



## 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 2008
- B. Deicing Salt Purchase
- C. Cashier System Acquisition
- D. Cumulative Purchases Over \$50,000 in 2008
- E. Custodial Services Contracts for City Facilities
- F. 2009 Dell Server and Computer Replacement Purchases
- G. 2009 Microsoft Exchange and Outlook 2007 License Purchases
- H. Oakhurst Park Shelter Renovation Construction Contract Award
- I. 144<sup>th</sup> Avenue, Zuni Street to Jason Drive, Construction Contract and Construction Engineering Services Contract
- J. WEDA/City ICA re Construction & Maintenance of City Center Park - Westminster Center Eastern Sub-area URA
- K. Second Reading Councillor's Bill No. 50 re Church Ranch Hotel Company LLC BAP Amendment
- L. Second Reading Councillor's Bill No. 51 re Democratic National Convention Supplement Appropriation
- M. Second Reading Councillor's Bill No. 52 re Pension Plan Amendments

### 9. Appointments and Resignations

- A. Resolution No. 61 re Appointment to Adams County housing Authority

### 10. Public Hearings and Other New Business

- A. Public Hearing re CLUP Amendment, Rezoning, PDP and ODP for the Turnpike Motel (7151 Federal Blvd)
- B. Councillor's Bill No. 53 re Comprehensive Land Use Plan Amendment for the Turnpike Motel
- C. Councillor's Bill No. 54 re Amending the Rezoning of Lots for the Turnpike Motel to Planned Unit Development
- D. Preliminary Development Plan and Official Development Plan Approval for the Turnpike Motel
- E. Development Agreement between the City and the Landowner of Lot 43 of the Federalview Subdivision
- F. Resolution No. 62 re IGA with the State re Historic Preservation Grant for Shoenberg Farm Partial Acquisition
- G. Councillor's Bill No. 55 re Shoenberg Farm Partial Acquisition Grant Supplemental Appropriation
- H. Resolution No. 63 re Transfer of Funds for the Quagga/Zebra Mussel Program

### 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)**

**WESTMINSTER HOUSING AUTHORITY (Separate agenda)**

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**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 8, 2008 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 Major moved, seconded by Mayor Pro Tem Dittman, to approve the minutes of the regular meeting of November 24, 2008, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the holiday lighting ceremony, complete with a Santa Claus sighting, had been a huge success. Then he welcomed employees at the meeting who were participating in Westminster 303, an advanced training class. Next, he announced that Council's meeting schedule during the holiday season would not change. City offices and facilities would be closed only on December 25 and January 1. In conclusion, he advised that immediately following this meeting, the public was welcome to join City Council at a post-meeting in the Council Board Room where the City Engineer would review the Colorado Department of Transportation's plans for reconstructing the 80<sup>th</sup> Avenue Bridge over US Highway 36.

CITY COUNCIL COMMENTS

Mayor Pro Tem Dittman thanked Parks and Recreation Department staff for the Holiday display in the City Hall courtyard and on the surrounding grounds. Each year the display seemed to grow and was a wonderful gift to the community. Councillor Major concurred, noting the large number of families that toured the village each year and enjoyed the lights and decorations. The traditional lighting ceremony at Fire Station 1 had been most successful, too, with caroling and neighborhood families enjoying refreshments.

Mayor McNally also conveyed appreciation to staff for setting up the holiday displays. If the hours spent preparing needed to be justified, all one had to do was look in the eyes of the children who attended the lighting ceremonies. Coupled with the Fire Department's Santa Visits, City employees could take pride in the joy they brought to residents young and old by sprinkling the magic of the season throughout the community. Council knew that none of it could occur without staff's creativity and dedication.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute a contract with Greater Western Fence & Supply, Inc. in the amount of \$210,960 for the fencing of the Northwest Water Treatment Facility, Semper Water Treatment Facility Clearwell, and Reclaimed Water Treatment Facility; authorize the City Manager to execute a contract for 2009, with options for two additional one-year renewals in 2010 and 2011, for the Wastewater Collection System Maintenance Program with the low bidder, Quality Pipe Services, Inc., in the amount of \$513,726, and authorize a contingency of \$51,373; authorize the City Manager to execute a \$909,091 design-build contract with BT Construction Company, the low bidder, for construction of the Owens Street Waterlines Replacement Project, and authorize a construction contingency in the amount of \$90,909; authorize the City Manager to execute a \$136,375 contract with Garney Companies Inc., the low bidder, for construction services related to the 36-inch connection to the 54-inch waterline in Pierce Street and authorize a construction contingency in the amount of \$13,638; authorize the City

Manager to execute a contract with the lowest bidder, Adolfson and Peterson Construction, to provide contract manager/general contractor services for the City Park Recreation Center Aquatics Renovation for a preconstruction fee of 0.5% and a construction management fee of 3% of the cost of construction; authorize the City Manager to sign a Memorandum of Understanding regarding an Adams County Regional Public Safety Training Center with Adams County, Adams County Sheriff's Office, the City of Westminster, and several other municipal and county governments; final passage of Councillor's Bill No. 45 amending the Comprehensive Land Use Plan for the Westminster Gateway development by changing the designation of the northern portion of the property from Public/Quasi Public to Retail Commercial, and other parcels of the property from Retail Commercial to City Owned Open Space, and from City Owned Open Space to Retail Commercial; final passage of Councillor's Bill No. 46 authorizing an amendment to Title 15 of the City Code regarding the acquisition of water rights; final passage of Councillor's Bill No. 47 amending Title V of the Westminster Municipal Code concerning home occupation and massage therapist licenses; and final passage of Councillor's Bill No. 49 providing for a supplemental appropriation in the amount of \$399,002 to the 2008 Parks, Open Space and Trails budget.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. None did, and it was moved by Councillor Kaiser, seconded by Councillor Major, to approve the consent agenda as presented. The motion passed unanimously.

#### RESOLUTION NO. 59 ADOPTING 2009 LEGISLATIVE POLICY STATEMENT

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Lindsey, to adopt Resolution No. 59 establishing the City of Westminster 2009 Legislative Policy Statement. On roll call vote, the motion passed unanimously.

#### RESOLUTION NO. 60 EXTENDING SERVICE COMMITMENT AWARD FOR VALLEY VIEW ESTATES

Upon a motion by Councillor Lindsey, seconded by Councillor Major, the Council voted unanimously at roll call to adopt Resolution No. 60 extending the existing Category B-2 Service Commitment award to the Valley View Estates – Eliot Street Duplexes single-family attached residential project based on the finding that the need for an extension was the result of the downturn in the housing market beyond the control of the developer.

#### COUNCILLOR'S BILL NO. 50 AMENDING CHURCH RANCH HOTEL COMPANY AGREEMENT

It was moved by Councillor Major, seconded by Mayor Pro Tem Dittman, to pass Councillor's Bill No. 50 on first reading authorizing the City Manager to execute and implement the Amendment to the Church Ranch Hotel Company LLC Business Assistance Agreement in substantially the same form as that attached to the agenda memorandum to facilitate the development of the Hyatt Place Hotel. At roll call, the motion passed unanimously.

#### COUNCILLOR'S BILL NO. 51 APPROPRIATING FUNDS FROM CITY & COUNTY OF DENVER

Councillor Winter moved, seconded by Councillor Lindsey, to pass Councillor's Bill No. 51 on first reading to appropriate funds received from the City and County of Denver in the amount of \$184,000 for the City of Westminster Police Department's participation at the Democratic National Convention. At roll call, the motion passed with all Council members casting affirmative votes.

#### COUNCILLOR'S BILL NO. 52 AMENDING THE GENERAL EMPLOYEE & POLICE PENSION PLANS

It was moved by Councillor Briggs and seconded by Councillor Kaiser to pass Councillor's Bill No. 52 on first reading to amend the Westminster Municipal Code concerning the General Employee and the Police Pension Plans in order to comply with changes required by applicable federal pension laws and U.S. Treasury regulations. The motion passed unanimously on roll call vote.

ADJOURNMENT

There being no further business to come before the City Council, the Mayor adjourned the meeting at 7:15 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

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



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
December 22, 2008



**SUBJECT:** Financial Report for November 2008  
**Prepared By:** Tammy Hitchens, Finance Director

**Recommended City Council Action**

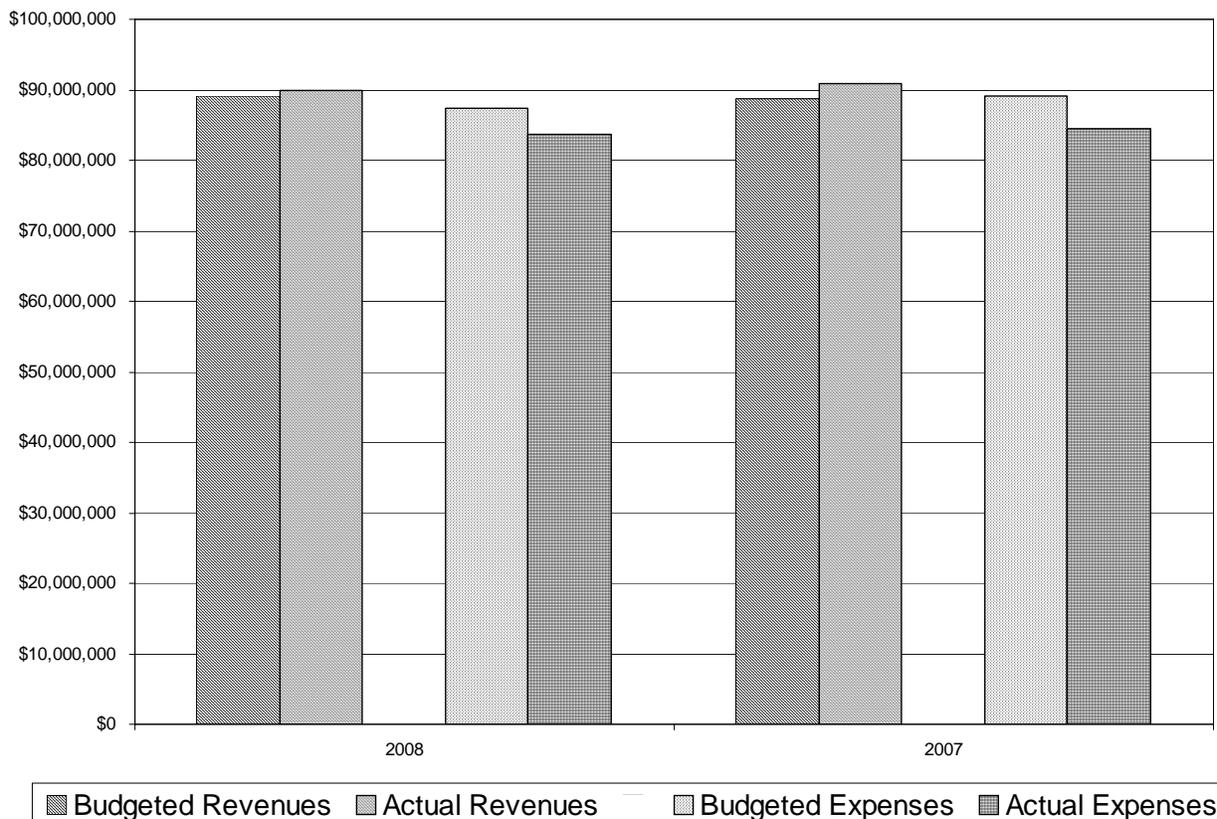
Accept the Financial Report for November as presented.

**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 \$6,216,074. The following graph represents Budget vs. Actual for 2007 – 2008.

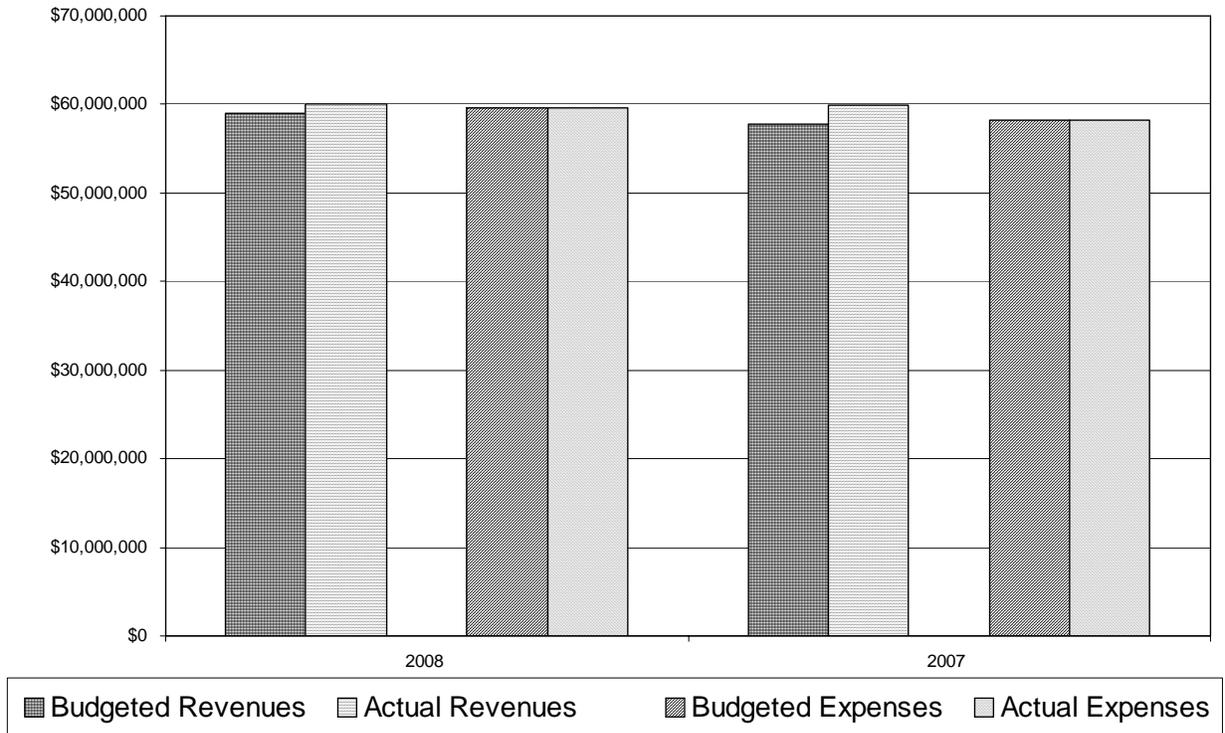
**General Fund  
Budget vs Actual**



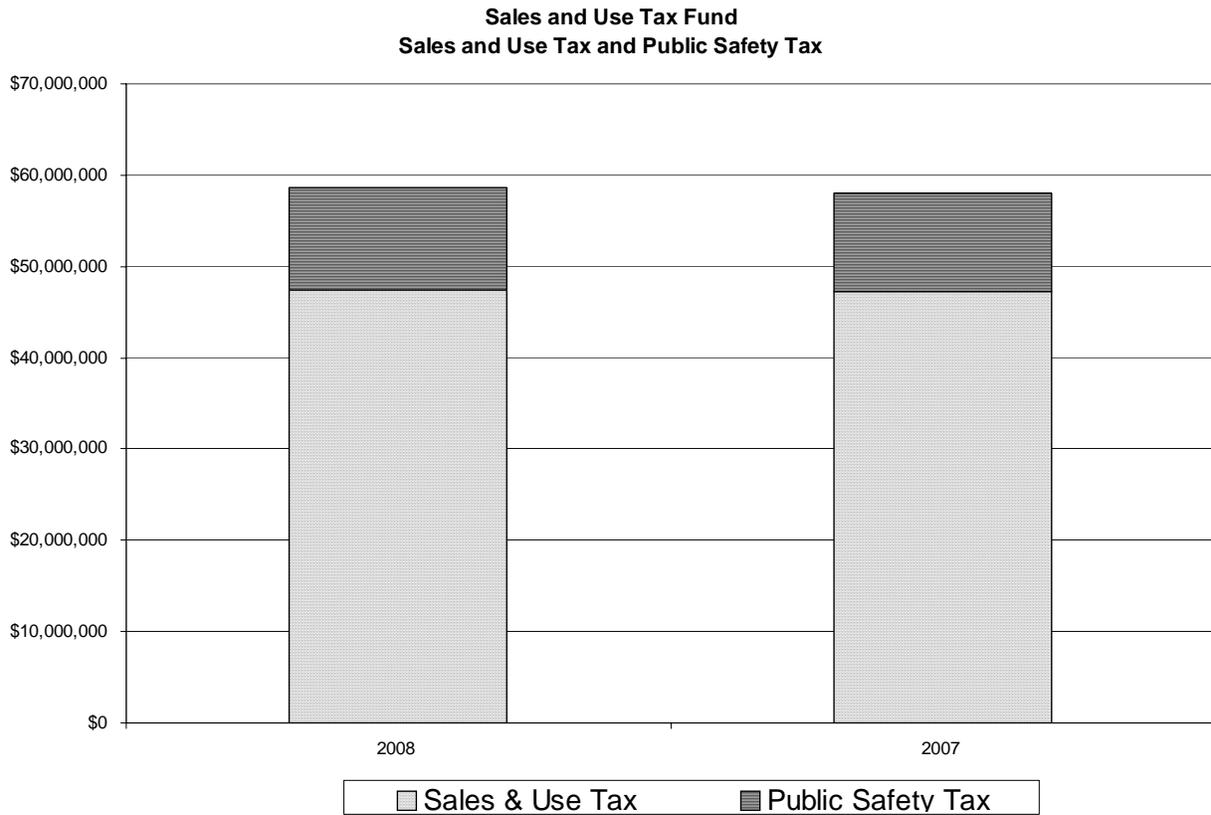
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$458,466.

- On a year-to-date cash basis, sales & use tax returns are up 3.9% over 2007.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 4.9% 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 up 1.2%.
- The top 50 Sales Taxpayers, who represent about 62% of all collections, were up 1.1% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 21% on a year-to-date basis.
- Building Use Tax is down 24% year-to-date from 2007.

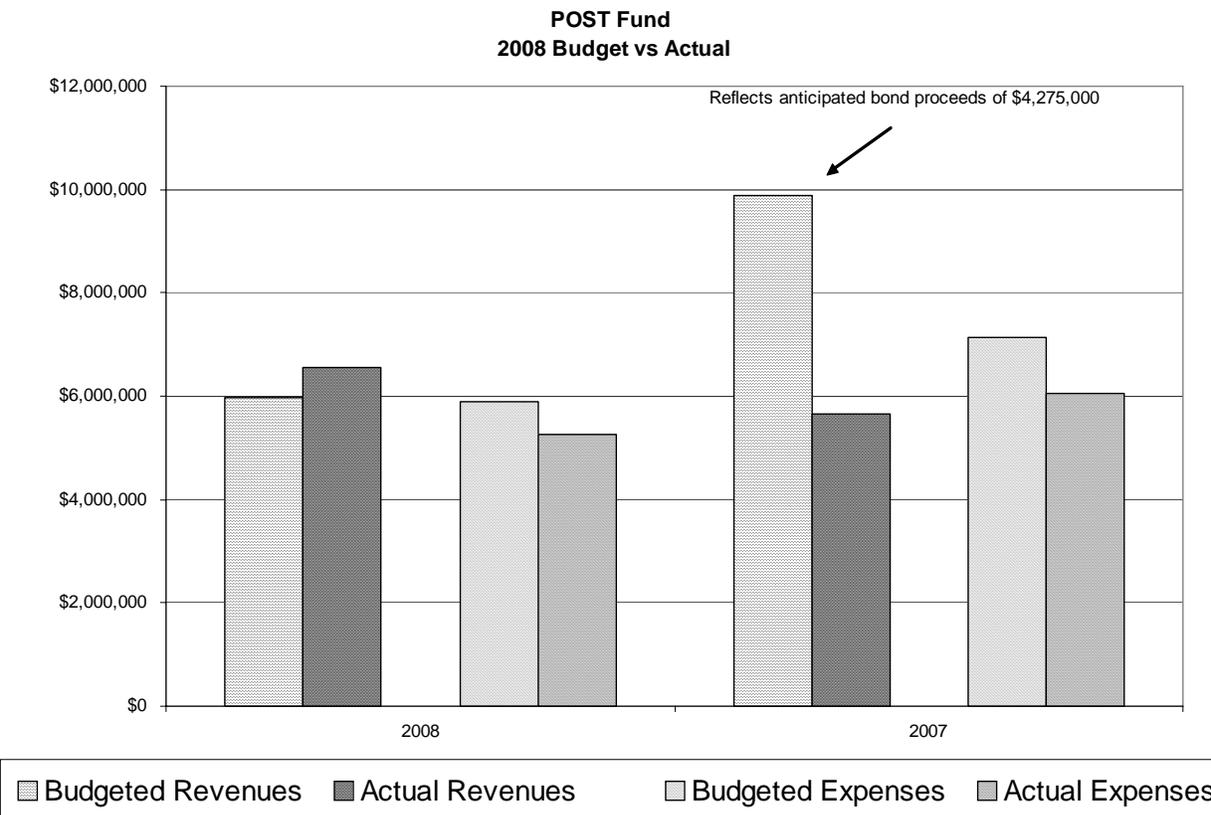
**Sales & Use Tax Fund  
Budget vs Actual**



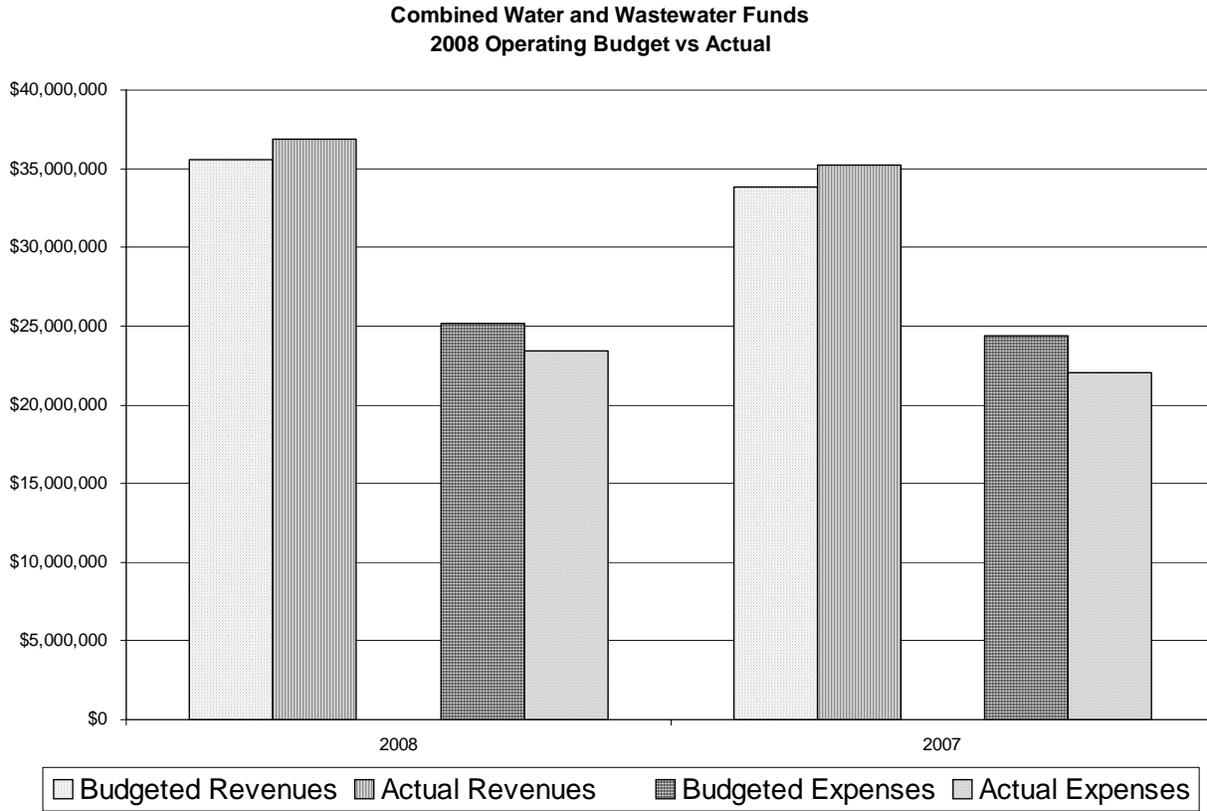
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



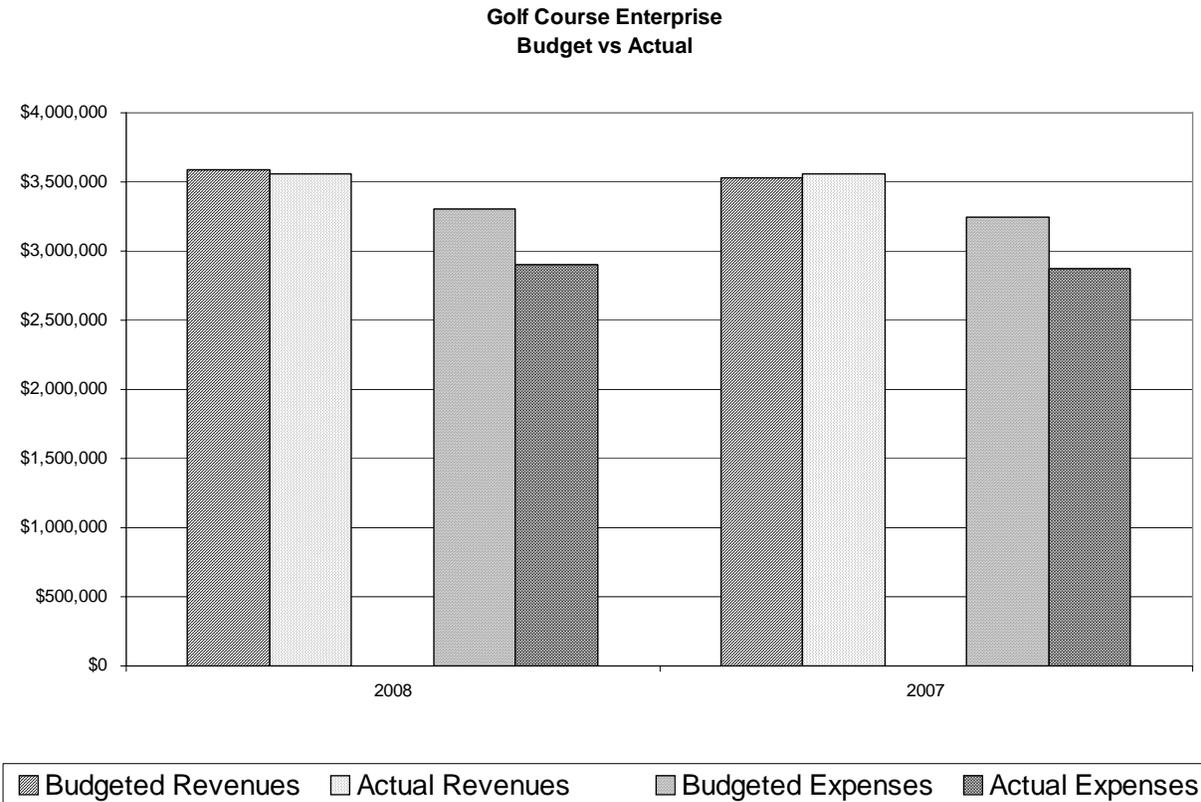
The Parks Open Space and Trails Fund revenues exceed expenditures by \$1,282,817. Interest earnings reflect interest on the 2007 POST bond proceeds



The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$31,800,606. \$25,298,993 is budgeted for capital projects and reserves.



The combined Golf Course Fund revenues exceed expenditures by \$656,851.



**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.

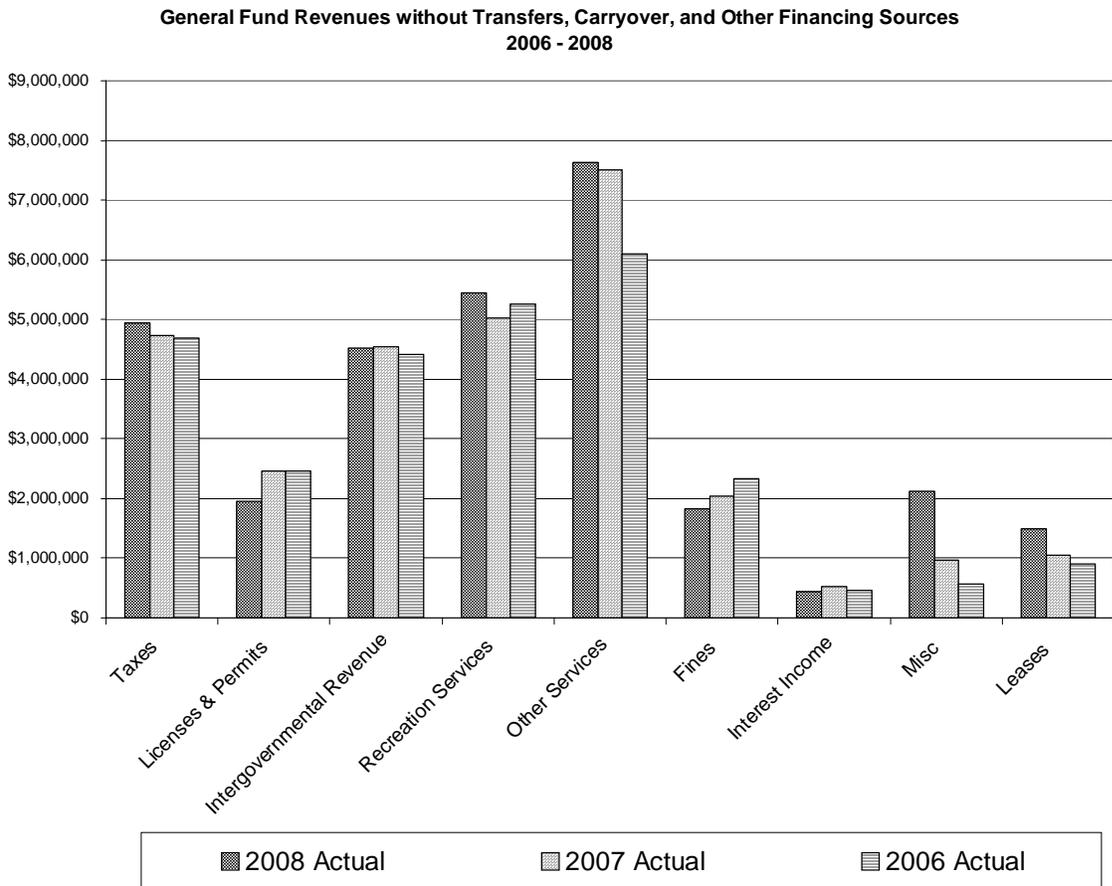
**Background Information**

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.

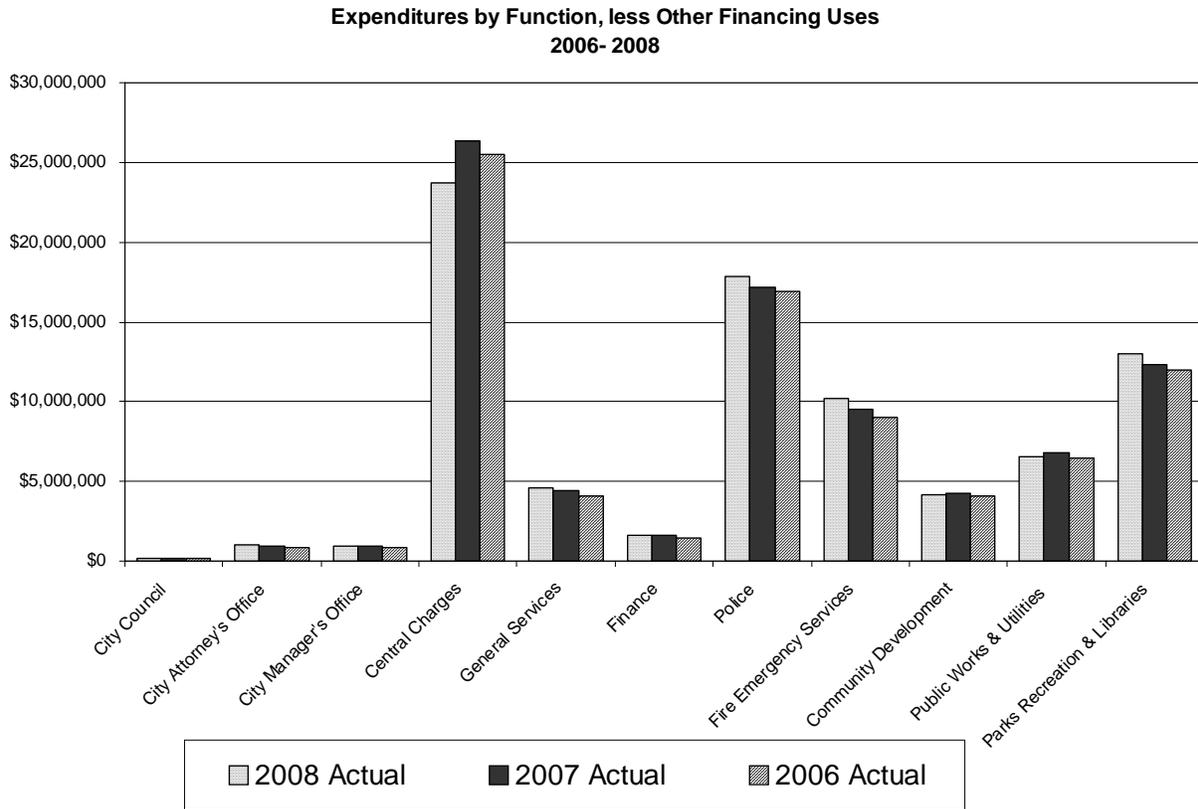
The following chart represents the trend in actual revenues from 2006 – 2008 year-to-date.



Increases in General Fund revenue categories are explained as follows:

- Miscellaneous reflects a reimbursement from Thornton relating to the 144<sup>th</sup> Avenue bridge construction IGA
- Leases reflects rental income for the former police building at 88<sup>th</sup> Avenue and Sheridan Boulevard as well as the final lease payments for the Conference Center and Lakeview Pavillion

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2006 –2008.

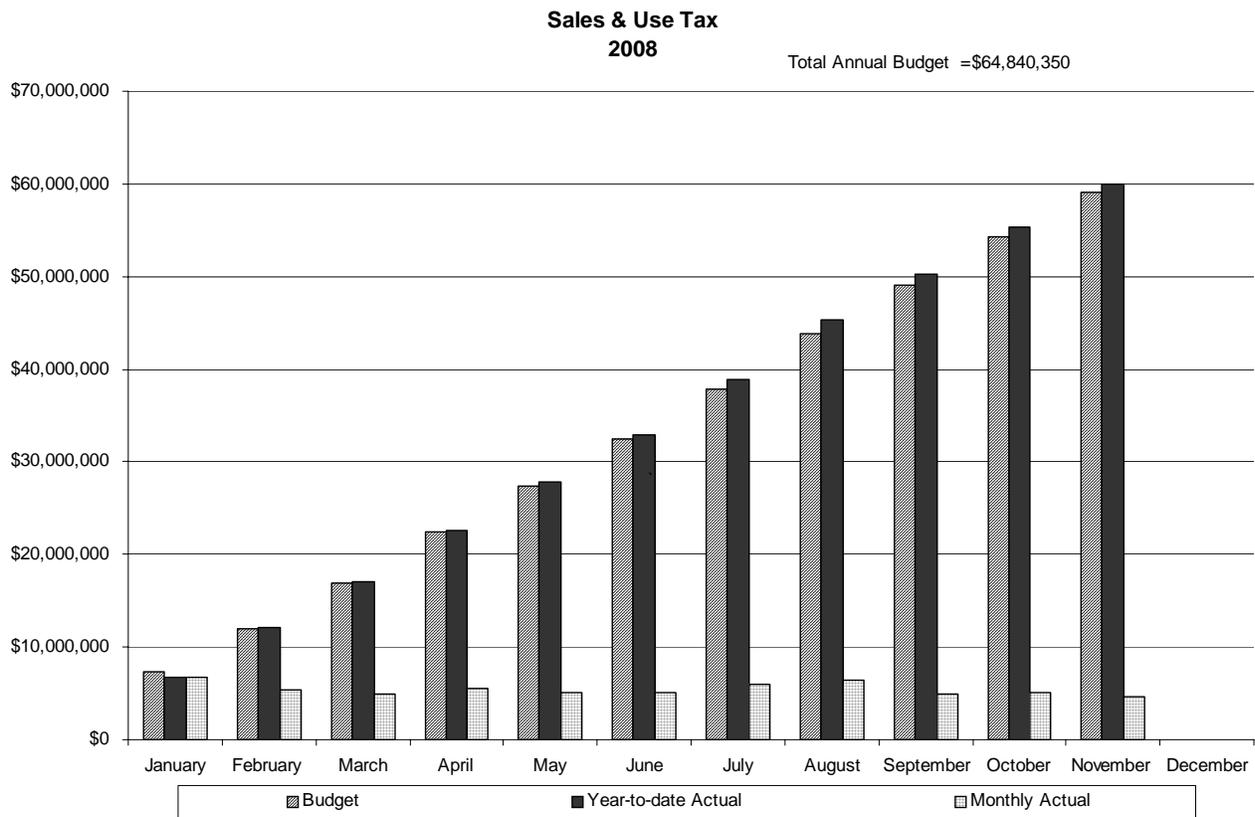


In 2008, Central Charges expenditures were less than in prior years due to a variance in the annual carryover appropriation of transfers to the General Capital Improvement Fund.

**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. This chart does not include Open Space Sales & Use Tax.

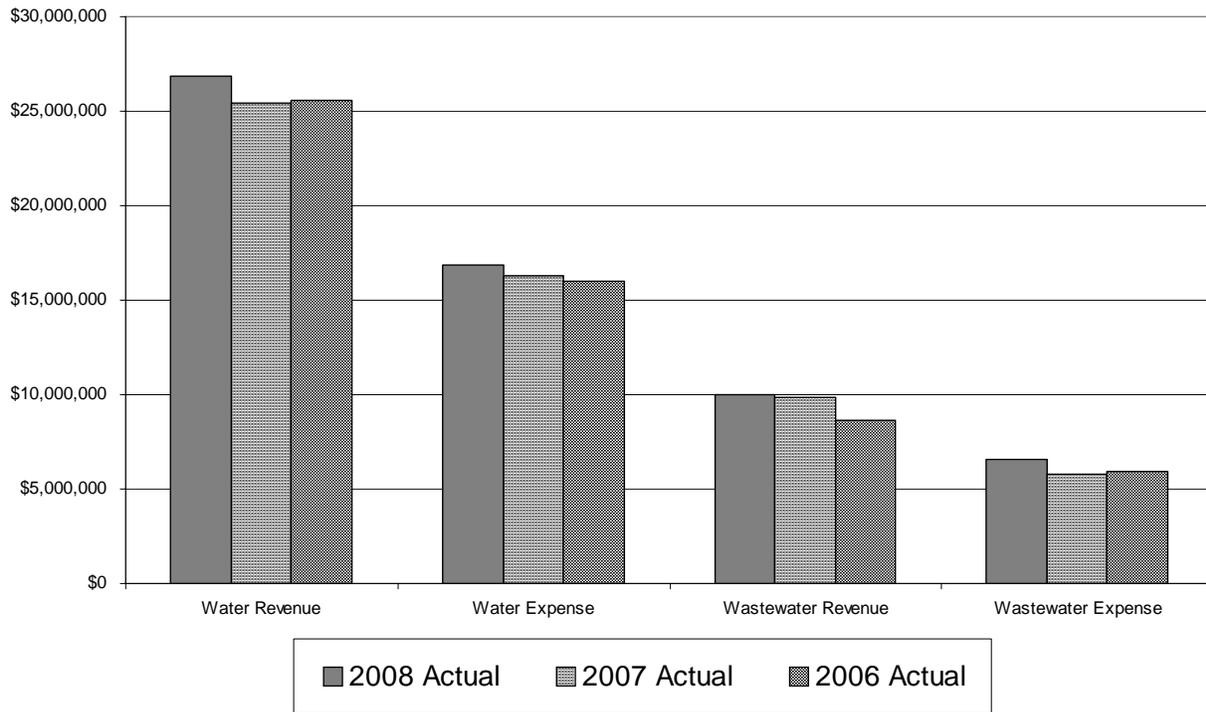


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

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.

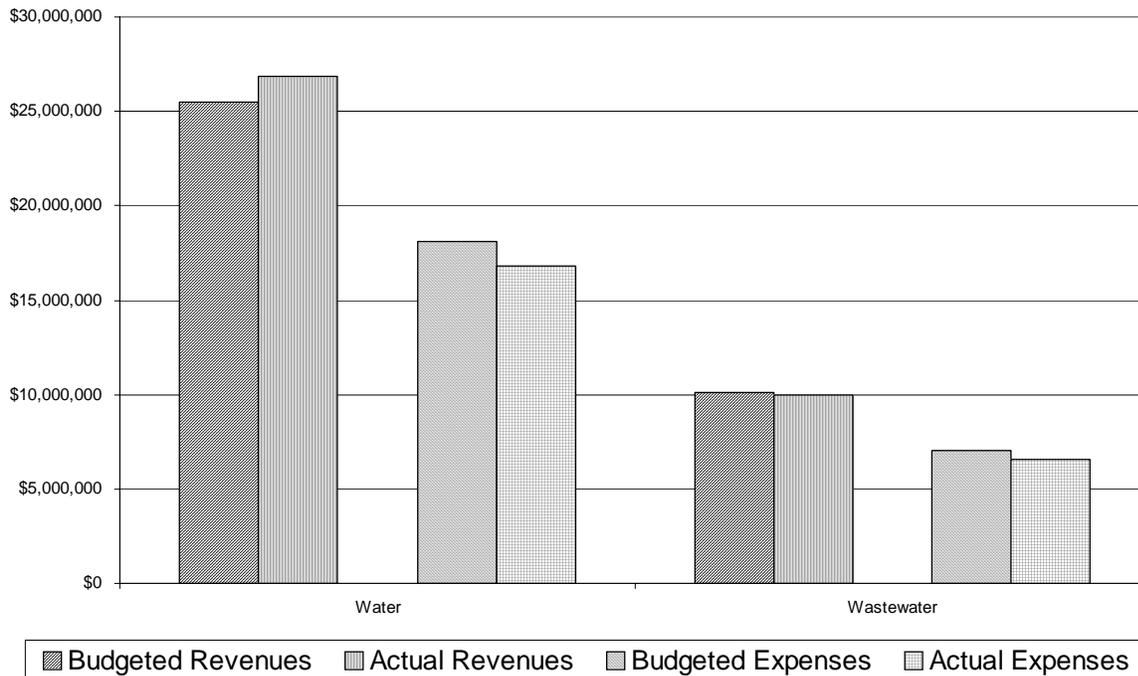
These graphs represent the segment information for the Water and Wastewater funds.

**Water and Wastewater Funds  
Operating Revenue and Expenses 2006-2008**



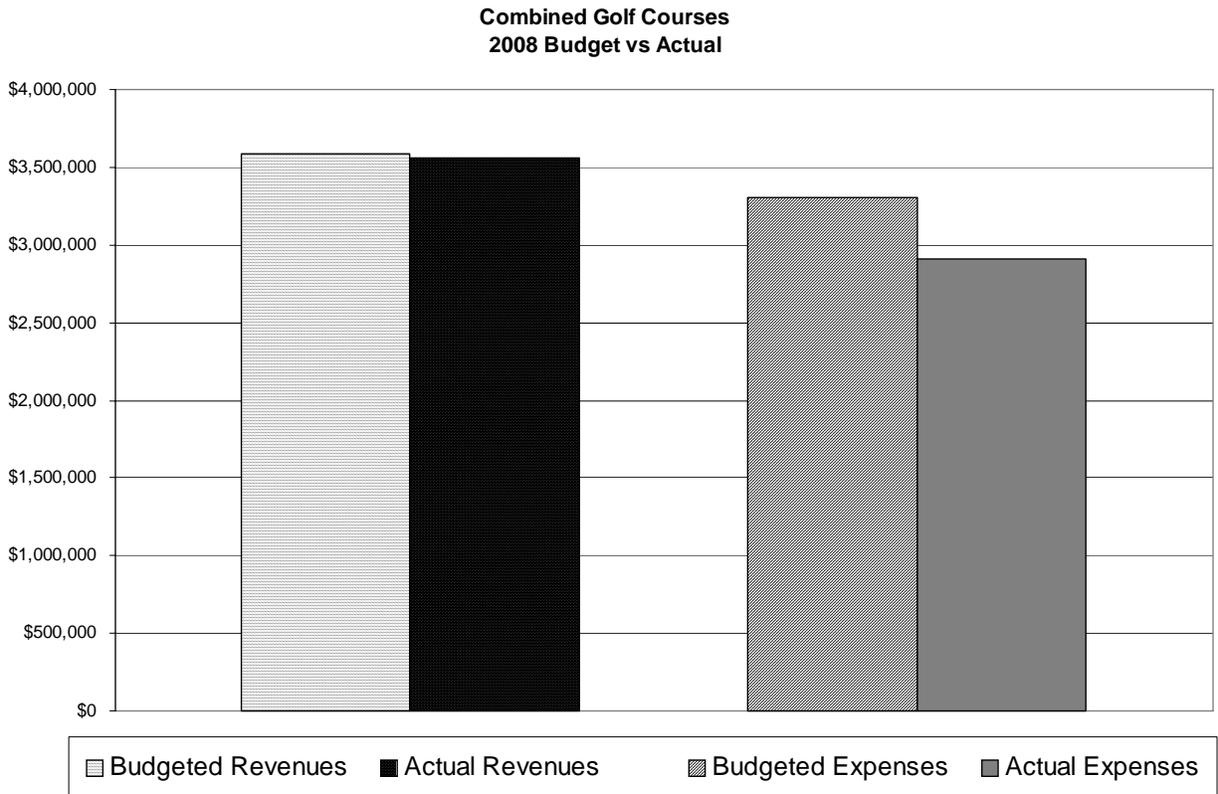
Fluctuation in water revenue between years reflects the effect of weather variations on water consumption.

**Water and Wastewater Funds  
2008 Operating Budget vs Actual**

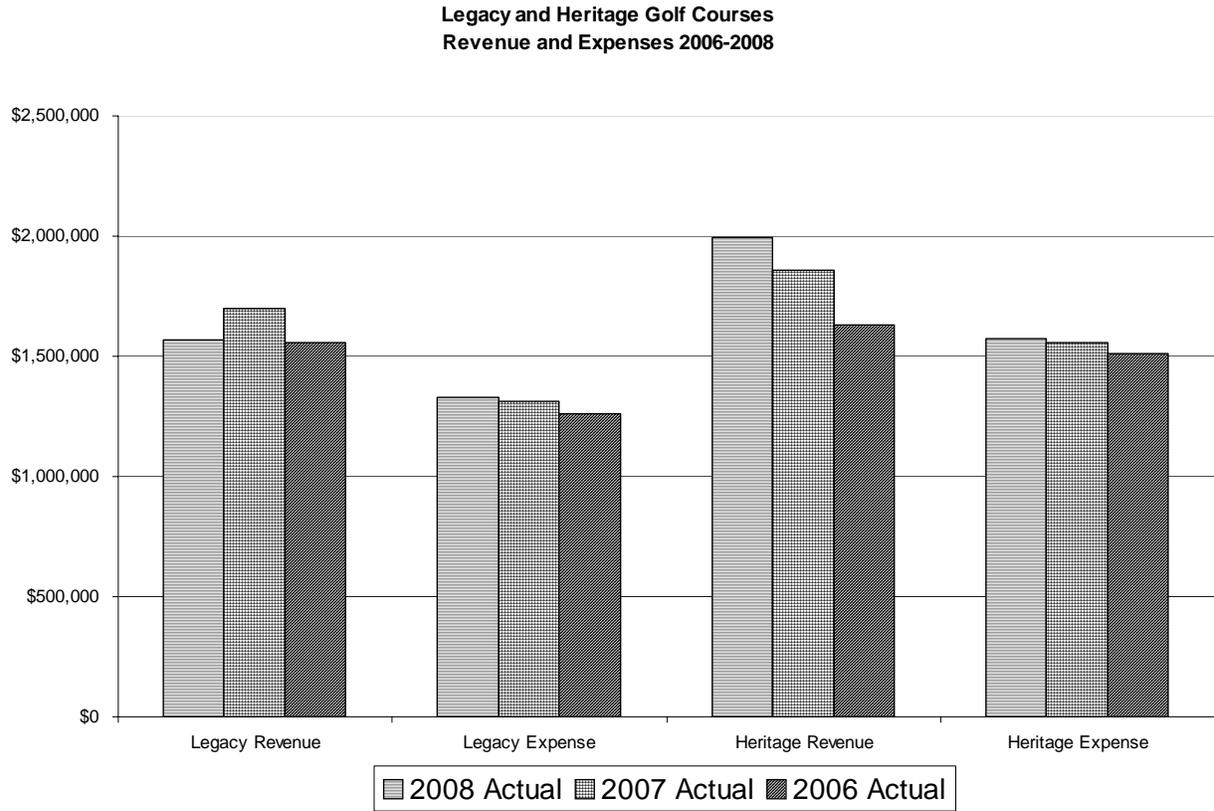


**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

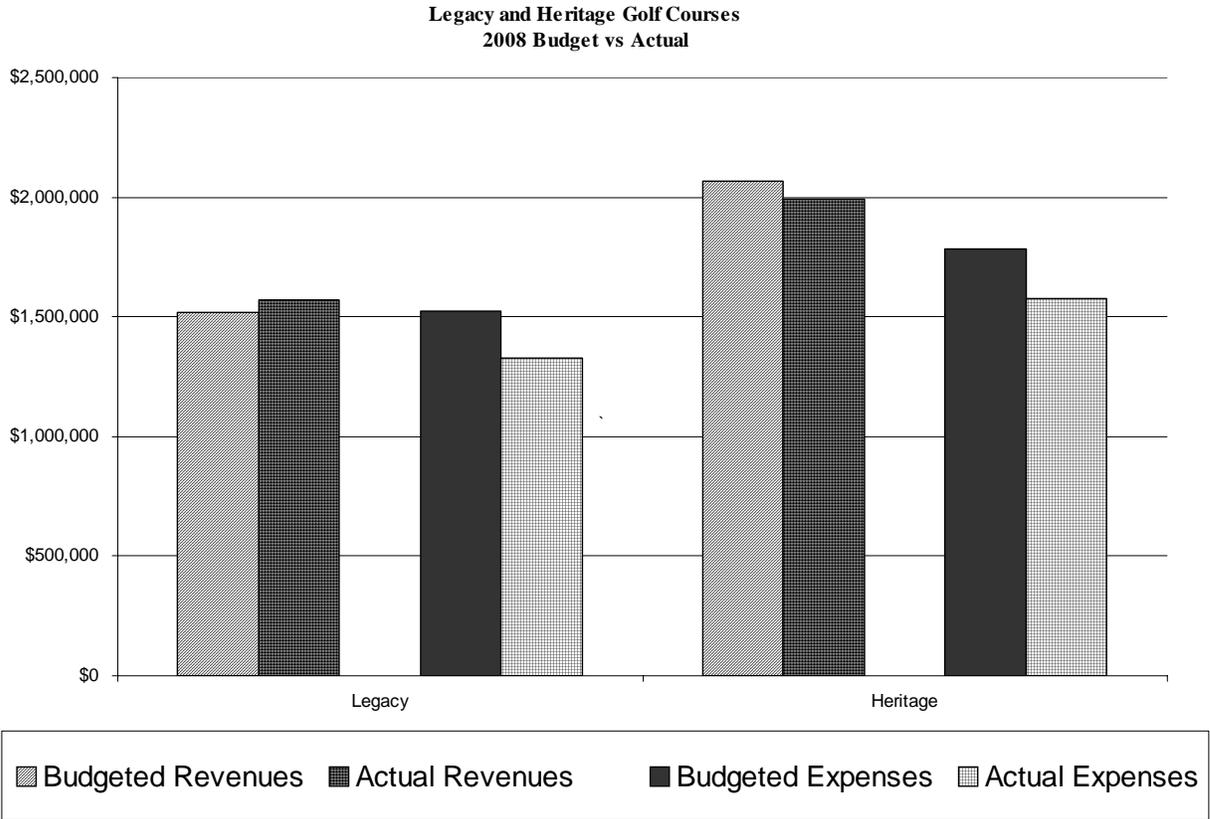
This enterprise reflects the operations of the City's two municipal golf courses.



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



A one time Other Financing Source and Use of \$582,144 for a lease purchase of golf carts, was omitted from 2006 Heritage revenues and expenses for comparison purposes. One time transfers from the General Fund for the write off of inter-fund loans in the amounts of \$521,678 and \$228,322 for Heritage and Legacy, respectively, have been omitted from 2006 revenues for comparison purposes.



Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Taxes	5,012,710	4,916,549		4,943,654	27,005	100.5%
Licenses & Permits	1,575,000	1,447,950	(1)	1,954,205	506,255	135.0%
Intergovernmental Revenue	4,912,281	4,410,781		4,523,646	112,865	102.6%
Recreation Services	5,689,173	5,166,979		5,438,012	271,033	105.2%
Other Services	8,591,710	7,753,239		7,634,934	-118,305	98.5%
Fines	2,353,275	2,188,546		1,821,512	-367,034	83.2%
Interest Income	505,798	470,392		433,016	-37,376	92.1%
Misc	1,973,671	1,969,711	(2)	2,129,629	159,918	108.1%
Leases	1,697,251	1,270,216		1,482,832	212,616	116.7%
Interfund Transfers	60,167,072	55,162,328		55,164,028	1,700	100.0%
Sub-total Revenues	<u>92,477,941</u>	<u>84,756,691</u>		<u>85,525,368</u>	<u>768,677</u>	<u>100.9%</u>
Carryover	4,420,614	4,420,614		4,420,614	0	100.0%
Revenues and Carryover	<u>96,898,555</u>	<u>89,177,305</u>		<u>89,945,982</u>	<u>768,677</u>	<u>100.9%</u>
<b>Expenditures</b>						
City Council	208,772	172,112		151,063	-21,049	87.8%
City Attorney's Office	1,105,473	1,014,027		994,327	-19,700	98.1%
City Manager's Office	1,191,924	1,075,176		964,683	-110,493	89.7%
Central Charges	28,225,813	25,085,076		23,718,844	-1,366,232	94.6%
General Services	5,362,775	4,751,170		4,550,599	-200,571	95.8%
Finance	1,899,205	1,732,697		1,593,740	-138,957	92.0%
Police	20,769,718	18,961,200		17,842,331	-1,118,869	94.1%
Fire Emergency Services	11,490,882	10,485,965		10,206,333	-279,632	97.3%
Community Development	4,740,500	4,335,379		4,147,843	-187,536	95.7%
Public Works & Utilities	7,278,255	6,520,139		6,516,366	-3,773	99.9%
Parks, Recreation & Libraries	14,625,238	13,227,469		13,043,779	-183,690	98.6%
Total Expenditures	<u>96,898,555</u>	<u>87,360,410</u>		<u>83,729,908</u>	<u>-3,630,502</u>	<u>95.8%</u>
Revenues and Carryover						
Over(Under) Expenditures	<u>0</u>	<u>1,816,895</u>		<u>6,216,074</u>	<u>4,399,179</u>	

(1) Reflects commercial building permit activity in the North Huron Urban Renewal Area

(2) Reflects reimbursement from the City of Thornton for 144th Avenue Bridge IGA

City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues and Carryover</b>						
Sales Tax						
Sales Tax Returns	41,420,167	37,816,312		38,043,827	227,515	100.6%
Sales Tax Audit Revenues	684,000	648,618		609,338	-39,280	93.9%
S-T Rev. STX	<u>42,104,167</u>	<u>38,464,930</u>		<u>38,653,165</u>	<u>188,235</u>	<u>100.5%</u>
Use Tax						
Use Tax Returns	8,811,551	7,795,325		7,876,949	81,624	101.0%
Use Tax Audit Revenues	761,782	659,703		875,777	216,074	132.8%
S-T Rev. UTX	<u>9,573,333</u>	<u>8,455,028</u>		<u>8,752,726</u>	<u>297,698</u>	<u>103.5%</u>
Total STX and UTX	<u>51,677,500</u>	<u>46,919,958</u>		<u>47,405,891</u>	<u>485,933</u>	<u>101.0%</u>
Public Safety Tax						
PST Tax Returns	11,647,649	10,618,656		10,871,443	252,787	102.4%
PST Audit Revenues	126,284	111,188		296,862	185,674	267.0%
Total Rev. PST	<u>11,773,933</u>	<u>10,729,844</u>		<u>11,168,305</u>	<u>438,461</u>	<u>104.1%</u>
Total Interest Income	150,000	137,500		185,584	48,084	135.0%
Carryover	<u>1,238,917</u>	<u>1,238,917</u>		<u>1,238,917</u>	<u>0</u>	<u>100.0%</u>
Total Revenues and Carryover	<u>64,840,350</u>	<u>59,026,219</u>		<u>59,998,697</u>	<u>972,478</u>	<u>101.6%</u>
<b>Expenditures</b>						
Central Charges	<u>64,840,350</u>	<u>59,540,231</u>		<u>59,540,231</u>	<u>0</u>	<u>100.0%</u>
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>-514,012</u>		<u>458,466</u>	<u>972,478</u>	

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Sales & Use Tax	4,897,190	4,448,805		4,654,647	205,842	104.6%
Interest Income	60,000	55,000		446,510	391,510	811.8%
Sale of Assets	50,000	50,000		50,000	0	100.0%
Miscellaneous	88,832	81,429		59,974	-21,455	73.7%
Interfund Transfers	100,000	100,000		100,000	0	100.0%
Sub-total Revenues	<u>5,196,022</u>	<u>4,735,234</u>		<u>5,311,131</u>	<u>575,897</u>	<u>112.2%</u>
Carryover	1,234,737	1,234,737		1,234,737	0	100.0%
Total Revenues and Carryover	<u>6,430,759</u>	<u>5,969,971</u>		<u>6,545,868</u>	<u>575,897</u>	<u>109.6%</u>
<b>Expenditures</b>						
Central Charges	6,091,667	5,572,819		5,010,651	-562,168	89.9%
Park Services	339,092	311,338		252,400	-58,938	81.1%
	<u>6,430,759</u>	<u>5,884,157</u>		<u>5,263,051</u>	<u>-621,106</u>	<u>89.4%</u>
Over(Under) Expenditures	<u>0</u>	<u>85,814</u>		<u>1,282,817</u>	<u>1,197,003</u>	

**City of Westminster**  
**Financial Report**  
For Eleven Months Ending November 30, 2008

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water and Wastewater Fund-Combined</b>						
<b>Operating Revenues</b>						
License & Permits	70,000	64,167	(1)	86,090	21,923	134.2%
Intergovernmental Revenue	50,000	11,871		11,871	0	100.0%
Rates and Charges	37,661,877	35,201,376		36,500,171	1,298,795	103.7%
Miscellaneous	311,414	285,463		262,059	(23,404)	91.8%
<b>Total Operating Revenues</b>	<b>38,093,291</b>	<b>35,562,877</b>		<b>36,860,191</b>	<b>1,297,314</b>	<b>103.6%</b>
<b>Operating Expenses</b>						
Central Charges	5,735,227	5,257,291		5,089,820	(167,471)	96.8%
Finance	649,035	572,449		529,147	(43,302)	92.4%
Public Works & Utilities	19,698,959	18,849,763		15,573,761	(1,276,002)	92.4%
Information Technology	2,727,474	2,465,636		2,241,256	(224,380)	90.9%
<b>Total Operating Expenses</b>	<b>28,810,695</b>	<b>25,145,139</b>		<b>23,433,984</b>	<b>(1,711,155)</b>	<b>93.2%</b>
<b>Operating Income (Loss)</b>	<b>9,282,596</b>	<b>10,417,738</b>		<b>13,426,207</b>	<b>3,008,469</b>	
<b>Other Revenue and Expenses</b>						
Tap Fees	9,925,000	9,308,175	(1)	9,136,057	(172,118)	98.2%
Interest Income	1,550,000	1,420,833		1,520,260	99,427	107.0%
Interfund Transfers	10,160,069	9,624,979	(2)	9,624,979	0	100.0%
Sale of Assets	1,157,901	1,157,901		1,157,902	1	100.0%
Carryover	2,632,317	2,632,317		2,632,317	0	100.0%
Debt Service	(6,308,662)	(2,596,888)		(2,596,888)	0	100.0%
Reserve Transfer	(3,100,228)	(3,100,228)		(3,100,228)	0	100.0%
<b>Total Other Revenue (Expenses)</b>	<b>16,016,397</b>	<b>18,447,089</b>		<b>18,374,399</b>	<b>(72,690)</b>	<b>99.6%</b>
<b>Increase (Decrease) in Net Assets</b>	<b>25,298,993</b>	<b>28,864,827</b>	(3)	<b>31,800,606</b>	<b>2,935,779</b>	

(1) Reflects significant development activity in the North Huron Urban Renewal Area

(2) Includes February transfer of \$3,738,933 from the Reserve Fund for MSC Facility Renovation CIP

(3) Increase in Net Assets available for Capital Projects and Reserves

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water Fund</b>						
<b>Operating Revenues</b>						
License & Permits	70,000	64,167	(1)	86,090	21,923	134.2%
Intergovernmental Revenue	50,000	11,871		11,871	0	100.0%
Rates and Charges	26,597,850	25,110,750		26,505,214	1,394,464	105.6%
Miscellaneous	301,414	276,296		262,046	(14,250)	94.8%
<b>Total Operating Revenues</b>	<u>27,019,264</u>	<u>25,463,084</u>		<u>26,865,221</u>	<u>1,402,137</u>	<u>105.5%</u>
<b>Operating Expenses</b>						
Central Charges	3,997,052	3,663,864		3,571,868	(92,096)	97.5%
Finance	649,035	572,449		529,147	(43,302)	92.4%
Public Works & Utilities	12,920,063	11,411,839		10,498,391	(913,448)	92.0%
Information Technology	2,727,474	2,465,636		2,241,256	(224,380)	90.9%
<b>Total Operating Expenses</b>	<u>20,293,624</u>	<u>18,113,888</u>		<u>16,840,662</u>	<u>(1,273,226)</u>	<u>93.0%</u>
<b>Operating Income (Loss)</b>	<u>6,725,640</u>	<u>7,349,196</u>		<u>10,024,559</u>	<u>2,675,363</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	7,500,000	7,041,900	(1)	6,921,895	(120,005)	98.3%
Interest Income	900,000	825,009		1,077,171	252,171	130.6%
Interfund Transfers	8,887,770	8,458,705	(2)	8,458,705	0	100.0%
Sale of Assets	1,157,901	1,157,901		1,157,902	1	100.0%
Carryover	1,616,781	1,616,781		1,616,781	0	100.0%
Debt Service	(4,801,939)	(1,987,094)		(1,987,094)	0	100.0%
Reserve Transfer	(2,712,160)	(2,712,160)		(2,712,160)	0	100.0%
<b>Total Other Revenues (Expenses)</b>	<u>12,548,353</u>	<u>14,401,033</u>		<u>14,533,200</u>	<u>132,167</u>	<u>100.9%</u>
<b>Increase (Decrease) in Net Assets</b>	<u>19,273,993</u>	<u>21,750,229</u>	(3)	<u>24,557,759</u>	<u>2,807,530</u>	

(1) Reflects significant development activity in the North Huron Urban Renewal Area

(2) Includes February transfer of \$3,738,933 from the Reserve Fund for MSC Facility Renovation CIP

(3) Increase in Net Assets available for Capital Projects and Reserves

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Wastewater Fund</b>						
<b>Operating Revenues</b>						
Rates and Charges	11,064,027	10,090,626		9,994,957	(95,669)	99.1%
Miscellaneous	10,000	9,167		13	(9,154)	0.1%
Total Operating Revenues	<u>11,074,027</u>	<u>10,099,793</u>		<u>9,994,970</u>	<u>(104,823)</u>	<u>99.0%</u>
<b>Operating Expenses</b>						
Central Charges	1,738,175	1,593,327		1,517,952	(75,375)	95.3%
Public Works & Utilities	6,778,896	5,437,924		5,075,370	(362,554)	93.3%
Total Operating Expenses	<u>8,517,071</u>	<u>7,031,251</u>		<u>6,593,322</u>	<u>(437,929)</u>	<u>93.8%</u>
Operating Income (Loss)	<u>2,556,956</u>	<u>3,068,542</u>		<u>3,401,648</u>	<u>333,106</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	2,425,000	2,266,275	(1)	2,214,162	(52,113)	97.7%
Interest Income	650,000	595,833		443,089	(152,744)	74.4%
Interfund Transfers	1,272,299	1,166,274		1,166,274	0	100.0%
Carryover	1,015,536	1,015,536		1,015,536	0	100.0%
Debt Service	(1,506,723)	(609,794)		(609,794)	0	100.0%
Reserve Transfer	(388,068)	(388,068)		(388,068)	0	100.0%
Total Other Revenues (Expenses)	<u>3,468,044</u>	<u>4,046,056</u>		<u>3,841,199</u>	<u>(204,857)</u>	<u>94.9%</u>
Increase (Decrease) in Net Assets	<u>6,025,000</u>	<u>7,114,598</u>	(2)	<u>7,242,847</u>	<u>128,249</u>	

(1) Reflects significant development activity in the North Huron Urban Renewal Area

(2) Increase in Net Assets available for Capital Projects and Reserves

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Storm Drainage Fund</b>						
<b>Revenues and Carryover</b>						
Charges for Services	1,840,000	1,686,667		1,796,584	109,917	106.5%
Interest Income	0	0		72,592	72,592	N/A
Miscellaneous	4,000	3,667		6,098	2,431	166.3%
Sub-total Storm Drainage Revenues	<u>1,844,000</u>	<u>1,690,334</u>		<u>1,875,274</u>	<u>184,940</u>	<u>110.9%</u>
Carryover	258,636	258,636		258,636	0	100.0%
Total Revenues and Carryover	<u>2,102,636</u>	<u>1,948,970</u>		<u>2,133,910</u>	<u>184,940</u>	<u>109.5%</u>
<b>Expenses</b>						
General Services	100,860	82,503		60,184	(22,319)	72.9%
Community Development	123,740	112,727		100,969	(11,758)	89.6%
Park Services	178,000	163,167		151,361	(11,806)	92.8%
Public Works & Utilities	360,400	275,346		271,358	(3,988)	98.6%
Total Expenses	<u>763,000</u>	<u>633,743</u>		<u>583,872</u>	<u>(49,871)</u>	<u>92.1%</u>
Increase (Decrease) in Net Assets	<u>1,339,636</u>	<u>1,315,227</u>	(1)	<u>1,550,038</u>	<u>234,811</u>	

(1) Increase in Net Assets available for Capital Projects and Reserves

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Golf Courses Combined</b>						
<b>Revenues</b>						
Carryover	0	0		0	0	N/A
Charges for Services	3,226,101	3,156,691		3,069,441	(87,250)	97.2%
Interest Income	0	0		25,037	25,037	N/A
Interfund Transfers	467,150	428,221		468,192	39,971	109.3%
<b>Total Revenues</b>	<u>3,693,251</u>	<u>3,584,912</u>		<u>3,562,670</u>	<u>(22,242)</u>	<u>99.4%</u>
<b>Expenses</b>						
Central Charges	210,500	195,295		167,747	(27,548)	85.9%
Recreation Facilities	2,982,436	2,969,512		2,595,414	(374,098)	87.4%
<b>Total Expenses</b>	<u>3,192,936</u>	<u>3,164,807</u>		<u>2,763,161</u>	<u>(401,646)</u>	<u>87.3%</u>
Operating Income (Loss)	500,315	420,105		799,509	379,404	
Debt Service Expense	500,315	142,658		142,658	0	100.0%
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>277,447</u>		<u>656,851</u>	<u>379,404</u>	

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Pro rated Budget	% Budget
<b>Legacy Ridge Fund</b>						
<b>Revenues</b>						
Carryover	(117,732)	(107,921)		(107,921)	0	100.0%
Charges for Services	1,661,452	1,624,900		1,653,787	28,887	101.8%
Interest Income	0	0		25,037	25,037	N/A
<b>Total Revenues</b>	<u>1,543,720</u>	<u>1,516,979</u>		<u>1,570,903</u>	<u>53,924</u>	<u>103.6%</u>
<b>Expenses</b>						
Central Charges	107,700	98,869		81,860	(17,009)	82.8%
Recreation Facilities	1,436,020	1,423,096		1,247,792	(175,304)	87.7%
<b>Total Expenses</b>	<u>1,543,720</u>	<u>1,521,965</u>		<u>1,329,652</u>	<u>(192,313)</u>	<u>87.4%</u>
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>(1,986)</u>		<u>241,251</u>	<u>246,237</u>	

**City of Westminster  
Financial Report  
For Eleven Months Ending November 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Heritage at Westmoor Fund</b>						
<b>Revenues</b>						
Carryover	117,732	107,921		107,921	0	100.0%
Charges for Services	1,531,649	1,531,791		1,415,654	(116,137)	92.4%
Interfund Transfers	467,150	428,221		488,192	39,971	109.3%
<b>Total Revenues</b>	<b>2,149,531</b>	<b>2,067,933</b>		<b>1,991,767</b>	<b>(76,166)</b>	<b>96.3%</b>
<b>Expenses</b>						
Central Charges	102,800	96,426		85,887	(10,539)	89.1%
Recreation Facilities	1,546,416	1,546,416		1,347,622	(198,794)	87.1%
<b>Sub-Total Expenses</b>	<b>1,649,216</b>	<b>1,642,842</b>		<b>1,433,509</b>	<b>(209,333)</b>	<b>87.3%</b>
Operating Income	500,315	425,091		558,258	133,167	
Debt Service Expense	500,315	142,658		142,658	0	100.0%
<b>Increase (Decrease) in Net Assets</b>	<b>0</b>	<b>282,434</b>		<b>415,601</b>	<b>133,167</b>	

CLTY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH and YEAR-TO-DATE NOVEMBER 2008

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	Last Year General Sales	Last Year General Use	Total Sales	%Change	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	311,487	1,884	313,371	378,799	1,472	380,271	-18	28	-18
THE ORCHARD 344TH & I-25 JC PENNEY/WACY'S	231,249	10,811	242,059	110,383	1,392	111,775	110	677	117
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	219,451	950	220,401	179,255	22,147	201,402	22	-96	9
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	202,010	2,470	204,480	262,358	2,814	265,172	-23	-12	-23
SHOPS AT WALNUT CREEK 104TH & REED TARGET	183,356	1,174	184,530	168,228	4,449	172,677	9	-74	7
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	184,071	166	184,236	183,028	513	183,541	-1	-68	-1
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	173,210	8,380	181,590	191,932	3,797	195,729	-10	121	-7
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN CIRCUIT CITY	165,917	3,802	169,718	215,623	1,267	217,890	-23	200	-22
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	160,808	625	161,433	47	0	47	43506	*****	44842
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	139,315	12,302	151,618	118,002	1,091	119,093	18	1027	27
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	117,641	4,921	122,562	133,148	19,115	152,262	-12	-74	-20
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	102,970	466	103,436	91,516	336	91,852	13	39	13
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	84,612	743	85,354	76,680	52	76,731	10	1338	11
STANLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	67,461	52	67,513	64,902	183	65,085	4	-71	4
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER	58,469	674	59,143	62,486	282	62,768	-6	139	-6

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH and YEAR-TO-DATE NOVEMBER 2008

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	Last Year General Sales	Last Year General Use	Total Sales	%Change	Use	Total
GUIAR STORE STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	51,181	4,245	55,426	53,424	186	53,610	-4	2183	3
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	55,011	71	55,082	48,697	66	48,783	13	-18	13
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	51,719	277	51,996	53,706	113	53,819	-4	145	-3
CHURCH RANCH CORPORATE CENTER CHURCH RANCH BOULEVARD LA QUINIA	10,771	37,535	48,306	6,916	13,247	20,163	56	183	140
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	3,910	44,060	47,971	25,704	30,931	56,635	-85	42	-15
WILLOW RUN 128TH & ZUNI SAFEWAY	45,887	131	46,018	49,235	176	49,411	-7	-25	-7
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	41,675	492	42,167	44,606	313	44,919	-7	57	-6
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	29,656	1,997	31,653	23,045	131	23,176	29	1426	37
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	25,160	302	25,462	32,107	222	32,330	-22	36	-21
MEADOW POINTE NE CRN 92ND & OLD WADS CARRABAS	21,917	22	21,939	22,248	182	22,431	-1	-88	-2
	2,738,921	138,552	2,877,473	2,599,075	104,496	2,703,572	5	33	6

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH and YEAR-TO-DATE NOVEMBER 2008

Center Location Major Tenant	YTD 2008			YTD 2007			XChange		
	General Sales	General Use	Total	General Sales	General Use	Total Sales	Use	Total	
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	4,236,840	25,758	4,262,598	4,558,516	21,993	4,580,509	-7	17	-7
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	3,014,391	58,536	3,072,927	3,865,644	38,273	3,903,917	-22	53	-21
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	2,382,568	83,750	2,466,319	1,611,984	75,743	1,687,726	48	11	46
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,342,804	310,651	2,653,455	1,306,768	13,567	1,320,335	79	2190	101
SHOPS AT WALNUT CREEK 104TH & REED TARGET	2,326,240	17,014	2,343,254	2,002,518	27,867	2,030,385	16	-39	15
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	2,258,749	27,700	2,286,449	2,263,177	10,738	2,273,915	0	158	1
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN CIRCUIT CITY	2,237,947	26,509	2,264,455	2,649,565	19,255	2,668,819	-16	38	-15
BROOKHILL I & II N SIDE 88TH OTIS TO WAOS HOME DEPOT	2,053,196	35,274	2,088,470	2,072,929	19,980	2,092,918	-1	76	0
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,414,549	263,776	1,678,326	1,850,007	213,658	2,063,665	-24	23	-19
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,348,036	43,654	1,391,690	1,406,348	15,103	1,421,451	-4	189	-2
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,207,111	6,686	1,213,797	1,084,197	14,531	1,098,728	11	-54	10
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	1,086,671	5,680	1,092,351	1,084,675	3,292	1,087,968	0	73	0
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,004,745	6,368	1,011,114	4,372	37	4,410	22879	17024	22830
STANDLEY SHORES CENTER SW CORNER 100TH & WAOS KING SOOPERS	781,249	8,292	789,541	742,428	2,799	745,227	5	196	6
WESTMINSTER CROSSING 136TH & I-25	702,747	2,634	705,381	757,338	6,969	764,307	-7	-62	-8

CITY OF WESTMINSTER  
 GENERAL RECEIPTS BY CENTER  
 MONTH and YEAR-TO-DATE NOVEMBER 2008

Center Location Major Tenant	YTD 2008			YTD 2007			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total Sales	Use	Total	
LOWE'S ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	664,890	4,216	669,106	672,239	5,987	678,227	-1	-30	-1
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	601,296	27,804	629,100	617,684	2,869	620,552	-3	860	1
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	588,258	6,735	594,993	615,250	2,918	618,167	-4	131	-4
WILLOW RUN 128TH & ZUNI SAFEWAY	550,292	3,521	553,813	599,453	2,243	601,696	-8	57	-8
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POIIS	467,840	10,915	478,755	447,816	15,153	462,969	4	-28	3
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	317,301	5,956	323,257	335,143	17,079	352,222	-5	-65	-8
NORTHVIEW 92ND AVE YATE'S TO SHERIDAN SALTGRASS	279,132	23,525	302,656	337,840	6,322	344,162	-17	272	-12
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	271,870	5,609	277,479	250,498	1,558	252,056	9	260	10
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	271,159	5,910	277,069	278,821	9,888	288,709	-3	-40	-4
BROOKHILL IV E SIDE WADS 90TH-92ND HANCOCK FABRICS	265,121	6,446	271,567	161,587	1,906	163,493	64	238	66
	32,675,002	1,022,918	33,697,920	31,576,796	549,733	32,126,529	3	86	5



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Deicing Salt Purchase

**Prepared By:** Pat Sexton, Street Maintenance Supervisor  
Ray Porter, Street Operations Manager

**Recommended City Council Action**

Authorize the purchase of rock salt from the two low quote vendors, Independent Salt Company and Envirotech Services, Inc., in an amount not to exceed \$324,000.

**Summary Statement**

- Deicing salt is purchased as a deicing product to ensure safer travel for the motoring public.
- 2008-2009 bids for salt were obtained through the Multiple Assembly of Procurement Officials (MAPO). Independent Salt Company has agreed to extend the MAPO contract for an additional one year, July 16, 2008 through July 15, 2009 for \$57.98 per ton.
- The 2009 State of Colorado low bid for deicing salt, (ice slicer) with Envirotech Services, Inc has been quoted at \$78.70 per ton.
- Staff estimates that 4,500 tons of deicing salt will be utilized during 2008:
 

Envirotech Services, Inc.	2,000 tons
Independent Salt Company	2,500 tons
- The \$324,000 authorization requested will allow for the purchase of 4,500 tons of deicing salt. If the City experiences significant snow and ice conditions and these materials are used up, Staff will need to request additional spending authority.
- Splitting this purchase between the two vendors has proven to expand available resources and the two products are mixed 50/50 to decrease the overall price per ton (\$68.34).
- Adequate funds were budgeted and are available for this purchase.

**Expenditure Required:** \$324,000

**Source of Funds:** General Fund – Public Works and Utilities 2009 Street Operations Budget

**Policy Issue**

Should City Council authorize the purchase of deicing salt from the two available vendors, Independent Salt Company and Envirotech Services, Inc., in an amount not to exceed \$324,000?

**Alternatives**

One alternative is to not purchase deicing materials, which is not recommended as keeping the streets safe for the motoring public during the winter months is of the highest priority.

A second alternative is to re-bid the salt purchase. This alternative is not recommended since Staff believes the unit cost of salt and the vendors will remain the same. Locking into one vendor increases the chance for non-delivery and running out of the product.

**Background Information**

The City has successfully purchased salt through the MAPO bid and CDOT bid in past years with no problems. These expenditures are within the approved 2009 Public Works and Utilities Street Operations Division budgeted amount for these items. Deicing salt costs increased 3.6% over the 2008 winter season, primarily due to increased transportation costs.

In 2007 and 2008 deicing material shortages have been experienced across the country and Staff has contacted all known suppliers with negative success for procurement. Once the entire 2009 budgeted \$324,000 allotment for deicing salt is depleted, (depending on the severity of the remaining winter season) additional funding in 2009 may be required. At this writing, Westminster's stockpile is at 80% capacity. Staff will make a recommendation to City Council if such a situation should arise.

This purchase helps achieve City Council's strategic plan goal of a "Safe and Secure" community by meeting the objective of safe citizen travel throughout the City.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Cashier System Acquisition

**Prepared By:** Robert Byerhof, Senior Financial Analyst

**Recommended City Council Action**

Based on the report of the City Manager, City Council finds the public interest would be best served by accepting the cashier system bid from Active Network and authorize the City Manager to sign a contract for the purchase of a new cashier system at City Hall with Active Network not to exceed \$95,764, approve a project contingency of \$9,576 and associated project expenses of \$34,000 for equipment and software for a total project budget of \$139,340.

**Summary Statement**

- The current cashier system is out of date and Staff was apprised that the system would no longer be supported by the end of 2010.
- Due to system failures and ongoing software issues with the current system that results in significant Staff time to get the system back on line, Staff requested and Council authorized 2007 carry-over funding in the amount of \$150,000 to purchase a new system in 2008.
- A Request for Proposals (RFP) was sent to five qualified vendors and after a thorough analysis, the committee was very clear in their selection of Active Network (Active) as the best qualified vendor to install a new cashier system at City Hall.

**Expenditure Required:** \$139,340

**Source of Funds:** Utility Fund

**Policy Issue**

Should the City purchase and implement a new cashier system at City Hall to increase its efficiency and improve customer service?

**Alternatives**

1. Do not proceed with a new cashier system. This action is not recommended due to the current antiquated software will not be supported after 2010 and computer data entries and operating efficiencies will not be maximized through software interfaces with a new system.
2. Select the lowest bid provider, PCI. This action is not recommended due to Staff's criteria to select a vendor that will provide the best solution to the City's cashiering needs and interface experience with software currently utilized by the City.

**Background Information**

City Hall employs central payment processing and revenue collections that primarily includes utility bill payments. In addition, the cashiers process payments such as tap fees, passports, sales tax submissions, contractor licenses and building permits, police department fees and fines, and deposits from recreation centers. Payments throughout the organization are made with cash, checks and credit cards. The cashiers process approximately \$30 million dollars annually, with an average of 225 transactions daily.

The current cashier system was installed in 2000. In 2007 the vendor, Paradigm, alerted Staff that the system would no longer be supported after 2010. In early spring 2008, the cashier system broke down at one of the two cashier terminals. The Information Technology Department worked numerous hours with the vendor to rebuild the system. Because of the unreliability of the current system, Staff requested that 2007 carry-over funds be appropriated to move up the replacement of the existing cashier system. City Council approved this carry-over appropriation on August 11, 2008 in the amount of \$150,000.

A RFP was sent to five qualified vendors with existing government customers and similar software applications that the City runs, such as the financial management system (JD Edwards), utility billing system (Advanced Utility System CIS Infinity), and building permit system (Accela). An important goal of a new cashier system is the ability to interface with these systems in order to facilitate operational efficiencies. The new cashier system will improve customer service since it will allow cashiers to process utility billing and building permit payments in "real time".

Staff from the Finance and Information Technology departments reviewed the RFPs and selected a vendor based on important application and integration requirements, the City's revenue collection, reporting, and auditing standards, and computer hardware and software applications. Of the five RFPs requested, four vendors submitted proposals and one declined.

Each proposal was evaluated on the following criteria:

- Application's ease of use
- Ability to integrate with other software applications
- Initial and ongoing customer support
- Total cost of ownership of the system, including upfront and ongoing maintenance costs
- Quality references, which best provide the City with a good understanding of the Bidder's product and services along with similar usage and integration issues

A summary of the submitted proposals' costs are outlined below:

<b>Vendor</b>	<b>Base Cost *</b>	<b>3-Year Maintenance Costs</b>	<b>Total Costs **</b>
PCI	\$46,100	\$6,699	\$ 52,799
Active Network	\$67,180	\$18,300	\$ 85,480
Core Business Tech.	\$84,600	\$17,462	\$ 97,062
System Innovators	\$82,572	\$49,646	\$132,218

\* Includes interface costs with Accela, JDE, and Advanced Utility System CIS Infinity.

\*\* Does not include travel costs and peripheral hardware costs.

The selection team is recommending Active Network for the following reasons:

- The proposed solution has all of the required functionality as needed for City operations.
- The product includes the ability to interface with other systems used by Westminster, such as the utility billing application, permit system, and the JD Edwards financial management system, allowing for automation of data integration and updating between systems.
- Active has significant experience in developing and supporting cashier systems for local government, and clearly understand the City's requirements.
- Active's proposal provided the most comprehensive response in terms of product quality, ease of use, and customer support.
- Active comes highly recommended by all contacted references.
- Active has agreed to an implementation schedule and contract that is acceptable to the City of Westminster.

The City anticipates additional costs for the following items associated with the cashier system implementation, which will be purchased through Active Network:

- Peripheral Hardware: \$3,684 (cash drawers, credit card swipers, printers, etc.)
- Optional follow-up training \$4,200
- Travel costs charged by Active Network: \$2,400

In addition, third party software interface costs are estimated to be \$32,500 (charges from Advanced Utility System CIS Infinity, Accela, etc.), and two new PC's at \$1,500.

The total estimated cost for the installation of the new cashier system is \$139,340, which is inclusive of a 10% contingency for Active Network and within the total project budget of \$150,000.

Staff evaluated the proposals as well as vendor demonstrations. The committee selected Active Network as the preferred system solution. Although Active Network's base and total estimated 3-year costs are higher than the lowest bid, Staff evaluated each proposal on the criteria noted above with a significant weight placed on a vendor's previous interface experience with the City's peripheral software applications as well as user friendliness relative to the cashiers' daily collection duties. Overall, the committee concluded that the proposal submitted by Active Network will provide the City with the best cashing solution.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Cumulative Purchases over \$50,000 in 2008

**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 these contracts to the following vendors, ratify past purchases and approve future 2008 expenses with Frontier Radio Communications up to a maximum of \$90,000, C West Code Consultants up to a maximum of \$90,000, Titleist up to a maximum of \$91,000, Nike U.S.A. Golf Division up to a maximum of \$54,000, Thunder Mountain Harley Davidson up to a maximum of \$90,000, Fence Consultants up to a maximum of \$70,000, and Public Safety Warehouse up to a maximum of \$120,000. Additional ratification and approval above what has already been approved by Council, is approved for HD Waterworks Inc up to a maximum of \$79,767 and National Water Meter & Automation up to a maximum of \$56,527.

**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 seven purchases as needing Council authorization and two vendors that had purchases approved by Council earlier in 2008, but then incurred additional purchases for other departmental needs.
- Funds were previously appropriated in the 2008 Budget and are available in the General Fund, Golf Course, Open Space and the Utility Funds for the purchases.

**Expenditure Required:** \$741,294

**Source of Funds:** General, Golf Course, Open Space and Utility Fund Budgets

**Policy Issue**

Should Council retroactively approve the purchase of commodities that total over \$50,000 in 2008?

**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 cumulative larger purchases that are subject to Council approval.

**Background Information**

In November, the City's Internal Auditor and Purchasing Officer conducted an audit of all City purchases to determine if the aggregate amounts paid to one vendor exceeded \$50,000. Seven vendors were identified that did not have Council approval for purchases over \$50,000, and two vendors were identified as being paid more than what had been approved by Council earlier in 2008. Staff is seeking ratification of these past purchases and approval of future expenditures for the calendar year 2008. Funds are available in the appropriate budgets for these expenditures.

The details of these purchases are as follows:

- The City has incurred expenses from Frontier Radio Communications to date of \$86,715.02. The Radio system is a Citywide system, shared by several departments: Police, Fire, Public Works & Utilities, Parks, Recreation and Libraries, and Community Development. The system is managed by the Police Department and purchases for equipment, maintenance and repair, supplies, etc. are handled by the Police Department. The maintenance/repair and radio replacement expenses are budgeted in the participating department's budget, but the purchase of all equipment and maintenance/repair orders are dealt with by the Police Department. Therefore, all City radio expenses fall under the Police Department umbrella. The maintenance and repair contract was with Legacy Communications ended in mid-April due to several contract breaches by Legacy Communications and Legacy ultimately lost their certification. Therefore, it was necessary for the department to negotiate an interim agreement with another vendor and in the process found that Frontier Radio Communications was the only company in the State of Colorado that could handle the maintenance/repair of the City's radio system because of the system size and complexity. The City of Westminster is working with the City of Arvada in negotiating a contract with Frontier Radio Systems. Currently, the Police Department pays Frontier on a month to month basis, until a final contract can be taken to City Council for approval.
- C West Code Consultants provided services to date totaling \$85,247.97. This consultant processes plan reviews for the Building Division.
- The City has incurred expenses from Titleist to date of \$91,000.00. The City purchases high-quality Pinnacle range balls from Titleist and merchandise for resale including 60% of the golf gloves; golf balls (Pro-v, Pro-v 1x, NXT, NXT Tour and Pinnacle); and a limited number of clubs for stock in the golf shop (woods, wedges, putters). All iron purchases are done on a special-order basis with Staff providing the customer with a custom club fit for the irons. The irons are then ordered and sold with no inventory overhead.
- The City has incurred expenses from Nike USA Golf Division to date of \$54,000.00. The golf courses purchase Nike USA Golf Division merchandise for resale including golf balls (Juice, Nike One Platinum and Nike One Black); 60% of the shoe inventory; and a limited number of clubs and special-order all iron sets. In 2008 and again in 2009, Staff will purchase approximately 50% of the golf shop's clothing line for resale from Nike USA Golf Division (shirts, jackets, wind shirts, socks). Titleist and Nike are two of the three best-selling brands in the golf shops.

- The Police Department has purchased \$86,804.18 of motorcycles/leases/maintenance from Thunder Mountain Harley Davidson. Thunder Mountain Harley Davidson is the vendor the Police Department uses for the police motorcycles. Thunder Mountain is the only vendor in the State of Colorado that is able to provide the Harley motorcycles that are used by the department. The department was under a lease program for 12 motorcycles until 2007. In 2007, the department began a purchase program to phase out the leased motorcycles over a 4 year period.
  - 2007: Purchase 3 and lease 9.
  - 2008: Purchase 3 and lease 6.
  - 2009: Purchase 3 and lease 3.
  - 2010: Purchase the final 3.

Three motorcycles were purchased in 2008 for \$46,950. The lease payment for the 6 leased motorcycles was \$11,448. In addition to the purchase and lease costs, the department pays repair and maintenance costs for the leased and purchased motorcycles, and include repair costs when the leased motorcycles are turned in. The total for these maintenance/repair costs was \$28,406.18.

- The City has incurred expenses from Fence Consulting Services Inc. to date of \$53,268. This vendor provides design and construction management services based on City specification and installation criteria for open space and park related fencing projects. As part of this service, Fence Consultants bids out the project to three or more fencing contractors, obtains the low bid, verifies material selection and manages the installation of the fence to insure it meets City specifications and warranty requirements.
- The City has accumulated purchases from Public Safety Warehouse to date of \$107,802.18. This vendor is a supplier for uniforms and equipment for the Police and Fire Departments.
- The City has accumulated purchases from HD Waterworks Inc. to date of \$281,887.19. This vendor supplies pipe and valves for the City's Utility division. The large purchase items for pipe have already been approved by Council this year CCA 10-13-2008 8A and CCA 11-24-2008 8C totaling of \$220,233. Additional expenditures are for items that occur for day to day business.
- The City has accumulated purchases from National Water Meter & Automation to date of \$205,933. This vendor supplies water meters for the City's Utility division. The large purchase items for water meter have already been approved by Council this year CCA 10-13-2008 8B totaling \$168,473. In 2005, the City of Westminster undertook a series of water meter retrofit programs for the entire City. All existing Badger TRACE water meters were replaced or retrofitted with the new ORION transponder as it is more effective and reliable than the TRACE transponder. National Meter and Automation, Inc. is the western regional Badger Water Meter sole supplier. The meters and transponders furnished by National Meter & Automation, Inc. meet all required specifications set by the City. Throughout 2007 and 2008, Utilities meter staff, along with the contractor, replaced approximately 29,000 residential meter systems. Additional expenditures are for Badger meters and parts purchases that occur for day to day business.

The City's approach to these types of collective purchases from a single vendor was modified in the recent past. Staff will work to assure that these contracts in excess of \$50,000 are identified in advance and brought to City Council for approval.

Respectfully submitted,

J. Brent McFall  
City Manager



WESTMINSTER  
COLORADO  
Agenda Memorandum

City Council Meeting  
December 22, 2008



**SUBJECT:** Custodial Services Contracts for City Facilities

**Prepared By:** Jerry Cinkosky, Facilities Manager

**Recommended City Council Action**

Authorize the City Manager to execute contracts with the low bidders KG Clean Inc., Carnation Building Services Inc., DiTirro Building Service L.L.C., and Porter Industries Inc. to provide custodial services in City facilities and authorize two additional one year renewals based on the contractors meeting the City's performance standards and that price increases, if any, will not exceed the annual Denver/Boulder Consumer Price Index.

**Summary Statement**

- In October 2008, request for proposals were sent to 12 contract custodial firms to provide janitorial services in 16 City-owned facilities. Seven custodial firms attended a pre-bid meeting, mandatory tour and walkthrough of each facility.
- On November 14, 2008, a bid opening was held with four of the seven firms submitting custodial service proposals for the review and evaluation by City Staff.
- Criteria used to evaluate bids were: cost of service contracts based on geographic and campus locations; proposed staffing at each facility; recommendations from present clients; and past performance providing custodial services for the City of Westminster.
- The request for proposals was written to award custodial service contracts based on lowest responsive bids for pre-determined geographic locations or campus type settings.
- As a result of the City's competitive bid process, evaluation of proposals, recommendations of present clients, and past history working with the City of Westminster; Staff is recommending contracts be awarded to KG Clean, Inc., in the amount of \$114,400; Carnation Building Services, Inc., in the amount of \$69,840; DiTirro Building Service L.L.C. in the amount of \$74,024; and Porter Industries, Inc., in the amount of \$126,408 to provide custodial services in City facilities.

**Expenditure Required:** \$384,672

**Source of Funds:** General Fund - General Services 2009 Operating Budget  
General Fund - Public Works & Utilities 2009 Operating Budget  
General Fund - Park Recreation & Libraries 2009 Operating Budget

**Policy Issue**

Should Council award multiple custodial service contracts for the purpose of providing janitorial services in City facilities?

**Alternative**

Direct Staff to award a single contract to the lowest overall custodial firm’s bid. Staff is not recommending this action based on the amount of supervision, drive time, and fuel costs associated with providing custodial services in 16 facilities located within 25 square miles of the City’s boundaries. Furthermore, Staff believes that utilizing the multiple contractor approach provides an added incentive for each contractor to maintain a good work performance level, and, in addition, allows for Staff to have backup companies readily available in case one of the contractors was unable to fill their contractual requirements.

**Background Information**

For the past 20 years, the City has contracted with the private sector to provide custodial services. It is estimated this practice of using contract custodial services has saved the City \$100,000 - \$150,000 annually.

In October 2008, a request for proposals was sent to 12 custodial firms for the purpose of providing janitorial cleaning services to 16 City facilities. Each firm was required to attend a pre-bid meeting and tour of each of the facilities requiring custodial services. During the pre-bid meeting and facilities tour, contractors were made aware of Staff’s intent to recommend awarding custodial service contract to the lowest responsible bidders based on the four geographic locations of campus setting within the City. The four geographical locations include: South Westminster (72<sup>nd</sup> Ave. North to 80<sup>th</sup> Ave.), North Westminster (104<sup>th</sup> & Sheridan North), West Westminster (Sheridan to Westmoor Business Park) and Central Westminster (City Hall & the Public Safety Center).

The purpose of bidding facilities by geographic locations or campus settings is that it allows each company to concentrate in one area of the City. In addition, it reduces the number of miles driven by the contractors throughout the City and ultimately reduces the cost of providing custodial services.

Bid results by lowest responsive bid and by geographic location are as follows:

**CUSTODIAL SERVICES BIDS BY CAMPUS LOCATIONS**

<b>Location</b>	<b>K-G Clean</b>	<b>Carnation</b>	<b>Porter</b>	<b>DiTirro</b>
City Park Recreation Center	\$74,268.00	\$76,920.00	\$66,732.00	no bid
City Park Fitness Center	\$42,348.00	\$39,780.00	\$44,964.00	no bid
Park Operations	\$14,400.00	\$8,460.00	\$6,552.00	no bid
Legacy Ridge	\$8,400.00	\$10,560.00	\$8,160.00	no bid
<b>Total</b>	<b>\$139,416.00</b>	<b>\$135,720.00</b>	<b>\$126,408.00</b>	
City Hall	\$39,600.00	\$40,800.00	\$40,308.00	no bid
Public Safety Center, Westminster Mall and Orchard Town Center Police sub stations	\$74,800.00	\$94,968.00	\$91,416.00	no bid
<b>Total</b>	<b>\$114,400.00</b>	<b>\$135,768.00</b>	<b>\$131,724.00</b>	

West View Recreation Center	\$28,800.00	\$29,160.00	\$55,140.00	no bid
Heritage Golf Course	\$8,400.00	\$8,580.00	\$10,884.00	no bid
Northwest Water Treatment Plant	\$2,100.00	\$1,560.00	\$2,328.00	no bid
<b>Total</b>	<b>\$39,300.00</b>	<b>\$39,300.00</b>	<b>\$68,352.00</b>	
The MAC	\$23,100.00	no bid	\$34,092.00	\$21,547.00
Irving Street Library	\$13,500.00	no bid	no bid	\$12,732.00
Swim & Fitness Center	\$23,820.00	no bid	\$33,372.00	\$23,220.00
Municipal Court	\$17,400.00	no bid	\$20,148.00	\$16,525.00
<b>Total</b>	<b>\$77,820.00</b>	<b>\$0.00</b>	<b>\$87,612.00</b>	<b>\$74,024.00</b>
Municipal Service Center	\$22,980.00	\$18,780.00	\$37,140.00	no bid
Semper	\$14,100.00	\$11,760.00	\$10,440.00	no bid
<b>Total</b>	<b>\$37,080.00</b>	<b>\$30,540.00</b>	<b>\$47,580.00</b>	

Criteria used by Staff to evaluate bids for an award recommendation were:

- Cost of services contracts based on geographic campus locations
- Proposed hours and staffing requirements at each facility
- Recommendations from present clients
- Past performance providing custodial services for the City of Westminster.

As a result of the City’s competitive bid process, evaluations of proposals, recommendations of present clients, and past history working with the City of Westminster, Staff is recommending one year custodial service contracts be awarded to KG Clean Inc., Carnation Building Services Inc., DiTirro Building Service L.L.C, and Porter Industries Inc. to provide custodial services in City facilities. In addition, Staff is requesting City Council’s authorization to renew custodial service contracts for an additional two (2) one-year periods at its option and based on each contractor’s performance and no price increase greater than the Denver/Boulder Consumer Price Index.

By accepting the lowest responsive bid, accepting proposals based on geographic locations, and the benefit of cost savings to the City by contracting with private sector custodial companies, these all support City Council’s Goal of Financially Sustainable City Government in the following areas of 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 22, 2008



**SUBJECT:** 2009 Dell Server and Computer Replacement Purchases

**Prepared By:** David Puntteney, Information Technology Director  
Scott Rope, Information Systems Manager

**Recommended City Council Action**

Find that the Western States Contracting Alliance (WSCA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2009 calendar year purchases of desktop PCs, laptop PCs, storage hardware, computer servers, printers and software through Dell Computer Corporation in an amount not to exceed \$250,478.

**Summary Statement**

- The City uses 52 computer servers to support software applications and provide services for all departments.
- The City will be replacing fewer desktop computers in 2009 due to a modification of the desktop replacement schedule from four years to five years.
- City Council authorized adequate funds in the 2009 Utility Fund, Information Technology Department operating budget, to purchase replacement servers and software.
- City Council authorized adequate funds in the appropriate 2009 Utility Fund and General Fund department's operating budgets for the purchase of departmental PCs.
- The City purchases hardware through Dell Computer below the Western States Contracting Alliance (WSCA) contract prices, therefore meeting the City Charter bidding requirements. The prices under this joint purchasing contract are well below what the City could achieve purchasing on its own.
- The City is scheduled to replace 31 laptops that will reach four years of age in 2009.
- The City will purchase up to 32 desktop PCs to replace PCs that may fail during their fifth year of use or to designate for additional staff authorized to start in 2009.
- The City is scheduled to replace 13 servers in 2009.
- Technology purchases and services including software maintenance, monitors, RAM and related supplies are also purchased through Dell at or below the Western States Contracting Alliance (WSCA) contract prices and are included in the total projected 2009 amount.
- Decommissioned desktop and laptop computers are donated to the 7:10 Rotary Club for the Computers for Kids Program.
- Decommissioned computer servers are frequently relocated to the City's computer disaster recovery facility to serve as short-term recovery computers in the event of a disaster at the primary computer facility located at City Hall.

**Expenditure Required:** \$250,478

**Source of Funds:** General and Utility Fund Departmental Operating Accounts  
- Utility Fund - Information Technology Department Operating Budget

**Policy Issue**

Should the City continue to replace aged computer servers, desktop computers, laptop computers and peripheral equipment and software to ensure high availability, performance and capacity to support software applications and users?

**Alternative**

Forgo the 2009 replacement of computer hardware, software and servers. This alternative is not recommended for the following reasons:

- Continued maintenance on older servers is expensive. The City purchases new servers that include a four-year maintenance agreement.
- Application software upgrades frequently require more processing speed and memory. Attempting to upgrade older servers to meet the demands of new applications is many times impossible, and not cost effective, especially when combined with the cost of maintaining older computer technology.
- The expected performance and reliability of servers more than four years old is unacceptable for the City's critical applications.
- Older desktop and laptop computers lack the processing power needed to adequately support newer applications.

**Background Information**

The City uses 998 personal computers throughout all departments, representing an investment of approximately \$1.76 million. These computers provide access to essential software and services needed for City operations.

In 2001, the City established a PC replacement schedule of three years or four years, depending on the type of applications and performance requirements on each PC. In 2005, with the improved reliability and speed of new computers, Information Technology eliminated the three year replacement schedule, and moved all computers to a four year replacement cycle. In 2008, IT Staff evaluated the potential savings and risk associated with extending the desktop computer replacement schedule from four years to five years. Through that study, staff determined that using desktop computers for one additional year before replacement may have minimal impact and save the City over \$330,000 if continued over the next ten years. Staff will implement the new schedule beginning in 2009 and evaluate the revised replacement schedule through the end of 2010. If successful, the City will continue with the revised schedule. In 2009, the City will purchase up to 32 desktop PCs to replace desktop computers that may fail after the fourth year of use, and 31 laptops due for scheduled replacement.

In 2006, the Information Technology Department conducted a comprehensive study of "virtualization" technology to determine how such technology could improve computer server availability and reliability while reducing the total number of servers required. Virtualization is the process of configuring an individual computer server to function as multiple virtual servers, thereby allowing multiple applications to be run on the same server. The study concluded that virtualization would result in a long term cost benefit to the City by reducing the required number of servers. In 2007, Staff began the virtualization project, and has successfully eliminated 30 servers, reducing the total number of servers from 82 to 52. Without virtualization, the City would be replacing 15 servers in 2009. Instead, only 13 servers require replacement in 2009. Over the next 18 months, Information Technology will complete the virtualization project to eliminate another 25-30 servers. Following completion of the virtualization infrastructure build in 2009, the City will be realizing an average annual net savings of \$40,000 in server replacement costs.

The City's servers support applications such as Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management, Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing, Office tools and many others. These servers are critical to departments to provide internal and external customer service and to conduct critical City operations. The City has established a four-year replacement for computer servers. Decommissioned servers are frequently relocated to the City's computer disaster recovery facility to provide short term, more limited use in the event of a disaster at City Hall that would restrict access to or availability of production servers. New servers include a four-year maintenance agreement, so the City does not incur additional hardware maintenance expense during the full production life of the servers. The City has standardized on Dell computer systems, which have some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of Dell equipment and the support provided to the City.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** 2009 Microsoft Exchange and Outlook 2007 License Purchases

**Prepared By:** David Puntenney, Information Technology Director  
Scott Rope, Information Systems Manager

**Recommended City Council Action**

Find that the State of Colorado Microsoft Select pricing meets City Charter bidding requirements and authorize Staff to proceed with 2009 calendar year purchases of 1,000 Microsoft Exchange and Outlook licenses through Software Spectrum in an amount not to exceed \$126,450.

**Summary Statement**

- The City uses Microsoft Exchange 2003 to provide email communication, calendaring, contacts, and conference room scheduling for all departments.
- The Microsoft Exchange and Outlook is updated every four to five years in order to provide high level of reliability, availability and performance.
- City Council authorized adequate funds in the 2008 Utility, General and Public Safety budgets to purchase Microsoft Exchange and Outlook 2007 license upgrades.
- The City participates with the State of Colorado in the Microsoft Select program, which enables the City to purchase Microsoft software at a significant discount. The program is administered through Software Spectrum.

**Expenditure Required:** \$126,450

**Source of Funds:** General Capital Improvement Fund and Utility Fund Capital Improvements

## Policy Issue

Should the City continue to upgrade the existing email software to ensure high availability, performance and capacity to support employee's communication needs?

## Alternative

Forgo the replacement of Microsoft Exchange 2007 and Outlook 2007 and continue to use the current software. This alternative is not recommended for the following reasons:

- The City would risk losing support for the Exchange and Outlook product in the future, as software vendors normally reduce or eliminate support for older products.
- The City loses opportunity to benefit from valuable enhancements contained within the new version of Exchange and Outlook such as:
  - Date replication capabilities that offer increased availability and protection of user data.
  - Ability for IT staff to automatically and efficiently replicate and store email at the disaster recovery facility.
  - Ability to send and receive text and picture messages between Outlook and any mobile device.
  - Ability to access email, calendar and contacts with a similar user interface from virtually anywhere using a desktop computer, laptop, Internet browser, mobile device and even a telephone.
  - Ability to use a new scheduling assistant that automates time-consuming calendaring tasks.
  - Ability to search for keywords, dates or other flexible criteria to locate items in e-mail, calendar or contacts.
  - Ability to easily integrate, manage and support email and voice mail with the upcoming upgrades to the City's telephone systems

## Background Information

In 1988, the City installed a Data General mini-computer system to provide 68 employees with word processing, electronic mail and scheduling software. The Data General Comprehensive Electronic Office (CEO) software was upgraded each year to provide employees with enhanced features and new functionality. The Data General System served the City well until 1998, when it was replaced with a Windows based PC system and Microsoft Office 97 software. Today, the City has over 1,000 employees who benefit from the City's email system. Over the last year, Staff evaluated the Microsoft Exchange and Outlook 2007 and learned that the new suite incorporated many enhancements and new features that would improve usability and reliability and reduce administration time. A few of the new features and enhancements include:

- **Instant search** - Outlook 2007 offers the ability to search for keywords, dates or other flexible criteria to locate items in e-mail, calendar, contacts or tasks to save valuable time. Instant Search in Outlook 2007 is fully integrated within the interface so users never have to leave Outlook to find the information they need.
- **Easier to use interface** - Outlook 2007 has redesigned the look and feel of the messaging interface to make composing, formatting and acting upon information an easier and more intuitive experience.
- **Junk Mail filter** - Outlook 2007 has taken new measures to keep users safe from junk mail and "phishing" Web sites. While the City has implemented other services, technology and training to help protect users from divulging personal information to threatening Web sites, Office Outlook 2007 compliments and further extends those efforts by adding improved junk e-mail filters that disable links and warn users about threatening content within an e-mail message.

- **High Level Integration with the Web** - Users will be able to easily create and share rich Web documents with the same Office tools they use to create printed documents. The most important benefit of this greatly enhanced integration with the Web is that rich Office content is universally viewable by anyone with a browser.
- **Online Meeting** – Outlook 2007 applications include a Conference command that invokes NetMeeting conferencing software and enables sharing of documents with one or more people using the Chat or Whiteboard tools. IT Staff is planning to test and implement on-line conferencing in 2010.
- **Increased collaboration and functionality** - Outlook 2007 calendaring functionalities provide easy ways to share calendars with anyone within or outside of the City, giving authorized contacts immediate access to calendar information. Users can create and publish Internet calendars to Microsoft Office Online, add and share Internet calendar subscriptions, e-mail calendar snapshots, or even send a customized electronic business card to others.
- **Outlook Mobile Service** - Outlook Mobile Service, a feature of Outlook, enables users to send and receive text and picture messages between Office Outlook 2007 and any mobile phone. Outlook Mobile Service also enables users to forward Outlook e-mail, contacts, appointments, and tasks to others as text messages.

In 2008, IT Staff installed and evaluated Microsoft Outlook 2007 on a limited number of City PCs. Employees using the new version of the software are pleased with the upgrades and new features provided in this release.

In an effort to achieve the best possible pricing on Microsoft Office software, as well as other Microsoft software, the City entered into the Microsoft Select Volume Licensing Program in 1998. Westminster joined the State of Colorado and 11 other Colorado government agencies in this agreement in order to achieve volume pricing for Microsoft software purchases. Purchasing through this agreement will result in a savings of more than \$90,000.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Oakhurst Park Shelter Renovation Construction Contract Award

**Prepared By:** Sarah Washburn, Landscape Architect II

**Recommended City Council Action**

Authorize the City Manager to execute a contract with the low bidder Innovative Interiors & Construction, Inc in the amount of \$149,270 for the renovation of the Oakhurst Park Shelter and authorize a 10% contingency fund for a total amount of \$164,197.

**Summary Statement**

- The Department of Parks, Recreation and Libraries determined that the functional and aesthetic quality of the existing shelter at Oakhurst Park needed upgrades as determined in a park system audit completed in 2006.
- Staff wishes to enhance the Park and amenities by increasing the amount of natural light within the shelter and upgrade the quality and coverage of the roof canopy. (See attached location map and rendering)
- The Oakhurst Park Shelter, constructed in 1982, is the second largest shelter available for reservation offered by the City of Westminster.
- The City hired Keith Krebs, AIA Architect to develop the renovation concepts in 2008.
- This project was offered for bid to five contractors, and four bids were received, with Innovative Interiors & Construction offering the lowest bid for the work. Staff has reviewed references for this contractor and has determined them qualified to successfully complete this project.
- Adequate funds were budgeted and are available for this project.

**Expenditure Required:** \$164,197

**Source of Funds:** General Capital Improvement Fund – Park Renovation Program

**Policy Issue**

Should the City continue with replacement of the park shelter at Oakhurst Park?

**Alternatives**

1. City Council could choose to not authorize the renovation of the Oakhurst Park shelter. Staff would not recommend this alternative, as the existing shelter is in disrepair and does not offer a level of quality appropriate for the large parties that use the facility.
2. City Council could require that the Department of Parks, Recreation and Libraries further modify the scope, thereby reducing the size and/or the quality of the structure. Staff does not recommend this alternative as this is an opportunity for the City to showcase its facilities, and the upgrades are ideal for this site due to its frequency of use. Additionally, the renovation would offer a greater area of roof cover and allow additional seating for this second largest pavilion offered for reservation by the City.

**Background Information**

As a result of the Park Facility Inventory Project conducted in 2006, Staff determined that the picnic shelter and playground at Oakhurst Park were in need of renovation. The shelter’s current configuration includes a vaulted roof canopy that masks natural light underneath and offers minimal protection from the elements. The playground renovation and refurbishing of its iconic “tractor” were completed in 2007.

Oakhurst Park experiences the second highest volume of reserved and drop-in use by the citizens of Westminster and surrounding areas. Fatigue on this shelter is evident, as many groups use the shelter on a weekly basis, and frequent large family gatherings have put strain on the shelter over its 26-year lifespan.

The plans developed call for an adaptive reuse of the existing facility, utilizing as much of the structure as possible and adding new materials where necessary. The largest timber trusses that support the roof will remain as will existing concrete columns, and new columns will be added to increase the roof coverage. This contract will also allow replacement of the concrete surfacing underneath the shelter. Worn and weathered materials, including the existing metal roof, will be removed and replaced with new standing-seam metal roofing. The roof over the existing port-o-let enclosure will also be replaced with this contract to match the proposed shelter’s roof system. The enhanced façade will become an iconic figure of the park. Staff plans to replace the barbecue grills and picnic tables following the renovation of the structure. The construction will be complete prior to the 2009 reservation season so that users will experience minimal impact.

Bids for the construction work were solicited on November 5, 2008, from four construction companies. Three of these companies, Starker Construction, Interlock Construction, and Innovative Interiors & Construction were recommended by the architect, and the fourth, Arrow J, Inc, is a company that has completed a number of other park projects, including Big Dry Creek Park and Westfield Village Park.

The bids received are as follows:

Innovative Interiors & Construction	\$149,270
Arrow J, Inc.	\$161,992
Starker Construction	\$172,900
Interlock Construction	\$176,724

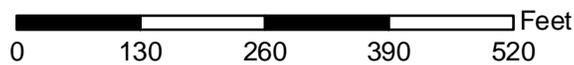
Respectfully submitted,

J. Brent McFall  
City Manager  
Attachments

# Vicinity Map: Oakhurst Park



City of Westminster



# Oakhurst Park Picnic Shelter Renovation

Before Renovation  
Existing Conditions



After Renovation  
Architect's Computer-generated Model





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** 144<sup>th</sup> Avenue, Zuni Street to Jason Drive, Construction Contract and Construction Engineering Services Contract

**Prepared By:** David W. Loseman, Senior Projects Engineer

**Recommended City Council Action**

Authorize the City Manager to execute a contract with the low bidder, Premier Paving, Inc., in the amount of \$3,200,115 for the construction of 144<sup>th</sup> Avenue; authorize a construction contingency in the amount of \$320,000; authorize the payment of an amount not to exceed \$250,000 to Xcel Energy for the design and installation of street lights for the project; authorize the City Manager to execute an agreement with PBS&J for construction engineering services in the amount of \$276,586; and authorize a construction engineering contingency in the amount of \$25,000.

**Summary Statement**

- As part of the Huron Street widening project of 2006, approximately 810 feet of arterial roadway was constructed west of Huron Street along 144<sup>th</sup> Avenue. Additionally, 144<sup>th</sup> Avenue was widened to four-lane arterial roadway standards east of Huron Street in conjunction with the I-25/144<sup>th</sup> Avenue Interchange Project. This leaves the section located between Jason Drive and Zuni Street as the only portion of 144<sup>th</sup> Avenue located in or adjacent to the City of Westminster remaining to be widened to a four-lane arterial roadway section.
- The widening of this last section of 144<sup>th</sup> Avenue has been identified as a priority by City Council and Staff in order to provide enhanced traffic flow on 144<sup>th</sup> Avenue.
- The Request for Bids for the construction of this project was advertised in the Daily Journal for four weeks, and bids were opened on December 4. Seventeen bids were received, and the lowest bidder is Premier Paving, Inc. with a bid of \$3,200,115.
- Staff has reviewed the bids and recommends awarding this construction contract to Premier Paving, Inc. A \$320,000 contingency is also recommended.
- Approximately 30 new street lights will be needed to appropriately illuminate this newly widened portion of 144<sup>th</sup> Avenue. A conservative estimate of the cost of the design and installation of these lights is \$250,000.
- Staff has also conducted a selection process to identify a firm to provide construction engineering services for this project. Staff recommends that PBS&J be retained at a cost of \$276,586 for this purpose. A \$25,000 construction engineering contingency is requested.

**Expenditure Required:** \$4,071,701

**Source of Funds:** \$2,501,143 - WEDA Funds  
\$ 250,558 - Utility Fund Capital Improvement Fund  
\$1,320,000 - General Capital Improvement Fund

## **Policy Issue**

Should the City proceed with the construction of the 144<sup>th</sup> Avenue, Zuni Street to Jason Drive widening project?

## **Alternatives**

Alternatives include postponing or abandoning the construction of this project. Given the very favorable bids for the construction of this project coupled with the desire to enhance access to the northeastern reaches of the City, these alternatives are not recommended.

## **Background Information**

The widening of 144<sup>th</sup> Avenue between Jason Drive and Zuni Street has become important as a result of increased traffic volumes accessing the commercial developments in this portion of the City. The recent widening of Huron Street between 128<sup>th</sup> Avenue and 150<sup>th</sup> Avenue and the opening of the 144<sup>th</sup> Avenue/I-25 Interchange have also contributed to an increase in traffic along 144<sup>th</sup> Avenue. The proposed widening of 144<sup>th</sup> Avenue between Jason Drive and Zuni Street will improve the only remaining two-lane rural roadway section of this arterial street located within or adjacent to the City of Westminster. The City and County of Broomfield has already started improving the 144<sup>th</sup> Avenue corridor to the west of Zuni Street, and the City of Thornton will widen 144<sup>th</sup> Avenue to the east of Washington Street in the near future. Additionally, the Denver Regional Council of Governments (DRCOG) 2030 Regional Transportation Plan has designated 144<sup>th</sup> Avenue as a Principal Arterial roadway link between McCaslin Boulevard in Louisville to the west and Colorado Boulevard in Thornton to the east.

Currently, the segment of 144<sup>th</sup> Avenue between Tejon Street and Zuni Street is located within unincorporated Adams County. At Staff's request, the County agreed to contribute \$660,000 to this project over the next three years under the condition that the City annexes the right-of-way at the conclusion of the construction. Staff believes that this is a fair proposal. City Staff is appreciative of the cooperation exhibited by Adams County during the planning for this project, including the County's \$25,000 contribution toward earlier design efforts. The City is upfronting the costs for the Adams County portion of the project and the Adams County funds will be allocated to future City capital improvement projects.

On January 22, 2006, City Council approved funding for the preparation of the 144<sup>th</sup> Avenue Corridor Design Study, which identified necessary infrastructure requirements as well as environmental and social impacts within the corridor. This study was completed in October 2007 by the selected consultant, Felsburg Holt & Ullevig (FHU).

FHU was later hired to complete the final design of these roadway improvements. Following the completion of the design in October 2008, requests for bids for the construction of this project were advertised in The Daily Journal for four weeks, and bids were opened on December 4.

The bid results are as follows:

<u>Contractor</u>	<u>Submitted Bid</u>
Premier Paving, Inc.	\$3,200,115.10
Brannon Sand and Gravel Company	\$3,384,786.88
Tarco, Inc.	\$3,476,150.81
Twin Peaks Excavating, Inc.	\$3,502,467.00
Jalisco International, Inc.	\$3,678,414.06
Mountain Constructors, Inc.	\$3,697,826.45
Hamon Contractors, Inc.	\$3,705,106.27
DeFalco Construction, Inc.	\$3,739,550.36
Concrete Express, Inc.	\$3,740,594.50
Scott Contracting, Inc.	\$3,773,068.19
Zak Dirt	\$3,766,005.75
Lafarge West, Inc.	\$3,886,285.00
New Design Construction	\$3,922,850.15
Fiore & Sons, Inc.	\$4,020,348.86
Asphalt Specialties, Inc.	\$4,081,564.60
Quality Paving Company	\$4,086,210.08
Lawrence Construction Company	\$4,296,664.12
<b>Engineer's Estimate</b>	<b>\$5,097,828.00</b>

The difference between the engineer's estimate and the actual bids reflects the volatile state of the economy and the extremely low current oil prices, which resulted in lower material delivery and asphalt costs. The material prices bid are generally lower than what has been the norm over the past several years. This coupled with the large number of bidders on this project resulted in very favorable bids for the City.

Staff and FHU have reviewed the results of the bidding procedure and recommend that the low bidder, Premier Paving, Inc., be awarded the contract for construction in the amount of \$3,200,115.10. Both Staff and FHU have previous successful experiences with Premier Paving, Inc., which is pre-qualified with the Colorado Department of Transportation and is very capable of constructing this type of project. The contingency amount of \$320,000 is approximately 10% of the cost of construction. Staff believes that this is an adequate contingency for a project of this size and complexity.

A Request for Proposals for construction engineering services for this project was advertised for three weeks in the Daily Journal. The City received fifteen proposals for this work. The written proposals were reviewed by Staff for the purpose of identifying a "short list" for further consideration. Staff then conducted oral interviews with the five leading candidates. Those interviews yielded three acceptable firms, but it is Staff's opinion that PBS&J is clearly the superior choice for this particular job. Both the written proposal submitted by this firm and the responses received from the representatives of this company during the oral interview were rated the highest of all of the contenders for the contract. The proposed fees of the three finalists are listed below:

<u>FIRM</u>	<u>INITIALLY PROPOSED FEE</u>
PBS&J	\$378,006
Felsburg, Holt & Ullevig	\$373,705
Martin/Martin	\$359,070

The initially proposed fee for PBS&J is higher than the other two firms because all three candidates proposed a slightly different number of hours for the personnel that they would use on the project. If the fee for each firm was to be prorated to match a set number of hours, the fee for PBS&J would be less than the other two firms due to their lower hourly rate. Armed with this knowledge, Staff entered into negotiations with PBS&J and was able to negotiate a final fee, subject to Council's approval, of \$276,586.

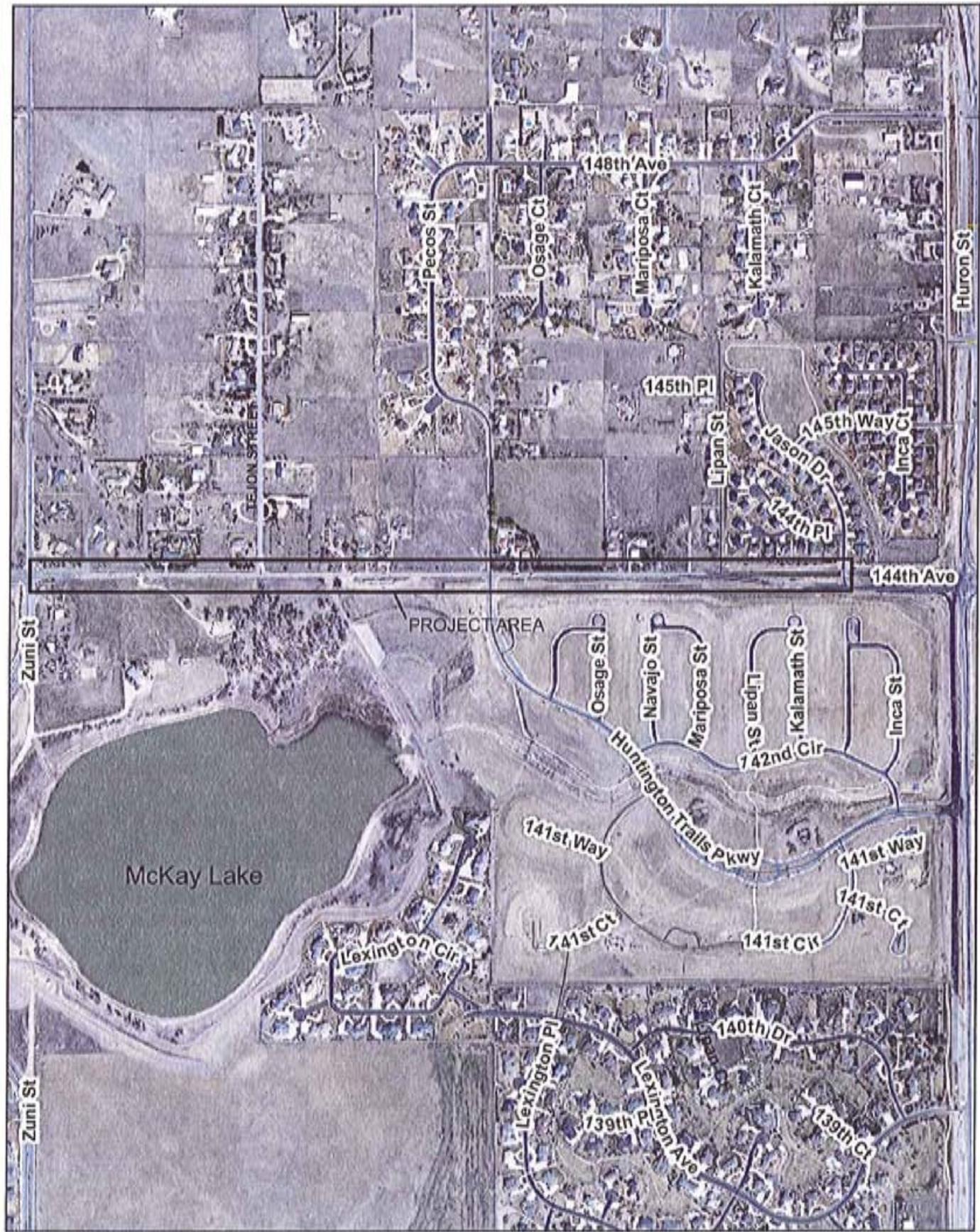
The funding for this project comes from two sources: Remaining Westminster Economic Development Authority (WEDA) funds from the 144<sup>th</sup> Interchange and Huron Street projects and Utility Fund Capital Improvement Funds. The following chart outlines the City's estimated total expenditures for this project, many of which have previously been approved by Council:

<u>ITEM</u>	<u>COST</u>
Design cost	\$ 517,498
Right-of-Way costs	\$ 142,000
Construction engineering costs.	\$ 276,586
Utility relocation costs – Encana Gas	\$ 264,000
Street lighting costs	\$ 250,000
Construction costs	\$3,200,115
Contingency	\$ 345,000
Total anticipated project costs	\$4,990,846

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – map of project area



**144TH AVENUE, ZUNI STREET TO JASON DRIVE PROJECT**





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Westminster Economic Development Authority / City of Westminster Intergovernmental Cooperation Agreement for the Construction and Maintenance of City Center Park in the Westminster Center Eastern Sub-area Urban Renewal Area

**Prepared By:** Robert Smith, Treasury Manager  
Robert Byerhof, Senior Financial Analyst  
Karen Creager, Special Districts' Accountant

**Recommended City Council Action**

Authorize the City Manager to execute an Intergovernmental Cooperation Agreement (ICA) between the City of Westminster (City) and the Westminster Economic Development Authority (WEDA) in substantially the same form as attached providing payment to the City from WEDA for reimbursement of City incurred costs related to the planning, design, and construction of City Center Park as well as future operating and capital costs incurred after the park is in commission, as long as WEDA has fulfilled all, if any, superior obligations including but not limited to: debt service and covenant requirements as detailed in the respective Indenture of Trust, Bank Agreement and any other obligation that is deemed to be superior over the City's reimbursement request.

**Summary Statement**

- Westminster Center Eastern Sub-area is 1 of 6 Urban Renewal Area's (URA's) under the WEDA umbrella.
- URA's are a very effective redevelopment tool and most likely will continue to be used as a redevelopment tool.
- The development and redevelopment in the URA's will continue to cause the City to incur additional improvement, maintenance, and administrative service costs that are chargeable to WEDA.
- The ICA details City and WEDA obligations regarding the covenants set forth for the reimbursement of costs from WEDA's Westminster Center Eastern Sub-area Urban Renewal Area to the City for the construction and maintenance of City Center Park located within the URA.
- Pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City of Westminster enter into an ICA with WEDA to provide for the reimbursement of construction and maintenance costs associated with City Center Park located within the Westminster Center Eastern Sub-area Urban Renewal Area, provided all other superior covenants and superior obligations have been met?

**Alternative**

Do not authorize the execution of the proposed ICA between the City and WEDA. This alternative is not recommended. The reimbursement of costs anticipated to be incurred by the City for the construction and maintenance of City Center Park is necessary given the significant costs to develop, redevelop, and maintain public improvements.

**Background Information**

Pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. As such, the City desires to enter into an Intergovernmental Cooperation Agreement (IGA) with WEDA for the reimbursement of costs incurred by the City relative to the development and maintenance of City Center Park.

This ICA accomplishes several things:

- Recognizes that the City of Westminster will accrue capital and maintenance costs associated with City Center Park located within the Westminster Center Eastern Sub-area Urban Renewal Area.
- Recognizes that reimbursement of City incurred costs will be subordinate to any current or future bonded indebtedness (Superior Obligations), including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is any way secured, collateralized, or backed by revenues of WEDA.
- Each fiscal year, the City and WEDA shall negotiate in good faith to determine the amount of payment due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the revenues available to WEDA after first meeting all Superior Obligations of WEDA. The good faith determination as to WEDA's obligations under this Agreement in any given fiscal year shall be conclusively determined upon the adoption by WEDA and the City of their respective budgets setting forth, in the case of WEDA's budget, the amount WEDA shall pay to the City, and, with respect to the City budget, the amount to be received from WEDA pursuant to this agreement.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment: Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
FOR THE CONSTRUCTION AND MAINTENANCE OF CITY CENTER PARK IN THE  
WESTMINSTER CENTER EASTERN SUB-AREA URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** ("WEDA"), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (the "City"), a Colorado home-rule municipality.

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Part 1 of Article 25 of Title 31, C.R.S. (the "Colorado Urban Renewal Law"); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to 31-25-105, § C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to § 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore contracted for the design of City Center Park, a public park with playground and recreational and community facilities, to be located on approximately 10 acres of land owned by the City, generally bounded by 93<sup>rd</sup> Avenue on the north, 92<sup>nd</sup> Avenue on the south, Xavier Street on the east, and City Center Drive on the west.

WHEREAS, the City has heretofore approved the Westminster Center Urban Renewal Plan (the "Plan"), which includes as one of its primary goals the redevelopment and revitalization of the Westminster Center Eastern Sub-Area Urban Renewal Area (the "City Center East URA"), as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make the City Center East URA more attractive for private investment, which actions may include landscaping, park and recreation facilities, and public art projects; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the construction and maintenance of City Center Park in the City Center East URA will further the urban renewal goals and objectives of WEDA, which include the removal and prevention of blight and deterioration within the City Center East Urban Renewal Area, and the health, safety, and welfare interests of the City; and

WHEREAS, WEDA and the City desire to enter into this Agreement for the construction and maintenance of City Center Park in the City Center East URA; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the City and WEDA hereby agree as follows:

1. **City Center Park Construction.** The City has heretofore entered into contracts for the planning and design of City Center Park. The City anticipates entering into one or more contracts for the construction of said park. WEDA agrees to reimburse the City for a portion of the City's costs related to the planning, design, and construction of City Center Park, as set forth in paragraph 3.B., below. WEDA's obligation under this paragraph 1 shall be paid from property tax or sales tax incremental revenues available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

2. **Maintenance of City Center Park.** Following the completion of construction of City Center Park, the City agrees to maintain said park in accordance with the same standards of maintenance as the City follows for other public parks within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the maintenance, repair, and future capital repair and maintenance of said park, as set forth in paragraph 3.B., below. WEDA's obligation under this paragraph 2 shall be paid from property tax or sales tax incremental revenues available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

3. **Conditions to WEDA's Payment Obligations.** The obligations assumed by WEDA pursuant to sections 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness (the "Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is in any way secured, collateralized, or backed by revenues of WEDA.

B. Each fiscal year, the City and WEDA shall negotiate in good faith to determine the amount of payment due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the revenues available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its cost sharing obligations under this Agreement. The good faith determination of the City and WEDA as to WEDA's obligations under this Agreement in any given fiscal year shall be conclusively determined upon the adoption by WEDA and the City of their respective budgets setting forth, in the case of WEDA's budget, the amount WEDA shall pay to the City, and, with respect to the City budget, the amount to be received from WEDA pursuant to this Agreement.

C. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

4. **Cooperation.** WEDA and the City agree to work cooperatively and in good faith to defend and uphold every provision of this Agreement against any action or challenge involving the legality, validity, or enforceability of any provision hereof.

5. **Effective Date.** The City and WEDA agree that it is their intent to implement this Agreement starting in fiscal year 2009. In the event this Agreement is not approved by both parties prior to the date of adoption of the respective budgets of WEDA and the City for fiscal year 2009, the parties agree to cooperate in good faith to take such actions as may be necessary to amend their respective budgets to reflect the intended applicability of this Agreement to their respective 2009 budgets.

6. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

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

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

E. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

**WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY**

**CITY OF WESTMINSTER**

By: \_\_\_\_\_  
J. Brent McFall  
Executive Director

By: \_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary for WEDA

\_\_\_\_\_  
Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Martin R. McCullough  
Attorney for WEDA

\_\_\_\_\_  
Martin R. McCullough  
City Attorney



## Agenda Item 8 K

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Second Reading for Councillor's Bill No. 50 re Amendment to the Church Ranch Hotel Company LLC Business Assistance Agreement to Facilitate the Hyatt Place Hotel

**Prepared By:** Susan F. Grafton, Economic Development Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 50 on second reading authorizing the City Manager to execute and implement the Amendment to the Church Ranch Hotel Company LLC Business Assistance Agreement in substantially the same form as the attached amended agreement to facilitate the development of the Hyatt Place Hotel.

**Summary Statements**

- This Councillor's Bill was passed on first reading on December 8, 2008.
- The Hyatt Place is being built as part of the Spring Hill Suites and proposed Marriott full service hotel development.
- The 115 room hotel will be built simultaneously with the Marriott Hotel.
- There is an existing Business Assistance Agreement with Church Ranch Hotel Company, originally signed in September 1998 for a 240 to 260 full service Marriott expandable to 350 rooms plus a 10,000 square foot conference center.
- In 1999, the agreement was amended to allow for the 150 to 160 room Spring Hill Suites hotel as part of the project.
- Assistance for the Hyatt Place Hotel is being requested by the developer because of the higher image of the hotel brand and the intense competition in the market place.
- Using rebates of Building Permit Fees and Use Tax, the 7% Accommodations Tax and the proposed self imposed 2% Conference Center fee; staff is recommending a 60% rebate for 15 years. The rebate will be approximately \$3,454,380.
- The assistance package is based on the performance of this hotel; assistance will be paid only as revenue is generated from this project.
- This project is projected to produce in excess of \$2.2 million net new revenues to the City.

**Expenditure Required:** Approximately \$3,454,380

**Source of Funds:** Funds will come exclusively from rebates of Accommodation and Use taxes as well as permit fees collected from the project.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments: Ordinance  
Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **50**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**Major - Dittman**

**A BILL**

**FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE  
CHURCH RANCH HOTEL COMPANY LLC BUSINESS ASSISTANCE AGREEMENT TO  
FACILITATE THE HYATT PLACE HOTEL**

WHEREAS, the successful attraction and retention of high quality development to the City of Westminster provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Westminster to generate additional tax revenue and remain competitive with other local governments in offering assistance for new businesses; and

WHEREAS, the Hyatt Place Hotel plans to build adjacent to the Marriott Hotel and Spring Hill Suites; and

WHEREAS, a proposed amended agreement between the City and Church Ranch Hotel Company, LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an amendment of the Church Ranch Hotel Company, LLC Business Assistance agreement in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. 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 8th day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of December, 2008.

ATTEST:

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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

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

~~2008~~**THE AMENDED AND RESTATED  
BUSINESS ASSISTANCE AGREEMENT BETWEEN  
THE CITY OF WESTMINSTER AND CHURCH RANCH HOTEL COMPANY I LLC  
AND CHURCH RANCH HOTEL COMPANY II LLC  
FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION  
OF A FULL-SERVICE MARRIOTT HOTEL, AND A MARRIOTT SUITES HOTEL, AND A  
HYATT PLACE HOTEL.**

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ ~~January, 2005~~ by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality ("City"), CHURCH RANCH HOTEL COMPANY I LLC, a Colorado limited liability company ("CRHC I"), RLJ II – S WESTMINSTER, L.L.C., a Delaware Limited Liability Company ("RLP"), and CHURCH RANCH HOTEL COMPANY III, II-LLC, a Colorado limited liability company ("CRHC III").

**WHEREAS**, City is a Colorado home-rule municipality with all the authority granted to home-rule municipalities pursuant to Colorado Constitution Article XX, Section 6, and its City Charter adopted pursuant thereto;

**WHEREAS**, CRHC I, and Church Ranch Hotel Company II, L.L.C. ("CRHC II") are Colorado limited liability companies with whom the City has ~~previously~~ entered into certain prior agreements for the development and construction by CRHC I of a 240 to 260 room, expandable to 350 rooms, first class full service Marriott hotel and an approximately 10,000 gross square foot conference center in Church Ranch Corporate Center ("Marriott Hotel") and the development and construction by CRHC II of a 164 room Marriott suites hotel in Church Ranch Corporate Center ("Marriott Suites-Hotel"), both to be located south and east of Church Ranch Boulevard and north of 103<sup>rd</sup> Avenue, said prior agreements are dated September 28, 1998, September 13, 1999, November 15, 2000 and July 3, 2003 (collectively the "Prior Agreements");

**WHEREAS**, CRHC III is a Colorado limited liability company and the developer of a proposed Hyatt Place Hotel in Church Ranch Corporate Center ("Hyatt Place Hotel").

**WHEREAS**, the Marriott Hotel, Hyatt Place Hotel, and the Marriott Suites Hotel will be referred to collectively as "Projects";

**WHEREAS**, CRHC II has completed construction of the Marriott Suites Hotel and the parties hereto mutually agree that the obligations of CRHC II relative to said construction of the Suites Hotel have been satisfied;

**WHEREAS**, CRHC II previously assigned its rights and CRHC II have ongoing obligations under the Prior Agreements to RLJ pursuant to that certain Assignment and Assumption this Agreement dated July 26, 2006; and

**WHEREAS**, the parties hereto to the Prior Agreements now desire to replace the Prior Agreements and the parties hereto mutually agree that this Agreement replaces the Prior Agreements for any and all purposes.

NOW THEREFORE, in consideration of the above premises and the promises and covenants set forth below, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City, CRHC I, SLJ, and CRHC III agree as set forth below:

## I. DEVELOPER'S OBLIGATIONS

1.1 CRHC I shall develop and cause the Marriott Hotel to be constructed, equipped, and furnished per the Hotel Official Development Plan ("Hotel ODP") as defined in Section 1.1.1. The City and CRHC I agree that the hotel franchisor shall be Marriott, or an equivalent full service, first-class hotel as described in Exhibit A attached hereto and by this reference incorporated herein. The Marriott Hotel shall be designed, constructed, operated, managed and maintained in a manner consistent with how first-class, full-service hotels and first-class conference facilities are designed, constructed, operated, managed and maintained.

1.1.1 CRHC I and CRHC III have ~~has~~ the right to request an amendment to the First Amendment to the Official Development Plan, Church Ranch Home Place, Filing No. 9 recorded at Reception No. F1265044 on June 28, 2001 (the "Hotel ODP") per the City ODP process.

1.1.2 CRHC II has previously constructed, equipped and furnished and opened for business a 164 room Marriott SpringHill Suites Hotel ("Marriott Suites Hotel") per the Hotel ODP. The Marriott Suites Hotel is now owned by RLJ CRHC II.

1.1.3 In the event CRHC I desires to amend the Hotel ODP then the City and CRHC I shall work together on the positioning of the Marriott Hotel in a manner consistent with maintaining the continuity of the area. The Marriott Hotel to be constructed by CRHC I shall be built as a fully integrated facility, and the Marriott Hotel shall be owned by CRHC I or an affiliate thereof. The Marriott Hotel shall include an attached restaurant or a restaurant in a separate building as specified in the Hotel ODP and as mutually agreed upon by City and CRHC I.

1.1.4 ~~CRHC III.2~~ The Hotel shall develop and cause to be constructed, equipped, and furnished and opened for business a 115-room Hyatt Place Hotel. The Hyatt Place Hotel shall be designed, constructed, operated, managed, and maintained in the same a-manner comparable consistent with how first-class, full-service hotels and first-class conference facilities are designed, constructed, operated, managed, and maintained.

1.2 ~~CRHC and~~ CRHC I, RLJ, and CRHC III are responsible for all capital improvements, repairs and maintenance for the Projects. The initial operations manager of the Marriott Hotel and the Marriott Suites Projects shall be White Lodging Services Corporation. The initial operations manager of the Hyatt Place Hotel shall be White Lodging Services Corporation.

1.3 As part of the management and operation of the Projects, CRHC ~~and CRHC I, RLJ, and CRHC II~~ shall remit to City, City's accommodations tax at the then current rate, as well as a separate Conference Center Fee in an amount equal to two percent (2%) of the Marriott Hotel's, the Marriott Suites', and the Hyatt Place Suites Hotel's room rate charged to and collected from their respective guests ~~by the hotel franchisees~~. The Conference Center Fee shall be collected only for the duration of the Business Assistance Rebate contained in Section 2.6 below.

1.4 CRHC I, RLJ, and CRHC III shall at their expense, as provided in this Agreement, obtain all entitlements necessary for the development and construction of the Projects, subject to the terms contained elsewhere herein.

1.5 The responsibility for paying all property taxes, other taxes, annual fees, and fees and taxes levied, by the state, county, or other taxing authority for the Projects shall be the exclusive responsibility of CRHC I, ~~RLJ~~, and CRHC III or the successors or transferees thereof.

1.6 CRHC ~~and CRHC I, RLJ, and CRHC III~~ shall be responsible for providing, at their expense, all normal site improvements and utilities, including water, sewer, electric, gas, telephone, cable TV, optic and/or data transmission lines, and the parking areas and landscaping for the Projects.

1.7 CRHC I and CRHC III will be responsible for paying the City's customary domestic water and sanitary sewer tap fees ("Tap Fees") ~~for the Hotel based upon the City sewer and water tap fee schedule current as of the date of building permit application for the Hotel.~~ If a separate restaurant is built ~~in a building separate from the Hotel and/or~~ needs additional sewer or water taps, such cost shall also be borne solely by CRHC I and CRHC III. ~~CRHC - CRHC II~~ has paid the applicable water and sewer tap fees for the Suites Hotel.

1.8 CRHC I and CRHC III will design the ~~Hotel building interior and exterior of their respective buildings based on a first-class full-service hotel. The Hotel design of CRHC I's and CRHC III's buildings and interiors shall be consistent with the level of quality and detail incorporated in the Westin Westminster Hotel located at 10600 Westminster Boulevard .~~

1.8.1 The approved Hotel ODP has satisfied the requirements under this Agreement for design and materials for the ~~Marriott Suites Hotel~~. Prior to application for ~~their respective the Hotel building permits,~~ CRHC I and CRHC III shall be required to meet all applicable design and construction standards of the City and pay all applicable fees in effect at the time of application pursuant to this Agreement. If necessary, CRHC I and CRHC III shall submit an application for an amendment to the approved Hotel ODP ~~for the Hotel~~ as required to incorporate such applicable new or updated City design and construction standards.

1.9 CRHC II has constructed the ~~Marriott Suites Hotel~~ and the City issued a certificate of occupancy for the ~~Marriott Suites Hotel~~ on April 22, 2002.

## II. CITY OBLIGATIONS

2.1 For and in consideration of CRHC I's ~~CRHC's~~ development, construction, furnishing, and equipping of the ~~Marriott Hotel~~, City has conveyed on December 27, 2000 by warranty deed as recorded at Reception No. FI 162592 to CRHC I Lot 1 and Tract B Church Ranch Home Place - Filing No. 9 to be utilized as a portion of the site for the ~~Marriott Hotel~~ ("City Parcel"). City has paid the assessment for the 104<sup>th</sup> Avenue Special Improvement District with respect to the City Parcel only. CRHC I shall be responsible for paying any other property taxes due on the City Parcel. City has provided CRHC I an ALTA title insurance policy on the City Parcel.

2.1.1 The ~~site for the Projects~~ ~~Hotel Project Site~~ consists of the City Parcel, less the 27.50 feet of right-of-way for Church Ranch Blvd. as dedicated by Final Plat, Church Ranch Home Place - Filing No. 9 as recorded November 7, 2008, ~~March 14, 2004~~ at Reception No. ~~2008102962F4499958~~ (the "Final Plat") and Lot 2 of the Final Plat. The ~~Marriott Hotel~~ site is defined on the Hotel ODP and Final Plat.

2.1.2 CRHC I has acquired Lot 2 of the ~~Marriott Hotel~~ site ("CRHC I Parcel") from Church Ranch Land Co. LLC ("CRLC").

2.1.3 The deed for the City Parcel contains a possibility of reverter subject to exercise upon fifteen (15) days prior notice to CRHC I in the event CRHC I fails to commence construction of the Marriott Hotel, on or before March 1, 2009. At the option of CRHC I, the deed for the CRHC I Parcel transferred from Church Ranch Land Co. CRLC may also include a possibility of reverter in substantially the same form as that contained in the deed for the City Parcel.

2.1.4 CRHC II has acquired the site for the Marriott Suites Suite Hotel ("Suites Hotel Site") from Church Ranch Land Co. CRLC. The Suites Hotel Site is defined as Lot 3 and Tract A per the Final Plat.

2.2 CRHC I and CRHC III shall design and build at their ~~its~~ expense the onsite improvements required for their respective Projects, ~~the Hotel~~. City staff will review and approve the onsite improvements in an expedient manner, as mutually agreed, consistent with normal city policy, procedures, and practices. These improvements shall include, but not be limited to, all onsite walkway improvements for the Marriott Hotel and the Hyatt Place Hotel, including, without limitation, sidewalks, circulation roads, ~~the Hotel~~ parking lot paving and lighting, curb cuts, landscaping, storm water facilities (including water quality), and water, sewer, natural gas, electric and telephone utilities for servicing the Hotels, ~~Hotel~~ including public common areas.

2.3 CRHC I and CRHC III shall also be responsible, at their ~~its~~ cost, for constructing, or causing to be constructed, all reasonably necessary off-site improvements for their respective projects ~~the Hotel~~, pursuant to normal City code requirements and policies. ~~As of the date of this Agreement there are no off-site improvements required as part of the Hotel~~. In addition, CRHC I, CRHC II, and CRHC III have no obligation to reimburse or pay back the City or any other party for public improvements installed adjacent to or in the proximity of the City Parcel, the CRHC I Parcel, ~~or the~~ ~~and~~ Suites Hotel Site.

2.4 City staff shall assist CRHC I and CRHC III in obtaining all approvals and entitlements necessary for construction of their respective projects ~~the Hotel~~ consistent with normal City standard practices, policies and procedures.

2.5 Other than the Tap Fees for the Marriott Hotel and Hyatt Place Hotel as specified in Section 1.7, the payment of which is the sole responsibility of CRHC I and CRHC III, the City shall waive or rebate the following:

(A) During ~~during~~ the construction period of the Marriott Hotel for CRHC I, or its ~~their~~ assigns, the City shall waive any and all one-time fees and assessments normally charged by City as a condition to building permit issuance for the Marriott Hotel, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees and building material use taxes and the like. Any third party construction or other plan review and approval fees, if any, shall be split by City and CRHC I with each paying one-half thereof; and -

(B) During the construction of the Hyatt Place Hotel for CRHC III, or its assigns, the City shall rebate sixty percent (60%) of any one-time fees and assessments normally charged by the City as a condition to building permit issuance for the Hyatt Place Hotel, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees, and building material use taxes and the like. This rebate shall be added to and paid in the same manner as the Hyatt Place Rebate provided for in paragraph 2.6.1(C) below.

2.5.1 City agrees that no other fee, assessment, or charge shall be levied against the Projects other than as set forth in this Agreement. However, nothing in this Agreement shall be construed as prohibiting City from assessing, levying or increasing any fees, charges or taxes against the Marriott Hotel, the Hyatt Place Hotel, or the Marriott Suites Hotel to the extent such fees, charges or taxes are assessed and paid by all like businesses in the City.

2.5.2 Nothing in this Section 2.5 shall be construed as exempting CRHC I, RLJ, or CRHC III from the responsibility to pay normal annual taxes such as property tax, business license, and applicable federal, state and county fees and taxes.

2.6 For and in consideration of CRHC I's, RLJ's, CRHC's and CRHC III's construction, furnishing and equipping of the Projects, and the overall economic and financial benefits to the community at large as a result of locating such facilities within the City of Westminster, City shall provide CRHC I, RLJ, and CRHC III the following business assistance rebates. ~~It is a "Business Assistance Rebate."~~

#### 2.6.1

(A) ~~A business assistance rebate~~~~The Business Assistance Rebate~~ shall be paid by City to CRHC ~~or CRHC II~~ in quarterly installments equal to the sum of (i) those revenues attributable to City's seven percent (7%) accommodations tax from the Marriott Hotel operation and the Suite Hotel operation for the preceding quarter, plus (ii) those revenues attributable to the two percent (2%) Conference Center Fee for the previous quarter, plus (iii) those revenues attributable to City's Sales and Use Tax at the then current rate generated by the Marriott Hotel Projects (including food and beverage taxes) for the previous quarter, exclusive of (a) City's parks, open space and trails tax at 0.25% ("Open Space Tax") and (b) City's public safety tax at 0.6% ("Public Safety Tax") and (c) any future voter approved sales or use tax, the use of which is restricted by the voters to specific, limited purposes (the "Marriott Hotel Rebate").

(B) A business assistance rebate shall be paid by City to RLJ in quarterly installments equal to the sum of (i) those revenues attributable to the City's seven percent (7%) accommodations tax from the Marriott Suites operation for the preceding quarter, plus (ii) those revenues attributable to the two percent (2%) Conference Center fee for the previous quarter plus (iii) those revenues attributable to the City's Sales and Use Tax at the then current rate generated by the Marriott Suites (including food and beverage) for the previous quarter, exclusive of (a) City's parks, open space and trails tax at 0.25% ("Open Space Tax") and (b) City's public safety tax at 0.6% ("Public Safety Tax") and (c) any future voter approved sales or use tax, the use of which is restricted by the voters to specific, limited purposes (the "Marriott Suites Rebate")

(C) A business assistance rebate shall be paid by the City to CRHC III in quarterly installments equal to the sum of (i) sixty percent (60%) of those revenues attributable to the City's seven percent (7%) accommodations tax from the Hyatt Place Hotel operation for the preceding quarter, plus (ii) sixty percent (60%) of those revenues attributable to the two percent (2%) Conference Center fee for the previous quarter (the "Hyatt Place Rebate").

2.6.1.1 ~~At~~—As such time as the aggregate amount of the quarterly installments of the Marriott Hotel Rebate equals ~~\$Business Assistance Rebates equals \$9,800,000 present value for the Hotel~~, using a discount rate of eight percent (8%) per annum, or upon City's rebate of sixty (60) quarterly installments, ~~for the Marriott Hotel Rebate then the Business Assistance Rebates for the Hotel shall cease. The first quarterly installment of the Marriott Hotel Rebate Business Assistance Rebate for the~~

~~Hotel~~ shall be made within fifteen (15) days after the last day of the first quarter after the Marriott Hotel receives a certificate of occupancy.

2.6.1.2 At such time as the aggregate amount of the quarterly installments of the Marriott Suites Business Assistance Rebates equals \$3,275,000 present value ~~for the Suite Hotel~~, using a discount rate of eight percent (8%) per annum, or upon City's rebate of sixty (60) quarterly installments, the Marriott Suites Rebate shall cease.

2.6.1.3 Upon City's rebate of sixty (60) quarterly installments for the Hyatt Place Rebate, ~~Suites Hotel~~ ~~then the Hyatt Place Rebate~~ shall cease. The first quarterly installment of ~~Business Assistance Rebates~~ for the Hyatt Place Rebate shall be made within fifteen (15) days after the last day of the first quarter after the Hyatt Place Hotel receives a certificate of occupancy. ~~Suites Hotel shall cease.~~

2.6.2 In the event the first rebate is prorated for either the Marriott Hotel, ~~the Marriott or Suites, or the Hyatt Place Hotel~~, the last payment shall include the additional days not included in the first rebate to provide sixty (60) full quarterly installments. The business assistance rebates for the Marriott Hotel, the Marriott Suites, and the Hyatt Place Business Assistance Rebates for the Hotel and Suites Hotel are independent and shall be calculated and paid separately ~~for the Hotel and for the Suites Hotel~~ as noted hereinabove.

2.6.3 City's obligations pursuant to this Section 2.6 shall be subject to annual appropriation consistent with the requirements of Colorado Constitutional Amendment X, Section 20, provided, however, that the City agrees to exercise its best efforts and utmost good faith in making funds available to meet its obligation under Section 2.6.

2.6.4 City warrants and represents that no other person or entity has any right, title or claim against the specific rebate items included in the business assistance rebates ~~Business Assistance Rebate~~ specified in this Agreement other than sales and use tax bond covenants.

2.6.5 ~~Subordination.~~—For the purpose of protecting the City's bonding capacity and credit worthiness, it should be known that the City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City. This Section 2.6.5 however does not refer to or include the revenue generated by these Projects from Accommodation Tax or the Conference Center Tax.

2.6.6 This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the City Charter and the City Municipal Code.

**III. FURTHER AGREEMENTS AND COMMITMENTS**

3.1 City, CRHC I, RLJ, and CRHC III agree to exercise utmost good faith in negotiating and completing such additional or further agreements that may be required to accomplish the ultimate goal of the parties of realizing the construction and commencement of the operation of the Projects contemplated by this Agreement. City, CRHC I, RLJ, and CRHC III hereby assume the mutual duty of "agreeing to agree" on such further agreements or actions that may be necessary to realize their overriding objective in executing this Agreement. Any omission or ambiguity in this Agreement shall not be considered cause for non-performance of the parties of this Agreement.

3.2 Without in any way limiting the foregoing, City, CRHC I, RLJ, and CRHC III specifically agree to cooperate in resolving the following matters to the extent necessary.

3.2.1 Providing information and assistance as reasonably required by CRHC's and CRHC I's, RLJ's, and CRHC III's lender(s) to the extent such assistance does not result in added costs or obligations for City or release CRHC I, RLJ, and CRHC III from obligations in this Agreement.

3.2.2 The City, CRHC I and CRHC II have entered into a Golf Course Marketing Agreement dated March 25, 2003 for the Marriott Hotel and Suites Hotel.

3.3 Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be construed as creating a joint venture or partnership relationship between City, CRHC I, RLJ, and CRHC III and the liabilities and responsibilities of the parties shall be the independent liabilities and responsibilities of the party charged with such liability or responsibility.

3.4 Any notice required hereunder shall be sent certified mail, return receipt requested, with faxed copies to any current address given by one party to the other or at:

<u>CITY:</u>	<u>RLJ: City</u>
<u>CRHC II:</u>	
City of Westminster Attn: City Manager 4800 West 92 <sup>nd</sup> Avenue Westminster, Colorado 80031 Fax: (303) 430-1809	<del>Church Ranch Hotel Company II LLC Attn: Managing Member c/o Etkin Johnson Group 1512 Larimer Street, Suite 325 Denver, Colorado 80202 Fax: (303) 629-5451</del>
<u>CRHC I:</u>	<u>CRHC III:</u>
Church Ranch Hotel Company I LLC Attn: Managing Member c/o Etkin Johnson Group 1512 Larimer Street, Suite 325 Denver, Colorado 80202 Fax: (303) 629-5451	

3.5 City Manager is authorized, consistent with City Charter and Ordinances, to enter into any further agreements, give all consents, enter into estoppel letters, amendments or the like, and do all things necessary hereunder that are consistent with this Agreement.

3.6 City staff, CRHC I and CRHC III shall work together for adequate and appropriate signage for the Projects, including signage typical for comparable first-class hotel projects in the City as allowed under City Code.

3.7 The execution of this Agreement by CRHC I, RLJ, and CRHC III and City as indicated in the signatory blocks below constitutes a representation by the respective parties that the Agreement has been duly authorized and approved by the City Council of the City of Westminster on behalf of City, and by CRHC I, RLJ, and CRHC III in accordance with and under the authority of their respective CRHC's and CRHC-IPs limited liability company agreements and state law.

3.8 Except as provided otherwise in this Agreement, anywhere in this Agreement it provides that it is the responsibility of CRHC I, RLJ, and CRHC III, it shall be at the sole cost and expense of CRHC I, RLJ, and CRHC III, and anywhere in this Agreement it provides that it is the responsibility of City, it shall be the sole cost and expense of City.

3.9 This Agreement is severable and assignable to another legal entity subject to City's reasonable consent which will not be withheld as long as evidence satisfactory to the City in its reasonable discretion is provided that demonstrates that the successor entity has the financial wherewithal, experience and expertise to carry out the Projects and the obligations under this Agreement. However, any assignment or transfer of this Agreement other than as defined herein shall require City's approval, which shall not be unreasonably withheld. The rights and obligations hereunder shall inure to the benefit and detriment of any transferees, assigns or beneficiaries.

3.10 Except as otherwise provided in this Agreement, the City agrees that this Agreement is not cancelable by the City.

3.10.1 ~~\_\_\_\_\_ A. This Assistance Agreement shall terminate and become void and of no force or effect upon the City as to the Marriott Hotel and the Hyatt Place Hotel only if CRHC I and CRHC III fails to commence construction of the Marriott Hotel and the Hyatt Place Hotel on or before March 1, 2009, or, CRHC I and CRHC III have ~~has~~ not completed construction and initiated operations of the Marriott Hotel and Hyatt Place Hotel by March 31, 2011; or in the event CRHC I or CRHC III, at any time prior to completing their respective Projects, ~~make the Hotel,~~ makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of CRHC of all or a substantial part of their respective ~~its~~ assets; or, a petition of relief is filed by either CRHC I or CRHC III under federal bankruptcy, insolvency, or similar laws; or, a petition in a proceeding under any bankruptcy, insolvency, or similar laws is filed against either CRHC I or CRHC III and not dismissed within sixty (60) days.~~

3.10.2 B. This Agreement shall remain in full force and effect with respect to the Suites Hotel in this event of any termination of this Agreement pursuant to 3.10.1, above, including, but not limited to the Marriott Suites ~~Business Assistance~~ Rebate for the Suites Hotel in the aggregate amount of \$3,275,000 present value per Section 2.6. However, if CRHC I fails to commence construction of the Marriott Hotel on or before March 1, 2009, CRHC I agrees to (1) transfer to City its interest in Lot 1, Lot 2 and Tract B of the Final Plat free and clear of liens and encumbrances, except for current property taxes and the existing lien in favor of Key Bank or its successor on Lot 2 with a release price not to exceed \$4.00 per square foot and CRHC I agrees to hold harmless and indemnify the City from any liens and encumbrances in excess of the \$4.00 per square foot owed to Key Bank, or its successor on Lot 2 and (2) transfer to City its interest in any and all plans, specifications or drawings for the Marriott Hotel. If CRHC I breaches the obligation to not encumber Lot 1, Lot 2 and Tract B beyond

the limits specified hereinabove and if CRHC I is required to transfer Lot 1, Lot 2 and Tract B to the City pursuant to this Agreement, then in that event the City has in addition to the remedies provided in Section 4 below the right to discontinue the ~~Marriott Suites Business Assistance Rebate~~ payments to CRHC II on the Suites Hotel for the period of time required to reimburse the City for the amount of the encumbrance CRHC I placed on Lot 1, Lot 2 and Tract B in excess of the limits specified hereinabove.

~~3.10.3~~ CRHC I has paid or ~~in addition~~, CRHC agrees to pay the City additional applicable non-refundable extension fees upon City Council approval of this Agreement per the following schedule:

- i. Initial extension payment, \$25,000.00 paid to City by CRHC I on July 17, 2003.
- ii. Second extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2005. Upon payment of this second extension payment the total of \$75,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if construction of the Marriott Hotel commences before March 1, 2006.
- iii. Third extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2006. Upon payment of this third extension payment the total of \$125,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2007.
- iv. Fourth extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2007. Upon payment of this fourth extension payment the total of \$175,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2008.
- v. Fifth extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2008. Upon payment of this fifth extension payment the total of \$225,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2009.

~~E-~~In the event CRHC I has not commenced construction of the Marriott Hotel on or before March 1, 2009 then the extension payments made to the City by CRHC I shall be forfeited by CRHC I to the City and CRHC I shall have no further right nor benefit of the extension payments and the City has the right to full use of the extension payments for whatever purpose the City deems appropriate.

~~3.10.4 D-~~ For purposes of this Agreement, commencement of construction of the Marriott Hotel and Hyatt Place Hotel shall be defined as (i) payment of necessary fees pursuant to this Agreement, including but not limited to Tap Fees, (ii) obtaining necessary construction permits and (iii) mobilization of the general contractor on the ~~Hotel Project Site~~.

~~3.10.5 E-~~ CRHC I agrees that it will not grant additional security interests in Lot 1, Lot 2 or Tract B securing any additional debt except for a security interest for financing for the actual construction of the Marriott Hotel, which security interest shall not attach until construction is ready to commence and a building permit has been issued for the Marriott Hotel without the prior written consent of the City.

CRHC I agrees to provide the City an ownership and encumbrance report evidencing CRHC I compliance with this Section prior to requesting any extension herein provided for hereinabove.

3.11 In the event CRHC I ceases business operations of the Marriott Hotel within three (3) years after the issuance of a certificate of occupancy by the City for the Marriott Hotel, for a period of three months or longer except in the case of force majeure, then in such event, CRHC I shall pay to the City the total amount of fees and taxes that were due and payable by CRHC I to the City, but were rebated or waived by the City, as well as reimburse the City for all funds provided to CRHC I pursuant to the Agreement. The same refund provisions shall apply to CRHC III on the Hyatt Place Hotel in the event CRHC III ceases business operations on the Hyatt Place Hotel within three (3) years after the issuance of a certificate of occupancy by the City for the Hyatt Place Hotel, for a period of three (3) months or longer, except in the case of force majeure. These same refund provisions shall apply to RLJ/CRHC-H on the Suites Hotel in the event RLJ/CRHC-H ceases business operations of the Marriott Suites Hotel prior to April 1, 2009, for a period of three months or longer except in the case of force majeure.

#### IV. REMEDIES

4.1 In the event of a dispute concerning this Agreement, the parties agree to first attempt to negotiate a resolution of their differences. In the event of an inability to resolve their difference through negotiation, the parties agree to retain the services of a qualified professional mediator acceptable to all parties and to enter into mediation in good faith in an attempt to resolve the dispute.

4.2 In the event the parties are unable to agree upon the meaning or interpretation of any term or condition of this Agreement, the parties agree that a court of competent jurisdiction may declare the rights, duties and obligations of the parties in a declaratory judgment action and that such court may further impose upon the parties any fair and reasonable provision the court may deem appropriate to accomplish the overall objective of this parties as set forth in this Agreement. Further, in the event of such a declaratory judgment action, it is the intent of the parties that the court may receive parol evidence for the purpose of deciding such rights, obligations and duties of the parties in the event of an ambiguity.

4.3 The parties hereby waive and agree not to seek any damages from the other in connection with the enforcement of this Agreement if specific performance provides an adequate remedy. The parties may setoff any amounts due the other for any undisputed amounts. An arbitrator or court may grant setoff as an available remedy hereunder. The rights, obligations and duties of the parties may be enforced through the declaratory action referred to in Section 4.2 above, or by way of specific performance. The parties recognize that time is of the essence, and accordingly the parties shall seek any expedited proceedings to which they may be entitled. However, if any party is required to bring an action to enforce or have its rights declared under this Agreement, the prevailing party in such litigation shall be entitled to the recovery of its reasonable costs and attorney's fees. CRHC I, RLJ, and CRHC III I have the right to withdraw from this Agreement with no further obligations to the City including but not limited to the repayment of any business assistance rebate~~Business Assistance Rebate~~ payments which have been received if City commitments are not satisfied as agreed in this Agreement.

4.4 ~~CRHC's, CRHC I's, RLJ's, H's and City's~~ obligations under this Agreement shall be deemed covenants running with the land and shall be binding upon and enforceable against the transferees, successors, assigns and purchasers of any item contained herein. For the purposes of creating constructive notice of this provision of this Agreement, a memorandum of this Agreement shall be recorded in the real estate records of the Jefferson County Clerk and Recorder's Office.

4.5 The Agreement replaces and supercedes all previous agreements and understandings and sets forth the agreement of the parties. There are no representations or warranties other than as contained herein. The documents to be entered into between the parties in the future shall become part and incorporated into this Agreement.

4.6 The Prior Agreements by and between City, CRHC I and CRHC II shall be deemed replaced by this Agreement upon the execution hereof by all parties.

4.7 References herein to any party to this Agreement includes their respective successors and assigns.

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

**CITY OF WESTMINSTER,**  
a Colorado home-rule municipality

**CHURCH RANCH HOTEL**  
COMPANY I LLC, a Colorado limited liability company

By: \_\_\_\_\_  
J. Brent McFall, City Manager

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Michele Kelley, City Clerk

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

**RLJ-S WESTMINSTER, LLC, a**  
a Delaware Limited Liability Company company

**CHURCH RANCH HOTEL COMPANY,**  
II LLC, a Colorado limited liability company

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

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

ATTEST:

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

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

Title: \_\_\_\_\_

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

**EXHIBIT A**  
**Acceptable Hotel Franchisors**  
(attached to and made a part of the Agreement)

| Hotel:

Marriott is the currently approved hotel franchise for the proposed Hotel. In the event that it becomes necessary for CRHC to select an alternate full-service hotel franchise for the Hotel, the following full-service hotels could be built as part of this Agreement if they are determined by HVS or alternate similar caliber consultant at the time the alternate franchisor is selected by CRHC and submitted to City to be a first-class, full-service hotel:

- Marriott
- Hilton
- Wyndham
- Sheraton
- Crowne Plaza
- Hyatt

Suites Hotel:

Marriott SpringHill Suites is the currently approved Suite Hotel franchise for the Suites Hotel.



## Agenda Item 8 L

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Second Reading of Councillor's Bill No. 51 re Democratic National Convention Supplemental Appropriation

**Prepared By:** Lee Birk, Chief of Police

**Recommended City Council Action**

Pass Councillor's Bill No. 51 on second reading appropriating funds received from the City and County of Denver in the amount of \$184,000 for the City of Westminster Police Department's participation at the Democratic National Convention (DNC).

**Summary Statement**

- On July 28, 2008, City Council approved an Intergovernmental Agreement (IGA) with the City and County of Denver allowing the City of Westminster Police Department to provide police services and assistance to the City and County of Denver during the Democratic National Convention (DNC).
- The City and County of Denver received a Federal Convention Security Grant of \$50 million to cover the security related costs that were used to reimburse participating and assisting jurisdictions. Under the terms of the IGA with the City and County of Denver, Denver would reimburse Westminster for every hour that a Westminster officer was assigned to DNC-related duties.
- These funds fully reimburse the City of Westminster for all costs incurred during the DNC.
- This Councillor's Bill was passed on first reading on December 8, 2008.

**Expenditure Required:** \$184,000

**Source of Funds:** Reimbursement by the City of Denver from the Federal Convention Security Grant

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **51**

SERIES OF 2008

INTRODUCED BY COUNCILLORS  
**Winter - Lindsey**

**A BILL  
FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE GENERAL FUND AND  
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2008 ESTIMATED  
REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General Fund initially appropriated by Ordinance No. 3316 is hereby increased by \$184,000. This appropriation is due to the receipt of federal grant funds.

Section 2. The \$184,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10D, dated December 8, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$184,000</u>
Total	<u>\$184,000</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 8<sup>th</sup> day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22<sup>nd</sup> day of December, 2008

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Second Reading of Councillor's Bill No. 52 re Pension Plan Amendments

**Prepared By:** Kim McDaniel, Retirement Administrator

**Recommended City Council Action**

Pass Councillor's Bill No. 52 on second reading amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans in order to comply with changes required by applicable federal pension laws and U.S. Treasury regulations.

**Summary Statement**

- During 2006, the U.S. Congress passed the Pension Protection Act of 2006 (PPA). The PPA includes several provisions that are beneficial to defined contribution plans. In order for plan participants in the City of Westminster Police and General Employee Pension Plans to receive the full benefit of the changes allowed by the PPA, these provisions must be affirmatively adopted by the Plans.
- The IRS requires qualified pension plan documents to be amended for changes in federal pension laws and filed with the IRS in order to retain their tax-qualified status. The initial cycle as applied to the General Employee and Police Pension Plans ends on January 31, 2009.
- Pension staff received Council approval on September 8, 2008 to hire Brownstein Hyatt Farber Schreck, LLP to (i) revise the pension plan documents to reflect federal pension law requirements and (ii) prepare and submit legal documents to the IRS in order to obtain favorable letters of determination with respect to the amendments. It is anticipated that the pension plans will be filed with the IRS on January 9, 2009.
- The changes proposed are primarily technical clarifications and not substantial in nature.
- This Councillor's Bill was passed on first reading December 8, 2008.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **52**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**Briggs - Kaiser**

**A BILL  
FOR AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF TITLE 14  
OF THE WESTMINSTER MUNICIPAL CODE CONCERNING  
POLICE AND GENERAL EMPLOYEE PENSION PLANS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-1-1, subsections (A) and (C), W.M.C., are hereby AMENDED to read as follows:

**14-1-1: NAME AND PURPOSE OF PLAN; HISTORY:**

(A) The City of Westminster (THE "CITY" OR THE "EMPLOYER") does hereby establish its Police Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under CODE Section 401(a) ~~of the Federal Internal Revenue Code~~ and the Trust created pursuant to the Plan is intended to be exempt under CODE Section 501(a) ~~of such Code~~ and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the ~~Federal Internal Revenue Code~~ after the enactment of the Employee Retirement Income Security Act of ~~1984~~,1974, except to the extent that changes to the Code apply to governmental plans.

(C) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became Participants in the FPPA defined benefit system. Assets in the retirement medical savings account (RMSA) in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section 14-1-7(C)(4) ~~of this Plan.~~

Section 2. Section 14-1-2, subsections (C), (E), (H), (I) and (V), W.M.C., are hereby AMENDED to read as follows:

**14-1-2: DEFINITIONS:** When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(C) "CITY" The City of Westminster, Colorado. THE CITY MAY ALSO BE REFERENCED IN THIS PLAN AS THE "EMPLOYER."

(E) COMPENSATION" The base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions. FOR PURPOSES OF DETERMINING THE COMPENSATION APPLICABLE TO THE LIMITATIONS ON ANNUAL CONTRIBUTIONS IN SECTION 14-1-5, COMPENSATION SHALL BE AS DEFINED IN SECTION 14-1-5(B)(5).

(H) "ELIGIBLE RETIRED PUBLIC SAFETY OFFICER" A Police Officer who is separated from service with the City as a public safety officer by reason of disability or is separated from service with the City as a public safety officer and separated from service after normal retirement age AS DEFINED IN SECTION 14-1-6(A)(1).

(I) "EMPLOYEE" Any person who fills ~~an~~ A CITY-authorized position of Police Officer as defined in this Chapter that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(V) "TRUST FUND" The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the TRUST Fund and all increases in fair market value.

Section 3. Section 14-1-3, subsections (A)(3), (A)(4)(a), (A)(4)(d), and (B)(2), W.M.C., are hereby AMENDED to read as follows:

### **14-1-3: PARTICIPATION OF EMPLOYEES:**

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant: No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive employer contributions, on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay period of Contribution: The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment WITH THE CITY shall terminate for any reason unless such Participant is employed BY THE CITY on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of or earnings on his undistributed interest in the Plan, after termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service: For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this WESTMINSTER MUNICIPAL Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such employee is still employed AS AN EMPLOYEE on such date and has not severed his employment (as provided in subsection (d) of this Section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended, pursuant to Section 1-24-10(V) of this WESTMINSTER MUNICIPAL Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to

release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment WITH THE CITY shall be considered as a break in continuity of service; subsequent reemployment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment WITH THE CITY or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

Section 4. Section 14-1-4, subsections (C)(1)(b), (C)(1)(c), (D), (E)(1) and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS:**

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%), or the percentage at least equal to the OASDI tax rate. During any period in which the contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this Plan by each contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this Plan for a Participant to less than two percent (2%) of that contributing Participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in CODE Section 414(h) ~~of the Internal Revenue Service Code~~ and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to his employment WITH THE CITY, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the Plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions:

(a) Subject to the provisions of Section 14-1-5(B), each Contributing Participant may elect to contribute to the Trust Fund an amount that when combined with the mandatory contributions required in paragraph (1) of this Subsection does not exceed the amount described in Section 14-1-5(B)(1).

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund must be contributed through payroll deductions. A contributing Participant may have the option of increasing, decreasing, or terminating his voluntary contribution at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-1-12(A), shall not be considered voluntary contributions.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan each pay period.

(D) Retirement Medical Savings Accounts:

(1) Each Participant shall have the option of designating up to TWENTY-FIVE PERCENT (25%) of his or her combined mandatory and City contributions to be used for future medical expenses as provided for in CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~. Contributions to the medical savings accounts will not be taxed at separation from service nor upon use for medical expenses after separation from service. The retirement medical savings accounts will be subject to the rules and requirements as issued by the City Manager.

(2) Contributions designated for future health benefits under CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~ as described in Subsection 0(D)(1) of this Section shall be maintained in separate accounts.

(E) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the CITY'S employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation in whole or in part, of the Trust Fund.

(F) Contributions for periods of qualified military service. The employer shall make all contributions to the Plan required by CODE Section 414(U) ~~of the code~~ which are attributable to periods of qualified military service. In addition, the employer shall allow any Participant to make elective MANDATORY EMPLOYEE CONTRIBUTIONS AND VOLUNTARY contributions for periods of qualified military service ~~and the employer shall make any matching contributions based upon such contributions at the rate at which such elective contributions of the employee would have been made during the applicable period of qualified military service, each as required by Section 414(U) of the code~~ AS REQUIRED BY CODE SECTION 414(U). The employer may elect to make additional contributions based upon such qualified military service based upon employer contributions made during the applicable period, provided such election by the employer is made on a non-discriminatory basis applicable to all similarly situated employees who have qualified military service. Any contributions made under this Subsection shall be subject to the provisions of CODE Section 414(U) ~~of the code~~ and the provisions of this Plan shall be applied considering any such contributions as having been made during the plan year to which the

contributions relate. For the purposes of this Section, "qualified military service" means service in the uniformed services of the United States (as defined in Chapter 43 of Title 38, OF THE United States Code) by any individual if such individual is entitled to re-employment rights with respect to such service.

Section 5. Section 14-1-5, subsections (B)(1), (B)(3), (B)(5), (C), (E), and (H), W.M.C., are hereby AMENDED to read as follows:

**14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:**

(B) Limitations on Allocations.

(1) General Rule: In no event may a Participant receive an allocation for any PLAN year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of one hundred percent (100%) of his or her compensation for such year or \$40,000, provided such figure shall be adjusted as provided in code section 415(D). For limitation years beginning before January 1, 2002, the foregoing percentage limitation is 25% and the foregoing dollar limitation is ~~\$3,000~~\$30,000, as adjusted pursuant to code section 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this Subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000, subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this Subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, ~~roll-over~~ ROLLOVER contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

(5) Compensation: For the purposes of applying the limitations of this Subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under ~~Federal Internal Revenue Service~~ Code Sections 125, 132(f)(4), 402(g)(3), 457, 401(k), or 403(b). The ~~annual compensation~~ “ANNUAL COMPENSATION” of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed ~~two hundred thousand dollars~~ (\$200,000), as adjusted for cost-of-living increases in accordance with CODE Section 401(A)(17)(b) ~~of the code~~. For LIMITATION years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is ~~one hundred fifty thousand dollars~~ (\$150,000). ~~Annual compensation~~ “ANNUAL COMPENSATION” means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(C) Allocation of Earnings, Losses, Charges and Changes in Fair Market Value of the Net Assets of the Trust Fund. Earnings and losses of the Trust Fund and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. Third party and administrative charges shall be allocated in the ratio that the total dollar value of the interest of each such Participant in the trust fund bears to the aggregate dollar value of all of such INTERESTS OF ALL SUCH Participants or equally to all Participants.

(E) Evaluation Dates. The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City, THE STATE and the Participants for that quarter. If an event described in Section 14-1-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

(H) Investment of Participant's Account. A Participant's account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in ~~their~~ HIS account among the investment options in a manner determined by the plan custodian and subject to such provisions as the plan administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

Section 6. Section 14-1-6, W.M.C., is hereby AMENDED to read as follows:

**14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:**

(A) Retirement Date.

(1) Normal Retirement: The normal retirement age for each Participant shall be AGE fifty-five (55); and, on the last day of the month in which HE ATTAINS HIS NORMAL RETIREMENT AGE ~~his fifty-fifth birthday occurs~~, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a Contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may voluntarily retire. Until actual retirement, a Contributing Participant shall continue to participate in the Plan.

(B) Beneficiaries.

(1) Designation of Beneficiaries: Each Participant shall have the right to designate a Beneficiary ONE or MORE Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. ANY BENEFICIARY DESIGNATION SHALL BE EFFECTIVE WHEN RECEIVED BY THE BOARD.

(2) Determination of a Beneficiary when there is no designated Beneficiary: If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to his THE PARTICIPANT'S surviving spouse, if any, or if none, then to the personal representative of his THE PARTICIPANT'S estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of his THE PARTICIPANT'S death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies: The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-1-8(A).

Section 7. Section 14-1-7, W.M.C., is hereby AMENDED to read as follows:

**14-1-7: DISTRIBUTION FROM TRUST FUND:**

(A) When Interests Become Distributable and Effect Thereof. When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest IN THE PLAN shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to THE Board. For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests.

(1) Insurance: If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance by informing the Board of his election. If said election is not exercised within thirty (30) days after the PARTICIPANT'S termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments UNDER THE PLAN.

(2) Election to Defer Benefits: A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (F) of this Section. No election to change the method of payment may be made more than once every six months once payments have commenced.

(3) Distribution of ~~Contributions~~ PARTICIPANT'S ACCOUNTS: Any other provision of this Subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board.

(4) Benefits payable from the 401(h) account:

(a) Benefits are payable from the retirement medical savings account only upon retirement, separation of service, death or total disability.

(b) Benefits payable from a 401(h) account shall include only payments or reimbursements for medical care {as defined in Code section 213(d)(1)}.

(c) Medical care payments shall only be paid pursuant to a reimbursement application.

(d) No refunds of contributions shall be made. All contributions remain in the 401(h) account until used for medical care payments.

(e) Reimbursements may not be made for any expense for which the retired Participant or his or her spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.

(f) In order to receive benefits from the 401(h) account, the retired Participant must agree to provide appropriate documentation of the MEDICAL CARE expenditure.

(D) Transfers Between Qualified Plans:

(1) In General. The trustee and the plan custodian, upon their mutual agreement, are authorized to receive and add to the interest of any Participant the Participant's vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this Plan and Trust, concerning employer contributions. The trustee is also authorized, at the direction of the plan custodian and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer ~~satisfied~~ SATISFIES the requirements under law for such transfers.

(2) For Distributions Made On or After January 1, 1993. Notwithstanding any provision of the ~~p~~Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) For Distributions Made After December 31, 2001. An eligible retirement plan, AS DEFINED IN SUBSECTION (4) BELOW, shall also mean an annuity contract described in CODE section 403(b) ~~of the code~~ and an eligible plan under CODE section 457(b) ~~of the code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in CODE section 414(p) ~~of the code~~. The Plan shall be permitted to accept rollovers from any type of eligible retirement plan except to the extent limited in THIS Section 14-2-7.

(4) Definitions.

(a) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (I) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or

joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (II) any distribution to the extent such distribution is required under CODE section 401(a)(9) ~~of the code~~; (III) any hardship distribution as described in CODE section 401(k)(2)(b)(I)(iv) ~~of the code~~ (applicable only to distributions after December 31, 1999); and (IV) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in CODE section 408(a) or (b) ~~of the code~~, or to a qualified defined contribution plan described in CODE section 401(a) or 403(a) ~~of the code~~ that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. The Plan shall ~~not~~ accept a rollover of after-tax employee contributions ~~unless specifically elected in the adoption agreement or a supplement thereto.~~

(b) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in CODE section 408(a) ~~of the code~~, an individual retirement annuity described in CODE section 408(b) ~~of the code~~, an annuity plan described in CODE section 403(a) ~~of the code~~, or a qualified trust described in CODE section 401(a) ~~of the code~~, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in CODE section 414(p) ~~of the code~~, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(E) Withdrawals While Employed: A Participant who has attained age sixty-two (62) may elect to begin distributions from the Trust Fund according to the rules described in ~~the~~ THIS Section 14-1-7 if the Participant's current annual base salary at the time of election is at least twenty-five percent (25%) less than the Participant's highest annual base salary.

(F) Required Distribution Commencement Date: Distribution of a Participant's interest IN THE PLAN must begin no later than the April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one half (70 1/2) or the year the Participant retires.

(G) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof.

(2) Qualified Domestic Relations Order: Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a qualified domestic relations order setting forth the agreement of the parties with respect to the division of benefits pursuant to Colorado Revised Statutes, Section 14-10-113. A lump sum distribution will be made pursuant to such an order within one hundred and twenty (120) days

after the date on which a certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board.

The Board shall establish such reasonable procedures as are necessary to determine the compliance of a domestic relations order with the requirements of Colorado Revised Statutes, Section 14-10-113 and to administer distributions under such qualified orders. Such procedures may be at the discretion of the Board, including standardized forms to be used for such marital agreements and orders. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall ~~not~~ have NO rights to vote in elections held pursuant to this Plan.

(H) Manner of Distribution: A Participant's interest IN THE PLAN may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary by the distribution of the total balance of his PLAN account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. ~~The~~ THIS maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six (6) months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) Limitation on Duration of Payments:

(1) No distribution shall be made over a period exceeding the joint life expectancy of the Participant and his beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this Subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(2) Notwithstanding anything in ~~the~~ THIS Chapter to the contrary, all distributions from the plan shall conform to the final regulations issued under ~~Internal Revenue~~ Code Section 401(A)(9), including the incidental death benefit provisions of ~~Internal Revenue~~ Code Section 401(A)(9)(G).

(J) Withdrawals: EXCEPT AS PROVIDED IN SECTION 14-1-7(E), A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

(K) Special Rules for Distributions after the Participant's Death:

(1) Distributions Commencing Prior to Death: If distribution of a Participant's interest IN THE PLAN has commenced prior to the Participant's death in accordance with Subsection (I) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death: If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries: If a Participant should die after receiving some part, but not all, of his PLAN account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this Subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this Subsection to the recipient determined pursuant to Section 14-1-6.

(4) Distribution to IRA of Nonspouse Beneficiary: A Participant's nonspouse beneficiary may elect payment of ~~any~~ THE portion of the deceased Participant's account TO WHICH HE IS ENTITLED in a direct trustee to trustee transfer to an individual retirement account or annuity described in CODE Section 402(C)(8)(B)(I) or (II) ~~of the code~~ that is established to receive the plan distribution on behalf of the beneficiary. For purposes of this Section, a trust maintained for the benefit of one or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date as defined in Section 14-1-7(F), the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of CODE Section 402(C)(11) ~~of this Code~~ apply to distributions under this Section.

(L) Payment for Qualified Health Insurance Premiums: A Participant who has separated from service as a public safety officer with the City due to disability for attainment of normal retirement age, AS DEFINED IN SECTION 14-1-6(a), may elect to have amounts not yet paid from the plan paid directly to a provider of an accident or health insurance plan or a qualified long term insurance contract to cover the cost of up to \$3,000 per year of "qualified health insurance premiums" for the Participant and the Participant's spouse and dependents, in accordance with CODE Section 402(L) ~~of the code~~. The requirements of CODE Section 402(L) ~~of the code~~ apply to payments under this Section.

Section 8. Section 14-1-8, subsection (A)(3), W.M.C., is hereby AMENDED to read as follows:

#### **14-1-8: INSURANCE COMPANY CONTRACTS:**

(A) Insurance or Annuity Contracts:

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the

Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) After December 31, 1996, the City shall not purchase any NEW group insurance or annuity contracts for pension Participants.

Section 9. Section 14-1-9, subsections (A), (B), (D), and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-9: POLICE PENSION BOARD:**

(A) Appointment of Board:

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants, elected by a majority of the voting Participants. One of the three elected members ~~must~~ SHALL be an unclassified employee as defined in the CITY'S Personnel Rules and Regulations. The trustee shall serve as Chairperson of the Board.

(2) The three (3) MEMBERS to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the trustee. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, TO SUPPLY OMISSIONS AND TO RESOLVE INCONSISTENCIES AND AMBIGUITIES ARISING UNDER THE PLAN. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon IT in this Chapter. The Board may employ for the Trust Fund an ~~Investment Advisor~~ "INVESTMENT ADVISOR" and may rely on such INVESTMENT Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such INVESTMENT Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such INVESTMENT Advisor or for any acts or omissions made upon the direction or recommendation of such INVESTMENT Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investments offered, the Board shall provide the opportunity to Participants to make options as to investments. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may remove or phase out an investment option if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board,

the plan administrator nor the City shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment optionS.

(D) Matters Affecting Board Members: In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote AS A MEMBER OF THE BOARD in the determination of such matter ~~as a member of the Board~~, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(F) Records of the Board: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all PLAN benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-1-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

Section 10. Section 14-1-10, subsections (D)(2) and (G)(4), W.M.C., are hereby AMENDED to read as follows:

#### **14-1-10: POWERS AND DUTIES OF THE TRUSTEE:**

(D) Advice of Board or Counsel:

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and THE TRUSTEE shall be fully protected from any responsibility with respect to any action taken or omitted by ~~them~~ THE TRUSTEE in good faith pursuant to the advice of such counsel.

(G) Resignation and Removal of Trustee: The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate CO-Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

Section 11. Section 14-1-11, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-1-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN: (2464)**

(C) Distribution of Trust Fund on Termination of Plan. If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright, IN A LUMP SUM CASH PAYMENT, his entire interest in the Trust Fund.

(D) Amendments to THE Plan.

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

- (a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;
- (b) Decrease any Participant's share of this Plan;
- (c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees; or
- (d) Fail to comply with State statutes for voting for Police Pension Plans.

(2) Notwithstanding anything herein to the contrary, ~~however~~, this Chapter may be amended, if necessary, without requiring the approval of the plan Participants to conform to the provisions and requirements of the ~~Federal Internal Revenue~~ Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

Section 12. Section 14-1-12, subsections (A), (B) and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-12: MISCELLANEOUS: (2464 3319)**

(A) Benefits to be Provided Solely from the Trust Fund. All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility ~~therefor~~ THEREFOR.

(B) Notices from Participants to be Filed with Plan Administrator, THE BOARD OR THE TRUSTEE. Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice ~~therefor~~ THEREFOR signed by the Participant on a form furnished by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS MAY BE APPLICABLE, for such purpose and filed with the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE, which shall not be effective until received by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE.

(F) Plan for Exclusive Benefit of Participants; Reversion Prohibited. This Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

Section 13. Section 14-2-1, subsections (A), (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-2-1: NAME AND PURPOSE OF PLAN; HISTORY:** (2464 3319)

(A) The City of Westminster (THE "CITY" OR THE "EMPLOYER") does hereby establish its General Employee Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under CODE Section 401(a) ~~of the Federal Internal Revenue Code~~ and the Trust created pursuant to the Plan is intended to be exempt under CODE Section 501(a) ~~of such Code~~ and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the ~~Federal Internal Revenue Code~~ after the enactment of the Employee Retirement Income Security Act of ~~1984~~ 1974, except to the extent that changes to the Code apply to governmental plans.

(C) Prior Coverage Under Other City Funded Pension Plans. Any employee who was formerly a Participant in the Employee's Pension Plan and Trust Agreement or the Police and Fire Pension Plan shall automatically have his interest in such plan, whether held by investment agents, the trustee, or the City, transferred to this Plan upon becoming eligible to be a Participant in this Plan. Upon transfer of the employee's interest without a break in municipal service, the employee ~~has~~ SHALL HAVE the same Participant status as the employee ~~has~~ HAD under the other plan.

(D) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became Participants in the FPPA defined benefit system. Assets in the retirement medical savings account (RMSA) in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section ~~14-2-7(e)(4)~~ ~~of this Plan~~ 14-2-7(C)(4).

Section 14. Section 14-2-2, subsections (C), (E), (G), (K), and (R), W.M.C., are hereby AMENDED to read as follows:

**14-2-2: DEFINITIONS:** (2464 3319) When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

(C) "CITY" The City of Westminster, Colorado. THE CITY MAY ALSO BE REFERENCED IN THIS PLAN AS THE "EMPLOYER."

(E) "COMPENSATION" The base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE's) budgeted for their positions. FOR PURPOSES OF DETERMINING THE COMPENSATION APPLICABLE TO THE LIMITATIONS ON ANNUAL CONTRIBUTIONS IN SECTION 14-2-5, COMPENSATION SHALL BE AS DEFINED IN SECTION 14-2-5(B)(5).

(G) "EMPLOYEE" Any person who fills ~~an~~ A CITY-authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers ~~as defined in this Chapter~~, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(K) "PARTICIPANT" Any contributing PARTICIPANT or inactive Participant.

(R) "TRUST FUND" The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the TRUST fund and all increases in fair market value.

Section 15. Section 14-2-3, subsections (A)(2), (A)(3), (A)(4) and (B)(2), W.M.C., are hereby AMENDED to read as follows:

**14-2-3: PARTICIPATION OF EMPLOYEES:** (2464 3319)

(A) Participants.

(1) Contributing Participant. Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant. No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive ~~employer~~ CITY contributions on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay Period of Contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment BY THE CITY shall terminate for any reason unless such Participant is employed BY THE CITY on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of OR earnings on his undistributed interest in the Plan, after termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this WESTMINSTER MUNICIPAL Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) calendar months of service with the City and has attained the age of eighteen (18), provided such employee is still employed AS AN EMPLOYEE on such date and has not severed his employment (as provided in subsection (d) of this Section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended pursuant to Section 1-24-10~~(\*)~~(V) of this Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment WITH THE CITY shall be considered as a break in continuity of service; subsequent re-employment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment WITH THE CITY or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

Section 16. Section 14-2-4, subsections (A)(1), (B)(1)(b), (B)(1)(c), (C), (D)(1), and (E), W.M.C., are hereby AMENDED to read as follows:

**14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS** (2464 3319 3360)

(A) Contributions by the City.

(1) Determination of Contribution by the City. On ~~or~~ AND after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's compensation for that pay period, provided that during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to this Plan for each Participant shall be offset by the amount of the old age survivors and disability insurance ("OASDI") portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and Method of Payment of Contribution by the City. The contributions of the City shall be made every pay period and shall be credited to the Plan each pay period.

(B) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions.

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%) or the percentage at least equal to the OASDI Tax Rate. During any period in which the contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this Plan by each contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this plan for a Participant to less than two percent (2%) of that contributing Participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as employer, as provided in CODE Section 414(h) ~~of the Internal Revenue Service Code~~ and the Participant's gross income shall be reduced by the amount of the contributionS picked up by the City.

(c) Each Participant, as a condition to his employment WITH THE CITY, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions.

(a) Subject to the provisions of Section 14-2-5(B) each Contributing Participant may elect to contribute to the Trust Fund an amount that when combined with the mandatory contributions required in paragraph (1) of this Subsection does not exceed the amount described in Section 14-2-5(B)(1).

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund must be contributed through payroll deductions. A Contributing Participant may have the option of increasing, decreasing, or terminating his voluntary contribution at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-2-12(A) ~~of this Code~~, shall not be considered voluntary contributions.

(3) Payment of Participant Contributions. The contributions of the employee shall be withheld every pay period and shall be credited to the Plan each pay period.

(C) Retirement Medical Savings AccountS.

(1) Each Participant shall have the option of designating up to TWENTY-FIVE PERCENT (25%) of his or her combined mandatory and City contributionS to be used for future medical expenses as provided for in CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~. Contributions to the medical savings accountS will not be taxed at separation from service nor upon use for medical ~~purposes~~ EXPENSES after separation from service. The retirement medical savings accounts will be subject to the rules and requirements issued by the City Manager.

(2) Contributions designated for future health ~~costs~~ BENEFITS under CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~ as described in Subsection C(1) of this Section shall be maintained in separate accounts.

(D) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the CITY'S employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

(E) Contributions for Periods of Qualified Military Service. The employer shall make all contributions to the Plan required by CODE Section 414(u) ~~of the Code~~ which are attributable to periods of qualified military service. In addition, the employer shall allow any Participant to make ~~elective~~ MANDATORY EMPLOYEE CONTRIBUTIONS AND VOLUNTARY contributions for periods of qualified military service ~~and the employer shall make any matching contributions based upon such contributions at the rate at which such elective contributions of the employee would have been made during the applicable period of qualified military service, each~~ as required by CODE Section 414(u) ~~of the Code~~. The employer may elect to make additional contributions based upon such qualified military service based upon employer contributions made during the applicable period, provided such election by the employer is made on a non-discriminatory basis applicable to all similarly situated employees who have qualified military service. Any contributions made under this Subsection shall be subject to the provisions of Section 414(u) of the Code and the provisions of this Plan shall be applied considering any such contributions as having been made during the plan year to which the contributions relate. For the purposes of this Section, "qualified military service" means service in the uniformed services of the United States (as defined in Chapter 43 of Title 38 OF THE United States Code) by any individual if such individual is entitled to re-employment rights with respect to such service.

Section 17. Section 14-2-5, subsections (B)(1), (B)(2), (B)(5) and (H), W.M.C., are hereby AMENDED to read as follows:

**14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS: (2464 3319)**

(B) Limitations on Allocations.

(1) General Rule. In no event may a Participant receive an allocation for any PLAN year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of one hundred percent (100%) of his or her compensation for such year or \$40,000, provided such figure shall be adjusted as provided in Code Section 415(d). For limitation years beginning before January 1, 2002, the foregoing percentage limitation is 25% and the foregoing dollar limitation is \$30,000, as adjusted pursuant to Code Section 415(d). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this Subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations. For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and non-deductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the non-deductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000-00, subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts. Any amount not mentioned in paragraph (2) of this Subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess. In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the employer.

(5) Compensation. For the purposes of applying the limitations of this Subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under ~~Federal Internal Revenue Service~~ Code Sections 125, 132(f)(4), 402(g)(3), 457, 401(k), or 403(b). The ~~annual compensation~~ “ANNUAL COMPENSATION” of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed ~~two hundred thousand dollars~~ (\$200,000), as adjusted for cost-of-living increases in accordance with CODE Section 401(a)(17)(b) ~~of the Code~~. For LIMITATION years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is ~~one hundred fifty thousand dollars~~ (\$150,000). ~~Annual compensation~~ “ANNUAL COMPENSATION” means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(H) Investment of Participant’s Account. A Participant’s account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in ~~their~~ HIS account among the investment options in a manner determined by the plan custodian and subject to such provisions as the plan administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

Section 18. Section 14-2-6, subsections (A)(1), (B)(1) and (B)(2), W.M.C., are hereby AMENDED to read as follows:

**14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY: (2464 3319 3390)**

(A) Retirement Date.

(1) Normal retirement. The normal retirement age for each Participant shall be AGE sixty (60); and, on the last day of the month in which ~~his sixtieth birthday occurs~~ HE ATTAINS HIS NORMAL RETIREMENT AGE, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may voluntarily retire. Until actual retirement, a contributing Participant shall continue to participate in the Plan.

(B) Beneficiaries.

(1) Designation of Beneficiaries. Each Participant shall have the right to designate ~~a Beneficiary~~ ONE or MORE Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. ANY BENEFICIARY DESIGNATION SHALL BE EFFECTIVE WHEN RECEIVED BY THE BOARD.

(2) Determination of a Beneficiary when there is no designated Beneficiary. If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to ~~his~~ THE PARTICIPANT'S surviving spouse, if any; or, if none, then to the personal representative of ~~his~~ THE PARTICIPANT'S estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after ~~his~~ THE PARTICIPANT'S death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of his death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies. The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-2-8(A).

Section 19. Section 14-2-7, subsections (A) through (D), (F), and (H) through (K), W.M.C., are hereby AMENDED to read as follows:

**14-2-7: DISTRIBUTION FROM TRUST FUND (2464 3319 3390)**

(A) When Interests Become Distributable and Effect Thereof. When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest IN THE PLAN shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to THE Board. For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests.

(1) Insurance. If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance by informing the Board of his election. If said election is not exercised within thirty (30) days after the PARTICIPANT'S termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments UNDER THE PLAN.

(2) Election to Defer Benefits. A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this Section. No election to change the method of payment may be made more than once every six months once payments have commenced.

(3) Distribution of ~~Contributions~~ PARTICIPANT'S ACCOUNTS. Any other provision of this Subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board.

(4) Benefits payable from the 401(h) account.

(a) Benefits are payable from the retirement medical savings account only upon retirement, separation of service, death or total disability.

(b) Benefits payable from a 401(h) account shall include only payments or reimbursements for medical care [as defined in Code Section 213(d)(1)].

- (c) Medical care payments shall only be paid pursuant to a reimbursement application.
- (d) No refunds of contributions shall be made. All contributions remain in the 401(h) account until used for medical care payments.
- (e) Reimbursements may not be made for any expense for which the retired Participant or his or her spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.
- (f) In order to receive benefits from the 401(h) account, the retired Participant must agree to provide appropriate documentation of the MEDICAL CARE expenditure.

(D) Transfers Between Qualified Plans.

(1) In General. The trustee and the plan custodian, upon their mutual agreement, are authorized to receive and add to the interest of any Participant the Participant's vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this Plan and trust concerning employer contributions. The trustee is also authorized, at the direction of the plan custodian and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers.

(2) For Distributions Made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) For Distributions Made after December 31, 2001. An eligible retirement plan, AS DEFINED IN SUBSECTION 4, BELOW, shall also mean an annuity contract described in CODE Section 403(b) ~~of the Code~~ and an eligible plan under CODE Section 457(b) ~~of the Code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in CODE Section 414(p) ~~of the Code~~. The Plan shall be permitted to accept rollovers from any type of eligible retirement plan except to the extent limited in THIS Section 14-2-7.

(4) Definitions.

(a) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (I) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (II) any distribution to the extent such distribution is required under CODE Section 401(a)(9) ~~of the Code~~; (III) any hardship distribution as described in CODE Section 401(k)(2)(b)(I)(iv) ~~of the Code~~ (applicable only to distributions after December 31, 1999); and (IV) the portion of any distribution that is not ~~included~~ INCLUDABLE in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not ~~included~~ INCLUDABLE in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in CODE Section 408(a) or (b) ~~of the Code~~, or to a qualified defined contribution plan described in CODE Section 401(a) or 403(a) ~~of the Code~~ that agrees to separately account for amounts so transferred,

including separately accounting for the portion of such distribution which is ~~includible~~ INCLUDABLE in gross income and the portion of such distribution which is not so ~~includible~~ INCLUDABLE. The Plan shall ~~not~~ accept a rollover of after-tax employee contributions ~~unless specifically elected in the adoption agreement or a supplement thereto.~~

(b) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in CODE Section 408(a) ~~of the Code~~, an individual retirement annuity described in CODE Section 408(b) ~~of the Code~~, an annuity plan described in CODE Section 403(a) ~~of the Code~~, or a qualified trust described in CODE Section 401(a) ~~of the Code~~, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in CODE Section 414(p) ~~of the Code~~, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(F) Required Distribution Commencement Date. Distribution of a Participant's interest IN THE PLAN must begin no later than the April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one half (70 1/2) or the year the Participant retires.

(H) Manner of Distribution. A Participant's interest IN THE PLAN may be distributed by one or more of the following methods:

(1) Lump Sum Distribution. The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary by the distribution of the total balance of his PLAN account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments. The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods. Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) Limitation on Duration of Payments.

(1) No distribution shall be made over a period exceeding the joint life expectancy of the Participant and his beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this Subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(2) Notwithstanding anything in this Chapter to the contrary, all distributions from the Plan shall conform to the final regulations issued under ~~Internal Revenue~~ Code Section 401(A)(9), including the incidental death benefit provisions of ~~Internal Revenue~~ Code Section 401(A)(9)(G).

(J) Withdrawals. EXCEPT AS PROVIDED IN SECTION 14-2-7(E), A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

(K) Special Rules for Distributions after the Participant's Death.

(1) Distributions Commencing Prior to Death. If distribution of a Participant's interest IN THE PLAN has commenced prior to the Participant's death in accordance with subsection (I) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death. If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries. If a Participant should die after receiving some part, but not all, of his PLAN account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this Subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this Subsection to the recipient determined pursuant to Section 14-2-6.

(4) Distribution to IRA of Nonspouse Beneficiary: A Participant's nonspouse beneficiary may elect payment of ~~any~~ THE portion of the deceased Participant's account TO WHICH HE IS ENTITLED in a direct trustee to trustee transfer to an individual retirement account or annuity described in CODE Section 402(C)(8)(B)(I) or (II) ~~of the code~~ that is established to receive the Plan distribution on behalf of the beneficiary ~~on behalf of the beneficiary~~. For purposes of this Section, a trust maintained for the benefit of one or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date as defined in Section 14-2-7(F), the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of CODE Section 402(C)(11) ~~of the code~~ apply to distributions under this Section.

Section 20. Section 14-2-8, subsection (A)(3), W.M.C., is hereby AMENDED to read as follows:

**14-2-8: INSURANCE COMPANY CONTRACTS: (2464)**

(A) Insurance or Annuity Contracts.

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from

time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) After December 31, 1996, the City shall not purchase any new group insurance OR ANNUITY contracts ~~or annuities~~ for pension Participants.

Section 21. Section 14-2-9, subsections (A), (B)(1), (D), and (F), W.M.C., are hereby AMENDED to read as follows:

**14-2-9: GENERAL EMPLOYEE PENSION BOARD: (2464 3199)**

(A) Appointment of Board.

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants elected by a majority of the voting Participants. One of the three elected members shall be an unclassified employee as defined in the CITY'S Personnel Rules and Regulations. In no case shall more than one elected member be from the same department. The trustee shall serve as Chairperson of the Board.

(2) The three (3) MEMBERS to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the trustee. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board. The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, TO SUPPLY OMISSIONS AND TO RESOLVE INCONSISTENCIES AND AMBIGUITIES ARISING UNDER THE PLAN. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon it in this Chapter. The Board may employ for the Trust Fund an ~~Investment Advisor~~ "INVESTMENT ADVISOR" and may rely on such INVESTMENT Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such INVESTMENT Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such INVESTMENT Advisor or for any acts or omissions made upon the direction or recommendation of such INVESTMENT Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investmentS offered, the Board shall provide the opportunity to Participants to make options as to investmentS. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may

remove or phase out an investment option if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board, the plan administrator nor the City shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment optionS.

(D) Matters Affecting Board Members. In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote AS A MEMBER OF THE BOARD in the determination of such matter ~~as a member of the Board~~, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(F) Records of the Board. The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all PLAN benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-2-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

Section 22. Section 14-2-10, subsections (D)(2) and (G)(4), W.M.C., are hereby AMENDED to read as follows:

**14-2-10: POWERS AND DUTIES OF THE TRUSTEE: (2464 3199)**

(D) Advice of Board or Counsel.

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and THE TRUSTEE shall be fully protected from any responsibility with respect to any action taken or omitted by ~~them~~ THE TRUSTEE in good faith pursuant to the advice of such counsel.

(G) Resignation and Removal of Trustee. The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-Trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate CO-Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

Section 23. Section 14-2-11, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-2-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN (2464)**

(C) Distribution of Trust Fund on Termination of Plan. If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright, IN A LUMP SUM CASH PAYMENT, his entire interest in the Trust Fund.

(D) Amendments to the Plan.

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

- (a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;
- (b) Decrease ~~the~~ ANY Participant's share of this Plan; or
- (c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(2) Notwithstanding anything herein to the contrary, ~~however~~, this Chapter may be amended, if necessary, without requiring the approval of the plan Participants to conform to the provisions and requirements of the ~~Federal Internal Revenue Code~~ or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

Section 24. Section 14-2-12, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

**14-2-12: MISCELLANEOUS (2464 3319)**

(A) Benefits to be Provided Solely from the Trust Fund. All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility ~~therefore~~ THEREFOR.

(B) Notices from Participants to be Filed with Plan Administrator, THE BOARD OR THE TRUSTEE. Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice ~~therefore~~ THEREFOR signed by the Participant on a form furnished by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS MAY BE APPLICABLE, for such purpose and filed with the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE, which shall not be effective until received by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE.

Section 25. The City Clerk is hereby authorized to make all necessary changes to Chapters 1 and 2 of Title 14, W.M.C., in order to neutralize any gender specific references therein.

Section 26. This ordinance shall take effect upon its passage after second reading.

Section 27. 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 8th day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22<sup>nd</sup> day of December, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Resolution No. 61 re Appointment to Adams County Housing Authority

**Prepared By:** Linda Yeager, City Clerk

**Recommended City Council Action**

Adopt Resolution No. 61 to appoint Councillor Faith Winter to a two-year term on the Adams County Housing Authority Board of Commissioners effective January 1, 2009.

**Summary Statement**

- The City Council has been asked to select an elected representative to serve on the Housing Authority Board for a two-year term effective January 1, 2009.
- The City's representation on this Board will create an opportunity for joint ventures and partnerships that will provide better coordination between the City and the Authority, resulting in greater benefits to the community at large.
- If adopted, Councillor Faith Winter will be designated to represent the City of Westminster as a member of the Adams County Housing Authority Board of Commissioners for a two-year term beginning January 2009.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Does City Council want to appoint a representative to the Adams County Housing Authority Board?

**Alternative**

City Council could decide not to appoint an elected official to the Adams County Housing Authority Board of Commissioners at this time. Staff does not recommend this alternative, as the City would lose the opportunity for direct input into the Authority's decision making, as well as the opportunity to influence those decisions.

**Background Information**

Adams County Housing Authority Board of Commissioners include elected officials from member municipalities. The Authority seeks diversity to further the mission of the agency through representatives with varying experiences, business backgrounds, skills, and resources and tries to rotate the opportunity to serve among the cities so each has a voice in shaping policy and guiding the direction of the organization. Activities of the Authority include programs and services offered to the residents of Adams County, development of affordable and mixed-income housing communities, and revitalization projects throughout the County.

Councillor Winter's appointment of the Authority supports Council's Strategic Goal of Vibrant Neighborhoods and Commercial Areas through the Authority's revitalization and affordable/mixed-income housing projects.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **61**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

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**APPOINTMENT TO ADAMS COUNTY HOUSING AUTHORITY  
BOARD OR COMMISSIONERS**

WHEREAS, The City of Westminster is a participant in the Adams County Housing Authority;  
and

WHEREAS, The mission of the Adams County Housing Authority includes offering programs and services to residents of the County, developing affordable and mixed-income housing communities, and revitalization projects throughout the County; and

WHEREAS, The City of Westminster has an opportunity to have a voice on the Adams County Housing Authority Board of Commissioners through the City Council's selection of an elected representative to serve as a Board member.

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

Section 1: That Councillor Faith Winter be appointed the City of Westminster's elected representative to the Adams County Housing Authority to a two-year term beginning in January 2009.

PASSED AND ADOPTED this 22<sup>nd</sup> day of December, 2008.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

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City Attorney



## Agenda Item 10 A-E

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Public Hearing and Action on a Comprehensive Land Use Plan Amendment, Rezoning, a Preliminary Development Plan and Official Development Plan for the Turnpike Motel  
**Prepared By:** Patrick Caldwell, Planner II

**Recommended City Council Action**

1. Hold a public hearing.
2. Pass Councillor's Bill No. 53 re the Comprehensive Land Use Plan amendment for the Turnpike Motel properties changing the designation of Lot 43 of the Federalview Subdivision from R-2.5 to Retail Commercial, and Lot 44 of the Federalview Subdivision from R-18 to Retail Commercial. This recommendation is based on a finding that the proposed amendment will be in the public good and that:
  - a) There is justification for the proposed change and the Plan is in need of revision as proposed;
  - b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
  - c) The proposed amendment is compatible with existing and planned surrounding land uses; and
  - d) The proposed amendment would not result in excessive detrimental impacts to the City's existing or planned infrastructure systems.
3. Pass Councillor's Bill No. 54 re amending the rezoning of Lots 43 and 44 of the Federalview Subdivision from R-4; and the rezoning of Lot 1 Block 1 of the Turnpike Motel Final Plat from C-1 to Planned Unit Development (PUD). This recommendation is based on a finding that the criteria set forth in Section 11-5-3 of the Westminster Municipal Code have been met.
4. Approve the Preliminary Development Plan and Official Development Plan of the Turnpike Motel. This recommendation is based on a finding that the criteria set forth in Sections 11-5-14 and 11-5-15 of the Westminster Municipal Code have been met.
5. Authorize the City Manager to sign the Development Agreement between the City and the landowner of Lot 43 of the Federalview Subdivision.

**Summary Statement**

- An existing motel, called the City Inn, with 16 rooms was constructed 4 years ago on a lot at 7151 Federal Boulevard. This replaced a smaller deteriorated motel at the same location. Two lots to the west are being added and proposed new construction of 36 rooms and 24 new parking spaces will occur on those 2 lots. One of the 2 new lots is vacant and the other lot contains a single family house that would be rehabilitated and rented or used as a residence for the motel manager. Within one year of PDP/ODP approval all three lots will be replatted as one lot, 1.04 total acres.
- To make zoning and land use consistent, the 3 lots are proposed to be rezoned to PUD. The CLUP is proposed to be amended to allow a consistent Retail Commercial land use designation for the three lots.
- The proposed building is to be three stories and is proposed to be connected by an open air bridge at the third level to the existing three story motel. The stucco, brick, roof, paint color and overall building design are proposed to match the existing motel.
- The proposed Development Agreement between the City of Westminster and the owner of Lot 43 will allow the City to gain right-of-way for an extension of Grove Street to the north at some point in the future, but not sooner than 5 years.

**Expenditure Required:** \$ 0  
**Source of Funds:** N/A

### **Planning Commission Recommendation**

The Planning Commission reviewed this proposal on December 9, 2008, and voted unanimously (5-0) to recommend that the City Council approve the following:

- 1) The CLUP amendment changing the land use designation of Lot 43 of the Federalview Subdivision from R-2.5 to Retail Commercial, and Lot 44 of the Federalview Subdivision from R-18 to Retail Commercial; and
- 2) A rezoning of Lots 43 and 44 of the Federalview Subdivision from R-4; and the rezoning of Lot 1, Block 1 of the Turnpike Motel Final Plan from C-1 to City of Westminster Planned Unit Development (PUD); and
- 3) The Preliminary Development Plan and Official Development Plan of the Turnpike Motel, as submitted.

### **Policy Issues**

- 1) Should the City approve a Comprehensive Land Use Plan amendment for the Turnpike Motel properties changing the designation of Lot 43 of the Federalview Subdivision from R-2.5 to Retail Commercial, and Lot 44 of the Federalview Subdivision from R-18 to Retail Commercial?
- 2) Should the City approve the rezoning of Lots 43 and 44 of the Federalview Subdivision from R-4; and the rezoning of Lot 1, Block 1 of the Turnpike Motel Final Plat from C-1 to “Planned Unit Development (PUD)?”
- 3) Should the City approve the Preliminary Development Plan and Official Development Plan of the Turnpike Motel? (Should the City approve a Development Agreement with the owner of Lot 43 of the Federalview Subdivision?)
- 4) Should the City approve a Development Agreement with the owner of Lot 43 of the Federalview Subdivision?

### **Alternatives**

- 1) Deny the Comprehensive Land Use Plan amendment changing the designation of Lot 43 of the Federalview Subdivision from R-2.5 to Retail Commercial, and Lot 44 of the Federalview Subdivision from R-18 to Retail Commercial. This alternative is not supported by City Staff because the proposed CLUP amendment is in compliance with provisions of the City Code regarding approval of CLUPs.
- 2) Deny the rezoning of Lots 43 and 44 of the Federalview Subdivision from R-4; and the rezoning of Lot 1 Block 1 of the Turnpike Motel Final Plat from C-1 to “Planned Unit Development (PUD).” This alternative is not supported by City staff because the proposed rezoning is in compliance with provisions of City Code regarding approval of rezonings.
- 3) Deny the Preliminary Development Plan and Official Development Plan of the Turnpike Motel. This alternative is not supported by City staff because the proposed Preliminary Development Plan is in compliance with provisions of City Code regarding approval of Preliminary Development Plans and Official Development Plans.
- 4) Deny the development agreement with the owner of Lot 43 of the Federalview Subdivision. This alternative is not supported by City staff because the development agreement will provide needed right-of-way for the extension of Grove Street to the north at the time that the City decides to extend Grove Street to the north.

## Background Information

### Nature of Request

The applicant, Leslie Kim, has purchased two additional lots adjacent (to the west) of the existing 16 room Turnpike Motel site (see attached vicinity map) for an expansion of 20 new rooms for a total of 36 rooms upon completion. A rezoning to PUD, an amendment to the CLUP, and approval of a revised PDP/ODP are required to allow the expansion.

### Location

The existing site is located at 7151 Federal Boulevard. The two lots that are being added will use the 7151 Federal Boulevard address after the entire site is platted. Lot 44 of the Federalview Subdivision at 7150 Grove Street is vacant. Lot 43 in the Federalview Subdivision is addressed at 3055 Craft Way and will continue to use this address until the replat. (Please see attached vicinity map).

### Comprehensive Land Use Plan Amendment

The Westminster Municipal Code requires the owner of the property requesting an amendment to the Comprehensive Land Use Plan (CLUP) to prove the amendment is in the public good and in overall compliance with the purpose and intent of the CLUP. Further, the CLUP provides four criteria to be used when considering a CLUP amendment. Staff has reviewed these criteria and has provided the following comments on each.

1. The proposed amendment must, “Demonstrate that there is justification for the proposed change, and that the Plan is in need of revision as proposed.” There is demand for additional motel rooms in this part of Westminster and there are no other motels in the vicinity of the intersection of 72<sup>nd</sup> & Federal Boulevard and the nearby interchange of Federal Boulevard and U.S. Highway 36. In an area of approximately one acre the CLUP now allows three different land use designations. They are Retail Commercial, R-3.5 and R-18 and the proposed amendment will add consistency with a Retail Commercial designation for all three lots.
2. The proposed amendment must, “Be in conformance with the overall purpose, intent, goals, and policies of the Plan.” Applicable goals are stated in Section III of the Community Goals and Policies section of the Plan. They include:
  - Goal D4 – “Continue to enhance the viability and appearance of older commercial areas in South Westminster.”
  - Policy D4a – “Continue to promote the redevelopment of deteriorated commercial areas in South Westminster through public actions as appropriate.”
  - Policy E2c – “Actively promote the economic development and revitalization strategies of the City’s south Westminster Strategic Revitalization Plan adopted in 2001.”
  - Goal F1 – “Continue to promote redevelopment of targeted areas as a pathway to economic revitalization and improved physical conditions.”
  - Policy F1a – “Promote redevelopment in targeted areas, including Westminster Center, 72<sup>nd</sup> and Sheridan area, 80<sup>th</sup> and Sheridan, Holly Park, the Federal Boulevard Corridor, Mandalay, and South Westminster (72<sup>nd</sup>/Federal/Lowell).

Based upon these goals and policies, staff has found this proposed amendment to be in conformance with the overall purpose, intent, goals, and policies of the Plan.

The redevelopment of two lots will upgrade the commercial corridor on Federal Boulevard. There is likely to be increased economic activity from the expanded motel.

3. The proposal must, “Be compatible with existing and surrounding land uses.” The proposed motel use is compatible with the existing commercial uses located north, south and east of the site that have frontage on Federal Boulevard. The expanded motel site will be buffered from the attached residential use to the west by the single family residential dwelling that will remain on the site.

- 4. The proposal must, “Not result in detrimental impacts to the City’s existing or planned infrastructure or provide measures to mitigate such impacts to the satisfaction of the City.” All potential impacts will be mitigated. The existing Crestview Water and Sanitation lines to the site will be capped and the adjacent City of Westminster water and sewer lines will be connected to the proposed development. A detention pond at the southwest corner of the site will be constructed for stormwater runoff and water quality. There is a possible extension of Grove Street to the north and the applicant and the City have agreed to the terms of a Development Agreement that will reserve right-of-way at the west side of the site for part of the needed right-of-way. The Development Agreement will be recorded in a document separate from the PDP/ODP. The owner of Lot 43 will dedicate the needed right-of-way and the City will bear the cost to demolish the existing single family detached house if the City requests the additional right-of-way.

Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearings. Notice was published in the Westminster Window on November 27, 2008.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Two signs were posted on the property on December 10, 2008.
- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on November 26, 2008.

Applicant/Property Owner

Chong and Leslie Kim  
JJLC, LLC  
7151 Federal Boulevard  
Westminster, Colorado 80030

Surrounding Land Use and Comprehensive Land Use Plan Designation

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Use</b>
North: Federalview Subdivision	C-1	Retail Commercial	Restaurant
West: Federalview Subdivision	R-4	R-3.5 Residential	Residential
East: Northgate Shopping Center	B-1	Retail Commercial	Commercial
South: Federalview Subdivision	C-1	R-18 Residential Retail Commercial	Residential Office

Site Plan Information

The following site plan information provides a few examples of how the proposal complies with the City’s land development regulations and guidelines; and the criteria contained in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code (attached).

- Traffic and Transportation: The existing access on Federal Boulevard is anticipated to continue to be the primary point of access to the site. The Colorado Department of Transportation (CDOT) reviewed the proposed motel expansion and was not concerned with the amount of additional traffic to be generated by the use. The new lots to the west where the expanded motel will be built have frontage on the corner of Craft Way and Grove Street. There will be a new access drive added at that corner, but it will be a secondary access and will be gated and operable with a card key provided by the motel management.
- Site Design: The existing 3 story motel is aligned east to west on the north side of the site. The parking area is on an east to west axis in the south half of the site. The main drive aisle is accessed at Federal Boulevard and this will remain. The proposed motel expansion continues the building and parking alignments. The proposed 3 story motel building will be separated from the existing building by approximately 30 feet. Existing utility easements are in place and in use within the 30 foot separation. An open air bridge will connect the third levels of the two buildings. The site in elevation is higher at the north side and retaining walls will be constructed east to west near the north property line to level the site to accommodate a more level parking area along the south part of the site. A detention and water quality pond will be constructed at the southwest corner of the site near Grove Street. The motel expansion will continue the parking area to the west and a gated access to the corner area of Grove Street and Craft Way will be provided. The existing house at the west part of the site will be repaired and painted to match the motel. A new sidewalk and designated parking space will be provided for the house. The existing driveway access will be removed and the new access will be shifted to the east onto the existing Lot 44. A 6 foot high vinyl fence with masonry pillars at 50 feet on center will be constructed along the north and west side of Lot 43 and along the south side of Lot 44. The City's Commercial Design Guidelines require an 8 foot masonry wall between commercial and residential uses. Because this area of South Westminster is in an active stage of redevelopment and land uses to the north, west and south are anticipated to change, this minor deviation appears appropriate.
- Landscape Design: The landscape design meets the standards required for commercial developments in the City.
- Public Land Dedication/School Land Dedication: Non-residential sites are not required to dedicate public or school lands. The residential unit that exists on this site is accessory to the office for the motel owner and is not considered a use that would be required to dedicate land or cash-in-lieu for parks or schools.
- Parks/Trails/Open Space: There are no parks, trails or open space adjacent to this site and therefore no dedications or improvements are required.
- Architecture/Building Materials: The exterior design of the proposed building will be very similar to the exterior of the existing motel building. The primary difference is in the roof design. The existing roof design is composed of hip roofs. The new building will have prominent gabled towers at each end to identify the stair towers. The gable ends will have batten details to simulate a trussed gable. At the midsection of the south elevation a raised gable element with wide brick support columns is different from the existing more austere motel building. The building materials will match the existing motel building. Beige stucco, gray brick, teal trim elements and a dark colored asphalt shingle roof will also be used for the new building.
- Signage: The existing monument sign at the Federal Boulevard side will remain. Two wall signs are proposed, each at 18 square feet in area. The maximum wall signage may not exceed 300 square feet.
- Lighting: The lighting in the development will be of a design consistent with the existing motel. The existing motel does not have any pole lights for the parking lot. Exterior pole lights at 25 feet high are proposed in 4 locations in the parking lot. The wall lights for the new motel building will be an upgraded, but similar design with a ribbed metal container style and will use compact fluorescent bulbs for more energy efficiency. The existing wall lights are an unframed glass and do not have the ribbed metal container. The photometric plan shows no light spillage to the residential use to the west.

- Development Agreement: As redevelopment continues in the South Westminster area the City may not want to extend Grove Street to the north to create a more consistent grid street system connection. The applicant has agreed to dedicate needed right-of-way for the Grove Street extension at no cost to the City along the west side of the site when the City requests the right-of-way. The City would be responsible for demolition costs for the existing house if it needed to be removed for the Grove Street extension. The Development Agreement provides that after a 5 year period, the City may, at its discretion, receive the dedication of the right-of-way.

Service Commitment Category

Service Commitments shall be allocated to this site from Category C for non residential developments. The exact number of commitments required will be calculated by staff at the time of building permit approval. There are adequate commitments to serve this property if approved.

Referral Agency Responses

A copy of the proposed plans was sent to the following agencies: Xcel Energy and the Crestview Water and Sanitation District. Staff received responses from both of these agencies and their concerns have been addressed on the PDP/ODP. Xcel Energy requested that utility easements be placed on the perimeter of the site and these are shown on the PDP/ODP. Crestview Water and Sanitation District is not able to serve the expanded site and asked that the City of Westminster provide water and sanitation services to the site. The City of Westminster has agreed to provide water and sanitation services and notes have been placed on the PDP/ODP to show the City will provide water and sanitation services and the utility study has been accepted for the site.

Neighborhood Meeting(s) and Public Comments

A neighborhood meeting was held on September 10, 2008. One nearby property owner attended and expressed full support for the proposed motel expansion.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

- Vicinity Map
- Development Agreement
- Comprehensive Land Use Plan Ordinance
- Comprehensive Land Use Plan Map – Exhibit A
- Zoning Ordinance
- Zoning Map – Exhibit A
- Criteria and Standards for Land Use Applications

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **53**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING THE WESTMINSTER  
COMPREHENSIVE LAND USE PLAN**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the owner(s) of the properties described below, incorporated herein by reference, requesting a change in the land use designations from "R-3.5 on Lot 43 and R-18 on Lot 44" to "Retail Commercial" for the .605 acres of the two lots located at the northeast corner of Craft Way and Grove Street.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 9, 2008, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B) and the City Clerk has certified that the required notices to property owners were sent pursuant to W.M.C. §11-4-16(D).

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly the redevelopment of the South Westminster area as a pathway to economic development and improved physical conditions.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designations of the properties more particularly described as follows: Lot 43 and Lot 44 of the Federalview Subdivision, to "Retail Commercial", as depicted on the map attached as Exhibit A.

Section 3. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

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

Section 5. 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 22 of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12 day of January, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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

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

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **54**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING THE ZONING OF  
Lot 43 a .31 acre lot at 3055 Craft Way in the Federalview Subdivision,  
Lot 44 a .295 acre lot at 7150 Grove Street in the Federalview Subdivision and  
Lot 1 Block 1 a .435 acre lot at 7151 Federal Boulevard,  
ADAMS COUNTY, COLORADO FROM R-4 and C-1 TO PUD**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for the rezoning of the properties generally located at and near 7151 Federal Boulevard, as described below, from the R-4 and C-1 zones to the PUD zone has been submitted to the City for its approval pursuant to W.M.C. §11-5-2.

b. That the notice requirements of W.M.C. §11-5-13 have been met.

c. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 9, 2008 and has recommended approval of the requested amendments.

d. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code and has considered the criteria in W.M.C. § 11-5-14.

e. That based on the evidence produced at the public hearing, a rezoning to the proposed PUD zoning complies with all requirements of City Code, including, but not limited to, the provisions of W.M.C §11-5-14, regarding standards for approval of planned unit developments and §11-4-3, requiring compliance with the Comprehensive Land Use Plan.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the properties, described as follows:

Lot 43 of the Federalview Subdivision; Lot 44 of the Federalview Subdivision; and Lot 1 Block 1 of the Turnpike Motel Final Plat from the R-4 and C-1 zoning district to the PUD zoning district, as depicted on the map marked Exhibit A, attached hereto.

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 22 day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12 day of January, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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

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

## Criteria and Standards for Land Use Applications

### *Comprehensive Land Use Plan Amendments*

- The owner/applicant has “the burden of proving that the requested amendment is in the public good and in compliance with the overall purpose and intent of the Comprehensive Land Use Plan...” (WMC 11-4-16(D.4)).
- Demonstrate that there is justification for the proposed change and that the Plan is in need of revision as proposed;
- Be in conformance with the overall purpose, intent, and policies of the Plan;
- Be compatible with the existing and surrounding land uses; and
- Not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems, or the applicant must provide measures to mitigate such impacts to the satisfaction of the City (Page VI-5 of the CLUP).

### *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.

***Zoning or Rezoning to a Zoning District Other Than a Planned Unit Development (PUD)***

11-5-3: STANDARDS FOR APPROVAL OF ZONINGS AND REZONINGS: (2534)

(A) The following criteria shall be considered in the approval of any application for zoning or rezoning to a zoning district other than a Planned Unit Development:

1. The proposed zoning or rezoning is in conformance with the City's Comprehensive Plan and all City policies, standards and sound planning principles and practice.
2. There is either existing capacity in the City's street, drainage and utility systems to accommodate the proposed zoning or rezoning, or arrangements have been made to provide such capacity in a manner and timeframe acceptable to City Council.

***City Initiated Rezoning***

(B) The City may initiate a rezoning of any property in the City without the consent of the property owner, including property annexed or being annexed to the City, when City Council determines, as part of the final rezoning ordinance, any of the following:

1. The current zoning is inconsistent with one or more of the goals or objectives of the City's Comprehensive Land Use Plan.
2. The current zoning is incompatible with one or more of the surrounding land uses, either existing or approved.
3. The surrounding development is or may be adversely impacted by the current zoning.
4. The City's water, sewer or other services are or would be significantly and negatively impacted by the current zoning and the property is not currently being served by the City.

***Official Development Plan (ODP) Application***

11-5-15: STANDARDS FOR APPROVAL OF OFFICIAL DEVELOPMENT PLANS AND AMENDMENTS TO OFFICIAL DEVELOPMENT PLANS: (2534)

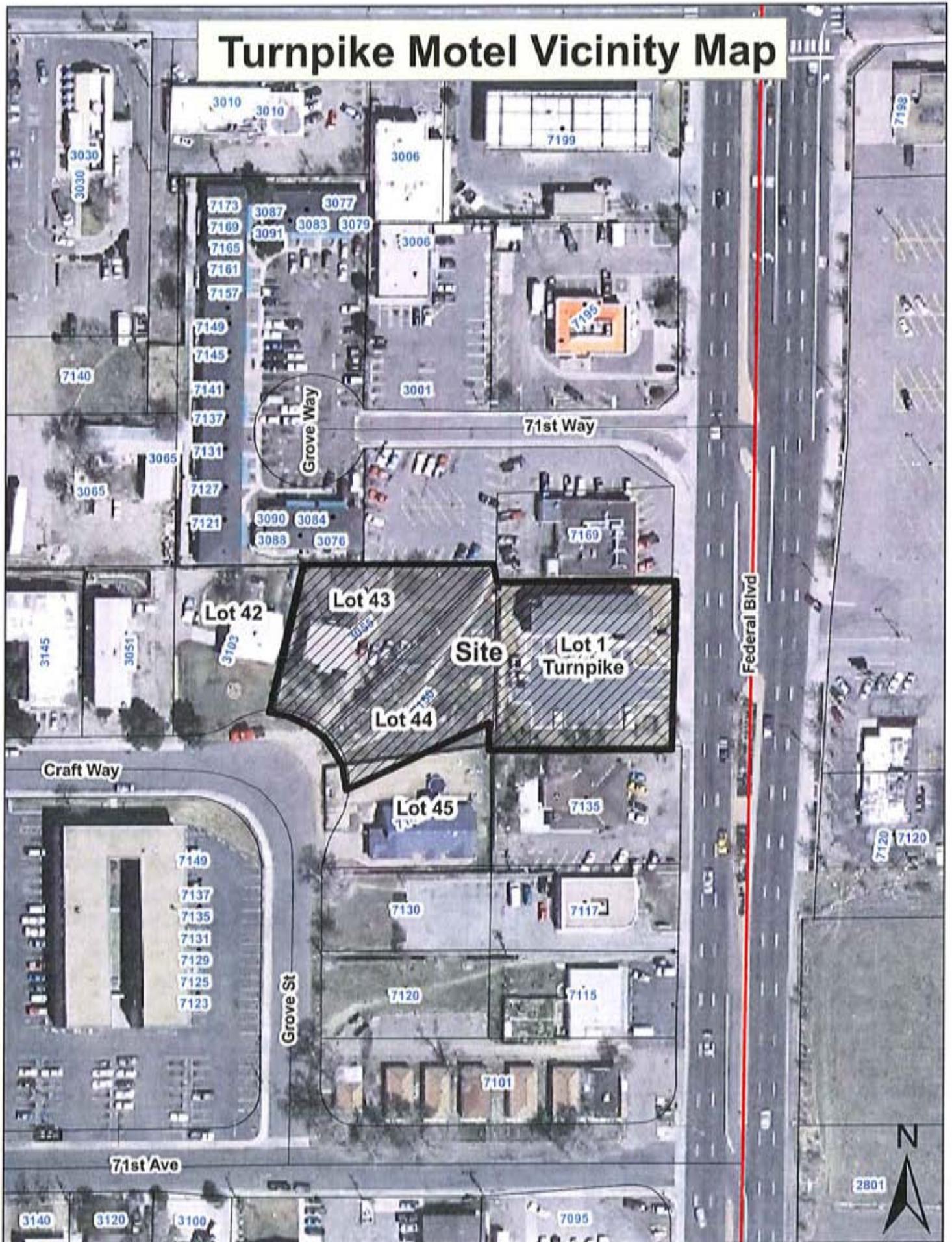
(A) In reviewing an application for the approval of an Official Development Plan or amended Official Development Plan the following criteria shall be considered:

1. The plan is in conformance with all City Codes, ordinances, and policies.
2. The plan is in conformance with an approved Preliminary Development Plan or the provisions of the applicable zoning district if other than Planned Unit Development (PUD).
3. The plan exhibits the application of sound, creative, innovative, or efficient planning and design principles.
4. For Planned Unit Developments, 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 Official Development Plan.
5. The plan is compatible and harmonious with existing public and private development in the surrounding area.
6. The plan 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.
7. The plan has no significant adverse impacts on future land uses and future development of the immediate area.
8. The plan provides for the safe, convenient, and harmonious grouping of structures, uses, and facilities and for the appropriate relation of space to intended use and structural features.

9. Building height, bulk, setbacks, lot size, and lot coverages are in accordance with sound design principles and practice.
10. The architectural design of all structures is internally and externally compatible in terms of shape, color, texture, forms, and materials.
11. Fences, walls, and vegetative screening are provided where needed and as appropriate to screen undesirable views, lighting, noise, or other environmental effects attributable to the development.
12. Landscaping is in conformance with City Code requirements and City policies and is adequate and appropriate.
13. Existing and proposed streets are suitable and adequate to carry the traffic within the development and its surrounding vicinity.
14. Streets, parking areas, driveways, access points, and turning movements are designed in a manner promotes safe, convenient, promotes free traffic flow on streets without interruptions and in a manner that creates minimum hazards for vehicles and or pedestrian traffic.
15. Pedestrian movement is designed in a manner that forms a logical, safe, and convenient system between all structures and off-site destinations likely to attract substantial pedestrian traffic.
16. Existing and proposed utility systems and storm drainage facilities are adequate to serve the development and are in conformance with the Preliminary Development Plans and utility master plans.
17. 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 Official Development Plan or an amendment to an Official Development Plan.

# Turnpike Motel Vicinity Map



## DEVELOPMENT AGREEMENT

This Development ("Agreement") is made and entered into this 8<sup>th</sup> day of December, 2008, by and between Leslie Kim, owner of the property generally located at 7151 Federal Blvd, Westminster, Colorado, (Owner) and the CITY OF WESTMINSTER, a Colorado home-rule municipality (City).

### RECITALS

**Whereas**, the Owner has applied for a PDP/ODP approval from the City, to accommodate an expansion of the Turnpike Motel property, and

Whereas, the Owner acknowledges that the City may request various land dedications for public use as part of the PDP/ODP process, pursuant to Chapter 11-6, W.M.C., and

Whereas, the City anticipates that it may be necessary to extend Grove Street as a result of this development and potential future development in the area, but does not currently need dedication of said right-of-way:

### AGREEMENT

**NOW, THEREFORE**, in consideration of the covenants, promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Certain Definitions. Unless the context otherwise requires, the following words and phrases shall have the following meanings:

**"PDP/ODP"** shall mean the Preliminary Development Plan and Official Development Plan approved by the City for the Property and Development Project.

**"Property"** shall mean the real property described on Exhibit A attached hereto and incorporated herein by this reference which is comprised of the Parcels and other real property.

2. The City agrees that it shall forbear, for a period of at least five years, from requesting the dedication of right-of-way for the future Grove Street extension, so that the existing house on Lot 43, Federalview Subdivision may be upgraded or repaired in order to remain in residential use.
3. The City will bear the cost to remove the existing single family dwelling on Lot 43 if Grove Street is extended and after the needed right of way is dedicated to the City of Westminster.

4. The Owner agrees that if, after the expiration of five years, the City requests a dedication of right-of-way for Grove Street, the Owner shall grant, at no cost to the City, that portion of Lot 43 needed for the street improvements, within ninety days of said request, in fee simple.
5. Recordation of Agreement. This Agreement shall be recorded with the Adams County Clerk and Recorder. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors in interest or the legal representatives of the parties, including all heirs, transferees, successors, assigns, purchasers, lessors and subsequent owners of any Parcel, and all such provisions and conditions shall be deemed as covenants running with the Property.
6. No Waiver. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or negation of the City's legislative, governmental, or police powers to promote and protect the health, safety or general welfare of the City and its citizens.
7. Entire Agreement. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. Except as specifically modified herein, this Agreement shall be construed in a manner which makes it consistent with the City Code and City Charter. This Agreement shall supercede all previous communications, representations or agreements, either verbal or written, between the parties. This Agreement may not be modified except in writing and executed with the same formalities as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

THE CITY OF WESTMINSTER

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Its: \_\_\_\_\_

ATTEST:

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

OWNER

\_\_\_\_\_  
 \_\_\_\_\_

Leslie Kim

Chong jin Kim

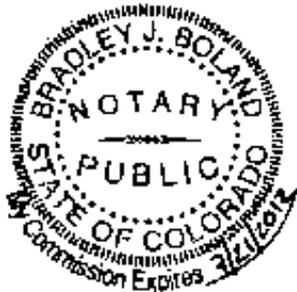
STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before by this 9th day of December, 2008 by  
Leslie Kim and Chong J. Kim

Witness my hand and official seal.

My commission expires: 7/21/2012

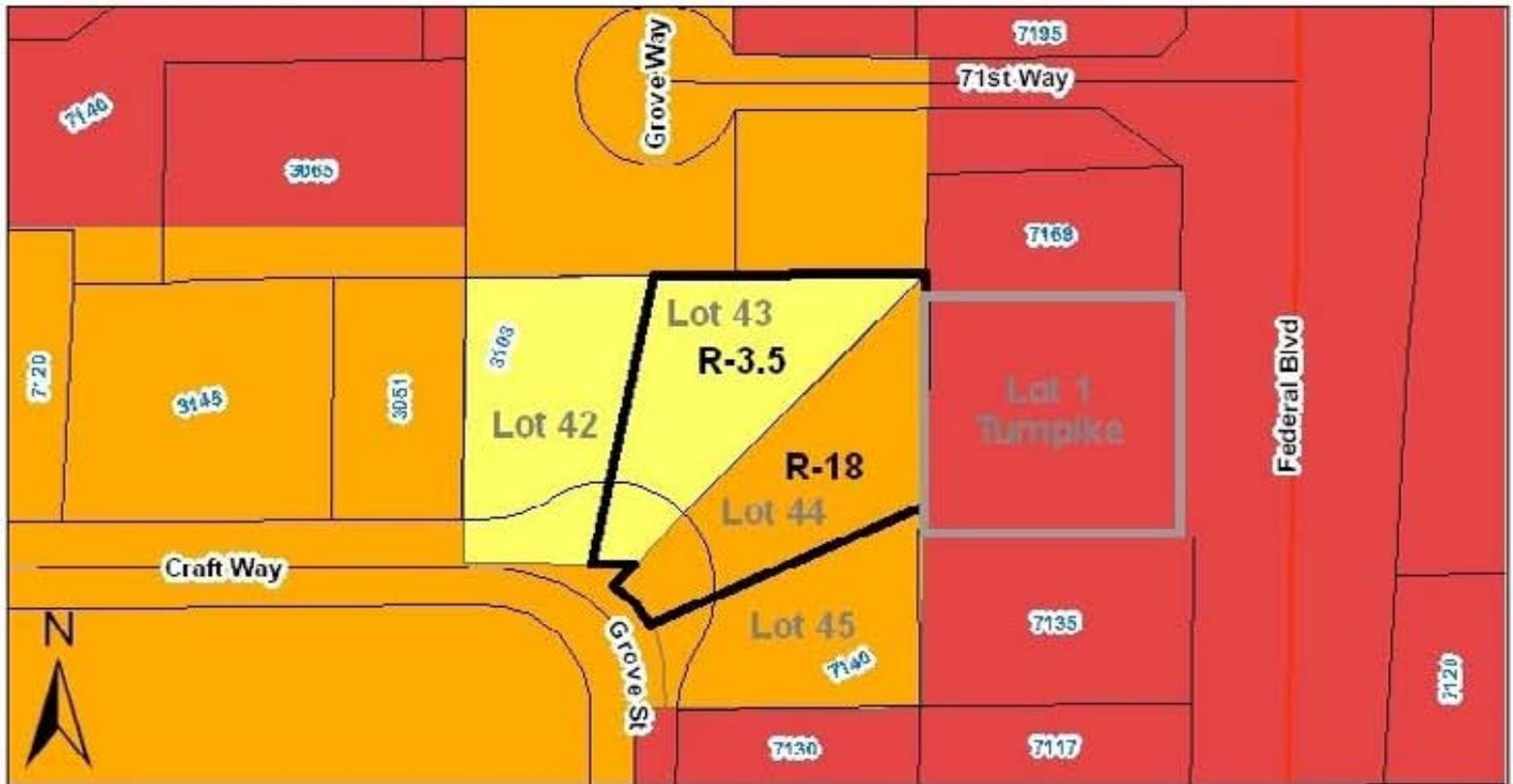
  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**

Lot 43 of the Federalview Subdivision Plat

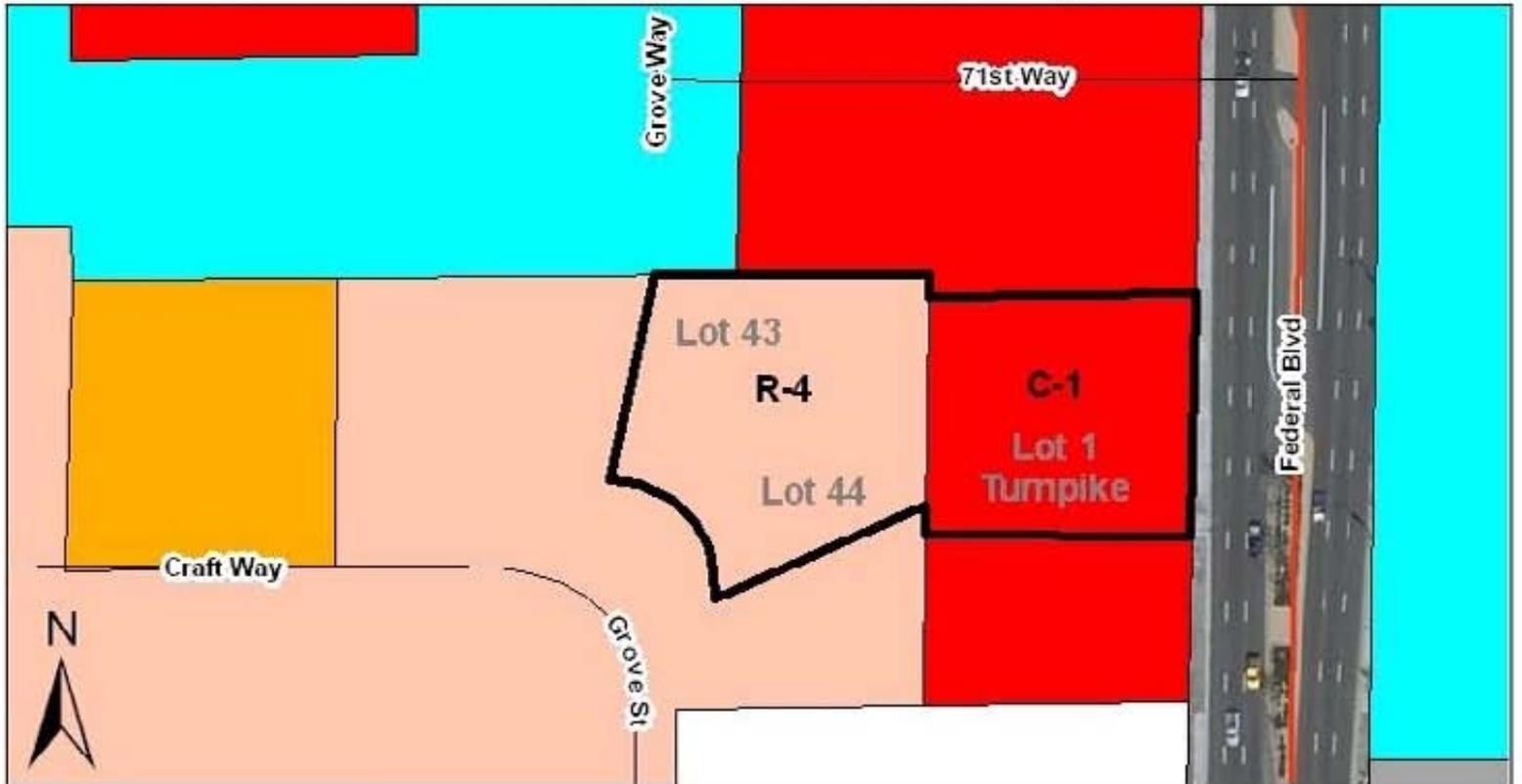
# Turnpike CLUP Map: R-3.5 and R-18 to Retail Commercial



Legend				
<b>CompPlan</b>	R-5	Industrial	City Owned Open Space	N.E. Comprehensive Land Use Plan
<b>CP DESIG</b>	R-8	Business Park	Public Parks	Major Creek Corridor Non Public
	R-1	Office/Residential	Private Parks/Open Space	
	R-2.5	District Center	Golf Courses	
	R-3.5	Traditional Mixed Use	Public/Quasi Public	
	R-18			
	Retail Commercial			
	Office			

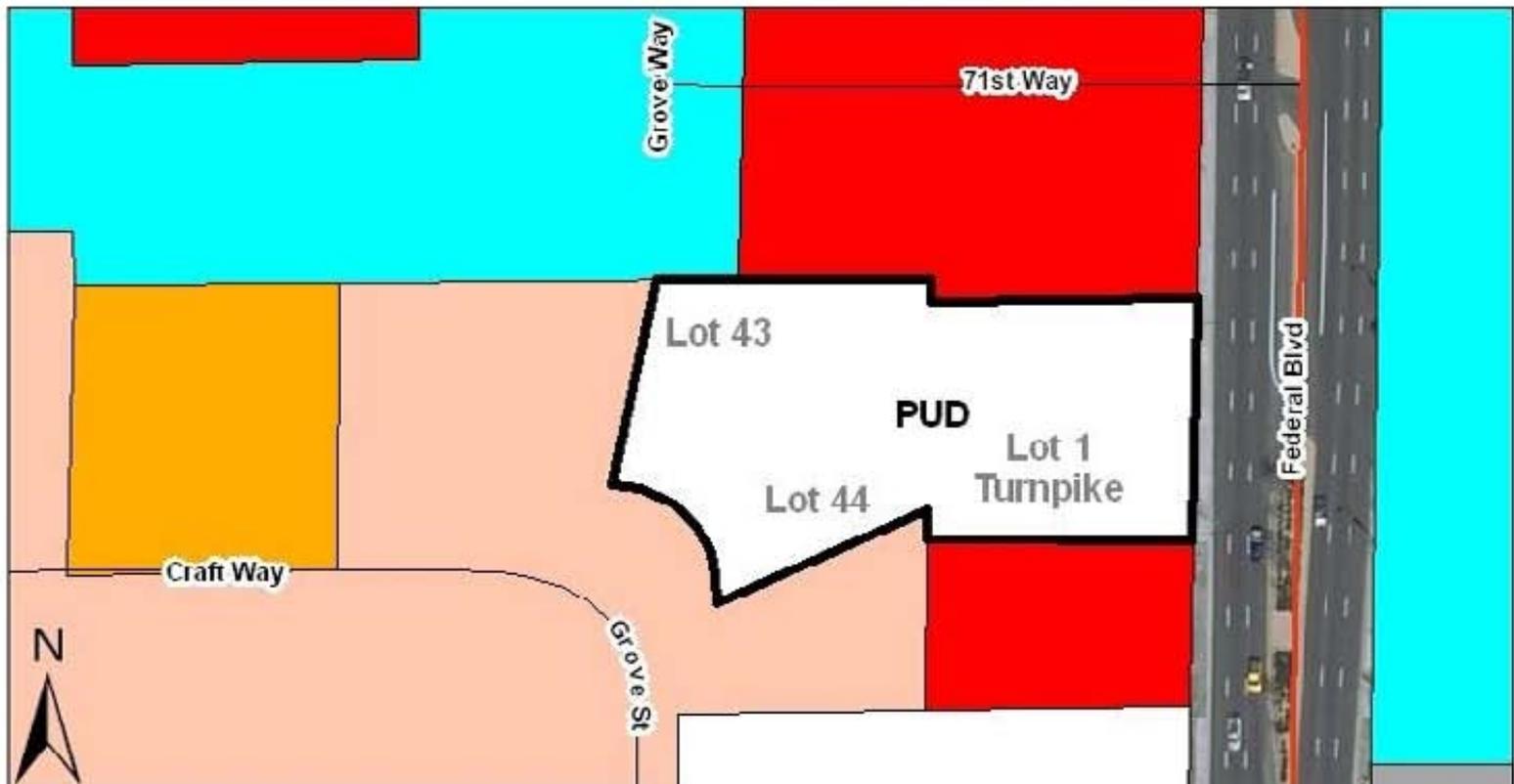


# Turnpike Motel Zoning Map: R-4 and C-1 to Planned Unit Development



**Legend**

B-1	Q-1	R-1	R-5	T-1
C-1	PUD	R-2	R-A	
M-1	R-3	R-4	R-E	





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Resolution No. 62 re Intergovernmental Agreement with the State of Colorado re Historic Preservation Grant for Shoenberg Farm Partial Acquisition

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

**Recommended City Council Action**

Adopt Resolution No. 62 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the partial acquisition of Shoenberg Farm.

**Summary Statement**

- The City has applied for and has been awarded a grant in the amount of \$501,125 from the State Historical Fund for the partial acquisition of Shoenberg Farm, located at the southwest corner of 73<sup>rd</sup> Avenue and Sheridan Boulevard.
- In order to complete this acquisition, the City is required to contribute a 25% cash match of \$164,170.
- Of the State grant, \$23,000 is required to be paid by the City to the Colorado Historical Foundation for a preservation easement on the property to be acquired.
- To regulate the use and accounting of the funds the State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed.

**Expenditure Required:** \$665,295

**Source of Funds:** \$501,125 – State Historical Fund  
\$164,170 – General Capital Improvement Fund  
- Shoenberg Farm Restoration CIP

**Policy Issue**

Should City Council authorize an IGA with the State of Colorado concerning the use of State Historical Fund grant money awarded for the partial acquisition of Shoenberg Farm?

**Alternative**

Do not enter into the IGA with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project. This alternative is not recommended because the seven historic structures within the acquisition area will be subject to possible demolition if not purchased from the owner by February 10, 2009.

**Background Information**

Since 2002 through December 1, 2008, the City has received \$1,319,585 in grants for historic preservation purposes from the State Historical Fund, the Colorado Historical Society and the Westminster Legacy Foundation. These grants have funded archeological and structure assessments, the exterior restoration of the Westminster Grange Hall, the Semper Farmhouse, and the Rodeo Super Market (underway), and reconnaissance and intensive historical resource surveys throughout the City.

The attached intergovernmental agreement with the State Historical Fund (SHF) would provide a grant of \$501,125 for the partial acquisition of Shoenberg Farm and requires a City cash match of \$164,170. The funds would be spent as follows:

	<b>SHF</b>	<b>City</b>	<b>Totals</b>
<b>Acquisition</b>	478,125	159,375	637,500
<b>Closing Costs</b>		2,795	2,795
<b>Appraisal</b>		2,000	2,000
<b>Preservation Easement Fee to Colorado Historical Foundation</b>	23,000		23,000
<b>Totals</b>	<b>\$501,125</b>	<b>\$164,170</b>	<b>\$665,295</b>

The funds will permit acquisition of about one acre of the historic Shoenberg Farm area, including seven structures: the farmhouse, two-story garage, dairy barn, milk and ice house, powerhouse, concrete silo and wooden stave silo. Grant awards have also been given for rehabilitation of the dairy barn and for construction drawings for the rehabilitation of the milk and ice house and the concrete silo. These grant contracts will be presented to City Council in the future for approval. The State Historical Fund has thus far awarded five grants for Shoenberg Farm, totaling \$853,516.

Acceptance of this grant award by the City will require a preservation easement to be conveyed to the Colorado Historical Foundation. The State Historical Fund pays the fee (\$23,000 in this case) that will later be paid by the City into the Foundation's endowment. The endowment supports the Foundation's work, which will include an annual inspection of the property subject to a preservation easement. Staff has been in contact with the executive director of the Foundation to explain the current status, the master plan and foreseeable plans, including rehabilitation projects and eventual conveyance to private ownership. Staff has also reviewed the boilerplate easement forms with the City Attorney's Office. Upon review of this information, the Foundation sent a letter of intent to the State Historical Fund, agreeing to accept a preservation easement from the City. Final negotiation of the details of the easement will occur after the City's acquisition of the property.

This grant award is the result of several years of effort, including the negotiation of a two-year option agreement with the Shoenberg Farm owner and commercial developer, which expires January 11, 2009, and historic structure assessments on eight of the ten remaining farm buildings. These steps have allowed the City to develop a plan that will help preserve most of the Shoenberg Farm buildings and provide a basis for future adaptive re-use of the buildings in the private sector.

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

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments – Map, Resolution, Contract



Approximate Acquisition Area

SHERIDAN BOULEVARD

Advance Auto Parts

Proj C Starbucks SI

Quonset

Proposed Townhomes

Townhomes

Dairy Barn

Milk House

Silos

Piazza

Processing Plant

Truck Shop

Call Tower

P Cc

RESOLUTION

RESOLUTION NO. **62**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

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**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE  
STATE OF COLORADO CONCERNING THE USE OF A  
GRANT FOR THE PARTIAL ACQUISITION OF SHOENBERG FARM**

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

Shoenberg Farm Partial Acquisition - \$501,125

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

NOW, THEREFORE, the City Council of the City of Westminster resolves that the City Manager is authorized to execute and carry out the provisions of this Intergovernmental Agreement with the State of Colorado concerning the use of a grant for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 22<sup>nd</sup> day of December, 2008.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office

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

**CONTRACT #2009-01-023**

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

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number \_\_\_\_\_ in Fund Number 401, Appropriation Account 401 and Organization S11C; and

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

WHEREAS, Article 12 47 1-1201 of the Colorado Revised Statutes and Subsection (5) (b) (II) of Section 9 of Article XVIII of the state constitution, provide for the annual distribution of monies from the State Historical Fund; and

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

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

WHEREAS, the Contractor is a public entity and the owner in fee simple of certain real property in Adams County, Colorado, which property has been listed in a listing of local landmarks as the Shoenberg Farm located at 7231 Shubutan Boulevard, Westminster, Colorado, hereinafter referred to as the "Property," and which Property is more particularly described as follows:

    Lots 5 and 14A, Shoenberg Farm Commercial Center, 6th P.M., T.2 S., R.69 W., 1/2 of S1/4 of Section 36, City of Westminster, Jefferson County, Colorado

NOW THEREFORE, it is hereby agreed that:

1. The Contractor shall use funds subject to this Contract in support of **Project #2009-01-023 "Acquisition"** in accordance with the *Scope of Work* attached hereto as Exhibit A, including all applicable plans and specifications developed prior to or during the contract period, which are hereby made a part of this Contract by reference.
2. **APPLICABLE STANDARDS:** The Contractor agrees that it will perform the activities and produce the deliverables listed in Exhibit C in accordance with the pertinent sections of the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*. Contractor shall perform any and all survey activities and submittals in accordance with the Survey Manual and How to Complete Colorado Cultural Resource Inventory Forms, Volumes I and II, June 1998 (Revised December 2001) for any and all survey activities and projects (copies of which are available through the Society).

3. **RIGHT OF USE:** All copyrightable materials and/or submittals developed or produced under this contract are subject to a royalty-free, nonexclusive, and irrevocable license to the Society to reproduce, publish, display, perform, prepare derivative works or otherwise use, and authorize others to reproduce, publish, display, perform, prepare derivative works, or otherwise use, the work or works for Society and/or State Historical Fund purposes.

4. **CONTRACT EFFECTIVE DATE:** The term of this Contract shall be from December 26, 2008 through May 31, 2010

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

5. **COMPENSATION AND METHOD OF PAYMENT:** In consideration of the project described in Exhibit A and subject to on time delivery of completion of the milestones contained in the *List of Submittals* set forth in Exhibit C, the State shall pay to the Contractor a grant not to exceed five hundred one thousand, one hundred twenty five dollars (\$501,125).

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

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

6. EASEMENT: If required, in the sole discretion of the State, the provisions in the following paragraph are hereby incorporated into this agreement.

Easement Required:  Yes  No

Initials/State

Initials/Grantee

Initials/Property Owner

- a. Grantee shall place or cause to be placed on the property title a perpetual easement, which easement shall be transferred to an organization qualified to hold easements of this kind under Section 170(f)(3) of the Internal Revenue Code and Internal Revenue Service Regulations, Section 1.170A-14(e).
- b. The easement shall, at a minimum, prohibit any alteration of the premises, which would affect the exterior appearance of the property unless first authorized by the easement holding organization with appropriate exceptions to permit routine maintenance. Other necessary language shall protect the interests of the easement holding organization in the event of damage to the property, and shall further require that the easement be transferred to a similar organization in the event that the selected organization becomes unable for any reason to perform its obligations pursuant to the easement agreement.
- c. Grantee agrees that the easement form and any associated costs shall be subject to the approval of the State.
- d. Subsequent to its transfer, this easement shall remain in place in accordance with the terms of the easement agreement, and no action taken by the State to recapture all or any portion of the grant award pursuant to paragraph 19 shall affect the status of the easement.
7. ACCOUNTING: At all times from the effective date of this Contract until completion of this Project, the Contractor shall maintain properly segregated books of State funds, matching funds, and other funds associated with this Project. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the *Budget* set forth in Exhibit B. Contractor may adjust budgeted expenditure amounts up to ten percent (10%) within said Budget without approval of the State and document the adjustments in the next financial report. Adjustments of budget expenditure amounts in excess of ten percent (10%) must be authorized by the State. In no event shall the State's total financial obligation exceed the amount shown in Paragraph 5 above. Interest earned on funds advanced by the State shall be applied to eligible project expenditures, and will be deducted from the final payment.
8. AUDIT: The State or its authorized representative shall have the right to inspect, examine, and audit Contractor's records, books, and accounts, including the right to hire an independent Certified Public Accountant of the State's choosing and at the State's expense to do so. Such discretionary audit may be called for at any time and for any reason from the effective date of this Contract until three (3) years after the date final payment for this Project is received by the Contractor provided that the audit is performed at a time convenient to the Contractor and during regular business hours.
9. PARTIES RELATIONSHIP: CONTRACTOR IS A GRANTEE AND NOT AN EMPLOYEE OR AGENT OF THE STATE. CONTRACTOR SHALL HAVE NO AUTHORITY, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS OR UNDERSTANDINGS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE. THE CONTRACTOR REPRESENTS THAT IT HAS OR SHALL SECURE AT ITS OWN EXPENSE ALL PERSONNEL BY THE CONTRACTOR UNDER THIS CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING WORKMEN'S COMPENSATION COVERAGE AND UNEMPLOYMENT COMPENSATION COVERAGE FOR ALL OF ITS EMPLOYEES TO THE EXTENT REQUIRED BY LAW, AND FOR ENSURING THAT ALL SUBCONTRACTORS MAINTAIN SUCH INSURANCE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING. ALL OF THE SERVICES REQUIRED HEREUNDER SHALL BE PERFORMED BY THE CONTRACTOR OR UNDER ITS SUPERVISION.
10. REPRESENTATIVES AND NOTICES: All notices required to be given by the parties hereunder shall be given by certified or registered mail to the individuals at the addresses set forth below, who are also the designated representatives for the project. Any party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

To the State:

Steven W. Turner  
Director  
Colorado Historical Society  
State Historical Fund  
225 East 16th Avenue, Suite 260  
Denver, Colorado 80203-1620

To the Contractor:

Ms. Vicky Hansen  
Community Development Programs Coordinator  
City of Westminster  
4800 West 92nd Avenue  
Westminster, CO 80031

11. **ADA COMPLIANCE:** The Contractor assures the State that at all times during the performance of this contract no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance the State relies. Further, all real property improvements shall conform to applicable ADA requirements.
12. **DISSEMINATION OF ARCHAEOLOGICAL SITE LOCATIONS:** Contractor agrees to provide the Society with copies of any archaeological surveys developed during the course of, or under a project financed either wholly or in part by the Society. Contractor agrees to otherwise restrict access to such archaeological surveys, as well as access to any other information concerning the nature and location of archaeological resources, in strict accordance with the provisions of the Colorado Historical Society, Office of Archaeology and Historic Preservation, Dissemination of Cultural Resource; Policy and Procedures, adopted October 1991 (Revised Nov. 2002), a copy of which is available from the Society.
13. **REPORTS:** Contractor shall deliver project progress reports to the State every six (6) months during the project which document the progress of the Project, and *SHP Financial Reports* (Attachment 1) as described and at the times in the *List of Submittals* (Exhibit C).
14. **MATCHING FUNDS:** Contractor agrees to make available the necessary funds to complete the Project and provide matching funds, if applicable, in accordance with the Project Budget as set forth in Exhibit B. In the event that said matching funds become unavailable, the State may, in its sole discretion, reduce its total funding commitment to the Project in proportion to the reduction in matching funds.  
  
If the total funding set forth in the Project Budget is not expended on completion of the Project, the State may reduce its pro rata share of the unexpended budget.
15. **CONSULTANTS/SITE VISITS:** The State may:
  - a. Review any project planning documents and methods for conformity with the applicable standards, manuals, and guidelines;
  - b. Make site visits as determined necessary by the State before, during and/or at the conclusion of the Project to provide on site technical advice and to monitor progress.Any exercise of the State's rights under this Paragraph 15 shall not relieve the Contractor of any of its Contract obligations.
16. **PUBLIC ACKNOWLEDGMENT OF FUNDING SOURCE:** In all publications and similar materials funded under this Contract, a credit line shall be included that reads: "This project is/was paid for in part by a State Historical Fund grant from the Colorado Historical Society." In addition, the Society reserves the right to require that the following sentence be included in any publication or similar material funded through this program: "The contents and opinions contained herein do not necessarily reflect the views or opinions of the Colorado Historical Society".
17. **PRESERVATION OF PROPERTY:** The Contractor hereby agrees to the following for a period of ten (10) years commencing on the date of this Agreement:
  - a. Without the express written permission of the Society, no construction, alteration, movement, relocation or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would alter the architectural appearance of the Property, adversely affect the structural soundness of the Property, or encroach on the open land area on the Property; provided, however, that the reconstruction, repair, or restoration of the Property, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted subject to the prior written approval of The Society, provided that such reconstruction, repair, or restoration is performed according to the Secretary of the Interior's *Standards for the Treatment of Historic Properties and the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, issued and as may from time to time be amended by the U.S. Secretary of the Interior, hereinafter collectively referred to as the "*Standards*". In all events, the Contractor further agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property according to the *Standards* so as to prevent deterioration of the Property.
  - b. In the event of severe damage or total destruction to the Property (defined, for the purpose of this Agreement, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of the public enemy, riot or other similar casualty) not due to the fault of the Contractor this Agreement shall terminate as of the date of such damage or destruction.

- c. The Society, or a duly appointed representative of the Society, shall be permitted to inspect the Property at all reasonable times in order to ascertain if the above conditions are being observed.
- d. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses, and attorneys fees incurred as a result of any act or omission by the property owner, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
- e. The provisions of this Paragraph 17 will cease to be effective upon the conveyance of an approved easement if such is required pursuant to Paragraph 6 above.
18. REMEDIES: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant, insufficient, incorrect, or improper performance, activities, or inaction by the Contractor. These remedial actions are as follows:
- Suspend the Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
  - Withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed in accordance with the *Standards*, the *STIP Grants Manual* and/or the terms and conditions of this Contract; and/or
  - Request the removal from work on the contract of employees or agents of the Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
  - Deny payment for those services or obligations which have not been performed and which due to circumstances caused by the Contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
  - Declare all or part of the work ineligible for reimbursement; and/or
  - In the event of a violation of this Agreement, and in addition to any remedy now or hereafter provided by law, the Society may, following reasonable notice to the Contractor institute suit to enjoin said violation or to require the restoration of the Property to its condition at the time of this Agreement or condition at the time of the most recent satisfactory inspection by the Society. The Society shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees
  - Terminate the contract for default
19. CUMULATIVE EFFECT: The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.
20. TERMINATION OF CONTRACT FOR DEFAULT: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall, in addition to other remedies, thereupon have the right to terminate this Contract for default by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, products, submittals, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
- Notwithstanding the above, Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor are determined.
21. TERMINATION BY STATE: The State may terminate this Contract at any time the State determines that the purposes of the distribution of State monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials paid for with State funds shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than sixty percent (60%) of the project covered by this Contract has been completed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payments) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the project covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 20 hereof relative to termination shall apply.

22. **CHANGES:** This Contract is intended as the complete integration of all understandings between the parties, at this time, and no prior or contemporaneous addition, deletion, or other amendment hereto, including an increase or decrease in the amount of monies to be paid to the Contractor, shall have any force or effect whatsoever, unless embodied in a written contract amendment incorporating such changes executed and approved pursuant to the State's Fiscal Rules. Notwithstanding this provision, modifications to Exhibit A (Scope of Work) and/or to Exhibit C (List of Submittals) may be approved by letter of agreement, agreed to in writing by all parties, providing that no such letter of agreement may alter either the total amount of funds payable under the contract, as set forth in Paragraph 5, or the contract period, as set forth in Paragraph 4, unless such changes are embodied in a written contract amendment executed and approved pursuant to the State's Fiscal Rules.
23. **CONFLICT OF INTEREST:** Contractor agrees not to engage in any conduct, activity, or transaction related to this contract which would constitute a conflict of interest under any applicable State or Federal law.
24. **COMPLIANCE WITH APPLICABLE LAWS:** At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.
25. **SEVERABILITY:** To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
26. **BINDING ON SUCCESSORS:** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.
27. **ASSIGNMENT:** No party, nor any subcontractors hereto, may assign its rights or duties under this Contract without the prior written consent of the other parties.
28. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance of compliance beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.
29. **BOND REQUIREMENT:** If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

# SPECIAL PROVISIONS

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

- 1. CONTROLLER'S APPROVAL.** CRS 24-30-202 (1).  
This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY.** CRS 24-30-202(5.5).  
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. INDEMNIFICATION.**  
Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and costs awards including fines, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or subcontractees pursuant to the terms of this contract.  
*[Applicable Only to Intergovernmental Contracts]* No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** 4-C.L.R. 801-2.  
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local local taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have an authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation fund provide proof of such insurance when requested by the state) and unemployment compensation insurance to the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
- 5. NON-DISCRIMINATION.**  
Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
- 6. CHOICE OF LAW.**  
The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
- 7. *[Not Applicable to Intergovernmental Contracts]* VENDOR OBLIGATION.** CRS 24-30-202 (3) and 24-30-202 4.  
The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset database system for (a) unpaid child support debt or child support arrears; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination as enclosed to judgment, as certified by the State Controller.
- 8. SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 092 00.  
No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST.** CRS 24-18-201 and 24-50-507.  
The signatories hereto to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
- 10. PUBLIC CONTRACTS FOR SERVICES.** CRS 8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]*  
Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS 8-17.5-102(4)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS 8-17.5-102(3), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of each employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
- 11. PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS 24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS 24-76.5-101 et seq., and (c) has produced one form of identification required by CRS 24-76.5-101 prior to the effective date of this contract.

Revised May 13, 2008

# CONTRACT SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR:  
(Grant Recipient)

STATE OF COLORADO  
Bill Ritter, Jr., GOVERNOR

\_\_\_\_\_  
City of Westminster  
Legal Name of Contracting Entity

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

\_\_\_\_\_  
\*Signature of Authorized Officer

Colorado Historical Society

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

\_\_\_\_\_  
Date

Department of Higher Education

STATE HISTORICAL FUND

\_\_\_\_\_  
Print Name of Authorized Officer

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

\_\_\_\_\_  
Print Title of Authorized Officer

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

WAIVER CONTRACT REVIEWER

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

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

## ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

STATE CONTROLLER  
David J. McDermott, CPA

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

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

Revised, June 10, 2008  
X:\Document\02122616.doc  
Approval/Easement, Contract 4

### SCOPE OF WORK

- I. **Project Purpose:** The purpose of this project is to acquire through purchase 42,500 square feet of the Shoenberg Farm in Westminster.
- II. **Scope of Work is as follows:**
  - A. Acquisition of Lots 5 and 14A of Shoenberg Farm
    - 1. Obtain appraisal or market analysis
    - 2. Purchase lots 5 and 14A of Shoenberg Farm
    - 3. Complete all legal and filing requirements
    - 4. Negotiate, sign and record perpetual easement with qualified easement holding organization

In accordance with Section 12-47.1-12.1 C.R.S. (1999) The Limited Gaming Act which authorizes the Colorado Historical Society to administer the State Historical Fund as a statewide grants program.

H:\Contracts\2009\0901023 Exhibit A.doc

PROJECT BUDGET

TASK	GRANT REQUEST	CASH MATCH	PROJECT TOTAL
Acquire Lots 5 and 14A (42,500 sq. ft x \$15/sq. ft)	\$478,125	\$159,375	\$637,500
Closing Costs (Closing fee \$400, Recording fees \$150, Title Charges: Tax Certificate \$30, Courier \$75, Delete Standard exceptions \$75, Title Policy \$2,050 and Wire \$15)	\$0	\$2,795	\$2,795
Appraisal	\$0	\$2,000	\$2,000
<b>PROJECT TOTALS</b>	<b>\$478,125</b>	<b>\$164,170</b>	<b>\$642,295</b>

1E:\Contracts\2009\0901023 Exhibit B.doc

**LIST OF SUBMITTALS**

<b>Project Reports</b>		
<u>Project Reports</u>	<u>Due Date</u>	<u>Society Response</u>
a. Payment Request Form (Attachment 2).	N/A	Advance payment of grant award \$478,125.
b. Progress Report # 1	March 26, 2009	Review*
c. Progress Report # 2	June 26, 2009	Review*
d. Payment Request Form (Attachment 2). Easement Negotiation Fee Invoice due before payment is made.	June 26, 2009	Review & Approve. Payment of grant award \$3,000.
e. Progress Report # 3	September 26, 2009	Review*
f. Progress Report # 4	December 26, 2009	Review*
g. Payment Request Form (Attachment 2). Deliverable # 4 below and Easement Acceptance Fee Invoice must be received and approved before payment is made.	December 26, 2009	Review & Approve. Payment of grant award \$20,000.
h. Final Financial Report (Attachment 1)	December 26, 2009***	Review & Approve.

\*At the discretion of the SHU technical staff, progress reports may not receive a response.  
 \*\* Interim financial report due date is a guideline. Please submit Interim financial report when majority of advance has been expended and you are ready for the next payment.  
 \*\*\* Project period ends: All Deliverables due on or before this date.

**PROJECT DELIVERABLES**

Submit the following Project Deliverables.

<u>Project Deliverables</u>	<u>Society Response</u>
1. Copy of Appraisal	Review/Comment and or Approve
2. Copy of Deed	Review/Comment and or Approve
3. Letter of intent from Easement Holder	Review/Comment and or Approve
4. Signed, Recorded Perpetual Easement.	Review/Comment and or Approve

H:\Contracts\2009\0501023 Exhibit C.doc



## Agenda Item 10 G

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
December 22, 2008



**SUBJECT:** Councillor's Bill No. 55 re Shoenberg Farm Partial Acquisition Grant  
Supplemental Appropriation

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

#### **Recommended City Council Action**

Pass Councillor's Bill No. 55 on first reading appropriating funds received from the State Historical Fund in the amount of \$501,125 for the City's partial acquisition of Shoenberg Farm.

#### **Summary Statement**

- City Council previously approved an intergovernmental agreement (IGA) with the State Historical Fund that awards a grant to the City in the amount of \$501,125 for the partial acquisition of Shoenberg Farm, located at the southwest corner of 73rd Avenue and Sheridan Boulevard.
- City Council action is needed to appropriate these grant funds.
- In order to complete this acquisition, the City is required to contribute a 25% cash match of \$164,170. These funds were approved as part of the 2009 Budget.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the State Historical Fund grant be appropriated to the Shoenberg Farm Restoration CIP account to pay for the partial acquisition of Shoenberg Farm?

**Alternative**

The alternative would be to not amend the 2008 General Capital Improvement Fund budget and decline the State Historical Fun grant money. Staff does not recommend this alternative as no other funding is available to complete the partial acquisition of Shoenberg Farm.

**Background Information**

Since 2002 through December 1, 2008, the City has received \$1,319,585 in grants for historic preservation purposes from the State Historical Fund, the Colorado Historical Society and the Westminster Legacy Foundation. These grants have funded archeological and structure assessments, the exterior restoration of the Westminster Grange Hall, the Semper Farmhouse, and the Rodeo Super Market (underway), and reconnaissance and intensive historical resource surveys throughout the City.

The intergovernmental agreement with the State Historical Fund (SHF) previously approved by City Council provides a grant of \$501,125 for the partial acquisition of Shoenberg Farm and requires a City cash match of \$164,170. The funds will permit acquisition of about one acre of the historic Shoenberg Farm area.

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7501.40620.0000	\$0	<u>\$501,125</u>	\$501,155
Total Change to Revenues			<u>\$501,125</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Shoenberg Farm Restoration CIP	80875030834.80400.8888	\$0	<u>\$501,125</u>	\$501,125
Total Change to Expenses			<u>\$501,125</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **55**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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**A BILL**

**FOR AN ORDINANCE AMENDING THE 2008 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3316 is hereby increased by \$501,125. This appropriation is due to the receipt of state grant funds.

Section 2. The \$501,125 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10G , dated December 22, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$501,125</u>
Total	<u>\$501,125</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 22<sup>nd</sup> day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of January, 2009

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 22, 2008



**SUBJECT:** Resolution No. 63 re Transfer of Funds from Public Works and Utilities to Parks, Recreation and Libraries for the Quagga/Zebra Mussel Program

**Prepared By:** Phil Jones, Management Analyst

**Recommended City Council Action**

Pass Resolution No. 63 transferring funds from the Public Works and Utilities Department to the Parks, Recreation and Libraries Department within the Water Fund for the protection of Standley Lake from invasive species.

**Summary Statement**

- When establishing the program to protect Standley Lake from Zebra and Quagga mussels, it was agreed that costs associated with the protection program would be paid out of the Public Works and Utilities' (PWU) budget.
- During the implementation of the protection program for the 2008 boating season, certain costs associated with staffing and printing were paid for by the Parks, Recreation and Libraries' (PRL) budget, and not recovered from the PWU budget.
- The attached resolution moves funds from the PWU budget in the Water Fund to the PRL Standley Lake section budget in the Water Fund to reimburse PRL for staffing and printing expenses.
- This action requires City Council authorization because the transfer of dollars is between funds.

**Expenditure Required:** \$54,160

**Source of Funds:** Utility Fund – Public Works and Utilities Operating Budget

**Policy Issue**

Should the City transfer funds from the PWU water fund budget to the PRL water fund budget, reimbursing program costs associated with the Quagga and Zebra Mussel program?

**Alternatives**

1. Council can choose to not transfer the funds listed in the attached resolution from PWU to PRL.
2. Council can choose to transfer only a portion of the funds outlined in the attached resolution.

Neither of the alternatives is recommended, as the funds are available in the PWU water fund, and needed in the PRL water fund to cover costs incurred during the 2008 boating season.

**Background Information**

In February 2008, Staff learned that Zebra Mussels had been found in the Pueblo Reservoir and became concerned about the possible impact of this non-native aquatic nuisance species to the water supply and recreation uses of Standley Lake. At the March 31, 2008 Study Session, City Council received an explanation of the plan to help protect Standley Lake and also preserve recreation use of the lake and park.

The protection program consisted of inspections, spray washing, quarantine of boats and trailers, eliminating aquatic bait, and educating boaters and fisherman on how they can assist with protecting the lake. To implement the program, several projects were completed including the construction of a spray station for washing boats and trailers; adding a tagging station; improving the boat storage area; printing informational brochures, signs, and pamphlets; purchasing a patrol vehicle; and hiring additional temporary gate attendants and park rangers to ensure the program was as effective as possible.

The costs for the protection program were paid for by the PRL and PWU operating budgets to ensure the program was ready by the May 1, 2008 park opening date. All projects were completed this past year and staff was hired and trained by the opening date. In order to follow the original guidelines, a transfer is requested from the PWU water fund budget to the PRL water fund budget to cover a portion of the implementation costs. The transfer of \$54,160 in funding will be used to balance the costs for the 2008 program and ensure it is ready for the May 2009 opening of the park. The City of Westminster's protection program stands out as a model for other agencies to use.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **63**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

**A RESOLUTION**

**TRANSFERRING FUNDS FROM THE PUBLIC WORKS AND UTILITIES DEPARTMENT TO THE PARKS, RECREATION AND LIBRARIES DEPARTMENT WITHIN THE WATER FUND FOR THE PROTECTION OF STANDLEY LAKE FROM INVASIVE SPECIES**

WHEREAS, the protection of the City of Westminster’s water supply is critical to the health, safety, and welfare of the citizens of Westminster, and

WHEREAS, the transfer of funds as outlined below assists in protecting the City’s water supply from the invasive Zebra and Quagga mussels:

Description	Account Number	Current Budget	Amendment	Revised Budget
PR&L Standley Lake Temp Salary	20050660.60600.0000	\$0	\$49,160	\$49,160
PR&L Standley Lake Printing	20050660.66600.0000	0	5,000	5,000
Resources & Treatment Salary	20035480.60200.0000	646,373	(15,000)	631,373
Resources & Treatment Temp Salary	20035480.60600.0000	5,000	(4,000)	1,000
Plants Salary	20035490.60200.0000	912,385	(15,000)	897,385
Plants Temp Salary	20035490.60600.0000	12,000	(12,000)	0
Water Field Ops Other Equipment	20035470.76000.0000	20,630	(8,160)	12,470
Total Change to Expenses			<u>\$0</u>	

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that the City Staff is directed to transfer the funds between the Public Works and Utilities Department and the Parks, Recreation and Libraries Standley Lake Division within the Water Fund as outlined above.

PASSED AND ADOPTED this 22<sup>nd</sup> day of December, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
WESTMINSTER CITY HALL, 4800 W. 92<sup>ND</sup> AVENUE  
MONDAY, December 22, 2008  
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 13, 2008)
- 3. New Business**
  - A. 144<sup>th</sup> Avenue, Zuni Street to Jason Drive, Construction Contract and Construction Contract and Construction Engineering Services Contract
  - B. WEDA/City ICA re Construction & Maintenance of City Center Park in the Westminster Center Eastern Sub-area Urban Renewal Area
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, OCTOBER 13, 2008 AT 7:29 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 Stephen P. Smithers, Acting Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Kaiser, to approve the minutes of the meeting of August 11, 2008 with no additions or corrections. The motion carried unanimously.

HEARING ON WEDA BUDGET FOR 2009 AND 2010

At 7:30 p.m. the Chairperson opened a public hearing to consider the 2009 and 2010 proposed budget. Tammy Hitchens, Finance Director, highlighted salient features of the proposal. Total expenditures in the 2009 budget were \$11,313,628 for 2009; \$11,831,483 for 2010.

There were no questions and no one wished to speak either in favor of or in opposition to the budget proposal. The Chair closed the public hearing at 7:31 p.m.

RESOLUTION NO. 104 ADOPTING THE 2009 AND 2010 BUDGET FOR WEDA

It was moved by Kaiser, seconded by Winter, to adopt Resolution No. 104 adopting the 2009 and 2010 budget for the Westminster Economic Development Authority as presented and appropriating the funds as budgeted. The motion carried with all members voting aye at roll call.

ADJOURNMENT

There being no other business to come before the Authority, the meeting adjourned at 7:32 p.m.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
December 22, 2008



**SUBJECT:** 144<sup>th</sup> Avenue, Zuni Street to Jason Drive, Construction Contract and Construction Engineering Services Contract

**Prepared By:** David W. Loseman, Senior Projects Engineer

### Recommended Board Action

Authorize the Executive Director to execute a contract with the low bidder, Premier Paving, Inc., in the amount of \$3,200,115 for the construction of 144<sup>th</sup> Avenue; authorize a construction contingency in the amount of \$320,000; authorize the payment of an amount not to exceed \$250,000 to Xcel Energy for the design and installation of street lights for the project; authorize the Executive Director to execute an agreement with PBS&J for construction engineering services in the amount of \$276,586; and authorize a construction engineering contingency in the amount of \$25,000.

### Summary Statement

- As part of the Huron Street widening project of 2006, approximately 810 feet of arterial roadway was constructed west of Huron Street along 144<sup>th</sup> Avenue. Additionally, 144<sup>th</sup> Avenue was widened to four-lane arterial roadway standards east of Huron Street in conjunction with the I-25/144<sup>th</sup> Avenue Interchange Project. This leaves the section located between Jason Drive and Zuni Street as the only portion of 144<sup>th</sup> Avenue located in or adjacent to the City of Westminster remaining to be widened to a four-lane arterial roadway section.
- The widening of this last section of 144<sup>th</sup> Avenue has been identified as a priority by the City Council, the Westminister Economic Development Authority (WEDA) Board and Staff in order to provide enhanced traffic flow along this section of 144<sup>th</sup> Avenue.
- The Request for Bids for the construction of this project was advertised in the Daily Journal for four weeks, and bids were opened on December 4. Seventeen bids were received, and the lowest bidder is Premier Paving, Inc. with a bid of \$3,200,115.
- Staff has reviewed the bids and recommends awarding this construction contract to Premier Paving, Inc. A \$320,000 contingency is also recommended.
- Approximately 30 new street lights will be needed to appropriately illuminate this newly widened portion of 144<sup>th</sup> Avenue. A conservative estimate of the cost of the design and installation of these lights is \$250,000.
- Staff has also conducted a selection process to identify a firm to provide construction engineering services for this project. Staff recommends that PBS&J be retained at a cost of \$276,586 for this purpose. A \$25,000 construction engineering contingency is requested.

**Expenditure Required:** \$4,071,701

**Source of Funds:** \$2,501,143 - WEDA Funds  
\$ 250,558 - Utility Fund Capital Improvement Fund  
\$1,320,000 - General Capital Improvement Fund

**Policy Issue**

Should WEDA proceed with the construction of the 144<sup>th</sup> Avenue, Zuni Street to Jason Drive widening project?

**Alternatives**

Alternatives include postponing or abandoning the construction of this project. Given the very favorable bids for the construction of this project coupled with the desire to enhance access to the northeastern reaches of the North Huron Urban Renewal Area, these alternatives are not recommended.

**Background Information**

The widening of 144<sup>th</sup> Avenue between Jason Drive and Zuni Street has become important as a result of increased traffic volumes accessing the commercial developments in this portion of the North Huron Urban Renewal Area. The recent widening of Huron Street between 128<sup>th</sup> Avenue and 150<sup>th</sup> Avenue and the opening of the 144<sup>th</sup> Avenue/I-25 Interchange have also contributed to an increase in traffic along 144<sup>th</sup> Avenue. The proposed widening of 144<sup>th</sup> Avenue between Jason Drive and Zuni Street will improve the only remaining two-lane rural roadway section of this arterial street located within or adjacent to the City of Westminster. The City and County of Broomfield has already started improving the 144<sup>th</sup> Avenue corridor to the west of Zuni Street, and the City of Thornton will widen 144<sup>th</sup> Avenue to the east of Washington Street in the near future. Additionally, the Denver Regional Council of Governments (DRCOG) 2030 Regional Transportation Plan has designated 144<sup>th</sup> Avenue as a Principal Arterial roadway link between McCaslin Boulevard in Louisville to the west and Colorado Boulevard in Thornton to the east.

Currently, the segment of 144<sup>th</sup> Avenue between Tejon Street and Zuni Street is located within unincorporated Adams County. At Staff’s request, the County agreed to contribute \$660,000 to this project over the next three years under the condition that the City annexes the right-of-way at the conclusion of the construction. Staff believes that this is a fair proposal. City Staff is appreciative of the cooperation exhibited by Adams County during the planning for this project, including the County’s \$25,000 contribution toward earlier design efforts.

On January 22, 2006, the City Council approved funding for the preparation of the 144<sup>th</sup> Avenue Corridor Design Study, which identified necessary infrastructure requirements as well as environmental and social impacts within the corridor. This study was completed in October 2007 by the selected consultant, Felsburg Holt & Ullevig (FHU).

FHU was later hired to complete the final design of these roadway improvements. Following the completion of the design in October 2008, requests for bids for the construction of this project were advertised in The Daily Journal for four weeks, and bids were opened on December 4. The bid results are as follows:

<b>Contractor</b>	<b>Submitted Bid</b>
Premier Paving, Inc.	\$3,200,115.10
Brannon Sand and Gravel Company	\$3,384,786.88
Tarco, Inc.	\$3,476,150.81
Twin Peaks Excavating, Inc.	\$3,502,467.00
Jalisco International, Inc.	\$3,678,414.06
Mountain Constructors, Inc.	\$3,697,826.45
Hamon Contractors, Inc.	\$3,705,106.27
DeFalco Construction, Inc.	\$3,739,550.36

Concrete Express, Inc.	\$3,740,594.50
Scott Contracting, Inc.	\$3,773,068.19
Zak Dirt	\$3,766,005.75
Lafarge West, Inc.	\$3,886,285.00
New Design Construction	\$3,922,850.15
Fiore & Sons, Inc.	\$4,020,348.86
Asphalt Specialties, Inc.	\$4,081,564.60
Quality Paving Company	\$4,086,210.08
Lawrence Construction Company	\$4,296,664.12
<b>Engineer's Estimate</b>	<b>\$5,097,828.00</b>

The difference between the engineer's estimate and the actual bids reflects the volatile state of the economy and the extremely low current oil prices, which resulted in lower material delivery and asphalt costs. The material prices bid are generally lower than what has been the norm over the past several years. This coupled with the large number of bidders on this project resulted in very favorable bids for WEDA.

Staff and FHU have reviewed the results of the bidding procedure and recommend that the low bidder, Premier Paving, Inc., be awarded the contract for construction in the amount of \$3,200,115.10. Both Staff and FHU have previous successful experiences with Premier Paving, Inc., which is pre-qualified with the Colorado Department of Transportation and is very capable of constructing this type of project. The contingency amount of \$320,000 is approximately 10% of the cost of construction. Staff believes that this is an adequate contingency for a project of this size and complexity.

A Request for Proposals for construction engineering services for this project was advertised for three weeks in the Daily Journal. WEDA received fifteen proposals for this work. The written proposals were reviewed by Staff for the purpose of identifying a "short list" for further consideration. Staff then conducted oral interviews with the five leading candidates. Those interviews yielded three acceptable firms, but it is Staff's opinion that PBS&J is clearly the superior choice for this particular job. Both the written proposal submitted by this firm and the responses received from the representatives of this company during the oral interview were rated the highest of all of the contenders for the contract. The proposed fees of the three finalists are listed below:

<u>FIRM</u>	<u>INITIALLY PROPOSED FEE</u>
PBS&J	\$378,006
Felsburg, Holt & Ullevig	\$373,705
Martin/Martin	\$359,070

The initially proposed fee for PBS&J is higher than the other two firms because all three candidates proposed a slightly different number of hours for the personnel that they would use on the project. If the fee for each firm was to be prorated to match a set number of hours, the fee for PBS&J would be less than the other two firms due to their lower hourly rate. Armed with this knowledge, Staff entered into negotiations with PBS&J and was able to negotiate a final fee, subject to the WEDA Board's approval, of \$276,586.

The funding for this project comes from two sources: Remaining Westminster Economic Development Authority (WEDA) funds from the 144<sup>th</sup> Interchange and Huron Street projects and Utility Fund Capital Improvement Funds.

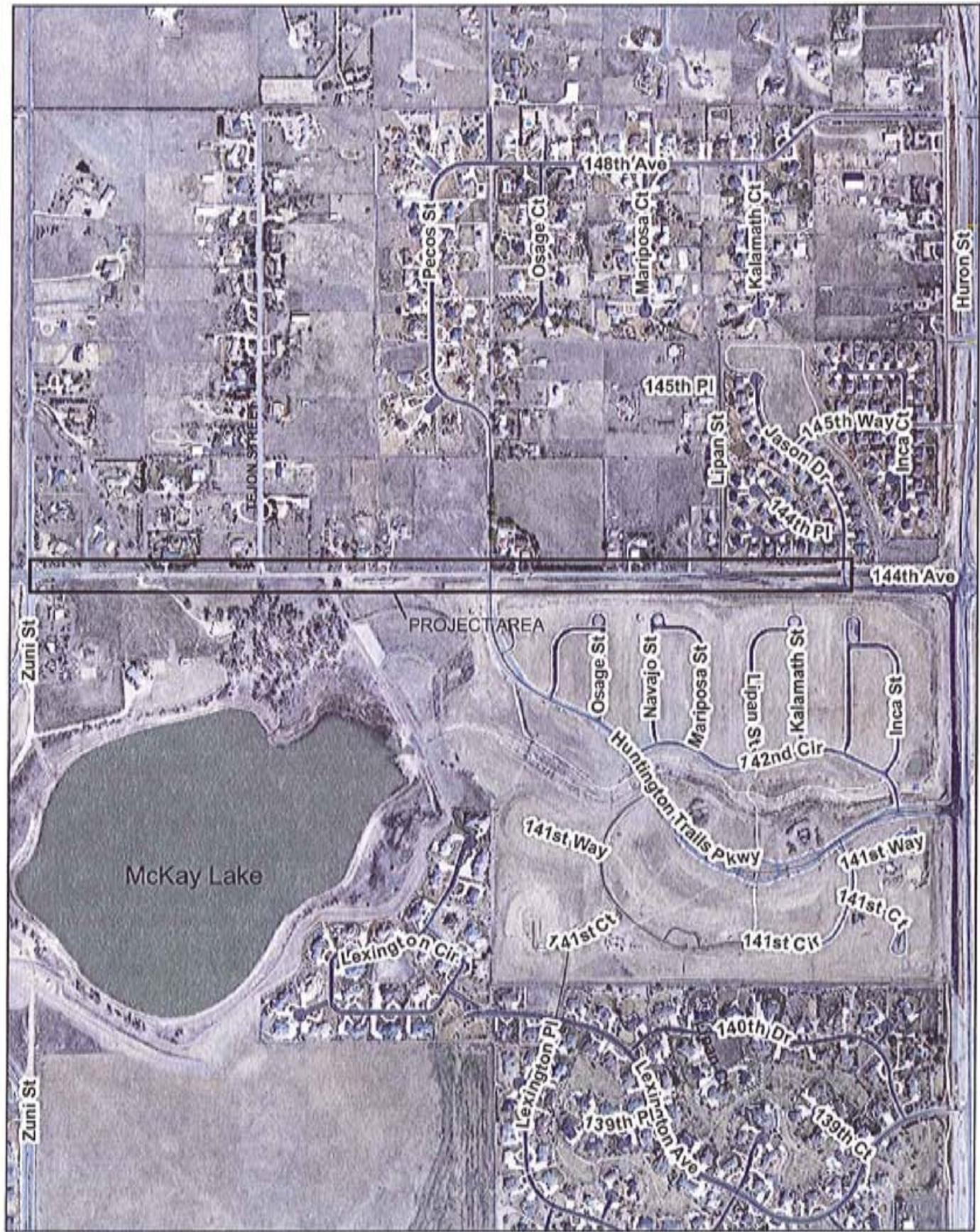
The following chart outlines the estimated total expenditures for this project, many of which have previously been approved.

<b><u>ITEM</u></b>	<b><u>COST</u></b>
Design cost	\$ 517,498
Right-of-Way costs	\$ 142,000
Construction engineering costs.	\$ 276,586
Utility relocation costs – Encana Gas	\$ 264,000
Street lighting costs	\$ 250,000
Construction costs	\$3,200,115
Contingency	\$ 345,000
Total anticipated project costs	\$4,990,846

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment – Map of Project Area



144TH AVENUE, ZUNI STREET TO JASON DRIVE PROJECT



# WEDA Agenda Item 3 B

## Agenda Memorandum

Westminster Economic Development Authority  
December 22, 2008



**SUBJECT:** Westminster Economic Development Authority / City of Westminster Intergovernmental Cooperation Agreement for the Construction and Maintenance of City Center Park in the Westminster Center Eastern Sub-area Urban Renewal Area

**Prepared By:** Robert Smith, Treasury Manager  
Robert Byerhof, Senior Financial Analyst  
Karen Creager, Special Districts' Accountant

### Recommended Board Action

Authorize the Chairperson, Vice Chairperson, the Secretary and the Executive Director to execute an Intergovernmental Cooperation Agreement (ICA) between the City of Westminster (City) and the Westminster Economic Development Authority (WEDA) as attached providing payment to the City from WEDA for reimbursement of City incurred costs related to the planning, design, and construction of City Center Park as well as future operating and capital costs incurred after the park is in commission, as long as WEDA has fulfilled all, if any, superior obligations including but not limited to: debt service and covenant requirements as detailed in the respective Indenture of Trust, Bank Agreement and any other obligation that is deemed to be superior over the City's reimbursement request.

### Summary Statement

- Westminster Center Eastern Sub-area is 1 of 6 Urban Renewal Area's (URA's) under the WEDA umbrella.
- URA's are a very effective redevelopment tool and most likely will continue to be used as a redevelopment tool.
- The development and redevelopment in the URA's will continue to cause the City to incur additional improvement, maintenance, and administrative service costs that are chargeable to WEDA.
- The ICA details City and WEDA obligations regarding the covenants set forth for the reimbursement of costs from WEDA's Westminster Center Eastern Sub-area Urban Renewal Area to the City for the construction and maintenance of City Center Park located within the URA.
- Pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity.

**Expenditure Required:** Varies by Budget Year

**Source of Funds:** Sales and Property Tax Increment

**Policy Issue**

Does the WEDA Board of Directors support entering into an ICA with the City of Westminster to provide for the reimbursement of construction and maintenance costs associated with City Center Park located within the Westminster Center Eastern Sub-area Urban Renewal Area, provided all other superior covenants and superior obligations have been met?

**Alternative**

Do not authorize the execution of the proposed ICA between the City and WEDA. This alternative is not recommended. The costs borne by the City for construction and maintenance of City Center Park are expenses relative to development, redevelopment, and maintenance of public improvements within the Urban Renewal Area and as such, are expenses that are appropriate to be paid with tax increment revenues.

**Background Information**

Pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. As such, the City desires to enter into an Intergovernmental Cooperation Agreement (IGA) with WEDA for the reimbursement of costs incurred by the City relative to the development and maintenance of City Center Park.

This ICA accomplishes several things:

- Recognizes that the City of Westminster will accrue capital and maintenance costs associated with City Center Park located within the Westminster Center Eastern Sub-area Urban Renewal Area.
- Recognizes that reimbursement of City incurred costs will be subordinate to any current or future bonded indebtedness (Superior Obligations), including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is any way secured, collateralized, or backed by revenues of WEDA.
- Each fiscal year, the City and WEDA shall negotiate in good faith to determine the amount of payment due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the revenues available to WEDA after first meeting all Superior Obligations of WEDA. The good faith determination as to WEDA's obligations under this Agreement in any given fiscal year shall be conclusively determined upon the adoption by WEDA and the City of their respective budgets setting forth, in the case of WEDA's budget, the amount WEDA shall pay to the City, and, with respect to the City budget, the amount to be received from WEDA pursuant to this agreement.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment: Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
FOR THE CONSTRUCTION AND MAINTENANCE OF CITY CENTER PARK IN THE  
WESTMINSTER CENTER EASTERN SUB-AREA URBAN RENEWAL AREA**

This Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** ("WEDA"), a Colorado urban renewal authority, and the **CITY OF WESTMINSTER** (the "City"), a Colorado home-rule municipality.

WHEREAS, the City is a Colorado home-rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, WEDA is a Colorado urban renewal authority, with all the powers and authority granted pursuant to Part 1 of Article 25 of Title 31, C.R.S. (the "Colorado Urban Renewal Law"); and

WHEREAS, pursuant to article XIV of the Colorado Constitution, and Part 2 of Article 1 of Title 29, C.R.S., the City and WEDA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to 31-25-105, § C.R.S., WEDA has the authority to undertake urban renewal projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with an urban renewal project; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado Urban Renewal Law; and

WHEREAS, pursuant to § 31-25-112 of the Colorado Urban Renewal Law, the City is specifically authorized to do all things necessary to aid and cooperate with WEDA in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of WEDA, to enter into agreements with WEDA respecting such actions to be taken by the City, to cause public buildings and public facilities, including parks, playgrounds, and recreational and community facilities to be furnished within an urban renewal area and to appropriate funds and make such expenditures of its funds to aid and cooperate with WEDA in undertaking its urban renewal projects and carrying out its plans; and

WHEREAS, the City has heretofore contracted for the design of City Center Park, a public park with playground and recreational and community facilities, to be located on approximately 10 acres of land owned by the City, generally bounded by 93<sup>rd</sup> Avenue on the north, 92<sup>nd</sup> Avenue on the south, Xavier Street on the east, and City Center Drive on the west.

WHEREAS, the City has heretofore approved the Westminster Center Urban Renewal Plan (the "Plan"), which includes as one of its primary goals the redevelopment and revitalization of the Westminster Center Eastern Sub-Area Urban Renewal Area (the "City Center East URA"), as described in said Plan; and

WHEREAS, Section 4.5 of the Plan provides that WEDA may undertake certain actions that would make the City Center East URA more attractive for private investment, which actions may include landscaping, park and recreation facilities, and public art projects; and

WHEREAS, the respective governing bodies of the City and WEDA hereby find and declare that the construction and maintenance of City Center Park in the City Center East URA will further the urban renewal goals and objectives of WEDA, which include the removal and prevention of blight and deterioration within the City Center East Urban Renewal Area, and the health, safety, and welfare interests of the City; and

WHEREAS, WEDA and the City desire to enter into this Agreement for the construction and maintenance of City Center Park in the City Center East URA; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the City and WEDA hereby agree as follows:

1. **City Center Park Construction.** The City has heretofore entered into contracts for the planning and design of City Center Park. The City anticipates entering into one or more contracts for the construction of said park. WEDA agrees to reimburse the City for a portion of the City's costs related to the planning, design, and construction of City Center Park, as set forth in paragraph 3.B., below. WEDA's obligation under this paragraph 1 shall be paid from property tax or sales tax incremental revenues available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

2. **Maintenance of City Center Park.** Following the completion of construction of City Center Park, the City agrees to maintain said park in accordance with the same standards of maintenance as the City follows for other public parks within the City. WEDA agrees to reimburse the City a portion of the City's costs related to the maintenance, repair, and future capital repair and maintenance of said park, as set forth in paragraph 3.B., below. WEDA's obligation under this paragraph 2 shall be paid from property tax or sales tax incremental revenues available to WEDA after first satisfying WEDA's Superior Obligations, as herein defined below.

3. **Conditions to WEDA's Payment Obligations.** The obligations assumed by WEDA pursuant to sections 1 and 2 of this Agreement are subject to the following conditions:

A. WEDA's obligations pursuant to this Agreement are subordinate to WEDA's obligations for repayment of any current or future bonded indebtedness (the "Superior Obligations"). The term "bonded indebtedness" includes all form of indebtedness of WEDA, including but not limited to tax increment notes, tax increment bonds, economic development agreements, and all other forms of contractual indebtedness or obligation of whatsoever nature that is in any way secured, collateralized, or backed by revenues of WEDA.

B. Each fiscal year, the City and WEDA shall negotiate in good faith to determine the amount of payment due from WEDA under this Agreement, based on the costs incurred or expected to be incurred by the City, and the revenues available to WEDA after first meeting all Superior Obligations of WEDA. The City and WEDA agree that the obligations of WEDA under this Agreement shall be deemed subordinate to all other obligations of WEDA, past or future, except to the extent that any future obligation incurred by WEDA is expressly made subordinate to WEDA's obligations under this Agreement, provided, however, it is WEDA's intent to apply any revenues not needed to meet its Superior Obligations to funding its cost sharing obligations under this Agreement. The good faith determination of the City and WEDA as to WEDA's obligations under this Agreement in any given fiscal year shall be conclusively determined upon the adoption by WEDA and the City of their respective budgets setting forth, in the case of WEDA's budget, the amount WEDA shall pay to the City, and, with respect to the City budget, the amount to be received from WEDA pursuant to this Agreement.

C. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S.

4. **Cooperation.** WEDA and the City agree to work cooperatively and in good faith to defend and uphold every provision of this Agreement against any action or challenge involving the legality, validity, or enforceability of any provision hereof.

5. **Effective Date.** The City and WEDA agree that it is their intent to implement this Agreement starting in fiscal year 2009. In the event this Agreement is not approved by both parties prior to the date of adoption of the respective budgets of WEDA and the City for fiscal year 2009, the parties agree to cooperate in good faith to take such actions as may be necessary to amend their respective budgets to reflect the intended applicability of this Agreement to their respective 2009 budgets.

6. **General Provisions.**

A. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.

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

C. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WEDA, this Agreement shall control.

D. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

E. **Third Parties.** The City and WEDA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WEDA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

**WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY**

**CITY OF WESTMINSTER**

By: \_\_\_\_\_  
J. Brent McFall  
Executive Director

By: \_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary for WEDA

\_\_\_\_\_  
Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Martin R. McCullough  
Attorney for WEDA

\_\_\_\_\_  
Martin R. McCullough  
City Attorney

**WESTMINSTER HOUSING AUTHORITY  
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE  
MONDAY, December 22, 2008  
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (June 9, 2008)
- 3. New Business**
  - A. Resolution No. 32 re 2009 WHA and Westminster Commons Budgets
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY  
MONDAY, JUNE 9, 2008 AT 7:34 P.M.

ROLL CALL:

Present at roll call were Housing Authority Chairperson McNally, Vice Chairperson Dittman and Authority members Briggs, Kaiser, Lindsey, Major, and Winter. Also present were Stephen P. Smithers, Acting Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

MINUTES OF PRECEEDING MEETING:

Member Briggs moved, seconded by Kaiser, to accept the minutes of the meeting of March 31, 2008 as written and distributed. The motion carried unanimously.

SUPPLEMENTAL ASSISTANCE FOR HARRIS PARK TOWNHOUSE PROJECT

It was moved by Member Major, seconded by Kaiser, to approve an amendment to the development agreement with Community Builders, Inc. regarding Phase II of the 73<sup>rd</sup> Avenue/Lowell Boulevard Area redevelopment project, in substantially the same form as the agreement attached to the agenda memorandum. The motion carried with all Board members voting yes.

ADJOURNMENT:

There being no further business to conduct, the meeting was adjourned at 7:35 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

# WHA Agenda Item 3 A

## Agenda Memorandum

Westminster Housing Authority Meeting  
December 22, 2008



**SUBJECT:** Resolution No. 32 re 2009 Westminster Housing Authority and Westminster Commons Budgets

**Prepared By:** Tony Chacon, Senior Projects Coordinator

### Recommended Board Action

Adopt Resolution No. 32 adopting the 2009 Westminster Housing Authority Budget and the 2009 Westminster Commons Senior Housing Project Budget.

### Summary Statement

- The 2009 operating budget revenues for the Westminster Housing Authority (WHA) includes a \$60,000 owner distribution from Westminster Commons.
- The operating budget expenses for the WHA include a \$70,000 payment to the City of Westminster for administrative services and \$9,600 for utilities, maintenance, and insurance expenses.
- The 2009 Budget of Westminster Commons is shown separately from the WHA Budget.
- The Westminster Commons Budget includes net rental revenue of \$888,048 and other revenues of \$4,356 for total revenues of \$892,404. Expenses include administrative expenses of \$199,452 utilities expenses of \$117,588, operating and maintenance expenses of \$161,448, taxes & insurance expenses of \$58,807, financial expenses (including owner distribution and reserve replacement) of \$324,900 for total expenses of \$862,195.

<b>Expenditure Required:</b>	\$104,600	WHA Operating Expenditures
	\$862,195	Westminster Commons Cost of Operations

<b>Source of Funds:</b>	\$104,600	WHA Operating Revenues and Fund Balance
	\$892,404	Westminster Commons Revenues

**Policy Issue**

Does the Board of the WHA wish to support the activities of the Westminster Housing Authority and Westminster Commons by adopting the proposed 2009 budgets?

**Alternative**

Do not adopt the 2009 Westminster Housing Authority or Westminster Commons Budgets. This is not recommended as an approved budget is necessary for the operation of the Commons, for the Authority to carry out financing activities and for the Authority to enter into contracts needed to pursue Authority projects and goals.

**Background Information**

Community Development staff manages the WHA and the contract with Howard Bishop & Company, which is the property manager for the Westminster Commons. The Westminster Commons budget is presented separately from the remaining WHA activities.

Westminster Housing Authority

WHA revenues from operating activities for 2009 will come only from the Westminster Commons project that generates \$60,000 per year as a distribution to the owner (the Authority). In past years, the WHA also generated a total of about \$100,000 in lease payments from the WHA owned Rodeo Market building; however, the WHA, in partnership with the City, is preparing plans to convert the building into a community center in conjunction with the adjacent Westminster Grange building. The City received a grant from the Colorado Historical Fund in 2008 to be used in conjunction with improvements to the property starting in the Fall 2008. As a result, the WHA has had to terminate the current tenant leases and vacate the space to accommodate asbestos remediation and exterior façade improvements. Therefore, the budget reflects the assumption that the Rodeo Building will not generate any rental revenue in 2009.

Authority expenses include payment of \$70,000 to the City of Westminster for administrative services provided to the Authority. Additionally, expenses include \$7,600 for utilities that are higher than 2008 to cover the additional cost associated with the WHA owned Vehicle Service Center building that was not covered in the 2008 budget. The Vehicle Service Center is located at the southwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard. A \$2,000 expense for contractual expenses covers the cost of insurance and mowing of weeds on WHA owned vacant property.

The 2009 budget also reflects an anticipated loan payment of \$27,548. The WHA has been assisting the City of Westminster in securing land along Little Dry Creek, between Federal and Lowell Boulevards, to be used in conjunction with drainage and park improvements. In conjunction with this effort, the WHA secured a loan from the Colorado Brownfields Revolving Loan Fund (CBRLF) which was used to clear two parcels of land of contaminants. The first payment on the loan is due in 2009.

Further in 2008, Staff retained the services of a consultant to conduct a thorough financial assessment of the Westminster Commons senior housing facility. This unanticipated, but essential service was not provided for in the 2008 WHA operations budget. Thus the estimated budget expenditure in 2008 reflects an expense in the Contractual Services account of \$17,636, which exceeds the 2008 budgeted amount by \$13,500. Accordingly, Staff will submit an amendment to the 2008 budget for Board consideration at an upcoming WHA.

Westminster Commons

The Westminster Commons budget projects total revenue at \$892,404. This figure includes rental income from the Westminster Commons senior housing facility projected at \$415,900 in tenant payments and \$481,124 in assistance payments pursuant to the Section 8 program administered by the United States Department of Housing and Urban Development. The total net rental income (rents less vacancy) is projected at \$888,048. The revenue projection also includes \$2,232 in interest income and \$2,124 in other fees.

Expenditures in the 2009 budget includes operating expenses of \$862,195 include administration, utilities, operations and maintenance, taxes, insurance, mortgage principal and interest payments, deposits into the reserve for replacement, and a \$60,000 distribution to WHA. The budget for telephone/answering service is lowered by about \$2,000 to reflect cost savings by bundling the facilities phone and internet services. The interest on mortgage has also been reduced to reflect a substantial reduction in the interest rate from 5.36% to 3.25%. Net cash flow is expected to be positive in the amount of \$30,209 for 2009.

The budget presented also reflects a few adjustments of significance to the 2008 budget. Projected expenses within the Manager Salaries and Repairs Contract budgets exceeded the budgeted amount by \$22,800 due to the hiring of part-time maintenance worker at \$13.00 per hour. This cost was offset by savings of \$26,694 in the Repairs Contract line item, whereby the new employee was able to perform much of that work. The 2009 budget reflects a similar reduction in the Repairs Contract line item. Higher expenses in the Janitor/Cleaning and Decorating line items resulted in a differential of \$13,735 which was a result of an abnormally high level of tenant turnover.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachments:

- Resolution
- 2009 WHA Proposed Budget
- 2009 Westminster Commons Proposed Budget

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **32**

INTRODUCED BY COMMISSIONERS

SERIES OF 2008

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**A RESOLUTION ADOPTING THE 2009 BUDGET FOR THE  
WESTMINSTER HOUSING AUTHORITY**

WHEREAS, the Westminster Housing Authority (the "Authority") is a political subdivision of the State of Colorado, duly organized, existing, and acting pursuant to C.R.S. section 29-4-201 *et seq.* (the "Act"); and

WHEREAS, the Authority was created to carry out the purposes of a public housing authority pursuant to the Act; and

WHEREAS, the Westminster Housing Authority Board has not yet adopted a formal operating budget for fiscal year 2009 for the Westminster Housing Authority and the Westminster Commons senior apartment facility; and

WHEREAS, the Westminster Housing Authority has received revenue and anticipates receiving additional revenues; and

WHEREAS, the Westminster Housing Authority anticipates expenditures for various purposes relating to the goals of the Authority and operating the Westminster Commons senior housing project; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Westminster Housing Authority:

That the attached 2009 Westminster Housing Authority Budget and 2009 Westminster Commons Facility Budget, are hereby approved and the amounts stated herein are hereby appropriated for the fiscal year 2009.

PASSED AND ADOPTED this 22<sup>nd</sup> day of December, 2008.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Chair

\_\_\_\_\_  
Authority Secretary

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Authority Attorney

**WESTMINSTER HOUSING AUTHORITY (Excluding Commons)  
2009 Proposed Budget**

	2007 Actual	2008 Budget	2008 Estimated	2009 Proposed
<b>Revenues</b>				
Monthly Revenue Transfers from Commons	60,000	60,000	60,000	60,000
Rental Income from WHA Owned Property	24,702	0	4,308	0
Interest Income	21,123	0	15,000	0
<i>Total Operating Revenues</i>	<u>105,825</u>	<u>60,000</u>	<u>79,308</u>	<u>60,000</u>
<b>Expenditures</b>				
Administrative Fees (City of Westminster) \$	70,000	70,000	70,000	70,000
Utilities	6,639	5,848	4,800	7,600
Contractual Services	5,620	4,136	17,636	2,000
Commodities	33,692	0	0	0
Debt Service	0	0	0	27,548
Contingency	0	0	0	0
<i>Total Operating Activities</i>	<u>115,951</u>	<u>79,984</u>	<u>92,436</u>	<u>107,148</u>
<b>Net Operating Surplus (Deficit)</b>	(10,126)	(19,984)	(13,128)	(47,148)
<b>Other Financing Sources (Uses)</b>				
Sale of Assets	(14,981)	0	0	0
<i>Total Other Financing Sources (uses)</i>	<u>(14,981)</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Net Change in Cash Balance</b>	(25,107)	(19,984)	(13,128)	(47,148)
<b>Cash Balance Beginning</b>	219,509	358,204	349,849	302,701
<b><i>Accural and Balance Sheet Adjustments</i></b>	<u>168,575</u>	<u>          </u>	<u>          </u>	<u>          </u>
<b>Cash Balance Ending</b>	<u>362,977</u>	<u>358,204</u>	<u>349,849</u>	<u>302,701</u>

## 2009 WESTMINSTER COMMONS BUDGET

	Acct	2007 Actual	2008 Budget	2008 Projected	2009 Budget
<b>Rental Income</b>					
Apartments	5120	409,701	420,000	418,044	415,900
Assistance Payments	5121	474,134	473,880	480,132	481,124
Miscellaneous					
<b>Total</b>		883,835	893,880	898,176	897,024
<b>Vacancies</b>					
Apartments	5220	7,755	8,940	8,940	8,976
<b>Net Rental Revenue</b>		876,080	884,940	889,236	888,048
<b>Financial Revenue</b>					
Interest-Project operations	5410	1,014	408	744	408
Interest-Res for Replacements	5440	5,944	5,004	2,592	1,824
Income from Investments-Misc	5991	0		0	
<b>Total Financial Revenue</b>		6,958	5,412	3,336	2,232
<b>Other Revenue</b>					
Laundry and Vending	5910	2,045	2,100	2,004	2,004
Damages & Cleaning Fees	5930	0	0	52	0
Forfeited Deposits	5940	0	0	816	0
Other Revenue (loss) on Sale	5992	73	120	96	120
<b>Total Other Revenue</b>		2,118	2,220	2,968	2,124
<b>Total Revenue</b>		885,156	892,572	895,540	892,404
<b>Administrative Expense</b>					
Advertising	6210	1,775	1,608	1,200	1,200
Office Salaries	6310	58,564	58,008	61,530	61,536
Office Supplies	6311	23,970	17,004	18,564	18,564
Management Fee	6320	50,391	51,408	50,985	51,060
Manager Salaries	6330	25,667	22,800	35,558	38,556
Manager Rent Free Unit	6331	13,598	13,752	13,818	14,016
Auditing	6350	5,200	5,208	5,200	5,208
Telephone/Answering Service	6360	12,328	12,000	11,419	9,312
Misc Administrative Expense	6390	78	156	0	0
Legal Expense	6340	0	0	0	0
<b>Total Administrative Expense</b>		191,571	181,944	198,274	199,452
<b>Utilities</b>					
Electricity	6450	35,269	38,508	43,632	43,632
Water	6451	14,698	14,796	15,451	15,444
Gas	6452	49,403	55,404	49,000	49,008
Sewer	6453	7,335	9,504	8,900	9,504
<b>Total Utilities Expense</b>		106,705	118,212	116,983	117,588

**Operating & Maintenance Exp**

Janitor/Cleaning Payroll	6510	10,964	10,968	11,310	11,310
Janitor/Cleaning Supplies	6515	1,670	1,104	1,184	1,184
Janitor/Cleaning Contract	6517	4,247	3,708	8,443	8,443
Exterminating Contract	6519	933	960	960	960
Garbage Removal	6525	5,780	5,808	5,979	5,976
Grounds Supplies	6536	621	900	623	624
Grounds Contract	6537	4,032	5,004	2,595	2,592
Repairs Material	6541	6,877	8,508	8,820	8,820
Repairs Contract	6542	40,563	51,408	24,714	25,920
Elevator Maintenance	6545	23,049	21,000	21,000	21,000
Heating/Cooling Repair	6546	26,767	25,008	26,091	26,091
Snow Removal	6548	4,939	3,408	2,000	3,408
Decorating Contract	6560	26,008	21,000	30,000	30,000
Decorating Supplies	6561	4,050	2,700	5,984	5,988
Vehicle & Equipment Maintenance	6570	0	900	0	0
Fire Alarm & Misc Oper & Maint	6581	3,075	6,000	7,023	9,132
<b>Total Operating &amp; Maintenance</b>		<b>163,575</b>	<b>168,384</b>	<b>156,726</b>	<b>161,448</b>

**Taxes & Insurance**

Payroll Taxes (FICA)	6711	7,860	6,804	10,460	10,464
Property & Liability Insurance	6720	28,164	25,008	27,737	28,008
Fidelity Bond	6721	483	720	468	468
Worker's Compensation	6722	3,942	3,900	3,849	3,900
Health Insurance	6723	7,984	9,000	8,773	10,027
Other-D & O, Discrimination	6729	6,548	5,604	5,940	5,940
<b>Total Taxes &amp; Insurance</b>		<b>54,981</b>	<b>51,036</b>	<b>57,227</b>	<b>58,807</b>

**Financial Expense**

Interest on Mortgage	6820	148,885	152,700	136,128	91,200
Mortgage Insurance Premium	6850	0	0	0	0
Misc Financial Expense	6890	906	0	0	0
<b>Total Financial Expense</b>		<b>149,791</b>	<b>152,700</b>	<b>136,128</b>	<b>91,200</b>

**Subtotal Expenses**

		666,623	672,276	665,338	628,495
Reserve for Replacement Deposits		15,000	15,000	15,000	15,000
Owner Distribution		60,000	60,000	60,000	60,000
Principal Payment		126,182	132,900	134,500	158,700

**Total Cost of Operations**

		867,805	880,176	874,838	862,195
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**Capital Improvements**

		0	0	0	0
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**Less Total Revenue**

		885,156	892,572	895,540	892,404
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**Cash Flow**

		17,351	12,396	20,702	30,209
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**From Reserve for Replacement**

		0	0	0	0
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**Net Change in Operating Cash**

		17,351	12,396	20,702	30,209
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