



## CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
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 September 2010
  - B. Quarterly Insurance Claim Report: July – September 2010
  - C. Revised Employment Agreement with J. Brent McFall
  - D. Revised Employment Agreement with John A. Stipech
  - E. Revised Employment Agreement with Martin R. McCullough
  - F. Ice Centre IGA Amendment with Hyland Hills Park and Recreation District
  - G. Shaw Heights Tributary at Circle Drive IGA Amendment with UDFCD and Adams County
  - H. Little Dry Creek Regional Detention Pond IGA Amendment with UDFCD and Adams County
  - I. Reclaimed Water Treatment Facility Phase II Expansion Construction Contracts
  - J. Little Dry Creek/Big Dry Creek Sewer Rehabilitation – Phase I Engineering Contract
  - K. Reclaimed Water Agreement with West 117<sup>th</sup> Master Homeowners' Association in the Weatherstone Subdivision
  - L. Project Oversight Services Agreement Amendment for the Municipal Service Center Gasoline Recovery System
  - M. Second Reading of Councillor's Bill No. 52 re Amend W.M.C. Section 9-8-3 re Infrastructure Fee
  - N. Second Reading of Councillor's Bill No. 53 re 2011/2012 City Budget Fund Appropriations
  - O. Second Reading of Councillor's Bill No. 55 re Debt Refinancing Supplemental Appropriation
  - P. Second Reading of Councillor's Bill No. 56 re Amend W.M.C. Section 4-1-3 re Retailer Collection Fees
  - Q. Second Reading of Councillor's Bill No. 57 re Amend W.M.C. Title IV re Collection of Tax on Infrastructure

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Resolution No. 37 re IGA with State re Historic Preservation Grant for Shoenberg Farm Concrete Silo Stabilization
- B. Councillor's Bill No. 58 re Shoenberg Farm Concrete Silo Stabilization Grant Supplemental Appropriation

11. Old Business and Passage of Ordinances on Second Reading

12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session

- A. City Council

13. Adjournment

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

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 11, 2010 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor McNally led the Council, staff and audience in the Pledge of Allegiance.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of September 27, 2010, as written. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the 2011/2012 City Budget was scheduled for adoption later in the meeting. If, however, Amendments 60 or 61 or Proposition 101 were approved by the Colorado electorate on November 2, the impact would force budgetary reductions and immediate amendment of the Budget. Council was charged by law with the responsibility of adopting a balanced budget by December.

Following tonight's meeting Council would meet as the Board of Directors of the Westminster Economic Development Authority and of six General Improvement Districts to consider their 2011 budgets. At the conclusion of those meeting, the Council would convene in executive session to discuss the City Attorney's performance evaluation pursuant to Westminster Municipal Code §1-11-3(C)(1) and Colorado Revised Statutes §24-6-402(4)(f).

COUNCIL REPORTS

Councillor Briggs reported that all levels of government except federal were required to adopt balanced budgets and could not deficit spend.

PROCLAMATIONS

Councillor Briggs read a proclamation issued by the Mayor to declare October 23 to 31 to be Red Ribbon Week. This year's theme, "I Am Drug-free," would headline activities throughout the nation. The proclamation was presented to Kathy Pascoe and Eleanor Scott of the Westminster Area Community Action Awareness Team Board of Directors.

Mayor McNally proclaimed the week of October 18 to be Business Appreciation Week and October 22 to be Business Appreciation Day. The City realized the significance of businesses that chose to locate and remain in Westminster. Council and staff enjoyed the opportunity to recognize that partnership annually by hosting a luncheon where individual businesses that had operated for 25 years or more were honored. The Mayor presented the proclamation to Peter Smith of Smith Environmental, a member of the Business Advisory Group who accepted the proclamation on behalf of all businesses in the City.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute a contract with the low bidder, BT Construction, Inc., in the amount of \$639,028 for construction improvements to the City's reclaimed water distribution system and authorize a fifteen percent (15%)

construction contingency in the amount of \$95,854 for a total construction budget of \$734,882; ratify the expenditure of \$8,990 to the previously approved contract with Accela, Inc. for the purchase and implementation of the Total Enterprise Asset Management System and Building Division Operating Software application; authorize the City Manager to execute the renewal of a \$44,913 contract with Lehman Communications Corporation for printing and distribution services of three issues of the Parks, Recreation and Libraries Activities Guide for the twelve-month period beginning November 1, 2010, including options for two additional one-year renewals (2011 and 2012) for a total amount of \$136,036 with a contingency of \$2,784 based on negotiated adjustments not to exceed the annual percent change of the CPIU; authorize the City Manager to execute agreements for bond counsel services with Sherman & Howard for a fee not to exceed \$40,000, plus actual expenses not to exceed \$1,200, and for disclosure counsel services with Kutak Rock for a total fee not to exceed \$25,500, inclusive of expenses, both in connection with the proposed issuance of \$10 million Certificates of Participation, Series 2010, representing an assignment of the right to receive certain revenues pursuant to a Lease Purchase Agreement, dated as of March 1, 1998, as amended, by and between the City of Westminster and the City of Westminster Building Authority, in substantially the same form as distributed in the agenda packet; final passage on second reading of Councillor's Bill No. 49 implementing water and sewer rate adjustments and meter service charges for 2011 and 2012; final passage on second reading of Councillor's Bill No. 50 amending Title VIII of the Municipal Code to reflect changes to the City's Water Regulations; and final passage on second reading of Councillor's Bill No. 51 authorizing a \$70,000 supplemental appropriation reflecting the City's receipt of an Adams County Open Space Grant for Little Dry Creek Dog Park.

Councillor Kaiser moved, seconded by Mayor Pro Tem Dittman, to approve all items on the consent agenda. The motion carried.

#### COUNCILLOR'S BILL NO. 52 INCREASING INFRASTRUCTURE FEE

Upon a motion by Councillor Major, seconded by Mayor Pro Tem Dittman, the Council voted unanimously on roll call vote to pass on first reading Councillor's Bill No. 52 amending Section 9-8-3 of the Westminster Municipal Code concerning the infrastructure fee.

#### RESOLUTION NO. 35 SETTING MILL LEVY & ADOPTING 2011/2012 CITY BUDGET

Councillor Major moved to adopt Resolution No. 35 setting the City mill levy at 3.65 mills for both fiscal years 2011 and 2012 and formally adopting the total 2011/2012 City budget, including staffing levels and the Five-year Capital Improvement Program. Mayor Pro Tem Dittman seconded the motion, and the motion passed unanimously at roll call.

#### COUNCILLOR'S BILL NO. 53 APPROPRIATING FUNDS FOR THE 2011/2012 BUDGET

Councillor Major moved, seconded by Mayor Pro Tem Dittman, to pass on first reading Councillor's Bill No. 53 appropriating funds for the 2011/2012 budget. On roll call vote, the motion passed unanimously.

#### RESOLUTION NO. 36 ADOPTING THE 2011 AND 2012 PAY PLANS

Councillor Briggs moved, seconded by Councillor Major, to adopt Resolution No. 36 establishing the 2011 and 2012 Pay Plans. The motion passed unanimously on roll call vote.

#### 2011 CITY EMPLOYEE HEALTH INSURANCE RENEWALS AND RATES

Councillor Lindsey moved to authorize the City Manager to renew contracts with Great-West Healthcare (CIGNA), Kaiser Permanente and Delta Dental and authorize the continuation of a four-tier rate structure with the employer and employee premium rates as reflected and distributed in the agenda packet. Mayor Pro Tem Dittman seconded the motion, which passed unanimously on roll call vote.

COUNCILLOR BILL NO. 54 TO REFUND ICE CENTRE SERIES 1998 CERTIFICATES OF PARTICIPATION

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to pass as an emergency ordinance Councillor's Bill No. 54 refunding Certificates of Participation, Series 1998, (Ice Centre Building) in an amount not to exceed \$10 million.

COUNCILLOR'S BILL NO. 55 – DEBT REFINANCING SUPPLEMENTAL APPROPRIATION

It was moved by Councillor Winter and seconded by Councillor Kaiser to pass on first reading Councillor's Bill No. 55 providing for supplementary appropriations to the 2010 budget of the General, Debt Service and Golf Course Funds. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 56 AMENDING RETAILER COLLECTION FEES IN TITLE IV OF W.M.C.

Councillor Major moved to pass on first reading Councillor's Bill No. 56 to amend Section 4-1-3 of the Westminster Municipal Code concerning retailer collection (vendor) fees. Councillor Winter seconded the motion, and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 57 AMENDING TITLE IV, W.M.C., TO COLLECT TAX ON INFRASTRUCTURE

It was moved by Councillor Kaiser and seconded by Mayor Pro Tem Dittman to pass on first reading Councillor's Bill No. 57 amending Title IV of the Westminster Municipal Code concerning the collection of tax on infrastructure. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Dittman and seconded by Kaiser to adjourn. The motion carried and the meeting adjourned at 7:20 p.m.

ATTEST:

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

\_\_\_\_\_  
Mayor



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
October 25, 2010



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

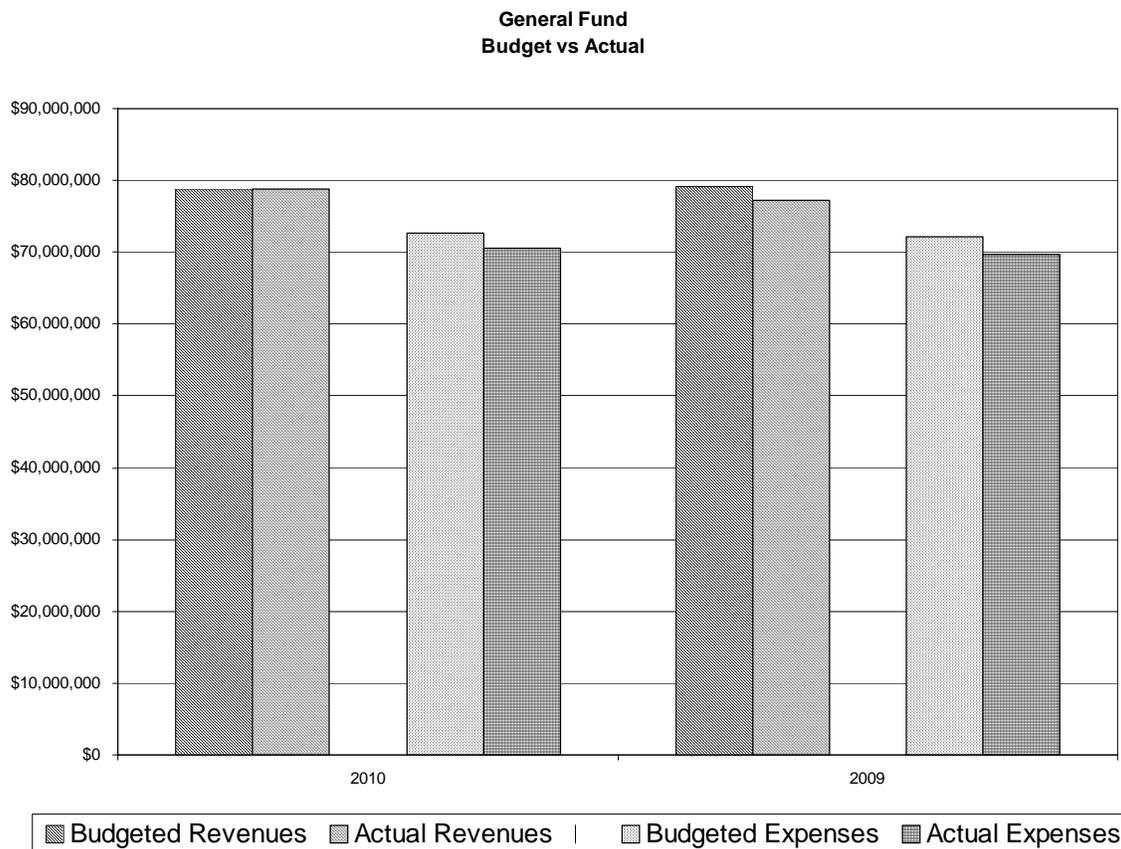
**Recommended City Council Action**

Accept the Financial Report for September 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 exceed expenditures by \$8,533,714. The following graph represents Budget vs. Actual for 2009-2010.

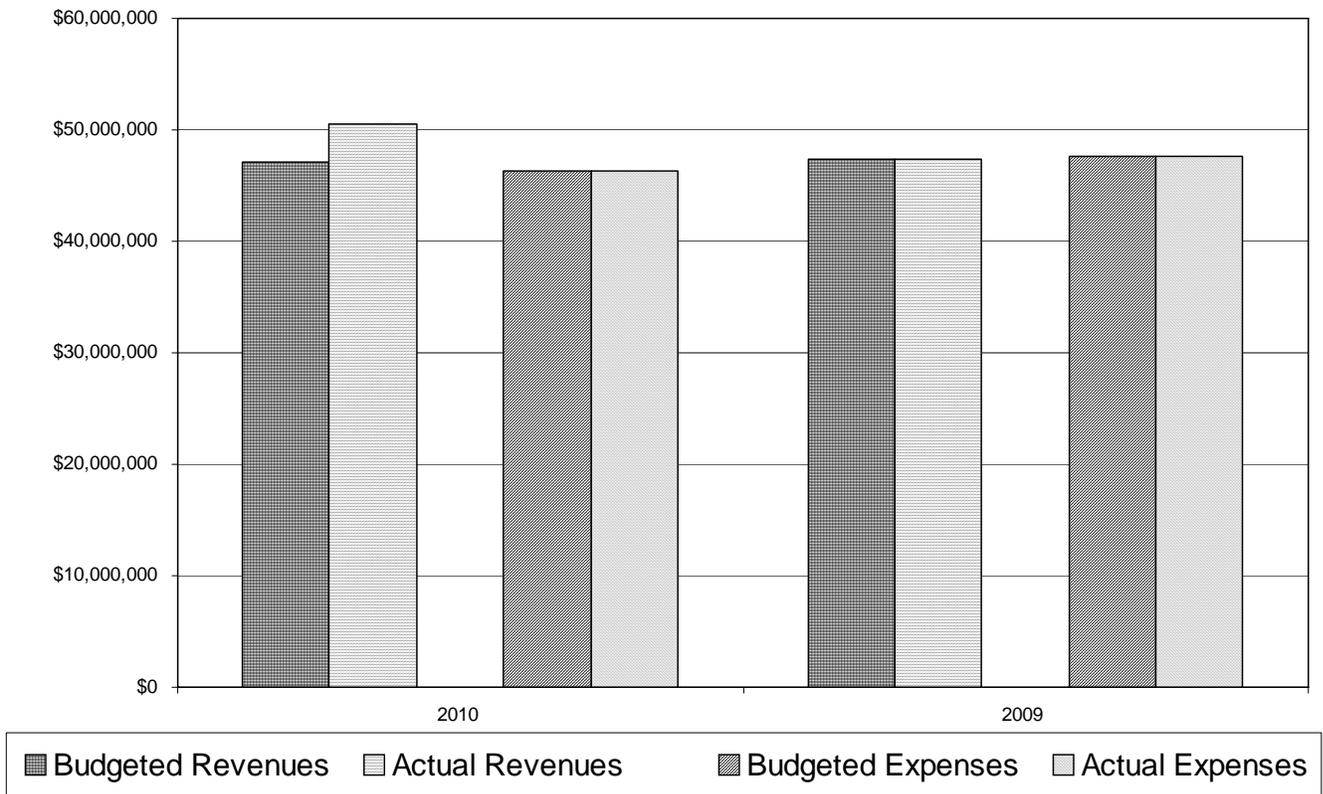


2010 actual revenue and expenditures do not reflect the refunding of the 2001 Certificates of Participation in the amount of \$13.5 million. The budget appropriation for the refunding will be made in October.

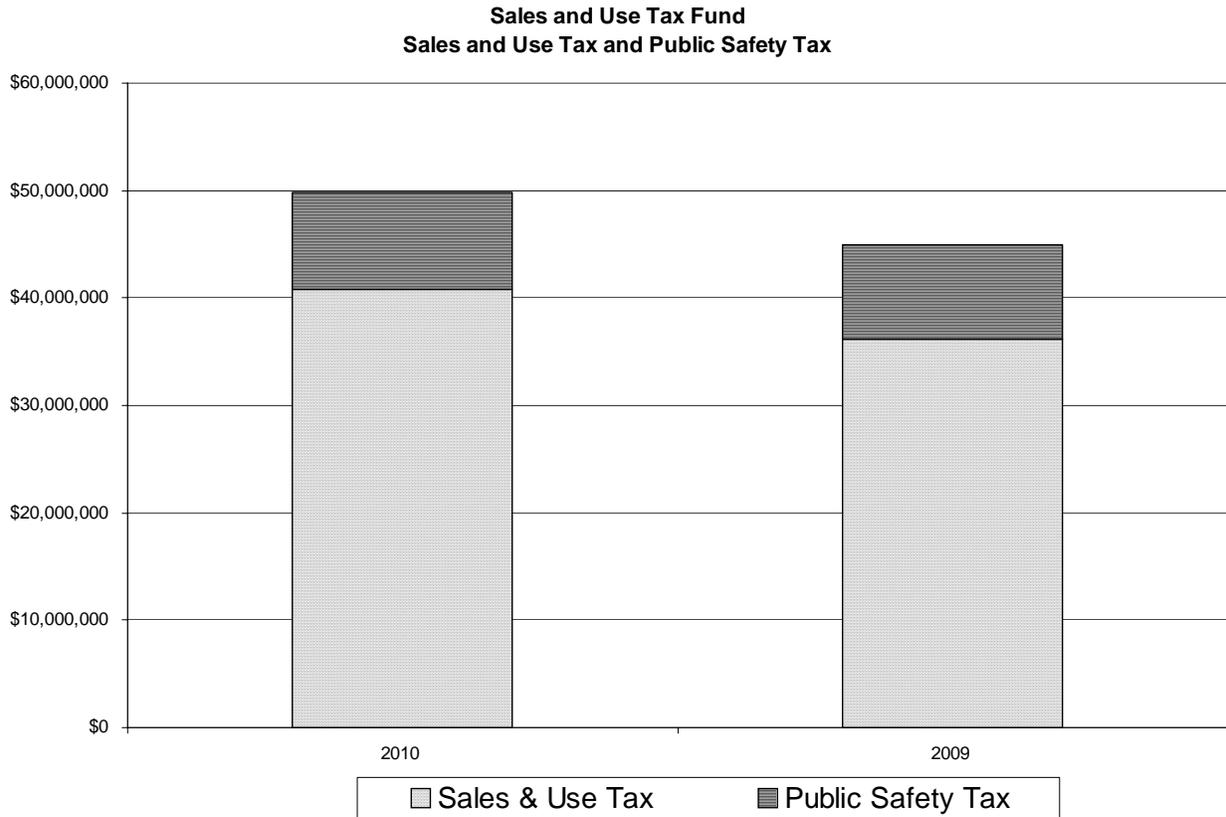
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$4,274,049.

- On a year-to-date cash basis, sales and use tax returns are up 9.8% from 2009.
- On a year-to-date basis, across the top 25 shopping centers before including urban renewal area adjustments, total sales and use tax receipts are down 2.7% from the prior year. With the urban renewal area adjustments, sales and use tax receipts are up 9.7%.
- Sales and use tax receipts from the top 50 Sales Taxpayers, representing about 62% of all collections, are up 10.8% after urban renewal area adjustments.
- Urban renewal areas make up 42.2% of gross sales tax collections. After urban renewal area and economic development assistance adjustments, 16.2% of this money is available for General Fund use.
- The Westminster Mall is down 34.0% on a year-to-date basis.
- Building use tax is up 31.6% year-to-date from 2009.
- Audit and Enforcement revenue includes one large audit of \$1.7 million.

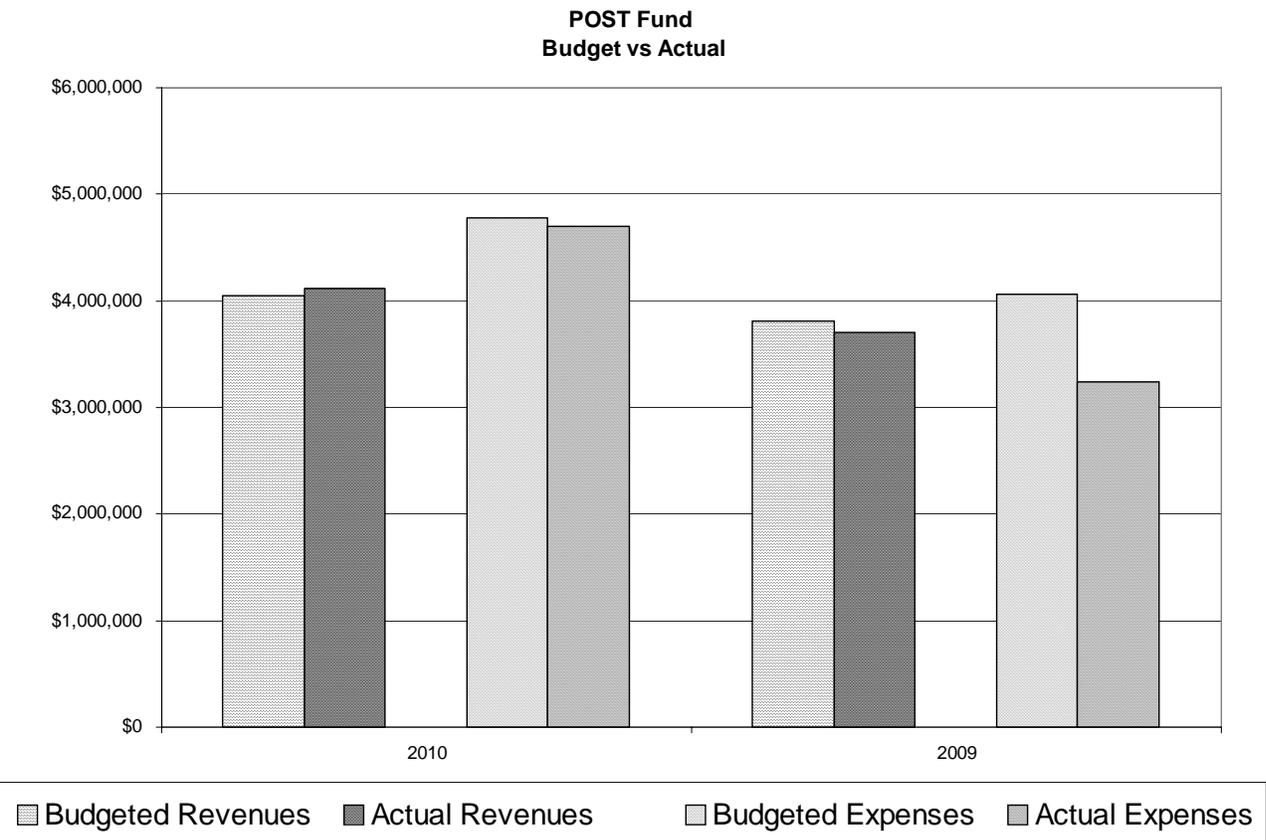
**Sales & Use Tax Fund  
Budget vs Actual**



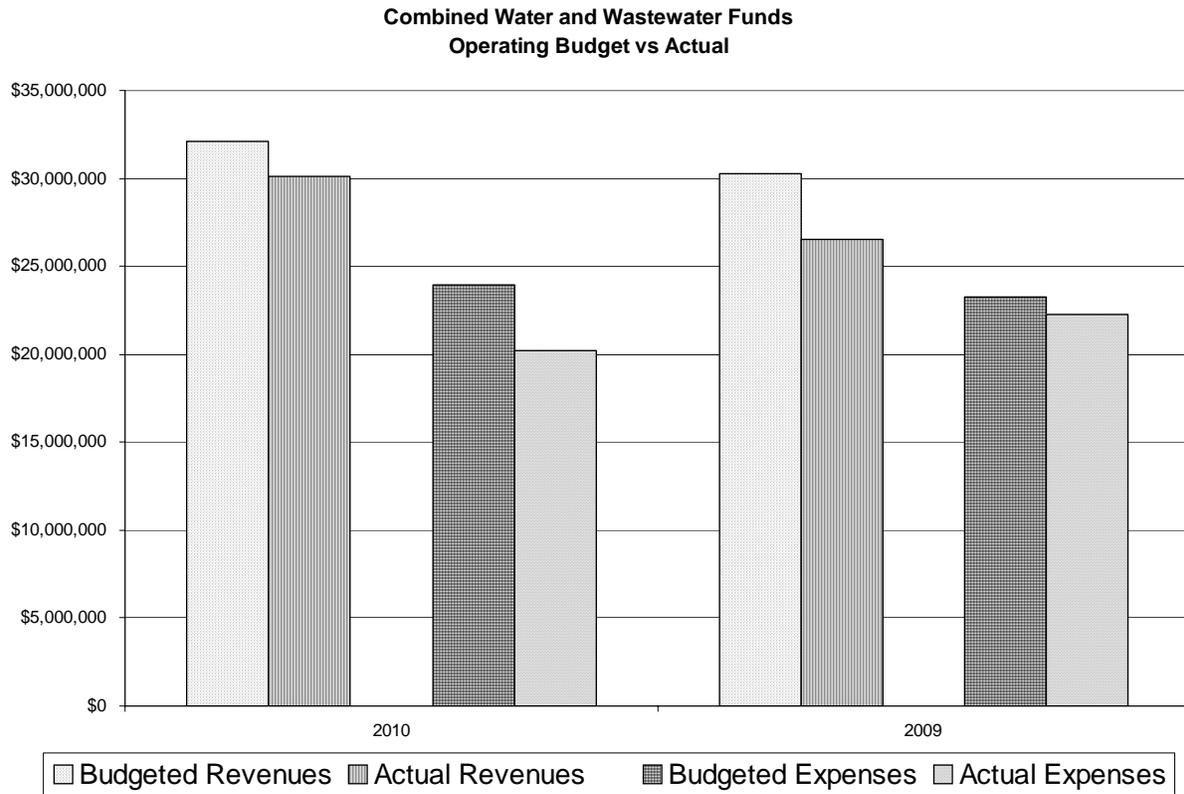
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



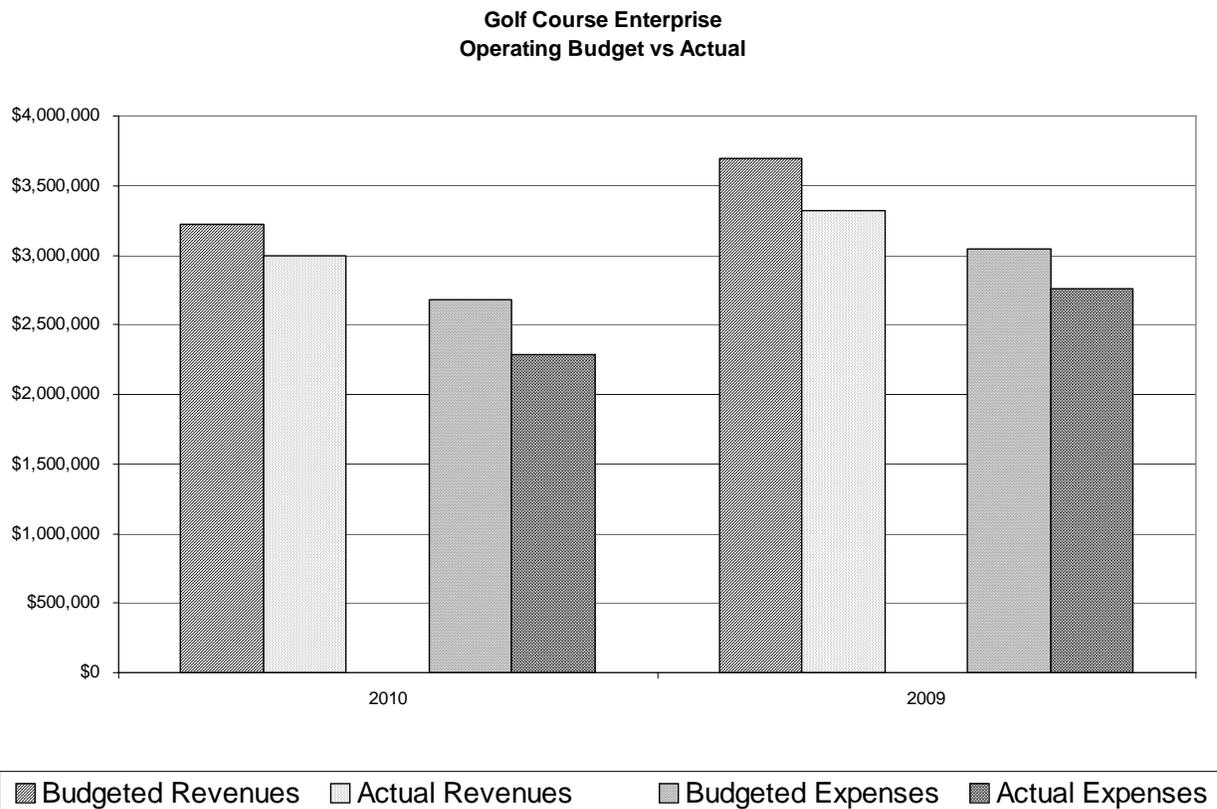
The Parks Open Space and Trails Fund expenditures exceed revenues by \$585,448.



The combined Water & Wastewater Fund revenues exceed expenses by \$31,662,631, which includes \$29,505,000 in revenue bond proceeds. \$29,581,232 is budgeted for capital projects and reserves. Operating revenues exceed expenses by \$9,924,377.



The combined Golf Course Fund revenues exceed expenses by \$560,644.



**Policy Issue**

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

**Alternative**

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

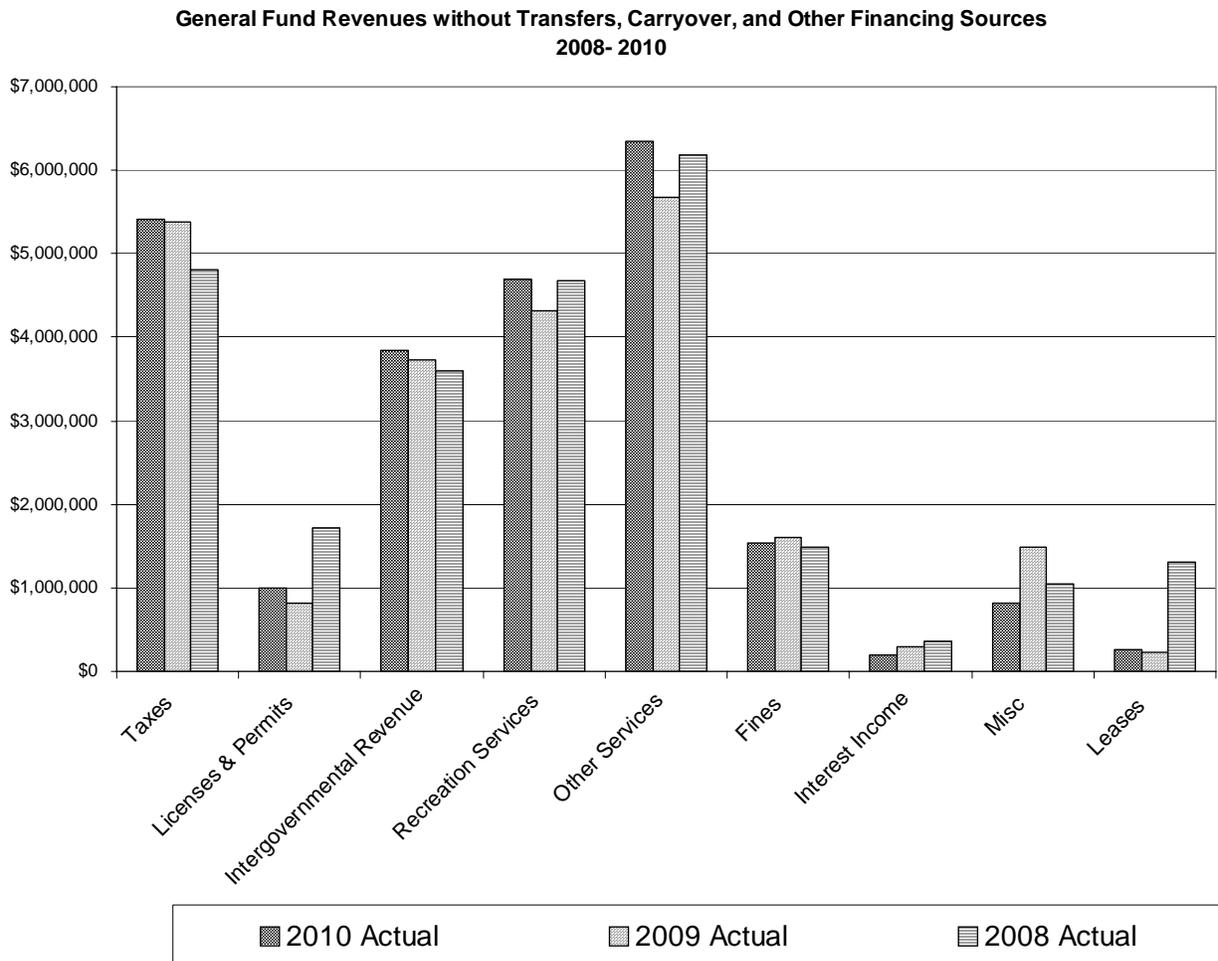
**Background Information**

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

**General Fund**

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

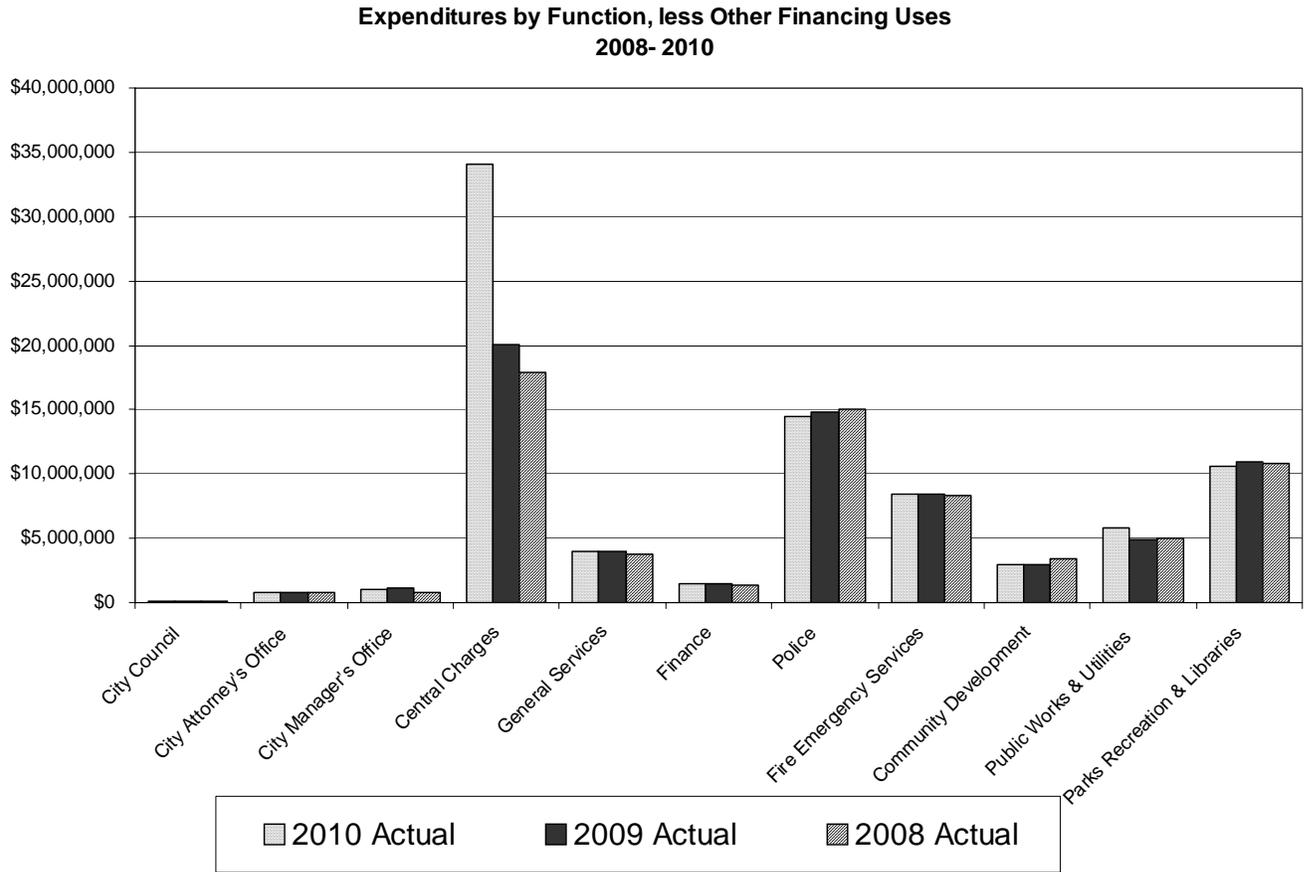
The following chart represents the trend in actual revenues from 2008 – 2010 year-to-date.



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

- Intergovernmental revenue is up due mostly to highway users tax.
- Recreation Services is up due mostly to facility pass and admission fees.
- Other Services is up due mostly to franchise, emergency management service and street cut fees.
- Miscellaneous revenue is down mostly as a result of variances in reimbursements from the prior year.

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



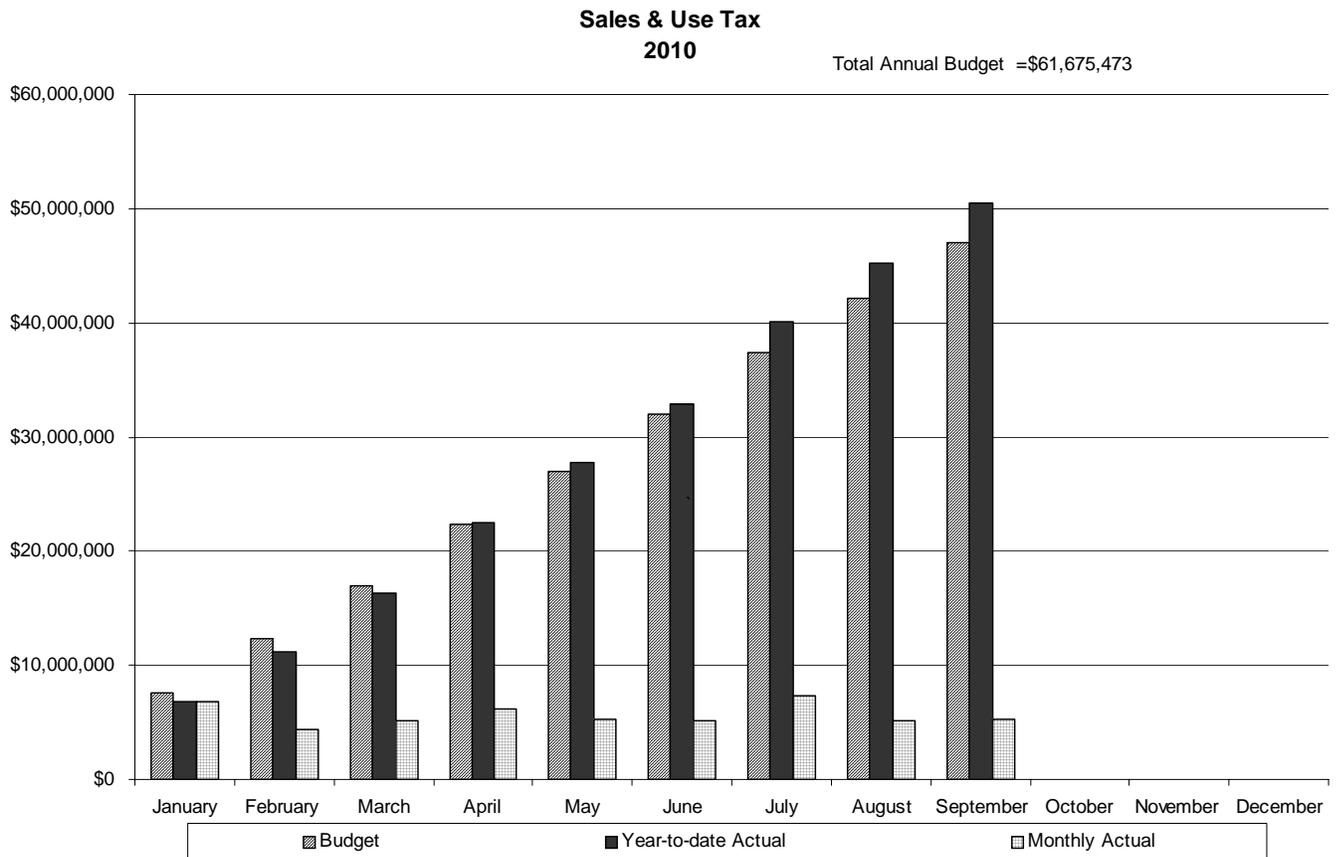
Significant differences between years in General Fund expenditure categories are explained as follows:

- Central Charges expenditures is up due to an increase in equipment rental capital replacement fees, transfers of energy audit lease proceeds to the General Capital Improvement Fund, and a refinancing of 2001 Certificates of Participation in the amount of \$13.1 million.

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

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

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

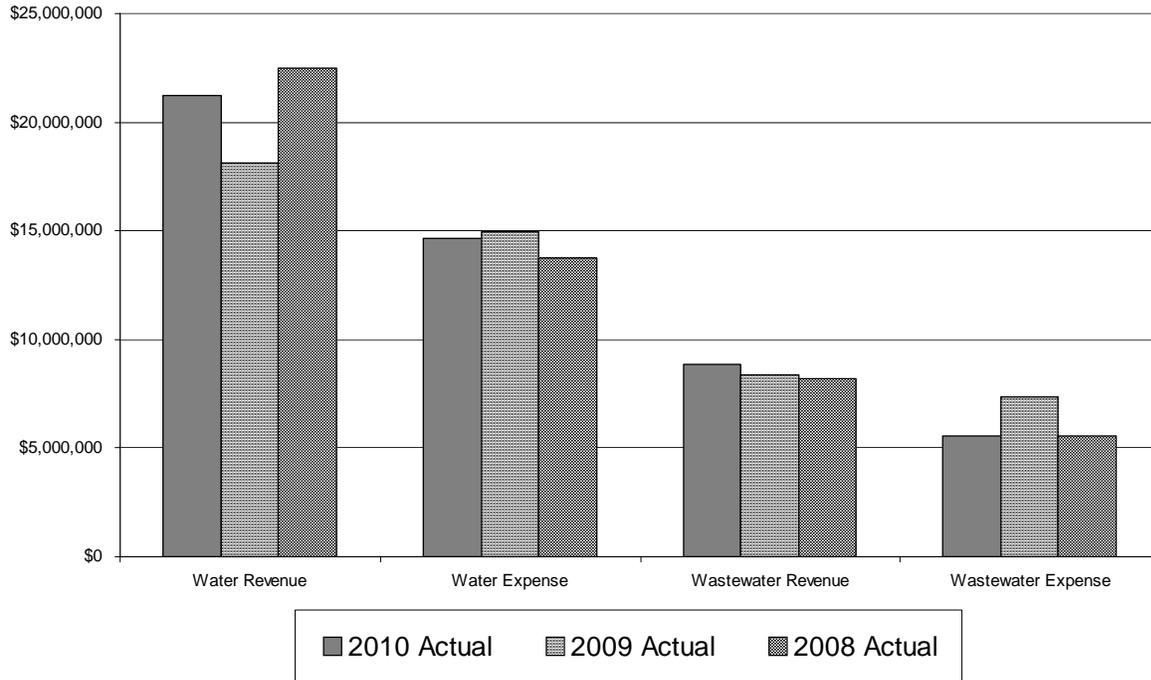


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

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

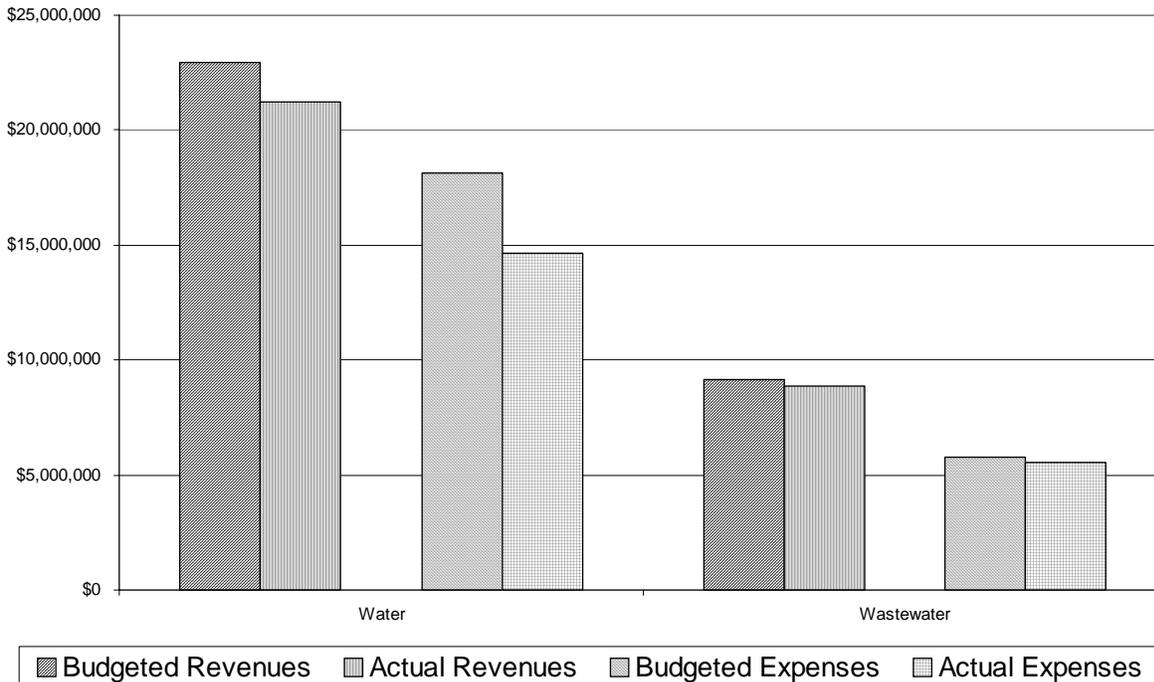
These graphs represent the segment information for the Water and Wastewater funds.

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



The water revenue annual variance is due to the effect of climatic variations on water consumption, billing rates, and an intergovernmental sale of effluent water. A one-time payment to decommission the 94<sup>th</sup> and Quitman lift station is reflected in the 2009 Wastewater Fund expense.

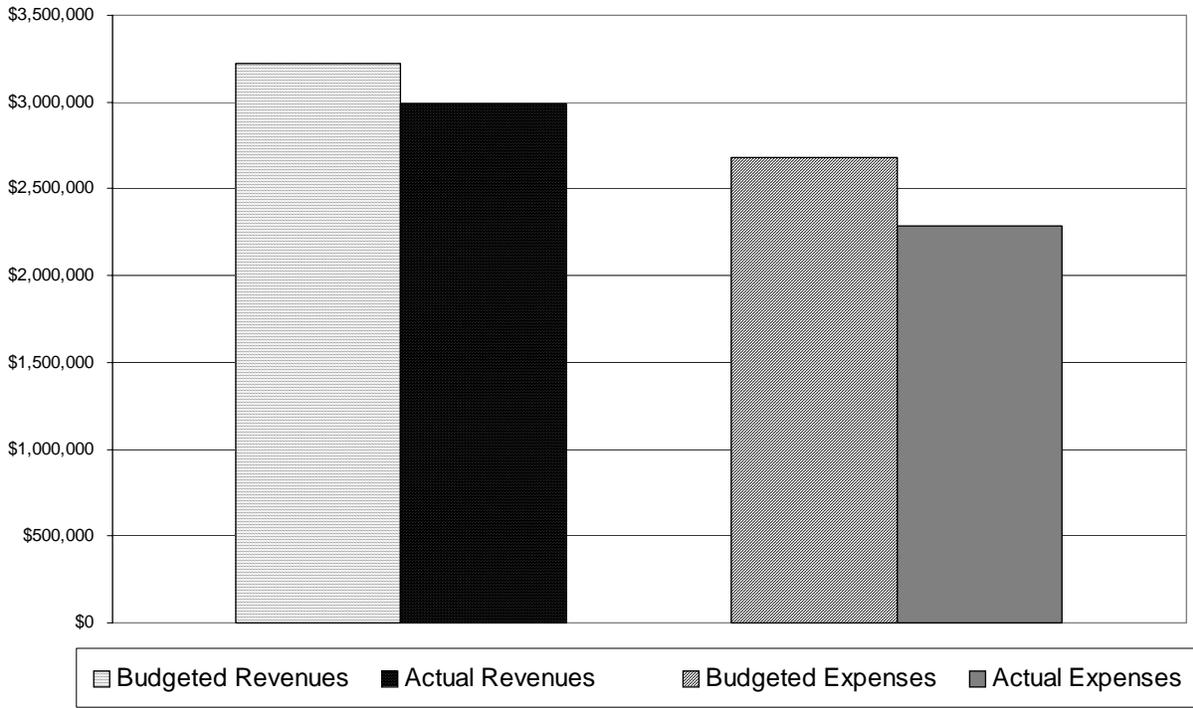
**Water and Wastewater Funds  
2010 Operating Budget vs Actual**



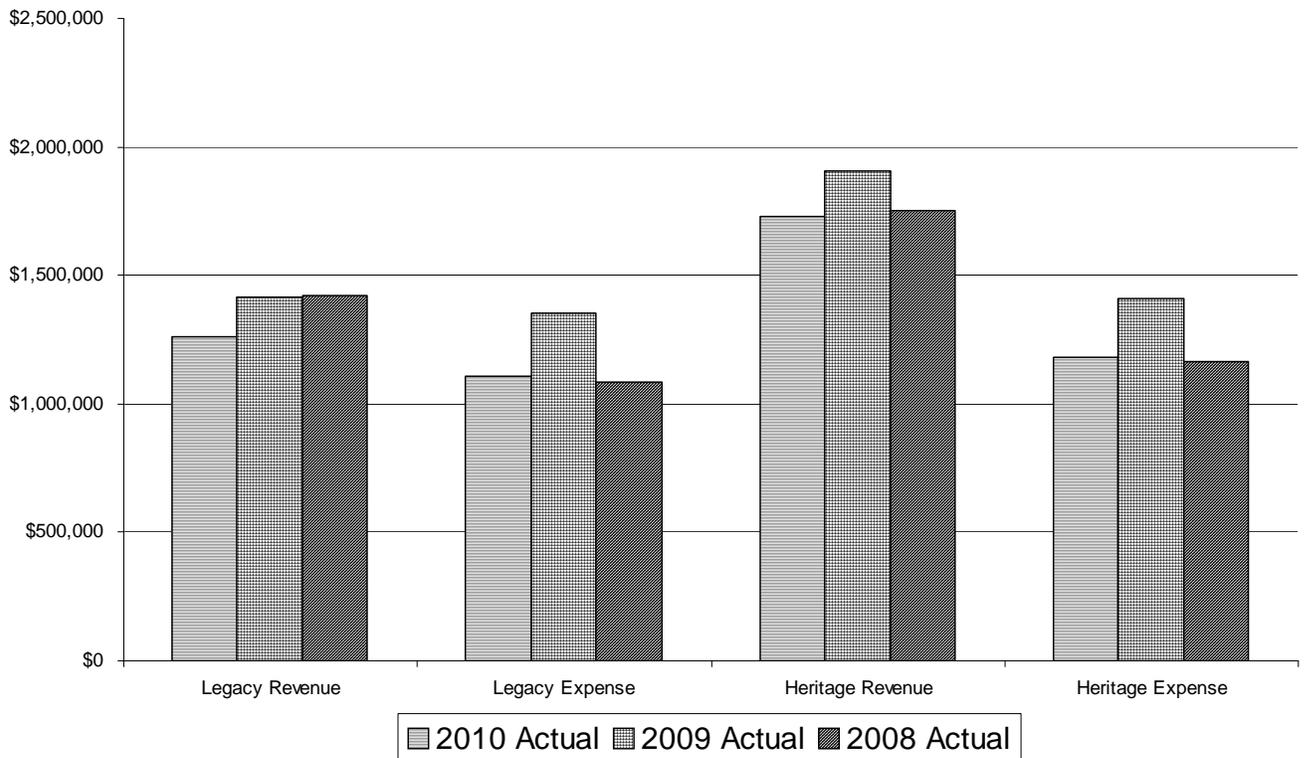
**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

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

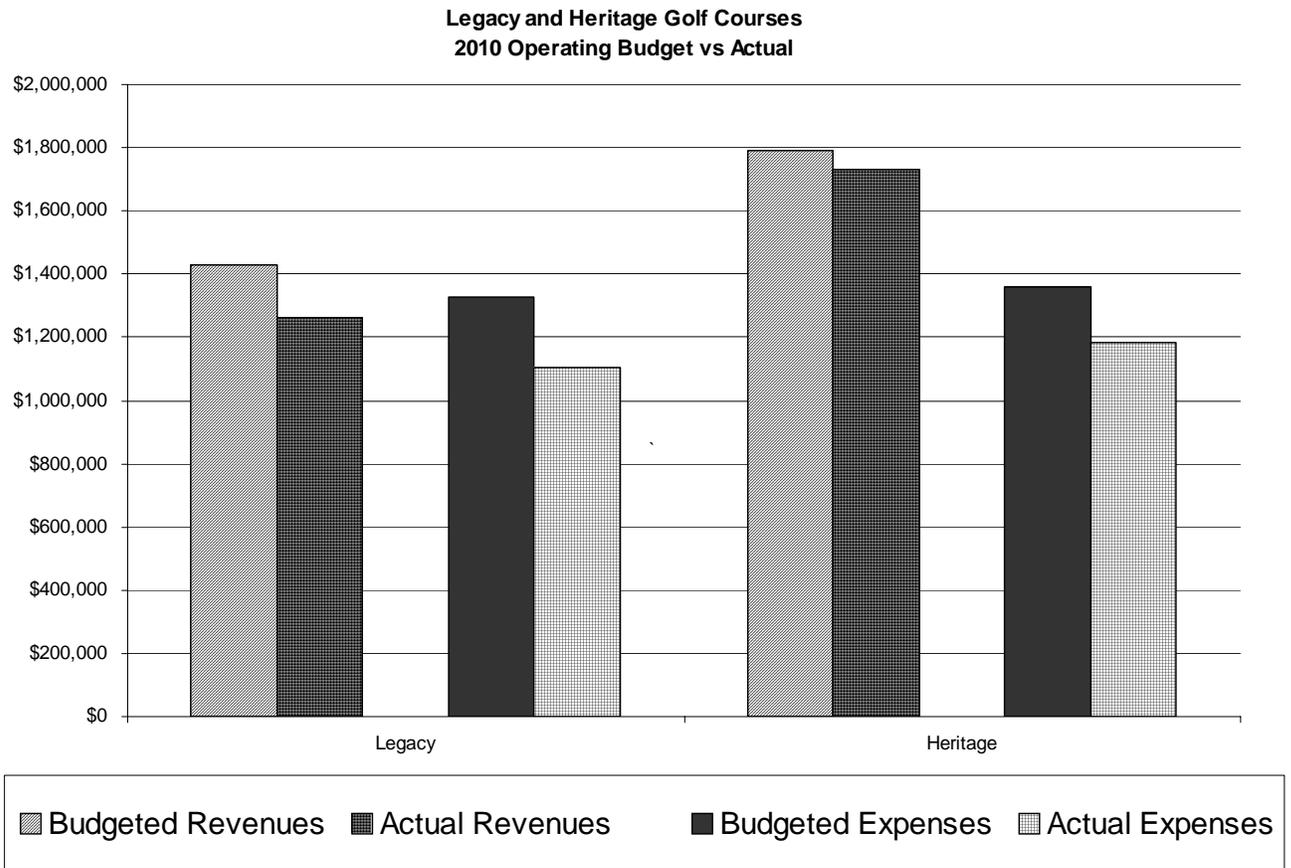
**Combined Golf Courses  
2010 Operating Budget vs Actual**



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



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



Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>General Fund</b>						
<b>Revenues</b>						
Taxes	5,678,400	5,413,804		5,413,529	(275)	100.0%
Licenses & Permits	1,371,178	1,021,868		991,206	(30,662)	97.0%
Intergovernmental Revenue	5,278,812	3,721,669		3,839,685	118,016	103.2%
Charges for Services						
Recreation Services	6,219,206	4,584,535		4,694,281	109,746	102.4%
Other Services	8,760,147	6,053,389		6,347,613	294,224	104.9%
Fines	2,262,105	1,719,318		1,532,723	(186,595)	89.1%
Interest Income	425,000	269,462		203,505	(65,957)	75.5%
Misc	1,625,161	994,756		811,860	(182,896)	81.6%
Leases	328,023	259,982		259,982	0	100.0%
Interfund Transfers	64,517,612	48,388,209		48,388,209	0	100.0%
Other Financing Sources	2,579,386	2,575,190	(1)	16,111,832	13,536,642	625.7%
Sub-total Revenues	<u>99,045,030</u>	<u>75,002,182</u>		<u>88,594,425</u>	<u>13,592,243</u>	<u>118.1%</u>
Carryover	3,817,820	3,817,820		3,817,820	0	100.0%
Revenues	<u>102,862,850</u>	<u>78,820,002</u>		<u>92,412,245</u>	<u>13,592,243</u>	<u>117.2%</u>
<b>Expenditures</b>						
City Council	222,312	168,948		151,577	(17,371)	89.7%
City Attorney's Office	1,156,960	837,522		814,010	(23,512)	97.2%
City Manager's Office	1,611,334	1,167,748		1,075,974	(91,774)	92.1%
Central Charges	31,499,443	20,397,037	(1)	34,088,122	13,691,085	167.1%
General Services	5,937,816	4,230,341		4,031,969	(198,372)	95.3%
Finance	2,037,876	1,492,418		1,436,801	(55,617)	96.3%
Police	20,869,814	15,417,299		14,518,262	(899,037)	94.2%
Fire Emergency Services	11,876,889	8,584,497		8,453,727	(130,770)	98.5%
Community Development	4,302,220	3,131,571		2,909,088	(222,483)	92.9%
Public Works & Utilities	7,798,534	5,737,424		5,826,646	89,222	101.6%
Parks, Recreation & Libraries	15,549,652	11,438,787		10,572,355	(866,432)	92.4%
Total Expenditures	<u>102,862,850</u>	<u>72,603,592</u>		<u>83,878,531</u>	<u>11,274,939</u>	<u>115.5%</u>
Revenues Over(Under)						
Expenditures	<u>0</u>	<u>6,216,410</u>		<u>8,533,714</u>	<u>2,317,304</u>	

(1) Other Financing Source revenue and Central Charges expenditures reflects the refunding of the 2001 Certificates of Participation at \$13.5 million. The budget appropriation for the refunding will be made in October.

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues and Carryover</b>						
Sales Tax						
Sales Tax Returns	40,321,375	30,968,166		32,586,948	1,618,782	105.2%
Sales Tx Audit Revenues	711,876	567,647		1,908,787	1,341,140	336.3%
S-T Rev. STX	<u>41,033,251</u>	<u>31,535,813</u>		<u>34,495,735</u>	<u>2,959,922</u>	109.4%
Use Tax						
Use Tax Returns	7,010,205	5,058,416		5,329,566	271,150	105.4%
Use Tax Audit Revenues	785,000	655,475		1,021,462	365,987	155.8%
S-T Rev. UTX	<u>7,795,205</u>	<u>5,713,891</u>		<u>6,351,028</u>	<u>637,137</u>	111.2%
Total STX and UTX	<u><u>48,828,456</u></u>	<u><u>37,249,704</u></u>		<u><u>40,846,763</u></u>	<u><u>3,597,059</u></u>	109.7%
Public Safety Tax						
PST Tax Returns	11,616,517	8,751,912		8,516,526	(235,386)	97.3%
PST Audit Revenues	315,500	225,437		411,562	186,125	182.6%
Total Rev. PST	<u>11,932,017</u>	<u>8,977,349</u>		<u>8,928,088</u>	<u>(49,261)</u>	99.5%
Total Interest Income	235,000	176,250		75,803	(100,447)	43.0%
Carryover	680,000	680,000		680,000	0	100.0%
Total Revenues and Carryover	<u><u>61,675,473</u></u>	<u><u>47,083,303</u></u>		<u><u>50,530,654</u></u>	<u><u>3,447,351</u></u>	107.3%
<b>Expenditures</b>						
Central Charges	<u>61,675,473</u>	<u>46,256,605</u>		<u>46,256,605</u>	0	100.0%
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>826,698</u></u>		<u><u>4,274,049</u></u>	<u><u>3,447,351</u></u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>POST Fund</b>						
<b>Revenues</b>						
Sales & Use Tax	4,865,857	3,679,466		3,791,764	112,298	103.1%
Intergovernmental Revenue	2,770,900	0		0	0	
Interest Income	55,000	41,250		57,650	16,400	139.8%
Miscellaneous	83,977	69,981		6,359	(63,622)	9.1%
Interfund Transfers	371,622	162,622		162,622	0	100.0%
Sub-total Revenues	<u>8,147,356</u>	<u>3,953,319</u>		<u>4,018,395</u>	<u>65,076</u>	<u>101.6%</u>
Carryover	93,478	93,478		93,478	0	100.0%
Total Revenues	<u>8,240,834</u>	<u>4,046,797</u>		<u>4,111,873</u>	<u>65,076</u>	<u>101.6%</u>
<b>Expenditures</b>						
Central Charges	7,891,646	4,541,970		4,553,120	11,150	100.2%
Park Services	349,188	242,293		144,201	(98,092)	59.5%
	<u>8,240,834</u>	<u>4,784,263</u>		<u>4,697,321</u>	<u>(86,942)</u>	<u>98.2%</u>
Over(Under) Expenditures	<u>0</u>	<u>(737,466)</u>		<u>(585,448)</u>	<u>152,018</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water and Wastewater Funds - Combined</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		77,470	21,220	137.7%
Intergovernmental Revenue	4,727	1,973		1,973	0	100.0%
Rates and Charges	41,600,438	31,710,390		29,186,795	(2,523,595)	92.0%
Miscellaneous	439,826	329,870	(1)	843,543	513,673	255.7%
<b>Total Operating Revenues</b>	<b>42,119,991</b>	<b>32,098,483</b>		<b>30,109,781</b>	<b>(1,988,702)</b>	<b>93.8%</b>
<b>Operating Expenses</b>						
Central Charges	6,051,028	7,119,235		4,586,071	(2,533,164)	64.4%
Finance	705,372	506,457		469,746	(36,711)	92.8%
Public Works & Utilities	20,141,577	14,136,158		13,115,957	(1,020,201)	92.8%
Parks, Recreation & Libraries	147,979	110,984		84,556	(26,428)	76.2%
Information Technology	2,844,464	2,067,925		1,929,074	(138,851)	93.3%
<b>Total Operating Expenses</b>	<b>29,890,420</b>	<b>23,940,759</b>		<b>20,185,404</b>	<b>(3,755,355)</b>	<b>84.3%</b>
<b>Operating Income (Loss)</b>	<b>12,229,571</b>	<b>8,157,724</b>		<b>9,924,377</b>	<b>1,766,653</b>	
<b>Other Revenue and Expenses</b>						
Tap Fees	3,193,061	2,459,504		2,422,610	(36,894)	98.5%
Interest Income	1,450,000	1,087,500		597,819	(489,681)	55.0%
Sale of Assets	0	0		34,007	34,007	
Other Financing Sources	27,915,455	27,915,455		29,509,585	1,594,130	105.7%
Carryover	2,867,251	2,867,251		2,867,251	0	100.0%
Debt Service	(6,757,592)	(2,376,504)		(2,376,504)	0	100.0%
Reserve Transfer	(11,316,514)	(11,316,514)		(11,316,514)	0	100.0%
<b>Total Other Revenue (Expenses)</b>	<b>17,351,661</b>	<b>20,636,692</b>		<b>21,738,254</b>	<b>1,101,562</b>	<b>105.3%</b>
	<b>29,581,232</b>	<b>28,794,416</b>		<b>31,662,631</b>	<b>2,868,215</b>	

(1) Miscellaneous revenue includes the sale of effluent water based on an intergovernmental agreement.

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water Fund</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		77,470	21,220	137.7%
Intergovernmental Revenue	4,727	1,973		1,973	0	100.0%
Rates and Charges	29,360,461	22,591,522		20,316,921	(2,274,601)	89.9%
Miscellaneous	425,000	318,750	(1)	832,395	513,645	261.1%
<b>Total Operating Revenues</b>	<b>29,865,188</b>	<b>22,968,495</b>		<b>21,228,759</b>	<b>(1,739,736)</b>	<b>92.4%</b>
<b>Operating Expenses</b>						
Central Charges	4,258,103	5,774,541		3,255,041	(2,519,500)	56.4%
Finance	705,372	506,457		469,746	(36,711)	92.8%
Public Works & Utilities	13,811,268	9,679,598		8,903,263	(776,335)	92.0%
PR&L Standley Lake	147,979	110,984		84,556	(26,428)	76.2%
Information Technology	2,844,464	2,067,925		1,929,074	(138,851)	93.3%
<b>Total Operating Expenses</b>	<b>21,767,186</b>	<b>18,139,505</b>		<b>14,641,680</b>	<b>(3,497,825)</b>	<b>80.7%</b>
<b>Operating Income (Loss)</b>	<b>8,098,002</b>	<b>4,828,990</b>		<b>6,587,079</b>	<b>1,758,089</b>	
<b>Other Revenue and Expenses</b>						
Tap Fees	2,600,000	2,007,000		2,064,189	57,189	102.8%
Interest Income	800,000	600,000		468,815	(131,185)	78.1%
Sale of Assets	0	0		34,007	34,007	
Other Financing Sources	27,915,455	27,915,455		29,509,585	1,594,130	105.7%
Carryover	2,857,168	2,857,168		2,857,168	0	100.0%
Debt Service	(5,253,788)	(1,817,059)		(1,817,059)	0	100.0%
Reserve Transfer	(10,896,431)	(10,896,431)		(10,896,431)	0	100.0%
<b>Total Other Revenues (Expenses)</b>	<b>18,022,404</b>	<b>20,666,133</b>		<b>22,220,274</b>	<b>1,554,141</b>	<b>107.5%</b>
<b>Increase (Decrease) in Net Assets</b>	<b>26,120,406</b>	<b>25,495,123</b>		<b>28,807,353</b>	<b>3,312,230</b>	

(1) Miscellaneous revenue includes the sale of effluent water based on an intergovernmental agreement.

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Wastewater Fund</b>						
<b>Operating Revenues</b>						
Rates and Charges	12,239,977	9,118,868		8,869,874	(248,994)	97.3%
Miscellaneous	14,826	11,120		11,148	28	100.3%
Total Operating Revenues	<u>12,254,803</u>	<u>9,129,988</u>		<u>8,881,022</u>	<u>(248,966)</u>	97.3%
<b>Operating Expenses</b>						
Central Charges	1,792,925	1,344,694		1,331,030	(13,664)	99.0%
Public Works & Utilities	6,330,309	4,456,560		4,212,694	(243,866)	94.5%
Total Operating Expenses	<u>8,123,234</u>	<u>5,801,254</u>		<u>5,543,724</u>	<u>(257,530)</u>	95.6%
Operating Income (Loss)	<u>4,131,569</u>	<u>3,328,734</u>		<u>3,337,298</u>	<u>8,564</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	593,061	452,504		358,421	(94,083)	79.2%
Interest Income	650,000	487,500		129,004	(358,496)	26.5%
Carryover	10,083	10,083		10,083	0	100.0%
Debt Service	(1,503,804)	(559,445)		(559,445)	0	100.0%
Reserve Transfer	(420,083)	(420,083)		(420,083)	0	100.0%
Total Other Revenues (Expenses)	<u>(670,743)</u>	<u>(29,441)</u>		<u>(482,020)</u>	<u>(452,579)</u>	1637.2%
Increase (Decrease) in Net Assets	<u>3,460,826</u>	<u>3,299,293</u>		<u>2,855,278</u>	<u>(444,015)</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Storm Drainage Fund</b>						
<b>Revenues</b>						
Charges for Services	2,000,000	1,500,000		1,462,087	(37,913)	97.5%
Interest Income	80,000	60,000		54,312	(5,688)	90.5%
Miscellaneous	0	0		2,961	2,961	
Sub-total Storm Drainage Revenues	<u>2,080,000</u>	<u>1,560,000</u>		<u>1,519,360</u>	<u>(40,640)</u>	97.4%
Carryover	323,434	323,434		323,434	0	100.0%
Total Revenues	<u>2,403,434</u>	<u>1,883,434</u>		<u>1,842,794</u>	<u>(40,640)</u>	97.8%
<b>Expenses</b>						
General Services	92,000	64,308	(1)	65,525	1,217	101.9%
Community Development	147,000	109,074		97,119	(11,955)	89.0%
PR&L Park Services	200,000	150,000		44,662	(105,338)	29.8%
Public Works & Utilities	291,000	180,711		166,996	(13,715)	92.4%
Total Expenses	<u>730,000</u>	<u>504,093</u>		<u>374,302</u>	<u>(129,791)</u>	74.3%
Increase (Decrease) in Net Assets	<u>1,673,434</u>	<u>1,379,341</u>		<u>1,468,492</u>	<u>89,151</u>	

(1) General Services expense reflects contractual services activity.

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Golf Course Funds - Combined</b>						
<b>Operating Revenues</b>						
Charges for Services	2,970,719	2,618,801		2,322,913	(295,888)	88.7%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	804,591	603,444		665,588	62,144	110.3%
Total Revenues and Carryover	<u>3,775,310</u>	<u>3,222,245</u>		<u>2,992,132</u>	<u>(230,113)</u>	92.9%
<b>Operating Expenses</b>						
Central Charges	230,085	172,940		171,872	(1,068)	99.4%
Recreation Facilities	3,047,135	2,510,988		2,117,749	(393,239)	84.3%
Total Operating Expenses	<u>3,277,220</u>	<u>2,683,928</u>		<u>2,289,621</u>	<u>(394,307)</u>	85.3%
Operating Income (Loss)	498,090	538,317		702,511	164,194	130.5%
<b>Other Revenues and Expenses</b>						
Other Financing Sources	0	0		4,820,000	4,820,000	
Debt Service	(498,090)	(498,090)	(1)	(4,961,867)	4,463,777	996.2%
Total Other Revenues and (Expenses)	<u>(498,090)</u>	<u>(498,090)</u>		<u>(141,867)</u>	<u>356,223</u>	28.5%
Increase (Decrease) in Net Assets	<u>-</u>	<u>40,227</u>		<u>560,644</u>	<u>520,417</u>	1393.7%

(1) Debt Service reflects the refunding of the 1998 Golf Course Revenue Bonds. The budget appropriation for the refunding will be reflected in October's financial statement.

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Legacy Ridge Fund</b>						
<b>Operating Revenues</b>						
Charges for Services	1,597,500	1,408,995		1,237,008	(171,987)	87.8%
Interest Income	0	0		3,631	3,631	
Interfund Transfers	29,433	22,075		22,075	0	100.0%
Total Operating Revenues	<u>1,626,933</u>	<u>1,431,070</u>		<u>1,262,714</u>	<u>(168,356)</u>	88.2%
<b>Operating Expenses</b>						
Central Charges	122,030	91,034		90,364	(670)	99.3%
Recreation Facilities	1,504,903	1,234,020		1,015,440	(218,580)	82.3%
Total Operating Expenses	<u>1,626,933</u>	<u>1,325,054</u>		<u>1,105,804</u>	<u>(219,250)</u>	83.5%
Increase (Decrease) in Net Assets	<u>0</u>	<u>106,016</u>		<u>156,910</u>	<u>50,894</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2010**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Heritage at Westmoor Fund</b>						
<b>Operating Revenues</b>						
Charges for Services	1,373,219	1,209,806		1,085,905	(123,901)	89.8%
Interfund Transfers	775,158	581,369		643,513	62,144	110.7%
Total Revenues and Carryover	<u>2,148,377</u>	<u>1,791,175</u>		<u>1,729,418</u>	<u>(61,757)</u>	96.6%
<b>Operating Expenses</b>						
Central Charges	108,055	81,906		81,508	(398)	99.5%
Recreation Facilities	1,542,232	1,276,968		1,102,309	(174,659)	86.3%
Total Operating Expenses	<u>1,650,287</u>	<u>1,358,874</u>		<u>1,183,817</u>	<u>(175,057)</u>	87.1%
Operating Income	<u>498,090</u>	<u>432,301</u>		<u>545,601</u>	<u>113,300</u>	126.2%
<b>Other Revenues and Expenses</b>						
Other Financing Sources	0	0		4,820,000	4,820,000	
Debt Service	(498,090)	(498,090)	(1)	(4,961,867)	4,463,777	996.2%
	<u>(498,090)</u>	<u>(498,090)</u>		<u>(141,867)</u>	<u>356,223</u>	28.5%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(65,789)</u>		<u>403,734</u>	<u>469,523</u>	

(1) Debt Service reflects the refunding of the 1998 Golf Course Revenue Bonds. The budget appropriation for the refunding will be

CITY OF WESTMINSTER  
GENERAL RECEIPTS BY CENTER  
MONTH OF SEPTEMBER 2010

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	337,906	15,463	353,369	330,244	8,402	338,646	2	84	4
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	314,709	3,114	317,823	345,685	1,438	347,122	-9	117	-8
SHOPS AT WALNUT CREEK 104TH & REED TARGET	206,899	1,542	208,441	204,352	2,809	207,162	1	-45	1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	196,506	362	196,869	189,504	228	189,732	4	59	4
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	181,969	1,018	182,987	174,932	577	175,509	4	76	4
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	169,139	432	169,571	240,335	454	240,789	-30	-5	-30
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	161,987	1,017	163,004	160,527	1,638	162,165	1	-38	1
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	155,901	311	156,212	146,593	608	147,201	6	-49	6
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	135,997	1,285	137,282	177,280	1,111	178,391	-23	16	-23
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	102,011	26,771	128,781	97,733	13,137	110,870	4	104	16
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINTA	12,049	100,940	112,989	11,159	13,980	25,139	8	622	349
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	100,669	585	101,254	142,896	619	143,516	-30	-6	-29
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	94,392	287	94,680	96,163	216	96,379	-2	33	-2
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	69,423	1,186	70,609	67,242	614	67,856	3	93	4
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	69,184	202	69,386	67,397	795	68,192	3	-75	2

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH OF SEPTEMBER 2010

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	62,887	735	63,622	59,548	348	59,895	6	111	6
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	63,425	58	63,483	64,051	21	64,073	-1	171	-1
WESTMOOR NW OF 108TH AND WADSWORTH GE ACCESS	5,861	41,493	47,355	6,062	127,491	133,554	-3	-67	-65
NORTH SHERIDAN CENTER E SIDE SHERIDAN 80TH-83RD BUDGET TRANSMISSION	31,575	12,709	44,284	6,276	320	6,595	403	3876	571
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	44,103	0	44,103	43,997	0	43,997	0	*****	0
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	43,885	204	44,089	44,642	596	45,238	-2	-66	-3
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	40,458	281	40,739	38,927	71	38,998	4	296	4
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	39,931	223	40,154	41,159	425	41,584	-3	-48	-3
WILLOW RUN 128TH & ZUNI SAFEWAY	32,342	200	32,543	35,308	116	35,424	-8	73	-8
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	29,309	0	29,309	35,754	0	35,754	-18	*****	-18
	2,702,517	210,418	2,912,935	2,827,764	176,014	3,003,778	-4	20	-3

CITY OF WESTMINSTER  
GENERAL RECEIPTS BY CENTER  
SEPTEMBER 2010 YEAR-TO-DATE

Center Location Major Tenant	/----- General Sales	YTD 2010 General Use	-----/ Total	/----- General Sales	YTD 2009 General Use	-----/ Total Sales	/--- %Change	---/ Use	---/ Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,127,075	52,079	3,179,155	3,196,469	51,148	3,247,617	-2	2	-2
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,962,182	201,487	3,163,668	2,641,755	144,019	2,785,774	12	40	14
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,020,720	63,939	2,084,659	1,905,211	41,373	1,946,584	6	55	7
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,930,820	3,872	1,934,691	2,115,397	18,037	2,133,434	-9	-79	-9
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,890,216	7,300	1,897,516	1,864,526	10,129	1,874,655	1	-28	1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,709,977	3,772	1,713,748	1,629,793	6,671	1,636,465	5	-43	5
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,530,697	14,429	1,545,126	1,535,216	17,353	1,552,569	0	-17	0
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,418,660	5,295	1,423,955	1,387,843	17,065	1,404,908	2	-69	1
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	1,260,517	10,951	1,271,468	1,918,653	11,713	1,930,365	-34	-7	-34
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,045,408	300,019	1,345,427	1,059,670	138,062	1,197,732	-1	117	12
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,043,751	6,370	1,050,121	1,534,171	12,580	1,546,751	-32	-49	-32
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	957,334	3,654	960,988	973,134	4,332	977,466	-2	-16	-2
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	765,256	2,219	767,475	773,773	3,702	777,475	-1	-40	-1
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	675,939	3,577	679,516	651,023	2,750	653,773	4	30	4
WESTMINSTER CROSSING 136TH & I-25	606,721	809	607,530	591,653	5,976	597,629	3	-86	2

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 SEPTEMBER 2010 YEAR-TO-DATE

Center Location Major Tenant	YTD 2010 General Sales	YTD 2010 General Use	Total	YTD 2009 General Sales	YTD 2009 General Use	Total Sales	%Change	Use	Total
LOWE'S ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	601,396	4,571	605,967	529,921	2,480	532,401	13	84	14
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	412,728	13,138	425,866	429,965	3,737	433,702	-4	252	-2
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	370,949	2,084	373,033	410,007	4,218	414,224	-10	-51	-10
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	364,784	3,463	368,247	369,340	1,987	371,327	-1	74	-1
WILLOW RUN 128TH & ZUNI SAFEWAY	308,598	3,884	312,483	375,826	2,458	378,283	-18	58	-17
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	286,872	1,111	287,984	248,140	24,750	272,890	16	-96	6
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	223,872	1,039	224,911	219,549	1,229	220,778	2	-15	2
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	222,834	1,697	224,531	214,884	48,247	263,131	4	-96	-15
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	211,162	1,695	212,857	210,598	1,789	212,387	0	-5	0
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	203,127	3,695	206,822	232,510	4,454	236,964	-13	-17	-13
	26,151,596	716,147	26,867,743	27,019,024	580,258	27,599,282	-3	23	-3



## Agenda Item 8 B

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Quarterly Insurance Claim Report: July - September 2010

**Prepared By:** Martee Erichson, Risk Management Officer

### Recommended City Council Action

Accept the Third Quarter 2010 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 adjustor 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 3rd quarter of 2010 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 third quarter of 2010, Staff has noted the following summary information:

- Seven of the 13 claims reported in the third quarter of 2010 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

	3rd Qtr 2010			YTD
Department	Total Claims	Open	Closed	Total
CD	1	0	1	1
CMO	1	1	0	1
Police	4	3	1	9
PR&L	2	0	2	11
PWU - Streets	3	1	2	7
PWU - Utilities	2	1	1	5
<b>TOTAL</b>	13	6	7	34

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 our City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

**Quarterly Insurance Report  
July - September 2010**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2010-199	7/4/2010	PD	Zachery Salazar	9415 Lowell Blvd., Westminster CO 80031	Police officer driving a City vehicle, backed into the claimant's parked vehicle.	\$0.00	Open	CIRSA Investigating
2010-204	7/8/2010	CMO	Westminster Mall Company et al	Not Provided	A Summons and Complaint was served upon the City, City Council and Westminster Economic Development Authority from the Westminster Mall company alleging violation of the Urban Renewal Law and damages through redevelopment and acquisition efforts.	\$0.00	Open	CIRSA policies do not provide coverage for the allegations made in this lawsuit. City will be handling the claim internally along with outside counsel who specializes in Urban Renewal Law.
2010-212	7/9/2010	PRL	Marty Chase	3163 W. 9th Ave., Broomfield CO 80020	Parks employee operating a mower, threw up a rock which damaged claimant's vehicle.	\$319.72	Closed	
2010-237	7/29/2010	PRL	Ron Dunne	9195 W. 89th Ct., Westminster CO 80021	A large Cottonwood tree branch from a tree on City property, fell onto claimant's fence causing damage during a windstorm.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2010-238	7/29/2010	PWU - Util	Theresa Glazer	2558 Franklin Ave., Louisville CO 80027	Insurance adjuster for Fleishner-Smyth, management company of the building at 9035 Wadsworth Pkwy, forwarded a claim they received from claimant who alleges she tripped and fell into a water meter vault on the grounds of their building.	\$0.00	Open	CIRSA Investigating
2010-257	8/4/2010	PWU - Streets	Lawrence Walters	7514 Benton St., Arvada CO 80003	Insurance adjuster for the Residence Inn on Yates St., forwarded a claim they received from the claimant who alleges he fell from his wheelchair due to poor design of the handicap ramp/driveway near the hotel.	\$0.00	Open	CIRSA Investigating
2010-245	8/12/2010	CD	Bonnie Moreno	8471 Circle Dr., Westminster CO 80031	Claimant alleges flood waters caused by poor drainage in her neighborhood are continually damaging her driveway, property and crawl space of her home.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2010-249	8/17/2010	PD	Dan Engstrom	8671 Wagner Dr., Westminster CO 80031	Claimant's fence was damaged when Westminster Police Officers were searching his neighborhood looking for two robbery suspects.	\$156.30	Open	Claim denied based on Colorado Governmental Immunity, however, claimant was paid under the City's "good neighbor" settlement program.
2010-250	8/17/2010	PWU - Streets	John Dayton	2727 W. 107th Ct. #A, Westminster CO 80234	Employee driving a City vehicle, backed the trailer he was towing into the claimant's parked vehicle.	\$1,595.66	Closed	

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2010-265	9/1/2010	PWU - Streets	Michael Billington	7521 Stuart St., Westminster CO 80030	Claimant alleges damage to his vehicle when he hit a curb he believes is not constructed properly.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2010-267	9/6/2010	PD	Russ Hamm	21504 E. Layton Dr., Aurora CO 80015	A Westminster Motorcycle Officer driving his police motorcycle hit claimant's personal motorcycle in the Public Safety Center parking lot.	\$827.81	Closed	
2010-275	9/9/2010	PWU - Util	Dale Emme	3699 W. 76th Ave., Westminster CO 80031	Claimant alleges sewer line replacement work performed approximately two years ago caused damage to his house over time.	\$0.00	Closed	Claimant was referred to the contractor that performed the sewer replacement work.
<b>CLAIM SUBMITTED RECENTLY WITH OCCURRENCE DATE PRIOR TO 3rd QUARTER 2010:</b>								
2008-471	1/29/2008	PD	Calletano Robles-Lopez	1000 E. 10th Ave. Apt. 209, Broomfield CO 80020	Claimant alleges that officers of the Westminster Police Department used excessive force when they arrested him in January 2008 and he is now seeking payment for medical bills he incurred at the time.	\$0.00	Open	CIRSA Investigating
<b>TOTAL</b>						<b>\$2,899.49</b>		



## Agenda Item 8 C

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Revised Employment Agreement with J. Brent McFall

**Prepared By:** Matt Lutkus, Deputy City Manager

### Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2011 with an effective date of January 1, 2011, and automatic renewal for 2012 unless terminated pursuant to the provisions of the agreement.

### Summary Statement

- City Council is requested to approve a revised employment agreement with Brent McFall for services as City Manager beginning January 1, 2011. The agreement will be automatically renewed for 2012 unless it is terminated by City Council or by Mr. McFall in accordance with the agreement provisions.
- Under the proposed revised agreement, Mr. McFall's combined salary and deferred compensation continues to remain at the 2009 level of \$209,175. The freezing of the City Manager's contracted salary at the 2009 and 2010 levels is in line with the Council's decision to freeze the salaries of all employees as one of a series of steps needed to trim expenditures in the recently approved 2011 Budget. However, it is important to note that Mr. McFall has volunteered to temporarily reduce his salary by 5% for the coming year. This reduction will be accomplished administratively and is not reflected in the terms of this agreement.

**Expenditure Required:** \$198,716 (including temporary voluntary reduction), plus the cost of other fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - City Manager's Office Budget

**Policy Issue**

Should City Council approve the employment agreement with J. Brent McFall for the continuation of his services as City Manager for 2011 and 2012?

**Alternative**

Council could make adjustments to the proposed employment agreement with Mr. McFall.

**Background Information:**

J. Brent McFall has been employed as City Manager since May 21, 2001. His previous experience includes holding city manager or city administrator positions in four cities in Kansas and Washington prior to becoming Westminster's City Manager. Mr. McFall is an active member of the International City/County Management Association and currently holds the designation of Credentialed Manager through that organization. He is the immediate past president of the Metro City Managers' Association and is also active with the Colorado City/County Managers' Association (CCCMA), and with the Jefferson and Adams County/City Managers' groups. He currently chairs the CCCMA Professional Advocacy Committee and is a member of the Colorado Municipal League Conference Planning Committee. Mr. McFall has been a recipient of the Edwin O. Stene Award for Managerial Excellence by University of Kansas City Managers' Alumni in recognition of his outstanding accomplishments over thirty years as chief executive in five cities. His activities at the community level include serving on the Boards of Directors of the Metro North Chamber of Commerce and the Westminster Legacy Foundation. He also serves on the Board of Advisors for the Rocky Mountain Land Institute and is a member of the Westminster 7:10 Rotary Club.

Under Mr. McFall's leadership, the City continues to use the City Council's Strategic Plan to guide the City departments' ongoing activities and the development of the City's biennial budget for 2011 and 2012. The City's strategic approach to long-range planning is further demonstrated in the recently updated Comprehensive Land Use Plan, the Community Enhancement Master Plan, our Utilities Master Plan, the City's Strategic Financial Model and the Parks and Recreation Master Plan.

During the past twelve months, Mr. McFall was closely involved in the achievement of many of the City's successes. Some of the key milestones for the past year were continued progress on the initial phases of the Westminster Center Urban Reinvestment Project including: the significant progress in negotiations with Steiner & Associates and the acquisition of the former Macy's store and Trail Dust Steakhouse; assignment of the City of Thornton water contract to the City of Brighton; the upgrade of aquatic facilities at City Park Recreation Center; implementation of the first Core Services review to prioritize City programs and activities; implementation of the General Fund Strategic Reserve to be used to buffer the high and low years of the General Fund revenue stream; refinance of Sales and Use Tax Bonds and Golf Course Certificates of participation for a combined net savings of over \$2 million; acquisition of properties that will facilitate the development of the South Westminster Transportation Oriented Development, addressing drainage issues in the area to be developed and providing a significant amount of land for future park development along Little Dry Creek; and implementation of the Focused Work Week for administrative personnel.

Mr. McFall continues to champion the City organization's key values of service, pride, integrity, responsibility, innovation and teamwork (SPIRIT). Under his leadership, the City continues to be a leader on many fronts and enjoys an excellent reputation nationwide for the quality of its facilities and programs.

The past twelve months have continued to present significant budgetary challenges as the national recession caused a substantial reduction in City General Fund revenues. The national economic slump exacerbated the impact of a longer term economic realignment that has resulted in flat or declining revenues since 2001. Following City Council's completion of the Core Services review, City Staff, under Mr. McFall's leadership, implemented a series of budget reductions that resulted in the elimination of 72.7 FTE's most of which had been kept vacant in anticipation of the need to reduce expenditures. The restructuring of City services to reflect the Council's priorities within financial resources combined with the City's aggressive economic development initiatives will help ensure the City's long-term financial sustainability.

City Council met with Mr. McFall on September 27 to review his job performance during the past twelve months. The proposed employment agreement with Mr. McFall reflects Mr. McFall's request and Council's decision to maintain Mr. McFall's compensation at 2010 level in recognition of the current City Budget constraints. This is consistent with the Council's decisions to freeze salaries for all City employees in the 2011 Budget. The revised agreement will continue to provide for a combined salary and deferred compensation of \$209,175. However, Mr. McFall has voluntarily reduced his salary by 5% for the coming year. This voluntary reduction will be accomplished administratively and is not reflected in the employment agreement that Council is being asked to approve. The proposed employment agreement is identical to the current agreement with the exceptions of the effective dates and a change in the provision regarding a retention bonus.

City Council's favorable action on the continuation of the City Manager's employment agreement will support all five of the City Strategic Plan Goals by ensuring the City organization will continue to be managed by a highly skilled and experienced chief executive.

Funds are available in the 2011 Budget to provide for the compensation described in the agreement.

Respectfully submitted,

Stephen P. Smithers  
Assistant City Manager

Attachment

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January 2011, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and J. BRENT McFALL, hereinafter called "EMPLOYEE", as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of J. BRENT McFALL, as City Manager of the City of Westminster as provided by City Charter, Chapter IV, Section 7; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DUTIES:

CITY hereby agrees to continue the employment of J. BRENT McFALL as City Manager of CITY to perform the duties and functions specified in Section 4.8 of the City Charter and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

### SECTION 2. TERMS:

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as City Manager for calendar years 2011 and 2012. EMPLOYEE agrees to remain in the exclusive employ of CITY and EMPLOYEE will serve as City Manager from January 1, 2011 through December 31, 2012. Further, EMPLOYEE agrees not to become employed by any other employer until said termination date, unless said termination date is effected as hereinafter provided.

The term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraph A and B of this agreement.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth below.

D. This Employment Agreement shall be in effect through December 31, 2011, but shall be automatically renewed through December 31, 2012, unless terminated on or before October 31, 2011.

### SECTION 3. TERMINATION AND SEVERANCE PAY:

A. In the event City Council decides to exercise its right to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing twelve (12) months, provided however, that in the event the EMPLOYEE is terminated in relation to his conviction of an illegal act, then, and in that event, CITY has no obligation to pay the aggregate severance sum designated in this paragraph.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the twelve (12) months' severance pay provisions herein.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY sixty (60) days notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this section.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A. hereof and shall entitle EMPLOYEE to the lump sum cash payment described therein.

### SECTION 4. SALARY:

The CITY agrees to pay EMPLOYEE for his services rendered hereto a combined salary and deferred compensation amount of \$209,175 effective January 1, 2011. The base salary portion of this amount shall be payable in installments at the same time as other employees of the CITY are paid. The EMPLOYEE shall designate a portion of this amount not to exceed the amount allowed by Federal Law to be paid as a lump sum payment to the EMPLOYEE'S deferred compensation plan.

CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY.

### SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the Council provided that such consulting or other non-City connected business does not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. City Council shall be the sole judge of such conflicts whose determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. A monthly car allowance of \$750 shall be paid to EMPLOYEE to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

SECTION 8. PROFESSIONAL DEVELOPMENT:

CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the International City/County Management Association, the Colorado City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

A. EMPLOYEE will be allowed all benefits as are extended to all other Department Head level employees, except that when such benefits are in conflict with this agreement, said agreement shall control.

B. The EMPLOYEE shall continue to accrue General Leave at the rate prescribed for "over 20" years of continuous municipal service in the Westminster Municipal Code and City Personnel Policies and Rules and shall be able to use such accrued leave in accordance with the rate of use accorded to employees in the "over 20" category.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

C. In the 2005 Budget, the City Council appropriated the sum of \$60,000, which amount shall be paid in one lump sum payment to EMPLOYEE on a date to be mutually agreed upon by City and EMPLOYEE, but no later than December 15, 2011, in the event EMPLOYEE continues to serve as City Manager through January 2, 2011. This retention incentive payment shall be in addition to any salary, bonus or other benefit paid to EMPLOYEE during the term of this Employment Agreement.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This agreement becomes effective on January 1, 2011, and if automatically renewed shall be in effect through December 31, 2012.

D. If any provision, or any portion hereof contained in this agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. Nothing in this agreement shall be construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20.

F. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this agreement.

APPROVED by Westminster City Council on this 25th day of October, 2010.

\_\_\_\_\_  
Nancy McNally, Mayor

ATTEST:

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

\_\_\_\_\_  
J. Brent McFall

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2010



**SUBJECT:** Revised Employment Agreement with John A. Stipech

**Prepared By:** Matt Lutkus, Deputy City Manager

**Recommended City Council Action**

Authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2011 with an effective date of January 1, 2011, and an automatic renewal for 2012 unless terminated by City Council.

**Summary Statement**

- City Council is requested to approve an employment agreement with John A. Stipech for services as Presiding Judge. The agreement would go into effect January 1, 2011, and would automatically be renewed for 2012 unless it is terminated by City Council no later than October 31, 2011.
- In the proposed agreement, Judge Stipech's 2011 combined salary and deferred compensation will be \$127,683, which is the same as his annual salary was in 2009 and is in 2010. The continuation of the Judge's annual compensation at its current level is consistent with Council's decision to freeze the salaries of all City employees in the 2011 Budget, as part of a series of steps to achieve expenditure reductions. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2011.
- The Judge has requested that his salary be decreased by 5% due to the City's financial issues. The pay reduction will be addressed administratively and thus is not to be reflected in the employment agreement.
- The attached proposed agreement with Judge Stipech is identical to the current employment agreement with the exception of a change in the effective dates of the contract. Since there will be no change in the Judge's contract salary, a Councillor's Bill updating the compensation is not required.

**Expenditure Required:** 2011 - \$121,299 (base salary minus temporary voluntary reduction) plus the cost of fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - Municipal Court Division Budget

**Policy Issue**

Should City Council continue its present employment agreement with the Presiding Judge for the continuation of his services through 2011 and 2012?

**Alternative**

Council could make further adjustments to the employment agreement with Judge Stipech.

**Background Information**

Since July 1991, City Council has used an employment agreement for Presiding Judge services. This approach is consistent with the practice of having employment agreements with the City Manager and the City Attorney who also serve at the pleasure of City Council. The agreement with the Presiding Judge addresses the overall duties of the position, the term of the agreement, compensation and benefits, professional development, and termination and separation provisions.

Presiding Judge John Stipech graduated from the University of Utah in 1967 with a Bachelor of Arts Degree and received his Juris Doctorate degree from the University of Denver Law School in 1971. In July 1979, he was appointed as an Associate Judge in Westminster's Municipal Court and has served as Presiding Judge since January 1, 1996. He is a member of the Colorado and Adams County Bar Associations and a member of the Colorado Municipal Judges' Association. Judge Stipech is a member of the Westminster Rotary Club and of the School District 50 Education Foundation Board of Directors.

The proposed employment agreement with Judge Stipech is identical to the current agreement that Council approved in October 2009 with the exception of the effective dates of the agreement.

City Council met with Judge Stipech on October 4 to review his job performance since his last performance appraisal and to determine his compensation for the coming year. The revised agreement incorporates the direction given by Council to Staff and will provide for the continuation of the Judge's 2010 combined salary and deferred compensation of \$127,683. The Council's decision to maintain the Judge's salary at the current level is consistent with Council's approval of a salary freeze for all City employees in the 2011 City Budget. The employment agreement allows the Judge to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with Judge Stipech provides that, except in those cases where the agreement provides for a different benefit level, the Judge will receive the same fringe benefits as those extended to all department heads.

The Judge has offered to voluntarily reduce his salary by 5% in 2011 in recognition of the City's organization-wide budget reductions. However, in order to maintain the 2010 salary as the basis for future salary adjustments, this change has not been made in the attached employment agreement. Staff's intent is to address this temporary pay reduction administratively.

Funds are available in the 2011 Budget to cover the expense for the salary and fringe benefits described in the agreement.

Section 16.2 of the Westminster City Charter requires that the Council set the Presiding Judge's salary by ordinance. Since there will not be a change in the contracted salary for 2011, a Councillor's Bill is not required.

**SUBJECT:** Revised Employment Agreement with John A. Stipech

Page 3

The proposed agreement with Judge Stipech supports City Council's Strategic Plan goal of "Safe and Secure Community" by ensuring that a highly competent and experienced jurist continues to serve as the City's Presiding Judge.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT, effective as of the 1st day of January, 2011, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY," and JOHN A. STIPECH, hereinafter called "EMPLOYEE," both of whom understand as follows:

WHEREAS, the CITY desires to continue to employ the services of John A. Stipech as Presiding Municipal Judge of the City of Westminster as provided by City Charter, Chapter XVI, Section 16.2; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### **SECTION 1. DUTIES:**

A. CITY hereby agrees to continue the employment of EMPLOYEE as Presiding Municipal Judge of CITY to perform the duties and functions specified in Section 16.2 of the City Charter, Chapter 22 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall administer the judicial component of the Municipal Court and shall be responsible for providing judicial coverage to insure efficient and expeditious hearing of all matters scheduled for hearing in the Court.

C. EMPLOYEE and the Court Administrator shall prepare and submit jointly a proposed budget for the Municipal Court, following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

D. EMPLOYEE shall supervise the judicial staff of the Municipal Court as may be authorized by the City Council. EMPLOYEE shall provide advice and direction to the Court Administrator in connection with the governance of the Court staff.

### **SECTION 2. TERMS:**

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as Presiding Judge for calendar years 2011 and 2012. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. Subject to the provisions of Section 2.D. and Section 3 of this Agreement, EMPLOYEE will serve as Presiding Municipal Judge for calendar years 2011 and 2012. EMPLOYEE is employed as a full-time employee and shall be compensated based upon his devoting normal business hours to his duties as Presiding Municipal Judge.

The term "employed" shall not be construed to include other judicial service, private law practice, teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraph A and B of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3, paragraph C of this Agreement.

D. This Employment Agreement is for a one-year term, but shall be automatically renewed for 2012 unless terminated no later than October 31, 2011.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time EMPLOYEE is willing and able to perform the duties of Presiding Municipal Judge, then, and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) months. In the event the City elects to terminate this Agreement without giving EMPLOYEE six (6) months' advance written notice thereof, the EMPLOYEE shall have as his sole and exclusive remedy the severance payment equal to six (6) months of EMPLOYEE'S base salary as provided in this paragraph and EMPLOYEE shall have no other rights or claims against the CITY and hereby expressly waives and releases the same; provided, however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the six (6) months' severance pay provisions herein.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY four (4) months' notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs A and C of this Section 3, and paragraph D in Section 2.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A hereof and shall entitle EMPLOYEE to the lump sum cash payment described therein.

### SECTION 4. SALARY:

A. Effective January 1, 2011, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$127,683. EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid, except that the EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then-current maximum allowed by law.

B. CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY. Such evaluation shall consider the salary of judges of similar municipalities.

#### SECTION 5. HOURS OF WORK:

It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

#### SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. A monthly car allowance of \$500 shall be paid to EMPLOYEE to assist in compensating for these costs.

#### SECTION 7. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the CITY.

#### SECTION 8. PROFESSIONAL DEVELOPMENT:

CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the CITY, including, but not limited to, the American Bar Association, the Colorado Bar Association, the Colorado Municipal Judges Association, and continuing legal education courses and seminars related to topics of the judiciary. In addition to reasonably funding educational/training programs for EMPLOYEE'S professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each year.

#### SECTION 9. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

#### SECTION 10. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to Department Head level employees, including the monthly car allowance, except that when such benefits are in conflict with this agreement, said agreement shall control. The EMPLOYEE'S years of service with the City in an unbenefited capacity will be treated as years of continuous municipal service when the level of employee benefits is computed.

#### SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY, in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

C. EMPLOYEE is ultimately responsible for providing judicial coverage of all docketed matters in the Westminster Municipal Court.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2011, and, if automatically renewed, shall be in effect through December 31, 2012.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2011, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE.

APPROVED by the Westminster City Council on October 25, 2009.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

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

\_\_\_\_\_  
John A. Stipech

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney



## Agenda Item 8 E

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Revised Employment Agreement with Martin R. McCullough

**Prepared By:** Matt Lutkus, Deputy City Manager

### Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2011 with an effective date of January 1, 2011, and an automatic renewal for 2012 unless terminated pursuant to the terms of the agreement.

### Summary Statement

- City Council is requested to approve a revised Employment Agreement with Martin McCullough for services as City Attorney beginning January 1, 2011. The Agreement will be automatically renewed for 2012 unless it is terminated by City Council or Mr. McCullough in accordance with the termination section of the Agreement.
- City Council met with Mr. McCullough for his annual performance and salary review on October 11. The attached proposed agreement reflects Council's direction with regard to renewal of the current agreement.
- Under the proposed revised Agreement, Mr. McCullough's 2011 salary and deferred compensation will continue to be \$165,948. The continuation of the City Attorney's annual compensation through 2011 at his 2010 pay rate is consistent with City Council's decision to freeze all City employees' salaries as part of a number of measures that are being taken to reduce overall City Budget expenditures in the coming year. These actions are necessitated by the reduced revenue projections resulting from the continuing national economic downturn.
- The attached proposed agreement with Mr. McCullough is identical to the current employment agreement with the exception of the change in the effective dates for the contract.

**Expenditure Required:** \$165,948 plus the cost of fringe benefits as described in the attached Employment Agreement

**Source of Funds:** General Fund - City Attorney's Office Budget

**Policy Issue**

Should City Council continue its employment agreement with Martin McCullough for his services as City Attorney for 2011 and 2012?

**Alternative**

Council could make adjustments to the employment agreement with Mr. McCullough.

**Background Information**

Martin McCullough was appointed City Attorney on February 10, 1986, after serving as Acting City Attorney since September 1985. Prior to holding these positions, he was an attorney with the municipal law firm of Calkins, Kramer, Grimshaw and Haring. Mr. McCullough holds a B.A. from the University of Virginia, an M.S. from Florida State University and graduated magna cum laude from the University of Houston School of Law in 1982. He is admitted to practice law in Texas and Colorado and is a member of the National Institute of Municipal Law Officers and the Colorado and Denver Bar Associations. Mr. McCullough has served as President of the Attorneys' Section of the Colorado Municipal League, is past President of the Metro City Attorneys' Association, and is a member and past Chairperson of the Local Government Committee of the Colorado Bar Association. Mr. McCullough is also a past recipient of the Metro City Attorney's Association's "City Attorney of the Year" and "Leadership" awards. In 2004, Mr. McCullough was designated a Fellow In Local Government Law by the International Municipal Lawyers' Association. Mr. McCullough's fellowship status was recently extended through 2014.

During the past twelve months, the City Attorney's Office has provided a significant amount of legal support for key City developments/projects including: continued work on the Westminster Center Urban Reinvestment Project, which included acquisition of the former Trail Dust restaurant and Macy's department store properties and negotiations with Steiner & Associates on a Redevelopment Agreement; negotiations with the RTD staff on the various agreements related to the South Westminster Transportation-Oriented Development (TOD) and the EAGLE P3 Project; the continuing redevelopment of the 72<sup>nd</sup> and Sheridan Urban Renewal Area; and completion of negotiations with Xcel Energy on a new franchise.

During the past twelve months, the City Attorney's Office assisted in the preparation of twenty-four intergovernmental agreements and prepared twenty-nine ordinances and resolutions for City Council action. Major legislative efforts included an ordinance imposing residency restrictions on sexually violent predators, revamping the City's special use/groups home code and an ordinance that exercised the State-permitted local government "opt-out" that allows municipalities to prohibit medical marijuana dispensaries.

The City Attorney's Office continues to assist in all personnel related matters. The City continues to avoid litigation in employment law issues.

The City Attorney's Office continues to provide legal staff support on an ongoing basis for the Special Permits and License Board, the Broomfield-Westminster Open Space Foundation and for other boards and commissions, as needed. The Office has also been involved in numerous capital improvement projects, real estate transactions, and sales tax enforcement actions.

One of the City Attorney's important ongoing responsibilities is his oversight of the City Prosecutor's Office. During the past year, this Office represented the City in approximately 9,600 Municipal Court cases including 3,100 traffic cases. Domestic violence cases continue to consume a considerable amount of prosecution time due to the difficult nature of these cases. In the past twelve months, 354 domestic violence (DV) cases were filed with the Court, an increase of 11 cases (3%) over the number of DV cases filed during the previous twelve month period.

The City Prosecutor's Office also undertook the enforcement of the City's medical marijuana and zoning ordinances against the City's one remaining dispensary, Herbal Remedies. Both the landlord and the owner of Herbal Remedies have been cited into Municipal Court for multiple violations of the Westminster Urban Renewal Plan and City zoning regulations.

Graffiti cases continue to receive special attention by the City Prosecutor's Office. The City Prosecutor's Office prosecuted 28 cases of graffiti-defacement and 18 cases of possession of graffiti materials. Over \$10,900 in fines and more than 140 days of suspended jail time were ordered by the Court. Community service hours cleaning up graffiti are ordered as a condition to suspension. For juvenile offenders, the parent is ordered by the Court to participate, as well. The City Prosecutor's Office remains keenly aware of City Council's stance on graffiti crime and remains aggressive in its approach to graffiti offenders.

The proposed City Attorney's employment agreement reflects City Council's decision to maintain the City Attorney's salary and deferred compensation at the 2010 level of \$165,948. This is consistent with Council's decision to freeze City employees' salaries in the 2011 Budget as one in a series of measures being taken to reduce overall expenditures. The proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2011.

The continuation of an employment agreement with Mr. McCullough supports all five of the City's Strategic Plan goals by ensuring quality legal advice and support for the wide range of government functions provided by the City organization.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT, effective as of the 1st day of January, 2011, by and between the CITY OF WESTMINSTER, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and MARTIN R. McCULLOUGH, hereinafter called "EMPLOYEE," as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of MARTIN R. McCULLOUGH, as City Attorney of the City of Westminster as provided by City Charter, Chapter IV, Section 4.13; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE; and (4) provide a just means for terminating EMPLOYEE's services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE previously accepted employment as City Attorney of said CITY.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### **SECTION 1. DUTIES:**

A. CITY hereby agrees to continue the employment of EMPLOYEE as City Attorney of CITY to perform the duties and functions specified in Section 4.13 of the City Charter, Chapter 16 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall prepare and submit a proposed budget for the City Attorney's Office following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

C. EMPLOYEE shall supervise the staff of the City Attorney's Office as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by the City Attorney in accordance with the provisions of section 1-16-3 of the City Code.

### **SECTION 2. TERMS:**

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as City Attorney for calendar years 2011 and 2012. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. EMPLOYEE agrees neither to seek, to accept, nor to become employed by any other employer until said termination date, unless said termination date is effected as hereinafter provided.

The term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraphs A and B of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth in Section 3, paragraph C of this Agreement.

D. This Employment Agreement expires December 31, 2011 but shall be automatically renewed for 2012 unless terminated no later than October 31, 2011.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Attorney, then and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) months, provided however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the six (6) months' severance pay provisions herein.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY four (4) months notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs A and C of this Section 3, and paragraph D in Section 2.

E. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3A hereof and shall entitle EMPLOYEE to the lump sum cash payment described herein.

### SECTION 4. SALARY:

A. Effective January 1, 2011, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$165,948. The EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid.

B. CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY.

### SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the Council. Provided, that such consulting or other non-City connected business does not constitute a conflict of any nature with EMPLOYEE'S work as City Attorney. City Council shall be the sole judge of such conflicts whose determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. A monthly car allowance of \$500 shall be paid to EMPLOYEE to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

SECTION 8. PROFESSIONAL DEVELOPMENT:

CITY agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the City, including, but not limited to, the Colorado Bar Association, NIMLO, the Colorado Municipal League, and continuing legal education courses and seminars related to the practice of municipal law. In addition to reasonably funding educational/training programs for EMPLOYEE's professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each year.

SECTION 9. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to all Department Head level employees, except that when such benefits are in conflict with this Agreement, said Agreement shall control.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.

C. This agreement becomes effective on January 1, 2010, and if automatically renewed, shall be in effect through December 31, 2012.

D. If any provision, or any portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.

E. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Nothing in this Agreement shall be construed as creating any multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement both effective as of the day and year first above written.

APPROVED by Westminster City Council this 25th day of October, 2010.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Mayor

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

\_\_\_\_\_  
Martin R. McCullough



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2010



**SUBJECT** Ice Centre Intergovernmental Agreement Amendment with Hyland Hills Park and Recreation District

**Prepared By:** Tammy Hitchens, Finance Director

**Recommended City Council Action**

Authorize the City Manager to sign the "Fourth Amendment to Second Intergovernmental Agreement between the City of Westminster and Hyland Hills Park and Recreation District."

**Summary Statement**

- The Fourth Amendment is a minor change revising section 6.2 of the Second Intergovernmental Agreement (IGA) concerning the timing of the lease payments due on the 2010 Refunding COPS (Ice Centre Project).
- The original lease payments on the 1998 COPS originally issued for the construction of the Ice Center were due on January 15 and July 15 of each year, however, under the terms of the indenture, the City was required to make payments 30 days in advance, thus on December 15 and June 15 of each year. The resulting cross-over year of payments of this lease payment structure between December and January was inefficient and resulted in bookkeeping adjustments.
- In order to better align actual payments with the debt schedule in the same calendar year, the amendment to the IGA is necessary.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City approve the Fourth Amendment to the Second IGA between the City and the Hyland Hills Park District concerning the Westminster Promenade Ice Centre by amending the due dates of lease payments on the 2010 Refunding COPS (Ice Centre Project)?

**Alternative**

Do not approve the Fourth Amendment to the IGA. This is not recommended. The change stated in the amended IGA does not have any adverse financial impact but will result in operational efficiencies since the payments will be aligned with most of the City's other debt obligations.

**Background Information**

The City and Hyland Hills entered into an Intergovernmental Agreement dated January 1998, setting forth the basic terms under which they agreed to construct and finance the Ice Centre. The Fourth Amendment to the IGA aligns the debt service schedule with the actual lease payment due dates in the same year. This minor change to the IGA does not impact the City adversely and will result in operational efficiencies since the Finance Department will not have to account for differing schedules that are not aligned with payment dates in the same calendar year.

This change supports City Council's goal of a Financially Sustainable City Government Providing Exceptional Services.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

SECOND INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF WESTMINSTER, COLORADO,  
HYLAND HILLS PARK AND RECREATION DISTRICT, AND  
HYLAND HILLS PARK AND RECREATION DISTRICT ENTERPRISE  
CONCERNING THE WESTMINSTER PROMENADE ICE CENTER

ORIGINALLY APPROVED January, 29, 1998

FOURTH AMENDMENT DATED October 18, 2010

This Fourth Amendment to the Second Intergovernmental Agreement between the City of Westminster, Colorado, the Hyland Hills Park and Recreation District, and the Hyland Hills Park and Recreation District Enterprise (the "Fourth Amendment") amends the Second Intergovernmental Agreement executed and delivered by the same originally dated as of January 29, 1998, and amends and restates Section 6.2 to read as follows, with all other provisions remaining in full force and effect:

6.2 Annual Lease Payments The Hyland Hills Enterprise shall pay directly to the Trustee annual Lease Payments equal to fifty percent (50%) of the annual Rental Obligations for the Ice Arena. As the Enterprise has designated the Lease Payments as payable on a parity with the Enterprise Revenue Bonds as provided in paragraph 6.3 of the IGA, the Lease Payments shall be paid semi-annually to the Trustee on or before May 15 and November 15 in each year, commencing May 15, 2011. The Trustee shall provide written notice to the Hyland Hills Enterprise and to the City if a Lease Payment is fifteen (15) days late.

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

CITY OF WESTMINSTER, COLORADO

---

Nancy McNally, Mayor

ATTEST:

APPROVED AS TO LEGAL FORM

---

Linda Yeager, City Clerk

---

Martin R. McCullough, City Attorney

HYLAND HILLS PARK AND  
RECREATION DISTRICT

---

Sarah Heil, President

ATTEST:

APPROVED AS TO LEGAL FORM

---

Donald C. Ciancio II, Secretary

---

Richard L. Fuller, General Counsel

HYLAND HILLS ENTERPRISE

---

Sarah Heil, President

ATTEST:

APPROVED AS TO LEGAL FORM

---

Donald C. Ciancio II, Secretary

---

Richard L. Fuller, General Counsel



WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Shaw Heights Tributary at Circle Drive Intergovernmental Agreement Amendment with Urban Drainage and Flood Control District and Adams County

**Prepared By:** John Burke, P.E., CFM, Senior Engineer

**Recommended City Council Action**

Authorize the City Manager to sign the amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County for the construction of drainage improvements on the Shaw Heights Tributary between Circle Drive and Rotary Park, and authorize the expenditure of \$180,000 in additional funding for this project.

**Summary Statement**

- This storm drainage project will mitigate the nuisance flooding that has occurred at the intersection of Shaw Boulevard and Circle Drive for over twenty years. The project will construct a high capacity inlet at the intersection of these two streets and route the storm flows through an underground pipe to the Rotary Park regional detention pond.
- The final engineering design work for this project has been completed. The construction cost estimate is now approximately \$200,000 more than the preliminary design amount due to numerous utility conflicts that were encountered during the more detailed design effort. As such, this amended IGA will authorize the additional funds necessary for the construction of this project.
- The total cost for this project is estimated at \$1,240,000, further broken down as follows: \$120,000 for the engineering design; \$20,000 for right-of-way acquisition; \$950,000 for construction; \$100,000 for construction engineering services and \$50,000 for contingency. The following are the maximum contributions from each participating agency: City of Westminster: \$590,000; Adams County: \$340,000 and UDFCD: \$310,000.
- The Intergovernmental Agreement (IGA) contains provisions for amending the document in the future if a modified funding arrangement becomes necessary.
- Under the terms of the IGA, the Urban Drainage and Flood Control District (UDFCD) will manage the project, hire a contractor to construct the improvements and provide construction inspection services.
- The original IGA was authorized by City Council on March 27, 2006 and amended on April 12, 2010.

**Expenditure Required:** \$180,000 (\$410,000 was previously authorized)

**Source of Funds:** Miscellaneous Stormwater Utility Fund

**Policy Issue**

Should the City amend the Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County for the construction of drainage improvements at Shaw Boulevard and Circle Drive?

**Alternative**

Council could choose not to amend this intergovernmental agreement at this time. Staff does not recommend this alternative because the matching funds from Adams County and the UDFCD will help complete this project in a cost effective manner. If Council chooses not to approve this IGA, it would take additional City funds to complete the project in the future without Adams County and UDFCD participation.

**Background Information**

This area of the City has experienced drainage and flooding issues for more than twenty years. The current, inadequate drainage system collects runoff from roughly 270 acres of the upstream basin and discharges it directly into the Allen Ditch. This is not an appropriate drainage solution. These drainage flows are substantially larger than what can adequately be contained within the ditch banks. Therefore, even minor storm events have the potential to overtop the ditch and flood the basements of the adjacent single family residential properties in the City of Westminster and unincorporated Adams County.

The proposed drainage improvements project will construct a high capacity inlet on the west side of the intersection of Circle Drive and Shaw Boulevard. This inlet will capture up to the 10-year storm event and convey this stormwater into a 48-inch diameter storm sewer in Circle Drive. This 48-inch diameter storm sewer will continue south along Circle Drive, then run west at 84<sup>th</sup> Avenue, cross beneath the Allen Ditch, continue west in Wagner Drive and ultimately discharge into the regional detention pond at Rotary Park.

Because the improvements are benefitting both the City of Westminster and Adams County residents, the County has been part of the design team and will be funding \$340,000 for their share of costs associated with this project.

The City's additional share for this project (\$180,000) is available from the Miscellaneous Stormwater account. Since the UDFCD will manage and bid this project, the actual construction contract will not require City Council authorization. If the bids received by UDFCD are lower than the engineer's estimate, any remaining unused City funds will return to the Miscellaneous Stormwater Project account.

The construction of this project will eliminate the nuisance flooding that has occurred in this neighborhood for over 20 years and will advance the City of Westminster's Strategic Plan Goal of a Safe and Secure Community by protecting people, homes and buildings from flooding through an effective stormwater management program.

The request for bids will be sent out by UDFCD in November with construction anticipated to begin in December and finish in the spring of 2011.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

AMENDMENT TO  
AGREEMENT REGARDING  
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION  
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR  
SHAW HEIGHTS TRIBUTARY AT CIRCLE DRIVE,  
ADAMS COUNTY

Agreement No. 06-02.07C

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and ADAMS COUNTY (hereinafter called "COUNTY") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Shaw Heights Tributary at Circle Drive" (Agreement No. 06-02.07) dated October 19, 2006, as amended; and

WHEREAS, PARTIES now desire to proceed with additional design and construction of drainage and flood control improvements; and

WHEREAS, PARTIES desire to increase the level of funding by \$330,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. \_\_, Series of 2010); and

WHEREAS, the City Council of CITY, County Commissioners of COUNTY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Delineation, description and acquisition of required rights-of-way/ easements;
3. Construction of improvements;
4. Construction engineering services;
5. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$1,240,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$120,000
2. Right-of-way	20,000
3. Construction	950,000
4. Construction Engineering Services	100,000
5. Contingency	50,000
Grand Total	\$1,240,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	25.00%	\$160,000	\$150,000	\$ 310,000
CITY	47.58%	\$410,000	\$180,000	\$ 590,000
COUNTY	27.42%	\$340,000	\$ -0-	\$ 340,000
TOTAL	100.00%	\$910,000	\$330,000	\$1,240,000

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval. Payment of each party's full share (CITY - \$590,000; COUNTY - \$340,000; DISTRICT - \$310,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing account to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

3. All other terms and conditions of Agreement No. 06-02.07 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

By \_\_\_\_\_

ATTEST:

Title Executive Director

\_\_\_\_\_

Date \_\_\_\_\_

ADAMS COUNTY

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

County Attorney

CITY OF WESTMINSTER

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

# SHAW HEIGHTS TRIBUTARY



## VICINITY MAP





## Agenda Item 8 H

WESTMINSTER  
COLORADO

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Little Dry Creek Regional Detention Pond Intergovernmental Agreement Amendment with the Urban Drainage and Flood Control District and Adams County

**Prepared By:** John Burke, P.E., CFM, Senior Engineer

### Recommended City Council Action

Authorize the City Manager to sign the amended intergovernmental agreement with the Urban Drainage and Flood Control District and Adams County to provide additional funding for the Little Dry Creek Regional Detention Pond and related channel improvements.

### Summary Statement

- A regional storm water detention pond on Little Dry Creek is proposed to be constructed west of Federal Boulevard near the 68<sup>th</sup> Avenue alignment and immediately south of the proposed commuter rail station on the FasTracks Northwest Rail line. The primary purpose of this detention pond is to serve the future Transit Oriented Development (TOD) area bounded by Federal Boulevard, Lowell Boulevard, 72<sup>nd</sup> Avenue and the Burlington Northern/Santa Fe Railroad track. A regional detention facility will enhance the redevelopment opportunities in this area by eliminating the need for on-site detention for every lot of the TOD.
- This amendment to the Intergovernmental Agreement (IGA) is necessary to encumber additional funds that the Urban Drainage and Flood Control District (UDFCD) and the City have budgeted in 2010 for this project. These funds will remain in an interest bearing account managed by UDFCD and will be used to pay for various phases of this project. The approximate cost estimate for the Little Dry Creek channel realignment, utility relocations and the regional detention pond is over \$5,000,000. City Staff plans to continue to request funds in future years from UDFCD in support of this project.
- This amended IGA will add \$600,000 from UDFCD and \$500,000 from the City of Westminster into this project in preparation for construction in the year 2012. This additional money will bring the total project account up to \$1,500,000.
- The City's share of the funding, \$500,000, is budgeted and available.
- The IGA contains provisions for amending the document to allocate additional funding in future budget years. Significant future funding from the City's Storm Water Utility and the UDFCD is anticipated that will allow this project to be fully funded within the next two years.

**Expenditure Required:** \$500,000 (City's share)

**Source of Funds:** Little Dry Creek Regional Detention Account

**Policy Issue**

Should the City amend the Intergovernmental Agreement with the Urban Drainage and Flood Control District and Adams County for the design and construction of drainage and flood control improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard?

**Alternative**

Council could choose not to authorize this amended intergovernmental agreement at this time. Staff does not recommend this alternative because the matching funds from the UDFCD will help complete this project in a cost effective manner. If Council chooses not to approve this IGA, it would take longer to complete the project without UDFCD and Adams County funds thus delaying the drainage improvements necessary for the TOD development.

**Background Information**

The regional detention pond as envisioned in the Little Dry Creek Park Master Plan will facilitate the redevelopment of the area located south of 72<sup>nd</sup> Avenue between Federal Boulevard and Lowell Boulevard by allowing the individual lots to be developed without the need for on-site detention ponds. Additionally, this project will complete much of the earth moving activity within the Park Master Plan boundaries, thus allowing future park, roadway and amphitheatre construction to occur with minimal disturbance to the surrounding area.

The original IGA was authorized by City Council on February 9, 2009. Annual amendments to this IGA will continue until the project is fully funded.

With the recent Notice to Proceed issued to Denver Transit Partners for the RTD FasTracks Eagle P-3 project which includes the South Westminster Station, City staff have started detailed design coordination efforts. With this coordination, the City, UDFCD and Adams County will now work toward a detailed revision to the original Little Dry Creek Park Master Plan to incorporate the train station and associated elements. This design effort will continue through 2011 with construction on this project beginning in late 2012 or early 2013 to coincide with the RTD FasTracks project.

Through implementation of the regional detention pond project and the proposed lowering of the 100-year floodplain, this project will advance the City of Westminster's Strategic Plan Goal of a Safe and Secure Community by protecting people, homes and buildings from flooding through an effective stormwater management program. Additionally, this project will greatly enhance this area with unique open space and active recreational uses as identified in the Little Dry Creek Park Master Plan. This also assists the City's Strategic Plan Goal of Creating a Beautiful and Environmentally Sensitive City by increasing green space consistent with defined goals.

Westminster's share of the funding for this project (\$500,000) is available from the Little Dry Creek Regional Detention Project of the Stormwater Capital Improvements Fund.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

AMENDMENT TO  
AGREEMENT REGARDING  
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION  
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR  
LITTE DRY CREEK FROM LOWELL BOULEVARD TO FEDERAL BOULEVARD

Agreement No. 08-09.09A

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF WESTMINSTER (hereinafter called "CITY") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard" (Agreement No. 08-09.09) dated August 19, 2009, and

WHEREAS, PARTIES now desire to continue to fund final design, right-of-way acquisition and construction; and

WHEREAS, PARTIES desire to increase the level of funding by \$1,100,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 12, Series of 2010 and Resolution No. 43, Series of 2010); and

WHEREAS, the City Council of CITY, the County Commissioners of COUNTY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 2. SCOPE OF PROJECT is amended to include the following:
  - C. Right-of-Way Delineation and Acquisition. Right-of-way for the improvements as set forth in the final design and an estimate of costs for acquisition shall be determined. Maps, parcel descriptions and parcel plats shall also be prepared.
2. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:
  4. PROJECT COSTS AND ALLOCATION OF COSTS
    - A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
      1. Final design services;
      2. Delineation, description and acquisition of required rights-of-way/ easements;
      3. Construction of improvements;
      4. Contingencies mutually agreeable to PARTIES.

- B. It is understood that PROJECT costs as defined above are not to exceed \$1,500,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$450,000
2. Right-of-way	200,000
3. Construction	750,000
4. Contingency	100,000
Grand Total	\$1,500,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	42.9%	\$100,000	\$600,000	\$700,000
COUNTY	10.7%	\$150,000	\$0	\$150,000
CITY	46.4%	\$150,000	\$500,000	\$650,000
TOTAL	100.00%	\$400,000	\$1,100,000	\$1,500,000

3. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval. Payment of each party's full share (CITY - \$650,000; COUNTY - \$150,000; DISTRICT - \$600,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special interest bearing account to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

4. Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE is deleted and replaced as follows:

7. RIGHT-OF-WAY

CITY and COUNTY, with DISTRICT assistance, shall be responsible for acquiring, subject to approval of DISTRICT, such land or interests in land needed to implement construction of the drainage and flood control improvements as defined herein. The cost to be shared by PARTIES for right-of-way acquisition may include relocation costs of existing occupants. Appraisal costs and costs associated with condemnation (including outside legal costs) will also be considered a PROJECT cost. Right-of-way acquisition shall be in accordance with DISTRICT policy attached hereto as Exhibit B. Within Exhibit B, references to purchasing agency will be references to CITY and COUNTY. In reference to Paragraph 1.D and 2.D of Exhibit B, the Purchasing Agency shall pay the reasonable costs of the property owners appraisal only when the Purchasing Agency's appraisal of the owner's property is \$5,000 or greater. DISTRICT shall serve as the paying agency.

- A. Coordination of Right-of-Way Acquisition. Cost sharing by PARTIES will be based on supporting documentation such as formal appraisals, reasonable relocation cost settlements, legal description of the property, and other information deemed appropriate to the acquisition. Furthermore, cost sharing will be only for the properties, or portions thereof, approved by PARTIES to be needed for the drainage and flood control portions of PROJECT. Request for such approval shall include appraisals of property, legal description of the property, and other information deemed appropriate to the acquisition by PARTIES to this Agreement. CITY and COUNTY shall purchase the right-of-way only after receiving prior approval of DISTRICT.
- B. Payment for Right-of-Way Acquisition. Following purchase or receipt of executed memorandum of agreement between CITY, COUNTY and property owner for the needed right-of-way that commits the property owner to sell property to CITY and COUNTY at a price certain and on a date certain, CITY and COUNTY shall so advise DISTRICT and request payment as provided above. DISTRICT shall make payment within 30 days of receipt of request accompanied by the information set forth above.
- C. Ownership of Property and Limitation of Use. CITY and COUNTY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be

used for any purpose that will diminish or preclude its use for drainage and flood control purposes. CITY and COUNTY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY and COUNTY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY and COUNTY has not obtained the written approval of DISTRICT prior to such action, CITY and COUNTY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY and COUNTY's sole expense. In the event CITY and COUNTY breaches the terms and provisions of this Paragraph 7.C and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY and COUNTY for specific performance of this portion of the Agreement.

DISTRICT may, subsequent to the recording by CITY and COUNTY of any document transferring title or another interest to property acquired pursuant to this Agreement to CITY and COUNTY, record a memorandum of this Agreement (Exhibit C), specifically a verbatim transcript of Paragraph 7.C. Ownership of Property and Limitation of Use except for this sub-paragraph which shall not be contained in the memorandum. The memorandum shall reference by legal description the property being acquired by CITY and COUNTY and shall be recorded in the records of the Clerk and Recorder of Adams County immediately following the recording of the document transferring title or another interest to CITY and COUNTY. CITY and COUNTY authorizes the recording of that memorandum and acknowledges that the same is meant to encumber the property with its restrictions.

5. All other terms and conditions of Agreement No. 08-09.09 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND  
FLOOD CONTROL DISTRICT

(SEAL)

By \_\_\_\_\_

ATTEST:

Title Executive Director

\_\_\_\_\_

Date \_\_\_\_\_

ADAMS COUNTY

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

County Attorney

CITY OF WESTMINSTER

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2010



**SUBJECT:** Reclaimed Water Treatment Facility Phase II Expansion Construction Contracts

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

**Recommended City Council Action**

1. Authorize the City Manager to execute a contract with the low bidder Moltz Construction, Inc. in the amount of \$4,497,000 for construction of the expansion to the Reclaimed Water Treatment Facility and authorize a 10 percent construction contingency in the amount of \$450,000 for a total construction budget of \$4,947,000.
2. Based on the recommendation of the City Manager, find that the public interest would best be served by authorizing the City Manager to execute a contract amendment with Black & Veatch Corporation in the amount of \$750,000 to provide construction phase engineering services related to the expansion of the Reclaimed Water Treatment Facility and authorize a 10% contingency in the amount of \$75,000, for a total construction phase engineering services budget of \$825,000.

**Summary Statement**

- The capacity of the Reclaimed Water Treatment Facility (RWTF) needs to be expanded to meet current and future demands, as called for in the City’s water supply plan.
- As part of the project planning stage, it was identified that expansion of the facility required two phases: Phase I included an influent storage tank and pump station and is currently 90% constructed, and Phase II involves expansion of the treatment facility itself.
- City Council previously approved engineering contracts with Black & Veatch Corporation (Black & Veatch) for Phase II design and bidding. Final design and bidding were completed in September 2010.
- As part of the bidding process, Staff completed a contractor pre-qualification process to establish a list of pre-approved contractors who would be qualified to bid on the Phase II expansion project. Fifteen contractors responded to the comprehensive pre-qualification request, and after a detailed evaluation of all proposals, nine contractors were approved to bid the project.
- The City received bids from six of the nine contractors on September 28, 2010. Moltz Construction, Inc. (Moltz) submitted the lowest total bid in the amount of \$4,497,000 that included the base bid and three alternate bid items. This extremely competitive bid should result in an overall cost savings of \$1.5 million from original estimates. The bid from Moltz was reviewed by Staff and Black & Veatch and is recommended for award.
- To assist staff with the construction management of this project, Staff has negotiated a scope of services and fee schedule with Black & Veatch in the amount of \$750,000. These services will be provided through an amendment to the existing engineering services agreement with Black & Veatch, dated March 3, 2009.
- City Council appropriated \$15,575,000 in funding for the design and construction of both Phase I and Phase II in the 2009/2010 budget. Sufficient monies remain to fund construction and engineering services related to Phase II.

**Expenditure Required:** \$5,772,000  
**Source of Funds:** Utility Fund Capital Improvements  
- Reclaimed Water Treatment Facility Expansion Project

## **Policy Issue**

Should the City proceed with the construction of the expansion to the Reclaimed Water Treatment Facility by awarding the construction contract to Moltz Construction, Inc. and approve an amendment to the engineering services agreement with Black & Veatch for construction phase engineering services?

## **Alternatives**

1. The City could delay the construction of these improvements; however, without expanded treatment capacity, the facility will not meet current and future customer demands. In addition, delaying the project beyond the current favorable construction climate would likely result in higher construction costs.
2. The City could choose to negotiate a construction services contract with another firm; however, Black & Veatch has provided quality services on the project thus far, as well as on the original construction of the facility and is highly qualified to provide engineering services on this expansion project.

Neither of these alternatives is recommended by Staff.

## **Background Information**

The Reclaimed Water Treatment Facility (RWTF) expansion has been an important component in reclaimed water system planning since its design in 1998. Black & Veatch designed the facility with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to greater than 10 mgd as the system grew. The construction of the 2.2 million gallon storage tank and new pump station was the first of two phases of improvements required to increase the treatment capacity of the RWTF. The second phase includes the expansion of the RWTF treatment facility itself.

The 2008 Reclaimed Water System Evaluation recommended expediting construction of the RWTF expansion improvements. In July of 2008, the demand for reclaimed water met the existing capacity of 6 mgd, further signaling the need to expand the capacity of the RWTF. As reclaimed water demand increases and replaces potable water demand, the City's potable water supply effectively increases as does its ability to meet future potable water demands with new customers.

In 2009, Black & Veatch completed the final design of the Phase I improvements that included a 2.2 million gallon concrete influent storage tank and pump station currently nearing construction completion. As part of the final design services contract for the Phase I improvements, Black & Veatch completed the preliminary design of the Phase II improvements, which identified required elements for expansion of the RWTF treatment capacity to a firm yield of 10 mgd. City Council approved the initial design services contract with Black & Veatch on February 9, 2009 and approved amendments for the 30% and 100% design efforts for the Phase II plant expansion on January 11, 2010 and May 24, 2010, respectively.

During final design of Phase II, Staff and Black & Veatch conducted a contractor pre-qualification process in order to develop a list of contractors that would be qualified to bid on a project of this size and type. Twenty contractors requested pre-qualification packets and fifteen contractors submitted completed Statements of Qualifications (SOQs). After a detailed review and ranking of the submitted SOQs, Staff short-listed nine contractors to bid on the project.

The City sent bid packages to the nine short-listed contractors and received bids from six contractors on September 28, 2010. All three contractors who did not submit a bid had informed the City during the bid process that they were unable to bid this project due to other commitments.

The bid results are as follows:

<b><u>CONTRACTOR</u></b>	<b><u>TOTAL BID AMOUNT</u></b>
Moltz Construction, Inc.	\$ 4,497,000
Jennison Construction Company	\$ 4,577,777
RN Civil Construction	\$ 4,612,000
Stanek Construction	\$ 4,725,000
Archer-Western Contractors	\$ 4,838,800
Hydro Construction Company	\$ 4,863,923
<b>Engineer's Estimate</b>	<b>\$ 6,795,350</b>

Moltz Construction, Inc. was the successful low bidder. They have successfully performed similar work for many cities in the Denver metro area; and a check with their banking and insurance references, all indicated a strong financial and project performance history.

All six bids are within \$366,923 or 8% of each other, and the second low bidder is just \$80,777 or 1.8% higher than Moltz Construction, Inc. These conditions indicate a favorable bid climate for the City and support the notion that these bids are very competitive. For these reasons, Staff recommends executing a construction contract with Moltz Construction, Inc. Construction will commence following award of the contract with completion anticipated by April, 2012.

A second component of this project is related to engineering services during construction. Black & Veatch provided design services for both phases of the RWTF expansion, as well as construction administration services as a member of the design/build team during the recent construction of the Phase I improvements. In addition, Black & Veatch provided the design and construction phase engineering services for the original construction of the RWTF in 1998-2000 and has intimate knowledge of the design and construction of the facility. In order to continue to utilize this experience, Staff has negotiated a scope of services and fee schedule with Black & Veatch for engineering services during construction of Phase II. These services include administering the contract, special inspections and providing full-time resident project representation during the estimated 14-month construction period. The fee for these services is \$750,000, which brings the total contract amount with Black & Veatch for the Phase II design and construction services to \$1,347,007. This contract amendment amounts to 17% of the Moltz Corporation bid amount. Staff recommends approval of this amendment to the engineering services agreement with Black & Veatch for the following reasons: 1) while construction bids came in much lower than the engineering estimate, the cost of professional engineering services is independent of the construction costs, 2) because of the extensive nature of the expansion and updates, Staff is requesting that Black and Veatch update the operations and maintenance manual for this \$20 million facility, and 3) Staff is requesting the presence of a resident project representative to provide full-time project oversight. Staff believes that the Black and Veatch contract amendment for engineering services is competitive with the industry, and that their services will ultimately minimize risk to the project.

City Council appropriated \$15,575,000 in funding for the design and construction of both Phase I and Phase II in the 2009/2010 budget. Sufficient monies remain to fund construction and engineering services related to Phase II.

The Reclaimed Water Treatment Facility Phase II Expansion helps achieve the City Council's Strategic Plan goals of "Financially Sustainable City Government" by contributing to the objective of well-maintained and operated City facilities and "Beautiful City" by enhancing the City's reclaimed water and potable water systems.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2010



**SUBJECT:** Little Dry Creek/Big Dry Creek Sewer Rehabilitation - Phase I Engineering Contract

**Prepared By:** Mike Wong, Senior Engineer, Utilities Planning and Engineering  
Steve Grooters, Senior Project Engineer, Utilities Planning and Engineering

**Recommended City Council Action**

Based on the recommendation of the City Manager, the City Council finds that the public interest will best be served by authorizing the City Manager to execute a contract with HDR Engineering, Inc. in the amount of \$683,904 for flow monitoring and sampling field data collection services related to the Little Dry Creek/Big Dry Creek Sewer Rehabilitation Phase I project and authorize a contingency in the amount of \$65,000 for a total project budget of \$748,904.

**Summary Statement**

- As part of the 2006 URS Infrastructure Master Plan, the City determined a need to rehabilitate or replace certain portions of the large diameter sewers in the two main sewer basins of the Westminster collection system including: 1) the Little Dry Creek (LDC) basin and 2) the Big Dry Creek (BDC) basin.
- This project will advance the overall findings and recommendations from the 2006 Master Plan and establish, package, prioritize and plan an estimated \$35 million in sewer capital projects for several years to come.
- The primary concerns associated with the LDC and BDC basins are different. In general, the LDC basin is capacity limited due to future growth associated with the Westminster Center Urban Reinvestment Project and Regional Transportation District FasTracks and Transportation Oriented Developments. The BDC basin sewer system is aged and experiencing significant corrosion and rain and groundwater infiltration.
- In addition to the poor condition of the BDC sewer basin, there appears to be an unusually high contribution of salts to the wastewater flows within this basin and subsequently to the Big Dry Creek Wastewater Treatment Facility. Identifying methods to reduce this salinity is important to the success of the City's reclaimed water program.
- The overall purpose of the Little Dry Creek/Big Dry Creek Sewer Rehabilitation - Phase I project is to establish a cost-effective and prioritized list of sewer projects that ensure sufficient capacity and minimize risk of sewer failure.
- Key components of Phase I include flow monitoring through dry and wet weather seasons, sampling, inflow/infiltration and salinity studies, sewer modeling and condition assessments. This is a very labor and equipment intensive process and accounts for a substantial portion of the cost of this study. Results from Phase I will be used to form the basis for the future Phase II that includes design and construction of identified projects.
- Based on Staff's selection process, HDR Engineering, Inc.'s fee was determined to be appropriate for the project scope and their team to be the most qualified for this phase of the project.
- Sufficient monies are appropriated in the 2010 utility budget to fund this phase of the project.

**Expenditure Required:** \$748,904

**Source of Funds:** Utility Fund Capital Improvement Program  
- LDC/BDC Sewer Collection System Rehabilitation - Phase I

**Policy Issue**

Should the City execute a contract with HDR Engineering, Inc. for the Little Dry Creek/Big Dry Creek Sewer Rehabilitation - Phase I project?

**Alternatives**

1. The City could delay this project; however, rehabilitation and expanded capacity of the sewer system is necessary to reduce the risk of sewer failures and to provide the capacity needed for future development.
2. The City could choose to negotiate services with another firm; however, HDR Engineering, Inc. has provided quality services on past City projects, is highly qualified to provide the engineering services on this project and provided a competitive fee for the requested scope of work.

Staff does not recommend either of these alternatives.

**Background Information**

The City has determined there is a need to rehabilitate or replace certain portions of the large diameter sewers in the Little Dry Creek and Big Dry Creek sewer collection systems. The primary concerns associated with the LDC sewer system are mostly capacity related issues due to future growth associated with the Westminster Center Urban Reinvestment Project and RTD FasTracks and transportation orientated developments (TOD). As a result, future construction work within the LDC collection system is anticipated to consist mostly of sewer relocation and replacement. The primary concerns associated with the BDC basin sewer system is age, areas of significant corrosion, and areas that experience significant rain and groundwater infiltration. As a result, future construction work within the BDC collection system is anticipated to consist mostly of rehabilitation and repair.

In addition to the poor condition of the sewer system in the BDC basin, there appears to be an unusually high loading or contribution of salts to the wastewater flows between the water that was consumed following water treatment and prior to influent at the Big Dry Creek Wastewater Treatment Facility. It has been hypothesized that high saline infiltration into the sewer may be the primary cause. Identifying the sources of saline infiltration and methods leading to the reduction of salinity in the wastewater flows is important to the success of the City's reclaimed water program.

The proposed Phase I project will consist of flow monitoring, sampling, hydraulic modeling and condition assessment of the large diameter sewer pipe in both the LDC and BDC basins. The objectives are to identify sources of high inflow and infiltration, high salinity, evaluate sewer condition and capacity and recommend a systematic approach to rehabilitate or replace portions of the LDC/BDC sewer collection system in future Phase II design and construction projects. Construction projects associated with Phase II are anticipated to cost approximately \$35M and will be implemented over a 20-year period.

Twelve consulting firms and three contractors who specialize in this type of work were issued a Request For Proposals (RFPs) on the LDC/BDC Sewer Rehabilitation – Phase I project. Eight proposals were received on August 26, 2010 and interviews with a short list of four firms were held on September 23, 2010 to clarify scope of work, project approach, project team qualifications and proposal fees. The following is a tabulation of the final four proposals submitted by the consulting firms:

<u>Consulting Firms</u>	<u>Proposed Fee</u>
HDR Engineering Inc.	\$683,904
Stantec Consulting, Inc.	\$677,918
CH2M Hill	\$502,000 - 952,000 (depending proposed alternative services)
Black & Veatch Corporation	\$377,500

Based on the proposal and interview process, Staff has found HDR Engineering, Inc. (HDR Engineering) to be the most qualified firm for the Phase I project. Staff's selection was based on HDR Engineering's initial proposal submittal and its response in the selection interview process. The proposed project team has 1) the experience for projects of similar size and scope, 2) the institutional knowledge and understanding of the City's sewer system, and 3) the approach of utilizing sufficient metering and sampling equipment strategically installed throughout the sewer basins to collect the required field data. In addition, HDR proposes to utilize their local in-house meteorologists to assist in the rainfall dependent inflow and infiltration study, which is unique to the success of the Phase I field data collection project. The utilization of meteorologists was not proposed by any other consulting firms. HDR also proposes to retain local subcontractors for the field work, which will streamline the contract administration. Although Black & Veatch Corporation's proposed cost is significantly lower, the number of metering/sampling stations and the total project staff hours proposed for the project are about half of those proposed by HDR Engineering and Stantec Consulting. Staff believes Black & Veatch Corporation's proposed cost would not be sufficient to cover the full scope of work as specified in the Request for Proposals. Stantec's proposal was also slightly lower than HDR Engineering's. Based on the interview process, Staff determined that the proposed Stantec team did not have the level of experience necessary to complete this project to Staff's satisfaction. HDR Engineering has a history of successful projects with the City, and their fee was competitive for the proposed scope of work. Furthermore, the additional use of HDR Engineering's in-house meteorological staff to work on the inflow and infiltration study at a slightly higher proposal amount led Staff to recommend their selection. A project contingency of \$65,000 (just under 10% of the project cost) is requested as part of the project budget.

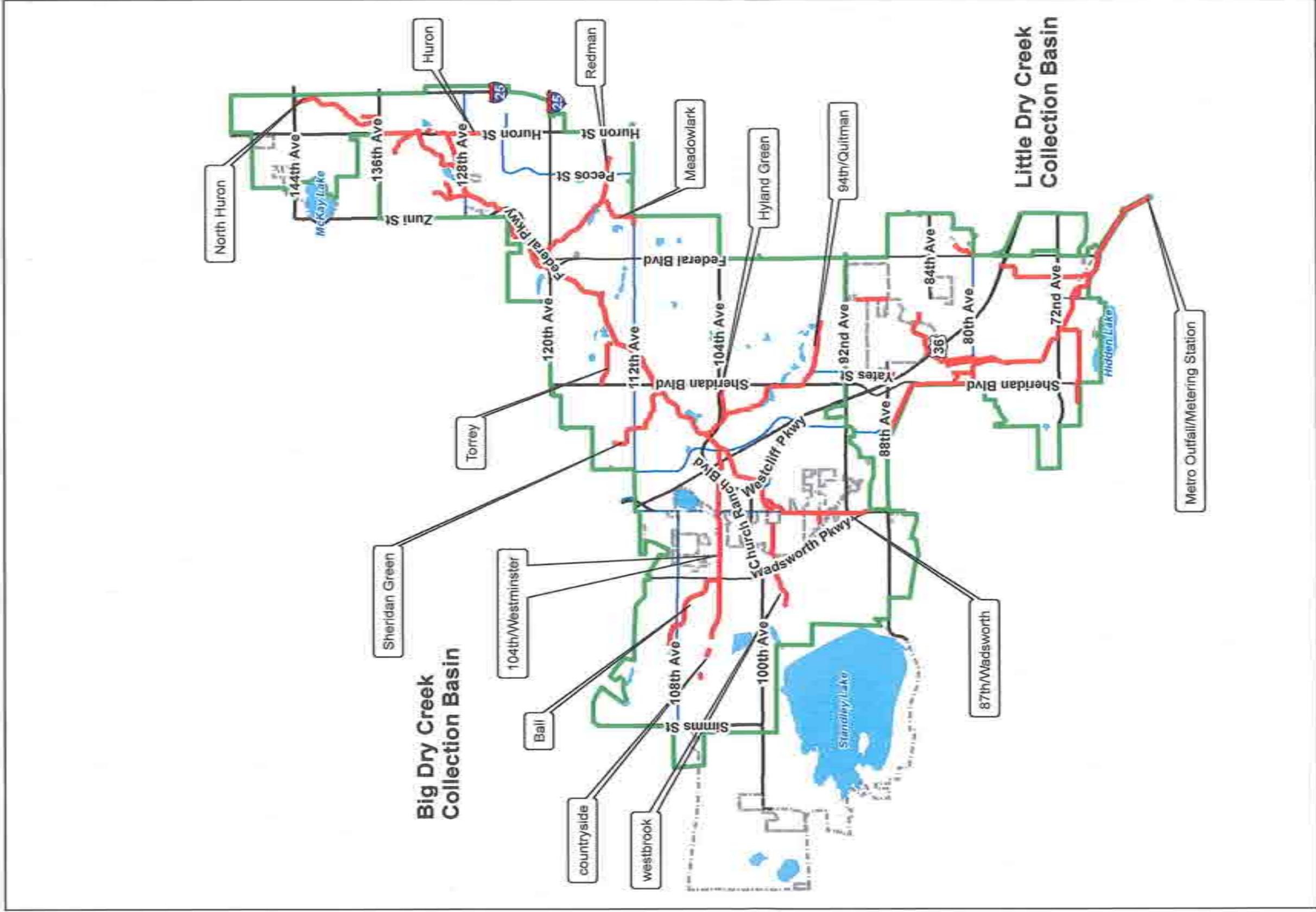
Staff anticipates the completion of Phase I by the end of 2011 with Phase II design and construction projects beginning in 2012. Due to the anticipated number, size and scope of the rehabilitation and/or replacement projects, Phase II will likely require a multi-year duration.

The Little Dry Creek/Big Dry Creek Sewer Collection System Rehabilitation helps to achieve the City Council's Strategic Plan goal of "Financially Sustainable City Government" by contributing to the objective of well-maintained and well-operated City infrastructure and facilities and "Beautiful City" by enhancing the quality of the City's reclaimed water system.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment: Map



# LDC and BDC Sewer Collection Systems



Figure 1





## Agenda Item 8 K

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Reclaimed Water Agreement with West 117<sup>th</sup> Master Homeowners' Association in the Weatherstone Subdivision

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

### Recommended City Council Action

Authorize the City manager to execute an agreement with West 117th Master Homeowners' Association in the amount of \$61,000, for cost sharing of the connection of West 117th Master Homeowners' Association to the City's reclaimed water system, in substantially the same form as the attached agreement.

### Summary Statement

- The City's reclaimed water program has operated since 2000 and is an integral component in the plan to meet growing water demands. At build-out, the reclaimed water system will supply 3,500 acre-feet of water a year and account for more than ten percent of the City's total water supply.
- To meet future water supply goals, more customers must connect to the reclaimed water system.
- The West 117<sup>th</sup> Master Homeowners' Association for Weatherstone (Weatherstone), a subdivision east of Sheridan Boulevard at 117<sup>th</sup> Avenue, currently uses potable water for the irrigation of common areas and desires to convert to reclaimed water so they can take advantage of the lower water rates.
- It will cost Weatherstone \$61,000 in private improvements to connect to the reclaimed water system.
- Weatherstone has limited resources and cannot afford to pay these costs up front. Therefore it is in the City's interest to assist them to make this project feasible.
- The agreement allows the City to pay for the private improvements necessary to connect Weatherstone to the reclaimed system. The agreement also defines shared project responsibilities and includes a provision for Weatherstone to pay back \$28,000 to the City within six years at 5% interest.
- The connection of Weatherstone to the reclaimed water system will allow the City to secure potable water supply for over 30 single family homes at a significantly reduced cost.
- Bidding requirements do not apply to this cost sharing agreement; however, City Staff have reviewed the scope and costs for the work to be done by Weatherstone and have found that they are reasonable in scope and price.

**Expenditure Required:** \$61,010 (\$28,000 to be paid back to the City over time with 5% annual interest)

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

## **Policy Issue**

Should the City pay \$61,000 of private improvement costs for Weatherstone to connect to the reclaimed water system and allow Weatherstone to pay back \$28,000 of those costs over time?

## **Alternatives**

1. The City could choose not to connect Weatherstone to the reclaimed water system. This is not recommended because the connection is beneficial to the City, cost effective and helps to meet the City's water supply goals for build-out.
2. The City could choose not to pay for Weatherstone's private improvements, nor allow them to pay the City back over time. This is not recommended. Without the City's contribution, Weatherstone could not afford to participate in the project because of the significant upfront expenditure. The City would then lose the benefit of acquiring the potable water, hampering the ability to cost effectively meet future water supply goals. The cost sharing and pay back terms are consistent with the City's reclaimed water connection cost sharing policy.

## **Background Information**

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

Weatherstone at West 117th Homeowners' Association is interested in connecting to the reclaimed water system. Weatherstone, located near 117<sup>th</sup> Avenue and Sheridan Boulevard, uses about 13 acre-feet of water a year to irrigate common area landscaping. By supplying Weatherstone with reclaimed water for irrigation, the City is able to save 13 acre-feet of potable water a year. This is enough water to supply over 30 single family homes with all of their water needs. This water can be used to meet the City's future water demands. Being an HOA with limited capital funding, it would be difficult for Weatherstone to pay the \$61,000 upfront costs to connect to the reclaimed water system. The proposed agreement facilitates making Weatherstone a reclaimed customer.

As a part of the 2009 Comprehensive Water Supply Plan, Staff identified the need to increase the reclaimed water system yield at build-out to 3,500 acre-feet a year. To accomplish this, additional reclaimed water customers must be connected to the reclaimed water system. In order to ensure that connecting customers are treated equitably and have adequate incentives to connect, City Staff developed a reclaimed water customer connection policy in the spring of 2010. This policy defines what the City may contribute to the connection of each reclaimed water customer and how financial assistance can be extended to customers to help them pay for their connections. Per the policy:

- The City will pay up to \$8,000 per acre-foot to connect customers to the reclaimed water system and the customer will pay the rest.
- If the project cost exceeds this amount, the City can still assist the customer with the money needed to complete the project, subject to being reimbursed in the future.
- The city will pay the excess costs if the customer agrees to continue to pay the potable water rate instead of receiving the 20% discount given to reclaimed customers until the City is repaid.
- The repayment period is limited to 6 years and at a 5% annual interest rate.
- The difference between the potable water rate and the reclaimed water rate is applied to the pay back amount.
- The City only assists customers who can reasonably pay back these amounts within six years. Weatherstone meets this requirement.

Weatherstone has \$61,000 worth of private irrigation system improvements. In accordance with the reclaimed water customer connection policy and the attached agreement, the City will pay the \$61,000 necessary to connect Weatherstone to the reclaimed water system, and Weatherstone will repay the City \$28,000. This is a net expenditure of \$33,000. When added to the \$71,000 of public improvements currently being made as a part of the Reclaimed Water Distribution System Improvements Project that was approved for construction by Council on October 11<sup>th</sup>, the total City cost to connect Weatherstone to the reclaimed water system is \$104,000. This represents the \$8,000 per acre-foot that the City can contribute per the customer connection policy to secure Weatherstone's 13 acre-feet of potable water supply. The \$28,000 that Weatherstone repays to the City will be paid back over time with 5% annual interest. Until Weatherstone has paid back the City, the homeowners' association will continue to be charged the potable water rate; and the difference between the potable water rate and the reclaimed water rate will be applied to the pay back amount. Once repayment has been made, Weatherstone will be charged the regular reclaimed rate, which is 80% of the potable rate.

If the City were not able to use reclaimed water to meet future water supply demands, other potable water supplies would need to be developed. This arrangement with Weatherstone will save the City approximately \$390,000 in future water purchases.

A copy of the proposed contract is attached for City Council consideration; however, the exhibits were not attached due to their length.

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

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

**AGREEMENT REGARDING THE CONNECTION  
OF RECLAIMED WATER TO WEST 117<sup>th</sup> MASTER  
HOMEOWNERS' ASSOCIATION**

THIS AGREEMENT is entered into this 16th day of July, 2010, by and between West 117<sup>th</sup> Master Homeowners' Association, a Colorado non-profit corporation, (hereinafter referred to as the "User" or "Customer") and the City of Westminster, a Colorado Municipal Corporation, (hereinafter referred to as "City").

WITNESSETH:

Whereas, The User owns, and is authorized under Colorado law to develop, operate and maintain the referenced irrigation facilities and is authorized to enter into this agreement; and

Whereas, the City has a reclaimed water system with sufficient capacity, and can construct the infrastructure necessary to provide reclaimed water to the user for irrigation; and

Whereas, the User has committed to using reclaimed water for irrigation and has completed, signed and delivered the "User's Plan to Comply" and an "Agreement for the Use of Reclaimed Water" to the City; and

Whereas, the City has determined that the site is suitable for the use of reclaimed water; and

Whereas, it is necessary to modify the User's irrigation system for reclaimed water to be used at the User's site; and

Whereas, there are costs associated with extending reclaimed water service to the User's and/or modifying the User's irrigation system; and

Whereas, the User is responsible for planning and performing modifications to the irrigation system and have individuals on its staff or can hire resources with the experience necessary to perform this work; and

Whereas, the City is responsible for planning for and extending reclaimed water service to the site and have the resources necessary to perform this work; and

Whereas, the User and the City desire that reclaimed water be used for irrigation purposes at the User's location, the two parties have agreed to share the necessary costs related to extending reclaimed water service to the site and/or modifying the User's irrigation system as defined in this agreement; and

Whereas, the User has provided to the City a cost estimate and a description of the required irrigation system modifications, including a map of the locations for modification (Appendix A); and

Whereas, the City has estimated the costs of extending the City's reclaimed water distribution system to the User's site (Appendix B); and

Whereas, the City has developed construction plans (Appendix C) for Reclaimed Water Distribution System Improvements, a portion of which describe and depict those improvements to the system needed to provide reclaimed water to the User's site; and

Whereas, the City and the User wish to enter into agreement whereby the City provides financing to the User for a portion of the project costs described in paragraph 5 below; and

Whereas, the City is able to provide financing and the User is able to repay the assigned amount per the terms of this agreement;

Now, therefore, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. Description of Project.

The purpose of this project is to replace the User's existing potable water irrigation supply with a reclaimed water irrigation supply. A description of the project improvements is shown on the insert of the map in Appendix A and the plans for portion of Appendix C that corresponds to said insert area. In basic form, the project includes the following tasks:

- A. Installation of two new 4" reclaimed water service lines. (Appendix C)
- B. Installation of two new reclaimed water meter pits and the installation of one new 3" meter and one new 4" meter. (Appendix C)
- C. Disconnection of potable water service to several existing irrigation meter pits and abandonment of the meter pits. (Appendix C.)
- D. Perform modifications to existing irrigation system and install new piping as needed to connect existing irrigation systems together, and provide sufficient flow allowing the system(s) to function satisfactorily from the new points of connection and at reclaimed water system pressures. (Appendix A)

## 2. User's Responsibilities:

- A. Plan, develop, and construct modifications to the User's irrigation system that are necessary for the system to operate using reclaimed water and to comply with all local codes and State regulations; Including the installation or verification of backflow prevention and use of purple materials.
- B. Perform User's duties defined in Appendix A and C.
- C. Contract with and pay the User's irrigation contractor for performing the irrigation system modifications.
- D. Assume responsibility for these modifications and the ability of the irrigation system to function.
- E. Comply with all applicable codes and regulations when making the described modifications.
- F. Repair any landscaping disturbed by the User's irrigation system improvements.
- G. Continue to operate and maintain all portions of the User's irrigation system including the planned modifications.
- H. Assume any future costs beyond those listed in Appendix A. required for the User's private irrigation system to use reclaimed water.
- I. Provide site access to City Utilities Staff or the selected contractor for the purpose of planning and performing the extension of the reclaimed water system and/or the abandonment of the existing potable water connection.
- J. Coordinate User's irrigation system modifications and their timing with the City. Some improvements may need to be sequenced or done in conjunction with the work performed by the City.
- K. Receive a written notice to proceed from the City for the User's irrigation system modifications before beginning work.
- L. Submit requests in writing to the City for approval to spend contingency monies prior to performing additional work and/or spending the funds.
- M. Provide a detailed invoice including unit costs for all labor and materials to the City for the User's irrigation system modifications. This must be done within 30 days of the completion of the project. Provide supporting documentation including detailed receipts or invoices for the materials purchased.

## 3. City's Responsibilities:

- A. Plan, design and construct the two new 4” reclaimed water service lines to the site, install 2 new pits as described in Appendix C as being done by the contractor.
- B. Plan and perform the disconnection of the existing potable water service connections and abandon meter pits as described in Appendix C as being done by the contractor.
- C. Repair any landscaping disturbed by the extension of the City’s reclaimed water distribution system or the potable water disconnection.
- D. Provide the User with the design pressure to use in planning the irrigation system modifications.
- E. Coordinate the planned system extension and timing with the User. Provide project schedule and plans to the User.
- F. Issue a written notice to proceed for the irrigation contractor to begin work. The City does not commit to reimburse irrigation modifications done or costs incurred that were not defined in the appendices to this contract and issued a notice to proceed.
- G. Set one new 3” reclaimed water irrigation meter and one new 4” reclaimed water meter and perform any necessary calibration.

4. Scheduling:

- A. For this project the User may complete system modifications at anytime following the execution of this agreement. The irrigation system modifications must be completed by April 30, 2011, unless the User has received a written extension from the City’s Reclaimed Water System Coordinator.
- B. The City must approve the disconnection from the potable water system before the new reclaimed water meter will be set. The irrigation system may be without water for a period of time during to the conversion. The City will try to minimize the impact to the User by scheduling the conversion during non-peak irrigation times and notifying the User of the expected construction schedule.
- C. Changes to the schedule outlined in this agreement may be made by mutual agreement between the City and the User. A request for schedule change and acceptance from the other party must be provided as a written notification per section 11.

5. Project Costs:

The City has estimated the cost of extending the reclaimed water system to the User’s site as described in Appendix D at \$71,000 dollars. The User has estimated the irrigation system improvements to be \$ 61,000 dollars (this included a \$6,000 dollar contingency). The total estimated cost of this project is \$132,000 dollars.

#### 6. Project Funding:

The City agrees to be responsible for \$ 104,000 for the connection of this site (\$8,000 per Acre Foot for 13 Acre Feet of annual customer demand). The User agrees to contribute \$28,000 dollars. A cost table is provided in Appendix B.

Following the completion of the engineering design process, the City will develop refined project cost estimates for the portion of the project that is the City's responsibility. If the refined cost estimates exceed the original estimated costs and the contingency by 20%, either the City or the user may renegotiate the terms of this contract, prior to beginning construction or to forgo the project

If the City chooses to proceed with the project, and the final costs related to the City's portion of the work exceed the estimate for that portion of the work, the City will assume the responsibility for the additional costs.

If the actual costs to improve the User's irrigation system are higher than the final estimate, the User assumes all additional costs.

The City will pay for the reclaimed water distribution system extension costs directly (cost shown in Appendix B) and reimburse the User for any irrigation system modifications up to \$ 33,000 dollars. The User must provide the City with a detailed invoice including unit costs for labor and materials.

The City will provide financing to the User for \$28,000 dollars to pay for the unreimbursed portion of the User's improvements. Interest will be charged to the User at five percent per annum and calculated monthly. The City will collect repayment and the User agrees to repay said loan using the City's Utility Billing System. Each month, the User will be billed at the current potable water billing rate. (Reclaimed water is currently twenty percent less than potable water, this loan recovery is intended to simulate the user's old potable water bill and minimize the impact to their finances.) If partial payment is made on a bill, monies received will be applied first to interest, then to principal and then to the water bill. If the User makes larger payments than required by the bill, the excess will be applied toward the principal. There is no penalty for early repayment of the loan. The User may pay off the loan at any time through one of the City's billing representatives. Once the loan is repaid, the City will change the user's billing rate and the user will begin receiving the reclaimed water rate. Annually, while the loan is in effect, the City will send the user a statement identifying the original balance of the loan, the remaining balance, the interest rate and the amount of interest paid.

#### 7. Completion of Work:

The User agrees to complete the project by April 30, 2011. The User may request a change to the completion date, by submitting a written request to the City. If the City agrees to the request, they will notify the user in writing. If for any reason such project improvements are not completed by the designated date, and other arrangements have not

been made with the City, the User will not be reimbursed for any improvements made and the City the User will be required to pay for the City's portion of the project shown in Appendix B or work performed by portion of the improvements.

8. Payment:

At the completion of the project, the user shall provide detailed invoices to the City for all irrigation system improvements and request reimbursement and/or financing for the costs as describe in Section 6 Project Funding. The invoices must include unit costs for labor and materials, and have attached copies of receipts for all materials purchased. The City will have thirty days to review the request for payment. The City may require an inspection of the irrigation system modifications prior to issuing payment in order to verify completion of the project and function of the irrigation system. If an inspection or additional information is required, the City will notify the user of the information that is needed to approve the invoice. Payment will be processed within thirty days following the City's approval of the invoices. The City will issue a check or checks to the user for reimbursement (up to \$33,000) and for the remainder of the irrigation system improvement costs (up to \$28,000), which the User shall pay back per Section 6 on Project Funding. Payment will not be issued for unapproved changes to project scope or cost, and will not exceed \$61,000 dollars.

9. Term.

This agreement shall remain in effect until the project is completed and paid for.

10. Supervision – Indemnification.

It is mutually understood and agreed that the User and the City each assumes no responsibility for the supervision of activities sponsored or conducted by the other party.

11. Written Notification -All notices to be given hereunder shall be in writing, and may be given, served, or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person or by electronic transmission to the contacts listed below. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Agreement from and after the fourth day next following the date deposited in the mail, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given shall be sent to or made at the last business address known to the party giving notice. Written notice shall be provided to:

Jenny Fifita  
City of Westminster  
Department of Public Works and Utilities  
4800 West 92nd Avenue  
Westminster, CO 80031  
jfifita @cityofwestminster.us  
303-658-2184

User: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Modification.

The terms of this Agreement may be modified at any time by the mutual consent and written agreement of the respective parties.

13. Memorandum of Agreement.

The parties agree that a memorandum recognizing the existence of the agreement will be recorded in the office of the Clerk and Recorder of Adams County and will be notice to and binding upon all successors in interest to the parties hereto.

14. Severability.

If any provision of this Agreement is determined to be invalid or illegal, such provision shall be deemed automatically amended as to conform to the law or if such amendment is not possible, such provision shall have no effect. In either event, the other provisions of this Agreement shall remain applicable to the parties and be given full effect.

15. Remedies.

In addition to any other remedies available by law and to the extent permitted by law, if either party fails to perform any obligation under this agreement for reasons within the party's control, the non-defaulting party shall have the right to obtain the specific performance of such obligation by the defaulting party.

16. No Third Party Beneficiaries.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any claim or right of action by any third person based upon this Agreement. It is the express intention of the City and the User that any person other than the City or the User receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

17. Additional Documents or Action.

The parties agree to execute any additional documents or take any additional action that is necessary to carry out his Agreement including taking all steps necessary for The Colorado Department of Public Health and Environment to issue a "Notice of Authorization for the Use of Reclaimed Water" to the User, which permits the use of reclaimed water for irrigation at this site.

18. Successors and Assigns

This agreements is binding on the parties, their successors, and assigns and may be enforced against them or any of them and further, that the obligations set out herein, may result in the creation of a lien on the properties of the parties served pursuant to this agreement.

USER \_\_\_\_\_

CITY OF WESTMINSTER

By: \_\_\_\_\_

President

By: \_\_\_\_\_

J. Brent McFall, City Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_

Secretary

By: \_\_\_\_\_

Linda Yeager, City Clerk

Approved as to form and content:

By: \_\_\_\_\_

City Attorney



## Agenda Item 8 L

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2010



**SUBJECT:** Project Oversight Services Agreement Amendment for the Municipal Service Center Gasoline Recovery System

**Prepared By:** Robert L. Booze, Distribution and Collection Superintendent  
Richard A. Clark, Utilities Operations Manager

**Recommended City Council Action**

Based on the recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute a contract amendment to the Project Oversight Services Agreement with CH2M-Hill in the amount of \$18,100 in order to perform Helium Leak testing and a Desktop Feasibility Study analysis related to the Gasoline Recovery at the Municipal Service Center for a total contract amount of \$65,500.

**Summary Statement**

- The 2010 Project Oversight Services Agreement for the Municipal Service Center (MSC) Gasoline Recovery System (GRS) with CH2M-Hill is \$47,400. Purchasing procedures require City Council approval for expenditures in excess of \$50,000.
- The State of Colorado, Department of Labor and Employment, Oil and Public Safety Section, has requested some additional information from the City regarding the Gasoline Recovery System (GRS). They have requested integrity testing of the vapor monitoring wells, to confirm that the vapor sample analysis can be eliminated from routine monitoring of the Municipal Service Center. They have further requested that a Desktop Feasibility Study be performed to evaluate remediation options for monitoring wells that are not showing the desired improvement.
- One of CH2M-Hill's additional tasks will be to perform Helium Leak testing of one of the seven vapor monitoring points and if the test passes, vapor monitoring can be eliminated from the Corrective Action Plan for the project. The leak testing will cost \$4,850 to complete.
- CH2M-Hill will also perform evaluation of remediation options that will increase the clean up efforts on the wells that the State will recommend be evaluated. The Desktop Feasibility Study analysis performed will cost \$13,250 to complete.

**Expenditure Required:** \$18,100

**Source of Funds:** Utility Fund Operating Budget - Wastewater Operations

## **Policy Issue**

Should the City amend the contract with CH2M-Hill to allow for Helium Leak Testing and a Desktop Feasibility Study Evaluation?

## **Alternative**

The City could choose not to amend the current contract. However, without performing the Helium Leak testing, the monthly vapor monitoring as required by the State will not be eliminated. Without performing the Desktop Feasibility Study, alternatives to cleanup the monitoring wells to the State's satisfaction will not be evaluated.

## **Background Information**

During a geotechnical evaluation of the Municipal Service Center (MSC) site conducted in 1986, evidence of an unleaded gasoline release was discovered at a T-connection in the fiberglass fuel line approximately 30 feet west of the main gasoline service island. Monitoring wells were installed to estimate the lateral extent of contamination, and an interceptor trench and two recovery wells were installed to begin remediation of the site. At that time, recovered gasoline was captured, and the untreated water was discharged to the sanitary sewer system.

In 1991, site characterization activities were conducted and more monitoring wells were installed at the site. A new treatment system consisting of an oil/water separator tank and an air stripper was installed in 1993 along with additional monitoring wells. The system was refurbished in 1997 to bring the site into compliance with local codes and increase the treatment capacity. At this time, the system was modified to discharge to a storm sewer adjacent to the site. This was done to avoid accidental discharges of gasoline into the sanitary sewer system.

In October of 1997, City Council approved the Public Works and Utilities Staff's recommendation to accelerate the schedule for the recovery of gasoline at the MSC. As part of this accelerated schedule, a feasibility study was performed that evaluated potential options to accelerate remediation of the gasoline recovery operation. The most economic and fast paced remediation technology was determined to be dual phased soil vapor extraction.

In July 1999, the City hired CH2M-Hill, a private engineering firm with expertise in the area of remedial technology, to perform a peer review of a feasibility study and determine if that remediation technology would be successful based on site specific information. CH2M-Hill agreed dual-phase soil vapor extraction was a good technology and recommended that city staff commence work on accelerating the schedule for the recovery of gasoline. CH2M-Hill prepared a performance-based contract package that was released for bid on May 25, 2001. The dual-phase soil vapor extraction system started on August 15, 2002. CH2M-Hill remained under contract to the City for project management and technical assistance services.

The treatment system struggled during the last months of its operation attempting to keep up with the changing quality of the groundwater being pumped and treated. The city terminated discharge to the storm sewer in May 2005. The project team spent time evaluating the treatment process and prepared a recommendation to the State to terminate the extraction of groundwater and enter into Monitored Natural Attenuation phase. The State approved this recommendation and this remains the process today.

CH2M-Hill's current 2010 contract is for \$47,400. The tasks being performed include:

- Enter site-monitoring data into monitoring and remediation reports to be submitted to the State.
- Prepare semi-annual monitoring reports to be reviewed by city staff and submitted to the State.
- Coordinate weekly conference calls with city staff and the contractor to discuss current tasks being performed. Visit the Municipal Service Center twice per year for fieldwork oversight.
- Evaluate contractor pay applications with invoices and recommend payment to the city.
- Perform project management activities.
- Evaluate current remediation strategy and make recommendations to optimize the activities.
- Evaluate the permitting of 16 existing monitoring wells and assure they meet compliance with the State.

The State of Colorado, Department of Labor and Employment, Oil and Public Safety Section has worked with City staff and CH2M-Hill to monitor the Gasoline Recovery System and to recommend and approve modifications to the system. At this time, the City has requested reduced monitoring of the vapors in the recovery wells in order to reduce collection and analysis costs. The State is amenable to this change, but has requested a helium leak test of one of the vapor monitoring wells in order to verify that the current samples are representative of the actual field conditions. The State has requested a Desktop Feasibility Study of several of the monitoring wells, where the current information indicates that Natural Attenuation will not reduce the gasoline constituents to acceptable levels for an extended period of time. The Desktop Feasibility Study is intended to evaluate a number of alternatives and provide a report for submission to the State of Colorado, Department of Labor and Employment, Oil and Public Safety Section

The Amendment to the Project Oversight Services Agreement for the Municipal Service Center Gasoline Recovery System (GRS) supports the City Council Strategic Plan in the following areas; effective cost containment/control measures for living within revenues and budget, well maintained City infrastructures and facilities, Safe and Secure Community, Beautiful and Environmentally Sensitive City

Respectfully submitted,

J. Brent McFall  
City Manager



# Agenda Item 8 M&N

## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Second Readings of Councillor’s Bill No. 52 re Infrastructure Fee and  
Councillor’s Bill No. 53 re 2011/2012 Appropriations

**Prepared By:** Steve Smithers, Assistant City Manager  
Barbara Opie, Budget & Special Projects Manager  
Aric Otzelberger, Senior Management Analyst  
Ben Goldstein, Management Analyst

### Recommended City Council Action

1. Pass Councillors Bill No. 52 on second reading amending Section 9-8-3 of the Westminster Municipal Code concerning the Infrastructure Fee.
2. Pass Councillor’s Bill No. 53 on second reading appropriating funds for the 2011/2012 budgets.

### Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading that amends the Infrastructure Fee, increasing the fee by \$1/month each year in 2011, 2012 and 2013 respectively.
- City Council action is also requested to pass on second reading the Appropriations Ordinance for 2011/2012, which sets forth the amounts of estimated revenue and expenditures by each separate fund of the City for calendar years/fiscal years 2011 and 2012.
- Under City Charter provisions, City Council is to hold a public hearing on the proposed City Budget for the ensuing year and adopt it no later than the fourth Monday in October. Two public meetings were held on June 14 and July 26 and the required public hearing was held on the proposed 2011/2012 Budget on September 13. A copy of the proposed 2011/2012 Budget has been on file in the City Clerk’s Office, at College Hill and Irving Street Libraries, and on-line for citizen review since September 2, and the appropriate legal notices have been published in the official City newspaper.
- The 2011/2012 Budget reflects all City operations and services to be provided to Westminster citizens and businesses in 2011/2012. This budget is balanced based on no tax increases or new taxes. 2011 will be the nineteenth and 2012 will be the twentieth consecutive years maintaining the City’s property tax mill levy at 3.65 mills. The 2011/2012 Budget reflects the City’s ongoing work towards sustainability.
- The total 2011 Budget is \$160,037,061, excluding \$41,919,117 in reserves and \$1,000,000 in contingency. The total 2012 Budget is \$168,178,036, excluding \$38,470,877 in reserves and \$1,000,000 in contingency.
- These Councillor’s Bills were passed on first reading on October 11, 2010.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **52**

SERIES OF 2010

INTRODUCED BY COUNCILLORS  
**Major - Dittman**

**A BILL**

**FOR AN ORDINANCE AMENDING SECTION 9-8-3 OF THE WESTMINSTER MUNICIPAL  
CODE CONCERNING INFRASTRUCTURE FEE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 9-8-3, W.M.C., is hereby AMENDED to read as follows:

**9-8-3: INFRASTRUCTURE FEE ESTABLISHED:**

There is hereby established an Infrastructure Fee in the amount of three dollars (\$3.00) per month on each utility bill sent to an in-City consumer of City utility services. ~~This fee represents a one dollar (\$1.00) amount for concrete replacement cost and a two dollar (\$2.00) amount for streetlight cost. Effective January 1, 2011, the Infrastructure Fee shall increase to four dollars (\$4.00) per month on each utility bill sent to an in-City consumer of City utility services. Effective January 1, 2012, the Infrastructure Fee shall increase to five dollars (\$5.00) per month on each utility bill sent to an in-City consumer of City utility services, and effective January 1, 2013, the Infrastructure Fee shall increase to six dollars (\$6.00) per month on each utility bill sent to an in-City consumer of City utility services.~~ All proceeds of the Infrastructure Fee will be used to offset the City's costs, ~~respectively~~, in providing concrete replacement and streetlighting services.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11th day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of October, 2010.

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

ATTEST:

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

\_\_\_\_\_  
City Attorney's Office

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **53**

SERIES OF 2010

INTRODUCED BY COUNCILLORS  
**Major - Dittman**

**A BILL**

**FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2011 AND 2012 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Carryover as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

NON-EMERGENCY RESERVE AND NEW REVENUE

	Fiscal Year 2011	Fiscal Year 2012
a. General Fund	\$93,608,948	\$94,892,666
b. Utility Fund	50,936,344	57,327,277
c. General Capital Improvement Fund	8,570,000	7,756,000
d. Fleet Maintenance Fund	2,160,263	2,166,698
e. General Capital Outlay Replacement Fund	1,209,838	1,169,468
f. General Debt Service Fund	7,579,235	7,527,528
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	63,826,088	64,489,072
i. Parks Open Space & Trails Fund	5,296,484	5,175,413
j. General Reserve Fund	0	0
k. General Fund Stabilization Reserve Fund	0	0
l. Utility Fund Rate Stabilization Reserve Fund	0	0
m. Utility Fund Capital Projects Reserve Fund	0	4,376,650
n. Golf Course Fund	<u>3,435,419</u>	<u>3,553,027</u>
Total Funds Available	\$237,247,619	\$249,058,799
Less Transfers	<u>-76,210,558</u>	<u>-79,880,763</u>
GRAND TOTAL	\$161,037,061	\$169,178,036

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2011	Fiscal Year 2012
a. General Fund	\$93,608,948	\$94,892,666
b. Utility Fund	50,936,344	57,327,277
c. General Capital Improvement Fund	8,570,000	7,756,000
d. Fleet Maintenance Fund	2,160,263	2,166,698
e. General Capital Outlay Replacement Fund	1,209,838	1,169,468
f. General Debt Service Fund	7,579,235	7,527,528
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	63,826,088	64,489,072
i. Parks Open Space & Trails Fund	5,296,484	5,175,413
j. General Reserve Fund	0	0
k. General Fund Stabilization Reserve Fund	0	0
l. Utility Fund Rate Stabilization Reserve Fund	0	0
m. Utility Fund Capital Projects Reserve Fund	0	4,376,650
n. Golf Course Fund	<u>3,435,419</u>	<u>3,553,027</u>
Total Funds Available	\$237,247,619	\$249,058,799
Less Transfers	<u>-76,210,558</u>	<u>-79,880,763</u>
GRAND TOTAL	\$161,037,061	\$169,178,036

Section 3. This ordinance shall become effective January 1, 2011.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11<sup>th</sup> day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25<sup>th</sup> day of October, 2010.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 8 O

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Second Reading of Councillor's Bill No. 55 re Debt Refinancing Supplemental Appropriation

**Prepared By:** Rachel Price, Financial Analyst

### Recommended City Council Action

Pass Councillor's Bill No. 55 on second reading providing for supplementary appropriations to the 2010 budget of the General, Debt Service and Golf Course Funds.

### Summary Statement

- On June 28, Council authorized partial refunding of the Sales and Use Tax Revenue Refunding Bonds, Series 2001 and the Sales and Use Tax Bonds Revenue Bonds, Series 2002. The Sales and Use Tax Revenue Refunding Bonds, Series 2010, were issued on July 27, 2010.
- On June 28, Council authorized the partial refunding of the Certificates of Participation (COP), Series 2001 and the full refunding of the Golf Course Enterprise Revenue Bonds, Series 1998. The Refunding Certificates of Participation, Series 2010, were issued on August 10, 2010.
- These funding sources need to be appropriated to properly reflect the refunding transactions on the City's books.
- This Councillor's Bill was passed on first reading on October 11, 2010.

**Expenditure Required:** \$11,796,253 – Sales and Use Tax Refunding, Series 2010  
\$18,367,039 – Certificates of Participation, Series 2010

**Source of Funds:** The funding sources for these budgetary adjustments include bond proceeds and lease proceeds.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **55**

SERIES OF 2010

INTRODUCED BY COUNCILLORS  
**Winter - Kaiser**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL, GOLF COURSE AND DEBT SERVICE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, Golf Course, and Debt Service Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$30,163,292. This appropriation is due to the receipt of lease proceeds and refunding bond proceeds.

Section 2. The \$30,163,292 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10G dated October 11, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$13,536,642
Sales and Use Tax Fund	4,830,397
Golf Course Fund	<u>11,796,253</u>
Total	<u>\$30,163,292</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 11<sup>th</sup> day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25<sup>th</sup> day of October, 2010.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 8 P

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Second Reading of Councillor's Bill No. 56 re Amendment to Section 4-1-3 of the Westminster Municipal Code concerning Retailer Collection Fees

**Prepared By:** Barb Dolan, Sales Tax Manager

#### Recommended City Council Action

Pass Councillor's Bill No. 56 on second reading amending Section 4-1-3 of the Westminster Municipal Code concerning retailer collection fees.

#### Summary Statement

- The Westminster Municipal Code currently provides for the payment of collection fees, commonly referred to as vendor's fees, to retailers as compensation for collecting and timely remitting certain taxes to the City.
- At the May 17, 2010 Study Session, Council directed Staff to include elimination of the vendor's fee as one of the 2011 operating budget adjustments.
- This Councillor's Bill was passed on first reading on October 11, 2010.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **56**

SERIES OF 2010

INTRODUCED BY COUNCILLORS  
**Major - Winter**

**A BILL**

**FOR AN ORDINANCE AMENDING SECTION 4-1-3 OF THE WESTMINSTER MUNICIPAL  
CODE CONCERNING RETAILER COLLECTION FEES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 4-1-3, subsection (C), W.M.C., is hereby AMENDED to read as follows:

**4-1-3: DEDUCTIONS AND CREDITS:**

(C) Collection Fee. For each reporting period ending on or before December 31, 2010, every retailer shall be entitled to a collection and remittance fee equal to the lesser of one hundred dollars (\$100) or two and one-half percent (2 1/2%) of the sum of the tax computed and any excess tax collected. A retailer shall apply this fee as an offset against the amount of tax due to the City at the time of remittance. Such fee shall be forfeited for any tax that is not reported and paid by the due date. Failure to apply this fee as an offset against the amount of tax due at the time of remittance shall result in forfeiture of the collection fee. This paragraph shall not apply to use tax.

Section 2. This ordinance shall take effect January 1, 2011.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 11th day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 25th day of October, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 8 Q

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Second Reading of Councillor's Bill No. 57 re Amendments to Title IV of the Westminster Municipal Code concerning the Collection of Tax on Infrastructure

**Prepared By:** Barb Dolan, Sales Tax Manager  
Josh Pens, Audit Supervisor

### Recommended City Council Action

Pass Councillor's Bill No. 57 on second reading amending Title IV of the Westminster Municipal Code concerning the collection of tax on infrastructure.

### Summary Statement

- Staff is recommending implementation of pre-payment procedures for public and private improvements similar to those used for building permits to mitigate related tax deficiencies as well as ease administrative burdens for the City and for taxpayers.
- These changes impact only the time and manner in which the use tax on materials is collected. They make no change to the imposition of or exemption from the tax itself.
- This Councillor's Bill was passed on first reading on October 11, 2010.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **57**

SERIES OF 2010

INTRODUCED BY COUNCILLORS  
**Kaiser - Dittman**

**A BILL**

**FOR AN ORDINANCE AMENDING TITLE IV OF THE WESTMINSTER MUNICIPAL CODE  
CONCERNING THE COLLECTION OF TAXES ON INFRASTRUCTURE**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 4-1-7, subsection (D), W.M.C., is hereby AMENDED to read as follows:

**4-1-7: RETURNS REQUIRED; TIME FOR FILING AND PAYING TOTAL TAX LIABILITY:**

(D) ~~Building Permits~~Construction Materials. Every person who pays an estimated prepayment of use tax ~~at the time a building permit is issued~~pursuant to W.M.C. Section 4-2-9 shall; make a return to the Finance Director of use tax due in excess of such estimated pre-payment.

(1) For public and private improvements, such return shall be made on or before the thirtieth (30th) day following written acceptance of any improvements by the City.

(2) For projects requiring a City building permit, such return shall be made on or before the thirtieth (30<sup>th</sup>) day following the issuance of a Certificate of Occupancy, or the date of final inspection by the building official, whichever occurs later, ~~make a return to the Finance Director and file such return.~~

(3) A return shall not be required if no additional use tax is due.

Section 2. Section 4-2-9, W.M.C., is hereby AMENDED to read as follows:

**4-2-9: PROVISIONS RELATIVE TO ~~BUILDING PERMITS~~CONSTRUCTION MATERIALS:**

(A) Public and Private Improvements.

(1) Every user of construction materials who builds, reconstructs, alters, or improves land or improvements to land as required by an agreement executed pursuant to Chapter 6, Title XI of this Code shall remit use tax on construction materials used on such project, whether purchased from sources inside or outside the City, by one of the following methods:

(a) Estimated prepayment. The estimated cost of construction materials shall be calculated by multiplying the cost of improvements or estimate thereof as listed in the public or private improvements agreement by fifty percent (50%). Use tax on such estimated cost of construction materials shall be remitted to the Finance Director prior to commencing work. Upon receipt of the estimated prepayment, the Finance Director shall issue written documentation evidencing that the use tax due upon such construction materials has been paid directly to the City. Upon written acceptance of any improvements by the City, the user of construction materials shall compute the use tax due on the actual cost of construction

materials used in the project and make a return of any tax due in excess of the estimated prepayment in accordance with W.M.C. Section 4-1-7(D).

(b) Actual cost. Prior to commencing work, the user of construction materials shall notify the Finance Director in writing of his election to make monthly returns of use tax due. The Finance Director shall thereupon issue written documentation evidencing that the use tax due on such materials will be paid directly to the City. From the date work commences through the date of written acceptance of any improvements by the City, the user of construction materials shall, on or before the twentieth (20<sup>th</sup>) day of each month, make a return to the Finance Director for the construction materials used during the preceding calendar month, and file such return whether or not tax is due in accordance with W.M.C. Section 4-1-7(A).

(2) Except as provided by W.M.C. Section 4-2-6(A)(7), use tax shall be due on all construction materials used in making public and private improvements

(a) notwithstanding ownership of the land or improvements by a charitable organization or governmental entity, unless such charitable organization or governmental entity purchases all such construction materials directly and makes all such improvements using its own employees; and

(b) notwithstanding the ultimate dedication of certain improvements to the City.

(BA) Projects requiring a City building permit. Except as provided by Section 4-2-6(A)(7), every person, including any charitable organization or governmental entity, who is required to obtain a City building permit shall remit use tax on construction materials used on that project, whether purchased from sources inside or outside the City, by one of the following methods:

(1) Estimated prepayment. The estimated cost of construction materials shall be calculated by multiplying the total valuation of the construction project entered on the building permit by the City Building Division, by fifty percent (50%). Use tax on such estimated cost of construction materials shall be paid at the time the building permit is issued. Upon the later of the date of final inspection by the building official or the date of issuance of a certificate of occupancy, the taxpayer shall compute the use tax due on the actual cost of construction materials and make a return of any tax due in excess of the estimated prepayment pursuant to Section 4-1-7(D). ~~Use tax on the actual cost of materials may be subsequently determined through audit. If use tax is prepaid, interest on any tax deficiency related to construction materials shall be computed from the later of the date of final inspection by the building official or the date of issuance of the certificate of occupancy.~~

(2) Actual cost. ~~The actual cost of construction materials shall be reported and paid on monthly returns. If use tax is paid on an actual cost basis, interest on any tax deficiency shall be computed from the date on which tax is due.~~ Prior to commencing work, the taxpayer shall notify the Finance Director in writing of his election to make monthly returns of use tax due. The Finance Director shall thereupon issue the taxpayer written documentation evidencing that the use tax due on such materials will be paid directly to the City. From the date of issuance of the City building permit through the date of final inspection by the building official or the issuance of the Certificate of Occupancy, whichever is later, the contractor shall, on or before the twentieth (20<sup>th</sup>) day of each month, make a return to the Finance Director for the construction materials used during the preceding calendar month, and file such return whether or not tax is due in accordance with W.M.C. Section 4-1-7(A).

~~(B) Nothing in this Section shall be interpreted to reallocate the responsibility for payment of use tax imposed by law.~~

(C) Use taxes imposed upon other uses of construction materials within the City shall be reported and paid in the same manner as provided for the payment of use taxes imposed upon other tangible personal property.

Section 3. This ordinance shall take effect January 1, 2011.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 11th day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 25th day of October, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 10 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Resolution No. 37 re Intergovernmental Agreement with the State of Colorado re Historic Preservation Grant for Shoenberg Farm Concrete Silo Stabilization

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

### Recommended City Council Action

Adopt Resolution No. 37 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the Shoenberg Farm concrete silo stabilization and preservation.

### Summary Statement

- The City has applied for and has been awarded a grant in the amount of \$71,033 from the State Historical Fund for the Shoenberg Farm concrete silo stabilization, located at 5202 W. 73<sup>rd</sup> Avenue.
- In order to complete this acquisition, the City is required to contribute a 25% cash match of up to \$23,678.
- The cash match was budgeted in 2009 and 2010 and is available for this project.
- To regulate the use and accounting of the funds the State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed.

**Expenditure Required:** \$94,711

**Source of Funds:** \$71,033 – State Historical Fund  
\$23,678 – General Capital Improvement Fund  
– Shoenberg Farm Restoration Project

**Policy Issue**

Should City Council authorize an IGA with the State of Colorado concerning the use of State Historical Fund grant money awarded for the stabilization and preservation of the Shoenberg Farm concrete silo?

**Alternative**

Do not enter into the IGA with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project. Staff does not recommend this alternative as no other funding is available to complete the stabilization and preservation of the Shoenberg Farm concrete silo.

**Background Information**

The attached intergovernmental agreement with the State Historical Fund (SHF) would provide a grant of \$71,033 for the stabilization and preservation of the Shoenberg Farm concrete silo and requires a City cash match of up to \$23,678. The grant and cash match were based on cost estimates developed in March 2010. The construction documents for this project were completed in 2009. After this intergovernmental is signed by all parties, the project planning and bidding may begin. Since the work mainly involves concrete, the project will not be started until spring 2011, after the risk of cold weather has passed. The project should be completed during the third quarter of 2011.

The stabilization will require excavation of the foundation of the silo to a depth of six feet. The interior of the foundation will be filled with gravel and capped with a 4-inch concrete slab. This will prevent water from infiltrating into the foundation and will also create substantial weight in the foundation to stabilize the 52-foot-high silo. Then shotcrete and reinforcing materials will be applied to the interior of the silo to thicken the walls and repair the holes and spalling that resulted from the use of the silo to store wet cattle feed (silage). The roof, steel reinforcing hoops and the silo access chute and hatches will all be restored.

The State Historical Fund has thus far awarded \$918,919 in grants for Shoenberg Farm and the Westminster Legacy Foundation has provided three grants totaling \$12,000.

The IGA consists of a State-prescribed format that is used with all State Historical Fund projects and it has been reviewed by the City Attorney's Office. This grant supports the City Council's goal of a Financially Sustainable City Government Providing Excellent Services by providing revenues to support defined city services and service levels as a mature city and the City Council's goal of supporting Vibrant Neighborhoods in One Livable Community, by preserving and restoring historic assets.

Respectfully submitted,

J. Brent McFall  
City Manager

**Attachments**

- Resolution
- Contract

RESOLUTION

RESOLUTION NO. **37**

INTRODUCED BY COUNCILLORS

SERIES OF 2010

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**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE  
STATE OF COLORADO CONCERNING THE USE OF A  
GRANT FOR THE STABILIZATION AND PRESERVATION OF THE SHOENBERG FARM  
CONCRETE SILO**

WHEREAS, the City of Westminster has been awarded the following grant from the State Historical Fund of the Colorado Historical Society in support of an historic preservation project within the City:

Shoenberg Farm Concrete Silo Stabilization and  
Preservation - \$71,033

WHEREAS, the State of Colorado requires Intergovernmental Agreements to be executed before funds are disbursed, which contracts regulate the use of funds and the grant award.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the City Manager is authorized to execute and carry out the provisions of the attached Intergovernmental Agreement with the State of Colorado concerning the use of a grant for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 25<sup>th</sup> day of October, 2010.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office

Department or Agency Name	
History Colorado, the Colorado Historical Society	
Department or Agency Number	
GCA	
Routing Number	
APPROVED WAIVER FORM	#37-C

CONTRACT #2011-01-031

THIS CONTRACT, Made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the State of Colorado for the use and benefit of the Department of Higher Education, History Colorado, the Colorado Historical Society, 1560 Broadway, Suite 400, Denver, Colorado 80202, hereinafter referred to as the State and/or History Colorado, and the City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031, hereinafter referred to as the "Contractor",

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

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

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

WHEREAS, the Contractor is eligible in accordance with law to receive a State Historical Fund preservation grant award for acquisition and development projects with cumulative grant awards over \$10,000; and

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

WHEREAS, the Contractor is a public entity and the owner in fee simple of certain real property in Jefferson County, Colorado, which property has been listed in a listing of local landmarks as the Shoenberg Farm-Concrete Silo located at 7231 Sheridan Boulevard and 5205 West 73rd Avenue, Westminster, Colorado, hereinafter referred to as the "Property," and which Property is more particularly described as follows:

Lot 14A, Shoenberg Farms Commercial Center, 6th P.M., Township 2 South, Range 69 West, E/2 SE/4 SE/4 Sec. 36, Westminster, Jefferson County, Colorado

NOW THEREFORE, it is hereby agreed that:

1. The Contractor shall use funds subject to this Contract in support of Project #2011-01-031 "Interior Stabilization and Exterior Preservation" in accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. APPLICABLE STANDARDS: The Contractor agrees that it will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. Contractor shall perform any and all survey activities and submittals in accordance with Survey Manual and How to Complete Colorado Cultural Resource Inventory Forms, Volumes I and II, June 1998 (Revised December 2001) for any and all survey activities and projects (copies of which are available through History Colorado).
3. RIGHT OF USE: All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty-free, nonexclusive, and irrevocable license to History Colorado to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works for History Colorado and/or State Historical Fund purposes.
4. CONTRACT EFFECTIVE DATE: The term of this Contract shall be from November 1, 2010 through November 30, 2012.

The performance of the work must be commenced within sixty (60) days of the Contract beginning date unless a longer period is approved in writing by the State Historical Fund Administrator. The performance of the work *must* be completed no later than thirty (30) days prior to the Contract ending date.

5. COMPENSATION AND METHOD OF PAYMENT: In consideration of the project described in Exhibit A and subject to on time delivery of completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Contractor a grant not to exceed seventy one thousand, thirty three dollars (\$71,033.00).

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

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

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

To the State: Steve W. Turner  
Director, State Historical Fund  
History Colorado, the Colorado Historical Society  
Civic Center Plaza  
1560 Broadway, Suite 400  
Denver, Colorado 80202-5133

To the Contractor: Ms. Vicky Bunsen  
Programs Coordinator  
City of Westminster  
4800 West 92nd Avenue  
Westminster, Colorado 80031

10. ADA COMPLIANCE: The Contractor assures the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service,

programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.

11. DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS: Contractor agrees to provide History Colorado with copies of any archaeological surveys developed during the course of, or under a project financed either wholly or in part by History Colorado. Contractor agrees to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of History Colorado-the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resource; Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from History Colorado.
12. REPORTS: Contractor shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SHIF Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).
13. MATCHING FUNDS: Contractor agrees to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.

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

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

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

15. PUBLIC ACKNOWLEDGMENT OF FUNDING SOURCE: In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from History Colorado, the Colorado Historical Society." In addition, History Colorado reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or policies of History Colorado, the Colorado Historical Society".
16. PRESERVATION OF PROPERTY: The Contractor hereby agrees to the following for a period of twenty (20) years commencing on the date of this Agreement.
  - a. Without the express written permission of History Colorado, no construction, alteration, movement, relocation or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would alter the architectural appearance of the Property, adversely affect the structural soundness of the Property, or encroach on the open land area on the Property; provided, however, that the reconstruction, repair, or restoration of the Property, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted subject to the prior written approval of History Colorado, provided that such reconstruction, repair, or restoration is performed according to the Secretary of the Interior's *Standards for the Treatment of Historic Properties and the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, issued and as may from time to time be amended by the U.S. Secretary of the Interior, hereinafter collectively referred to as the "*Standards*". In all events, the Contractor further agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property according to the *Standards* so as to prevent deterioration of the Property.
  - b. In the event of severe damage or total destruction to the Property (defined, for the purpose of this Agreement, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of the public enemy, riot or other similar casualty) not due to the fault of the Contractor this Agreement shall terminate as of the date of such damage or destruction.
  - c. History Colorado, or a duly appointed representative of History Colorado, shall be permitted to inspect the Property at all reasonable times in order to ascertain if the above conditions are being observed.
  - d. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses, and attorneys fees incurred as a result of any act or omission by the property owner, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
17. REMEDIES: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligation in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean

significant, insufficient, incorrect, or improper performance, activities, or inaction by the Contractor. These remedial actions are as follows:

- a. Suspend the Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
  - b. Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed in accordance with the *Standards*, the SHF Grants Manual and/or the terms and conditions of this Contract; and/or
  - c. Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
  - d. Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
  - e. Declare all or part of the work ineligible for reimbursement; and/or
  - f. In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, History Colorado may, following reasonable notice to the Contractor institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by History Colorado. History Colorado shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.
  - g. Terminate the contract for default.
18. CUMULATIVE EFFECT: The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.
19. TERMINATION OF CONTRACT FOR DEFAULT: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
- Notwithstanding the above, Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor are determined.
20. TERMINATION BY STATE: The State may terminate this Contract at any time the State determines that the purposes of the distribution of State monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 19 hereof relative to termination shall apply.
21. CHANGES: This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Contractor, shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.

22. CONFLICT OF INTEREST: Contractor agrees not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
23. COMPLIANCE WITH APPLICABLE LAWS: At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
24. SEVERABILITY: To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
25. BINDING ON SUCCESSORS: Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.
26. ASSIGNMENT: No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
27. SURVIVAL OF CERTAIN CONTRACT TERMS: Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance of compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.
28. BOND REQUIREMENT: If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

# SPECIAL PROVISIONS

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

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

Revised January 1, 2009  
2<sup>nd</sup> Revision March 10, 2009

# CONTRACT SIGNATURE PAGE

## THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR:  
(Grant Recipient)

City of Westminster

Legal Name of Contracting Entity

\*Signature of Authorized Officer

October 25, 2010  
Date

J. Brent McFall  
Print Name of Authorized Officer

City Manager  
Print Title of Authorized Officer

STATE OF COLORADO  
Bill Ritter, Jr., GOVERNOR

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

History Colorado, the Colorado Historical Society

Date: \_\_\_\_\_

Department of Higher Education

STATE HISTORICAL FUND

BY: \_\_\_\_\_  
Steve W. Turner, Director

Date: \_\_\_\_\_

WAIVER CONTRACT REVIEWER

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

Date: \_\_\_\_\_

### ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

STATE CONTROLLER  
David J. McDermott, CPA

BY: \_\_\_\_\_  
Susan S. Riehl  
CHS, Chief Financial Officer

Date: \_\_\_\_\_

Revised, June 18, 2010  
X:\Document\30135309.doc  
Approval/Contract C Includes Letter of Agreement

## SCOPE OF WORK

I. The Purpose of this project is to preserve and stabilize the Shoenberg Farm Concrete Silo

II. The Scope of Work is as follows:

A. Professional Services

1. Provide architectural construction management
2. Provide structural engineering construction management
3. Provide archaeological monitoring
4. Provide project management services to Owner
5. Obtain concrete testing and geotechnical services

B. Construction Services

1. Prepare the site by hand excavating, backfilling and grading in and around the silo
2. Reinforce, protect and patch the silo with concrete and reinforcing materials
3. Install wall ties
4. Inspect and tighten hoops and rods
5. Replace and repair wood access doors
6. Repair roof dome, ladder chute culvert and standing seams
7. Apply epoxy wall finish

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

H:\Contracts\2011\1101031 Exhibit A.doc

PROJECT BUDGET

TASK	AMOUNT
Professional Services	\$6,597
Construction Services	\$53,743
General Requirements	\$21,756
Project Manager	\$4,105
<hr/>	
<i>Subtotal</i>	<i>\$86,201</i>
Grant Administration	\$300
<hr/>	
<i>Project Subtotal</i>	<i>\$86,501</i>
Contingency*	\$8,210
<b>PROJECT TOTAL</b>	<b>\$94,711</b>
Cash Match (25%)	\$23,678
Grant Award (75%)	\$71,033

\*Contingency - Must receive written approval from SHF Staff prior to use

Travel must be within SHF/State allowable rates (\$.45/mile – mileage, \$80/night – Hotel, \$46/day – Per Diem)

Grant Administration cannot exceed 15% of *Subtotal* amount

LIST OF SUBMITTALS

Project Reports		
<u>Project Reports</u>	<u>Due Date</u>	<u>Society Response</u>
a. Payment Request Form (Attachment 2). Deliverables #1-3 below must be reviewed and approved before Advance payment is made.	N/A	Advance payment of grant award \$25,950.
b. Progress Report # 1	February 1, 2011	Review*
c. Progress Report # 2	May 1, 2011	Review*
d. Progress Report # 3	August 1, 2011	Review*
e. Progress Report # 4	November 1, 2011	Review*
f. Interim Financial Report (Attachment 1). Deliverables #4-8 below must be reviewed and approved before Interim payment is made.	November 1, 2011 **	Review & Approve. Interim payment of grant award \$32,438.†
g. Progress Report # 5	February 1, 2012	Review*
h. Progress Report # 6	May 1, 2012	Review*
i. Progress Report # 7	August 1, 2012	Review*
j. Final Financial Report (Attachment 1)	August 1, 2012***	Review & Approve. Final Reimbursement of grant award \$6,488.†

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

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

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

†Payment may increase due to approval of contingency funds

PROJECT DELIVERABLES

Submit the following Project Deliverables. Deliverables #1-7 must be reviewed and approved by SHF before commencement of treatments (construction).

<u>Project Deliverables</u>	<u>Society Response</u>
1. Initial Consultation with SHF Historic Preservation Specialist (within 45 days of contract start date)	Review/Comment and or Approve

City of Westminster  
Interior Stabilization and Exterior Preservation  
Project #2011-01-031

Exhibit C

- |  |                               |
|--|-------------------------------|
| 2. Before/Existing Condition photos of areas affected by Scope of Work | Review/Comment and or Approve |
| 3. Historical photos/documentation of areas to be treated              | Review/Comment and or Approve |
| 4. Subcontract Certification - Architect                               | Review/Comment and or Approve |
| 5. Subcontract Certification - Engineer                                | Review/Comment and or Approve |
| 6. Subcontract Certification – Archaeologist                           | Review/Comment and or Approve |
| 7. Pre Construction meeting with SHF Historic Preservation Specialist  | Review/Comment and or Approve |
| 8. Mock up of Epoxy  | Review/Comment and or Approve |
| 9. Copies of Change Orders, if necessary                               | Review/Comment and or Approve |
| 10. Interim meeting with SHF Historic Preservation Specialist          | Review/Comment and or Approve |
| 11. OAHF Archaeological Site Forms, if necessary                       | Review/Comment and or Approve |
| 12. Copy of Archaeological Report, if necessary                        | Review/Comment and or Approve |

H:\Contracts\2011\1101031 Exhibit C.doc



## Agenda Item 10 B

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 25, 2010



**SUBJECT:** Councillor's Bill No. 58 re Shoenberg Farm Concrete Silo Stabilization Grant Supplemental Appropriation

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

### Recommended City Council Action

Pass Councillor's Bill No. 58 on first reading appropriating funds granted by the State Historical Fund in the amount of \$71,033 for the City's stabilization of the Shoenberg Farm concrete silo.

### Summary Statement

- On August 1, 2010, the State Historical Fund awarded the City a grant in the amount of \$71,033 for the stabilization of the Shoenberg Farm concrete silo. The property is located at 5202 West 73<sup>rd</sup> Avenue.
- In order to complete this project, the City is required to contribute a cash match of up to \$23,678, which was budgeted in 2009 and 2010.

**Expenditure Required:** \$71,033

**Source of Funds:** State Historical Fund Grant

**Policy Issue**

Should the State Historical Fund grant be appropriated to the Shoenberg Farm Restoration Capital Improvement Project account to pay for the stabilization of the Shoenberg Farm Concrete Silo?

**Alternative**

The alternative would be to not amend the 2010 General Capital Improvement Fund budget and decline the State Historical Fund grant money. Staff does not recommend this alternative as no other funding is available to complete the stabilization of the Shoenberg Farm Concrete Silo.

**Background Information**

The intergovernmental agreement with the State Historical Fund (SHF), previously approved by City Council on the October 25, 2010, agenda, provides a grant of \$71,033 for the stabilization of the Shoenberg Farm concrete silo, and requires a City cash match of up to \$23,678. The funds will permit the stabilization of the concrete silo, which is severely deteriorated and at risk for collapse if not repaired in the near future.

The grant supports the City Council’s goal of a Financially Sustainable City Government by providing revenues to support defined city services and service levels as a mature city and the City Council’s goal of supporting Vibrant Neighborhoods and Livable Communities, by preserving and restoring historic assets.

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7500.40620.0000	\$0	<u>\$71,033</u>	<u>\$71,033</u>
Total Change to Revenues			<u>\$71,033</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Shoenberg Farm Restoration CIP	81075030975.80400.8888	\$0	<u>\$71,033</u>	<u>\$71,033</u>
Total Change to Expenses			<u>\$71,033</u>	

This grant supports the City Council’s goal of a Financially Sustainable City Government Providing Exceptional Services by providing revenues to support defined city services and service levels as a mature city and the City Council’s goal of supporting Vibrant Neighborhoods Within One Livable Community, by preserving and restoring historic assets.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **58**

SERIES OF 2010

INTRODUCED BY COUNCILLORS

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**A BILL**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$71,033. This appropriation is due to the receipt of state grant funds.

Section 2. The \$71,033 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10B, October 25, 2010 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$71,033</u>
Total	<u>\$71,033</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 25<sup>th</sup> day of October, 2010.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8<sup>th</sup> day of November, 2010.

ATTEST:

\_\_\_\_\_  
Mayor

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

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
WESTMINSTER CITY HALL, 4800 W. 92<sup>ND</sup> AVENUE  
MONDAY, October 25, 2010  
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 11, 2010)
- 3. New Business**
  - A. Public Hearing on the 3<sup>rd</sup> Quarter WEDA Budget Amendment
  - B. Resolution No. 122 re 2010 WEDA Budget Supplemental Appropriation
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, OCTOBER 11, 2010 AT 7:20 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.

CONSIDERATION OF MINUTES

Vice Chairperson Dittman moved, seconded by Lindsey, to approve the minutes of the meeting of September 13, 2010 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING ON 2011 AND 2012 PROPOSED BUDGETS

The Chairperson opened the hearing at 7:21 p.m. The Executive Director reported that the proposed budget had been reviewed by the Board and no changes had been made since. Staff was present to answer any questions. The Board had no questions. The Chairperson invited public comment. There was none, and she closed the hearing at 7:22 p.m.

RESOLUTION NO. 121 ADOPTING THE 2011 AND 2012 BUDGETS

Vice Chairperson Dittman moved, seconded by Kaiser, to adopt Resolution No. 121 adopting the 2011 and 2012 proposed budgets as presented, including the appropriation of funds set forth therein. At roll call, the motion carried with all members voting affirmatively.

ADJOURNMENT

There being no other business to be considered, the meeting adjourned at 7:23 p.m.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

# WEDA Agenda Item 3 A&B

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
October 25, 2010



**SUBJECT:** Public Hearing and Resolution No. 122 re 3rd Quarter 2010 Housekeeping Supplemental Appropriation

**Prepared By:** Karen Creager, Special Districts Accountant

### Recommended Board Action

1. Hold a Public Hearing on the 3rd quarter budget amendment for Westminster Economic Development Authority (WEDA).
2. Adopt Resolution No. 122 authorizing a supplemental appropriation to the 2010 WEDA budget and authorizing the use of contingency funds.

### Summary Statement

When necessary, City Staff prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Preparing a supplemental appropriation on a quarterly basis for WEDA simplifies administrative procedures and reduces paper work.

- This is the 3rd quarter 2010 housekeeping supplemental appropriation for various WEDA Urban Renewal Areas (URAs).
- Contingency – authorize the use of \$22,000 of contingency funds.
- Amendments:
  - \$50,831 increase to property tax increment
  - \$155,000 increase to sales tax increment
  - \$2,914,945 increase to transfers-in
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

**Expenditure Required:** \$3,120,776

**Source of Funds:** Property tax increment, sales tax increment and transfers-in

## **Policy Issue**

Should the WEDA Board appropriate funds and authorize the use of contingency as set forth in the attached Resolution?

## **Alternative**

The Board could decide not to appropriate funds and/or authorize the use of contingency at this time. This is not recommended because the appropriation of the incremental revenues and use of contingency is necessary for the URAs to meet their obligations for the year. Additionally, the transfer-in must be appropriated in order for the funds to be spent on WEDA activities.

## **Background Information**

### **Incremental Revenue**

#### *North Huron URA*

- WEDA has existing economic development agreements (EDA) and intergovernmental cooperation agreements (ICA) in this URA. The obligation for the EDAs and ICAs is estimated during the budget process using property tax and sales tax forecasts prepared by City Staff. In 2010, year-to-date actual revenues are higher than estimated resulting in higher payments on these obligations and the property tax collection fee. In order to have adequate budget available to pay these obligations, incremental revenues are requested to be appropriated.
- Total incremental revenues requested to be appropriated for North Huron URA are \$48,731.

#### *South Sheridan URA*

- WEDA also has an existing EDA in this URA. The obligation for the EDA is estimated during the budget process using property tax and sales tax forecasts prepared by City Staff. In 2010, year-to-date actual revenues are higher than estimated resulting in higher payments on this obligation. In order to have adequate budget available to pay this obligation, incremental revenues are requested to be appropriated.
- Total incremental revenues requested to be appropriated for South Sheridan URA are \$155,000.

#### *South Westminster URA*

- The property tax increment received in South Westminster URA for 2010 is greater than budgeted. In order to cover the collections fees paid to the County for the additional revenue, property tax increment is requested to be appropriated.
- A review of the South Westminster financials for the period ending September 30, 2010 shows that the interest expense for the year will be slightly higher than estimated during the budget process. In order to have adequate budget available to pay the full interest expense, property tax increment is requested to be appropriated.
- Total incremental revenues requested to be appropriated are \$2,100.

### **Transfers-in**

#### *Westminster Center Urban Reinvestment Plan Area (WURP) URA*

- On August 23, 2010 City Council authorized the transfer of \$2,914,945 to WURP for the City's participation in the project. City Staff is continuing efforts for redeveloping and reinvigorating the Westminster Mall site. Appropriation of these funds is requested in order to provide for funds to assist with the payment of the significant redevelopment costs anticipated to complete the project.

**Contingency**

*Westminster Center East URA*

- WEDA also has an existing EDA and an ICA in this URA. The obligation for the EDA and ICA is estimated during the budget process using property tax and sales tax forecasts prepared by City Staff. In 2010, year-to-date actual revenues are higher than estimated resulting in higher payments on the EDA obligation. Therefore, budgeted contingency is requested to be allocated to the contractual services account to cover the additional EDA expense.
- Total contingency funds requested to be allocated for Westminster Center URA are \$22,000.

The adjustments will amend Revenue and Expenditure accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Property Tax increment	6800.40035.0183	\$5,288,869	\$48,731	\$5,337,600
Property Tax increment	6800.40035.0184	\$358,633	\$2,100	\$360,733
Sales Tax increment	6800.40065.0190	\$1,766,614	\$155,000	\$1,921,614
Transfers in GF	6800.45000.0100	0	<u>\$2,914,945</u>	\$2,914,945
Total Change to Revenues			<u>\$3,120,776</u>	

**EXPENDITURES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Use	68010900.78800.0183	\$79,333	\$2,400	\$81,733
Other Financing Use	68010900.78800.0184	\$5,380	\$236	\$5,616
Contractual Services	68010900.67800.0183	\$366,008	\$46,331	\$412,339
Contractual Services	68010900.67800.0190	\$957,278	\$155,000	\$1,112,278
Interest Expense	68010900.78400.0184	\$190,713	\$1,864	\$192,577
WURP Appropriation Holding	80968005952.80400.8888	\$6,074,713	\$2,914,945	\$8,989,658
Contingency	68010900.79900.0189	\$357,080	\$(22,000)	\$335,080
Contractual Services	68010900.67800.0189	\$128,957	<u>\$22,000</u>	\$150,957
Total Change to Expenses			<u>\$3,120,776</u>	

The above amendments will bring WEDA's accounting records up-to-date to reflect the various detailed transactions.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **122**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2010

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**2010 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY BUDGET  
SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2010 budget on October 13, 2008 with an amendment approved on October 12, 2009 and

WHEREAS, proper notice for this amendment was published on October 21, 2010, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on October 25, 2010, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2010 budget for the 3rd quarter of 2010; and

WHEREAS, there is a need to move contingency funds of \$22,000 to cover unanticipated contractual service expenses; and

WHEREAS, the revenue adjustments consist of increases of: \$50,831 property tax increment, \$155,000 sales tax increment and \$2,914,945 transfers-in; and

WHEREAS, the expense adjustments consist of: \$1,864 interest expense, \$201,331 contractual expenses, \$2,636 other financing use and \$2,914,945 for capital projects.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority: The \$3,120,776 increase shall be allocated to WEDA Revenue and Expenditure accounts as described in the WEDA Agenda Item 10 A&B, October 25, 2010 (a copy of which may be obtained from the City Clerk).

PASSED AND ADOPTED 25th day of October, 2010.

ATTEST:

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Chairperson

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Secretary