



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 November 2009
 - B. Replacement Fire Engine Purchase
 - C. Cumulative Purchases Over \$50,000 in 2009
 - D. Swim & Fitness Center – Custodial Services Contract
 - E. Second Amendment to Pinnacle Towers LLC Radio Tower Site Lease
 - F. Semper Water Treatment Facility North Basin Roof Replacement Contract and Budget Revision
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Public Hearing re Amendment to the PDP in the Bivins PUD to Add an Allowed Use of Consignment Store
 - B. PDP Amendment for the Bivins PUD to Add an Allowed Use of Consignment Store (92nd Ave. and Harlan St.)
 - C. Resolution No. 57 re Right-of-Way Acquisition for 68th Avenue and Utica Street Project
 - D. IGA with Adams County School District 50 re New Westminster High School
 - E. Councillor's Bill No. 43 re 68th Avenue and Utica Street Project Supplemental Appropriation
 - F. Councillor's Bill No. 44 re Transportation Commission, Board of Adjustment & Appeals and Planning Commission
 - G. Councillor's Bill No. 45 re The Orchard Town Center Third Letter Agreement re Final Development Agreement
 - H. Councillor's Bill No. 46 re Delinquent Payments and Service Charges for Water and Sewer Service
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

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (separate agenda)

MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.

- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.

- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.

- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.

- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.

- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;

- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);

- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;

- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.

- J.** Final comments/rebuttal received from property owner;

- K.** Final comments from City Staff and Staff recommendation.

- L.** Public hearing is closed.

- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, DECEMBER 14, 2009 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 Major, to approve the minutes of the regular meeting of November 23, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall announced the last Council meeting of 2009 would be held on December 21. City offices would be closed on December 25 in observance of Christmas and on January 1, 2010, New Year's Day.

Following the City Council meeting, the Westminster Economic Development Authority Board of Directors would conduct a meeting, at which, if approved, the first acquisition of property for the Westminster Urban Reinvestment Project would be authorized following successful negotiations with the Trail Dust Restaurant. While only a small portion of the overall project, this acquisition was the exciting first step in achieving Council's top Strategic Plan goal of redeveloping the Westminster Mall.

CITY COUNCIL COMMENTS

Councillor Briggs congratulated Matt Lutkus, Deputy City Manager, on being elected Chair of 36 Commuting Solutions.

Councillor Kaiser reported having presented a City government class to a smart group of third graders at F. M Day Elementary. The students had great questions and comments.

Mayor Pro Tem Dittman reported that the Mayor, Councillor Briggs and he had the honor of attending ceremonies marking the first night of Hanukkah that included the installation of a new Rabbi on the evening of December 11. Until the local Jewish community could locate their own facility, the congregation was meeting in the basement of the Westminster Presbyterian Church. It was encouraging to see two religions come together to meet the needs of both.

Mayor McNally advised that Councillors Lindsey and Briggs and she attended the ribbon cutting for General Dynamics. The City was fortunate to have that business in the community and welcomed them.

Mayor McNally thanked Parks, Recreation & Libraries elves for the fantastic job they had done setting up the holiday display on City Hall grounds and in the courtyard. The display added magic to the season and brought joy to the hearts of everyone who visited.

Mayor Pro Tem Dittman added that he, disguised as Santa Claus, and Mayor McNally, disguised as Nutmeg the Elf, had enjoyed participating in the Fire Department's surprise Santa visits to area homes recently. The children of those homes had been excited and thrilled by the unexpected visits.

In conclusion, the Mayor reported that she, too, had participated in a City government class at Woodrow Wilson Charter School and found the students stimulating and engaged in the topic.

PRESENTATIONS

On behalf of City Council, Councillor Major recognized Scott Adams and other key officials of Microtek for having been named by the Colorado Office of Economic Development and International Trade as a 2009 Colorado Company to Watch. Mr. Adams explained Microtek's nature of business and was thankful that the business was located in Westminster.

Councillor Kaiser presented the Digital Cities Survey 2009 Winner award to David Puntteney and Scott Magerfleisch of the Information Technology Department. Mayor McNally had proudly accepted the plaque on behalf of staff at the National League of Cities Conference in November. This was the eighth consecutive year the City had achieved a top ten rating, and it was the only Colorado city in the 75,000 to 125,000 population category to maintain that rating for that length of time. Mr. Puntteney accepted the award, which he credited his staff for achieving.

CITIZEN COMMUNICATION

Speaking in opposition to final adoption of Councillor's Bill No. 41 were: Carl Wemhoff, owner of Herbal Remedies at 3200 W. 72nd Avenue; Deborah Schultz, co-owner of The Healing Center at 8020 Federal Boulevard; Tae Darnell, 36 Steele Street, and Warren Edison, 2801 East Colfax, attorneys representing both businesses; Brent Martin, address not provided and a medical marijuana patient; Shawn Waelti, 8973 McCoy Place; Carole Ray, 2425 South Yates, a medical marijuana patient; Mike Boling, 12945 Grove Way, a medical marijuana patient; Lee Ann Waychoff, 1245 Brentwood Street, a medical marijuana patient; James Bylsma, 3250 Kassler Place and a medical marijuana patient; Tom Jones of Aurora and a medical marijuana patient; Joan Realino-Robinson, 4435 West 94th Avenue; Jianinna Daniel, 4465 West 94th Avenue; Anji Gies, 3281 East 88th Avenue, and an employee of The Healing Center; and Julia Sepulveda, 1302 9th Avenue. Comments focused on the passage of Amendment 20 in November of 2000; sales tax revenues paid to the City and jobs created by the two dispensaries; the patients' needs for pain management with organic marijuana rather than prescriptive drugs and their ability to obtain organic marijuana from reputable, professional businesses where their privacy was protected in a safe environment; the additional services provided to patients at dispensaries, such as massage therapy to ease chronic pain; and requests to embrace diverse alternative remedies. Petitions were presented that purportedly contained the signatures of 240 people who opposed legislation that would, if passed, close the two dispensaries in the City. Council was urged to amend Councillor's Bill No. 41 by extending the existing moratorium and allowing the two operating dispensaries to continue providing needed services to their medical patients while the Colorado Legislature worked during the 2010 session to develop statewide regulations to control such businesses. If the Councillor's Bill were passed, attorneys said they would pursue injunctive relief and argue for their clients through the legal system.

Speaking in favor of Councillor's Bill No. 41 were Betty Whorton, 3720 West 103rd Drive, and Robert Ramirez of 107th Avenue and Lewis, stating that Council's adoption of the ordinance would reflect representation of their views and those of other residents to whom they had talked. The ordinance was the correct action to take for the City and its residents.

Nancy Perry requested Council's support in resolving frustrations she had experienced with Animal Management Officers concerning barking dogs that had moved into the neighborhood four years earlier. Repeated phone calls and requests for staff to intercede had failed, and her frustration increased when a Court case to have been held earlier in the day had been rescheduled to January 5 without notification to her. The neighbors were taking no action to remediate the problem. As a Master Gardener, she wanted the intolerable situation remedied so she could pursue her passion and garden in the back yard. She looked forward to Council's assistance.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: find that the Western States Contracting Alliance pricing met City Charter bidding requirements and authorize Staff to proceed with 2009 calendar year purchases of network switches, transceivers, maintenance and consulting through 24/7 Networks, Inc.

in an amount not to exceed \$85,000; authorize payment of \$57,527 for the City's 2010 Colorado Municipal League membership dues; authorize the City Manager to enter into an agreement with Malcolm Murray for work related to the Westminster Mall redevelopment in an amount not to exceed \$135,000; authorize a change order in the amount of \$98,603, to the contract with Adolphson and Peterson Construction for concrete replacement at the back service entry to the City Park Recreation Center as an add on to the construction of the City Park Recreation Center aquatics renovation, and increase the project contingency by \$5,916, (6%) for a total project contingency of \$104,519; authorize submittal of a SAFER grant application to hire replacements for vacant Firefighter positions in 2010, with 100% reimbursement of the salary and benefits provided by the grant; authorize the transfer of \$825,000 to the Westminster Economic Development Authority fund from the General Capital Improvement Fund for anticipated expenses related to the Trail Dust parcel purchase in the Westminster Center Urban Reinvestment Plan project; passage of Councillor's Bill No. 40 on second reading authorizing a supplemental appropriation in the amount of \$45,485 reflecting the award of 2009 Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant – Local Solicitation funds; and passage of Councillor's Bill No. 41 on second reading expressly prohibiting any land uses that are unlawful under state or federal law.

No requests were made to remove any items from the consent agenda for discussion purposes or separate vote. It was moved by Councillor Major and seconded by Mayor Pro Tem Dittman to approve the consent agenda as presented. The motion passed unanimously.

COUNCILLOR'S BILL NO. 42 TO EXTEND PUBLIC SERVICE COMPANY'S FRANCHISE

It was moved by Councillor Kaiser, seconded by Lindsey, to pass Councillor's Bill No. 42 as an emergency ordinance to extend the current franchise held by Public Service Company of Colorado for three months. At roll call, the motion passed unanimously.

RESOLUTION NO. 49 TO REDESIGNATE CITY-OWNED PROPERTY TO OPEN SPACE & PARKLANDS

Councillor Briggs moved to adopt Resolution No. 49 approving the redesignation of Open Space, Park and City-owned lands to Open Space and Parkland designations. The motion was seconded by Mayor Pro Tem Dittman and passed unanimously at roll call.

RESOLUTION NO. 50 ADOPTING 2010-2014 PARKS AND RECREATION MASTER PLAN

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to adopt Resolution No. 50 formally adopting the update to the City of Westminster Parks and Recreation Master Plan dated December 14, 2009, as a planning guide for future parks and facilities development and acquisition projects in the City.

RESOLUTION NO. 51 RE US 36 FINAL ENVIRONMENTAL IMPACT STATEMENT

It was moved by Councillor Winter and seconded by Councillor Lindsey to adopt Resolution No. 51 regarding City Council's support for the Preferred Alternative identified in the US 36 Final Environmental Impact Statement. At roll the motion passed unanimously.

RESOLUTION NO. 52 RE CITY'S 2010 LEGISLATIVE POLICY STATEMENT

Councillor Lindsey moved, seconded by Major, to adopt Resolution No. 52 establishing the City of Westminster 2010 Legislative Policy Statement. The motion passed unanimously on roll call vote.

RESOLUTION NO. 53 RE 2010 SERVICE COMMITMENT ALLOCATIONS

Mayor Pro Tem Dittman moved, seconded by Kaiser, to adopt Resolution No. 53 allocating Service Commitments for the year 2010 to the various categories of the Growth Management Program including Service Commitments for residential competitions for new Single-family Detached, Single-family Attached, Multi-family, Senior Housing

and Traditional Mixed Use Neighborhood Developments. At roll call, the motion passed with all Council members voting affirmatively. At roll call, the motion passed unanimously.

RESOLUTION NO. 54 EXTENDING SERVICE COMMITMENT AWARD FOR W. 101ST COURT PROJECT

Councillor Major moved to adopt Resolution No. 54 extending the existing Category B-1 Service Commitment award for the West 101st Court single-family detached residential project through December 31, 2010 based on the finding that the need for an extension was the result a combination of factors, including an ownership change on the property, delays and the extraordinary conditions in the housing market brought on by the economic downturn. Councillor Kaiser seconded the motion, which passed unanimously on roll call vote.

RESOLUTION NO. 55 EXTENDING SERVICE COMMITMENT AWARD FOR VALLEY VIEW ESTATES

It was moved by Councillor Major and seconded by Councillor Winter to adopt Resolution No. 55 extending the existing Category B-2 Service Commitment award to the Valley View Estates – Eliot Street Duplexes single-family attached residential project based on finding that the need for an extension was the result of the extraordinary conditions in the housing market brought on by the severe economic downturn. The motion passed unanimously on roll call vote.

RESOLUTION NO. 56 APPROVING IGA WITH CDOT FOR 80TH AVENUE BRIDGE OVER US 36

Upon a motion by Councillor Kaiser, seconded by Major, the Council voted unanimously at roll call to adopt Resolution No. 56 authorizing the City Manager to execute an Intergovernmental Agreement with the Colorado Department of Transportation for the design, construction and maintenance of the 80th Avenue Bridge over U.S. Highway 36 Project. The motion passed unanimously at roll call.

AUTHORIZATION OF FUNDS FOR 80TH AVENUE BRIDGE & WATER SYSTEM ENHANCEMENTS

Councillor Kaiser moved, seconded by Major, to authorize the expenditure of up to \$600,000 for the design and construction of architectural enhancements to the 80th Avenue Bridge and up to \$333,129 for the installation of water main enhancements. The motion carried unanimously.

LAND TRADE WITH ADVENT LUTHERN CHURCH APPROVED

It was moved by Councillor Kaiser and seconded by Councillor Major to authorize a trade of City-owned land to the Advent Lutheran Church in exchange for church property needed to allow the Colorado Department of Transportation to install a sidewalk along the south side of 80th Avenue. The motion carried with all Council members voting affirmatively.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Major, seconded by Mayor Pro Tem Dittman, to adjourn. The motion passed unanimously, and the meeting adjourned at 8:18 p.m.

ATTEST:

City Clerk

Mayor



**WESTMINSTER
COLORADO**

Agenda Memorandum

Agenda Item 8 A

City Council Meeting
December 21, 2009



SUBJECT: Financial Report for November 2009
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

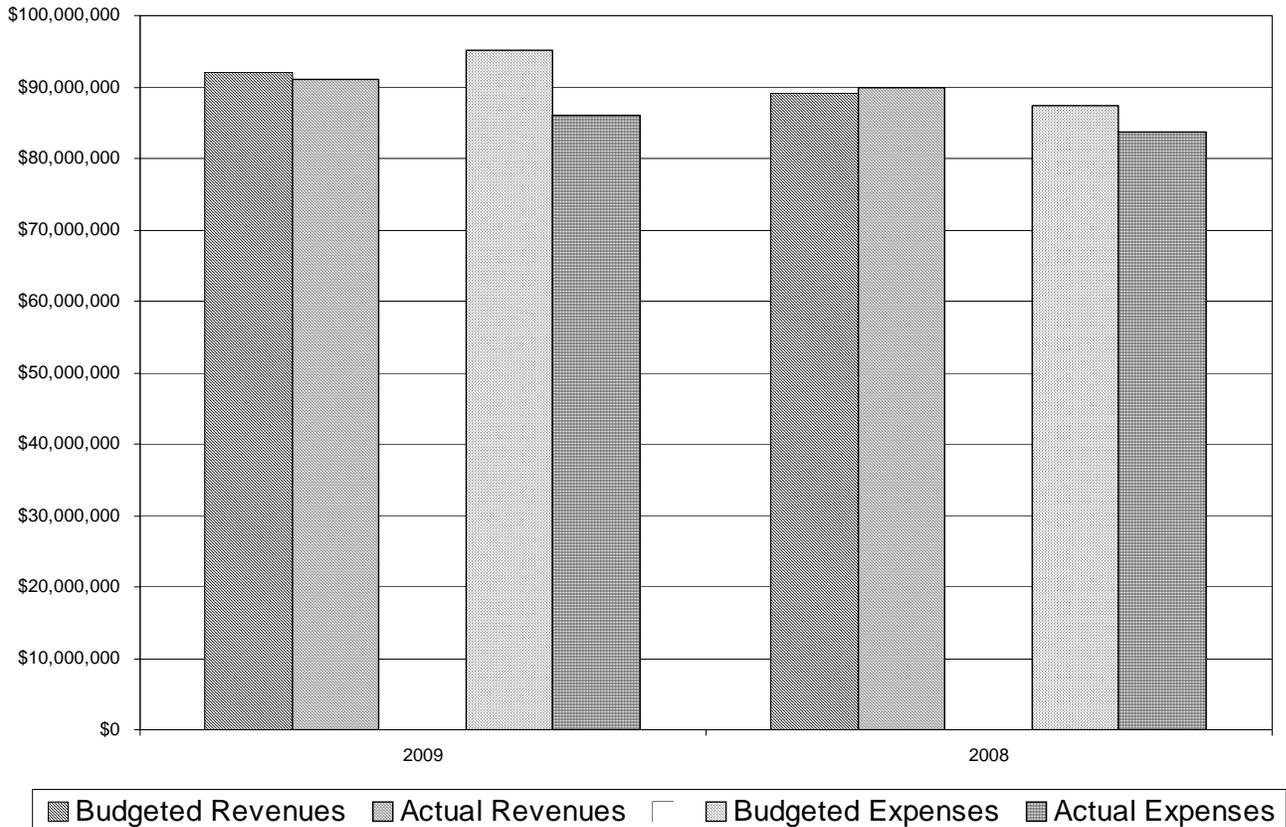
Accept the Financial Report for November as presented.

Summary Statement

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

The General Fund revenues and Carryover exceed expenditures by \$5,035,638. The following graph represents Budget vs. Actual for 2008 – 2009.

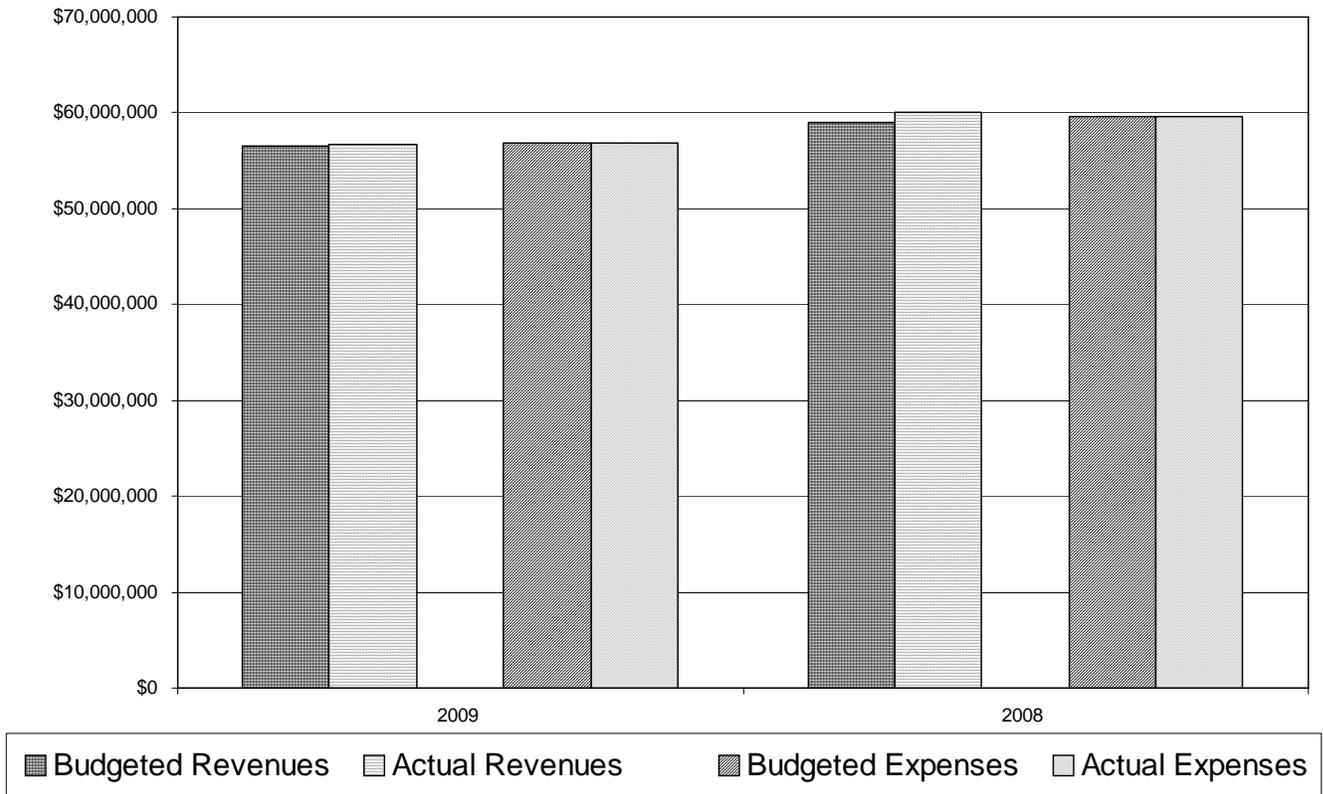
**General Fund
Budget vs Actual**



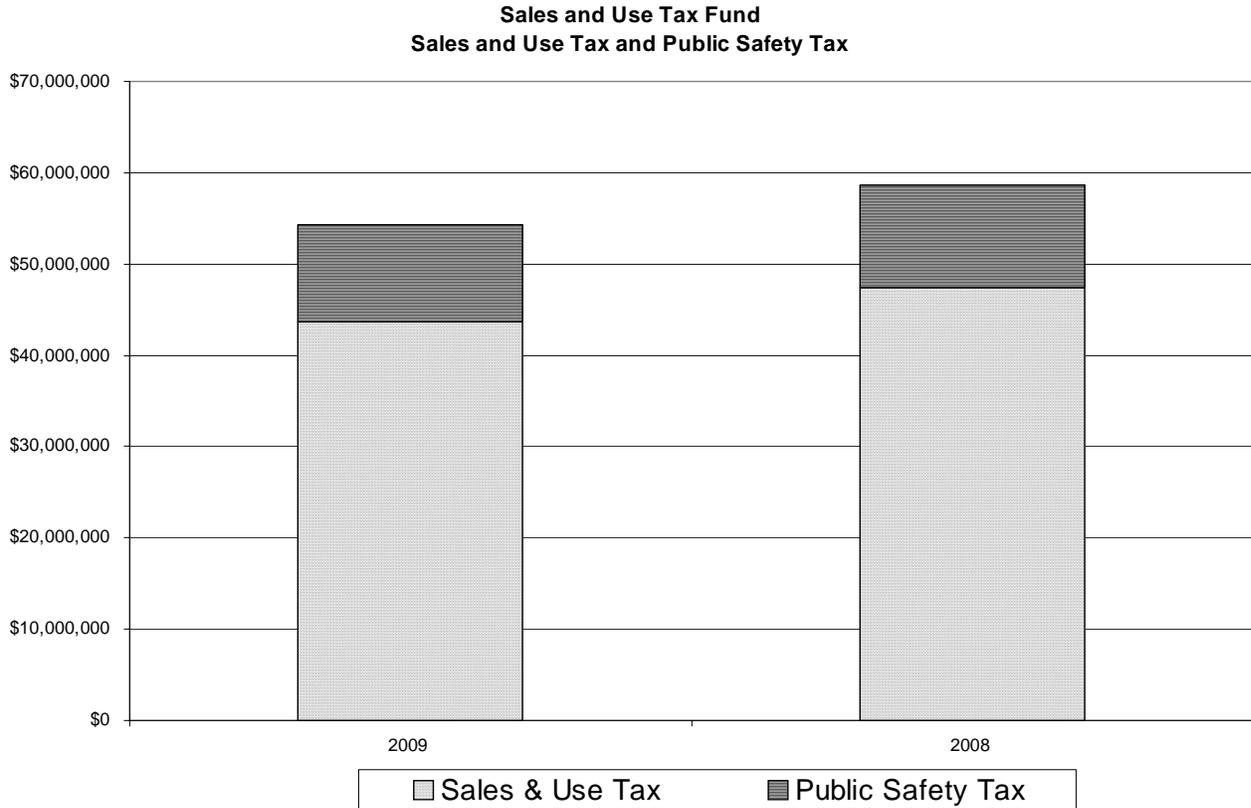
The Sales and Use Tax Fund revenues and Carryover are less than expenditures by \$173,472.

- On a year-to-date cash basis, sales and use tax returns are down 6.5% from 2008.
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are down 0.8% from the prior year. This includes Urban Renewal Area money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 4.7%.
- The top 50 Sales Tax payers, who represent about 62% of all collections, were down 2.0% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 27.0% on a year-to-date basis.
- Building Use Tax is down 54.2% year-to-date from 2008.

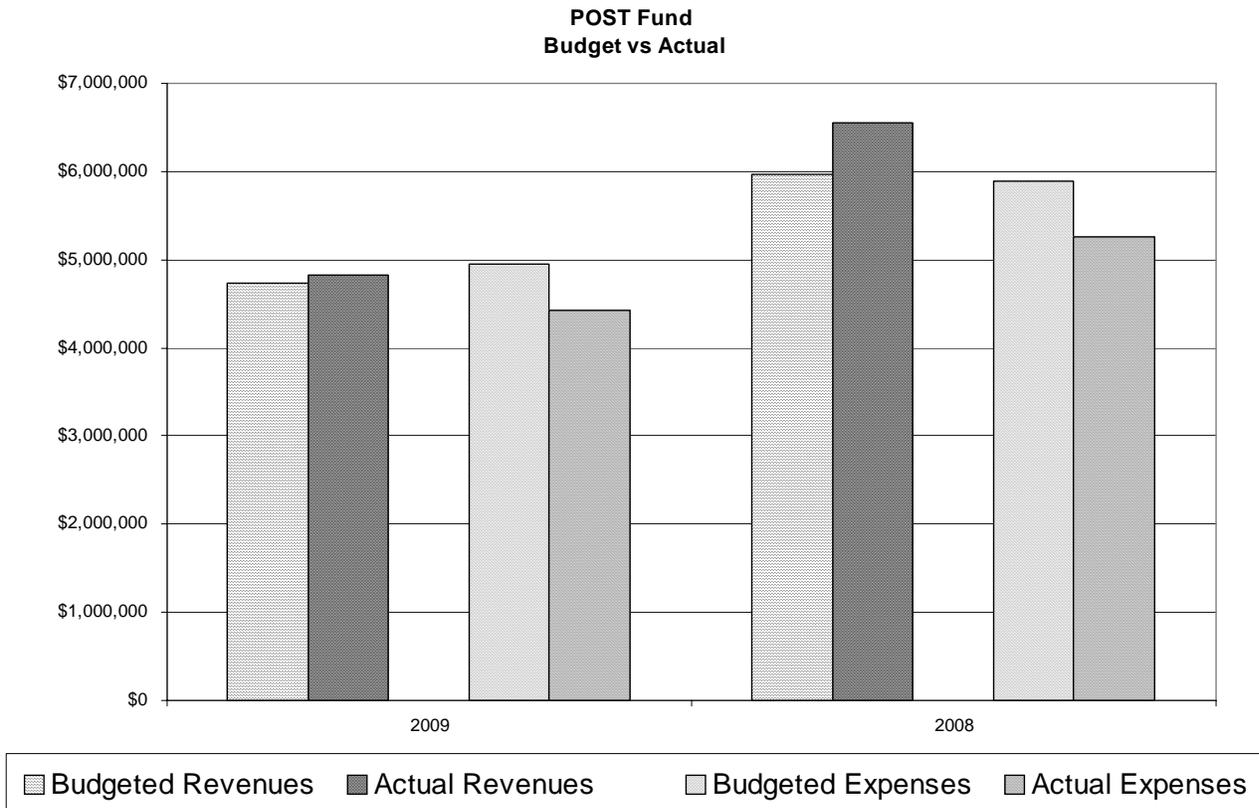
**Sales & Use Tax Fund
Budget vs Actual**



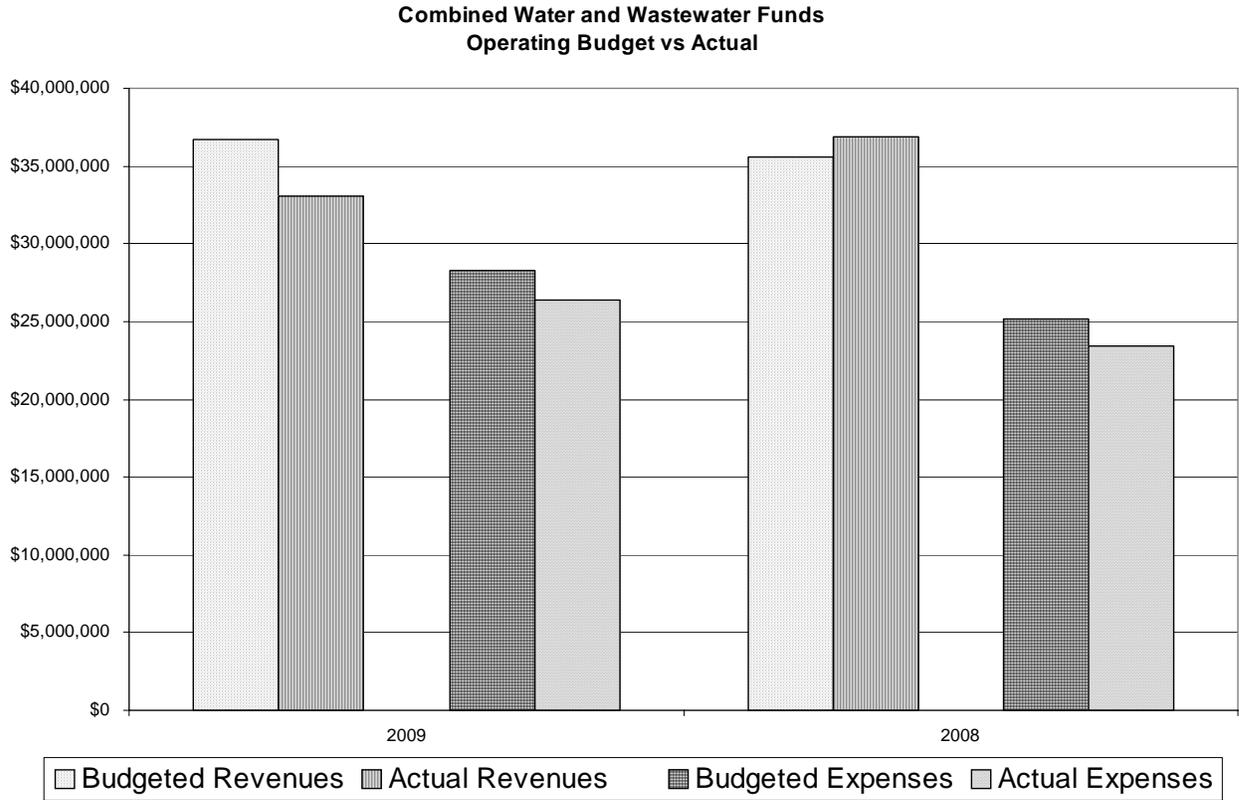
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



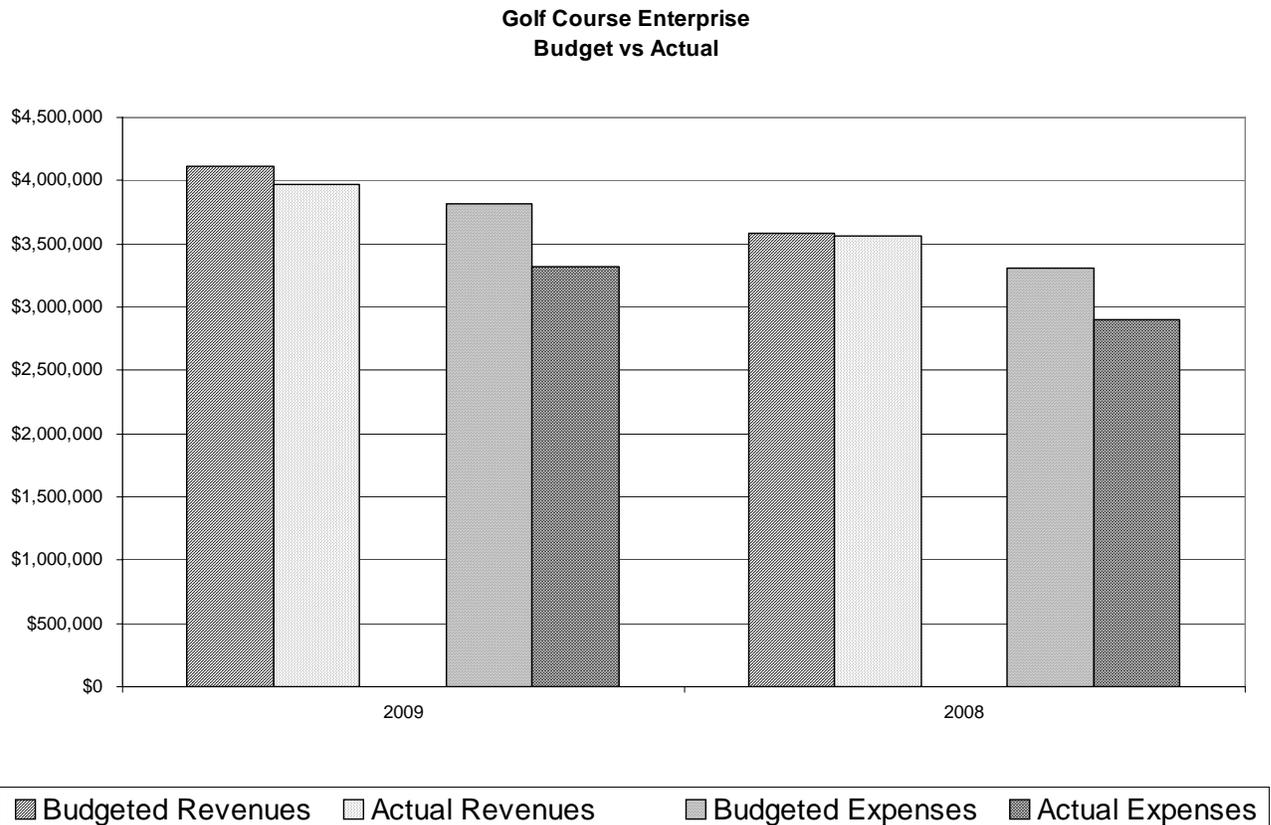
The Parks Open Space and Trails Fund revenues exceed expenditures by \$401,161.



The combined Water & Wastewater Fund revenues and Carryover exceed expenses by \$28,679,199. \$31,743,665 is budgeted for capital projects and reserves.



The combined Golf Course Fund revenues exceed expenses by \$649,311.



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

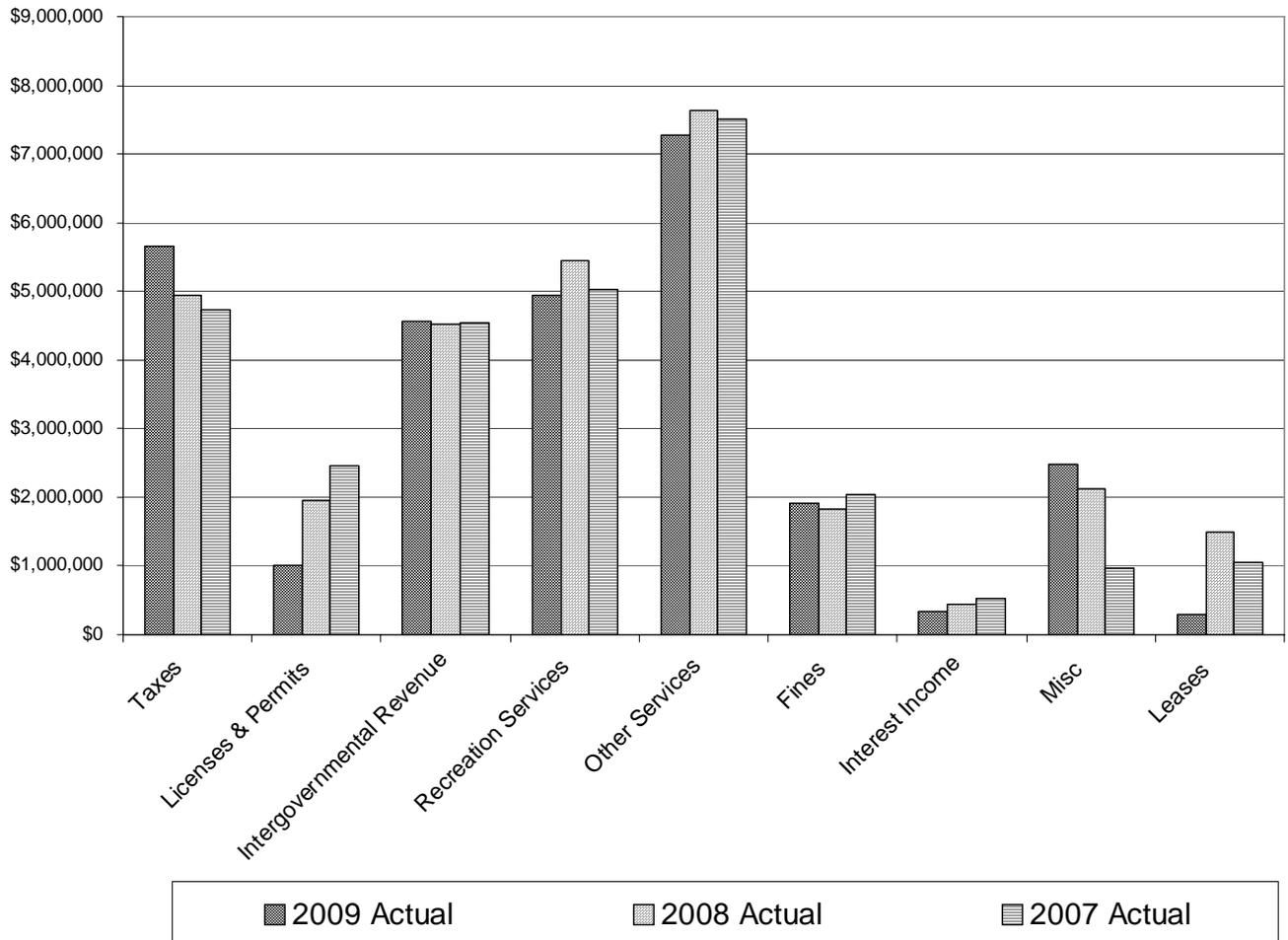
This section includes a discussion of highlights of each fund presented.

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 2007 – 2009 year-to-date.

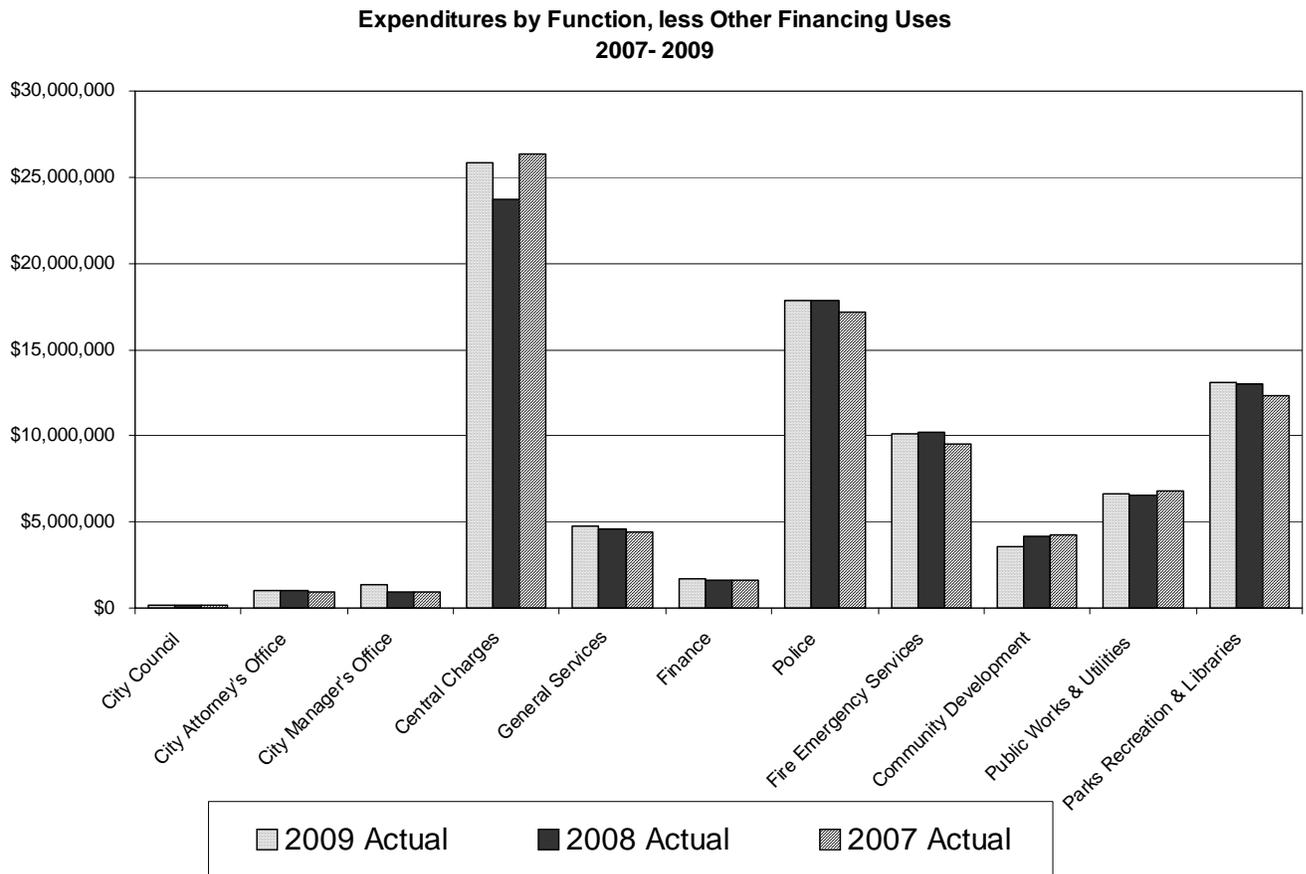
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2007 - 2009**



Significant variances in General Fund revenue categories are explained as follows:

- Increase in Taxes reflects Accommodations Tax previously recorded in the General Capital Improvement Fund, now recorded in the General Fund as a result of the Westin Conference Center sale.
- Decrease in License and Permit revenue reflects commercial and residential building permit activity.
- Decrease in Recreation Services revenue is largely due to construction activity at the City Park Recreation Center.
- Decrease in Other Services revenue reflects in large part Xcel franchise and EMS fees.
- Increase in Miscellaneous revenue reflects reimbursements received from Thornton relating to the 144th Avenue bridge construction IGA.
- Decrease in Lease revenue is due mostly to the Conference Center and Pavillion leases, which were terminated in 2008.

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2007 –2009.



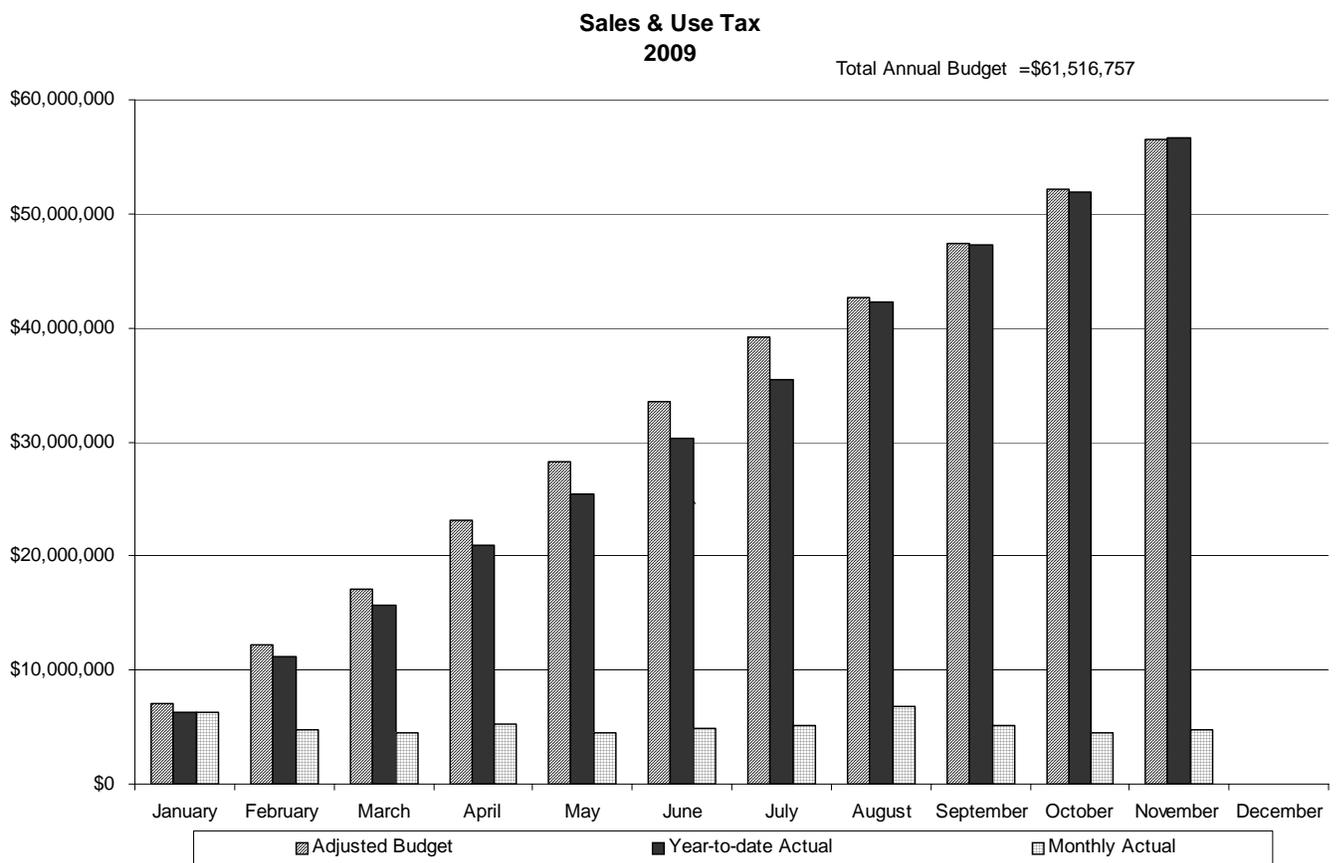
Significant variances in General Fund departmental expenditure categories are explained as follows:

- The increase in Central Charges is primarily due to the transfer made to establish the General Fund Stabilization Reserve and a decrease in the Carryover transfer to the General Capital Improvement Fund.

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. An appropriation of Carryover in the amount of \$2,357,889 is included in this depiction. This chart does not include Open Space Sales & Use Tax.

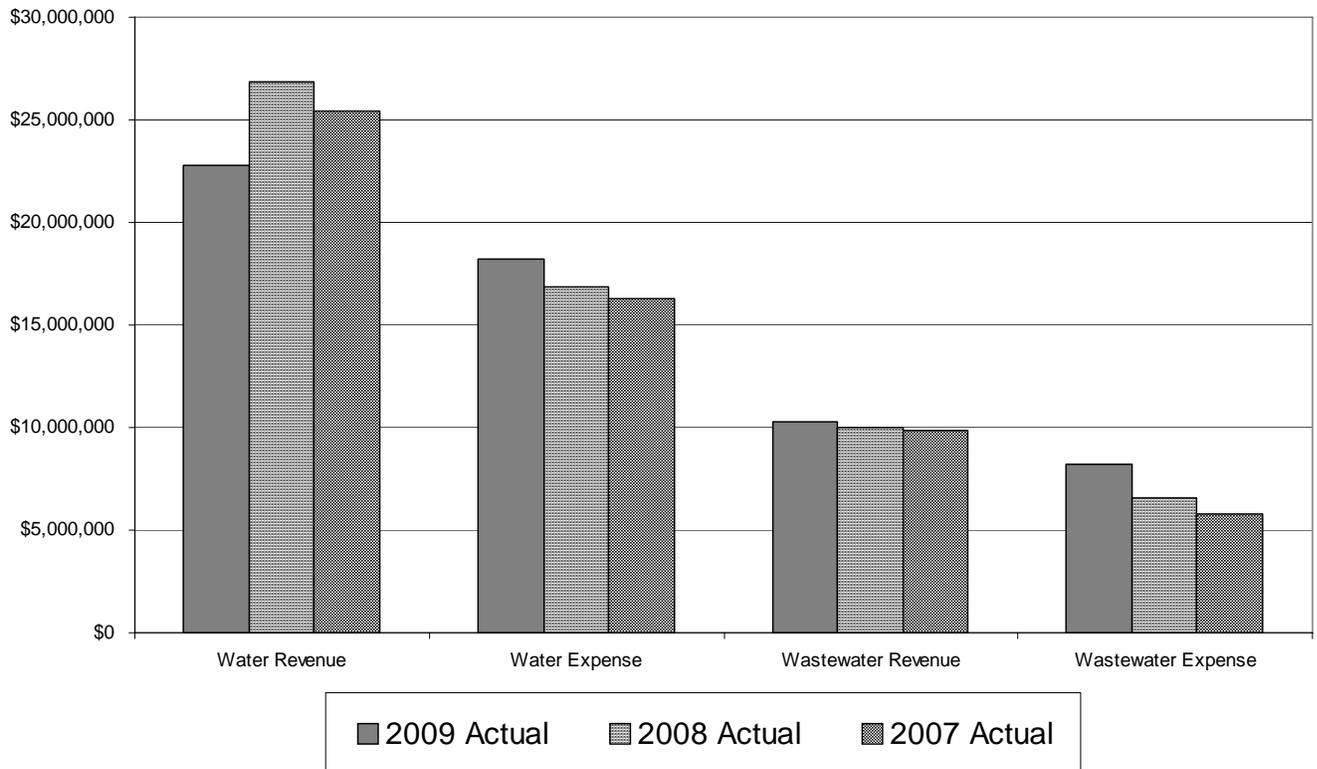


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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 revenue and expense information for the Water and Wastewater funds.

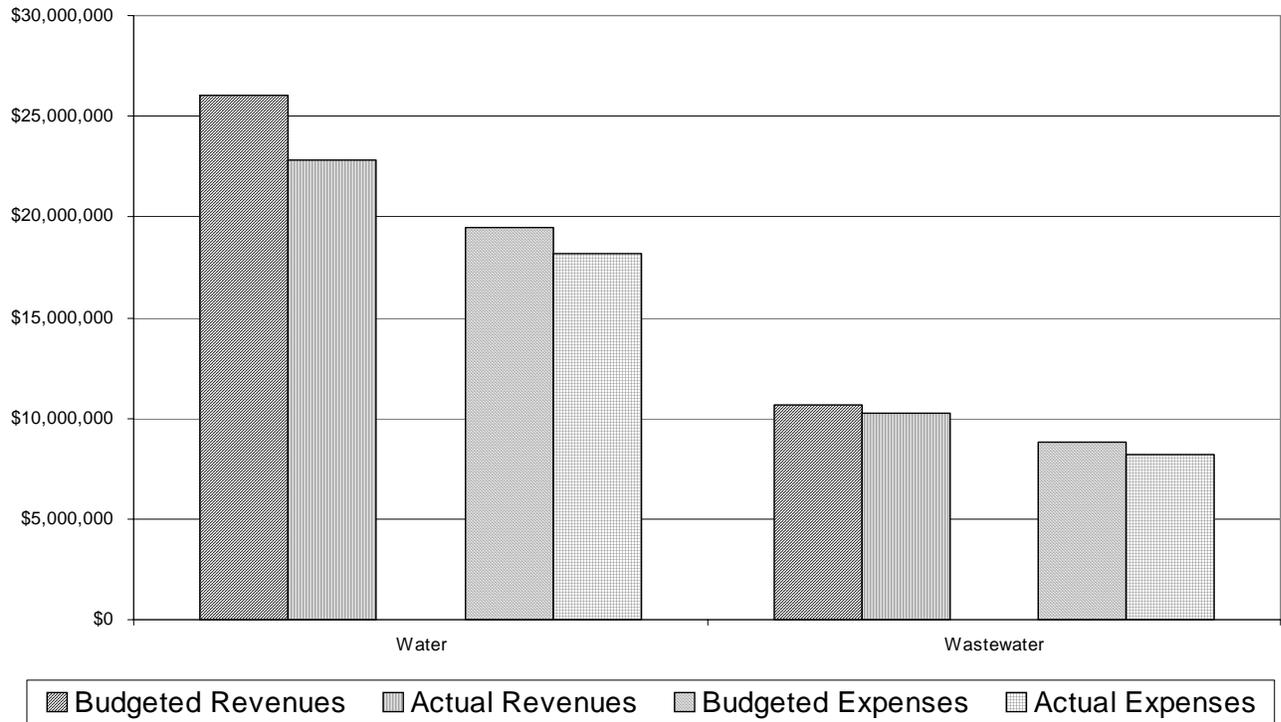
**Water and Wastewater Funds
Operating Revenue and Expenses 2007-2009**



Fluctuation in Water Fund revenue between years reflects the effect of weather variations on seasonal demand. The Water Fund expenditure increase in 2009 is the effect of costs related to employee benefits, energy payments, contract services charges and Zebra Mussel control efforts.

Expenses in the Wastewater Fund reflect a \$1.9M payment to Metro Wastewater Reclamation District to bring a portion of the previously contracted wastewater treatment in-house as approved by Council in March.

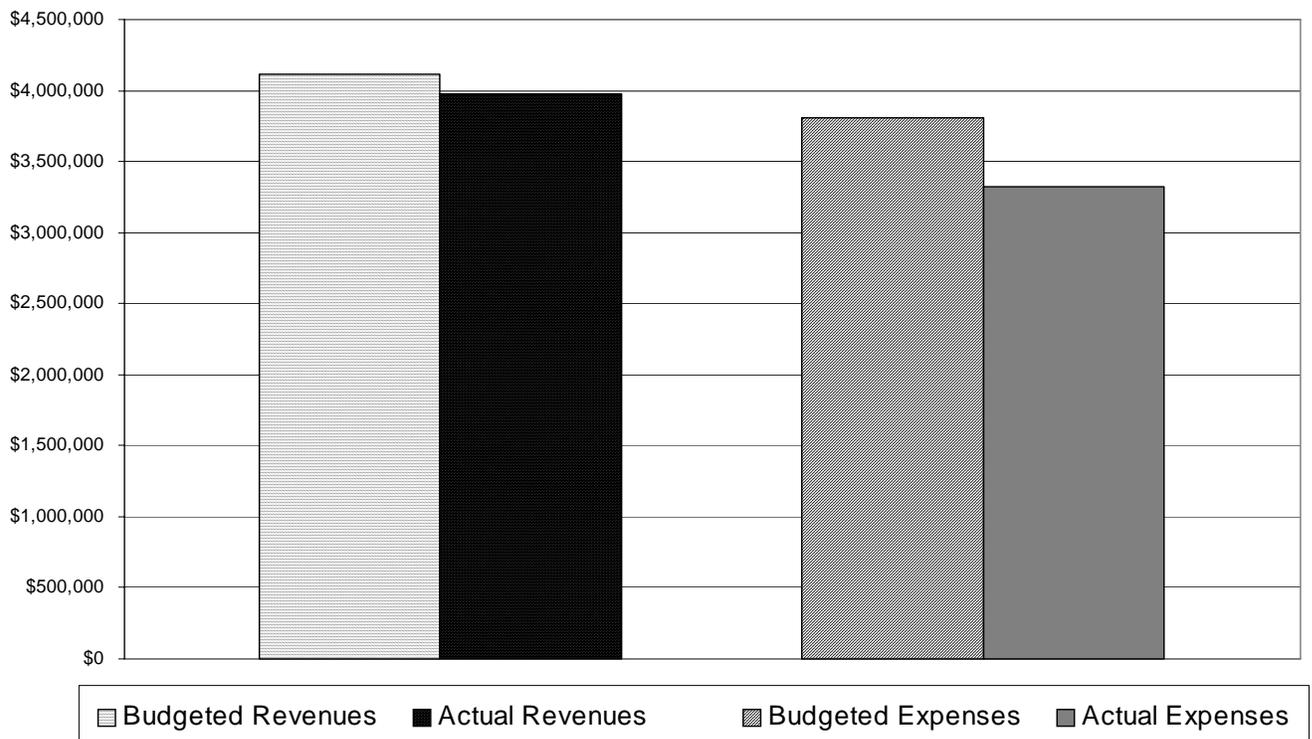
**Water and Wastewater Funds
2009 Operating Budget vs Actual**



Golf Course Enterprise (Legacy and Heritage Golf Courses)

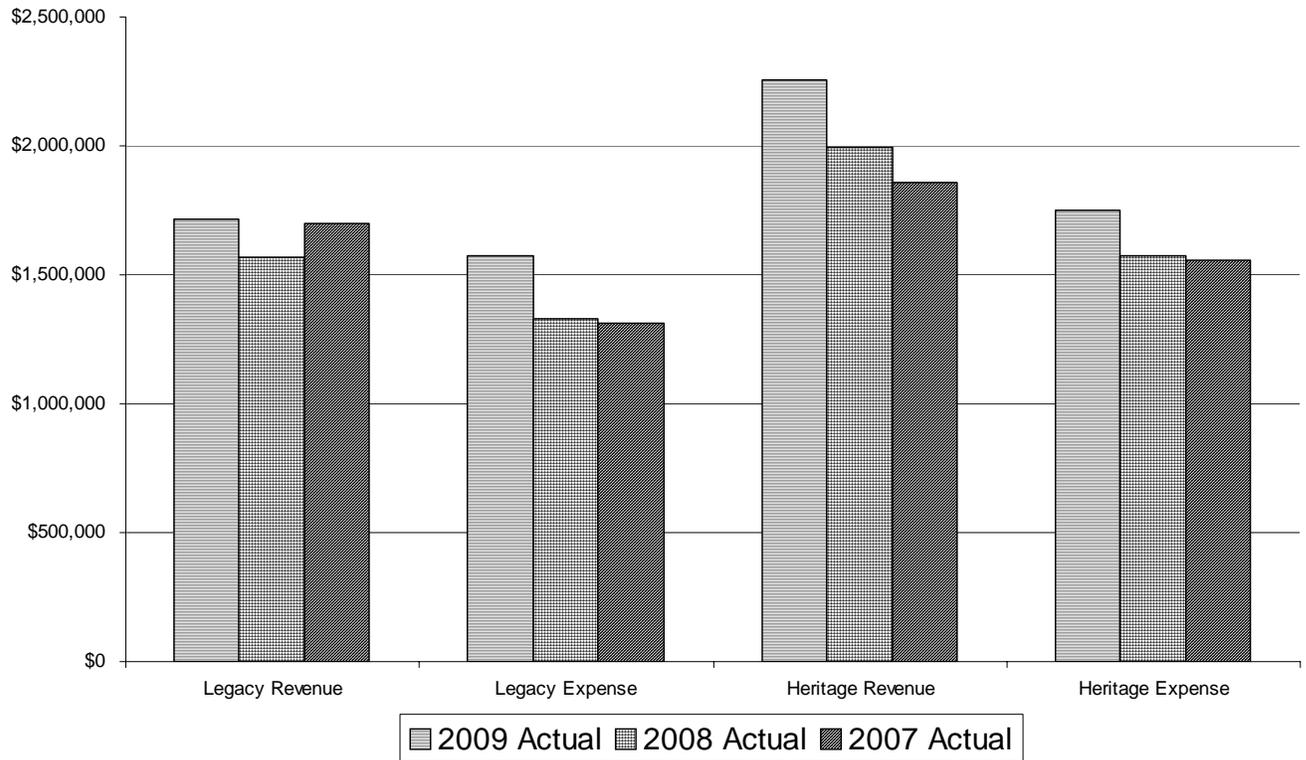
This enterprise reflects the operations of the City's two municipal golf courses.

**Combined Golf Courses
2009 Budget vs Actual**

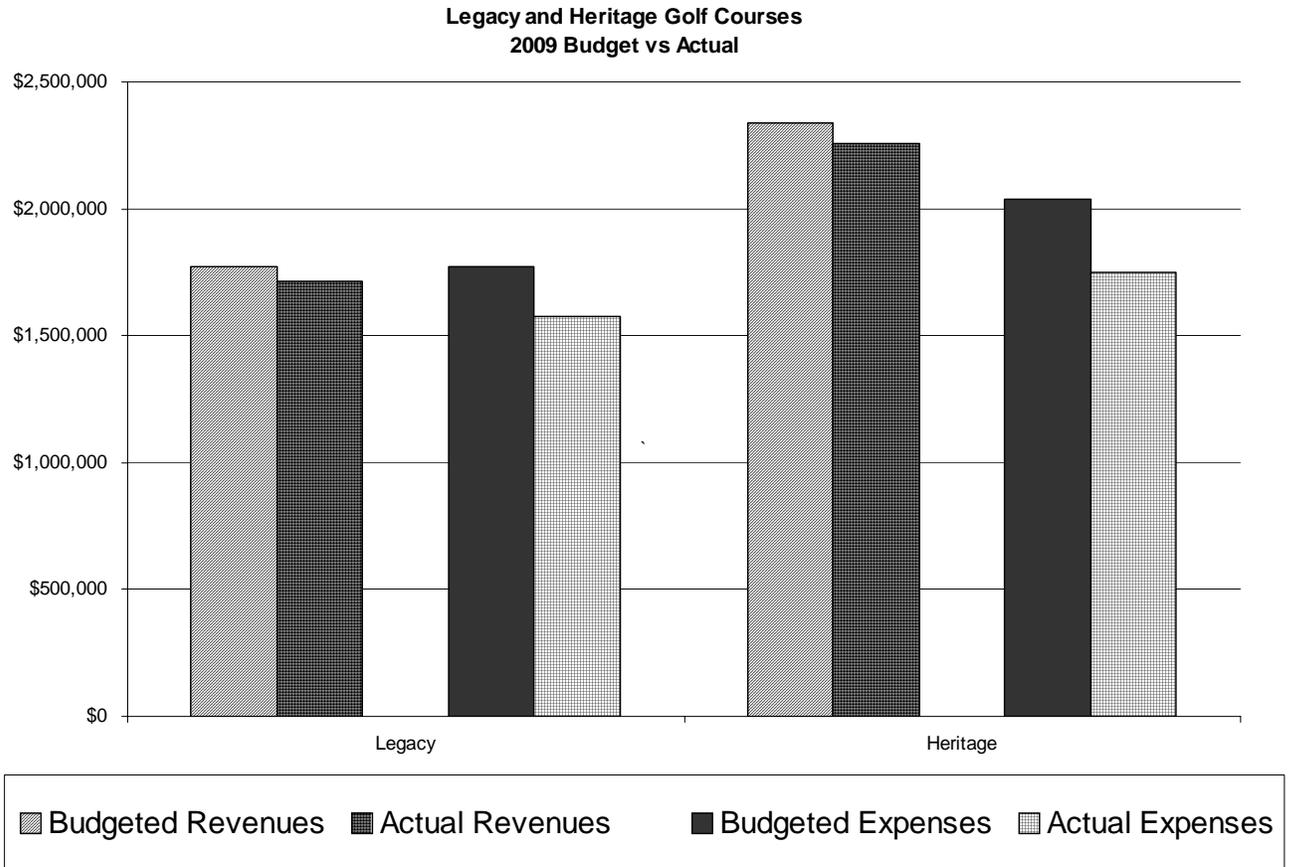


The following graphs represent the information for each of the golf courses.

**Legacy and Heritage Golf Courses
Revenue and Expenses 2007-2009**



Allocation of \$176,286 in Carryover from Legacy to Heritage, a transfer that Heritage receives to help pay outstanding bonds and lease financing of a new golf cart fleet impacts this revenue representation. Elimination of these items would indicate a decrease in operating revenues from 2008 of \$219,671 at Legacy and \$178,931 at Heritage.



Respectfully submitted,

J. Brent McFall, City Manager

Attachments

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues and Carryover						
Taxes	6,089,541	5,623,834		5,659,836	36,002	100.6%
Licenses & Permits	1,597,600	1,475,942		1,018,375	(457,567)	69.0%
Intergovernmental Revenue	5,175,942	4,644,708		4,568,576	(76,132)	98.4%
Charges for Services						
Recreation Services	5,910,792	5,378,142		4,950,926	(427,216)	92.1%
Other Services	9,256,084	8,195,695		7,275,904	(919,791)	88.8%
Fines	2,211,050	2,051,279		1,910,773	(140,506)	93.2%
Interest Income	515,000	482,536		336,353	(146,183)	69.7%
Misc	1,785,006	1,793,336	(1)	2,483,006	689,670	138.5%
Leases	295,925	273,901		289,077	15,176	105.5%
Interfund Transfers	59,601,420	54,636,731	(2)	55,119,670	482,939	100.9%
Other Financing Sources	584,990	584,990		562,530	(22,460)	96.2%
Sub-total Revenues	<u>93,023,350</u>	<u>85,141,094</u>		<u>84,175,026</u>	<u>(966,068)</u>	98.9%
Carryover	6,951,071	6,951,071		6,951,071	0	100.0%
Revenues and Carryover	<u>99,974,421</u>	<u>92,092,165</u>		<u>91,126,097</u>	<u>(966,068)</u>	99.0%
Expenditures						
City Council	183,819	157,013		148,952	(8,061)	94.9%
City Attorney's Office	1,170,579	1,152,115		1,024,393	(127,722)	88.9%
City Manager's Office	1,669,730	1,591,183		1,332,756	(258,427)	83.8%
Central Charges	28,666,349	26,812,030		25,837,457	(974,573)	96.4%
General Services	5,844,397	5,432,155		4,791,469	(640,686)	88.2%
Finance	1,975,712	1,930,188		1,721,239	(208,949)	89.2%
Police	21,303,178	20,772,352		17,827,851	(2,944,501)	85.8%
Fire Emergency Services	11,781,312	11,476,266		10,110,880	(1,365,386)	88.1%
Community Development	4,351,650	4,245,214		3,597,278	(647,936)	84.7%
Public Works & Utilities	7,523,153	6,851,352		6,622,869	(228,483)	96.7%
Parks, Recreation & Libraries	15,504,542	14,701,989		13,075,315	(1,626,674)	88.9%
Total Expenditures	<u>99,974,421</u>	<u>95,121,857</u>		<u>86,090,459</u>	<u>(9,031,398)</u>	90.5%
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>(3,029,692)</u>		<u>5,035,638</u>	<u>8,065,330</u>	

(1) The Miscellaneous revenue variance reflects the receipt of a prior year Thornton revenue sharing agreement receivable

(2) The Interfund Transfers variance reflects an unbudgeted payment from the 144th Avenue GID

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues and Carryover						
Sales Tax						
Sales Tax Returns	41,057,421	37,690,787		35,780,928	(1,909,859)	94.9%
Sales Tx Audit Revenues	697,800	656,774		512,867	(143,907)	78.1%
S-T Rev. STX	<u>41,755,221</u>	<u>38,347,561</u>		<u>36,293,795</u>	<u>(2,053,766)</u>	94.6%
Use Tax						
Use Tax Returns	4,784,874	4,298,121		5,962,829	1,664,708	138.7%
Use Tax Audit Revenues	777,018	701,647		1,410,865	709,218	201.1%
S-T Rev. UTX	<u>5,561,892</u>	<u>4,999,769</u>		<u>7,373,694</u>	<u>2,373,926</u>	147.5%
Total STX and UTX	<u><u>47,317,113</u></u>	<u><u>43,347,330</u></u>		<u><u>43,667,489</u></u>	<u><u>320,160</u></u>	100.7%
Public Safety Tax						
PST Tax Returns	11,482,915	10,495,858		10,211,054	(284,804)	97.3%
PST Audit Revenues	128,840	115,401		384,601	269,200	333.3%
Total Rev. PST	<u>11,611,755</u>	<u>10,611,259</u>		<u>10,595,655</u>	<u>(15,604)</u>	99.9%
Total Interest Income	230,000	210,833		88,534	(122,299)	42.0%
Carryover	<u>2,357,889</u>	<u>2,357,889</u>		<u>2,357,889</u>	<u>0</u>	100.0%
Total Revenues and Carryover	<u><u>61,516,757</u></u>	<u><u>56,527,312</u></u>		<u><u>56,709,567</u></u>	<u><u>182,257</u></u>	100.3%
Expenditures						
Central Charges	<u>61,516,757</u>	<u>56,883,039</u>		<u>56,883,039</u>	<u>0</u>	100.0%
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>(355,727)</u></u>		<u><u>(173,472)</u></u>	<u><u>182,257</u></u>	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues						
Sales & Use Tax	4,718,386	4,298,411		4,413,680	115,269	102.7%
Intergovernmental Revenue	540,000	0		0	0	N/A
Interest Income	31,000	28,417		55,194	26,777	194.2%
Sale of Assets	142,996	142,996		143,313	317	100.2%
Miscellaneous	88,832	88,832		31,892	(56,940)	35.9%
Interfund Transfers	180,000	180,000		180,000	0	100.0%
Total Revenues	<u>5,701,214</u>	<u>4,738,656</u>		<u>4,824,079</u>	<u>85,423</u>	101.8%
Expenditures						
Central Charges	5,360,985	4,664,902		4,193,627	(471,275)	89.9%
Park Services	340,229	281,486		229,291	(52,195)	81.5%
	<u>5,701,214</u>	<u>4,946,389</u>		<u>4,422,918</u>	<u>(523,470)</u>	89.4%
Over(Under) Expenditures	<u>0</u>	<u>(207,733)</u>		<u>401,161</u>	<u>608,893</u>	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Fund-Combined						
Operating Revenues						
License & Permits	75,000	68,750		87,720	18,970	127.6%
Intergovernmental Revenue	21,965	15,738		15,738	0	100.0%
Rates and Charges	38,724,370	36,192,413		32,785,633	(3,406,780)	90.6%
Miscellaneous	452,532	414,821		173,149	(241,672)	41.7%
Total Operating Revenues	39,273,867	36,691,722		33,062,240	(3,629,482)	90.1%
Operating Expenses						
Central Charges	6,013,371	5,512,257		5,496,655	(15,602)	99.7%
Finance	671,815	593,213		578,933	(14,280)	97.6%
Public Works & Utilities	22,368,798	19,506,145		17,906,465	(1,599,680)	91.8%
Parks, Recreation & Libraries	157,226	144,124		97,014	(47,110)	67.3%
Information Technology	2,808,228	2,521,789		2,318,969	(202,820)	92.0%
Total Operating Expenses	32,019,438	28,277,528		26,398,036	(1,879,492)	93.4%
Operating Income (Loss)	7,254,429	8,414,194		6,664,204	(1,749,990)	
Other Revenue and Expenses						
Tap Fees	7,020,000	6,586,825		2,064,816	(4,522,009)	31.3%
Interest Income	1,600,000	1,466,667		1,073,004	(393,663)	73.2%
Interfund Transfers	21,785,020	20,864,897		20,864,897	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	4,895,770	4,895,770		4,895,770	0	100.0%
Debt Service	(6,303,419)	(2,388,097)		(2,388,097)	0	100.0%
Reserve Transfer	(4,508,135)	(4,508,135)		(4,508,135)	0	100.0%
Total Other Revenue (Expenses)	24,489,236	26,917,927		22,014,995	(4,902,932)	81.8%
	31,743,665	35,332,121		28,679,199	(6,652,922)	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	68,750		87,720	18,970	127.6%
Intergovernmental Revenue	21,965	15,738		15,738	0	100.0%
Rates and Charges	27,006,370	25,521,311		22,530,995	(2,990,316)	88.3%
Miscellaneous	442,532	405,654		168,611	(237,043)	41.6%
Total Operating Revenues	27,545,867	26,011,453		22,803,064	(3,208,389)	87.7%
Operating Expenses						
Central Charges	4,268,956	3,913,210		3,917,546	4,336	100.1%
Finance	671,815	593,213		578,933	(14,280)	97.6%
Public Works & Utilities	13,856,961	12,283,838		11,293,804	(990,034)	91.9%
Parks, Recreation & Libraries	157,226	144,124		97,014	(47,110)	67.3%
Information Technology	2,808,228	2,521,789		2,318,969	(202,820)	92.0%
Total Operating Expenses	21,763,186	19,456,174		18,206,266	(1,249,908)	93.6%
Operating Income (Loss)	5,782,681	6,555,279		4,596,798	(1,958,481)	
Other Revenue and Expenses						
Tap Fees	5,739,000	5,400,033		1,664,303	(3,735,730)	30.8%
Interest Income	900,000	825,000		816,420	(8,580)	99.0%
Interfund Transfers	18,249,272	17,460,099		17,460,099	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	4,158,733	4,158,733		4,158,733	0	100.0%
Debt Service	(4,798,025)	(1,782,519)		(1,782,519)	0	100.0%
Reserve Transfer	(3,777,996)	(3,777,996)		(3,777,996)	0	100.0%
Total Other Revenues (Expenses)	20,470,984	22,283,350		18,551,780	(3,731,570)	83.3%
Increase (Decrease) in Net Assets	26,253,665	28,838,629		23,148,578	(5,690,051)	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	11,718,000	10,671,102		10,254,638	(416,464)	96.1%
Miscellaneous	10,000	9,167		4,538	(4,629)	49.5%
Total Operating Revenues	<u>11,728,000</u>	<u>10,680,269</u>		<u>10,259,176</u>	<u>(421,093)</u>	96.1%
Operating Expenses						
Central Charges	1,744,415	1,599,047		1,579,109	(19,938)	98.8%
Public Works & Utilities	8,511,837	7,222,307		6,612,661	(609,646)	91.6%
Total Operating Expenses	<u>10,256,252</u>	<u>8,821,354</u>		<u>8,191,770</u>	<u>(629,584)</u>	92.9%
Operating Income (Loss)	<u>1,471,748</u>	<u>1,858,915</u>		<u>2,067,406</u>	<u>208,491</u>	
Other Revenue and Expenses						
Tap Fees	1,281,000	1,186,792		400,513	(786,279)	33.7%
Interest Income	700,000	641,667		256,584	(385,083)	40.0%
Interfund Transfers	3,535,748	3,404,798		3,404,798	0	100.0%
Carryover	737,037	737,037		737,037	0	100.0%
Debt Service	(1,505,394)	(605,578)		(605,578)	0	100.0%
Reserve Transfer	(730,139)	(730,139)		(730,139)	0	100.0%
Total Other Revenues (Expenses)	<u>4,018,252</u>	<u>4,634,577</u>		<u>3,463,215</u>	<u>(1,171,362)</u>	74.7%
Increase (Decrease) in Net Assets	<u>5,490,000</u>	<u>6,493,492</u>		<u>5,530,621</u>	<u>(962,871)</u>	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues and Carryover						
Charges for Services	1,900,000	1,741,667		1,832,634	90,967	105.2%
Interest Income	0	0		74,759	74,759	N/A
Miscellaneous	0	0		4,088	4,088	N/A
Sub-total Storm Drainage Revenues	<u>1,900,000</u>	<u>1,741,667</u>		<u>1,911,481</u>	<u>169,814</u>	<u>109.8%</u>
Carryover	298,413	298,413		298,413	0	100.0%
Total Revenues and Carryover	<u>2,198,413</u>	<u>2,040,080</u>		<u>2,209,894</u>	<u>169,814</u>	<u>108.3%</u>
Expenses						
General Services	92,000	76,452		59,941	(16,511)	78.4%
Community Development	140,000	127,540		95,477	(32,063)	74.9%
Park Services	200,000	183,333		89,967	(93,366)	49.1%
Public Works & Utilities	396,000	317,988		270,657	(47,331)	85.1%
Total Expenses	<u>828,000</u>	<u>705,313</u>		<u>516,042</u>	<u>(189,271)</u>	<u>73.2%</u>
Increase (Decrease) in Net Assets	<u>1,370,413</u>	<u>1,334,767</u>		<u>1,693,852</u>	<u>359,085</u>	

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Revenues and Carryover						
Carryover	0	0		0	0	N/A
Charges for Services	2,968,142	2,904,087		2,670,839	(233,248)	92.0%
Interest Income	0	0		20,953	20,953	N/A
Interfund Transfers	835,272	765,666	(1)	842,391	76,725	110.0%
Other Financing Sources	439,745	439,745		439,745	0	100.0%
Total Revenues and Carryover	<u>4,243,159</u>	<u>4,109,498</u>		<u>3,973,928</u>	<u>(135,570)</u>	96.7%
Operating Expenses						
Central Charges	197,920	182,980		190,779	7,799	104.3%
Recreation Facilities	3,545,674	3,490,903		2,996,555	(494,348)	85.8%
Total Operating Expenses	<u>3,743,594</u>	<u>3,673,883</u>		<u>3,187,334</u>	<u>(486,549)</u>	86.8%
Operating Income (Loss)	499,565	435,615		786,594	350,979	180.6%
Other Expense						
Debt Service	499,565	137,283		137,283	0	100.0%
Increase (Decrease) in Net Assets	<u>0</u>	<u>298,332</u>		<u>649,311</u>	<u>350,979</u>	0.0%

(1) The Interfund Transfers variance reflects an unbudgeted payment from the General Capital Improvement Fund

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Legacy Ridge Fund						
Revenues and Carryover						
Carryover	(192,312)	(176,286)		(176,286)	0	100.0%
Charges for Services	1,564,013	1,528,041		1,434,116	(93,925)	93.9%
Interest Income	0	0		20,953	20,953	N/A
Interfund Transfers	218,000	199,833		218,000	18,167	109.1%
Other Financing Sources	219,873	219,873		219,873	0	100.0%
Total Revenues and Carryover	<u>1,809,574</u>	<u>1,771,461</u>		<u>1,716,656</u>	<u>(54,805)</u>	96.9%
Operating Expenses						
Central Charges	98,780	90,482		101,895	11,413	112.6%
Recreation Facilities	1,710,794	1,681,711		1,472,322	(209,389)	87.5%
Total Operating Expenses	<u>1,809,574</u>	<u>1,772,193</u>		<u>1,574,217</u>	<u>(197,976)</u>	88.8%
Increase (Decrease) in Net Assets	<u>0</u>	<u>(732)</u>		<u>142,439</u>	<u>143,171</u>	0.0%

**City of Westminster
Financial Report
For Eleven Months Ending November 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues and Carryover						
Carryover	192,312	176,286		176,286	0	100.0%
Charges for Services	1,404,129	1,376,046		1,236,723	(139,323)	89.9%
Interfund Transfers	617,272	565,833	(1)	624,391	58,558	110.3%
Other Financing Sources	219,872	219,872		219,872	0	100.0%
Total Revenues and Carryover	<u>2,433,585</u>	<u>2,338,037</u>		<u>2,257,272</u>	<u>(80,765)</u>	96.5%
Operating Expenses						
Central Charges	99,140	92,498		88,884	(3,614)	96.1%
Recreation Facilities	1,834,880	1,809,192		1,524,233	(284,959)	84.2%
Total Operating Expenses	<u>1,934,020</u>	<u>1,901,690</u>		<u>1,613,117</u>	<u>(288,573)</u>	84.8%
Operating Income	499,565	436,347		644,155	207,808	147.6%
Other Expense						
Debt Service	<u>499,565</u>	<u>137,283</u>		<u>137,283</u>	0	100.0%
Increase (Decrease) in Net Assets	<u><u>0</u></u>	<u><u>299,064</u></u>		<u><u>506,872</u></u>	<u><u>207,808</u></u>	169.5%

(1) The Interfund Transfers variance reflects an unbudgeted payment from the General Capital Improvement Fund

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE NOVEMBER 2009

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/	
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	325,447	1,521	326,969	311,487	1,884	313,371	4	-19 4
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	268,426	7,272	275,698	231,249	10,811	242,059	16	-33 14
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	224,736	644	225,380	219,451	950	220,401	2	-32 2
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	191,356	1,531	192,887	183,949	166	184,115	4	825 5
SHOPS AT WALNUT CREEK 104TH & REED TARGET	188,948	1,031	189,978	183,356	1,174	184,530	3	-12 3
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	180,962	541	181,503	160,808	625	161,433	13	-13 12
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	169,820	756	170,576	171,869	8,380	180,250	-1	-91 -5
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	142,543	1,038	143,582	202,199	2,470	204,669	-30	-58 -30
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	141,566	1,188	142,753	139,315	12,302	151,618	2	-90 -6
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	131,538	942	132,481	165,917	3,802	169,718	-21	-75 -22
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	105,547	16,560	122,108	117,641	4,921	122,562	-10	237 0
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	120,907	377	121,284	84,612	743	85,354	43	-49 42
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	105,502	82	105,583	55,011	71	55,082	92	15 92
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	95,072	341	95,413	103,091	466	103,558	-8	-27 -8
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	12,992	69,076	82,068	3,910	44,060	47,971	232	57 71

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE NOVEMBER 2009

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	69,469	619	70,088	51,719	277	51,996	34	123	35
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	69,216	118	69,334	67,461	52	67,513	3	125	3
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	59,513	484	59,997	51,181	4,245	55,426	16	-89	8
WILLOW RUN 128TH & ZUNI SAFEWAY	57,431	519	57,949	45,887	131	46,018	25	295	26
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	56,959	884	57,844	58,469	674	59,143	-3	31	-2
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	41,130	605	41,735	41,675	492	42,167	-1	23	-1
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	33,189	0	33,189	174	0	174	18999	*****	18999
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	30,023	295	30,317	20,688	116	20,804	45	154	46
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	26,776	65	26,841	29,656	1,997	31,653	-10	-97	-15
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	26,478	110	26,589	21,917	22	21,939	21	406	21
	<u>2,875,549</u>	<u>106,598</u>	<u>2,982,147</u>	<u>2,722,691</u>	<u>100,832</u>	<u>2,823,523</u>	<u>6</u>	<u>6</u>	<u>6</u>

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE NOVEMBER 2009

Center Location Major Tenant	/----- General Sales	YTD 2009 General Use	-----/ Total	/----- General Sales	YTD 2008 General Use	-----/ Total Sales	/--- %Change	---/ Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,847,951	54,139	3,902,090	4,236,840	25,758	4,262,598	-9	110	-8
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	3,195,811	157,099	3,352,909	2,342,804	310,651	2,653,455	36	-49	26
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	2,542,800	19,157	2,561,957	2,382,568	83,750	2,466,319	7	-77	4
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,311,303	47,455	2,358,758	2,326,240	17,014	2,343,254	-1	179	1
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,228,554	11,974	2,240,527	2,259,506	25,605	2,285,111	-1	-53	-2
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	2,218,550	14,605	2,233,155	3,018,422	58,536	3,076,958	-27	-75	-27
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,971,610	7,682	1,979,292	1,004,745	6,368	1,011,114	96	21	96
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,873,444	18,576	1,892,020	2,039,076	35,274	2,074,351	-8	-47	-9
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,769,173	14,666	1,783,838	2,237,947	26,509	2,264,455	-21	-45	-21
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,684,275	20,749	1,705,023	1,348,036	43,654	1,391,690	25	-52	23
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,256,647	164,152	1,420,799	1,414,549	263,776	1,678,326	-11	-38	-15
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,163,115	7,078	1,170,193	1,208,445	6,690	1,215,135	-4	6	-4
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	921,408	4,284	925,692	1,086,671	5,680	1,092,351	-15	-25	-15
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	787,281	3,127	790,409	781,249	8,292	789,541	1	-62	0
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	713,365	6,093	719,458	702,747	2,634	705,381	2	131	2

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE NOVEMBER 2009

Center Location Major Tenant	/----- YTD 2009 -----/			/----- YTD 2008 -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	641,800	3,539	645,339	664,890	4,216	669,106	-3	-16	-4
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	543,509	5,260	548,769	615,202	28,776	643,978	-12	-82	-15
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	510,394	9,203	519,597	588,258	6,735	594,993	-13	37	-13
WILLOW RUN 128TH & ZUNI SAFEWAY	467,218	3,102	470,320	550,292	3,521	553,813	-15	-12	-15
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	447,471	2,698	450,169	467,840	10,915	478,755	-4	-75	-6
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	314,790	24,750	339,540	635	0	635	49443	*****	53338
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	276,418	5,792	282,210	317,622	5,956	323,577	-13	-3	-13
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	262,788	48,622	311,410	279,132	23,525	302,656	-6	107	3
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	257,765	1,390	259,155	239,053	2,901	241,954	8	-52	7
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	246,117	2,331	248,447	258,672	1,410	260,082	-5	65	-4
	<u>32,453,558</u>	<u>657,521</u>	<u>33,111,079</u>	<u>32,371,441</u>	<u>1,008,146</u>	<u>33,379,586</u>	0	-35	-1



Agenda Item 8 B

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Replacement Fire Engine Purchase
Prepared By: Bill Work, Deputy Fire Chief
Tim Burandt & Mike Lynch, Fire Lieutenants

Recommended City Council Action

1. Authorize the purchase of a Pierce Velocity "Pump Under Cab" fire engine from Front Range Fire Apparatus in an amount not to exceed \$576,416.
2. Authorize trade-in of the 1995 Pierce engine (#5112) to Front Range Fire Apparatus for the minimum amount of \$25,000.

Summary Statement

- Funds have been allocated in the 2010 budget for a \$100,000 down payment for the replacement of a 1995 Pierce Fire Engine (#5112).
- City Council reapproved sole vendor status for Pierce Manufacturing, Inc. in 2006 for a five year period. Pierce Manufacturing, Inc. has had a sole source relationship with the City for supplying fire apparatus since 1994.
- Formal bids were not requested from other manufactures. Staff did do a comparative cost analysis of this fire engine design with three other fire departments that recently took delivery of similar units. Staff found this pricing to be competitive and fair.
- This purchase is being requested to be made now in order to purchase a Detroit Series 60 motor. These motors will be unavailable after the first of the year due to new emissions requirements. The 2010 motors will cost \$25,000 - \$30,000 more and will not have the same high performance output. The Detroit Series 60 motor is what is currently in most of the fire apparatus and will help to maintain a level of standardization for parts and maintenance.
- Having this sole vendor relationship with Pierce has allowed standardization of several items: stocking spare parts, mechanic training, fire engineer training and operation, trouble shooting, and dealer support. Staff is very pleased with the Pierce fleet.
- Front Range Fire Apparatus has offered a minimum trade-in price of \$25,000 for the 1995 Pierce engine that is being replaced. The trade-in value could go up to \$30,000 if sold for that amount prior to delivery. This trade-in amount is considered competitive.
- Delivery will be delayed to the 4th Quarter 2010 to avoid a 2010 lease payment.

Expenditure Required: \$576,416

Source of Funds: \$100,000 down payment (Fire Department Operating Budget)
\$451,416 financed through future lease payments (Fire Department Operating Budget)
\$25,000 from trade-in

Policy Issues

1. Does City Council want to accept the Pierce Manufacturing, Inc. bid using the sole source status?
2. Does City Council want to approve the trade-in of the 1995 Pierce fire engine to Front Range Fire Apparatus, using the trade-in value to offset the total replacement cost of the new engine?

Alternatives

1. City Council could direct staff to go out to bid. Staff does not recommend this alternative for several reasons. Staff has been very pleased with the fire apparatus purchased from Pierce. The true value when comparing fire apparatus is not just the purchase price. Quality of product, the ability to meet the bid specifications, and the value to fleet maintenance and fire department operators to have consistency in the type of product they work on and operate have all been considered.
2. City Council could choose to not trade-in the old fire engine. This old fire engine could be sent to auction or marketed in some other fashion for resale. Staff does not believe either of these alternatives will net the City additional value. Trading in the old engine to Front Range Fire Apparatus also puts the burden of brokering the truck and the associated issues connected to that resale on the dealer instead of the City.
3. City Council could choose to delay this purchase until later in 2010. Staff does not recommend this alternative due to the desire to be able to purchase the Detroit Series 60 motor. This is the motor currently used in most fire apparatus and it will not be available after the first of the year. The Detroit DD13 motor that will take its place has to meet new emissions requirements and will cost \$25,000 - \$30,000 more.

Background Information

The new fire engine will replace an existing 1995 Pierce engine that is currently being used by the Fire Department in a limited capacity as a reserve unit. Justification for replacing this fire engine includes the following:

- Engine has over 128,000 miles and 11,894 hours of run time.
- Body and compartments are rusting requiring body work to repair.
- Engine is 15 years old and does not incorporate the latest safety features and firefighting capabilities. These missing features include independent front suspension with disc brakes, roll-over protection, multiplexed electrical systems, and compressed air foam systems.

The new fire engine is expected to be placed into service at Fire Station One. The current Engine One (#5118) will move into reserve status.

Pump Under Cab (PUC) Design:

The City purchased a Pierce Velocity PUC fire engine in 2008. This “pump under cab” design is the latest revolutionary technology change that Pierce has developed to address concerns from the fire service. Basically, this new design eliminates the transfer case between the motor and the pump. This change shortens the power train/pump spacing needs. The result is that the pump is now accessed almost as easily as the motor, making it more efficient and safer for the mechanics. This design also allows the fire engine to be on a shorter wheelbase and allows the cabinet space to increase. The shorter wheelbase allows for greater maneuverability within the neighborhoods that have tighter streets. The City’s Fleet Maintenance and Fire Department staffs have endorsed this technology and have given this design very favorable review.

Price Comparisons:

Staff conducted price comparisons with three other fire departments that have recently purchased a similarly designed PUC fire engine from Pierce. The Westminster 2008 Velocity PUC fire engine is also illustrated for comparison. Staff did take out and add option pricing for all of these units so that the comparative costs would be an equally equipped comparison. Specific breakdown of these various price comparisons can be supplied by staff if so desired.

2010 Westminster PUC	2008 Westminster PUC	2010 Boulder, CO PUC	2010 Aspen, CO PUC	2010 Burning Mountain, CO PUC
\$576,416	\$536,475	\$648,000	\$588,344	\$577,473

Preferred options are the compressed air foam system (CAFS), independent front suspension, multi-plexed electrical system and side-roll protection. CAFS has been part of the most recent City of Westminster Fire Department apparatus purchases. This advanced technology offers increased firefighting capability and safety by providing more effective extinguishment for a wide variety of fire situations such as weed fires, flammable liquid fires and structure fires. The independent front suspension is the latest engineering advance that allows improved stability and handling, and in Pierce’s case allows for front wheel disc brakes. This improved handling and braking capability are significant safety improvements. The multi-plexed electrical system is preferred due to reduced problems and ease of maintenance when it comes to electrical repairs. The side-roll protection is strictly a firefighter safety issue and enhances protections levels for the firefighters inside the cab in the event of a rollover type accident.

Delivery time is expected to be in September 2010.

Specification and Dealer Evaluations:

Staff has been pleased with the facilities at Front Range Fire Apparatus as well as their ability to do warranty work and to provide support such as parts replacement.

Previous evaluation revealed that Pierce had the fewest exceptions and concerns in terms of meeting the City’s specifications. One of the biggest concerns in this area was with the proposed compressed air foam systems (CAFS). Pierce is the only manufacture that provides a CAFS that is designed by Pierce for their fire apparatus. Other vendors specify a third party product that creates concerns for reliability, service work, and compatibility with existing department owned CAFS.

Engineering:

- Pierce is ISO 9001 certified. This type of certification is highly regarded in terms of assuring quality and attention to detail in all aspects of the manufacturing process.
- The independent front suspension, which provides better driver control and operation, is a third party add-on for most other manufacturers
- The electrical multi-plexing is an engineering feature that has greatly reduced maintenance issues in correcting electrical problems. The City’s fleet maintenance personnel highly endorse this product. Pierce has had this type of electrical system design for seven years. The multi-plexing specified by the other manufacturers is a third party add-on that is relatively new to the industry and has a limited track record in terms of adequately assessing reliability.

Warranty:

Warranty and service work after the sale are very important considerations that have been evaluated. Front Range Fire Apparatus and Pierce Manufacturing have received high ratings and customer satisfaction. The City of Westminster Fire Department would rate its experience with Front Range Fire Apparatus and Pierce as excellent. There have been several complex repair issues over the last several years with the Pierce engines that were handled in a very expedient and professional manner by the dealer and manufacturer. One example involved a major motor problem with a unit purchased in 2004. Altitude issues required some major engineering and re-fabrication to upsize the turbo and still get the motor to fit within the cab. Pierce returned the fire engine back to the factory and corrected the problem satisfactorily. While the truck was out of service, Pierce provided a loaner fire engine in order to not compromise emergency services. This type of response to a problem is just one reason why staff has been very satisfied with the Pierce product.

Sole Source Status:

The City has a history of sole source status with Pierce Manufacturing, Inc. The City has been buying Pierce fire apparatus since 1988. The first sole “vendor” status was established in 1994. The most recent renewal of this sole source relationship was approved in 2006. The Pierce product tends to be more expensive than their competitors, but buyers realize a higher quality product that has an excellent reputation in terms of quality, reliability, engineering, customer service and satisfaction.

Sole source status has several direct benefits for the City. Having fire apparatus from a sole source vendor has allowed the City to stock a number of Pierce parts. Having these parts in stock at Fleet Maintenance allows for a faster turn around time on a number of repairs. Sole source vending of fire apparatus has allowed several of the City’s mechanics to develop their skills in very specific areas and has increased their expertise because they do not have to deal with a variety of different systems design. The City’s Fleet Division endorses sole source status with Pierce Manufacturing. Additionally, Fleet Maintenance has invested in the hardware and software needed to accommodate the diagnostic testing on the engine, transmission, and anti-lock braking systems of the Pierce units. The expertise that Fleet Maintenance has developed on other operating systems, such as the CAFS, ladder racks, multi-plexing and the like has greatly increased due to standardization of product. Fire Department operators/drivers have also benefited by having like apparatus to work with. Driving, handling, pump operation, routine maintenance, have all been improved by not having to deal with a variety of design and quality in the apparatus.

Trade-In:

Front Range has offered a minimum guaranteed trade-in price of \$25,000. There is a possibility that if the truck can be sold prior to the delivery of the new truck, then Front Range will increase the trade-in value to \$30,000. The buyer accepts the terms that delivery of the trade-in would not occur until the delivery of the new engine. This trade-in value is felt to be fair and significantly more than what sending the fire engine to auction would bring.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Cumulative Purchases over \$50,000 in 2009

Prepared By: Joe Lachermeier, Purchasing Officer

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by awarding a contract to Alpine Waste & Recycling, ratify past purchases and approve future 2009 expenses with Alpine Waste & Recycling up to a maximum \$60,000. In addition, ratify and approve expenditures to Global Mounting Solutions, up to a maximum of \$108,941.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- During routine year end audits of purchases cumulatively greater than \$50,000 for the calendar year, staff identified one vendor as needing Council authorization and one vendor that was identified as being paid more than what had been previously approved by Council earlier in 2009.
- Funds were previously appropriated in the 2009 Budget and are available in the appropriate Operating Budgets for the purchases.

Expenditure Required: \$108,253 (Global Mountain Systems)
\$60,000 (Alpine Waste & Recycling)

Source of Funds: General Fund – Police and General Services Departments Operating Budgets

Policy Issue

Should Council approve the purchase of commodities that total over \$50,000 in 2009?

Alternative

Do not approve the purchases as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more conservative and prudent approach is to treat the smaller transactions as larger purchases that are subject to Council approval.

Background Information

In November, the City's Internal Auditor and the City's Purchasing Officer conducted an audit of all City purchases to determine if the aggregate amounts paid to one vendor exceeded \$50,000. One vendor was identified that did not have Council approval for purchases over \$50,000, and one vendor was identified as being paid more than what had been approved by Council earlier in 2009. Staff is seeking ratification of these past purchases made in 2009. Funds are available in the appropriate budgets for these expenditures.

The details of these purchases are as follows:

Alpine Waste & Recycling provides solid waste disposal and recycling services for the City. Alpine provides the following services to the City: Citizen Recycling at the Municipal Service Center, roll off carts for the Adopt-A-Street program, a recycling dumpster at Big Dry Creek, additional pick ups for Parks Recreation and Libraries for special events, special pick ups at the City's greenhouse as well as pick up for any overflowing dumpsters at all City facilities. The total amount paid to Alpine Waste for services provided will not exceed \$60,000 in 2009.

Global Mounting provides ruggedized laptops, warranties and time and materials repairs for the City's Public Safety and Information Technology Departments. During the June 22nd City Council meeting, Council authorized expenditures with Itronix in the amount of \$60,688 for a maintenance warranty on 79 Itronix GoBook II ruggedized mobile laptop computers that were purchased in 2005. Payment was made to Global Mounting Solutions as the vendor that supplied the Itronix GoBook II to the City. In addition to the amount previously authorized by City Council, the City made additional purchases with Global Mounting totaling \$48,253 for a 90-day warranty extension, docking station warranty, and several time and material repairs. The City will not exceed expenditures of \$108,941 with Global Mounting Solutions Inc.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Swim & Fitness Center - Custodial Services Contract

Prepared By: Jerry Cinkosky, Facilities Manager
Peggy Boccard, Recreation Services Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with DiTirro Building Services in the amount of \$54,555 to provide day porter and nightly custodial services at the Swim & Fitness Recreation Center.

Summary Statement

- On November 5, 2009, a request for proposals (RFP) for both daytime and nightly custodial services at Swim & Fitness Recreation Center was sent to eight custodial service companies.
- Building Operations & Maintenance Division and Swim & Fitness Center Staff held a pre-bid meeting and walkthrough on November 13, 2009, with the five custodial firms that responded to the RFP.
- On November 19, 2009, a bid opening was held with DiTirro Building Services submitting the lowest most responsive bid.
- Based on DiTirro Building Services' submittal of the lowest competitive bid and their past performance providing custodial services at the Swim & Fitness Center, Staff is recommending awarding a custodial services contract to DiTirro Building Services for both daytime and nightly cleaning services

Expenditure Required: \$54,555

Source of Funds: General Fund - General Services Building Operations & Maintenance
2010 Operating Budget (\$22,068)
General Fund - Parks, Recreation and Libraries 2010 Operating Budget
(\$32,487)

Policy Issue

Should City Council authorize the City Manager to sign a contract with DiTirro Building Services for the provision of daytime and nightly after hour cleaning services?

Alternative

Direct Staff to continue the use of in-house daytime custodial staff. Staff is not recommending this approach based on the overall cost savings associated with using contract custodial services for the provision of this type of service.

Background Information

Over the past 23 years, the City has successfully used contract custodial services to provide nightly cleaning services in all City facilities. It is estimated that the practice of using contractual cleaning service has saved the City an average of \$350,000 annually.

Typically, daytime cleaning services at the City's recreation centers have been accomplished with the use of in-house custodial staff. In the past, Staff's decision to keep in-house custodial staff at the recreation centers was based on the ability to direct staff for particular cleaning needs and the flexibility to use cleaning staff to set up and tear down tables and chairs after meetings, events, and classes throughout the day. In addition to flexibility needs, there have always been concerns from recreation facility staff that contract custodial employees may not be as customer service oriented as custodial staff employed by the City.

In June 2009, the in-house custodian position at the Swim & Fitness Center became vacant and the decision was made to experiment with using contract custodial services for this position. Staff's decision was based on an estimated amount cost savings of \$20,000 by using contractual staffing. Staff then contacted DiTirro Building Services (the existing nightly custodial services provider at Swim & Fitness Center) regarding the possibility of adding daytime custodial services.

Swim & Fitness Center Staff drafted cleaning requirements specific to the needs of that facility based on peak times of customer usage as well as the duties that would normally be required of the now vacant custodial position. DiTirro Building Services was successful for those six months with providing both daytime and nightly cleaning requirements with no noticeable difference in the quality of service as compared to the in-house custodial staff.

As DiTirro Building Services was already under contract to provide nightly cleaning services at the Swim & Fitness Center, the addition of daytime services would increase the total cost of custodial services to over \$50,000, therefore requiring a formal bidding process and the approval of City Council.

On November 5, 2009, Staff sent out a request for proposals to eight custodial service companies. A pre-bid meeting and walkthrough was held on November 13, 2009. During the pre-bid meeting, Staff handed out the nightly cleaning specifications along with the customized daytime cleaning requirements that had been in use for the previous six months. A bid opening was held on November 19, 2009, with four custodial firms submitting proposals.

Bid results are as follows:

	Nightly Services	Daytime Services	Total
DITIRRO BUILDING SERVICES	\$22,068.00	\$32,487.00	\$54,555.00
EXPERT CONTRACT MAINTENANCE	\$22,800.00	\$36,000.00	\$58,800.00
SERVICE SOLUTIONS	\$34,800.00	\$39,600.00	\$74,400.00
FLOOR MAX	\$32,677.80	\$49,163.76	\$81,841.56

Based on DiTirro Building Services' submittal of the lowest competitive bid and successful performance over the past six months providing both daytime and nightly custodial cleaning services at the Swim & Fitness Recreation Center; Staff is recommending awarding a custodial services contract to DiTirro Building Services to provide seven days per week daytime and nightly cleaning services.

The recommendation to approve a custodial services contract at the Swim & Fitness Recreation Center supports the City Council's Strategic Plan Goal of Financially Sustainable City Government through well maintained City infrastructure and facilities and effective cost containment/control measures for living within revenues and budget.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Second Amendment to Pinnacle Towers, LLC, Radio Tower Site Lease Agreement

Prepared By: Walter Mathews, IV, Assistant City Attorney

Recommended City Council Action

Authorize the City Manager to execute the Second Amendment to Tower Site Lease Agreement with Pinnacle Towers, LLC, and the City of Arvada in an amount not to exceed \$27,946.44.

Summary Statement

- The City of Westminster and the City of Arvada share an 800 MHz radio system pursuant to an Intergovernmental Agreement (“IGA”) authorized by the Westminster City Council and the Arvada City Council. A critical component of this system is the radio tower site on Eldorado Mountain.
- In 2004, a new lease agreement (“Tower Site Lease”) with Pinnacle Towers, LLC, was authorized by both City Councils.
- Prior to the expiration of the Tower Site Lease in June of 2009, the parties agreed to amend the Tower Site Lease to allow for a six-month extension up to December 31, 2009, so that terms could be reached for a new agreement.
- The parties agreed to a Second Amendment to the Tower Site Lease (“Second Amendment”) for use of the radio tower site on Eldorado Mountain.
- Monthly lease payments will remain at the current rate of \$4,478.60 until July 1, 2010, at which time the monthly rate will increase by \$179.14 through June 30, 2010, resulting in a monthly rate of \$4,657.74, to be equally shared by both Cities.
- Westminster’s cost for the year 2010 is \$27,946.44, a \$1,074.84 increase from 2009.

Expenditure Required: Total contract cost for the shared site lease is \$55,892.88; Westminster’s portion is \$27,946.44.

Source of Funds: General Fund - Police Department Operating Budget

Policy Issue

Should the City enter into a Second Amendment to the Tower Site Lease Agreement with Pinnacle Towers, LLC, in the amount of \$27,946.44 for the City of Westminster's portion of the Eldorado Mountain site lease of the Westminster/Arvada shared 800 MHz radio system?

Alternatives

City Council could choose not to authorize the signing of the Second Amendment to renew the lease for the Eldorado Mountain radio site location. This course of action is not recommended, since it could leave the City of Westminster and the City of Arvada without a site location capable of powering the main microwave components of the joint radio system. This would render the joint 800 MHz radio system out of service. Currently, Pinnacle Towers, LLC, is the only site location able to meet the microwave projection criteria of our complex radio system.

Background Information

In 1992 and again in 1999, the Cities of Westminster and Arvada authorized an agreement with Eldorado Communications for the use of a radio tower site on Eldorado Mountain as a transmitter site for a radio system. In August of 1999, both City Councils again authorized an agreement with Eldorado Communications for the utilization of this radio tower site. In 2004, a new lease agreement ("Tower Site Lease") with Pinnacle Towers, LLC, was authorized by both City Councils that included a one-year term, renewable for four additional one-year terms, and a 5% per year lease fee increase. Prior to the expiration of the 2004 agreement, the mountain top tower site was purchased by Pinnacle Towers, LLC, a Global Signals Company. During the term of the Tower Site Lease, in 2006, Pinnacle Towers, LLC, was purchased by Crown Castle of Canonsburg, Pennsylvania. Prior to the expiration of the Tower Site Lease, in June of 2009, the parties agreed to amend the Tower Site Lease to allow for a six-month extension up to December 31, 2009, so that terms could be reached for a new agreement. After lengthy negotiations, the parties agreed to a Second Amendment to extend and renew the Tower Site Lease.

The Second Amendment reduces the 5% escalation charged in previous years to a 4% cost increase to the Cities for the term of the extension. The term of the Second Amendment will be from January 1, 2010 through December 31, 2010, and the Tower Site Lease is renewable for five additional and consecutive one-year terms.

The City of Westminster is responsible for delivering public safety services to the community, and depends on complex radio communication components in order to communicate. The location of these components and their maintenance requires cooperation and trust. Since 1992, the City of Westminster and the City of Arvada have worked under an IGA that enabled them to share the "backbone" portion of the 800 MHz radio system. This partnership has proven successful and has saved both Cities considerable costs. Both Cities depend on each other for radio communication needs. The City of Westminster's radio system serves Police, Fire, Public Works and Utilities, and Parks, Recreation and Libraries.

Both Cities recognize the critical role that system components and their respective locations play. Therefore, they continue to work collectively to accomplish optimum performance of the shared 800 MHz radio system. The original IGA that set this partnership in motion continues to pay dividends.

In the past, Arvada and Westminster have leased the Eldorado Mountain radio site in order to project a necessary microwave path for the shared radio system. While the location has remained the same, the site has changed hands several times and is currently owned by Crown Castle. This location is critical to the operation of the radio system.

SUBJECT: Second Amendment to Radio Tower Site Lease # 4052897

Page 3

The reason for the increase at mid-year 2010 is because the initial anniversary date was July 1 of each preceding year and the parties are maintaining that date for purposes of the annual escalation clause (i.e., on July 1 of each succeeding year there will be a 4% increase in the rate).

It is anticipated that Arvada's City Council will approve the Second Amendment to renew the Tower Site Lease with Crown Castle for the lease of the Eldorado Mountain Radio site in the near future.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Customer Site Name:
Customer Site ID:

Crown Site Name: CO Eldorado Mountain
Crown Business Unit: 871151
License Number: 131200
Amendment Number: 226912

SECOND AMENDMENT TO TOWER SITE LEASE

This Second Amendment to Tower Site Lease (this "Amendment") is made this _____ day of _____, 2009 (the "Effective Date"), by and between Pinnacle Towers LLC, a Delaware limited liability company ("Crown"), and City of Westminster and City of Arvada, cities in the State of Colorado. ("Customer").

RECITALS:

WHEREAS, Crown (and/or certain of its affiliates and/or predecessors-in-interest) and Customer (and/or certain of its affiliates and/or predecessors-in-interest) entered into a certain Tower Site Lease dated November 15, 2004, as may have been previously amended and/or assigned, and as may be subject to any master agreement or any other agreement(s) pertaining thereto (collectively, the "Co-Location Agreement"), whereby Customer leases or licenses from Crown certain space at a telecommunications facility known as CO Eldorado Mountain, Crown BU# 871151 (the "Site"); and

WHEREAS, Crown and Customer desire to amend the Co-Location Agreement pursuant to the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to be legally bound to this Amendment as follows:

- Capitalized Terms.** Unless clear from the context in which they are used, all capitalized terms used herein shall have the same meanings ascribed to them in the Co-Location Agreement.
- Term Extension.** Notwithstanding the date of full execution of this Amendment, the current term of the Co-Location Agreement shall be extended for a period of One (1) year(s) so that such term, as extended hereby, shall expire on December 31, 2010 (the "Term").
- Term Renewals.** The Term shall automatically extend for Five (5) renewal period(s) of One (1) year(s) each unless either party provides written notice to the other of its election not to renew the Term, at least Ninety (90) days prior to the end of the then-current Term.
- Recurring Fees.** The parties hereby acknowledge and agree that, notwithstanding anything to the contrary in the Co-Location Agreement, effective as of July 1, 2010, the monthly recurring lease or license fees due under the Co-Location Agreement will increase by One Hundred Seventy-Nine and 14/100 dollars (\$179.14).

Prepared by: Rob Lehrman
Prepared on: November 23, 2009
Template Version: 11/29/07

Customer Site Name:
Customer Site ID:

Crown Site Name: CO Eldorado Mountain
Crown Business Unit: 871151
License Number: 131200
Amendment Number: 226912

5. **Recurring Fee Escalation.** Notwithstanding anything to the contrary in the Co-Location Agreement, the recurring lease or license fees due under the Co-Location Agreement shall increase on the first anniversary of the Extension Commencement Date, and every anniversary of such date thereafter by an amount equal to Four percent (4%). Licensor's failure to demand any such increase shall not be construed as a waiver of any right thereto and Licensee shall be obligated to remit all increases notwithstanding any lack of notice or demand thereof.

6. **Termination.** Notwithstanding anything to the contrary in the Co-Location Agreement, either party may terminate the Co-Location Agreement at any time by providing at least Ninety (90) days prior written notice to the other party.

7. **Modifications to Equipment.** Notwithstanding anything to the contrary in the Co-Location Agreement, Customer shall apply to make modifications to its equipment by submitting an application form to Crown (as such form may be amended by Crown from time to time). A structural analysis, AM detuning study or an intermodulation study may be required by Crown in connection with a proposed modification, and Customer will be liable for the cost thereof. Any approved modification shall be evidenced by an amendment to the Co-Location Agreement, and the approved application, together with a tower level drawing and site plan (as required by Crown), describing all of Customer's permitted equipment and the locations thereof, shall be exhibits to said amendment.

8. **Full Force and Effect; Inconsistent Terms.** Except as expressly set forth in this Amendment, the Co-Location Agreement is otherwise unmodified, shall remain in full force and effect and is incorporated and restated herein as if fully set forth at length. In the event of any inconsistencies between the Co-Location Agreement and this Amendment, the terms of this Amendment shall control. Each reference in the Co-Location Agreement to itself shall be deemed to also refer to this Amendment.

[Remainder of Page Intentionally Left Blank]

Customer Site Name:
Customer Site ID:

Crown Site Name: CO Eldorado Mountain
Crown Business Unit: 871151
License Number: 131200
Amendment Number: 226912

IN WITNESS WHEREOF, the parties have set forth their hand and seal as of the date indicated above.

CROWN:

Pinnacle Towers LLC
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____
Area: _____

CUSTOMER:

City of Westminster

By: _____
Print Name: J. Brent McFall
Title: City Manager

CUSTOMER:

City of Arvada

By: _____
Print Name: Robert G. Frie
Title: Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Semper Water Treatment Facility North Basin Roof Replacement Contract and Budget Revision

Prepared By: Dan Strietelmeier, Senior Engineer
Tom Settle, Semper Water Treatment Superintendent

Recommended City Council Action

1. Authorize the City Manager to execute a contract with B & M Roofing of Colorado Inc. in the amount of \$229,992 for the roof replacement at the Semper Water Treatment Facility North Basin Buildings, authorize a \$22,999 (10%) contingency amount bringing the total project budget to \$252,991.
2. Authorize the transfer of \$102,991 from the Country Club Village Water Main Upsize Capital Improvement Budget into the Semper Water Treatment Facility North Basin Roof Replacement Capital Project account.

Summary Statement

- The Semper Water Treatment Facility (WTF) includes two buildings housing sedimentation basins located on the northern portion of the property. The existing roofs on the two sedimentation buildings are showing signs of major deterioration.
- The buildings were constructed in 1979 and the roofs have served their purpose however leaks have been getting progressively worse for the last eight years.
- In May 2009, Staff contacted the roofing asset management firm of Garland Company, Inc. who assisted staff in evaluating the roofs and writing specifications. Garland also assisted in selecting four pre-qualified roofing contractors who were invited to submit bids on roof replacement.
- City Council is being requested to approve a contract with the lowest responsive and responsible bidder, B & M Roofing of Colorado Inc. for the replacement of the Semper WTF North Basin Roofs.
- Capital funding of \$150,000 was originally identified during the 2009 and 2010 budget process however the roofs are in need of more repair than previously thought. Based on bids received on December 1, 2009 the original budgeted amount is insufficient to complete the project.
- The Country Club Hylands Water Main Upsize Capital Projects was completed under budget and remaining funds are available to apply towards this roof replacement project.
- Staff is requesting that capital project fund savings in the amount of \$102,991 be transferred into the Semper WTF North Basin Roof Replacement capital account to fund the project

Expenditure Required: \$252,991

Source of Funds: Utility Fund Capital Improvements
-Semper WTF North Basin Roof Replacement
-Country Club Village Water Main Upsize

Policy Issues

1. Should City Council award a contract to B & M Roofing of Colorado, Inc. for the replacement of the roofs at the Semper WTF North Basins?
2. Should City Council authorize the transfer of funds to fund the project?

Alternatives

The City could choose from the following alternatives:

1. Reject all bids and rebid the project. The City received bids from four roofing contractors and it is unlikely that new bids would be less costly. The bids received were all below Garland Company's estimate for roof replacement.
2. Do not proceed with the roof replacement at the Semper WTF North Basins. The present condition of the existing roofs could become a safety hazard and the deteriorating conditions risks potential future damages to structural integrity of the building.
3. City Council could choose not to authorize the transfer of funds to finance this project. Without transferring capital budget savings into the project account, there would be insufficient funds to complete the roof replacement project. The funds are not needed in the Country Club Village Main project, and this is the highest priority use of these funds.

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

Background Information

The Semper WTF sedimentation basins are the settling and clarification portion of the drinking water process to reduce suspended solids prior to filtration. Although not regularly occupied, the buildings provide security, treatment process protection from weather and sunlight, and the ability to work on equipment during winter months. The deteriorating roofs are starting to impact the structural integrity of the buildings, which could lead to roof materials possibly falling into process water or building collapse. Staff contemplated replacement of the north basin buildings to match the recently constructed south basins, but decided steel buildings would be too visible on the north side and not fit well with the surrounding neighborhood.

With the assistance of Garland Company, Inc., the technical specifications were completed and the roofing project request for bids was sent to four reputable, pre-qualified roof installation companies. The City has successfully worked with the Garland Company on roof replacements at City Park Recreation Center, Swim & Fitness Center, City Hall, the Municipal Service Center and most recently, the Municipal Court.

The new roofs will consist of essentially the same build up and gravel surface as the existing roofs and will have a 20-year warranty. Since the buildings are not heated or cooled, the new roofs will not be insulated. Included with the project will be removal of old, obsolete solar panels from one of the buildings, and replacement of deteriorated metal decking. The condition of the decking can only be determined once the old roof has been removed. The contractors were asked to provide a unit cost to replace the metal decking with their base bid and the City will handle this cost in a City controlled allowance in the contract. An allowance is also included for re-attaching any electrical conduits associated with new metal decking. Garland Companies will provide the inspection and replacement recommendation of the exposed metal decking.

A mandatory pre-bid meeting was held on November 18, 2009 that included visual inspections of the roof. On December 1, 2009 bids were received from all four roofing contractors. As a result of the competitive bid process Staff is recommending awarding the roof replacement project to B & M Roofing

of Colorado, Inc. This recommendation is based on B & M Roofing's submittal of the lowest competitive bid and the company's successful completion of roofing projects on other City facilities.

Bids were opened on December 1, 2009 and the bid results are as follows:

<u>Contractor</u>	<u>Bid Amount (1)</u>
B & M Roofing of Colorado, Inc.	\$229,992
Alpine Roofing Co., Inc.	\$238,515
Front Range Roofing Systems LLC	\$240,176
Colorado Moisture Control, Inc.	\$263,500
Garland Company's Estimate	\$268,000

(1) Bid amount includes allowance for metal decking and electrical conduit replacement.

During the 2009-2010 budget process, \$150,000 was budgeted for this project. The bids show the project cost will be higher due in part to the deteriorating condition of the roof over the last two years and the need to replace the metal decking. The Country Club Village Water Main Upsizing project has been completed and resulted in savings in the project budget. The transfer of these savings into the Semper WTF North Basin Roof Replacement account will fully fund the project.

The roof replacement at the Semper WTF North Basin Buildings supports the City Council Strategic plan goal of "Financially Sustainable City Government" in the following area:

- Effective cost containment/control measures for living within revenues and budget
- Well maintained City infrastructures and facilities.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 A&B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Public Hearing and Action on an Amendment to the Preliminary Development Plan in the Bivins Planned Unit Development to Add as an Allowed Use “Consignment Store of Less Than 5,000 Square Feet” on Lot 1 of Block 1 of the Plaza Northwest Plat

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action

1. Hold a public hearing.
2. Approve an amendment to the Preliminary Development Plan in the Bivins Planned Unit Development to add as an allowed use “consignment store of less than 5,000 square feet,” as defined within the amended Preliminary Development Plan for Lot 1 of Block 1 of the Plaza Northwest plat. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

Summary Statement

- The proposed amendment to the Bivins Preliminary Development Plan would allow a consignment store of less than 5,000 square feet on Lot 1 of Block 1 of the Plaza Northwest plat. The property, known as the Northwest Plaza, is located at the southwest corner of 92nd Avenue and Harlan Street.
- Staff believes that the use would function like a retail store given the limitation on size (5,000 sf) and the operational characteristics of a consignment store.
- The City’s Comprehensive Land Use Plan (CLUP) designation is District Center and the proposed use is consistent with the District Center description.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

On December 8, 2009, the Planning Commission reviewed the request to amend the Bivins PDP to add “consignment store of less than 5,000 square feet” as an allowed use on Lot 1 of Block 1 of the Plaza Northwest plat. The Planning Commission voted unanimously (7-0) to recommend that the City Council support the PDP amendment.

Policy Issue

Should the City Council approve an amendment to the Preliminary Development Plan (PDP) in the Bivins Planned Unit Development (PUD) to add as an allowed use “consignment store of less than 5,000 square feet” on Lot 1 of Block 1 of the Plaza Northwest plat?

Alternative

Deny the amendment to the PDP in the Bivins PUD to add as an allowed use “consignment store of less than 5,000 square feet” on Lot 1 of Block 1 of the Plaza Northwest plat. This alternative would not allow a consignment store in the Bivins PDP.

Background Information

Nature of Request

The applicant is proposing to amend the Bivins PDP to allow a consignment store in a retail space. Neither “Consignment” nor “Consignment Store” is currently defined in the Municipal Code. The applicant is proposing, and staff supports adding, to add a definition of “Consignment” and “Consignment Store” to the PDP as follows:

“Consignment. The placing, by owner of used merchandise, of such goods in the bailment of another, while retaining ownership until the item is sold. Consignment of a product differs from donation of a product in that, with consignment, the owner of the item retains ownership until he or she receives payment for the item, and the item has generally not lost a significant amount of value due to its original quality and limited wear.

“Consignment Store. A shop or store that devotes more than 75 percent of their retail sales floor area to the sale of items of consignment.”

The use would be limited to 5,000 square feet and would function like a retail store versus a thrift store. There would be no outdoor collection or donation bins, and no delivery trucks would bring items from donation centers to this store.

Background

The 7.03-acre Bivins PUD site was created in 1980 and replatted in 1984 as the Plaza Northwest subdivision. The Bivins PUD consists of 4 lots. The allowed uses include “Retail” and “Discount Retail,” among others. “Discount Retail” is not defined in the PUD or in the Westminster Municipal Code.

The proposed consignment use would apply only to the lot (Lot 1) that contains the in-line retail space, which includes approximately 27,000 square feet of gross floor area. Other existing uses in the Bivins PUD include a liquor store, gas and convenience store, and a three-story office building. Consignment store would not be allowed on these other lots.

Location

The subject site is located at the southwest corner of 92nd Avenue and Harlan Street and is addressed as 6080 West 92nd Avenue. It is located west of the Westminster Mall. (See Attachment A - Vicinity Map). The nearest residential use is 120 feet to the north, across 92nd Avenue. Retail and office uses abut the property on three sides.

Surrounding Land Use and Comprehensive Land Use Plan Designations

Development Name	Zoning	CLUP Designation	Use
North: Trendwood Residential Subdivision	PUD	R3.5 Residential	Single Family Detached Residential
West: Westminster Price Club Center Subdivision (Costco)	PUD	District Center	Costco Retail Center
East: Westminster Mall	PUD	District Center	Retail
South: Lake Arbor Industrial Park Filing 2	PUD	District Center	Office

Site Plan Information

- **Traffic and Transportation:** Vehicular accesses to the site are via existing full turn entrances on the north from 92nd Avenue and a shared access from Harlan Street on the east.
- **Site Design:** The PDP site is currently developed with a three-story office building with separate entrances off Harlan Street and 91st Avenue; the in-line retail building where the consignment store is proposed; a gas station; and, a free standing retail building that currently houses a liquor store. The gas station, liquor store, and in-line space share common entrances, though each has its own parking area.
- **Landscape Design:** The site is currently landscaped around the existing buildings with trees, shrubs, and turf.
- **Architecture/Building Materials:** The existing buildings are constructed of brick and stone. The in-line retail building was upgraded in 2008 with exterior remodeling.
- **Signage:** Existing monument signs will remain. Building signage will be allowed per the City Code.

Municipal Code Criteria

Section 11-5-14: Standards for Approval of Planned Unit Developments, Preliminary Development Plans and Amendments to Preliminary Development Plans

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
Staff Comment: The proposed use would be in conformance with the City's Comprehensive Land Use Plan and the use would comply with all City Codes, ordinances and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
Staff Comment: The proposed amendment would not affect the site plan, architecture, or landscaping within the PUD.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
Staff Comment: The proposed amendment would include a definition of "Consignment" and "Consignment Store" to clearly indicate the parameters of the use.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
Staff Comment: The proposed amendment is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
Staff Comment: The proposed use would function as a retail store and no significant impacts are anticipated.

6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
Staff Comment: The proposed use would function as a retail store and no significant impacts are anticipated.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
Staff Comment: The proposed amendment would not affect site layout or traffic flow.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
Staff Comment: The site is fully developed and no additional right-of-way is being requested.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
Staff Comment: The proposed amendment would not affect existing utility systems or storm drainage facilities.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
Staff Comment: This criterion is not applicable.
11. The applicant is not in default or does not have any outstanding obligations to the City.
Staff Comment: The applicant is not in default or have any outstanding obligations to the City.

Public Notification

Westminster Municipal Code §11-5-13 requires the following three public notification procedures:

- Published Notice: Notice of public hearings scheduled before City Council shall be published and posted at least 4 days prior to such hearing. Notice for the City Council hearing was published in the Westminster Window on December 10, 2009.
- Property Posting: Two signs were posted on the property on Wednesday, November 25, 2009.
- Written Notice: The applicant has provided the Planning Manager with a certification that he has listed the property owners that are within 300 feet of the subject property. The required notices were mailed on Wednesday November 25, 2009.

Applicant/Property Owner

Gene Pride
PNW Partners, LLC
10288 West Chatfield Avenue #300
Littleton, Colorado 80217

Service Commitment Category – not applicable

Referral Agency Responses – not applicable

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Exhibit A – Vicinity Map
- Exhibit B – Plaza Northwest Subdivision Plat
- Criteria and Standards for Land Use Applications

Vicinity Map - PDP for Bivins Subdivision



Boundaries for Lot 1 of Block 1 of Plaza Northwest Plat PDP Bivins Subdivision



Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)

11-5-14: STANDARDS FOR APPROVAL OF PLANNED UNIT DEVELOPMENTS, PRELIMINARY DEVELOPMENT PLANS AND AMENDMENTS TO PRELIMINARY DEVELOPMENT PLANS: (2534)

(A) In reviewing an application for approval of a Planned Unit Development and its associated Preliminary Development Plan or an amended Preliminary Development Plan, the following criteria shall be considered:

1. The Planned Unit Development (PUD) zoning and the proposed land uses therein are in conformance with the City's Comprehensive Plan and all City Codes, ordinances, and policies.
2. The PUD exhibits the application of sound, creative, innovative, and efficient planning principles.
3. Any exceptions from standard code requirements or limitations are warranted by virtue of design or special amenities incorporated in the development proposal and are clearly identified on the Preliminary Development Plan.
4. The PUD is compatible and harmonious with existing public and private development in the surrounding area.
5. The PUD provides for the protection of the development from potentially adverse surrounding influences and for the protection of the surrounding areas from potentially adverse influence from within the development.
6. The PUD has no significant adverse impacts upon existing or future land uses nor upon the future development of the immediate area.
7. Streets, driveways, access points, and turning movements are designed in a manner that promotes safe, convenient, and free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and pedestrian traffic.
8. The City may require rights-of-way adjacent to existing or proposed arterial or collector streets, any easements for public utilities and any other public lands to be dedicated to the City as a condition to approving the PDP. Nothing herein shall preclude further public land dedications as a condition to ODP or plat approvals by the City.
9. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with overall master plans.
10. Performance standards are included that insure reasonable expectations of future Official Development Plans being able to meet the Standards for Approval of an Official Development Plan contained in section 11-5-15.
11. The applicant is not in default or does not have any outstanding obligations to the City.

(B) Failure to meet any of the above-listed standards may be grounds for denial of an application for Planned Unit Development zoning, a Preliminary Development Plan or an amendment to a Preliminary Development Plan.



Agenda Item 10 C

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Resolution No. 57 re Right-of-Way Acquisition for 68th Avenue, Lowell Boulevard to Utica Street and Utica Street, 68th Avenue to 70th Avenue Improvements Project

Prepared By: David W. Loseman, Senior Projects Engineer
Ray Porter, Street Operations Manager

Recommended City Council Action

Adopt Resolution No. 57 authorizing City Staff to proceed with the acquisition of rights-of-way necessary for the construction of improvements for the 68th Avenue and Utica Street project, including the use of eminent domain, if necessary; and authorize an amount not to exceed \$100,000 to acquire the necessary property interests.

Summary

- One condition of the Intergovernmental Agreement (IGA) between the City and Adams County School District 50 regarding the new Westminster High School pertains to the improvement of public streets abutting the school site. The District agreed to fund the necessary street improvements, and the City agreed to manage the design and construction of the project. Additionally, the Street Division previously identified the segment of 68th Avenue located immediately east of the school property as a priority for rehabilitation in 2010.
- The final design of the proposed improvements to 68th Avenue between Utica Street and the east boundary of the school and Utica Street between 68th Avenue and 70th Avenue will be completed in January 2010. The reconstruction of the streets is expected to be underway in May of 2010.
- There are two properties from which fee simple rights-of-way or easement interests must be purchased in order to build the project.
- The attached Resolution will allow City Staff to pursue the activities needed to acquire the necessary rights-of-way for the 68th Avenue and Utica Street improvements. Staff expects that the acquisitions can be accomplished through negotiation, but is requesting authority to use the City's power of eminent domain if negotiations with the property owners do not result in the timely possession of the parcels.
- A neighborhood meeting will be held at a future date to gather neighborhood input on the street construction project.
- Adequate funds are available and have been designated in the General Capital Improvement Fund and the General Fund-Street Operations Budget for this expense.

Expenditure Required: \$75,000 (GCIF)
\$25,000 (General Fund-Street Operations Budget)

Source of Funds: General Capital Improvement Fund; and
General Fund – Public Works & Utilities 2010 Street Operations Budget

Policy Issue

Should the City proceed with right-of-way acquisitions for the 68th Avenue and Utica Street project?

Alternative

The Council could decide to not proceed with these acquisitions at this time. Staff does not recommend this action as this would create significant delays to the construction of the 68th Avenue and Utica Street project. The City is obligated to construct this project in a timely manner in accordance with the terms of the IGA between Adams School District 50 and the City (also on tonight's agenda).

Background Information

The proposed improvements to 68th Avenue between Lowell Boulevard and Utica Street and the widening of Utica Street between 68th Avenue and 70th Avenue are important due to the pending completion of the new Westminster High School, which will increase traffic on these streets when the school opens in August 2010. The majority of the work has been identified as an obligation of the two parties under the terms of the IGA between Adams School District 50 and the City. A smaller portion of the work along 68th Avenue between the east boundary of the Westminster High School property and Lowell Boulevard is a project previously identified for rehabilitation under the City's Street Maintenance Program. Staff believes it makes sense to join the two projects into one to obtain better bid prices and to save project administration costs.

Calibre Engineering, Inc. was hired to complete the final design of these roadway improvements. This design is expected to be completed in January 2010. The improvements necessitate the acquisition of additional rights-of-way from private properties located adjacent to 68th Avenue. One property is owned by Mayham Reservoir Corporation and the other by Frank Joseph Galasso. Staff believes these acquisitions can be accomplished through negotiations. However, if negotiations are not successful, the City should be prepared to pursue condemnation proceedings under the City's eminent domain authority.

Approval is sought for the expenditure of up to \$100,000 to secure the rights-of-way for the project. Up to \$25,000 of this amount will be provided from the General Fund-Street Operations Budget for the Galasso acquisition and up to \$75,000 of this amount will be provided from the General Capital Improvement Account for the Mayham Reservoir acquisition. The \$100,000 authorization should cover the cost of the property rights purchased along with costs of title commitments and insurance, appraisers, and the services of a land acquisition agent, if necessary. The attached resolution authorizes Staff to proceed with these activities.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments
- Resolution & Exhibit A

RESOLUTION

RESOLUTION NO. **57**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION FOR
RIGHT-OF-WAY ACQUISITION FOR THE 68TH AVENUE, LOWELL BOULEVARD TO
UTICA STREET AND UTICA STREET, 68TH AVENUE TO 70TH AVENUE IMPROVEMENTS**

WHEREAS, the City of Westminster has determined that it is necessary to the public health, safety and welfare to acquire certain parcels of land to accommodate the construction of the 68th Avenue, Lowell Boulevard to Utica Street and Utica Street, 68th Avenue to 70th Avenue improvements in the project area shown on the attached Exhibit A (attached); and

WHEREAS, the City will determine the fair market value of the property rights being acquired in each of the parcels; and

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

WHEREAS, a delay in the acquisition of any of the parcels could result in a delay of the 68th Avenue, Lowell Boulevard to Utica Street and Utica Street, 68th Avenue to 70th Avenue improvements, thus, creating a hardship on the general population of the City of Westminster and Adams County wishing to utilize the proposed improvements; and

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

WHEREAS, the City finds that if acquisition by condemnation of any parcel described in this resolution is commenced, immediate possession by the City may be necessary for the public health, safety and welfare in order to keep the 68th Avenue, Lowell Boulevard to Utica Street and Utica Street, 68th Avenue to 70th Avenue improvements on the desired schedule.

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

1. The City Manager is hereby authorized to establish minimum just compensation for acquisition of the property interests necessary to build the 68th Avenue, Lowell Boulevard to Utica Street and Utica Street, 68th Avenue to 70th Avenue improvements shown in Exhibit A.

2. City Staff is authorized to proceed with negotiations to acquire the necessary property interests for the project, including remainders pursuant to W.M.C section 15-1-11, on the basis of the appraised value, or such higher value as is considered just and necessary to facilitate the acquisition and avoid the necessity of condemnation.

3. The City Manager is hereby authorized to acquire such property interests consistent with applicable law, including the execution of all documents necessary to complete these purchases.

4. The City Attorney of the City of Westminster is authorized to take all necessary legal measures to acquire the property interests in question, including proceeding with condemnation of the properties in question against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceedings required to obtain property interests should normal negotiations fail or exceed the time constraints of the overall project. In the event that acquisition by condemnation is commenced, the City Attorney is further authorized to request a grant of immediate possession of the necessary property interests.

5. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the properties in question, including, without limitations, contractual services, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filing fees and charges and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property. The cost shall be charged to the 68th Avenue and Utica Street Account in the General Capital Improvement Fund and the General Fund-Public Works & Utilities Street Operations Budget Account.

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

PASSED AND ADOPTED this 21st day of December, 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office



68TH AVENUE AND UTICA STREET PROJECT EXHIBIT "A"



0 200 400 600 800 Feet



Agenda Item 10 D&E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Proposed Intergovernmental Agreement between Adams County School District 50 and the City of Westminster and Councillor's Bill No. 43 re 68th Avenue and Utica Street Project Supplemental Appropriation

Prepared By: John Carpenter, Director of Community Development
Jane Greenfield, Assistant City Attorney

Recommended City Council Action

1. Authorize the City Manager to sign an Intergovernmental Agreement (IGA) between the City of Westminster and Adams County School District 50 pertaining to the new Westminster High School.
2. Pass Councillor's Bill No. 43 on first reading appropriating \$100,000 to the 68th Avenue and Utica Street project to advance the project's design costs.

Summary Statement:

- School District 50 is constructing a new Westminster High School at the northwest corner of 68th Avenue and Utica Street, due west of existing Westminster High School. The new school is designed to accommodate up to 2,900 students and the building will house the School District 50 administrative offices. The construction of the new school raises several matters relating to annexation, building use tax, needed road improvements, etc. The IGA addresses these matters.
- The IGA includes provisions for the design and construction of approximately 2,640 linear feet of roadway widening along 68th Avenue and Utica Street.
- The IGA includes provisions for the School District to pay \$1,200,000 to the City as the estimated sales and use tax amount that would otherwise be due on construction materials, which the City has agreed to apply to the design and construction of this roadway project. \$100,000 will be paid to the City upon execution of this IGA and the remaining \$1,100,000 will be paid to the City by March 31, 2010. At that time, staff will request Council approval of a separate supplemental appropriation for the \$1,100,000 of funds to be used for construction.
- Any of the \$1,200,000 not needed for the Utica Street/68th Avenue project will be used for the realignment of Bradburn Boulevard between 72nd Avenue and 73rd to intersect 72nd Avenue at the existing Raleigh Street signalized intersection.
- A provision included in an earlier draft of the IGA that called for the City to purchase certain property from the District to be used as open space has been eliminated from the IGA. The property will remain in District ownership.
- On December 8, the School District 50 School Board approved the intergovernmental agreement.
- No additional City funds are anticipated to be used for this roadway widening project.

Expenditure Required: \$ 1,200,000

Source of Funds: Payment from Adams County School District 50

Policy Issue

Should the City enter into an IGA with Adams County School District 50 relating to the new Westminster High School?

Alternative

Do not enter into an IGA. This is not recommended since this would leave unresolved issues related to the construction of the new high school.

Background Information

The School District 50 Board made a decision to consolidate Ranum and Westminster High School into one new facility. The new Westminster High School is being built on a site that includes the existing Westminster High School building, the District Stadium, the site of the now demolished District offices and an unincorporated parcel purchased by the District to include in the high school campus. The school is now under construction and will open in mid-August 2010.

Staff members from the City and the District have negotiated for over a year on an IGA to address matters of mutual concern regarding the new high school. Some of the key provisions of the IGA are as follows:

1) Construction Use Tax

Contractors constructing any kind of building within Westminster (including public and private schools) are required to pay use tax on materials used in the construction of the building. As Council is aware, the three school districts within Westminster have questioned their obligation to pay use taxes. City Code makes it clear that use tax must be paid.

School District 50 Staff provided construction bid documentation to City Staff for the new high school. Based on that, Staff estimated that approximately \$1.2 million in use tax would be owed. As part of this agreement, the District agrees to pay \$1.2 million and in exchange the City agrees to design and construct the needed improvements to Utica Street and 68th Avenue abutting the new school. Any of the \$1.2 million not needed for the street improvements would be used for future public improvement projects benefitting the new high school.

2) Utica Street/68th Avenue

Portions of Utica Street and 68th Avenue abut the new high school. Curb and gutter exists on the high school side of these streets. The City requires the developers of partially developed streets to fully improve those streets as a part of their development project.

Construction activity for the new school is damaging Utica Street and 68th Avenue. Plus, the streets need to be widened at the main entrances to the school to accommodate left turn lanes. Final curb and gutter and pavement widening is needed on the non-school sides of the roadway. As a result, the streets abutting the school will likely need to be fully reconstructed.

The IGA provides that the school will pay a total of \$1.2 million to the City, which the City will use for the street improvement project, including an initial \$100,000 which the City will use to hire a consultant to prepare street construction drawings. The City will bid out and oversee the construction of the streets that will occur between April 2010 and mid-August 2010. Based on recent construction activity, Staff believes that the Utica Street/68th Avenue improvements will cost less than \$1.2 million. Any funds not needed for the Utica Street/68th Avenue project will be used for the realignment of Bradburn Boulevard north of 72nd Avenue to intersect 72nd Avenue at the Raleigh Street intersection. The widened and improved 68th Avenue and Utica Street will greatly enhance traffic circulation in this part of South Westminster.

3) Utica Street Right-of-Way

The District owns a strip of land about 15-feet in width located south of 70th Avenue on the west side of Utica Street abutting the Hidden Lake subdivision. The District will donate this land to the City at no cost to use as needed for the improvement of Utica Street.

4) Annexation

A portion of the site for the new high school includes an unincorporated lot (4315 68th Avenue). The District agrees to submit a request to annex this property (annexation petition) to the City. The City agrees to annex the property within three months of the date of the annexation petition. Annexing this parcel is critical to providing water and sewer services to the new school, as well as police and emergency services.

5) 70th Avenue ROW

The District also agrees to provide land, if needed, for right-of-way to construct 70th Avenue east of Utica Street when that “missing link” of 70th Avenue is built in the future.

6) Raleigh Street Vacation

The City agrees to vacate Raleigh Street south of 70th Avenue where it abuts School District 50 property on both sides. This area is a part of the high school site and is not needed for Raleigh Street.

7) Utility Considerations

The District agrees to complete certain public utility improvements to the City’s raw water line and an 8” domestic water line.

8) Deferred Parking

The District agrees to provide additional parking spaces for the school complex if the Auxiliary Services Center (bus barn) is vacated and the School District has adequate funds to complete redevelopment of the Auxiliary Services Center.

Approval of the attached Councillor’s Bill is necessary to appropriate a portion of the school’s costs to a project budget. This appropriation will amend the General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Intergovernmental	7500.40345.0000	\$0	<u>\$100,000</u>	\$100,000
Total Change to Revenues			<u>\$100,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
68 th Avenue and Utica Street Project	80975030946.80400.8888	\$0	<u>\$100,000</u>	\$100,000
Total Change to Expenses			<u>\$100,000</u>	

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Adams County School District 50/City of Westminster IGA with Exhibit A
- Councillor’s Bill

INTERGOVERNMENTAL AGREEMENT

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

This Intergovernmental Agreement (“Agreement”) is made and entered into this ____ day of _____, 2009, by and between the **CITY OF WESTMINSTER**, a Colorado home rule municipality, hereinafter called the “City,” and **ADAMS COUNTY SCHOOL DISTRICT NO. 50**, a Colorado school district, hereinafter called the “School District.” The City and School District may be referred to collectively or separately as “Parties” or “Party” or “Jurisdiction.”

RECITALS

WHEREAS, the City and the School District are both political subdivisions of the State of Colorado; and

WHEREAS, the people of the state of Colorado have authorized political subdivisions to cooperate with each other and contract in matters set out in this IGA through the Colorado Constitution, Article XIV, Section 18(2)(a), Article XX and Article XI, Section 7; and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S. is to implement the aforesaid provisions of the Colorado Constitution and authorizes the Parties to enter into intergovernmental agreements; and

WHEREAS, pursuant to Sections 22-32-110 and 124, C.R.S. the School District has the authority to plan for, construct, and operate public school services for the residents of the City; and

WHEREAS, Section 29-1-203(1), C.R.S. provides, inter alia, that governmental units may cooperate with one another to provide any function, service or facility lawfully authorized to each of the contracting units, including sharing of costs; and

WHEREAS, the School District has commenced construction of a new Westminster High School, administrative offices, and related athletic and parking facilities (collectively hereinafter, the “School”) generally located north of 68th Avenue, south of 70th Avenue and east of Utica Street, on land presently owned or occupied by the School District, a portion of which land remains in unincorporated Adams County; and

WHEREAS, the School District desires to annex that portion of its property to the City of Westminster in order that the School may receive all urban services offered by the City; and

WHEREAS, the City desires certain improvements to the roadway system serving the new School so as to benefit the School’s users and to mitigate the impacts of the new School on the surrounding neighborhood; and

WHEREAS, the City and the School District desire to jointly fund the aforementioned improvements and enter into an agreement to facilitate the construction of improvements to the surrounding roadway system serving the School; and

WHEREAS, the District has engaged one or more contractors who have in turn retained subcontractors (collectively hereinafter, the “the School Contractors”) to construct the School and any improvements associated therewith; and

WHEREAS, the City and School District agree that it is in the best interests of their respective constituents to enter into this Intergovernmental Agreement to address the respective obligations of the Parties hereto regarding the annexation of the unincorporated parcel and the construction of the School and related roadway improvements; and

WHEREAS, under Westminster Municipal Code Title IV, a use tax is levied on the privilege of using, storing, distributing, or otherwise consuming in the City any article of tangible personal property ; and

WHEREAS, the City and the School District disagree as to whether or not the City may impose a use tax on the construction materials used for schools; and

WHEREAS, as the Contractor is responsible for the payment of use taxes on said construction materials, the City and the School district acknowledge that this cost would be passed on to the School District; and

WHEREAS, the City and the School District wish to resolve any differences between them regarding payment of use taxes in connection with the School District's construction of a new Westminster High School and related facilities;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, as well as the mutual agreements made by the Parties set forth herein, the Parties agree and contract as follows:

AGREEMENT

SECTION 1. 68th Avenue/Utica Street Improvements

1.1 As a separate construction project at the new School, the City shall design and construct the following roadway improvements (the "Roadway Improvements"):

- a. The Roadway Improvements shall consist of widening the roadways abutting the School to the west and south to accommodate left turn lanes into the three principal entrances to the School.
- b. The Roadway Improvements shall be designed and completed in a sequence not to unreasonably interfere with:
 - i. the operation of the current Westminster High School at 4276 W. 68th Ave., Westminster;
 - ii. construction of the School; or
 - iii. opening and operations of the School commencing August 15, 2010.
- c. The Roadway Improvements shall include all geotechnical, surveying, engineering design or other work necessary to evaluate and reconstruct 68th Avenue between Osceola Street and Utica Street, and Utica Street between 68th Avenue and 70th Avenue. This shall include full depth subgrade and pavement replacement as determined by the City, based on the reports submitted from the mutually agreed upon design engineer and/or their subcontractors.
- d. The Roadway Improvements shall include streetlights and curb and gutter along 68th Avenue and Utica Street, to the extent that existing curb and gutter is not usable.
- e. To the extent that the Roadway Improvements require widening of W. 68th Avenue and Utica Street, such widening shall not encroach upon School District property where public right-of-way (including the land to be donated to the City pursuant to paragraph 1.2(h)) is available and shall not impede the School District's planned or actual use of the property.
- f. The Roadway Improvements shall not include sidewalk on the south side of 68th Avenue. The School District may install 8-foot wide sidewalk on the street sides abutting the School site.
- g. The School District and the City shall co-operate in co-coordinating their respective construction activities regarding the sidewalk and Roadway Improvements so as to facilitate the efficient and cost-effective installation of both. The City and its contractor shall ensure that the School District has access to W. 68th Avenue for its own construction purposes at all times during construction of the Roadway Improvements.
- h. The School District shall provide access across its property adjacent to W. 68th Avenue and Utica Street to the City and its contractor in order that the City may complete the Roadway Improvements in a timely manner, provided that such access shall not interfere with School District activities on the property and the City or its contractor shall be responsible for any damage to School District property resulting from such access.

1.2 The School District owns a strip of land approximately 15 feet in width located south of 70th Avenue and west of Utica Street, as well as a parcel of land south of 68th Avenue. From these two parcels, the District will donate a strip of land approximately 15 feet wide to the City to add to the existing Utica Street ROW. Such strip shall be immediately adjacent to the west side of the existing Utica/68th Avenue ROW and shall extend from 70th Avenue on the north to the south boundary of the School District's parcel on the south side of 68th Avenue. This dedication may occur on the subdivision plat described hereinafter in subsection 3.4.

1.3 The City shall coordinate the design and construction documents for the Roadway Improvements to accommodate the proposed topography, vehicular driveways and general improvements of the School site perimeter. The City shall be responsible for contracting the project and providing construction supervision. The City shall provide all design, engineering and construction documents to the District for

its review prior to the City's commencing work. Construction of these Roadway Improvements shall be completed no later than August 15, 2010.

- 1.4. The City shall obtain bids and award one or more contracts to construct the Roadway Improvements from qualified contractors in accordance with its normal practices.

SECTION 2. Reimbursement of Construction Costs.

2.1 The School District shall reimburse the City for its costs to construct the Roadway Improvements in a total amount not to exceed one million, two hundred thousand dollars (\$1,200,000), payable as described below:

- a. The School District shall pay the sum of one hundred thousand dollars (\$100,000) within seven days of execution of this agreement to provide funding to the City for design and engineering work for the Roadway Improvements. Such sum shall be credited to the School District's total obligation under this section 2.1.
- b. The School District shall pay the sum of one million one hundred thousand dollars (\$1,100,000) to the City at the time that the City awards the contract for construction of the Roadway Improvements but in no event later than March 31, 2010.
- c. After completion of the Roadway Improvements, if the City's costs of completing the Roadway Improvements total less than the sums paid by the School District in subsections a. and b. above, the City shall apply the remaining sum so paid by the School District to the realignment of Raleigh Street and Bradburn Boulevard, which project is to be undertaken when adequate funding is available, currently expected to be 2011 or 2012.

2.2 This Section 2 shall not apply to use tax due from the Contractor or its subcontractors from their use of construction equipment in the City pursuant to §4-2-10, W.M.C. The Contractor and its subcontractors are required to declare such construction equipment and remit any use tax due on or before the date the construction equipment is located in the City pursuant to §4-1-7(C), W.M.C.. The City shall collect use tax due, if any, on construction equipment from the Contractor and its subcontractors directly in the same manner as other taxes as provided by the City's Code.

2.3 Provided that the aforesaid payments are timely remitted, the City shall not commence, or if commenced shall hold in abeyance, all remedies for the enforcement or collection of use taxes, including those described in Title IV of the Code, and shall neither exercise such actions against the School Contractors nor their successors, assigns, agents, employees, officers, attorneys, shareholders, divisions, directors, and representatives; *excepting however*, that if the same or the School District fails to timely remit the aforesaid payments, the City may immediately commence such actions without further notice or review.

2.4 The provisions of Section 2 of this Agreement are intended for the sole purpose of resolving the issue of use tax on the School project without further delay, and shall not be construed as a waiver by the City of its authority to demand full payment of use tax upon construction by the School District within the City or as a waiver by the School District of any issue it may raise in defense thereof.

SECTION 3. Annexation of 4315-68th Avenue.

3.1 The School District shall promptly prepare and file a Petition for Annexation to the City of Westminster. The area to be included in the annexation map shall include the property located at 4315 68th Avenue and the abutting right-of-way for 68th Avenue as shown on the attached Exhibit A.

3.2 The City shall take all steps necessary to expeditiously complete the annexation requested by the School District, and shall act on the annexation ordinance no later than three (3) months after a complete Petition, meeting all City and state requirements, is filed.

3.3 The School District shall dedicate any additional right-of-way along 68th Avenue or Utica Street needed for construction of the improvements described in Section 1, above, provided that no such

dedication shall interfere with the School District's currently planned use of the high school site. This dedication may occur on the subdivision plat described hereinafter.

3.4 Upon the completion of the annexation to the City of Westminster, the School District shall complete a subdivision platting or replatting of its property affected by this agreement, and shall include on the plat all right-of-way and utility easement dedication contemplated by this agreement.

3.5 At such time in the future that the City so requests, the School District shall dedicate, at no cost to the City, a portion of land for the Right of Way of the 70th Avenue alignment between Utica Street and Raleigh Street, as depicted on Exhibit B, attached hereto, so long as such dedication does not interfere with current or currently planned school facilities.

SECTION 4. Vacation of Raleigh Street.

4.1 The City shall, upon request by the School District, vacate that portion of Raleigh Street, extending south from the southernmost right-of-way line of 70th Avenue into the School District's property, so as to allow the former street to be utilized in the site plan for the new School.

SECTION 5. Utility Considerations.

5.1 The School District shall complete the following utility improvements currently underway as part of the new School construction and the redevelopment of the current Westminster High School:

- a. The City's raw water line, generally located along the north south alignment of Raleigh Street, shall be improved as required to accommodate the proposed grading and construction on the school site at no cost to the City.
- b. The City's 8" water line, generally located on the eastern edge of the School's site shall be relocated and lowered to a location mutually agreeable to the parties. Design drawings must be approved by the City before construction of this water line begins, which approval shall not unreasonably be withheld.
- c. The detention pond (Detention Pond E) shall be graded to accommodate the 8" water line and will meet design specifications as reasonably established by the City.

5.2 Any major redevelopment at the current site of the School District's Auxiliary Services Center at 7002 Raleigh Street in Westminster shall require construction of a water quality pond to serve the site and any tributary treated storm water on the high school site, which is within the Little Dry Creek drainage basin. For the purposes of this provision, major redevelopment of the Auxiliary Services Center shall mean demolition of the current improvements currently being used for bus services and maintenance and as a purchasing warehouse, replaced by construction of new improvements or impervious surfaces for purposes other than bus services, maintenance or warehouse, such as educational programs or a parking lot.

SECTION 6. Deferred Parking.

The School District commits to providing adequate on-site parking spaces. The City has requested that the School District provide an additional 120 spaces at the School to meet the parking demand of students, faculty, staff, and visitors. The School District shall provide additional parking spaces if the Auxiliary Services Center is relocated and the School District has adequate funds to complete major redevelopment of the Auxiliary Services Center.

SECTION 7. Shared Facility Use.

The School District shall allow the City to use certain School District facilities at no cost, provided that the City's use of such facilities do not interfere with the School District's needs for and use of its own facilities. The School District shall have discretion to approve or deny any request by the City for use of School District facilities. The City shall reimburse the School District for any incremental

School District staffing, including, without limitation, custodial and maintenance personnel, necessary to make its facilities available to the City.

The foregoing activities would be cooperatively scheduled between the parties each year based upon the School District's calendar.

SECTION 8. Liability and Insurance.

8.1 Liability

During the term of this Agreement, each Party hereto shall take all steps necessary to extend coverages under its general liability and other insurance coverages to the real property and improvements subject to this Agreement and owned by that Party, and to that Party's activities on its property or pursuant to this Agreement.

8.2 Insurance

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

SECTION 9. Notice

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally delivered or served by facsimile. Notice shall also be sufficient if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when received by the other Party.

City of Westminster
Attention: City Manager
4800 West 92nd Avenue
Westminster, Colorado 80031
Fax: 303-706-3921

Adams County School District #50
Attention: Roberta Selleck, Superintendent of Schools
2401 West 80th Avenue
Denver, Colorado 80221
Fax: 303-657-9450

SECTION 10. Other Agreement Provisions

10.1 Integration and Amendment

This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings concerning the subject matter contained herein. Only an instrument in writing signed by the Parties may amend this Agreement. In the event this Agreement conflicts with or is inconsistent in any way with other agreements between the Parties concerning joint use of facilities, the terms of this Agreement shall be controlling.

10.2 Venue

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought only in the County of Adams, State of Colorado.

10.3 Severability

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

10.4 Waiver of Breach

A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

10.5 Non-discrimination

Neither of the Parties hereto shall discriminate on the basis of age, sex, race, religion, ancestry, national origin, physical or mental disability in any policy or practice.

10.6 Compliance with Law

The work and services to be performed hereunder shall be done in compliance with all applicable federal, state and local laws, ordinances, rules and regulations.

10.7 Recording

The School District and the City may record this Agreement, and both Parties shall receive a copy of the recorded Agreement in such event.

10.8 No Third Party Beneficiaries

This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto, and shall not be deemed to confer any rights on any person or entity not named as a Party hereto, except only that the parties acknowledge that the School District intends that its Contractors are the beneficiaries of Section 2 hereof regarding the enforcement and collection of use taxes on construction materials for the School.

10.9 Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party.

10.10 Interpretation

The Parties represent that this Agreement is the result of negotiations between the parties. In the event of any legal action to interpret any provision of this Agreement, the Agreement shall not be construed in favor of or against the interests of either Party as a result of its participation in drafting the document, and both Parties shall be deemed to have contributed equally to the language contained herein.

10.11 Attorney/Expert Fees

In the event legal action is necessary to enforce any provisions of this Agreement, or to recover damages for the breach hereof, the prevailing party shall recover from the defaulting party all of its costs and reasonable attorney and expert fees.

10.12 Default

Time is of the essence. If any payment or any other condition, obligation, or duty its not timely made, tendered, or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the no-defaulting party shall have the right to an action for specific performance or damages or both.

10.13 TABOR

The City and the School District intend that this Agreement comply with Colorado law and, in particular, with the provisions of Article X, Section 20, of the Constitution of the State of Colorado. To the extent funds have not been irrevocably pledged for any obligation in this Agreement, such obligation shall be contingent on and subject to prior appropriation of funds by the governing body of the obligated party. The Parties agree to use their best efforts and shall exercise their utmost good faith to appropriate funds necessary to meet their respective obligations under this Agreement.

10.14 Execution

This Agreement shall not be binding upon any Party hereto unless and until the governing entities of each Party have formally approved this Agreement as required by law and caused the Agreement to be signed in a manner and by authorized persons consistent with applicable statute, policy, ordinance or resolution.

10.15 Additional Documents or Action

The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

10.16 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this _____ day of _____, 2009.

ADAMS COUNTY SCHOOL DISTRICT NO.50

By: _____
Roberta Selleck
Superintendent of Schools

APPROVED AS TO FORM:

Semper Miller Mooney & Farmington PC

By: _____
Patrick Mooney

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall
City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney's Office

Exhibit to IGA:

Exhibit A – Map of School District property to be annexed

S:\Adams 50\Westminster HS\IGA 091208

INTERGOVERNMENTAL AGREEMENT

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

This Intergovernmental Agreement (“Agreement”) is made and entered into this ____ day of _____, 2009, by and between the **CITY OF WESTMINSTER**, a Colorado home rule municipality, hereinafter called the “City,” and **ADAMS COUNTY SCHOOL DISTRICT NO. 50**, a Colorado school district, hereinafter called the “School District.” The City and School District may be referred to collectively or separately as “Parties” or “Party” or “Jurisdiction.”

RECITALS

WHEREAS, the City and the School District are both political subdivisions of the State of Colorado; and

WHEREAS, the people of the state of Colorado have authorized political subdivisions to cooperate with each other and contract in matters set out in this IGA through the Colorado Constitution, Article XIV, Section 18(2)(a), Article XX and Article XI, Section 7; and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S. is to implement the aforesaid provisions of the Colorado Constitution and authorizes the Parties to enter into intergovernmental agreements; and

WHEREAS, pursuant to Sections 22-32-110 and 124, C.R.S. the School District has the authority to plan for, construct, and operate public school services for the residents of the City; and

WHEREAS, Section 29-1-203(1), C.R.S. provides, inter alia, that governmental units may cooperate with one another to provide any function, service or facility lawfully authorized to each of the contracting units, including sharing of costs; and

WHEREAS, the School District has commenced construction of a new Westminster High School, administrative offices, and related athletic and parking facilities (collectively hereinafter, the “School”) generally located north of 68th Avenue, south of 70th Avenue and east of Utica Street, on land presently owned or occupied by the School District, a portion of which land remains in unincorporated Adams County; and

WHEREAS, the School District desires to annex that portion of its property to the City of Westminster in order that the School may receive all urban services offered by the City; and

WHEREAS, the City desires certain improvements to the roadway system serving the new School so as to benefit the School’s users and to mitigate the impacts of the new School on the surrounding neighborhood; and

WHEREAS, the City and the School District desire to jointly fund the aforementioned improvements and enter into an agreement to facilitate the construction of improvements to the surrounding roadway system serving the School; and

WHEREAS, the District has engaged one or more contractors who have in turn retained subcontractors (collectively hereinafter, the “the School Contractors”) to construct the School and any improvements associated therewith; and

WHEREAS, the City and School District agree that it is in the best interests of their respective constituents to enter into this Intergovernmental Agreement to address the respective obligations of the Parties hereto regarding the annexation of the unincorporated parcel and the construction of the School and related roadway improvements; and

WHEREAS, under Westminster Municipal Code Title IV, a use tax is levied on the privilege of using, storing, distributing, or otherwise consuming in the City any article of tangible personal property ; and

WHEREAS, the City and the School District disagree as to whether or not the City may impose a use tax on the construction materials used for schools; and

WHEREAS, as the Contractor is responsible for the payment of use taxes on said construction materials, the City and the School district acknowledge that this cost would be passed on to the School District; and

WHEREAS, the City and the School District wish to resolve any differences between them regarding payment of use taxes in connection with the School District's construction of a new Westminster High School and related facilities;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, as well as the mutual agreements made by the Parties set forth herein, the Parties agree and contract as follows:

AGREEMENT

SECTION 1. 68th Avenue/Utica Street Improvements

1.1 As a separate construction project at the new School, the City shall design and construct the following roadway improvements (the "Roadway Improvements"):

- a. The Roadway Improvements shall consist of widening the roadways abutting the School to the west and south to accommodate left turn lanes into the three principal entrances to the School.
- b. The Roadway Improvements shall be designed and completed in a sequence not to unreasonably interfere with:
 - i. the operation of the current Westminster High School at 4276 W. 68th Ave., Westminster;
 - ii. construction of the School; or
 - iii. opening and operations of the School commencing August 15, 2010.
- c. The Roadway Improvements shall include all geotechnical, surveying, engineering design or other work necessary to evaluate and reconstruct 68th Avenue between Osceola Street and Utica Street, and Utica Street between 68th Avenue and 70th Avenue. This shall include full depth subgrade and pavement replacement as determined by the City, based on the reports submitted from the mutually agreed upon design engineer and/or their subcontractors.
- d. The Roadway Improvements shall include streetlights and curb and gutter along 68th Avenue and Utica Street, to the extent that existing curb and gutter is not usable.
- e. To the extent that the Roadway Improvements require widening of W. 68th Avenue and Utica Street, such widening shall not encroach upon School District property where public right-of-way (including the land to be donated to the City pursuant to paragraph 1.2(h)) is available and shall not impede the School District's planned or actual use of the property.
- f. The Roadway Improvements shall not include sidewalk on the south side of 68th Avenue. The School District may install 8-foot wide sidewalk on the street sides abutting the School site.
- g. The School District and the City shall co-operate in co-coordinating their respective construction activities regarding the sidewalk and Roadway Improvements so as to facilitate the efficient and cost-effective installation of both. The City and its contractor shall ensure that the School District has access to W. 68th Avenue for its own construction purposes at all times during construction of the Roadway Improvements.
- h. The School District shall provide access across its property adjacent to W. 68th Avenue and Utica Street to the City and its contractor in order that the City may complete the Roadway Improvements in a timely manner, provided that such access shall not interfere with School District activities on the property and the City or its contractor shall be responsible for any damage to School District property resulting from such access.

1.2 The School District owns a strip of land approximately 15 feet in width located south of 70th Avenue and west of Utica Street, as well as a parcel of land south of 68th Avenue. From these two parcels, the District will donate a strip of land approximately 15 feet wide to the City to add to the existing Utica Street ROW. Such strip shall be immediately adjacent to the west side of the existing Utica/68th Avenue ROW and shall extend from 70th Avenue on the north to the south boundary of the School District's parcel on the south side of 68th Avenue. This dedication may occur on the subdivision plat described hereinafter in subsection 3.4.

1.3 The City shall coordinate the design and construction documents for the Roadway Improvements to accommodate the proposed topography, vehicular driveways and general improvements of the School site perimeter. The City shall be responsible for contracting the project and providing construction supervision. The City shall provide all design, engineering and construction documents to the District for

its review prior to the City's commencing work. Construction of these Roadway Improvements shall be completed no later than August 15, 2010.

- 1.4. The City shall obtain bids and award one or more contracts to construct the Roadway Improvements from qualified contractors in accordance with its normal practices.

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2.1 The School District shall reimburse the City for its costs to construct the Roadway Improvements in a total amount not to exceed one million, two hundred thousand dollars (\$1,200,000), payable as described below:

- a. The School District shall pay the sum of one hundred thousand dollars (\$100,000) within seven days of execution of this agreement to provide funding to the City for design and engineering work for the Roadway Improvements. Such sum shall be credited to the School District's total obligation under this section 2.1.
- b. The School District shall pay the sum of one million one hundred thousand dollars (\$1,100,000) to the City at the time that the City awards the contract for construction of the Roadway Improvements but in no event later than March 31, 2010.
- c. After completion of the Roadway Improvements, if the City's costs of completing the Roadway Improvements total less than the sums paid by the School District in subsections a. and b. above, the City shall apply the remaining sum so paid by the School District to the realignment of Raleigh Street and Bradburn Boulevard, which project is to be undertaken when adequate funding is available, currently expected to be 2011 or 2012.

2.2 This Section 2 shall not apply to use tax due from the Contractor or its subcontractors from their use of construction equipment in the City pursuant to §4-2-10, W.M.C. The Contractor and its subcontractors are required to declare such construction equipment and remit any use tax due on or before the date the construction equipment is located in the City pursuant to §4-1-7(C), W.M.C.. The City shall collect use tax due, if any, on construction equipment from the Contractor and its subcontractors directly in the same manner as other taxes as provided by the City's Code.

2.3 Provided that the aforesaid payments are timely remitted, the City shall not commence, or if commenced shall hold in abeyance, all remedies for the enforcement or collection of use taxes, including those described in Title IV of the Code, and shall neither exercise such actions against the School Contractors nor their successors, assigns, agents, employees, officers, attorneys, shareholders, divisions, directors, and representatives; *excepting however*, that if the same or the School District fails to timely remit the aforesaid payments, the City may immediately commence such actions without further notice or review.

2.4 The provisions of Section 2 of this Agreement are intended for the sole purpose of resolving the issue of use tax on the School project without further delay, and shall not be construed as a waiver by the City of its authority to demand full payment of use tax upon construction by the School District within the City or as a waiver by the School District of any issue it may raise in defense thereof.

SECTION 3. Annexation of 4315-68th Avenue.

3.1 The School District shall promptly prepare and file a Petition for Annexation to the City of Westminster. The area to be included in the annexation map shall include the property located at 4315 68th Avenue and the abutting right-of-way for 68th Avenue as shown on the attached Exhibit A.

3.2 The City shall take all steps necessary to expeditiously complete the annexation requested by the School District, and shall act on the annexation ordinance no later than three (3) months after a complete Petition, meeting all City and state requirements, is filed.

3.3 The School District shall dedicate any additional right-of-way along 68th Avenue or Utica Street needed for construction of the improvements described in Section 1, above, provided that no such

dedication shall interfere with the School District's currently planned use of the high school site. This dedication may occur on the subdivision plat described hereinafter.

3.4 Upon the completion of the annexation to the City of Westminster, the School District shall complete a subdivision platting or replatting of its property affected by this agreement, and shall include on the plat all right-of-way and utility easement dedication contemplated by this agreement.

3.5 At such time in the future that the City so requests, the School District shall dedicate, at no cost to the City, a portion of land for the Right of Way of the 70th Avenue alignment between Utica Street and Raleigh Street, as depicted on Exhibit B, attached hereto, so long as such dedication does not interfere with current or currently planned school facilities.

SECTION 4. Vacation of Raleigh Street.

4.1 The City shall, upon request by the School District, vacate that portion of Raleigh Street, extending south from the southernmost right-of-way line of 70th Avenue into the School District's property, so as to allow the former street to be utilized in the site plan for the new School.

SECTION 5. Utility Considerations.

5.1 The School District shall complete the following utility improvements currently underway as part of the new School construction and the redevelopment of the current Westminster High School:

- a. The City's raw water line, generally located along the north south alignment of Raleigh Street, shall be improved as required to accommodate the proposed grading and construction on the school site at no cost to the City.
- b. The City's 8" water line, generally located on the eastern edge of the School's site shall be relocated and lowered to a location mutually agreeable to the parties. Design drawings must be approved by the City before construction of this water line begins, which approval shall not unreasonably be withheld.
- c. The detention pond (Detention Pond E) shall be graded to accommodate the 8" water line and will meet design specifications as reasonably established by the City.

5.2 Any major redevelopment at the current site of the School District's Auxiliary Services Center at 7002 Raleigh Street in Westminster shall require construction of a water quality pond to serve the site and any tributary treated storm water on the high school site, which is within the Little Dry Creek drainage basin. For the purposes of this provision, major redevelopment of the Auxiliary Services Center shall mean demolition of the current improvements currently being used for bus services and maintenance and as a purchasing warehouse, replaced by construction of new improvements or impervious surfaces for purposes other than bus services, maintenance or warehouse, such as educational programs or a parking lot.

SECTION 6. Deferred Parking.

The School District commits to providing adequate on-site parking spaces. The City has requested that the School District provide an additional 120 spaces at the School to meet the parking demand of students, faculty, staff, and visitors. The School District shall provide additional parking spaces if the Auxiliary Services Center is relocated and the School District has adequate funds to complete major redevelopment of the Auxiliary Services Center.

SECTION 7. Shared Facility Use.

The School District shall allow the City to use certain School District facilities at no cost, provided that the City's use of such facilities do not interfere with the School District's needs for and use of its own facilities. The School District shall have discretion to approve or deny any request by the City for use of School District facilities. The City shall reimburse the School District for any incremental

School District staffing, including, without limitation, custodial and maintenance personnel, necessary to make its facilities available to the City.

The foregoing activities would be cooperatively scheduled between the parties each year based upon the School District's calendar.

SECTION 8. Liability and Insurance.

8.1 Liability

During the term of this Agreement, each Party hereto shall take all steps necessary to extend coverages under its general liability and other insurance coverages to the real property and improvements subject to this Agreement and owned by that Party, and to that Party's activities on its property or pursuant to this Agreement.

8.2 Insurance

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

SECTION 9. Notice

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally delivered or served by facsimile. Notice shall also be sufficient if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when received by the other Party.

City of Westminster
Attention: City Manager
4800 West 92nd Avenue
Westminster, Colorado 80031
Fax: 303-706-3921

Adams County School District #50
Attention: Roberta Selleck, Superintendent of Schools
2401 West 80th Avenue
Denver, Colorado 80221
Fax: 303-657-9450

SECTION 10. Other Agreement Provisions

10.1 Integration and Amendment

This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings concerning the subject matter contained herein. Only an instrument in writing signed by the Parties may amend this Agreement. In the event this Agreement conflicts with or is inconsistent in any way with other agreements between the Parties concerning joint use of facilities, the terms of this Agreement shall be controlling.

10.2 Venue

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought only in the County of Adams, State of Colorado.

10.3 Severability

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

10.4 Waiver of Breach

A waiver by any party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

10.5 Non-discrimination

Neither of the Parties hereto shall discriminate on the basis of age, sex, race, religion, ancestry, national origin, physical or mental disability in any policy or practice.

10.6 Compliance with Law

The work and services to be performed hereunder shall be done in compliance with all applicable federal, state and local laws, ordinances, rules and regulations.

10.7 Recording

The School District and the City may record this Agreement, and both Parties shall receive a copy of the recorded Agreement in such event.

10.8 No Third Party Beneficiaries

This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto, and shall not be deemed to confer any rights on any person or entity not named as a Party hereto, except only that the parties acknowledge that the School District intends that its Contractors are the beneficiaries of Section 2 hereof regarding the enforcement and collection of use taxes on construction materials for the School.

10.9 Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party.

10.10 Interpretation

The Parties represent that this Agreement is the result of negotiations between the parties. In the event of any legal action to interpret any provision of this Agreement, the Agreement shall not be construed in favor of or against the interests of either Party as a result of its participation in drafting the document, and both Parties shall be deemed to have contributed equally to the language contained herein.

10.11 Attorney/Expert Fees

In the event legal action is necessary to enforce any provisions of this Agreement, or to recover damages for the breach hereof, the prevailing party shall recover from the defaulting party all of its costs and reasonable attorney and expert fees.

10.12 Default

Time is of the essence. If any payment or any other condition, obligation, or duty its not timely made, tendered, or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper. If the non-defaulting party elects to treat this Agreement as being in full force and effect, the no-defaulting party shall have the right to an action for specific performance or damages or both.

10.13 TABOR

The City and the School District intend that this Agreement comply with Colorado law and, in particular, with the provisions of Article X, Section 20, of the Constitution of the State of Colorado. To the extent funds have not been irrevocably pledged for any obligation in this Agreement, such obligation shall be contingent on and subject to prior appropriation of funds by the governing body of the obligated party. The Parties agree to use their best efforts and shall exercise their utmost good faith to appropriate funds necessary to meet their respective obligations under this Agreement.

10.14 Execution

This Agreement shall not be binding upon any Party hereto unless and until the governing entities of each Party have formally approved this Agreement as required by law and caused the Agreement to be signed in a manner and by authorized persons consistent with applicable statute, policy, ordinance or resolution.

10.15 Additional Documents or Action

The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

10.16 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this _____ day of _____, 2009.

ADAMS COUNTY SCHOOL DISTRICT NO.50

By: _____
Roberta Selleck
Superintendent of Schools

APPROVED AS TO FORM:

Semper Miller Mooney & Farmington PC

By: _____
Patrick Mooney

CITY OF WESTMINSTER, COLORADO

By: _____
J. Brent McFall
City Manager

ATTEST:

By: _____
Linda Yeager, City Clerk

APPROVED AS TO FORM:

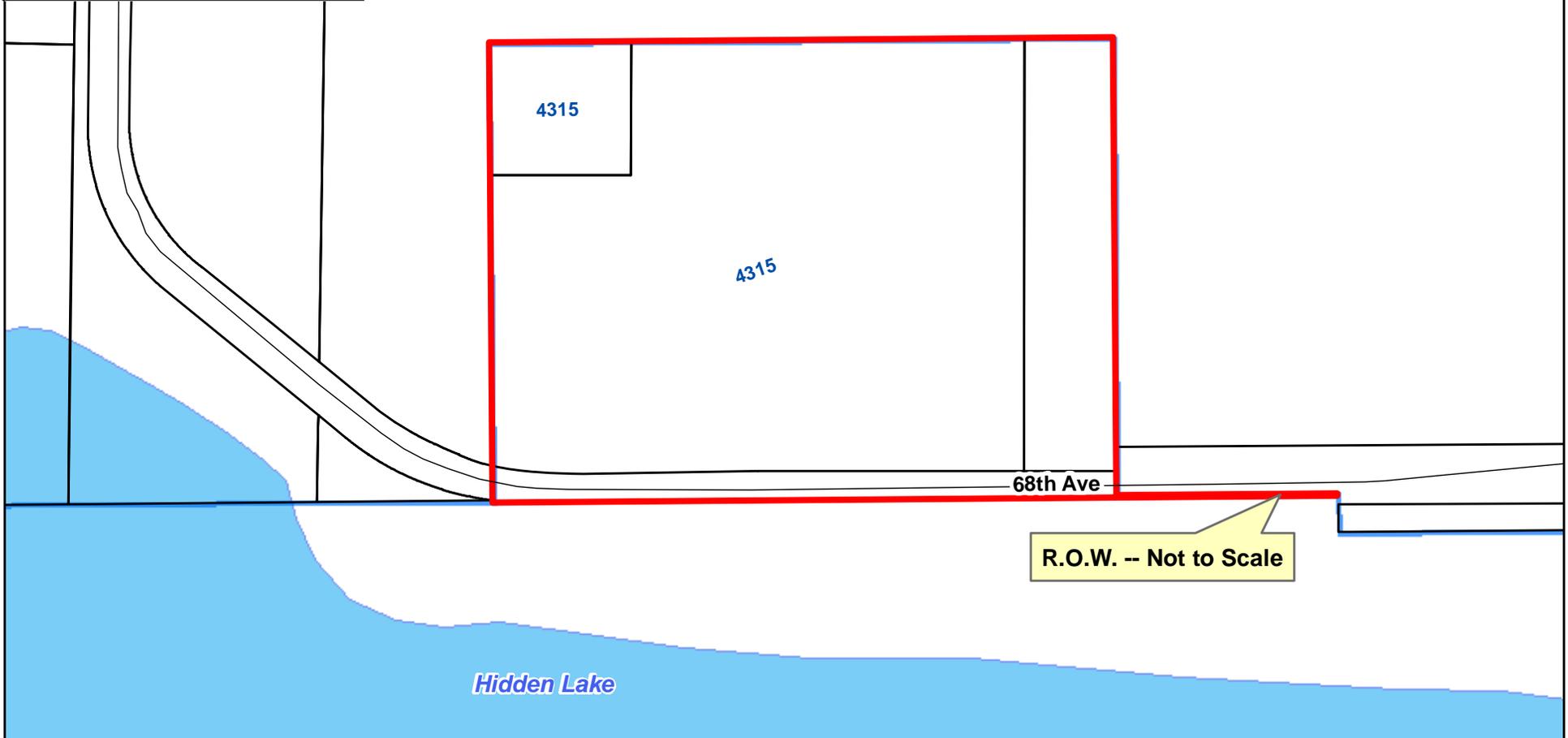
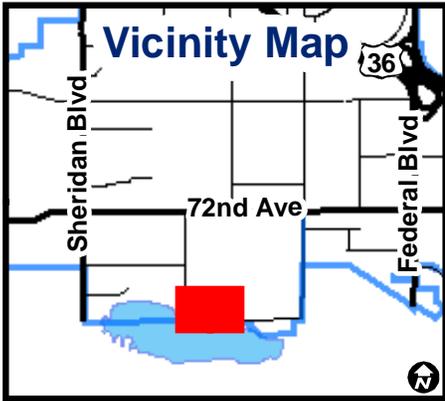
By: _____
City Attorney's Office

Exhibit to IGA:

Exhibit A – Map of School District property to be annexed

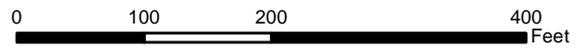
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Exhibit A to IGA



- Annexation
- Enclave
- Assessor Parcels
- City Limit
- Water Bodies

City of Westminster



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2009 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$100,000. This increase is due to the appropriation of cost participation from Adams County School District 50 for design costs necessary for the 68th Avenue and Utica Street roadway widening project.

Section 2. The \$100,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda, Item 10 D&E, dated December 21, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$100,000</u>
Total	<u>\$100,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of January, 2010.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Item 10 F

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Councillor's Bill No. 44 re Amending Chapter 23 of Title I, Repealing Chapters 6 and 7 of Title II, and Amending Chapter 2 of Title II of the Westminster Municipal Code Concerning the Transportation Commission, the Board of Adjustment and Appeals, and the Planning Commission

Prepared By: Jana Easley, Principal Planner

Recommended City Council Action

Pass Councillor's Bill No. 44 on first reading amending Chapter 23 of Title I, repealing Chapters 6 and 7 of Title II, and amending Chapter 2 of Title II of the Westminster Municipal Code concerning the Transportation Commission, the Board of Adjustment and Appeals, and the Planning Commission.

Summary Statement

- The Board of Adjustment and Appeals and the Transportation Commission would be dissolved by the passing of this Councillor's Bill.
- This proposed reduction in boards is not a result of performance-related concerns; it is simply in order to utilize the City's boards and commissions more effectively and efficiently.
- The Board of Adjustment and Appeals currently acts upon variance requests. The Planning Commission currently makes certain land use related decisions and would be an appropriate commission to decide variance requests upon the dissolution of the Board of Adjustment and Appeals.
- The function of the Transportation Commission could be handled by an adhoc citizen advisory group as needed and staff.
- The Board of Adjustment and Appeals and Transportation Commission have been conferred with on this recommendation and have been extended the offer to be put in the pool for future Boards and Commissions positions.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Board of Adjustment and Appeals and the Transportation Commission be dissolved, and should the variance function of the Board of Adjustment and Appeals be transferred to the Planning Commission?

Alternative

Do not pass the proposed Councillor's Bill. This is not recommended as staff believes the duties of the Transportation Commission and the Board of Adjustment and Appeals can be transferred to another board, commission or citizen advisory group without compromising the City's service to its customers.

Background Information

Board of Adjustment and Appeals

The Board of Adjustment and Appeals (BOA) hears applications for land use-related variance requests as one of its duties. It meets on the third Tuesday of each month on an as-needed basis. The BOA heard three requests in 2007 and none in 2008 and 2009.

Much of the reason the BOA does not hear a significant number of variance cases (1-4 cases per year) is because of the existing Planned Unit Development (PUD) process. For PUD zoned parcels, Preliminary and Official Development Plans (PDP/ODP) must be approved prior to final platting. Thereafter, any changes are processed as an amendment to the ODP (as a deviation), rather than as a variance. Variances are only processed for the relatively small portion of the City that has non-PUD zoning, meaning that the majority of requests for deviations are already handled by the Planning Commission.

A variance is defined as a departure from the provisions of a zoning ordinance, but not including the actual use or structure type. An example would be a building setback for an addition to a house in an R-1 zone. For straight-zoned (non-PUD zoned) properties, the Density Schedule in Section 11-4-5 of Chapter 4, Zoning, provides minimum setback distances for a principal building from the front, side, street side and rear property lines (see Attachment 1, Density Schedule). If the proposed addition would encroach into an interior side setback by one foot (creating a 4-foot setback, rather than the required 5-foot setback), the property owner would have to apply for a setback variance, and the BOA would hear the request and approve, approve with conditions, or deny the request. In contrast, if the property was zoned PUD, the property owner would apply for an ODP amendment to allow for a deviation from the setbacks stated in the original ODP, and the Planning Commission would render a final decision. The Planning Commission considers all non-administrative ODP amendments. A request to change a standard by 10% or less, such as a one-foot encroachment into a 10-foot required setback, would be considered administratively.

For reference, the BOA may grant a variance from the following provisions of Title XI of the Municipal Code, Land Development and Use Standards:

- a. Chapter 7, Section 4, on Off-Street Parking Requirements;
- b. Those portions of Chapter 11 specified in Section 11-11-5(F)(2) on Sign Regulations;
- c. Section 11-4-5 regarding density schedule and Section 11-4-6 regarding special regulations;
- d. Section 11-4-11, regarding Antennae Towers;
- e. Those portions of Section 11-4-12 specified in Section 11-4-12(I), on Satellite Earth Stations;
- f. Section 11-4-15 as it applies to nonconforming structures; and
- g. Section 11-4-6(O) regarding fence regulations.

If the BOA was dissolved, the review and approval or denial of variances should be transferred to the Planning Commission. The Planning Commission already hears land use-related applications (rezonings, Comprehensive Land Use Plan (CLUP) amendments, etc.), and it would be an appropriate decision-making body for variance requests.

The BOA also serves as an appeals board for administrative citations. The appeals function would be assigned to one or more hearing officers, based on the issue involved.

Transportation Commission

The Transportation Commission reviews proposals from the Regional Transportation District, participates in regional transportation study groups, receives input from citizens on transit issues and provides recommendations to the City Council on positions on transportation issues that are favorable to Westminster residents. The Commission meets on the third Wednesday of odd-numbered months, or about six times per year.

Given the high number of rapidly evolving regional transportation efforts that affect the City, it is impossible for Transportation Commission members to stay abreast of and provide meaningful feedback on these important issues while meeting so infrequently. There are, however, occasional instances in which citizen participation in certain transportation studies or projects of finite duration would be useful. The advertising bus shelter program of several years ago is a prime example of such an effort in which the citizen members of the Commission performed much of the research and participated in the negotiations with the selected vendor. The upcoming preparation of a City-wide Bicycling Master Plan may be another instance in which citizens possessing special knowledge of bicycle commuting could provide valuable input into the study. Therefore, it is recommended that a pool of citizen volunteers who are interested in various transportation matters be maintained for the purpose of participating in special task forces as the need arises. Naturally, the current members of the Transportation Commission would be invited to join that pool of volunteers.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 23 OF TITLE I, REPEALING CHAPTERS 6 AND 7 OF TITLE II AND AMENDING CHAPTER 2 OF TITLE II OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE TRANSPORTATION COMMISSION, THE BOARD OF ADJUSTMENT AND APPEALS, AND THE PLANNING COMMISSION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Sections 1-23-2, subsection (A), 1-23-3, subsection (C), 1-23-6, subsections (D) and (F), 1-23-7, 1-23-8, and 1-23-10, W.M.C., are hereby AMENDED as follows:

CHAPTER 23

ADMINISTRATIVE PENALTY CITATIONS FOR CODE VIOLATIONS

- 1-23-1: GENERAL INTENT
- 1-23-2: DEFINITIONS
- 1-23-3: AUTHORITY
- 1-23-4: PROCEDURES FOR ISSUANCE OF AN ADMINISTRATIVE CITATION
- 1-23-5: CONTENTS OF ADMINISTRATIVE CITATION
- 1-23-6: APPEAL OF ADMINISTRATIVE CITATION
- 1-23-7: PROCEDURES AND STANDARDS AT ADMINISTRATIVE CITATION APPEAL HEARINGS
- 1-23-8: DUTIES AND POWERS OF THE ADMINISTRATIVE HEARING OFFICER~~PEALS BOARD~~
- 1-23-9: FALSE INFORMATION OR REFUSAL PROHIBITED
- 1-23-10: FAILURE TO OBEY SUBPOENA
- 1-23-11: FAILURE TO ATTEND ADMINISTRATIVE CITATION APPEAL HEARING
- 1-23-12: FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER
- 1-23-13: PENALTIES ASSESSED
- 1-23-14: FAILURE TO PAY PENALTIES

1-23-2: DEFINITIONS: ~~When used in this Chapter, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:~~

(A) ~~The following words, terms and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise: **Board of Adjustment and Appeals** shall mean that Board created and authorized pursuant to Westminster Municipal Code Title II, Chapter 6.~~

~~(1B)~~ “(Administrative hearing officer)” shall mean a person appointed by the City Manager to hear and determine administrative citation appeals. The Manager may appoint an employee of the city or another person possessing qualifications acceptable to the Manager as a hearing officer to hear and receive evidence and render a decision on the law and the facts. The hearing officer may not have personally determined, in the first instance, the factual issues in controversy and may have no personal or financial interest in the outcome of the hearing.

~~(2)~~ “(City)” shall mean the City of Westminster.

~~(3C)~~ “(Code)” shall mean those provisions of the Westminster Municipal Code enumerated in Section 1-23-1(B).

~~(4D)~~ “(Enforcement official)” shall mean an employee or agent of the City authorized to enforce the ordinances of the City.

~~(5E)~~ “(Manager)” shall mean the City Manager or the Manager's designee.

(6F) **“Responsible party”** shall mean a person or entity who has violated the Code or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Chapter.

1-23-3: AUTHORITY:

(C) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate administrative citation may be issued. However, once an administrative citation has been issued for a violation of the Code, no additional administrative citation shall be issued for the same violation for ten (10) days or, if the responsible party appeals, until after the appeal has been heard and the responsible party has not complied with an administrative enforcement order of the Administrative Hearing Officer~~Board of Adjustment and Appeals (“Appeals Board”)~~ within ten (10) days of its issuance or such other time as the Administrative Hearing Officer~~Appeal Boards~~ has specified.

1-23-6: APPEAL OF ADMINISTRATIVE CITATION:

(D) If, in the opinion of the Manager, the appeal meets all of the requirements of subparagraphs (A) – (C) of this Section, the Manager shall appoint an Administrative Hearing Officer and forward the notice of appeal to that person~~the Secretary of the Appeals Board~~.

(F) As soon as practicable after receiving the written notice of appeal, the Administrative Hearing Officer appointed for that appeal~~Secretary to the Appeals Board~~ shall schedule a date, time and location for the hearing, unless, if requested by the appellant and in the sole discretion of the Administrative Hearing Officer~~Appeals Board~~, it is submitted on written brief and supporting material.

1-23-7: PROCEDURES AND STANDARDS AT ADMINISTRATIVE CITATION APPEAL HEARINGS:

(A) The procedure and format of the administrative citation appeal hearing shall follow procedures as set forth herein, and in W.M.C. section 2-6-4.

(B) Administrative citation appeal hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required by the Administrative Hearing Officer~~Appeals Board~~ or requested by any party. The request must be in writing. Failure to request discovery shall not be a basis for a continuance.

(C) The parties to an administrative citation appeal hearing shall be the responsible party and the City.

(D) The Administrative Hearing Officer~~Appeals Board~~, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness fees in the amount of \$5.00 per witness, and mileage fees at the rate provided for witnesses by statute, shall be borne by the party requesting the subpoena.

(E) The City bears the burden of proof at an administrative citation appeal hearing to establish the existence of a violation of the Code. In the case of an abatement hearing the City bears the burden of proof to establish the existence of a public nuisance.

(F) The standard of proof to be used by the Administrative Hearing Officer~~Appeals Board~~ in deciding the issues at an administrative citation appeal hearing is by a preponderance of the evidence.

(G) The Administrative Hearing Officer shall cause to be made a record of the hearing, either stenographically or by sound recording, and shall make available a transcript of the hearing to any person upon request and payment in advance of the estimated cost of the production of the transcript.

(H) The Administrative Hearing Officer shall render written decisions, accompanied by findings of fact and conclusions based thereon.

(I) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.

1-23-8: DUTIES AND POWERS OF THE ADMINISTRATIVE HEARING OFFICER~~APPEALS BOARD~~

(A) The Administrative Hearing Officer~~Appeals Board~~ shall determine whether appeals of administrative citations are valid. In doing so the Administrative Hearing Officer~~Appeals Board~~ shall determine whether the administrative citation under appeal was issued in compliance with the requirements of the City ordinances. In each case, the Administrative Hearing Officer~~Appeals Board~~ shall be charged with performing all functions relating to the final determination and order, and entertaining petitions or motions made in writing. The Administrative Hearing Officer~~Appeals Board~~ shall perform those duties and functions necessary and incidental to determining the matter, issuing

subpoenas, authorizing depositions, [administering oaths](#), hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting the hearing as a quasi-judicial proceeding.

(B) In the discretion of the [Appeals Board Administrative Hearing Officer](#), parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement may include: the issues raised by the appeal; agreed and disputed facts; copies of exhibits not previously included in the record; names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present a party's evidence and other matters as requested by the [Appeals Board Administrative Hearing Officer](#).

(C) All hearings or, when an appeal is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the [Administrative Hearing Officer Appeals Board](#) assigned to conduct the hearing or to examine the written material submitted.

(D) The admissibility of evidence shall be encouraged and the [Appeals Board Administrative Hearing Officer](#) shall consider all evidence of probative value. The [Appeals Board Administrative Hearing Officer](#) may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented.

(E) Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.

(F) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the [Appeals Board Administrative Hearing Officer](#).

(G) Whenever it appears that an appeal is not properly before the [Appeals Board Administrative Hearing Officer](#), or that the appellant for some other reason lacks jurisdiction or standing, the case may be dismissed on the motion of any party or the [Appeals Board Administrative Hearing Officer](#).

(H) Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular law or ordinance involved.

(I) The written decision of the [Appeals Board Administrative Hearing Officer](#) shall be known as an Administrative Enforcement Order.

(J) The parties may enter into a stipulated agreement which must be signed by both parties. Upon approval and acceptance by the [Appeals Board Administrative Hearing Officer](#), this agreement shall be entered as the administrative enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

(K) The [Appeals Board Administrative Hearing Officer](#) may uphold the administrative citation and all penalties, or dismiss the administrative citation and all penalties, or may waive or conditionally reduce the penalties assessed by the administrative citation. The [Appeals Board Administrative Hearing Officer](#) may also impose conditions and deadlines to correct the violation or require payment of any outstanding penalties.

(L) If the [Appeals Board Administrative Hearing Officer](#) dismisses the administrative citation and all penalties due to the City's failure to satisfy its obligations under this Chapter, the appellant's \$35 processing fee shall be promptly refunded.

(M) The [Appeals Board Administrative Hearing Officer](#) has continuing jurisdiction over the subject matter of an administrative citation appeal hearing for the purposes of granting a continuance, ordering compliance by issuing an administrative enforcement order, ensuring compliance of that order, modifying an administrative enforcement order, or, where extraordinary circumstances exist, granting a new hearing. The [Appeals Board Administrative Hearing Officer](#) may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.

1-23-10: FAILURE TO OBEY SUBPOENA: It is unlawful for any person to refuse to obey a subpoena issued by the [Appeals Board Administrative Hearing Officer](#). Any person who fails to obey a subpoena shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by confinement in jail or by both such fine and imprisonment as specified in Section 1-8-1 of this Code.

Section 2: Section 2-2-2, subsection (D) is AMENDED and NEW SUBSECTIONS (E) AND (F) ARE ADDED, Sections 2-2-4, subsection (B), and 2-2-7, W.M.C., are hereby AMENDED AND A NEW SECTION 2-2-8, W.M.C., IS ADDED to Title II, Chapter 2, PLANNING AND ZONING COMMISSION, as follows:

CHAPTER 2

PLANNING AND ZONING COMMISSION

- 2-2-1: CREATION
- 2-2-2: POWERS AND DUTIES
- 2-2-3: POLICY FROM COUNCIL
- 2-2-4: RULES AND REGULATIONS
- 2-2-5: REFERRALS TO PLANNING COMMISSION
- 2-2-6: COMMISSION RECOMMENDATIONS
- 2-2-7: ACTING CHAIRPERSON, QUORUM, ~~PROCEDURE~~
- 2-2-8: VARIANCE PROCEDURE AND STANDARDS

2-2-2: POWERS AND DUTIES: The powers and duties of the Planning Commission shall include, but not be limited to, the following: (319 1741 1970 2068)

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

(E) The review of requests for variances from the following provisions of Title XI, Land Development and Growth Management Procedures, W.M.C.:

- (1) Section 11-7-4, on Off-Street Parking Standards;
- (2) Those portions of Chapter 11 specified in Section 11-11-5(F)(2) on Sign Regulations;
- (3) Section 11-4-5 regarding density schedule and Section 11-4-6 regarding special regulations;
- (4) Section 11-4-11, regarding Antennae Towers;
- (5) Those portions of Section 11-4-12 specified in Section 11-4-12(I), on Satellite Earth Stations.
- (6) Section 11-4-15 as it applies to nonconforming structures.
- (7) Section 11-4-6 (O) regarding fence regulations.

(F) The interpretation of the Zoning Map and the Zoning District boundary lines thereon.

2-2-4: RULES AND REGULATIONS: (319 2068 2768)

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

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

2-2-7: ACTING CHAIRPERSON; QUORUM; ~~PROCEDURE~~: (2768) In the absence of the elected chairperson, the vice-chairperson shall assume the duties of the chairperson for that respective meeting.. A quorum shall consist of four (4) members, and a decision of a majority of the members present shall control. Any absent member may join in a pending decision of the board subject to section 2-1-3. All public hearings shall at a minimum be recorded electronically, or as deemed necessary by the chairperson, may be stenographically recorded by a court reporter engaged by the city and paid out of fees paid by the applicant

2-2-8: VARIANCE PROCEDURE AND STANDARDS:

(A) In addition to any procedural hearing requirements the Commission may adopt by rule, the Commission shall conduct hearings and make decisions in accordance with the following requirements:

(1) The public, the applicant and the Planning Commission shall be given notice of all variance hearings and, except as provided by Section 2-1-5(A), all hearings shall be open to the public.

(2) The Commission shall render written decisions, accompanied by findings of fact and conclusions based thereon. Conclusions based on any provision of this Chapter, Code, or any City rules or regulations shall contain a reference to such provision, rule or regulation and shall also contain the reason the conclusion is deemed appropriate in light of the facts found.

(3) All witnesses shall be sworn or shall affirm their testimony in the manner required in courts of record.

(4) The Commission shall decide on any matter within thirty-five (35) days after date of hearing thereon. Decision in favor of any applicant shall be approval of the matter requested and shall be an order to the Chief Building Inspector to carry out such action subject to any conditions imposed by the Commission.

(B) The Commission may grant a variance if it finds that all of the following requirements are satisfied, where applicable:

(1) That the strict application of the provisions of Title XI of this Code would result in practical difficulties or unnecessary hardship which is inconsistent with the general purpose and intent of this Code.

(2) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical conditions peculiar to the affected property.

(3) That these unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located.

(4) That because of such physical circumstances or conditions, the property cannot be reasonably developed in conformity with the provisions of this Code.

(5) That the special conditions and circumstances do not result from the present or prior actions of the applicant.

(6) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property.

Any application not meeting such criteria shall be denied. In approving an application meeting the above criteria, the Commission may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this Title or the various adopted codes.

(C) Decisions of the Board are final subject only to an appeal to District Court.

Section 3: Title II, Chapter 6, BOARD OF ADJUSTMENT AND APPEALS and Chapter 7, TRANSPORTATION COMMISSION, W.M.C., are hereby REPEALED.

Section 4. This ordinance shall take effect upon its passage after second reading. 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 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 11th day of January, 2010.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Councillor's Bill No. 45 re The Orchard Town Center Third Letter Amendment Relating to the Final Development Agreement Among the City of Westminster, the Westminister Economic Development Authority and Forest City Commercial Group, Inc.

Prepared By: Aaron B. Gagné, Senior Projects Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 45 as an Emergency Ordinance extending via a Third Letter Amendment the existing residential Service Commitments as assigned in the Final Development Agreement Section 7.6 dated December 30, 2004 between the City of Westminster, the Westminister Economic Development Authority and Forest City Commercial Group, Inc.

Summary Statement

- The Orchard Town Center project is located at the northeast corner of 144th Avenue and Huron Street, extending east to I-25 and north to the City boundary.
- The Final Development Agreement making the original 800 residential service commitments was executed on December 30, 2004.
- Attached is the request from the property owner requesting an extension of the residential service commitments for this development.
- Staff concurs that the depressed housing market has created a significant impact on this project that warrants the extension of service commitments.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council authorize the execution of the attached Third Letter Agreement relating to the Final Development Agreement among the City of Westminster, the Westminster Economic Development Authority and Forest City Commercial Group, Inc. extending the previously authorized 800 water and sewer service commitments at The Orchard Town Center?

Alternative

Do not authorize the execution of the Third Letter Amendment. This is not recommended as staff believes the extension is needed to avoid undue hardship to the developer that would result if the extension were not granted.

Background Information

Nature of Request

Service Commitments were committed via the Final Development Agreement for this project in December of 2004. A total of 800 Service Commitments were made available for the overall residential project, with the exact distribution of the type of commitment to be established at the time of final ODP for the residential section.

The 800 service commitments assigned via the Final Development Agreement were to be distributed as follows:

Year	Service Commitments
2005	100
2006	300
2007	400

The Final Development Agreement also stated that the service commitments were to be utilized no later than January 1, 2010. Due to the continued difficult housing market and financial crisis, the developer was unable to complete entitlements (i.e., ODP) for the residential project and is requesting an extension of the residential water and sewer service commitments over three years as in the original Agreement, commencing January 1, 2010. The new estimated schedule would be as follows:

Year	Service Commitments
2010	100
2011	300
2012	400

The service commitments would be able to be used beginning in March in the year provided and in any subsequent year, but not later than December 31, 2015.

Because of the pending expiration of the service commitment, Councillor's Bill No. 45 is recommended to be passed as an Emergency Ordinance, subject to super-majority voting requirements and if passed, the ordinance will be in full force and effect on its date of passage.

Location

The Orchard Town Center project is located at the northeast corner of 144th Avenue and Huron Street, extending east to I-25 and north to the City boundary.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Emergency Ordinance
- Proposed Third Letter Amendment
- Letter from property owner

BY AUTHORITY

ORDINANCE NO. **3493**

COUNCILLOR'S BILL NO. **45**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN EMERGENCY ORDINANCE APPROVING AND RATIFYING A THIRD
AMENDMENT TO THE FINAL DEVELOPMENT AGREEMENT AMONG THE CITY OF
WESTMINSTER, THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND
FOREST CITY COMMERCIAL GROUP, INC.**

WHEREAS, a Final Development Agreement ("FDA") among the City of Westminster, the Westminster Economic Development Authority and Forest City Commercial Group, Inc., was entered into on December 30, 2004, for the Orchard Town Center Project, located at the northeast corner of 144th Avenue and Huron Street, extending east to I-25 and north to the City boundary; and

WHEREAS, the FDA committed up to a maximum of 800 service commitments for the overall residential project, with an expiration date of January 1, 2010; and

WHEREAS, due to the continued housing market and financial crisis, the developer for the Orchard Town Center Project was unable to complete entitlements for the residential project; and

WHEREAS, the depressed housing market has created a significant impact on this Project that warrants the extension of service commitments.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. The attached Third Amendment to the Final Development Agreement Among the City of Westminster, the Westminster Economic Development Authority and Forest City Commercial Group, Inc., amending section 7.6 of the FDA to extend the expiration date for water and sewer service commitments required for the residential development up to a maximum of 800 units is hereby approved and ratified.

Section 2. Except as hereby amended, all terms of the FDA dated December 30, 2004, shall remain in effect and the same are hereby approved and ratified.

Section 3. Because the aforementioned service commitments are currently scheduled to expire on January 1, 2010, under the terms of the FDA, and because such expiration would frustrate goals and objectives of this urban renewal project and negatively affect the revenues necessary to pay the tax increment bonds that were previously issued for this Project, an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on December 21, 2009, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is enacted.

Section 4. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, READ IN FULL, AND PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE this 21st day of December, 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

**THIRD LETTER AMENDMENT TO THE FINAL
DEVELOPMENT AGREEMENT AMONG THE
CITY OF WESTMINSTER, THE WESTMINSTER
ECONOMIC DEVELOPMENT AUTHORITY AND
FOREST CITY COMMERCIAL GROUP, INC.**

This THIRD AMENDMENT dated the _____ day of December, 2009, represents the understanding of the City of Westminster (“City”), the Westminster Economic Development Authority (“Authority”) and Forest City Commercial Group, Inc. (“Forest City”), all parties to the Final Development Agreement with an effective date of December 30, 2004 (“FDA”), relating to certain provisions of the FDA:

1.0 Section 7.6 of the FDA is deleted and replaced with the following language:

Section 7.6 Water and Sewer Service Commitments. The City shall provide the Developer with the water and sewer service commitments required for the residential development up to a maximum of 800 units. The service commitments may be used beginning March 01 in the year provided and in any subsequent year, but not later than December 31, 2015. The allowable units shall be provided by the City, but are estimates and shall be finalized in the ODP: 1) 100 service commitments for 2010; 2) 300 service commitments for 2011; 3) 400 service commitments for 2012. It is anticipated that such service commitments shall be available, as set forth in this section, but such service commitments shall be made more specific in the ODP.

IN WITNESS WHEREOF, the City and the Authority each have caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

CITY:

AUTHORITY:

CITY OF WESTMINSTER, COLORADO

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, City Manager

By: _____
J. Brent McFall, Executive Director

ATTEST:

ATTEST:

By: _____
Linda Yeager, City Clerk

By: _____
Linda Yeager, Authority Secretary

DEVELOPER:

FOREST CITY COMMERCIAL GROUP, INC.

By: _____
Dimitri Vazelakis, President

Commercial Development
949 S. Hope Street
Los Angeles, CA 90015
213.488.2200 phone
213.488.9308 fax
www.forestcity.net

Brian Wynne
Forest City West
949 South Hope Street
Los Angeles, CA 90015
December 11, 2009

Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Cc: Mac Cummins, Susan Grafton

Dear Brent:

Per Section 7.6 of the Final Development Agreement (Agreement) by and between the City of Westminster (City), the Westminster Economic Development Authority, and Forest City Commercial Group (Developer), the City committed to provide Developer with the Water and Sewer Commitments required for the residential development at the Orchard Town Center of up to 800 units.

The Agreement stated that the service commitments were to be used prior to January 1, 2010. Due to the unforeseen and drastic downturn of the residential market, the residential development at the project has taken longer to materialize than originally anticipated.

We still feel that the residential component will be a vital addition to the project for a variety of reasons including horizontal mixed-use planning, increasing pedestrian traffic, leasing and marketing center, anchoring the north end of the project, as well as adding to the immediate trade area.

As such, we are respectfully requesting an extension on the deadline for use of the Water and Sewer Commitments. The original Agreement was executed in 2004 providing six years for use of the Commitments. Based on the unknown near- and intermediate-term health of the residential market in the north-Denver metro area, we are requesting the same time frame horizon for use of the commitments for an additional six years until January 1, 2016. If the City would prefer a different deadline, we would be open to discussing with you.

We greatly appreciate the relationship we have established with your team over the past several years on the Orchard project. Thank you very much for your consideration of this request. Please reach me at 213-416-2262 or brianwynne@forestcity.net any time to discuss further and coordinate next steps.

Sincerely,



Brian Wynne
Project Developer, Forest City West



Agenda Item 10 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 21, 2009



SUBJECT: Councillor's Bill No. 46 re Delinquent Payments and Service Charges for Water and Sewer Service

Prepared By: Walter Mathews, IV, Assistant City Attorney

Recommended City Council Action

Pass Councillor's Bill No. 46 on first reading amending provisions of the Westminster Municipal Code creating a lien upon the real property for unpaid sewer charges, and making modifications to current code provisions on liens for unpaid water charges.

Summary Statement

- During this economic downturn, the City has received an increase in bankruptcy filings. The majority of the bankruptcy filings that the City receives involve delinquent utility billing charges for water and sewer service.
- Currently, the City Code creates a lien for unpaid water charges. Liens for water utilities, penalties and charges become effective immediately upon the supplying of such water and are not discharged until payment in full is made. However, the Code does not expressly provide that this lien shall be first and prior to any other liens, claims, or encumbrances. Liens for City services and improvements are "governmental liens," which may be made first and prior to other liens and encumbrances.
- Currently, the City Code does not provide for a lien for unpaid sewer charges. As a result, the City is finding it difficult to pursue such "unsecured debts" in the increasing number of bankruptcies that have occurred recently.
- Therefore, Staff is recommending that the Code be amended to make both water and sewer service charges first and prior claims that are superior to all other liens, claims, and encumbrances, thereby making the claims secured in bankruptcy and other proceedings, such as foreclosures.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Westminster Municipal Code be amended to provide first and prior governmental liens for unpaid City water and sewer charges?

Alternative

The City could elect to not adopt the proposed ordinance, which would make collecting delinquent water and sewer charges unnecessarily difficult in bankruptcy and other proceedings.

Background Information

The 2008-09 economic downturn has brought about an increase in bankruptcy filings. Currently, charges assessed by the City for water services are secured by a lien against the property served, however, the current Code does not expressly declare them to be first and prior "governmental" liens. Though personal liability for the payment of a utility debt may be discharged in a bankruptcy case, the lien will not be discharged and will remain collectible *in rem* (against the property.) Currently, sewer charges for accounts in bankruptcy must be written off if they are not paid and if there is no lien for their payment.

The following proposed changes are described below:

- Section 8-7-9 adds language making the lien for all water service charges first and prior to all other liens, claims, and encumbrances, except liens for general taxes. The additions to section 8-7-9 also clarify the process for enforcing such liens. These changes will improve the City's ability to recover unpaid water service charges in bankruptcy and other proceedings.
- Section 8-8-5 adds language creating a lien for all charges for sewer service and making them first and prior to all other liens, claims, and encumbrances, except liens for general taxes. The changes will improve the City's ability to recover unpaid sewer service charges in bankruptcy and other proceedings.

Utility Billing Staff have reviewed the proposed amendments to this ordinance and concur with the recommendations.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 8-7-9 AND 8-8-5 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING DELINQUENT PAYMENTS AND SERVICE CHARGES FOR WATER AND SEWER SERVICE

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-7-9, subsection (C), W.M.C., is hereby AMENDED to read as follows:

8-7-9: DELINQUENT PAYMENTS AND SERVICE CHARGES; LIEN ON PROPERTY:

(C) The City shall have as security for the collection of such water service charges and utility rates, penalties ~~and charges~~ a lien upon the real property served by such water service, which lien shall become effective immediately upon the supplying of such water and shall not be discharged until the payment is made of all the water service bills, penalties and charges as herein provided. Such liens shall be governed by Title I, Chapter 31 of the Westminster Municipal Code.

(1) The lien shall include all charges prescribed by this Code relating to the provision of water services, together with the cost of collecting such charges, including court costs and attorneys' fees. The lien shall be first and prior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and shall remain a lien upon the real property served by the water connection from the date such charges and the cost of collecting them, if any, become due, until they are paid.

(2) The City may enforce the lien against the property or the liability against the property owner in any action at law or an action to enforce the lien. If any person in possession of any premises, building, lot, house, or other dwelling unit pays the entire charges due and owing, the payment relieves the property owner from such liability and the premises from the lien. However, the City is not required to look to any person other than the owner of the premises, building, lot, house, or other dwelling unit for the payment of the charges.

Section 2. Section 8-8-5, W.M.C., is hereby AMENDED BY THE ADDITION OF NEW SUBSECTIONS (H) THROUGH (L) to read as follows:

8-8-5: SERVICE AND USER CHARGES WITHIN THE CITY OF WESTMINSTER AND SHAW HEIGHTS; LIEN ON PROPERTY:

(H) Delinquent sewer bills shall be collected in the same manner as delinquent water charges, including the discontinuance of water service for nonpayment of sewer charges. Any payments received for combined water and sewer bills, which are for less than the sum of water and sewer bills, shall be first applied to the sewer charge, and any remainder to the water charge.

For customers not receiving City water service, these same provisions shall apply, except that instead of discontinuance of water, a five dollar (\$5) late charge shall be added to the next bill at the time of billing, to cover additional accounting charges. If a sewer charge is not paid in nine (9) months, a lien shall be filed recorded against on the property for the balance then due, plus a ~~ten~~ twelve dollar (\$~~10~~2) filing fee. If the lien is not paid in fifteen (15) months, the service line shall be disconnected from the City's main and plugged. Service shall not be restored until the account is paid in full plus the actual cost to the City

of disconnecting the service line. Reconnection shall be the responsibility of the owner. If such disconnection is required, the City shall notify the Health Department and agency furnishing water to the premise of the action to be taken.

(I) The City shall have as security for the collection of such sewer service charges and penalties, a lien upon the real property served by sewer service, which lien shall become effective immediately upon the supplying of such sewer service and shall not be discharged until the payment is made of all the sewer service bills, penalties and charges as herein provided. Such liens shall be governed by Title I, Chapter 31 of the Westminster Municipal Code.

(1) All charges prescribed by this Code relating to the provision of sewer service, together with the cost of collecting such charges, including court costs and attorneys' fees, are a lien that is first and prior to all other liens, claims, titles, and encumbrances, whether prior in time or not, except liens for general taxes, and shall remain a lien upon the real property served by the sewer connection from the date such charges and the cost of collecting them, if any, become due, until they are paid.

(2) The City may enforce the lien against the property or the liability against the property owner in any action at law or an action to enforce the lien. If any person in possession of any premises, building, lot, house, or other dwelling unit pays the entire charges due and owing, the payment relieves the property owner from such liability and the premises from the lien. However, the City is not required to look to any person other than the owner of the premises, building, lot, house, or other dwelling unit for the payment of the charges.

~~(H)~~(J) Owners or agents in charge of business blocks or other buildings occupied by more than one tenant using water from the same service pipe and/or discharging sewage through the same service sewer shall be required to pay the same rate for the whole of such building, unless a separate water meter is installed for each tenant.

~~(I)~~—(Repealed by Ordinance 1430)

~~(J)~~(K) These rates and charges are established so that each user class pays its proportionate share of the costs of wastewater treatment services and the City Manager is hereby directed to annually review the charge structure to assure that proportionality between user classes is maintained and to recommend modifications as appropriate. Each user shall be notified annually by the City of its user charges.

~~(K)~~(L) Reduction of Tap Fee: A nonresidential customer requesting a reduction in the assignment of the tap fee may apply for such reduction to the Building Division. The request must provide calculations showing the actual sewage discharge level. If approved, the reduction in tap fee may only be reduced to the next lowest full water tap size.

Section 3. This ordinance shall take effect upon its passage after second reading.

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 21st day of December, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 11th day of January, 2010.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, December 21, 2009
7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (December 14, 2009)
- 3. New Business**
 - A. First Amendment to the Intergovernmental Cooperation Agreement with Mandalay Town Center GID
 - B. The Orchard Town Center Third Letter Agreement re Final Development Agreement between the City, WEDA and Forest City Commercial Group, Inc.
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, DECEMBER 14, 2009 AT 8:18 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 for the Authority, and Linda Yeager, Secretary.

CONSIDERATION OF MINUTES

Vice Chairperson Dittman moved, seconded by Lindsey, to approve the minutes of the meeting of October 12, 2009 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING ON 4TH QUARTER 2009 BUDGET AMENDMENT

At 8:18 p.m., the Chair opened a public hearing to consider the 4th quarter budget amendment for the Authority. Staff was present to answer any questions. The Chair asked if anyone wished to speak on this subject. No one did, and Chairperson McNally closed the hearing at 8:19 p.m.

RESOLUTION NO. 117 AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO THE BUDGET

It was moved by Vice Chairperson Dittman and seconded by Major to adopt Resolution No. 117 authorizing a supplemental appropriation to the 2009 WEDA budget. At roll call, the motion carried unanimously.

ACQUISITION OF TRAIL DUST PROPERTY

Upon a motion by Board Member Lindsey, seconded by Winter, the Board voted unanimously to authorize the Executive Director to execute the contract to purchase the Trail Dust Property, Lot 2 & 3, Block 1 of the Lake Arbor Commercial Office Park, Filing No. 1.

ADJOURNMENT

There being no other business to be considered, the meeting adjourned at 8:20 p.m.

ATTEST:

Secretary

Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Board Meeting
December 21, 2009



SUBJECT: First Amendment to the Intergovernmental Cooperation Agreement with
Mandalay Town Center General Improvement District

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Executive Director to execute the First Amendment to the Intergovernmental Agreement (IGA) dated December 10, 2007 between the Westminster Economic Development Authority (WEDA) and the City of Westminster Mandalay Town Center GID (the “District”) in substantially the same form as the attached agreement regarding the remittance of certain District revenues to WEDA to assist in the repayment of the WEDA debt relating to improvements in the District.

Summary Statement

- The Mandalay Gardens Urban Renewal Area (URA) was created on March 17, 2003 primarily for the redevelopment of the area commonly known as the Shops at Walnut Creek. As part of the redevelopment, the URA issued 25-year taxable bonds in August 2003, which were subsequently refinanced as tax exempt bonds in June 2006. The proceeds of the 2003 bonds were used for the construction of public improvements within the Shops at Walnut Creek area. The source of funds for repayment of the bonds is sales tax increment and property tax increment within the URA.
- On December 10, 2007, the Board approved an IGA between WEDA and the District outlining the obligations of the District to remit excess revenues to WEDA to assist in the payment of debt service on the WEDA bonds. This IGA applied specifically to the WEDA Series 2003 and Series 2006 bonds.
- The Series 2006 bonds were refinanced in September 2009. Due to the refinancing, the Series 2006 bonds no longer exist. Therefore, the IGA must be amended. While it is not anticipated that future refinancings will be necessary, this amendment covers the current outstanding bonds and any other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds.
- The proposed amendment changes the term “bonds” to “debt,” which is defined in the agreement as the current outstanding bonds or other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original bond issues – WEDA Series 2003.
- The IGA is retroactive to September 1, 2009.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Board authorize the attached amendment to the IGA with the District?

Alternative

An alternative would be to not authorize an amendment to the IGA approved on December 10, 2007 between WEDA and the District. This alternative is not recommended as the District was established with the primary purpose to assist in the repayment of the WEDA debt for the development of the Shops at Walnut Creek area. Without the proposed amendment, the District will not be able to transfer funds to WEDA.

Background Information

The Mandalay Town Center General Improvement District was organized by City Council on September 8, 2003. The principal purpose of the District is to finance the acquisition, construction, installation, operation and maintenance of public improvements within the District. The District overlaps the Mandalay Gardens URA that was established in March 2003 under the WEDA umbrella. Mandalay Gardens URA is a tax increment financing district that receives incremental property tax revenues attributable to renewal development from overlapping jurisdictions. These property taxes are considered pledged revenues for debt service purposes. As such, the District's mill levy on any valuation above the base is allocated to the URA within WEDA. The intended use of any base revenues received by the District is to pay District operating expenses and an additional allocation to the URA.

The attached amendment to the IGA between the District and WEDA defines debt to include the current outstanding bonds or future bonds or other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds. The IGA is retroactive to September 1, 2009. The remaining provisions of the agreement were not amended.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**FIRST AMENDMENT TO THE INTERGOVERNMENTAL COOPERATION AGREEMENT
DATED DECEMBER 10TH, 2007 BETWEEN
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND THE CITY OF
WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT
REGARDING DISTRICT TAX REVENUES AND TAX INCREMENT REVENUES**

This First Amendment to the Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this ~~dated as of~~ _____ day of December, 2009 ~~November 26, 2007~~ by and between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, and the CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT ("District"), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R. S., as amended (collectively the "Parties").

W I T N E S S E T H;

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the "Mandalay Gardens Urban Renewal Plan" ("Urban Renewal Plan") under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the "Act"); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake urban renewal projects and activities and to finance such projects and activities by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, WEDA and the District entered into an Agreement dated December 10, 2007 regarding district tax revenues and tax increment revenues; and

WHEREAS, the District was created to assist WEDA with the cost of constructing public improvements within the boundaries of the District and the Urban Renewal Area commonly known as the Shops at Walnut Creek; and

WHEREAS, the Board finds that said improvements benefit the property owners and taxpaying electors of the District and it is fair and equitable for the District to contribute to the cost of constructing the improvements as set forth in this Agreement; and

WHEREAS, at an election held on November 4, 2003, a majority of the eligible electors of the District voting thereon approved the following questions (the "Election Questions"):

SHALL CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT TAXES BE INCREASED \$500,000 ANNUALLY IN THE FIRST YEAR OF COLLECTION OR BY SUCH OTHER AMOUNT AS IS COLLECTED IN THE FUTURE FROM A MILL LEVY OF NOT TO EXCEED 35 MILLS TO PAY THE ANNUAL EXPENSES OF THE DISTRICT; AND SHALL THE REVENUES FROM SUCH TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND NOTWITHSTANDING THE 5.5% REVENUE LIMIT OF SECTION 29-1-301, C.R.S. OR THE LIMITS OF ANY OTHER LAW?

SHALL CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT BE AUTHORIZED TO COLLECT, KEEP AND SPEND ALL REVENUES IT RECEIVES AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

WHEREAS, the Parties are authorized by Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, Parties desire to enter into an agreement setting forth their intent to cooperate as to the repayment of the WEDA ~~bonds~~ debt and to assure that taxes levied by the District are made available for purposes of paying District expenses, including the obligations set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, WEDA and the District hereby agree as follows:

1. ~~Bonds~~Debt. WEDA issued Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 in August 2003 which were refinanced in June 2006 to Tax Exempt Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2006 (~~the "bonds"~~). In September 2009, WEDA refinanced the 2006 Tax Exempt Tax Increment Adjustable Rate Revenue Bonds. "Debt" as defined in this agreement means the current outstanding bonds or other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds.

2. District Obligation to Levy Taxes. In consideration of WEDA's construction of the public improvements associated with the Mandalay Gardens Urban Renewal Project, and the benefits thereof to the District's property owners and taxpaying electors, the District agrees to annually impose a property mill levy of not to exceed 35 mills on the assessed valuation of the District for annual expenses and to assist WEDA in repayment of the ~~bonds~~ debt issued for the Mandalay Gardens Urban Renewal Project.

3. Revenues. To assist WEDA with the ~~annual debt service payments on~~ repayment of the Debt Bonds, the District agrees that the revenues that it receives as a result of the District's current and future levy of ad valorem taxes on the base amount of real and personal taxable property within the District after deduction for what is required to pay operating expenses, shall be transferred to WEDA Mandalay Gardens URA on an annual basis each year based on the total amount budgeted to be transferred. The transfer amount will be determined each year through the normal budget process for the District based on projected property tax, ownership tax, interest revenue and any miscellaneous revenues and expenses. The transfer will occur no later than September 30 each year beginning in 2008. The transfer for year 2007 shall occur no later than December 31, 2007. Amounts accumulated in fund balance for 2005 and 2006 will be included in the transfer made in 2007.

4. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

5. Effective Date; Term. This Agreement shall become effective retroactively to ~~January 1, 2005~~ September 1, 2009. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the ~~Bonds Debt~~ debt referenced in Section 1 are paid in full.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director of the Authority

CITY OF WESTMINSTER MANDALAY TOWN
CENTER GENERAL IMPROVEMENT DISTRICT

By: _____
Executive Director of the GID

APPROVED AS TO FORM:

Attorney for Authority

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
December 21, 2009



SUBJECT: The Orchard Town Center Third Letter Amendment Relating to the Final Development Agreement Among the City of Westminster, the Westminister Economic Development Authority and Forest City Commercial Group, Inc.

Prepared By: Aaron B. Gagné, Senior Projects Coordinator

Recommended Board Action

Authorize the Executive Director to execute the Third Letter Amendment extending the existing residential Service Commitments as assigned in the Final Development Agreement Section 7.6 dated December 30, 2004 between the City of Westminster, the Westminister Economic Development Authority and Forest City Commercial Group, Inc.

Summary Statement

- The Orchard Town Center project is located at the northeast corner of 144th Avenue and Huron Street, extending east to I-25 and north to the City boundary.
- The Final Development Agreement making the original 800 residential service commitments was executed on December 30, 2004.
- Attached is the request from the property owner requesting an extension of the residential service commitments for this development.
- Staff concurs that the depressed housing market has created a significant impact on this project that warrants the extension of service commitments.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Authority authorize the execution of the attached Third Letter Agreement relating to the Final Development Agreement between the City of Westminster, the Westminster Economic Development Authority and Forest City Commercial Group, Inc. extending the previously authorized 800 water and sewer service commitments at The Orchard Town Center?

Alternative

Do not authorize the execution of the Third Letter Amendment. This is not recommended as staff believes the extension is needed to avoid undue hardship to the developer that would result if the extension were not granted.

Background Information

Nature of Request

Service Commitments were committed via the Final Development Agreement for this project in December of 2004. A total of 800 Service Commitments were made available for the overall residential project, with the exact distribution of the type of commitment to be established at the time of final ODP for the residential section.

The 800 service commitments assigned via the Final Development Agreement were to be distributed as follows:

Year	Service Commitments
2005	100
2006	300
2007	400

The Final Development Agreement also stated that the service commitments were to be utilized no later than January 1, 2010. Due to the continued housing market and financial crisis, the developer was unable to complete entitlements (i.e., ODP) for the residential project and is requesting an extension of the residential water and sewer service commitments on the same timetable as the original Agreement, commencing January 1, 2010. The new estimated schedule would be as follows:

Year	Service Commitments
2010	100
2011	300
2012	400

The service commitments would be able to be used beginning in March in the year provided and in any subsequent year, but not later than December 31, 2015.

Location

The Orchard Town Center project is located at the northeast corner of 144th Avenue and Huron Street, extending east to I-25 and north to the City boundary.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Proposed Third Letter Amendment
- Letter from property owner

**THIRD LETTER AMENDMENT TO THE FINAL
DEVELOPMENT AGREEMENT AMONG THE
CITY OF WESTMINSTER, THE WESTMINSTER
ECONOMIC DEVELOPMENT AUTHORITY AND
FOREST CITY COMMERCIAL GROUP, INC.**

This THIRD AMENDMENT dated the _____ day of December, 2009, represents the understanding of the City of Westminster (“City”), the Westminster Economic Development Authority (“Authority”) and Forest City Commercial Group, Inc. (“Forest City”), all parties to the Final Development Agreement with an effective date of December 30, 2004 (“FDA”), relating to certain provisions of the FDA:

1.0 Section 7.6 of the FDA is deleted and replaced with the following language:

Section 7.6 Water and Sewer Service Commitments. The City shall provide the Developer with the water and sewer service commitments required for the residential development up to a maximum of 800 units. The service commitments may be used beginning March 01 in the year provided and in any subsequent year, but not later than December 31, 2015. The allowable units shall be provided by the City, but are estimates and shall be finalized in the ODP: 1) 100 service commitments for 2010; 2) 300 service commitments for 2011; 3) 400 service commitments for 2012. It is anticipated that such service commitments shall be available, as set forth in this section, but such service commitments shall be made more specific in the ODP.

IN WITNESS WHEREOF, the City and the Authority each have caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

CITY:

AUTHORITY:

CITY OF WESTMINSTER, COLORADO

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
J. Brent McFall, City Manager

By: _____
J. Brent McFall, Executive Director

ATTEST:

ATTEST:

By: _____
Linda Yeager, City Clerk

By: _____
Linda Yeager, Authority Secretary

DEVELOPER:

FOREST CITY COMMERCIAL GROUP, INC.

By: _____
Dimitri Vazelakis, President

FORESTCITY

COMMERCIAL GROUP

Commercial Development

949 S. Hope Street
Los Angeles, CA 90015
213.488.2200 phone
213.488.9308 fax

www.forestcity.net

Brian Wynne
Forest City West
949 South Hope Street
Los Angeles, CA 90015
December 11, 2009

Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Cc: Mac Cummins, Susan Grafton

Dear Brent:

Per Section 7.6 of the Final Development Agreement (Agreement) by and between the City of Westminster (City), the Westminster Economic Development Authority, and Forest City Commercial Group (Developer), the City committed to provide Developer with the Water and Sewer Commitments required for the residential development at the Orchard Town Center of up to 800 units.

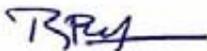
The Agreement stated that the service commitments were to be used prior to January 1, 2010. Due to the unforeseen and drastic downturn of the residential market, the residential development at the project has taken longer to materialize than originally anticipated.

We still feel that the residential component will be a vital addition to the project for a variety of reasons including horizontal mixed-use planning, increasing pedestrian traffic, leasing and marketing center, anchoring the north end of the project, as well as adding to the immediate trade area.

As such, we are respectfully requesting an extension on the deadline for use of the Water and Sewer Commitments. The original Agreement was executed in 2004 providing six years for use of the Commitments. Based on the unknown near- and intermediate-term health of the residential market in the north-Denver metro area, we are requesting the same time frame horizon for use of the commitments for an additional six years until January 1, 2016. If the City would prefer a different deadline, we would be open to discussing with you.

We greatly appreciate the relationship we have established with your team over the past several years on the Orchard project. Thank you very much for your consideration of this request. Please reach me at 213-416-2262 or brianwynne@forestcity.net any time to discuss further and coordinate next steps.

Sincerely,



Brian Wynne
Project Developer, Forest City West

**MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, December 21, 2009
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 12, 2009)
- 3. New Business**
 - A. First Amendment to Intergovernmental Cooperation Agreement with WEDA re Remittance of Certain District Revenues
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT
MONDAY, OCTOBER 12, 2009 AT 7:38 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, 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

Board Member Briggs moved, seconded by Lindsey to approve the minutes of the meeting of October 13, 2008 with no additions or corrections. The motion passed with all members voting favorably.

PUBLIC HEARING ON PROPOSED 2010 BUDGET

At 7:39 p.m. a hearing was opened to receive public comment on the proposed 2010 Budgets of the City of Westminister's General Improvement Districts (GID), which included the 136th Avenue GID, the 144th Avenue GID, the Amherst GID, the Mandalay Town Center GID, the Promenade Parking Garage GID, and Sheridan Crossing GID. Staff was present to answer questions. No one wished to comment. The Chairperson closed the public hearing at 7:40 p.m.

RESOLUTION NO. 12 TO ADOPT 2010 BUDGET & MILL LEVY

It was moved by Vice Chairperson Dittman and seconded by Lindsey to adopt Resolution No. 12 setting the mill levy for the taxable year 2009 for collections in 2010 at 35 mills for the City of Westminister Mandalay Town Center General Improvement District, formally adopting the 2010 budget as presented, and appropriating the funds as budgeted. At roll call, the motion passed unanimously.

ADJOURNMENT

The meeting was adjourned at 7:44 p.m.

Chairperson

ATTEST:

Secretary

Mandalay Town Center GID Agenda Item 3 A

Agenda Memorandum

Mandalay Town Center General Improvement District Meeting
December 21, 2009



SUBJECT: First Amendment to Intergovernmental Cooperation Agreement with Westminster Economic Development Authority

Prepared By: Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Executive Director to execute the First Amendment to the Intergovernmental Agreement (IGA) dated December 10, 2007 with the Westminster Economic Development Authority (WEDA) in substantially the same form as the attached agreement regarding the remittance of certain District revenues to WEDA to assist in the repayment of the WEDA debt relating to the improvements in the District.

Summary Statement

- The Mandalay Town Center General Improvement District was created on September 8, 2003 for the purpose of levying property taxes against the property owners to assist in paying off the bonds originally issued by WEDA Mandalay Gardens Urban Renewal Area (URA) in August 2003.
- On November 4, 2003, voters in the District agreed to a property tax mill levy not to exceed 35 mills.
- On December 10, 2007, the Board approved an IGA between WEDA and the District outlining the obligations of the District to remit excess revenues to WEDA to assist in the payment of debt service on the WEDA bonds. This IGA applied specifically to the WEDA Series 2003 that were refunded as the Series 2006 bonds.
- The Series 2006 bonds were refinanced in September 2009. Due to the refinancing, the Series 2006 bonds no longer exist. Therefore, the IGA must be amended. While it is not anticipated that future refinancing will be necessary, this amendment covers the current outstanding bonds and any other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds.
- This agreement is retroactive to September 1, 2009.

Expenditure Required: Future expenditures to be determined each year during the annual budget process.

Source of Funds: Revenues for the District including property taxes, ownership taxes, interest earnings and available fund balance.

Policy Issue

Should the Board authorize the attached amendment to the IGA with WEDA?

Alternative

An alternative would be to not authorize an amendment to the IGA approved on December 10, 2007 between the District and WEDA. This is not recommended as the District was established with the primary purpose to assist in the repayment of the WEDA bonds issued to construct the public improvements within the Mandalay Gardens URA. Without the amendment, the District will not be able to remit funds to WEDA.

Background Information

The Mandalay Town Center General Improvement District was organized by City Council on September 8, 2003. The principal purpose of the District is to finance the acquisition, construction, installation, operation and maintenance of public improvements within the District. On November 4, 2003, the property owners in the District approved two significant ballot resolutions. These resolutions 1) authorized the GID to assess property taxes at a levy of 35 mills and 2) to collect, keep, and spend all revenues it receives as a voter approved revenue change under Article X, Section 20 of the Colorado Constitution (TABOR).

The District is within the boundaries of the Mandalay Gardens URA that was established in March 2003 under the WEDA umbrella. Mandalay Gardens URA is a tax increment financing district that receives incremental revenues attributable to development from overlapping jurisdictions. The incremental revenues are considered pledged revenues for debt service purposes. As such, the District's mill levy on any valuation above the base valuation is already allocated directly to the URA within WEDA. The intended use of any base revenues received by the District is to pay District operating expenses and an additional allocation to the URA.

The Board approved an IGA between the District and WEDA on December 10, 2007 that outlined the District's responsibilities with respect to remitting available revenues to WEDA annually. The IGA specifies that the District's excess revenues, meaning revenues net of treasurer fees and other operating expenses, will be remitted to WEDA annually. However, the IGA did not contemplate a refinancing of the WEDA Series 2006 bonds; therefore, the agreement is specific to that bond issue. Due to the downgrade of the Letter of Credit Bank, it was necessary for WEDA to refinance the bonds in September 2009.

The attached amendment to the IGA between the District and WEDA defines debt to include the current outstanding bonds or future bonds or other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds. The IGA is retroactive to September 1, 2009. The remaining provisions of the agreement were not amended.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment

**FIRST AMENDMENT TO THE INTERGOVERNMENTAL COOPERATION AGREEMENT
DATED DECEMBER 10TH, 2007
BETWEEN THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND THE
CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT
DISTRICT REGARDING DISTRICT TAX REVENUES AND TAX INCREMENT REVENUES**

This First Amendment to the Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this ~~dated as of~~ _____ day of December, 2009 ~~November 26, 2007~~ by and between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, and the CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT ("District"), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R. S., as amended (collectively the "Parties").

W I T N E S S E T H;

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the "Mandalay Gardens Urban Renewal Plan" ("Urban Renewal Plan") under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the "Act"); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake urban renewal projects and activities and to finance such projects and activities by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, WEDA and the District entered into an Agreement dated December 10, 2007 regarding district tax revenues and tax increment revenues; and

WHEREAS, the District was created to assist WEDA with the cost of constructing public improvements within the boundaries of the District and the Urban Renewal Area commonly known as the Shops at Walnut Creek; and

WHEREAS, the Board finds that said improvements benefit the property owners and taxpaying electors of the District and it is fair and equitable for the District to contribute to the cost of constructing the improvements as set forth in this Agreement; and

WHEREAS, at an election held on November 4, 2003, a majority of the eligible electors of the District voting thereon approved the following questions (the "Election Questions"):

SHALL CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT TAXES BE INCREASED \$500,000 ANNUALLY IN THE FIRST YEAR OF COLLECTION OR BY SUCH OTHER AMOUNT AS IS COLLECTED IN THE FUTURE FROM A MILL LEVY OF NOT TO EXCEED 35 MILLS TO PAY THE ANNUAL EXPENSES OF THE DISTRICT; AND SHALL THE REVENUES FROM SUCH TAXES AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND NOTWITHSTANDING THE 5.5% REVENUE LIMIT OF SECTION 29-1-301, C.R.S. OR THE LIMITS OF ANY OTHER LAW?

SHALL CITY OF WESTMINSTER MANDALAY TOWN CENTER GENERAL IMPROVEMENT DISTRICT BE AUTHORIZED TO COLLECT, KEEP AND SPEND ALL REVENUES IT RECEIVES AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

WHEREAS, the Parties are authorized by Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, Parties desire to enter into an agreement setting forth their intent to cooperate as to the repayment of the WEDA ~~bonds~~ debt and to assure that taxes levied by the District are made available for purposes of paying District expenses, including the obligations set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, WEDA and the District hereby agree as follows:

1. ~~Bonds~~Debt. WEDA issued Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 in August 2003 which were refinanced in June 2006 to Tax Exempt Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2006 (~~the "bonds"~~). In September 2009, WEDA refinanced the 2006 Tax Exempt Tax Increment Adjustable Rate Revenue Bonds. "Debt" as defined in this agreement means the current outstanding bonds or other form of indebtedness resulting from financing activities necessary to pay the outstanding principal of the original Series 2003 bonds.

2. District Obligation to Levy Taxes. In consideration of WEDA's construction of the public improvements associated with the Mandalay Gardens Urban Renewal Project, and the benefits thereof to the District's property owners and taxpaying electors, the District agrees to annually impose a property mill levy of not to exceed 35 mills on the assessed valuation of the District for annual expenses and to assist WEDA in repayment of the ~~bonds~~ debt issued for the Mandalay Gardens Urban Renewal Project.

3. Revenues. To assist WEDA with the ~~annual debt service payments on repayment of the Debt Bonds~~, the District agrees that the revenues that it receives as a result of the District's current and future levy of ad valorem taxes on the base amount of real and personal taxable property within the District after deduction for what is required to pay operating expenses, shall be transferred to WEDA Mandalay Gardens URA on an annual basis each year based on the total amount budgeted to be transferred. The transfer amount will be determined each year through the normal budget process for the District based on projected property tax, ownership tax, interest revenue and any miscellaneous revenues and expenses. The transfer will occur no later than September 30 each year beginning in 2008. The transfer for year 2007 shall occur no later than December 31, 2007. Amounts accumulated in fund balance for 2005 and 2006 will be included in the transfer made in 2007.

4. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

5. Effective Date; Term. This Agreement shall become effective retroactively to ~~January 1, 2005~~ September 1, 2009. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the ~~Bonds~~ Debt referenced in Section 1 are paid in full.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director of the Authority

CITY OF WESTMINSTER MANDALAY TOWN
CENTER GENERAL IMPROVEMENT DISTRICT

By: _____
Executive Director of the GID

APPROVED AS TO FORM:

Attorney for Authority

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney