314
Attn: Robin Keller

Facsimile No.: 703-341-7002
Email: rkeller@voa.org

with a copy to: Volunteers of America National Services
c/o Volunteers of America, Inc.
1660 Duke Street
Alexandria, Virginia 22314
Attn: General Counsel
Facsimile No.: 703-341-7002
Email: dbowman@voa.org.

Any party may from time to time, by written notice to the other as provided above, designate a different address which shall be substituted for that specified above. If any notice or other document is sent as aforesaid, the same shall be deemed served or delivered on the date (i) of actual receipt, if personally served, or (ii) of delivery, if by Federal Express or other national commercial delivery or courier service. Notices to be given as above noted as "With a copy to:" shall be given as a courtesy only and delivery shall be complete without delivery or receipt of such courtesy notice.

33. **Gender and Number**. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

34. **Entire Agreement**. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

35. **Captions**. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

36. **Governing Law**. This Agreement and the exhibits attached hereto shall be governed by and construed under the laws of the State of Colorado. In the event of any dispute hereunder, it is agreed that the sole and exclusive venue shall be in a court of competent jurisdiction in the County of Denver, Colorado, and the parties hereto agree to submit to the jurisdiction of such court.

37. **Invalidity of Provision**. If any court determines that any provision hereof is unenforceable, it is the intention of the parties hereto that this Agreement shall not thereby be terminated but that the court reform this Agreement to the extent required to make it valid and enforceable, to the extent such reformation may be accomplished without materially and adversely affecting intended benefits and burdens of the parties under this Agreement.

38. **Amendments**. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing executed by both Buyer and Seller.

39. **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Facsimile (fax) transmission of a signed copy of this Agreement or any addendum or amendment thereof and the retransmission of any signed fax shall be the same as delivery of an original.

40. **Exhibits.** All exhibits to this Agreement are incorporated herein by this reference.

41. **Date of Performance.** If the date on which any performance required hereunder is other than a business day in the State of Colorado, then such performance shall be required as of the next following business day.

44. **Time for Acceptance.** This Agreement shall be null and void if a fully-executed copy is not returned to Buyer by 5:00 p.m., Eastern Standard Time, Friday, July 29, 2011.

[One signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER: HOUSING AUTHORITY OF THE CITY OF WESTMINSTER,
a non-profit public housing authority organized pursuant to Colorado Revised Statutes, Sections 29-4-201 et seq.

By: _____
Name: _____
Its: _____

BUYER: VOLUNTEERS OF AMERICA NATIONAL SERVICES,
a Minnesota nonprofit corporation

By: _____
Name: _____
Its: _____

EXHIBIT "A"
TO
PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

SUB: WESTMINSTER HOUSING AUTHORITY SUBD FLG 1 BLK:1 LOT:1 DESC: TOG WITH PT OF THE SW4 OF SEC 32/2/68 DESC AS FOLS BEG AT W4 COR SD SEC 32 TH E 1682/54 FT TH S 161/08 FT TO THE TRUE POB TH CONT S 25 FT TH E 270/51 FT TH N 25 FT TH W 270/51 FT TO THE POB 32/2/68

TO BE VERIFIED BY ESCROW AGENT/TITLE COMPANY UPON RECEIPT OF PRELIMINARY TITLE COMMITMENT.

**EXHIBIT “B”
TO
PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS**

Project Documents

(a) All permits, licenses and approvals, including, without limitation, certificates of occupancy and business licenses, issued by any government body or agency having jurisdiction over the Property, relating to the ownership and/or operation of, or Seller’s operations with respect to, the Property;

(b) All Leases, form of leases, Service Contracts, management contracts, maintenance and repair contracts, pest control contracts, snow removal contracts, leasing contracts and any and all other contracts and agreements, recorded or unrecorded, affecting the Property, or any portion thereof, of the Seller;

(c) [intentionally omitted];

(d) Any existing surveys, as-built construction drawings, plans and specifications, blueprints, engineering reports, environmental and geotechnical reports or other plans, drawings, reports or studies regarding the condition, construction, physical condition and operation of the Property;

(e) Existing title insurance policies or commitments for such policies related to the Property and copies of all exceptions thereto;

(f) Evidence of the availability of adequate utility services to the Property together with any bills therefore for at least the past twelve months and any written notices of termination or impairment in the furnishing of or an increase in rates for services to the Property of water, sewer, gas, electric, telephone, drainage and other utilities services;

(g) Warranties in possession from third parties relating to the condition of the improvements constructed on the Property including, for example, warranties for roofs, plumbing, mechanical, electrical, heating and air conditioning systems, landscaping, paving, equipment and appliances;

(h) All audited, if any, and unaudited financial and operating statements for the calendar years 2008, 2009, 2010 and the year-to-date, including any financial statements filed with any state or federal government agency;

(i) Current operating budgets for the Property;

(j) Any existing appraisals, market studies, rent comparability studies or similar evaluations of the Property;

(k) The rent rolls for the Property indicating the Rents and terms of the Leases for all apartments, Rents collected, any Delinquent Rents and all security deposits;

(l) An inventory of all personal property on the Property or owned by Seller relating to the Property, including, without limitation, all fixtures, furniture and equipment;

(m) A list of employees working for the Seller or at the Property, describing their positions, salaries and benefits;

(n) Copies of all liability, casualty and other insurance certificates covering the Property and the Seller;

(o) Copies of lien waivers from all contractors and subcontractors for materials or labor provided in connection with the Property if such contractors or subcontractors remain eligible under applicable law to file liens against the Property as of the date of this Agreement;

(p) Copies of all notes, loan agreements, mortgages/deeds of trust, security agreements, financing statements, guaranties, regulatory agreements, mortgage insurance contracts and similar documents relating to the mortgage loans and other loans secured by or made to the Property or Seller if such loans involve or are related to the Property;

(q) Documentation related to any other liability involving or related to the Property;

(r) A list of all litigation, proceedings or investigations pending or threatened against the Seller or adversely affecting the Property;

(s) Copies of any inspection reports, management reviews, or other studies, reviews or inspections from HUD and any other federal, state, city or local agency received in the most recent four (4) years;

(t) A copy of any and all HAP Contracts and other contracts or agreements by which rent subsidies under any statutory provision or program are provided to the Property, including the original contract and all subsequent renewals and amendments and all material documents and correspondence relating thereto.