



REVISED
CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Project of the Year Award by the Colorado Chapter of the American Public Works Association
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. Data Backup System Purchase
 - B. Storage Area Network Purchase
 - C. Avaya IP PBX Phone System Purchase
 - D. Utilities Division - Heavy Equipment Purchases
 - E. Table Mountain Animal Center Annual Assessment
 - F. Intergraph Corporation 2009 Software Maintenance Agreement
 - G. 2008 Open-Cut Waterline and Sanitary Sewer Construction Contract
 - H. Semper Water Treatment Facility Repair and Replacement Project Contract
 - I. Gregory Hill and Kershaw Ditch Pump Station Rehabilitation Construction Contract
 - J. Quit Claim Deed to Adams County re Construction of Bike Path along Lowell Blvd
 - K. IGA with the UDFCD and Adams County for the Little Dry Creek Regional Detention Pond
 - L. Grant of Permanent Non-Exclusive Easement for Construction of Church Ditch Water Quality Bypass Project
 - M. Second Reading Councillor's Bill No. 1 re Shoenberg Farm Dairy Barn Rehabilitation Grant Appropriation
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Resolution No. 4 re Recovery Contract Interest Rate
 - B. Resolution No. 5 re 2009 Great Outdoors Colorado Grant Contract
 - C. Resolution No. 6 re Year-End Contingency Transfers
 - D. Councillor's Bill No. 2 re FY2008 Budget Amendment
 - E. Engineering Services for the Reclaimed Water Influent Storage Tank, Pump Station and Plant Expansion
 - F. Councillor's Bill No. 3 re Utility Capital Project Reserve Fund Transfer
 - G. Resolution No. 7 re Triennial Renewal of the Rocky Flats Stewardship Council IGA
11. Old Business and Passage of Ordinances on Second Reading

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

- A. City Council
- B. Executive Session
 - 1. Discuss City’s position on the Comcast Cable Franchise Agreement , receive legal advice with respect thereto, and obtain direction thereon pursuant to WMC 1-11-3(C) (7) and (8) and CRS 24-6-402 (4)(b) and (e).
 - 2. Obtain direction from City Council re proposed amendments to economic development incentive agreement with Church Ranch Hotel Companies pursuant to WMC 1-11-3(C)(4), WMC1-11-3(C)(7) and CRS 24-6-402(4)(e) (*Verbal*)
 - 3. Discuss potential lawsuit and settlement with City Attorney pursuant to WMC sections 1-11-3(C)(3), (7) and (8), and CRS sections 24-6-402(4)(b) and (e). (*Verbal*)

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

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

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

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

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

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

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

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

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

J. Final comments/rebuttal received from property owner;

K. Final comments from City Staff and Staff recommendation.

L. Public hearing is closed.

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, JANUARY 26, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Members of Scout Troop 33 presented the colors and led the Mayor, Council, Staff, and audience in the Pledge of Allegiance. The scouts were working on their Citizenship in the Community badges.

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. Stephen P. Smithers, Acting City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of January 12, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. Smithers reported that the City Manager was out of town on a well-deserved vacation. Additionally, he reminded everyone that registration for the annual large-item pickup was being accepted through February 20. The actual pickup dates were April 22 and 29.

CITY COUNCIL COMMENTS

Mayor Pro Tem Dittman gave kudos to the Street Division for promptly snowplowing City streets making the public's travel safe.

Councillor Briggs reported that two Westminster Police Officers had presented valuable, enlightening information about avoiding identity theft to Rotary Club members recently. Other organizations could make arrangements for the presentation by contacting the Police Department.

Councillor Lindsey reminded the public that it was time to enroll in the next Citizens' Police and Citizens' Fire Academies, which would begin in March. These 12-week courses were very informative and demonstrated how officers and firefighters responded to routine and emergency situations.

Mayor McNally advised that the February 5 public meeting regarding the Metzger Farm Plan had been cancelled. She would announce specifics about the rescheduled meeting when they were known so the public could attend.

PRESENTATIONS

The Mayor and City Council presented a Certificate of Recognition to James and Sondra Thrasher, whose salon, Appearances Hair Color and Design Studio, had recently been featured in *Salon Today* magazine as one of the 200 fastest-growing salons in North America. The studio was located at 11961 Bradburn Boulevard. Accepting the certificate with the Thrashers was their young daughter, Kayla.

CITIZEN COMMUNICATION

Michael Farley, 7370 Vrain Street, suggested that rather than constructing a second railroad track for a commuter line, the existing railroad track should be paved over and used by RTD buses to move commuters between Denver and Boulder. Existing signals and turnouts could be used by the buses and travel time between Denver and Boulder would be cut in half. If that were not possible and commuter rail was the only solution, it was possible to lay tracks on top of existing tracks rather than laying the tracks side by side. Further, Mr. Farley suggested that stimulus money be obtained by the City and used to construct a homeless shelter and/or a product research center on existing vacant property.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the December 2008 Financial Report; based on the City Manager's recommendation, determine that the public's interest would be best served by awarding a contract to Baker and Taylor for the purchase of library books in an amount not to exceed \$150,000 in 2009; authorize the City Manager to execute a contract for the 2009 Asphalt Pavement Crackseal Project with the low bidder, A-1 Chipseal Company, in the amount of \$116,875 and authorize a contingency of \$11,600; authorize the City Manager to execute contract Change Order No. 2 with Asphalt Specialties Company, Inc. in the amount of \$53,341 for water main replacement trench patching; accept the Fourth Quarter 2008 Insurance Claim Report; based on the City Manager's recommendation, find that the public interest would be best served by authorizing a sole source agreement with C-West Code Consultants, LLC and authorize the City Manager to enter into an agreement with C-West Code Consultants, LLC for plan review services in an amount not to exceed \$150,000 for 2009; authorize the City Manager to sign a contract for legal services with Carlson Hammond & Paddock, LLC in connection with stormwater quality issues for the year 2009 including optional annual renewals of the agreement for up to three years with the condition that the total costs not exceed \$2,500 annually; and based on the City Manager's report, find that the public interest would be best served by accepting the proposal from SEH, Inc. for engineering design services for Lowell Boulevard between 77th Avenue and Turnpike Drive at a contract cost not to exceed \$109,000 and transfer a total of \$141,000 from the New Development Participation Capital Improvement Project to the Lowell Boulevard Corridor Enhancements Project to pay for design services, estimated right-of-way costs of \$20,000 and a contingency of \$12,000;

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 Major, seconded by Mayor Pro Tem Dittman, to approve the consent agenda as presented. The motion passed unanimously.

RESOLUTION NO. 1 REAPPOINTING MEMBERS TO BOARDS AND COMMISSIONS

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Kaiser, to adopt Resolution No. 1 reappointing members whose terms expired December 31, 2008, to two-year terms and appointing alternate members to regular membership, where applicable, on the Board of Adjustment, the Board of Building Code Appeals, the Environmental Advisory Board, the Historic Landmark Board, the Human Services Board, the Open Space Advisory Board, the Parks, Recreation and Libraries Advisory Board, the Personnel Board, the Planning Commission, the Special Permit and License Board, and the Transportation Commission. The motion passed unanimously on roll call vote.

RESOLUTION NO. 2 RE SPRING 2009 ADAMS COUNTY OPEN SPACE GRANT APPLICATION

Upon a motion by Councillor Winter, seconded by Councillor Kaiser, the Council voted unanimously at roll call to adopt Resolution No. 2 authorizing the Department of Community Development to pursue a grant with Adams County Open Space during the 2009 spring cycle for the acquisition of the DePalma parcel.

RESOLUTION NO. 3 RE IGA WITH STATE FOR HISTORIC PRESERVATION GRANT

It was moved by Councillor Lindsey, seconded by Councillor Major, to adopt Resolution No. 3 authorizing the City Manager to execute an Intergovernmental Agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the Shoenberg Farm dairy barn rehabilitation. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 1 RE SHOENBERG FARM DAIRY BARN REHABILITATION GRANT

Councillor Briggs moved to pass Councillor's Bill No. 1 on first reading appropriating funds received from the State Historical Fund in the amount of \$300,000 for the City's rehabilitation of the Shoenberg Farm dairy barn. Councillor Winter seconded the motion and it passed unanimously.

ADJOURNMENT

There being no further business to come before the City Council, the Mayor adjourned the meeting at 7:28 p.m.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Presentation of Award by the Colorado Chapter of the American Public Works Association

Prepared By: Kent Brugler, Senior Engineer

Recommended City Council Action

Mr. Keith Reester, Director of Public Works for the City of Loveland and Vice President of the of the American Public Works Association (APWA) Colorado Chapter will be present to recognize the Mayor, City Council, and Department of Public Works and Utilities Staff for receiving the Project of the Year Award in the Wastewater Treatment/Collection category for large communities.

Summary Statement

- Mr. Keith Reester, Vice President of the Colorado Chapter, will be present to make a presentation of the award to the Mayor, City Council, and Department of Public Works and Utilities Staff.
- Department of Public Works and Utilities Staff are being recognized by the APWA Colorado Chapter for receiving the Project of the Year Award in the Wastewater Treatment Collection, Large Community category their outstanding efforts on the Big Dry Creek Wastewater Treatment Facility Expansion and Renovation at the 23rd Annual APWA Colorado Chapter Awards Banquet that was held on January 26, 2009.
- Project Manager Kent Brugler will be accepting the award on behalf of City Staff.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Department of Public Works and Utilities Staff were presented with a plaque and recognition at the 23rd Annual American Public Works Association Colorado Chapter Awards Luncheon that was held on January 26 at the Marriott Denver South. The Big Dry Creek Wastewater Treatment Facility received the Project of the Year Award in the Wastewater Treatment Collection, Large Community category. Senior Engineer Kent Brugler, Project Manager, will accept the award Monday night on behalf of the entire project team.

The upgrade and expansion of the Big Dry Creek Wastewater Treatment Facility began in the summer of 2005 and was one of the most significant public works projects ever undertaken by the city. After three years of planning, design and permitting, the city began construction in August 2005 on this 36-month, \$44 million project. The project included expanding the facility from 9.2 million gallons per day to 11.9 million gallons per day. In addition to the capacity increase, several treatment process improvements were done, including converting the main treatment process to an advanced biological nutrient removal process for increased removal of total nitrogen and phosphorous, improved odor control facilities, converting the gas chlorine disinfection to ultraviolet light disinfection, and numerous solids handling, piping and instrumentation and control improvements. Other project improvements included enhanced site security improvements, a new headworks and influent pumping station, a new administration/operations building, and a self-service RV Dump Station, which reopened on January 1 of this year.

The Colorado APWA Chapter Awards Committee reviews all entries and selects the award winners. Awards are given for individual, project or program in eleven categories: 1) Public Works Administration, 2) Engineering/Construction Management, 3) Fleet Management/Operations, 4) Streets & Traffic-- Engineering/Operations/Maintenance, 5) Solid Waste Management/Operations, 6) Drainage & Flood Control, 7) Water Treatment/Distribution, 8) Wastewater Treatment/Collection, 9) Environmental Design/Maintenance/Operations, 10) Building Code Administration/Permitting/Enforcement, and 11) Facilities Management/Maintenance based on size of the community, small communities (1-20,000 population), medium communities (20,000-100,000 population), and large communities (over 100,000 population). The criteria used to evaluate each nomination submittal was as follows: 1) Innovation - Has the individual, program, or project found new methods to provide better service or improve the public lives? 2) Achievement - Did the completed project or program achieve all set goals? Did the individual achieve the desired results and have a consistent history of achievement? 3) Transferability - Are the resulting improvements and/or innovations transferable to other communities and situations? 4) Cooperation - Was there special cooperation between individuals, agencies, businesses and the general public?

In addition to the award, the Big Dry Creek Wastewater Treatment Facility Expansion and Renovation project appears on the cover of the Colorado Public Works Journal, 2009 Issue 1 of 9, commemorating the Colorado Chapter APWA 23rd Annual Awards. City Staff presented City Council with copies of the Colorado Public Works Journal at its January 26, 2009 City Council Meeting.

The City also received a Certificate of Achievement for the Municipal Service Center Renovation that was recently completed. City Staff submitted the MSC Renovation in the Engineering/Construction Management category for large communities. However, Douglas County received the Award for its improvements to the C-470 and Quebec Street Improvements. The APWA Colorado Chapter received 60 nominations in the eleven categories mentioned above.

The Colorado Chapter APWA Award helps achieve the City Council's Strategic Plan Goal of a Financially Sustainable City Government Providing Excellent Services through the City being recognized by its peers for excellence in construction of City facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Data Backup System Purchase

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 the purchase of an Archive I/Q disk based backup software solution through Dell Computer Corporation in the amount of \$48,269. Additionally, find that WSCA pricing meets City Charter bidding requirements and authorize staff to proceed with the purchase of the required disk drives through Lewan and Associates in the amount of \$97,470.

Summary Statement

- The project involves the replacement of the City’s existing tape backup system, purchased in 2005, with a disk based backup system. The backup system captures data on all centralized computer systems and copies that data to disk drives for recovery in the event of a disaster or file recovery need. The proposed system automatically creates two copies of the backup data for storage at City Hall and the City’s offsite disaster recovery facility.
- The new system will simplify backup administration; provide the necessary speed and storage for backing up a rapidly growing amount of data; and provide for high reliability and speed of data recovery. Other important reasons to proceed with the replacement of the existing tape backup system include:
 - Vendor support for the current tape backup system will expire in April of 2009. The vendor will not extend the existing maintenance contract due to the age of the equipment.
 - The proposed solution will meet the City’s current and future data storage and backup requirements.
 - The proposed solution removes redundant data to dramatically reduce the time required to complete backups and the size of the backup files.
 - Smaller backup file sizes will save money by reducing the number of disks required for backup data.
 - The solution provides for scalability to address future data growth.
 - Data recovery from tape media is notoriously time-consuming and complex compared with recovery from disk-based systems.
 - City Council authorized adequate funds in the 2009 General, Public Safety and Utility Capital Improvement Project budget to purchase a replacement data backup system.
- The City purchases hardware and software through Dell Computer Corporation, and Lewan and Associates at or 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.

Expenditure Required: \$145,739

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets

Policy Issue

Shall the City replace the current backup tape library purchased in 2005 with a new disk based data backup system?

Alternative

Forgo the 2009 tape library purchase. This alternative is not recommended for the following reasons:

- Vendor maintenance and support on the existing tape backup system will not be available after April, 2009.
- Upgrading the backup system is critical to maintaining an effective disaster recovery system.
- The existing tape library lacks the capacity and performance needed to consistently back up City data.
- Staff is unable to perform complete backups of City data during off hours, which results in a computer performance impact during normal business hours or incomplete backups of data.
- The City would not recognize the benefits associated with elimination of tape backups.
- The City would not benefit from a more efficient, reliable and cost effective backup system.

Background Information

Managing data backup, recovery and archiving systems can be one of the most time consuming and costly aspects of systems management in enterprise IT environments. Protecting and retaining data is a critical function, and performing that function with a tape based system requires copying and storing the same data over and over again, week after week. This method creates difficulties in scalability and it becomes increasingly costly and complex as staff contends with exponential data growth.

In 2005, the City purchased a centralized tape backup solution to back up City data on one system. Tape based backup systems were the industry standard method of performing data backups in 2005. The backup system is used to make a copy of data contained in applications such Computer Aided Dispatch, Public Safety Records Management, Enterprise Resource Management (Financial System), Court, Geographic Information Systems, Internet, Intranet, Utility Maintenance Management, Utility Billing and others. Having the ability to recover data in the event of system corruption or a disaster in the City's primary computer facility is essential for continued City operations.

The tape based backup system met the needs of the City over the last four years. However, the significant growth in the volume of data, increasing IT administration time to manage that growth with a tape based system, the system performance required to back up all City data during off hours, and the loss of vendor maintenance and support on the existing system requires the City to replace the current backup system.

Staff evaluated several backup solutions including Archive IQ, Dell EMC, Exagrid, Comvault, Backupexec and Symantec. Staff concluded that the proposed Archive IQ solution is the best solution in terms of ease of administration, initial cost, ongoing maintenance costs and scalability.

The purchase will be made through Dell Computer Corporation and Lewan and Associates under the WSCA agreement ensuring the City receives the lowest possible price for this solution.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Storage Area Network Purchase
Prepared By: David Puntenney, 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 the purchase of an EqualLogic storage area network through Lewan and Associates in an amount of \$151,900 and authorize a contingency fund of \$5,000 for a total budget of \$156,900.

Summary Statement

- The project involves the replacement of the City’s existing storage area network (disk drive system), purchased in 2003, with a system that offers centralized storage, reduced administrative overhead, expanded capacity, enhanced performance, redundancy and protection of critical data. The existing storage area network provides 8 terabytes of disk storage for application data from email, enterprise resource planning (ERP), geographic information systems (GIS), utility maintenance management, utility billing, sales tax, departmental files and more.
- The replacement solution will include two disk storage arrays with one located at City Hall and the other located at the City’s disaster recovery facility. In the event of a disaster, this configuration will provide for rapid recovery of the City’s data and computer operations. Additionally, replacement of the system is recommended for the following reasons:
 - Vendor support for the current storage area network will expire in April of 2009. The vendor will not extend the existing maintenance contract due to the age of the equipment.
 - The proposed solution will meet the City’s current and future data storage requirements.
 - The storage area network will provide the infrastructure required to complete the server consolidation (virtualization) project. By the end of 2009, Staff will have reduced the number of computer servers required for City operations from 82 to 31.
 - City Council authorized adequate funds in the appropriate 2009 General, Public Safety and Utility Fund Capital Improvement Project budgets for this purchase.
 - The City purchases hardware through Lewan and Associates 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.
- A \$5,000 contingency is included to provide implementation services in the event Staff is unable to handle the installation of the equipment completely in house.

Expenditure Required: \$156,900

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets

Policy Issue

Should the City replace the current storage area network to ensure high availability, performance and capacity to support City data storage needs and server consolidation?

Alternative

Forgo the 2009 replacement of the storage area network. This alternative is not recommended for the following reasons:

- Vendor maintenance and support on the existing storage area network system is not available after April 2009.
- Replacing the existing storage area network is critical to ensure the City has the capacity to meet the ever growing data storage needs.
- Additional disk storage is required to complete the server consolidation (virtualization) project.
- Performance and reliability of the existing storage area network will soon become unacceptable for the City's critical applications.
- The City would not recognize the benefits associated with performance enhancement, redundancy of critical data and additional storage capacity.

Background Information

The existing storage area network was purchased in 2003, with additional disks added in 2005. In order to maximize the useful life of the original equipment, the staff extended the warranty through the April of 2009. Further warranty extensions on the existing storage area network are not available.

The growth of City files, e-mail, databases and application data drives a constant need for more storage. The City's data storage needs have quadrupled from two terabytes in 2003 to over eight terabytes in 2008. The storage area network upgrade will provide storage to meet the City's current needs and provide the scalability and flexibility to grow as the need for capacity increases. The upgrade will consist of two storage arrays - one located at City Hall and the other located at the City's disaster recovery facility. This will further enhance the City's efforts to centralize disk storage, reduce server costs and ensure rapid recovery of critical City systems.

The addition of the new storage area network will enable the IT Department to complete the server consolidation (virtualization) project started in 2006 by reducing the remaining 52 physical servers to 31 servers in 2009. In the event of a disaster at the City's primary computer room, the new storage area network will provide the ability to quickly initiate transfer of processing to servers located at the disaster recovery facility since all data will be automatically replicated between the two facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Avaya IP PBX Phone System Purchase

Prepared By: David Puntenney, Information Technology Director
Scott Magerfleisch, Sr. Telecommunications Administrator

Recommended City Council Action

Find that the US General Services Administration (GSA) pricing meets City Charter bidding requirements and authorize Staff to proceed with 2009 calendar year purchases of replacement phone systems for City Park Recreation Center, City Park Fitness Center, Christopher Field and Swim and Fitness Center, as well as upgrades to the City Hall phone system through Axess Communications in an amount not to exceed \$166,000.

Summary Statement

- The City uses 24 PBX phone switches from three manufacturers to provide telephone services at City facilities.
- The City must use multiple vendors to support the three systems, requiring the management of multiple maintenance agreements and hardware replacement options.
- Phone switches at the City Park Recreation Center, City Park Fitness Center and Swim and Fitness Center have not been replaced in more that eight years and are no longer eligible for manufacturer support.
- New replacement parts for some of the phone systems in the City are no longer available.
- Systems at several facilities failed in 2008 and the vendor was unable to find complete replacement parts, leaving the systems to operate at less than original capacity.
- The City purchases telecommunication hardware through Axess Communications at or below the GSA contract prices, therefore meeting the City Charter bidding requirements. The prices under this GSA contract are well below what the City could achieve purchasing on its own.
- The City upgraded/replaced six phone switches since 2006 with new Avaya systems.
- Avaya phone switches and equipment purchased during the last 3-4 years is compatible with new Avaya switches and will continue to be used and integrated into this project.
- Selection of the Avaya solution supports a major Westminster business and employer.
- This project is included in the CIP budget and scheduled to be completed over a three year period at a cost not to exceed \$500,000.
- Following completion of this project, annual operating expenses for phone systems will decline by \$10,000 annually.
- City Council authorization is requested for the full 2009 CIP budget amount of \$166,000; however, \$134,000 of this amount is included in the CMO 2009 City-wide CIP freeze, and will not be spent until the freeze is lifted by the City Manager's Office.
- Staff believes it is important to move ahead with the first phase of this project to address several immediate needs.

Expenditure Required: \$166,000

Source of Funds: General, Public Safety and Utility Fund Capital Improvement Project Budgets

Policy Issue

Should the City replace aged telephone systems to ensure high availability, performance and capacity to support end users, while continuing to standardize on a specific vendor solution?

Alternative

Forgo the 2009 replacement of telephone systems at these locations. This alternative is not recommended for the following reasons:

- Continued maintenance and parts for older systems are not available.
- The performance and reliability of these older systems have proven unacceptable.
- Older telephone systems do not support the standardized communications infrastructure or features that are available on newer systems.
- The City would not benefit from increased ease of administration, lower support cost and enhanced features available with the proposed solution.

Background Information

The City's telephone systems are used within every department, division and facility within the City. These systems are critical to departments in order to provide internal and external customer service and to conduct critical City operations. The City uses over 1200 telephone extensions across 32 facilities and 24 PBX switches from three manufacturers. Some of these solutions have been in place for nearly 20 years.

In 2006, the City implemented limited Voice over IP (VoIP) technologies to assess the capabilities and reliability of the technology and to provide more advanced telecommunication features for several locations. Staff concluded that the new technology features, ease of use, more efficient administration and lower support cost provided short and long term benefit for the City. Some of the enhanced services available with the new VoIP technologies include four digit dialing between facilities, integration with the centralized voicemail system and standardization of features between facilities. In addition to the enhanced end user features provided by the Avaya VoIP solution, the standardization of systems throughout all City facilities increases the ability for IT Staff to support telecommunications equipment, reducing the need for expensive support and service contracts with vendors.

The City standardized on Avaya VoIP systems for all new PBX installations since 2006. Avaya has some of the highest customer satisfaction and quality ratings in the industry. The City is very pleased with the overall performance of the Avaya systems and the support provided to the City. Avaya is also a Westminster business and has worked hard to establish and maintain a good working relationship with the City over the past three years. Avaya (along with Axess) have worked diligently to ensure the City's telephone needs are addressed using the most appropriate and cost effective solution.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Utilities Division - Heavy Equipment Purchases

Prepared By: Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Authorize the purchase of a Volvo L90F Loader from Power Equipment Company (PECO) based on the Colorado Department of Transportation (CDOT) annual bid in the amount of \$120,609, which includes the required options and the trade-in allowance for the current loader and a Volvo EW 210C Excavator from Power Equipment Company (PECO), the low bidder from the competitive bid process, in the amount of \$202,824, which includes the required options for this piece of equipment and the trade-in allowance for the current excavator.

Summary

- The City will save significant dollars by purchasing the front end loader through the CDOT Bid, and also by utilizing the same vendor who was the low bidder on the excavator. The purchase of both of these pieces of equipment also includes a trade-in allowance toward the cost of the new equipment.
- This equipment is used primarily by the Utilities Division – Waterline Replacement Program. Both the Loader and the Excavator are used in the process of replacing waterlines in various areas of the city as determined by a prioritized list developed by the Utilities staff. The goal is to minimize water main breaks by targeting problem areas. The Loader can also be used for other purposes such as moving construction materials and snow removal.
- This expense was previously approved by City Council in the 2009 budget and adequate funds have been specifically allocated for this expense.

Expenditure Required: \$323,433

Source of Funds: Utilities Division Operating Budget – Vehicle Replacement Account

Policy Issue

Should City Council approve the purchases of the front end loader and excavator from Power Equipment Company?

Alternatives

1. Reject the use of the CDOT bid for the loader and the low competitive bid from Power Equipment Company and instruct City Staff to re-bid both of these pieces of equipment. This is not recommended because the CDOT bid reflects the purchasing power of all the political sub-divisions in the state.
2. Do not purchase the proposed replacement equipment in 2009. This is not recommended because these pieces of equipment have a maintenance history that makes it impractical to keep them in regular service, based on Fleet Maintenance recommendations.

Background Information

As part of the 2009-2010 budget process, City Council approved the replacement of an excavator and a front end loader for the Utilities Division in 2009. These pieces of heavy equipment will be utilized by the Utilities Division – Waterline Replacement Program for replacing aging waterlines throughout the city. The loader would also be used for moving materials and for snow removal operations as needed.

Unit #9710 (Hyundai Excavator) and Unit #9702 (Caterpillar front end loader) have both reached a point that it is no longer economically reasonable to maintain them in service and were recommended for replacement in 2009 by the Fleet Division.

CDOT bids out heavy equipment for the State of Colorado each year. The CDOT bid is to Power Equipment Company for a Volvo L90F loader. The low bid submitted for the excavator, a Volvo EW 210C excavator, which met all specifications and requirements set by the City, was also from Power Equipment Company. The total cost of both the Excavator (\$202,824) and the Loader (\$120,609) are within the amounts previously authorized in the 2009 budget by City Council for this expense.

Competitive bids were solicited from vendors for the wheeled excavator, with two bids being submitted and opened at the official bid opening on January 9, 2009. The low net bid for the excavator from Power Equipment Company was \$202,824, which was selected over the other higher net bid of \$219,445 from Honnen Equipment Company. A third potential vendor, Wagner Equipment, did not submit a bid. Staff has worked with the successful bidder for heavy equipment in the past and has had positive dealings with their representative.

The following chart illustrates the pricing and final costs to the City for purchasing these two pieces of heavy equipment from Power Equipment Company:

UNIT	MAKE	MODEL	BASE PRICE WITH OPTIONS	TRADE IN ALLOWANCE	FINAL COST	2009 APPROVED BUDGET AMOUNT
LOADER (State Bid)	Volvo	L90F	\$150,609	\$30,000	\$120,609	\$155,000
EXCAVATOR	Volvo	EW 210C	\$220,824	\$18,000	\$202,824	\$220,000

SUBJECT: Utilities Division - Heavy Equipment Purchases

Page 3

The purchase of both of these pieces of heavy equipment helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government" and "Revitalized Aging Neighborhoods and Commercial Areas" by contributing to the objectives of keeping a well-maintained City Infrastructure and Facilities, along with Improving Neighborhood Infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Table Mountain Animal Center Annual Assessment

Prepared By: Mike Cressman, Deputy Chief of Police
Rich Kopp, Neighborhood Services Administrator

Recommended City Council Action

Authorize payment of \$78,665.59 to Table Mountain Animal Center for the City's 2009 assessment for animal shelter services.

Summary Statement

- On November 25, 1996, City Council authorized the City Manager to enter into an Intergovernmental Agreement (IGA) for the provision of all animal sheltering functions for the City of Westminster to be located at Table Mountain Animal Center (TMAC). Westminster is party to this agreement with Jefferson County, Lakewood, Wheat Ridge, Arvada, Golden, Morrison, Mountain View and Edgewater. The Agreement also covers Westminster residents who live in Adams County as well as Jefferson County.
- Annual contributions to the operating costs of TMAC are shared by these nine entities and are determined by an assessed valuation based on population. The intergovernmental agreement restricts these assessments paid to TMAC to no more than 50% of the annual operating costs. The remaining amount is to be obtained through fundraising efforts.
- The amount requested is within the funds authorized by City Council for this item in the 2009 budget.

Expenditure Required: \$78,665.59

Source of Funds: 2009 General Fund – Police Department Operating Budget

Policy Issue

Should City Council authorize the expenditure of \$78,665.59 for Westminster's 2009 assessment of operating costs for Table Mountain Animal Center?

Alternative

The City could examine alternatives to obtaining animal sheltering services from Table Mountain Animal Center. Staff has examined alternatives for this service in the past and has not found a cost effective option.

Background Information

In November 1996, City Council directed the City Manager to enter into an agreement with Table Mountain Animal Center for the provision of all animal sheltering functions, effective January 1, 1997. This intergovernmental agreement set out the method for calculating each participating agencies assessment for TMAC operating expenses. An annual operating budget is to be established by the TMAC Manager and approved by a Board of Directors made up of representatives of each of the nine participating agencies. Each of those participating entities' contribution to that operating budget is determined by population. No more than 50% of TMAC's annual operating budget is funded through these assessments. The remaining amount comes through fundraising efforts by the Table Mountain Animal Center Foundation Board. Historically, the City's assessment has increased by approximately 5% per year. The amount assessed in 2009 by Table Mountain is a 2.3% increase over 2008.

Table Mountain Animal Center and its Board of Directors have been working on a project to address some significant building deficiencies and space constraints at their current facility. Sholar Architecture has performed a building deficiency study, a preliminary building program to identify future space needs, and a schematic design to make an initial cost estimate for a new facility. The Jefferson County Board of Commissioners and the City Managers from the TMAC participating agencies are evaluating options for funding construction of a new facility. An agreement has been reached that involves adoption of a county-wide animal licensing program. The fees collected from the dog licensing program would be funneled to Table Mountain Animal Center. All or a portion of licensing fees could be applied to the capital costs for construction of a new facility. The remaining costs for construction would need to be obtained through a fundraising effort by the Table Mountain Animal Center Foundation Board and a separate Capital Campaign Implementation Committee. Details of the license fee amount and how the fees collected would be disbursed are outlined in an intergovernmental agreement signed in 2007.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Intergraph Corporation 2009 Software Maintenance Agreement

Prepared By: Lee Birk, Chief of Police
Darrin Bacca, Police Records Supervisor

Recommended City Council Action

Authorize payment of \$159,426.08 to Intergraph Corporation for the 2009 Annual Software Maintenance for the integrated Fire and Police Computer Aided Dispatch, Police Records Management System, Fire Records Management System, and Mobile computer application systems.

Summary Statement

- The City of Westminster purchased an integrated Computer Aided Dispatch (CAD), Police Records Management System (RMS), Fire Records Management System (FMS) and the Mobile computer applications from Intergraph Corporation. These systems are heavily relied upon by communications personnel for dispatching of police and fire to emergencies and non-emergency events. The programs are utilized by police and fire personnel for entering call data from the public, entering in police and fire offense reports and incident reports, and provide a tool for field units to receive dispatch data and handle calls in the field.
- The Annual Software Maintenance contract was approved by City Council on February 25, 2008, and signed by the City Manager, on February 26, 2008. The 2009 payment extends the annual maintenance contract through February 28, 2010.
- It is critical for these systems to remain operational at all times and that problems with the system are addressed in a timely manner to ensure public safety response to critical incidents and emergencies. Additionally, the yearly maintenance provides for upgrades in existing software to ensure that the applications have current functionality as well as any necessary updates or repairs.
- This expenditure was specifically budgeted in the Police and Fire Department’s 2009 general fund operations budget and is within budget.

Expenditure Required: \$159,426.08

Source of Funds:	2009 Police General Fund Operating Budget	(\$111,598.26)
	2009 Fire General Fund Operating Budget	(\$ 47,827.82)

Policy Issue

Should the City of Westminster renew the annual software maintenance contract with Intergraph Corporation for the Police and Fire CAD, Police RMS, Fire RMS and Mobile system?

Alternative

Do not pay the annual software maintenance and support. Staff does not recommend this alternative because this action would leave the communication and information technology operations of both the Police and Fire Departments without the support needed to keep the systems operating.

Background Information

The Intergraph systems were purchased in 2000 and included a Computer Aided Dispatch (CAD) system, Police Records Management System (RMS), Fire Records Management System (RMS), the Mobile Computer Application and various system interfaces to include Enhanced 911 (E911) and Automatic Vehicle Locating. The system was designed to integrate all applications and components together to allow for a seamless transmission of data and information.

Communications staff input “service events” into a database and in turn, field units are able to receive those service events through their mobile data computers and consequently submit on line offense reports into the Police RMS. The Police RMS is a repository for police crime reports, arrest data, impounded evidence and stolen property. It allows for the department to generate monthly and annual crime statistics that are required to be reported to the Federal Bureau of Investigations (FBI), via National Incident Based Reporting System (NIBRS) and to the Colorado Bureau of Investigations (CBI). The Fire RMS component is used for tracking building inspections, Emergency Medical Services (EMS) reporting and National Fire Incident Reporting (NFIRS).

The City has executed and maintained a maintenance contract with Intergraph Corporation every year since the system was purchased. The annual maintenance contract allows all components of the system to be covered by the Intergraph Corporation. The CAD system maintenance plan provides for 24 hours a day, 365 days a year due to the critical nature of the application.

Support by Intergraph Corporation allows customers several options; the first is to have an immediate response to a problem by calling a telephone service support line that provides software support. The support line is answered by Intergraph Corporation support engineers for product specific technical needs and problems. The second response generally used for non-emergency requests is to submit on-line help via a service request. Additionally, the yearly maintenance provides for upgrades in existing software to ensure that the applications have current functionality and provides for mid-year fixes or updates.

The Information Technology Department requests that individual departments maintain current software applications and software maintenance contracts with their vendors to avoid system problems, and they support this maintenance agreement.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: 2008 Open-Cut Waterline and Sanitary Sewer Construction Contract

Prepared By: Kent Brugler, Senior Engineer, Capital Projects & Budget Management

Recommended City Council Action

Authorize the City Manager to execute a contract with the low bidder Northern Colorado Constructors, Inc in the amount of \$2,976,866 for construction of sanitary sewer and waterlines and authorize a 10 percent construction contingency in the amount of \$297,690 for a total construction budget of \$3,274,556.

Summary Statement

- Most of the water and sewer lines scheduled for replacement are 40-50 years old, and serve neighborhoods where frequent breaks and capacity problems have occurred in recent years.
- Many of the waterlines are undersized for current fire flow requirements and existing fire hydrant spacing falls short of current standards for residential property.
- Based on break history and waterline size and flow capacity, Staff has identified approximately 14,900 feet of waterlines that should be replaced. In addition, 34 new fire hydrants and 67 new valves will be installed.
- Every three years, the Utilities Operations Division completes an inspection program of all of the City's sanitary sewer collection system, and identifies pipelines that must be repaired or replaced. As a result of the current inspections, Staff has identified approximately 11,310 feet of sewer lines that must be replaced due to physical deficiencies. In addition, 16 manholes will be replaced and 15 manholes will be rehabilitated.
- In addition to old water pipelines being replaced in the Skyline Vista area, the waterline on 74th Avenue will be upsized from 8" to 12" to improve pressure and flow conditions in this area.
- The City advertised the project for bids on December 19, 2008 and received twelve qualified bids on January 20, 2009. Northern Colorado Constructors, Inc. presented the lowest responsible bid in the amount of \$2,976,866, which was 32% below the Engineer's estimate.
- Construction is tentatively scheduled to begin March 1, 2009 and will be completed by October 30, 2009.
- The requested funding is within the funding authorized by City Council in the 2008 Utility Fund Budget for water and sewer line replacement.

Expenditure Required: \$3,274,556.

Source of Funds: Utility Fund Capital Improvement Program
- Open Cut Water Line Replacements
- PACP Sewer Line Open Cut Replacement

Policy Issue

Should the City proceed with the replacement of these aged water and sanitary sewer lines?

Alternatives

1. The City could choose to replace these sanitary sewer and waterline at a later date; however, existing pipe capacity limitations and pipe conditions will likely only become worse, interfering with water and sewer service in the future.
2. The City could award the contract to another bidder; however, this would only unnecessarily increase the project costs since the low bidder is responsible and qualified to perform this work.
3. The City could choose to re-bid the project as currently designed; however, the cost proposal received is well below the Engineer’s estimate.

Staff does not recommend any of these alternatives.

Background Information

Staff has identified portions of the existing water distribution system where frequent waterline breaks have occurred. The neighborhoods scheduled for waterline replacement have experienced interrupted water service caused by the waterline breaks. Many of the waterline cast-iron pipes are particularly vulnerable to breaking as they age, due to the brittle nature of the pipe material. When these pipes were installed, approximately 40-50 years ago, the fire flow requirements of that period justified a 6-inch diameter pipe. However, as fire flow requirements have increased over the years, 6-inch diameter pipe no longer has sufficient capacity to deliver the flows that current standards call for. The new waterline pipe material will be 8-inch diameter polyvinylchloride (PVC). Along with the 12,420 feet of 8” and 2,480 feet of 12” waterline, 34 new fire hydrants and 67 main line isolation valves will be installed. Present day fire hydrant spacing requirements for residential properties will provide for an overall increase in the number of fire hydrants throughout these subdivisions.

Staff also identified portions of the existing sanitary sewer collection system in south Westminster that require replacement and rehabilitation that includes the installation of approximately 11,310 feet of 8-inch sanitary sewer PVC pipe, 16 new manholes and the rehabilitation of 15 existing manholes. These old lines are 4” and 6” diameter clays pipes that are cracked, have sags in them due to settlement or are partially blocked by protruding service connections. While many sanitary sewer improvements can be made using trenchless technologies, the sewer conditions in this area do not lend themselves to trenchless technology methods and must be replaced using open cut trench excavation. The new sanitary sewer lines will be 8” PVC pipe, thereby increasing the capacity of the line and eliminating groundwater from seeping into the system.

The project was advertised for bids on December 19, 2008 and the City received twelve qualified bids on January 20, 2009. The following is a summary of the bids received:

<u>CONTRACTOR NAME</u>	<u>BID AMOUNT</u>
Northern Colorado Constructors, Inc	\$ 2,976,666
Twin Peaks Utilities and Infrastructure	\$ 3,090,981
T. Lowell Construction, Inc	\$ 3,100,000
Quality Pipe Services, Inc	\$ 3,164,300
Brannan Construction Company	\$ 3,255,657

Duran Excavating, Inc.	\$ 3,395,540
K.R. Swerdfeger Construction, Inc.	\$ 3,492,305
Nelson Pipeline Construction, Inc.	\$ 3,588,866
BT Construction, Inc.	\$ 3,824,542
Levi Contractors, Inc.	\$ 4,255,122
Reynolds-Tierdael	\$ 4,651,586
Arapahoe Utilities & Infrastructure, Inc	\$ 4,891,678
Engineer’s Opinion of Probable Cost	\$ 4,381,161

After thoroughly reviewing all bids and checking references, the project design engineering consultant, Brown & Caldwell, and Staff is recommending award to Northern Colorado Constructors, Inc. who has successfully completed water line installation and other projects for the City. Following award of the contract, construction is tentatively scheduled to start on March 1, 2009 and be completed by October 30, 2009.

The approximate breakdown of total the project cost is as follows:

<u>Item</u>	<u>Amount</u>
Design Services	\$ 497,175
Design/Construction Management Contingency	\$ 49,718
Construction	\$ 2,976,866
Construction Contingency (10%)	\$ 297,690
Street Cut Impact Fees (estimated)	\$ 200,000
Geotechnical Services	\$ 70,000
 Total	 \$ 4,091,449
Current Authorized Budget	\$ 5,300,000
Budget Surplus/(Shortfall)	\$ 1,208,552

Staff will be coming back to a future City Council meeting to request authorization of a second construction phase. Staff anticipates that this will occur sometime in April 2009. The second phase of work will include approximately 12,500 feet of waterline and approximately 4,500 feet of sanitary sewerline work. The second phase of work is generally bound by 92nd Avenue to the south, Meade Street to the west, 96th Avenue to the north, and Federal Boulevard to the east.

This project achieves City Council’s Strategic Plan Goals of, “Financially Sustainable City Government, Safe and Secure Community and Vibrant Neighborhoods and Commercial Areas” by contributing to the following objectives:

- Well-maintained City infrastructure and facilities
- Citizens are safe anywhere in the City
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Map



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Semper Water Treatment Facility Repair and Replacement Project Contract

Prepared By: Mike Happe, Water Resources and Treatment Manager
Tom Settle, Water Treatment Superintendent

Recommended City Council Action

1. Authorize the City Manager to execute a contract with the low bidder, Aslan Construction, Inc., in the amount of \$442,582 for construction of improvements at the Semper Water Treatment Facility; and authorize a ten percent construction contingency in the amount of \$44,000 for a total construction budget of \$486,582.
2. Authorize a contract amendment with the project designer, Boyle Engineering/AECOM, in the amount of \$35,985 for construction phase services.

Summary Statement

- The Utility System Infrastructure Master Plan that was conducted by URS Corporation identified the need for several improvements to the aging Semper Water Treatment Facility (SWTF) to ensure its continued operation at peak performance and to facilitate maintenance of all the water supply facilities.
- The project consists of improving control and capacity of the lime feed system for pH control, adding bulk treatment for manganese treatment and construction of a maintenance parts storage space.
- Staff engaged Boyle Engineering/AECOM to generate equipment specifications and design details necessary for bidding and construction at a cost of \$142,496. Construction phase services will be added to the existing contract at a cost of \$35,985.
- The City advertised the construction phase project bids on December 29, 2008 and received three qualified bids on January 21, 2009. Aslan Construction presented the lowest responsible bid in the amount of \$442,582.
- Adequate funds are available for these expenses in the 2009 Capital Project budget.

Expenditure Required: \$522,567

Source of Funds: Utility Fund — SWTF Major Repair and Replacements Project

Policy Issue

Should the City proceed with the improvements to the SWTF at this time and award the contract for the construction to Aslan Construction?

Alternative

The City could choose to postpone the improvements to the SWTF. This alternative is not recommended for the following reasons: the lime feed system is inadequately sized to feed proper amounts of the chemical for pH control, the current dry-form manganese control chemical presents unnecessary employee health and fire hazards, and SWTF currently has very limited parts and materials storage, and a growing need to maintain on-hand stock for immediate repairs to maintain system reliability.

Background Information

The Semper Water Treatment Facility, the City’s largest and primary potable water treatment plant, was first constructed in 1969 with a capacity of six million gallons per day (mgd). The plant underwent major expansions in 1973, 1979, 1985 and 1995 resulting in its current capacity of 44 mgd. The facility is not planned to be expanded any further and will rely on periodic process improvement projects, major equipment replacements and structural rehabilitation projects to maintain its viability.

The 2006 URS Water and Sewer Infrastructure Master Plan identified a series of improvements that were needed at the SWTF to maintain effective operations. For 2008, the projects recommended and approved in the Utility Fund Capital Improvement Projects (CIP) plan include the following:

- Installation of chemical bulk storage facilities for Sodium Permanganate, a treatment chemical used for removal of manganese and iron from drinking water
- Repair/replacement of the Lime feed system to maintain pH control
- Expansion of the parts storage area of the Maintenance Shop

The improvements were evaluated and designed by Boyle Engineering (now AECOM) in 2008. Under a proposed change order to the original design contract, Boyle/AECOM will provide construction phase services including shop drawing reviews, on-site observation and as-built drawing preparation. These services were not included in the original contract because a construction timeline was not set at the time the design contract was executed. An amendment to the existing contract with Boyle/AECOM covering these services at a cost of \$35,985 is recommended.

Staff solicited proposals from appropriate contractors for construction of the improvements and three proposals were received as summarized in the table below. Aslan Construction provided the lowest cost proposal meeting all requirements of the bid request.

<u>Company</u>	<u>Quoted Cost</u>
Aslan Construction	\$442,582
T. Lowell Construction	\$454,000
Jennison Construction	\$455,055

In addition to the construction costs, the project has already incurred costs for the engineering design work. Fees of \$142,496 were paid to Boyle/AECOM for design and bidding phase work. The total cost of these improvements, based on the construction proposals received and contingencies, will be \$674,063. The projects are funded at \$682,000.

SUBJECT: Semper Water Treatment Facility Repair and Replacement Project Contract Page 3

This project helps achieve the City Council's Strategic Plan Goal of Financially Sustainable City Government by contributing to the objective of a Well-Maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Gregory Hill and Kershaw Ditch Pump Station Rehabilitation Construction Contract

Prepared By: Michael C. Wong, Senior Engineer
Abel Moreno, Capital Projects and Budget Manager

Recommended City Council Action

Authorize the City Manager to execute a contract for rehabilitation of the Gregory Hill and Kershaw Ditch Pump Station with the low bidder, Velocity Constructors Inc., in the amount of \$531,139; authorize a 10% contingency of \$53,114; and authorize the transfer of \$400,000 from the 78th Avenue/Stuart Street Water Line Project to the Gregory Hill Pump Station Improvements to fund the improvements.

Summary Statement

- The work includes major mechanical and electrical upgrade to the Gregory Hill and Kershaw Ditch Pump Stations to meet current building codes, structural repair of the Gregory Hill Pump Station south wall that was damaged due to a pump station failure in late 2006, and general improvement to drainage control and security at both sites.
- Contract documents were prepared by the City's consultant Stantec Consulting.
- \$980,000 was approved by City Council for this project; however, the low bid came in 29% under the engineers estimate.
- Staff originally proposed the use of bond financing to fund a portion of this project. Due to the better than anticipated bids for the construction, Staff is now proposing to cash fund this project with a transfer from a completed project (78th/Stuart Water Line) that has adequate funding available.

Expenditure Required: \$584,253

Source of Funds: Utility Fund Capital Improvement
– Gregory Hill and Kershaw Ditch Pump Station Rehabilitation

Policy Issue

Should City Council authorize a contract with Velocity Constructors Inc.?

Alternatives

The City could choose from the following alternatives:

1. Reject all bids and rebid the project. The City received bids from nine construction companies, and it is unlikely that new bids would be less costly or the City would receive additional qualified bids.
2. Reject staff recommendation to enter into a contract with Velocity Constructors Inc. The existing Gregory Hill and Kershaw Ditch Pump Stations have numerous mechanical and electrical deficiencies.

Staff does not recommend any of these alternatives since the bids are competitive, and there is adequate funding to complete the construction project.

Background Information

The Gregory Hill Pump Station located in the vicinity of 81st Avenue and Newton Street currently is not functional as a pump station due to structural damage that occurred in 2006.

The failure of the pump station in late 2006 caused the south brick wall to collapse and flooded several residences to the south of the pump station. The south wall has been boarded up since the 2006 accident. Emergency power is not available at the pump station site. The City plans to address all physical deficiencies existing at the Gregory Hill Pump Station including restoration of the damaged south wall, upgrading its mechanical and electrical system, and putting it back into service as intended to improve the Water Pressure Zone 3 distribution system during high water demand, and to address other seasonal pumping needs.

The Kershaw Ditch Pump Station located at 5500 Tennyson Street, while not part of the City’s potable water supply system, is considered an important facility in the City of Westminster’s overall water resources management. The facility diverts raw water from the Clear Creek-fed Sheet Lake and discharges into the Jim Baker Reservoir. The existing Kershaw Ditch Pump Station has numerous safety and operational deficiencies, including obsolete equipment, no redundant pumping capacity, non-code compliance electrical system, and is in need of significant building repair.

A mandatory prebid conference was held on January 21, 2009 to stress the importance of the project schedule, particularly the completion of the cross-piping at the Gregory Hill Pump Station by May 15, 2009 prior to this year’s high water demand. Bids were publicly opened and read on January 27, 2009. Nine qualified bids were received by the City of Westminster. The following is a tabulation of the bids and the Engineer’s estimate:

Contractor’s Lump Sum Bid (Alternate 1 with Generator)

Velocity Constructor Inc.	\$531,139
Friedland Construction	\$579,387
Clemons Construction	\$581,204
Paramount Construction	\$597,957
Aslan Construction	\$613,057
Jennison Construction	\$620,989
T. Lowell	\$640,400
Lillard & Clark	\$685,832
Taylor Kohrs	\$753,888
Stantec Engineer’s estimate	\$750,000

After a thorough review of the statement of qualifications and other references provided by Velocity Constructors Inc., Staff is confident that the contractor is qualified for the Gregory Hill and Kershaw Ditch Pump Station Rehabilitation project. Velocity Constructors Inc. has successfully completed two utility projects for City of Westminster in the past and is currently working on a groundwater well abandonment project for the City.

The total budget for the project including funds from 2008 and 2009 is \$980,000. Of these funds \$280,000 was appropriated as part of the 2008 Budget and \$700,000 was appropriated as part of the 2009 Budget. However, \$580,000 was to be debt funded as part of the 2010 debt financing that the City Manager's Office highlighted in their October 13, 2008 City Council 2009-2010 Budget Adoption Agenda Memo. Due to the better than anticipated bids, Staff is recommending that this project be paid with \$400,000 in funds that were not used as part of another water system improvement project that was completed in 2007.

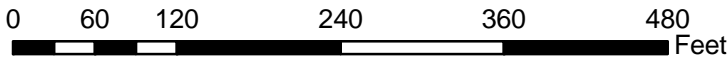
The Gregory Hill and Kershaw Ditch Pump Station Rehabilitation project helps achieve the City Council's Strategic Plan goals of "Safe and Secure Community" by improving staff safety and security to the City's outdated pump stations; "Financially Sustainable City Government" by contributing to the objective of well-maintained City facilities; and "Beautiful City" by enhancing the pump station sites.

Respectfully submitted,

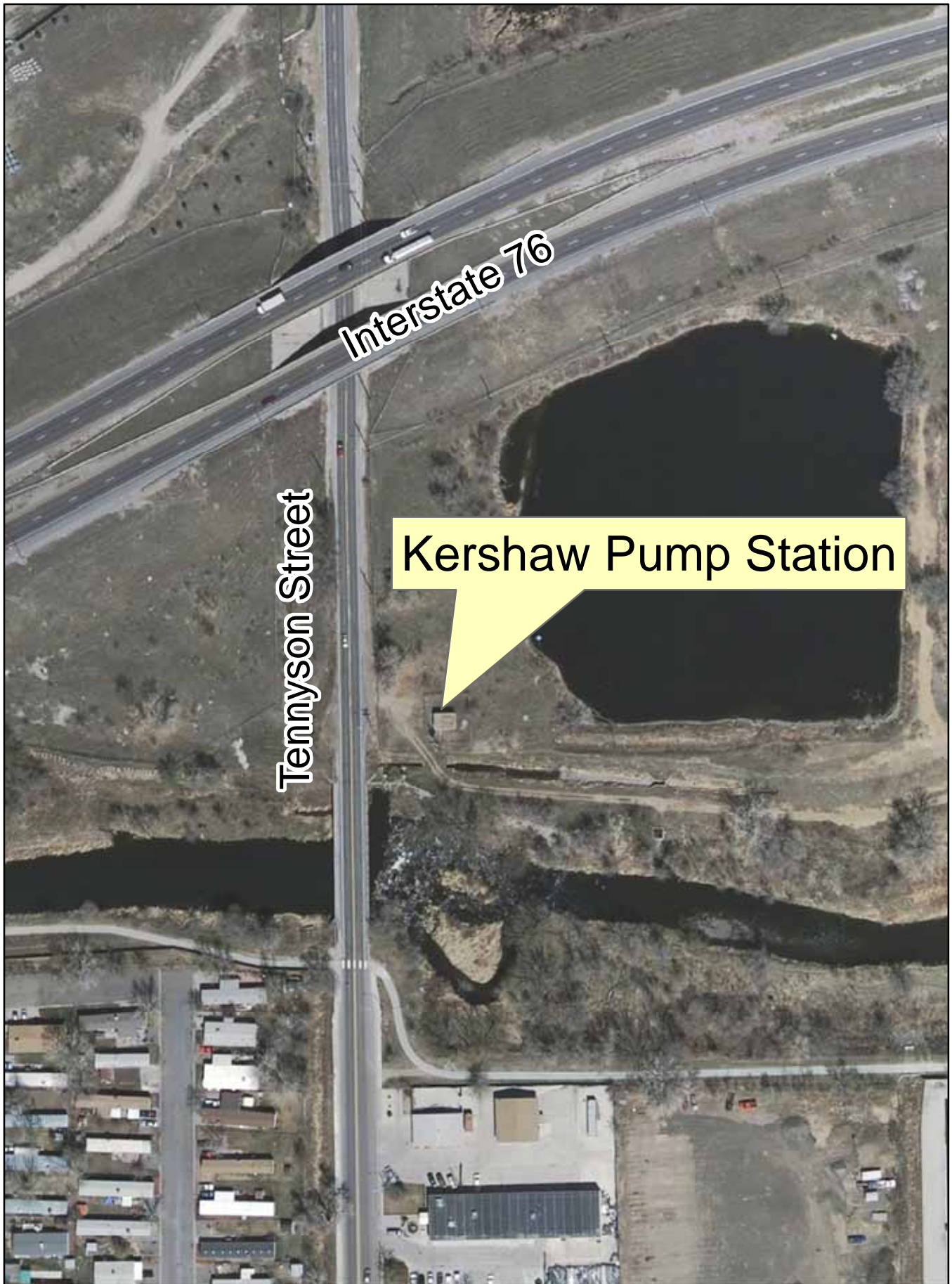
J. Brent McFall
City Manager

Attachment: Location Maps of Gregory Hill and Kershaw Ditch Pump Stations

Gregory Hill Pump Station Location Map



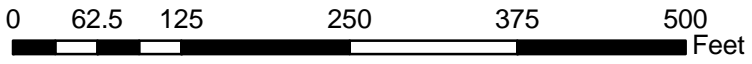
Kershaw Pump Station Location Map



Kershaw Pump Station

Interstate 76

Tennyson Street





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Quit Claim Deed to Adams County re Construction of Bike Path along Lowell Blvd

Prepared By: Bob Krugmire, Water Resources Engineer

Recommended City Council Action

Authorize the City Manager to execute a Quit Claim Deed granting a strip of land along the eastern boundary of Jim Baker Reservoir to Adams County for construction of a bike path.

Summary Statement

- As part of the overall conditional use permit, granted to the City of Westminster by Adams County relative to the construction of Jim Baker Reservoir, Westminster accepted the obligation to construct a bike path along the western side of Lowell Blvd.
- As part of an overall improvement project for Lowell Blvd. in the vicinity of Jim Baker Reservoir, Adams County agreed to release Westminster from the obligation to complete the bike path along Lowell Blvd. in exchange for Westminster's dedication of sufficient land to accommodate Adams County construction of this trail.
- The City of Westminster (Westminster) has previously provided Adams County with a "Permission to Enter" authorization to allow construction of the various Lowell Blvd. improvements to commence and is now moving forward on the formal land dedication, via Quit Claim Deed, to Adams County.
- Completion of this section of the trail system will provide improved access for bike and pedestrian traffic around and along Jim Baker Reservoir, as well as providing another connection segment between the City of Westminster trail system and the trail system for Clear Creek.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Westminster execute the Quit Claim Deed to Adams County?

Alternatives

The City of Westminster could elect to not dedicate the strip of land to Adams County. This alternative is not recommended since acquisition of the land by Adams County would allow construction of the bike path, which relieves Westminster from this financial obligation. In addition, construction of the bike path will provide eventual connectivity between the Westminster path system and the Clear Creek bike path system.

The City of Westminster could construct the bike path on its own. This alternative is not recommended as Westminster could see an increased cost of construction once the overall Lowell Blvd improvements are completed by Adams County.

Background Information

In response to a large number of requests for improvements on Lowell Blvd from the local community, Adams County is initiating modifications including improvements to sidewalks, curb and gutter, as well as addressing drainage concerns. In addition, Adams County will be widening Lowell Blvd to allow for the construction of a center turn lane to help the flow of traffic and improve overall safety on this section of road. Finally, as part of the overall project, Adams County will be constructing a bike path along the western side of Lowell Blvd.

Since the widening of Lowell Blvd and construction of the bike path will be impacting land owned by Westminster at Jim Baker Reservoir, the County has requested that Westminster execute a Right-of-Way Agreement and Warranty Deed.

Review of this agreement has been delayed by Westminster while staff conducted research on previous agreements with Adams County related to the issuance of a Conditional Use Permit associated with the original construction of Jim Baker Reservoir. According to the Conditional Use Permit, Westminster accepted the obligation of bike path construction under the condition that connectivity existed with the Clear Creek path system.

While this obligation is still in force, research by staff has revealed that connectivity to existing path systems is not yet achievable. However, with construction scheduled to start on Lowell Blvd, Adams County is willing to take on this obligation, thus saving Westminster the expense of construction. As a result, Westminster is waiving any land acquisition fees from Adams County in exchange for the County completing this construction and releasing Westminster from the obligation.

Because of the delay in review, Adams County is looking for some action by Westminster that would allow initiation of construction followed by eventual execution of the pertinent agreements. Westminster's Parks and Recreation Department has expressed strong support of this bike trail as it would allow eventual connectivity between Westminster's extensive trail system and the lower Clear Creek bike path system.

Westminster's Water Resources and Treatment Division staff will work closely with Adams County during this construction to ensure that reservoir facilities and water operations at Jim Baker Reservoir are not negatively impacted.

SUBJECT:

Quit Claim Deed re Construction of Bike Path along Lowell Blvd

Page 2

This project helps achieve the City Council's Strategic Plan Goal of Vibrant Neighborhoods and Commercial Areas by extending Westminster's already extensive trail system. It also contributes to the City achieving a Beautiful and Environmentally Sensitive City by balancing public use and access at Jim Baker Reservoir with the vital water resources operations provided by the lake.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

QUITCLAIM DEED

THIS DEED, dated this _____ day of _____, _____, between _____ **THE CITY OF WESTMINSTER**, _____ a home-rule municipal corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, grantor, and **THE COUNTY OF ADAMS, STATE OF COLORADO**, a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 450 South 4th Avenue, Brighton, Colorado 80601.



WITNESS, that the grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the said County of Adams and State of Colorado, described as follows:

See Exhibit "A", attached hereto and incorporated herein by this reference, AND reserving, therefrom, an easement for the repair, modification, reconstruction, and maintenance of the Jim Baker Reservoir dam, spillway and all other related appurtenances over so much of the property described in Exhibit A as may reasonably be necessary for said activities.

Dedicated for Lowell Boulevard and West 62nd Avenue.
Also known by street and number as: Vacant Land

Assessor's schedule or parcel number: Part of 0-1825-07-1-00-021 and part of 0-1825-07-4-00-002

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the grantor has caused its corporate name to be hereunto subscribed by its _____ Mayor, and its corporate seal to be hereunto affixed, attested by its _____ City Clerk, the day and year first above written.

Attest:

City of Westminster, Colorado
a home-rule municipal corporation

By: _____
Linda Yeager , City Clerk

By: _____
J. Brent McFall, City Manager

STATE OF COLORADO

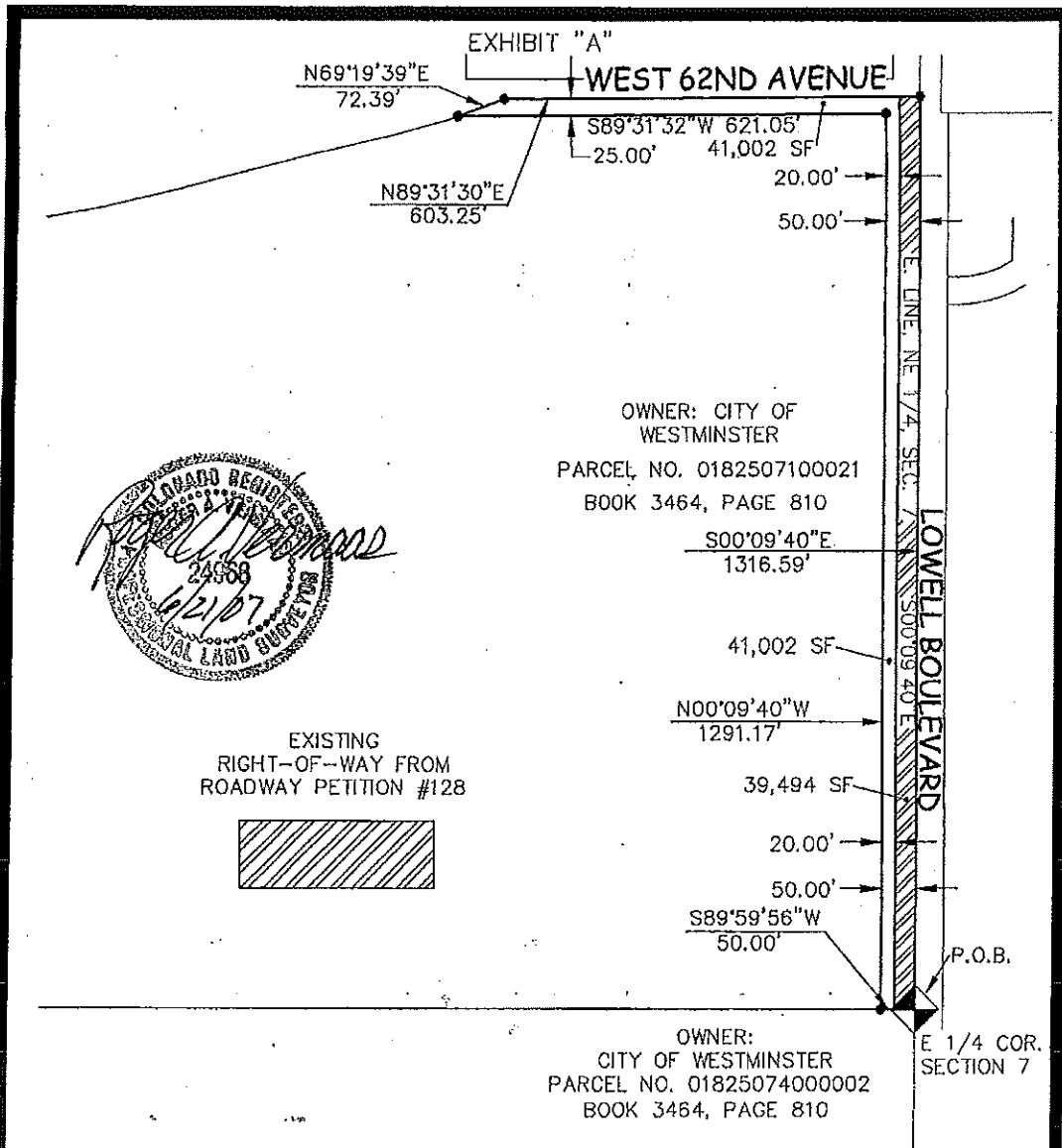
County of Adams

The foregoing instrument was acknowledged before me this _____ day of _____ 2008, by J. Brent McFall as City Manager and Linda Yeager as City Clerk of the City of Westminster, Colorado, a home-rule municipal corporation.

Witness my hand and official seal.
My commission expires:

Notary Public

Roger A. Vermaas, Icon Engineering Inc 8100 S Akron Street #300 Englewood CO 80112
Name and Address of Person Creating Newly Created Legal Description (§38-35-106.5, C.R.S.)

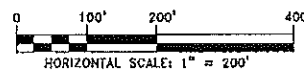


A PARCEL OF LAND BEING A PORTION OF PROPERTY AS DESCRIBED IN BOOK 3464 AT PAGE 810, PARCEL NO. 0182507100021 IN THE RECORDS OF ADAMS COUNTY, COLORADO, LOCATED IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M. COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 7, THENCE S89°59'56"W, A DISTANCE OF 50.00 FEET TO A POINT; THENCE N00°09'40"W, A DISTANCE OF 1291.17 FEET TO A POINT; THENCE S89°31'32"W, A DISTANCE OF 621.05 FEET TO A POINT; THENCE N69°19'39"E, A DISTANCE OF 72.39 FEET TO A POINT; THENCE N89°31'30"E, A DISTANCE OF 603.25 FEET TO A POINT; THENCE S00°09'40"E, A DISTANCE OF 1316.59 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 80,496 SQUARE FEET OR 1.8479 ACRES OF LAND, MORE OR LESS, WITH 39,494 SQUARE FEET OR 0.9067 ACRES OF LAND, MORE OR LESS, OF EXISTING RIGHT-OF-WAY, LEAVING 41,002 SQUARE FEET OR 0.9413 ACRES OF LAND, MORE OR LESS, TO BE ACQUIRED.

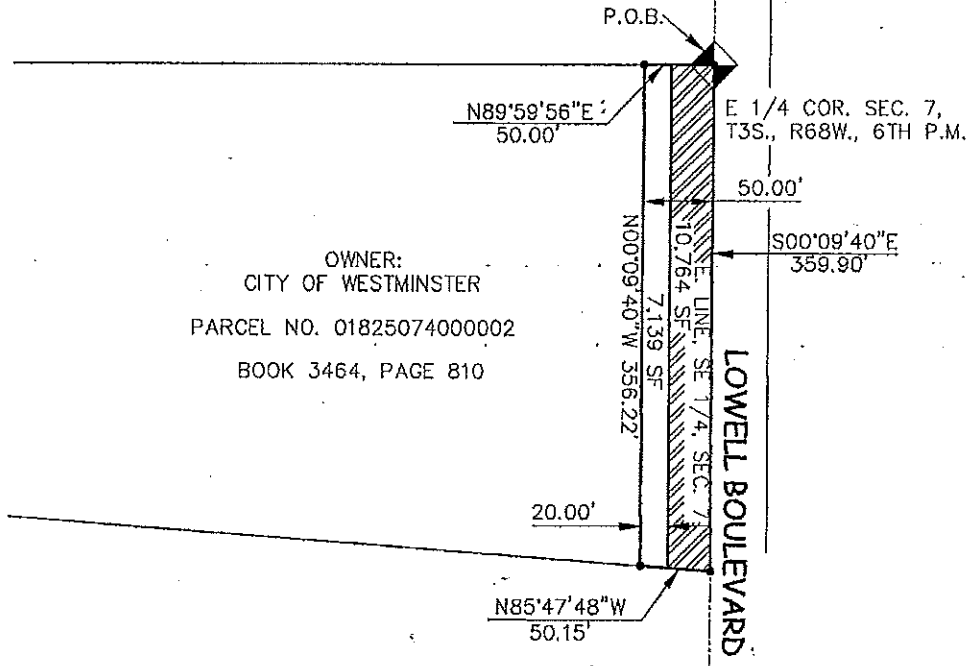
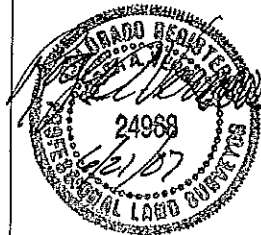
THE INFORMATION PRESENTED ON THIS EXHIBIT IS BASED ON RECORDED DOCUMENTS FROM ADAMS COUNTY. NO FIELD VERIFICATION HAS BEEN PERFORMED TO CONFIRM ACTUAL LOCATION OF MONUMENTS, PROPERTY CORNERS OR OTHER FEATURES DEPICTED ON THIS EXHIBIT.



SURVEYED BY:		PUBLIC RIGHT-OF-WAY		CLIENT:	ADAMS COUNTY	JOB NUMBER:	---		
DRAWN BY:	sp	 8163 South Arden Street, Suite 300, Englewood, CO 80112 Phone (303) 221-0807 / Fax (303) 221-4219		LOCATION:	LOWELL BOULEVARD	DOCUMENT NUMBER:	47		
CHECKED BY:	RAV			SECTION:	7	TOWNSHIP:	3S	RANGE:	68W
DATE:	04/09/07			SIXTH PRINCIPAL MERIDIAN		SCALE:	1" = 200'		
REV:	06/14/07			ADAMS COUNTY, COLORADO		SHEET:	1 of 1		

EXHIBIT "A"

OWNER: CITY OF WESTMINSTER
 PARCEL NO. 0182507100021
 BOOK 3464, PAGE 810



OWNER:
 CITY OF WESTMINSTER
 PARCEL NO. 01825074000002
 BOOK 3464, PAGE 810

A STRIP OF LAND BEING 50.00 FEET IN WIDTH, WITHIN A PORTION OF PROPERTY AS DESCRIBED IN BOOK 3464 AT PAGE 810, PARCEL NO. 01825074000002 IN THE RECORDS OF ADAMS COUNTY, COLORADO, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M. COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

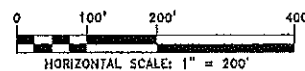
BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 7, THENCE S00°09'40"E, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 359.90 FEET TO A POINT; THENCE N85°47'48"W, A DISTANCE OF 50.15 FEET TO A POINT; THENCE N00°09'40"W, A DISTANCE OF 356.22 FEET TO A POINT; THENCE N89°59'56"E, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 17,903 SQUARE FEET OR 0.4110 ACRES OF LAND, MORE OR LESS, WITH 10,764 SQUARE FEET OR 0.2471 ACRES OF LAND, MORE OR LESS, LEAVING 7,139 SQUARE FEET OR 0.1607 ACRES OF LAND, MORE OR LESS, TO BE ACQUIRED.

EXISTING
 RIGHT-OF-WAY FROM
 ROADWAY PETITION #128



THE INFORMATION PRESENTED ON THIS EXHIBIT IS BASED ON RECORDED DOCUMENTS FROM ADAMS COUNTY NO FIELD VERIFICATION HAS BEEN PERFORMED TO CONFIRM ACTUAL LOCATION OF MONUMENTS, PROPERTY CORNERS OR OTHER FEATURES DEPICTED ON THIS EXHIBIT



SURVEYED BY:	PUBLIC RIGHT-OF-WAY 8100 South Alton Street, Suite 300, Englewood, CO 80112 Phone (303) 221-0637 / Fax (303) 221-1515	CLIENT:	ADAMS COUNTY	JOB NUMBER:	---	
DRAWN BY:		LOCATION:	LOWELL BOULEVARD	DOCUMENT NUMBER:	48	
CHECKED BY:		SECTION:	TOWNSHIP	RANGE	SCALE:	1" = 200'
DATE: 04/09/07 REV: 06/14/07 REV:		7	3S	68W	SIXTH PRINCIPAL MERIDIAN	SHEET: 1 of 1
		ADAMS COUNTY, COLORADO				



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



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

Prepared by: John Burke, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute an intergovernmental agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) and Adams County for the Little Dry Creek Regional Detention Pond and related channel improvements.

Summary Statement

- A regional storm water detention pond on Little Dry Creek is proposed to be constructed directly west of Federal Boulevard near the 70th Avenue alignment and immediately south of the proposed commuter rail station on the FasTracks Northwest Rail line. The pond was conceptualized in the Little Dry Creek Park Master Plan that was completed in January of 2007. The primary purpose of this detention pond is to serve the future Transit Oriented Development area bounded by Federal Boulevard, Lowell Boulevard, 72nd Avenue and the Burlington Northern/Santa Fe Railroad track. A regional detention facility will enhance the redevelopment opportunities in this area by relieving the burden of having on-site detention for every lot.
- The approximate cost estimate for the Little Dry Creek channel realignment, utility relocations and the regional detention pond is over \$5,000,000. City Staff requested matching funds for this project from the Urban Drainage and Flood Control District (UDFCD). This IGA is for the first phase of engineering design to take the conceptual level plans and create a multi-year construction phasing plan that can closely match the available funding. UDFCD is contributing \$100,000, Adams County is contributing \$150,000 and the City is contributing \$150,000 to this first phase of engineering design.
- The IGA contains provisions for amending the document in the future if a modified funding arrangement is necessary.
- Under the terms of the IGA, the UDFCD will manage the project and hire an engineering firm to prepare the design drawings with Westminster and Adams County oversight.

Expenditure Required: \$150,000 (City's share)

Source of Funds: Little Dry Creek Regional Detention Account

Policy Issue

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

Alternative

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

Background Information

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

The engineering design work will take into consideration the available funding that has been earmarked by the City of Westminster, Adams County and the UDFCD. The goal is to create a multi-year construction phasing plan that can be implemented as funds become available. The first phase of this engineering work will be funded by the UDFCD in the amount of \$100,000, Adams County in the amount of \$150,000 and the City in the amount of \$150,000.

City Staff have also been working with Adams County on the potential annexation of this area. An annexation by the City would allow greater control over the maintenance of the constructed facilities and oversight of any proposed developments or expansion of existing properties. The City and the County currently own a majority of the property in this area.

The proposed improvements are planned to be completed by the time the commuter rail station is operational in 2015-2017. This project will greatly enhance this area with unique open space and active recreational uses as identified in the Little Dry Creek Park Master Plan.

Westminster's share of the funding for this project (\$150,000) is available from the Little Dry Creek Regional Detention Project of the Stormwater Capital Improvements Fund.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
LITTLE DRY CREEK FROM LOWELL BOULEVARD TO FEDERAL BOULEVARD

Agreement No. 08-09.09

THIS AGREEMENT, made this 10TH day of FEBRUARY, 2008, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY OF WESTMINSTER (hereinafter called "CITY") and ADAMS COUNTY (hereinafter called "COUNTY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Little Dry Creek Adams County Major Drainageway Planning Study" by Merrick & Company, dated 1979 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Little Dry Creek from Lowell Boulevard to Federal Boulevard (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 90, Series of 2007) for drainage and flood control facilities in which PROJECT was included in the 2008 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2008 subsequent to public hearing (Resolution No. 72, Series of 2007) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 54, Series of 2008); and

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

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

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

- A. Final Design. PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall extend from approximately Lowell Boulevard to Federal Boulevard, as shown on Exhibit A.
- B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:
 - 1. Final design services;
 - 2. Construction of improvements;
 - 3. Contingencies mutually agreeable to PARTIES.
- B. It is understood that PROJECT costs as defined above are not to exceed \$300,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$300,000
2. Construction *	-0-
3. Contingency	100,000
Grand Total	\$400,000

* It is anticipated that funds for construction shall be added to this Agreement at a future date.

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

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

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	25.0%	\$100,000
CITY	37.5%	\$150,000
COUNTY	37.5%	\$150,000
TOTAL	100.0%	\$400,000

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973 and Resolution No. 49, Series of 1977), the cost sharing shall be after subtracting state, federal, or other sources of funding from third parties. However, monies CITY and COUNTY may receive from federal funds, the Federal Revenue Sharing Program, the Federal Community Development Program, or such similar discretionary programs as approved by DISTRICT's Board of Directors may be considered as and applied toward CITY and COUNTY's share of improvement costs.

Payment of each party's full share (CITY - \$150,000; COUNTY - \$150,000; DISTRICT - \$100,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY and COUNTY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

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

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officers for CITY and COUNTY. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to CITY and COUNTY.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY and COUNTY, each within its own jurisdiction, shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use

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

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT, with the assistance of CITY and COUNTY, shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT, with assistance and approval of CITY and COUNTY, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY and COUNTY. The contractor shall be required to indemnify CITY and COUNTY. Copies of the insurance coverage shall be provided to CITY and COUNTY.
 4. DISTRICT, with assistance of CITY and COUNTY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY and COUNTY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY and COUNTY on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.
 5. DISTRICT, with approval of CITY and COUNTY, shall contract with and provide the services of the design engineer for basic engineering construction services to

include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.

6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
7. DISTRICT shall review and approve contractor billings and send them to CITY and COUNTY for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
8. DISTRICT, with assistance and written concurrence by CITY and COUNTY, shall prepare and issue all written change or work orders to the contract documents.
9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
10. DISTRICT shall provide CITY and COUNTY a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

CITY and COUNTY agrees to regulate and control the floodplain of Little Dry Creek within CITY and COUNTY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY and COUNTY cannot obligate itself by contract to exercise its police powers. If CITY and COUNTY fails to regulate the floodplain of Little Dry Creek within CITY and COUNTY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY and COUNTY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be the City Manager, 4800 West 92nd Avenue, Westminster, Colorado 80031
- B. The contracting officer for COUNTY shall be the Engineering Manager, 12200 North Pecos Street, 3rd Floor, Westminster, Colorado 80211.
- C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- D. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- E. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT, CITY or COUNTY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

14. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

15. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

16. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

17. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

18. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

19. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

20. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

21. EMPLOYMENT STATUS

This Agreement shall not change the employment status of any employees of PARTIES. No party shall have the right to control or direct the activities of any employees of another related to this Agreement.

22. PUBLIC RELATIONS

It shall be at CITY and COUNTY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact

it may have on them. Technical and final design recommendations shall be presented to the public by the selected design engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY and COUNTY as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY AND COUNTY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and COUNTY and/or DISTRICT.

25. NO THIRD PARTY BENEFICIARIES

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

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. et seq. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (DEPARTMENT) made in the course of an investigation the DEPARTMENT is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State.

Consultant or Contractor acknowledges that the DEPARTMENT may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

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

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

COUNTY OF ADAMS

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

County Attorney

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:

City Attorney

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
LITTLE DRY CREEK FROM LOWELL BOULEVARD TO FEDERAL BOULEVARD

Agreement No. 08-09.09

Exhibit A





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Grant of Permanent Non-Exclusive Easement for Construction of Church Ditch Water Quality Bypass Project

Prepared By: Robert Krugmire, Water Resources Engineer

Recommended City Council Action

Authorize the City Manager to execute the Non-exclusive Easement Agreement between the City of Westminster and the Church Ditch Water Authority.

Summary Statement

- In response to proposed development on the west side of Standley Lake, staff from the Standley Lake Cities and the City of Arvada have been overseeing construction of a series of water quality bypass structures associated with the Church Ditch.
- These water quality bypass structures will route stormwater, collected from the growing western residential and commercial developments, around Standley Lake via the Church Ditch. This is a significant project that will provide protection for the Standley Lake water supply.
- As part of this overall construction, the Church Ditch Water Authority has recently completed construction of a new diversion structure to deliver Church Ditch water for the Standley Lake Cities that is above the storm water collection facilities.
- The Church Ditch Water Authority has also completed a new structure located at 100th Avenue and Simms Street within the Standley Lake Regional Park, which will route collected storm water flows away from Standley Lake and into Big Dry Creek.
- Placement of this final structure requires execution of a permanent Nonexclusive Easement Agreement between the City of Westminster and the Church Ditch Water Authority.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Westminster enter into a permanent Nonexclusive Easement Agreement with the Church Ditch Water Authority, which would allow placement and operation of water quality diversion structures associated with the Church Ditch Water Quality project within lands currently operated as part of the Standley Lake Regional Park?

Alternative

The City of Westminster could require the Church Ditch Water Authority to purchase the underlying land to accommodate the storm water diversion structure running from the Church Ditch to Big Dry Creek. This alternative is not recommended as (1) the City of Westminster is a member of the Church Ditch Water Authority and they would be charging themselves and (2) the diversion structure is a passive use, which staff feels should not impact the underlying Park operations to any significant degree.

Background Information

As part of their involvement in the Church Ditch Water Authority, staff from the cities of Northglenn and Westminster has been working very closely with the City of Arvada to address the potential significant water quality impacts to Standley Lake from development in western Arvada. The recently completed Church Ditch storm water bypass project offers significant water quality benefits to Standley Lake by capturing surface water runoff during storms. The captured stormwater will then be diverted around Standley Lake via the Church Ditch. At approximately 100th Avenue and Simms Street, the captured storm water will be diverted to the new ditch and run to Big Dry Creek across Standley Lake park land.

In order to operate and maintain the recently completed diversion ditch, the Church Ditch Water Authority has requested a non-exclusive easement agreement with the City of Westminster. This easement agreement would accommodate the placement of the diversion ditch along the northern boundary of the Standley Lake Regional Park. In addition, the easement agreement would allow for non-exclusive access by the Church Ditch Water Authority for purposes of operation and maintenance of the related facilities. Placement of this diversion structure and ditch were coordinated with Westminster staff and design was completed to minimize impacts to both the Park's operations as well as eventual modifications to 100th Avenue and the Simms Street intersection.

This project helps achieve the City Council's Strategic Plan Goal of Safe and Secure Community by providing facilities that help ensure the highest quality drinking water supply for the City of Westminster. It also contributes to the City achieving a Beautiful and Environmentally Sensitive City by planning for the ongoing and future protection of Standley Lake.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**NONEXCLUSIVE
EASEMENT AGREEMENT**

THIS NONEXCLUSIVE EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__, by and between the City of Westminster, Colorado, (hereinafter referred to as "Grantor"), the owner of real property commonly described as the Standley Lake Reservoir lands, and the Church Ditch Water Authority, a body corporate and politic (hereinafter referred to as "Grantee").

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of ten dollars (\$10.00) to Grantor in hand paid by Grantee, receipt of which is hereby acknowledged, and in consideration of the mutual covenants contained herein, Grantor hereby grants, bargains and sells to Grantee, its successors and assigns, a nonexclusive access easement as more fully described and depicted in **Exhibit A** across Grantor's property for the purpose of accessing Grantee's bypass structure (the "Bypass Structure"), which Bypass Structure is necessary for the operation, and maintenance of Grantee's ditch, commonly referred to as the Church Ditch; use of said easement shall be at Grantee's cost and expense, and at no cost or expense of Grantor.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED by and between Grantor and Grantee as follows:

1. Grantor specifically retains the right to the undisturbed use and occupancy of the property more particularly described in **Exhibit A**, insofar as such use and occupancy is consistent with and does not impair any grant or agreement contained herein, and the described property remains in a condition which allows Grantee to access the Bypass Structure as provided herein. By the grant of this easement, Grantee also shall have the right to construct, repair, remove, replace, and permanently maintain a continuous access way for vehicular and pedestrian ingress and egress upon, over, through, and across the property described in **Exhibit A**.

2. Grantor, its successors and assigns, agrees not to construct any permanent structures or fixtures upon the nonexclusive easement in a manner that will impair the use thereof by the Grantee. Grantor further agrees that livestock and horses shall not be allowed upon the nonexclusive easement, and such uses shall also constitute an interference with the easement rights granted herein. Grantor, for itself and for its successors and assigns, covenants and agrees that none of those above-referenced obstructions and interferences with the easement will be placed, erected, or installed on the easement. In addition, Grantor its successors and assigns, agrees not to obstruct the nonexclusive easement in any manner so as to prevent Grantee from utilizing the easement for its lawful purpose of operating and maintaining the Bypass Structure and the Church Ditch, which purpose includes Grantee's need for a continuous access way as set forth in Paragraph 1 of this Agreement.

3. Grantee covenants and agrees that following any construction, maintenance, or other activity by it or its agent that involves disturbance of the surface of the ground, Grantee shall restore the surface of the ground it may disturb in the course of exercising any of its rights under this Easement to substantially the same condition that existed prior to its use, including landscaping, fences, or other improvements, to a level comparable with the original condition. At a minimum, Grantee agrees to fulfill the conditions for re-vegetation and restoration specified in Exhibit B, attached hereto and incorporated herein by reference.

4. In the event Grantee abandons its rights herein granted and ceases to use the same, all right, title and interest hereunder of Grantee shall cease and terminate and Grantor shall hold said premises, as the same may be, free from the rights so abandoned and shall own all material and structures of Grantee so abandoned. If Grantee abandons its rights under this Agreement, Grantee agrees to execute and acknowledge an instrument evidencing its abandonment suitable for recording.

5. Grantor warrants that it has full right, title and lawful authority to grant the easement herein, and to make and enforce the promises herein, subject to existing easements, restrictions, and rights-of-way of record.

6. The word "Grantor" as used herein, whenever the context requires or permits, shall include the heirs, personal representatives, beneficiaries, successors, grantees, and assigns of each of the owners of the land through which the easement runs or the respective owners from time to time of portions thereof. The burdens and benefits of this Agreement shall be deemed covenants running with said easement and said land. Notwithstanding any contrary provision in this Agreement, however, any obligation under this Agreement which is to be performed by the owner of any land which is burdened by this Agreement shall be enforceable only against the then owner of such land, and not against any such owner's predecessors in interest.

7. The terms and provisions of this Agreement, except as qualified above, shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, beneficiaries, successors, grantees and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed the within Agreement as of the day and year first above written.

CITY OF WESTMINSTER, COLORADO

By: J. Brent McFall, City Manager

ATTEST:

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and _____.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

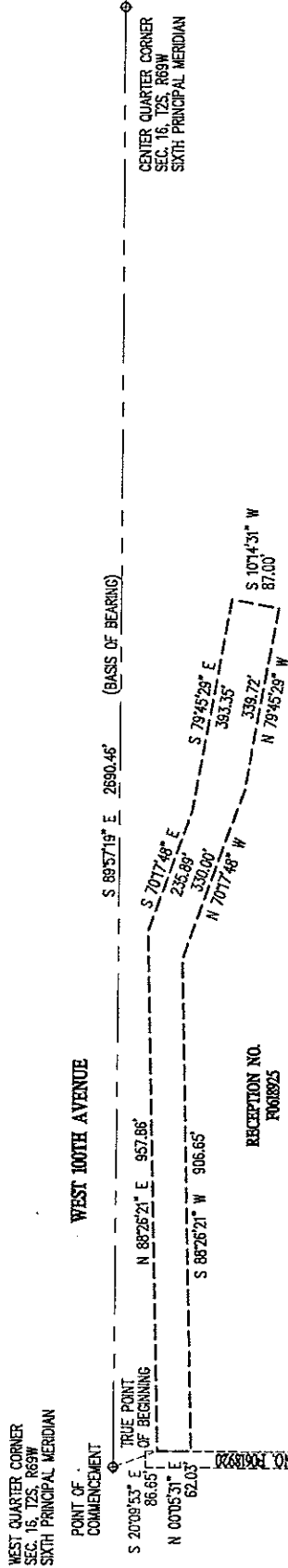
Notary Public

Approved at to Legal Form

By: *Janet H. Greenfield*
Westminster City Attorney

EXHIBIT A

AN ACCESS AND MAINTENANCE EASEMENT
 LOCATED WITHIN SECTION 16, TOWNSHIP 2 SOUTH,
 RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
 CITY OF WESTMINSTER, COUNTY OF JEFFERSON,
 STATE OF COLORADO



DESCRIPTION:

AN ACCESS AND MAINTENANCE EASEMENT LOCATED WITHIN THE PARCEL OF LAND RECORDED UNDER RECEPTION NO. F0618925, SECTION 16, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 16, WHENCE THE CENTER QUARTER CORNER THEREOF IS ASSUMED TO BEAR S 89°57'19" E, 2690.46 FEET WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, THENCE S 20°09'53" E, 86.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 88°26'21" E, 957.66 FEET; THENCE S 70°17'48" E, 235.89 FEET; THENCE S 79°45'29" E, 393.35 FEET; THENCE S 10°14'31" W, 87.00 FEET; THENCE N 79°45'29" W, 339.72 FEET; THENCE N 70°17'48" W, 330.00 FEET; THENCE S 88°26'21" W, 906.65 FEET TO A POINT ALONG THE EAST LINE OF THE PARCEL DESCRIBED UNDER RECEPTION NO. F0618920; THENCE ALONG SAID EAST LINE N 08°05'31" E, 62.03 FEET TO THE TRUE POINT OF BEGINNING.



SCALE: 1"=200'
 DATE: 05.13.2008

C.C.S. CONSULTANTS, INC.
 4660 Robb Street, Suite 101
 Wheat Ridge, Colorado 80033
 303-409-4706 Fax: 303-403-0800

EXHIBIT B

Restoration and Revegetation Conditions

1. Reseed in accordance with the attached Seeding specs.
2. Construction fencing and silt fencing is required along the temporary construction easement to protect open space until construction is complete. Silt fencing will remain in place until seed is established.
3. Grantee is responsible for irrigating the areas until the seed is established, as approved by the City.

Attachment to Exhibit B

City of Westminster Open Space Revegetation Specifications

A. SEED TYPES

Seed Mix – Perennial Cover

<i>Species</i>	<i>Common Name – Variety</i>	<i>Rate-PLS lb/ac*</i>
GRASSES		
<u>Bouteloua curtipendula</u>	Sideoats Grama	4.80
<u>Bouteloua gracilis</u>	Blue grama – Alma or native	12.40
<u>Buchloe dactyloides</u>	Buffalograss – Native	16.00
<u>Calamovilfa longifolia</u>	Prairie Sandreed	7.20
<u>Schizachyrium scoparium</u>	Little Bluestem	4.80
<u>Sporobolus airoides</u>	Alkali Sacaton – Native	4.80

*Rate for seed drilling; PLS – PURE LIVE SEED (Bulk rate – PLS rate/(%purity x % germination)).

B. SEEDING RATE

Seeding shall be done at a rate of 50 PLS/ac.

C. PURITY

Grass seed specified will confirm with all current state regulations regarding weed seed content and will meet the required pure live seed content as adjusted for batch purity and germination.

D. SOIL AMENDMENTS

Upon approval of the seedbed, apply Biosol Mix 7-2-3, or approved equal, at the rate of 25 lbs/1000 sf mixed with Menefee Granular Humate, or approved equal, at a rate of 5 bls/1000 sf. In addition, incorporate 3 yds of compost to an 8” depth, per 1000 sf. The City of Westminster shall approve soil amendment application prior to seeding.

E. MULCH

Mulch is required to conserve moisture, prevent crusting, reduce runoff and erosion and help establish a plant cover. The need for mulch will be at the sole discretion of the City of Westminster. Mulching material shall be applied immediately or immediately after seeding. One of the mulching methods listed below will be acceptable:

Areas under one acre: application of hydro-mulch (wood fibers in a water slurry) – minimum rate of 2,000 lbs/acre. A guar-based tackifier shall be included in the hydro-mulch.

Areas over one acre: grain straw shall be used at an application rate of 4,000 lbs/acre of air dried material. At least 50-percent of the mulch by weight shall be 10 inches or more in length. Mulch shall be anchored immediately after distributing with a mulch crimper, and tackifier.

F. GRADING / SEEDBED PREPARATION

In general, graded areas will match the undisturbed surface elevations ensuring positive drainage. In areas of pipeline installation grades over the pipe itself may be slightly elevated where the project engineer may believe that settling is likely to occur. Upon establishment of approved grades, the soil surface shall be loosened by rototilling to a minimum depth of 8 inches, and all materials over 2 inches in diameter shall be removed. The organic matter shall be evenly spread over the entire surface at the rate specified, and shall be mixed thoroughly into the soil surface to a depth of 8 inches by means of a rototiller, soil mixer or similar equipment. The surface shall then be finish-graded and compacted to the approved elevations. Prior to seeding, Biosol Mix combined with Humate as described above shall be applied. Seedbed preparation shall be approved by the City of Westminster prior to the installation of seed or soil amendments.

G. SEEDING

Dry land seeding, sometimes referred to as “native” seeding, shall be accomplished with mechanical power-drawn drills which have depth bands set to maintain a planting depth between ¼ inch and ½ inch and shall be set to space the rows not more than 2 inches apart. In addition, the drill will be equipped with multiple seed boxes from which large smooth, small smooth, and appendaged (i.e. fluffy or trashy) seed can be metered evenly. Seed that is extremely small shall be sowed from a separate hopper adjusted to the proper rate of application. When requested by the contracted and approved by the City, seeding may be accomplished by means of approved broadcast or hydraulic-type seeders. Seed shall not be drilled or sown during windy weather or when the ground is frozen or otherwise untellable.

All seed sown by broadcast-type seeders shall be “raked in” or otherwise covered with soil to a depth of at least ¼-inch. Hand method of broadcasting seed will be permitted only on small areas not accessible to machine methods. If inspections indicate that strips are wider than the specified space between the rows planted have been left or other areas skipped, the City may require immediate resowing of seed in such areas at the contractor’s expense.

During all seeing operations, proper functioning of the seed drill will be demonstrated to the Satisfaction of the City of Westminster upon request.

H. IRRIGATION

All disturbed areas shall be irrigated temporarily by a method approved by the City of Westminster. Temporary irrigation shall remain in place for a period of at least one growing season. Removal or discontinuation of temporary irrigation shall be approved by the City of Westminster.

I. WEED MANAGEMENT

In the two years following seeding, seeded areas will be monitored to assess the presence of serious weeds that require eradication or other treatment. Manual control will be undertaken where species and circumstances allow. However, chemical treatment may become necessary in some areas, to be determined by the City of Westminster.

J. ACCEPTANCE

Acceptance of seeding shall be a condition of this Easement Agreement. A minimum of 80% coverage will be required, with no visible bare spots.



Agenda Item 8 M

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Second Reading Councillor's Bill No. 1 re Shoenberg Farm Dairy Barn Rehabilitation Grant Supplemental Appropriation

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 1 on second reading appropriating funds received from the State Historical Fund in the amount of \$300,000 for the City's rehabilitation of the Shoenberg Farm dairy barn.

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 \$300,000 for the rehabilitation of the Shoenberg Farm dairy barn, located at the 5202 West 73rd Avenue west of Sheridan Boulevard.
- In order to complete this acquisition, the City is required to contribute a cash match of up to \$117,879, which will be borrowed from the Colorado Historical Foundation. The funds for annual debt service in the amount of \$15,000 were approved as part of the 2009 Budget.
- This Councillor's Bill was passed on first reading on January 26, 2009.

Expenditure Required: \$ 300,000

Source of Funds: State Historical Fund Grant

Respectfully submitted:

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

SERIES OF 2009

COUNCILLOR'S BILL NO. **1**

INTRODUCED BY COUNCILLORS
Briggs - Winter

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3432 is hereby increased by \$300,000. This appropriation is due to the receipt of state grant funds.

Section 2. The \$300,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item #10C, dated January 26, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$300,000</u>
Total	<u>\$300,000</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 26th day of January, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9th day of February, 2009.

ATTEST:

Mayor

City Clerk



Agenda Item 10 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Resolution No. 4 re Recovery Contract Interest Rate

Prepared By: Frances A. Velasquez, Secretary

Recommended City Council Action

Adopt Resolution No. 4 establishing the 2009 calendar year interest rate for non-City funded public improvement recovery contracts at 5.25 percent and an interest rate of 5.24 percent for City-funded public improvements.

Summary Statement

- In accordance with Section 7(F) of Title XI, Chapter 6, of the City Code, Staff requests that City Council establish interest rates on recovery agreements for 2009. For more than 15 years, it has been City practice to add two percent to the Prime Rate for non-City funded recovery contracts. The Prime Rate on January 1, 2009, was 3.25 percent. It is proposed that the recovery interest rate for 2009 on non-City funded public improvements be the Prime Rate plus two percent, or 5.25 percent.
- Staff is proposing that the recovery interest rate on City-funded projects for 2009 be set at 5.24 percent in accordance with the average Bond Buyer 20 Index for 2008, which is consistent with the methodology used to set the rate for the past four years.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the City Council concur with the proposed methods of assessing interest on recoveries associated with new private developments and City-funded projects?

Alternative

Council could establish a different interest rate for recovery agreements than the proposed rates. This is not recommended as the proposed rates are tied to the established indexes that provide good credibility for recovery interest paid to developers or the City.

Background Information

Several years ago, City Council established a recovery system that enables developers to recover a portion of certain costs associated with public improvements installed with their developments that also benefit adjacent, undeveloped properties. Recovery contracts are executed between the City and the developer. When subsequent development occurs in those areas benefited by the improvements installed by the original developer, the new development is assessed its proportionate share plus interest, which is then returned to the original developer. The recovery system has also allowed the City to be reimbursed for public improvements installed by the City when subsequent private development occurred abutting the improvements.

Prior to 1993, the interest rate used in calculations for recoveries owed on City-funded public improvements was equal to that used on privately funded improvements (i.e., prime rate plus two percent). However, the actual cost of money used to fund City Capital Improvement Projects is usually less than that charged to private developers. Since the philosophy behind the City's recovery system is one of cost reimbursement, not profit making, in the past City Council has felt that it is more equitable to select an interest rate for City-funded projects that more closely approximates the actual cost of money to the City. From 1993 through 2004, Council approved the use of the Municipal Bond Index as the recovery interest rate for City projects. Because this Index is set weekly and can fluctuate greatly throughout the year, Staff proposed a different approach four years ago. In 2005, Council selected the average Bond Buyer 20 Index for the preceding year as a more representative benchmark of the City's true cost of borrowing money. Staff recommends that this method of calculating the interest rate for recoveries associated with City-funded projects be used again this year.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. 4

INTRODUCED BY COUNCILLORS

SERIES OF 2009

ESTABLISHING THE 2009 RECOVERY CONTRACT INTEREST RATE

WHEREAS, Section 11-6-7 (F) 1 of the Westminster Municipal Code provides that City Council shall, from time to time, establish the interest rates to be utilized for the assessment of interest costs relating to recovery costs for public improvements; and

WHEREAS, such interest rates have traditionally been calculated at the beginning of each calendar year.

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster that the 2009 calendar year interest rate for any non-City funded public improvement recovery contract shall be 5.25 percent and the 2009 calendar year interest rate for City-funded public improvements shall be 5.24 percent.

PASSED AND ADOPTED this 9th day of February 2009.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney



Agenda Item 10 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Resolution No. 5 re 2009 Great Outdoors Colorado Grant Contract

Prepared By: Kathy Piper, Landscape Architect II
Rich Dahl, Park Services Manager

Recommended City Council Action

Adopt Resolution No. 5 authorizing the City Manager to execute a grant agreement with Great Outdoors Colorado (GOCO) for a \$200,000 grant for the development of Westminster Center Park.

Summary Statement

- On December 16, 2008, the Department of Parks, Recreation and Libraries received a \$200,000 grant from Great Outdoors Colorado for the development of Westminster Center Park.
- Staff recommends executing the attached agreement with Great Outdoors Colorado for this \$200,000 grant. This will increase the Westminster Center Park CIP budget of \$1.9 million to \$2.1 million for development of this 9.5-acre park site to include a plaza with a water feature, amphitheater shelter, playground, plumbed restroom, walking paths, parking and landscaping.
- Initial cost estimates for this project exceed the \$1.4 million budgeted amount approved by City Council in 2008. Therefore, besides this GOCO grant, Staff is also pursuing several options including a grant request from Adams County Open Space and the Department of Local Affairs, in addition to possible phasing of the project.

Expenditure Required: \$2,100,000

Source of Funds: POST Bond Funds and 2008 CIP Carryover Funds

Policy Issue

Should the City execute a grant agreement with Great Outdoors Colorado for the development of Westminster Center Park?

Alternative

Council could choose not to execute the grant agreement for additional funding for Westminster Center Park, forfeiting the \$200,000 grant, and proceed with the existing CIP project budget of \$1.9 million. Staff does not recommend this as entering into this agreement with GOCO and receiving additional funding will allow for an additional component(s) to be added to the park.

Background Information

The Department of Parks, Recreation and Libraries has been successful in applying for and receiving grants from a variety of sources in the past. The City has received grant money from Great Outdoors Colorado for park development projects, with Sensory Park (1999) being the most recent project receiving GOCO funding. The GOCO grant is limited to a maximum of \$200,000 for any type of request regarding new park construction. No work can start until grants are awarded and the contract signed. Staff strongly believes that this additional funding will help facilitate development of Westminster Center Park.

A copy of the contract with GOCO has been provided for City Council's review and has been reviewed by City Attorney's office. Two items of note are: (1) Paragraph 6.c requires that no easements or encumbrances exist or may be placed on the property; and (2) Paragraph 11.c requires a Restrictive Covenant for a period of 25 years be recorded with the County in which the property is located. Both of these items have been part of past awards, however, GOCO is now requesting formalized documentation.

The Westminster Centre Park development project supports City Council's Strategic Plan goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **5**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION
SUPPORTING THE GRANT AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND
THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND FOR THE
2008 GREAT OUTDOORS COLORADO GRANT PROGRAM**

WHEREAS, the City of Westminster supports the completion of the Westminster Center Park;
and

WHEREAS, the City of Westminster has received a grant from Great Outdoors Colorado to fund
the Westminster Center Park, subject to the execution of the grant agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE City Council of the City of Westminster:

SECTION 1: The Westminster City Council hereby consents to the terms of the grant agreement with
Great Outdoors Colorado and authorizes the City Manager to sign same.

SECTION 2: The Westminster City Council hereby authorizes the expenditure of funds as necessary to
meet the terms and obligations of the grant agreement and application.

SECTION 3: This resolution to be in full force and effect from and after its passage and approval.

PASSED AND ADOPTED this 9th day of February 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

93rd AVE.

CITY CENTER DRIVE

- OFF STREET PARKING (54 SPACES)
- DROP-OFF
- PLAYGROUND
- BLUEGRASS MEADOW (TYP)
- SEMI-CUSTOM SHELTER/RESTROOM
- OFF STREET PARKING (29 SPACES)
- WATER FEATURE
- PLAZA
- CONCRETE WALKS (TYP)
- SEMI-CUSTOM SHELTER/STAGE
- AMPHITHEATER SEATING
- SPECIAL PAVING (TYP)
- MONUMENT (TYP)
- 92nd AVE. UNDERPASS (FUTURE-BASED ON AVAILABLE FUNDING.)

XAVIER ST.

92nd AVE.

NOTE: IMPLEMENTATION OF IMPROVEMENTS SHOWN IS BASED ON AVAILABLE AND FUTURE FUNDING.

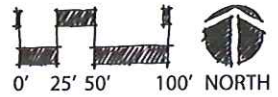
CITY HALL

WESTMINSTER CENTER PARK

SITE MASTER PLAN

ARCHITERRA GROUP/
CHEVO STUDIOS

3-12-08



GRANT AGREEMENT

DATE: January 9, 2009

PROJECT:

Project Title: Westminster Center Park
a. **Contract Number:** 09083
b. **Project Location:**
Completion Date: December 16, 2010

PARTIES TO AGREEMENT:

Board: The State Board of the Great Outdoors Colorado Trust Fund
Address: 1600 Broadway, Suite 1650
Denver, CO 80202
Telephone: (303) 226-4500
Facsimile: (303) 863-7517

Grantee: City of Westminster
Address: 4800 W. 92nd Avenue
Westminster, CO 80031
Contact Name: Kathy Piper
Contact Title:
Telephone: (303) 430-2400
Facsimile: (303) 428-4564

RECITALS

A. The State Board of the Great Outdoors Colorado Trust Fund (referred to herein as "GOCO" or the "Board") is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November 1992 General Election, which article appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the State's parks, wildlife, open space and recreational resources.

B. In 1994, the Board created a statewide grant program, pursuant to which eligible entities could apply for grants for local government parks and outdoor recreation projects to which Grantee responded with a detailed application (the "Project Application").

C. Grantee submitted a Project Application to the Board which contemplates the execution of the project entitled and described above (the "Project"), a copy of which Project Application is incorporated by reference and attached as Appendix A.

D. The Board approved Grantee's Project Application on December 16, 2008, subject to the execution of a detailed grant agreement, and subject to the terms and conditions set forth herein. For purposes of this Agreement, the "Project" shall be defined as the project described in the Project Application, as the same may be modified pursuant to the terms of this Agreement.

E. The parties intend this agreement to be the detailed final grant agreement required by the Board (the "Agreement").

AGREEMENT

NOW, THEREFORE, in consideration of the parties' mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the terms of this Agreement.
2. **Grant and Project.** Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed \$200,000.00 (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.
3. **Project Scope.** Grantee shall not materially modify the Project without the prior written approval of the Executive Director of GOCO ("Executive Director"), such approval to be in GOCO's sole discretion. Any material modification to the Project undertaken without GOCO's prior written consent may be deemed a breach of this Agreement by GOCO, entitling GOCO to all remedies available under this Agreement.
4. **Grantee Efforts.** Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and GOCO's approvals related to the Project.
5. **Matching Funds.** Except as otherwise specifically provided under Paragraph 7c, below, prior to funding of the Grant by GOCO, Grantee shall obtain the matching cash and in-kind contributions for the Project as described in the Project Application and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require in its discretion from time-to-time.
6. **Representations and Warranties of Grantee.**
 - a. Grantee is a municipality, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement;
 - b. Grantee's City Council, has authorized entering into this Agreement as evidenced by the resolution attached hereto as Appendix B;

c. Grantee has fee simple title to the property on which the Project is to be located (the "Property"), as evidence by the documentation attached hereto as Appendix C, and no other restrictions, liens, easements, rights of way, encumbrances or other matters have been made of record against the Property. GOCO may require Grantee to provide an Ownership and Encumbrance report satisfactory to GOCO in GOCO's discretion prior to funding. If the Property is not under control of Grantee, the Intergovernmental Agreement attached hereto as Appendix I, between Grantee and the property owner submitted with the Project Application and attached hereto as Appendix A continues in effect and unmodified; and,

d. No material modifications have been made to the Project Budget (the "Budget") and Project Timeline (the "Timeline") for this Project (which are attached hereto and incorporated herein as Appendix D and Appendix E respectively). Grantee hereby agrees to promptly submit all material revisions to their Budget and Timeline for advanced written approval by GOCO, which approval shall be in GOCO's sole discretion. As provided further below, the Board reserves the right at any stage of the Project to withhold funding if (i) modifications to the Project are so substantial as to make it, in the Board's judgment, substantially different in quality or kind from that approved by the Board under this Agreement, or (ii) delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;

7. **Information to be Provided Prior to Disbursement of Funds.** Except as set forth in Paragraph 7.f., below, prior to any disbursement by the Board of any grant funds for the Project, the Grantee must provide the Board with the following:

a. Written certification from the Grantee that the Project has been completed according to the Budget, the Timeline and in accordance with applicable governmental requirements, along with delivery of the Final Report project expenditure documentation detailed in Appendix F (the "Project Expenditure Documentation"), and such other reports or documentation as may be required hereunder or as otherwise determined in the discretion of GOCO;

b. Written certification from the Grantee that the matching funding has been received as outlined in the Budget;

c. Written certification from the Grantee that the representations made to the Board in the Project Application continue to be true (or, if there have been any material changes, the Board has been advised of such changes and has consented to such changes);

d. All permits and approvals required for completion of the Project under applicable local, state and federal laws and regulations have been obtained;

e. Special Project Conditions: N/A

f. In any case where the applicant has requested to receive reimbursement prior to the commencement of work on a project, the advanced payment is considered to be a loan, until the total project is complete and the final report documentation has been submitted and approved. Once completed and approved the payment will be considered as a grant payment.

8. **Conditions for Disbursement of Funds.** Except as provided in Paragraph 9, below, the Grant funds hereunder are subject to the following requirements and conditions:

a. The Grant funds shall only be used for the acquisition of fixed assets, including land acquisition, construction of new facilities, and enlargement or renovation of existing facilities. Funding may not be used to pay for maintenance costs, design costs, administrative costs (such as salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as athletic equipment), or any other costs deemed to be ineligible by the Board. However, up to 50% of the total design, engineering and/or architectural costs may be used toward the match as described in the Project Application.

b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.). A reduction in total Project cost or a reduction in Grantee's matching funding may result a proportional reduction in the grant award in GOCO's sole discretion. GOCO may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

c. Except as otherwise agreed to in advance by GOCO in accordance with the terms of this Agreement, no material modifications have been made to, or material delays in the Timeline experienced by, the Project.

d. Full and final payment of the Grant funds will be made to Grantee upon completion of the Project, and submission and approval of the Project Expenditure Documentation and such other information as is required under this Agreement, including without limitation, the information required under Paragraphs 6 and 7, above.

e. Grantee shall submit a written request for reimbursement as outlined in the Project Expenditure Documentation prior to the completion date. Projects are considered completed when all anticipated land has been acquired, and all facilities, trails or other improvements included in the Project as approved have been built and are ready for their intended use. Failure to submit the request for reimbursement within the specified time period may result in reduction or loss of grant dollars even if there are undisbursed amounts remaining in the Grant.

9. **Waiver.** The Executive Director or the Executive Director's designee may in such person's discretion, waive or agree to modify one or more of the obligations in sections 6, 7 or 8 of the Agreement, or may permit performance of one or more of such obligations subsequent to disbursement.

10. **Payment of Grant.** Subject to GOCO's determination in its sole discretion that it has received and has available sufficient net lottery proceeds to fund the Grant and subject to the provisions of Section 19 of this Agreement and upon satisfaction of all the conditions set forth in Paragraphs 6, 7 and 8 hereof, the Board shall disburse the funds for the Grant as follows:

\$200,000.00 during the quarter from November to December of 2009.

In determining the sufficiency of net lottery proceeds, GOCO may consider all facts and circumstances as it deems necessary or desirable in its discretion, including, but not limited to, adequate reserves, funding requirements and/or commitments for other past, current and future grants, and past, current and future GOCO operating expenses and budgetary needs.

This reimbursement schedule is a reflection of the scenario chosen by City of Westminster for payment on the Westminster Center Park project, #09083.

11. **Project Operation and Maintenance. Grantee agrees:**

a. The Grantee will operate and maintain the Project in a reasonable state of repair for the purposes specified in the Project Application for a period of 25 years from the date of completion of the Project or the useful life of the project, in accordance with product warranties and/or the generally accepted standards in the parks/recreation/wildlife community. GOCO shall not be liable for any cost of such maintenance, management or operation. Failure to operate and maintain the Project in accordance with the terms hereof may be deemed a default by Grantee under Paragraph 21, below.

b. Within 60 days of request, Grantee will provide the Board with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project as the Board may reasonably request.

c. The Board *requires* that a Restrictive Covenant for a period of 25 years be executed by the parties in the form attached hereto as Appendix G, which shall, upon completion of the project and/or acquisition of the Property by the Grantee, (but in any event prior to the provision of final funding hereunder by GOCO), be recorded in the real estate records for the County in which the Property is located, and which shall require that the Property and the Project be used for the 25 year period, or the useful life of the project, in accordance with product warranties, for the purposes set forth in the Application and approved hereunder.

12. **Public Access.** Grantee agrees, for itself and its successors in interest, to allow reasonable access to the members of the public to the Project.

13. **Compliance with Regulatory Requirements and Federal and State Mandates.** The Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive

bidding, and other similar requirements. To the extent permitted by law, the Grantee will indemnify and hold the Board harmless from any liability for any failure to comply with any such applicable requirements.

14. **Nondiscrimination.** During the performance of this Agreement, the Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, the Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

15. **Publicity and Project Information. Grantee agrees:**

a. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project;

b. Grantee shall cooperate with the Board or the Board's designee in advance in preparing public information pieces related to the Project;

c. Grantee shall give the Board the right and opportunity to use information gained from the Project;

d. Grantee shall erect and maintain a sign at a prominent location on the Project site acknowledging the assistance of Great Outdoors Colorado and the Colorado Lottery. Such signs can be obtained through Great Outdoors Colorado, or the Board will provide reproducible samples of its logo to the Grantee for custom signs.

i. Any permanent sign(s) design materially varying from the signs provided by GOCO shall be approved in advance by GOCO. To obtain such approval, Grantee shall submit to GOCO plans describing the number, design, placement, and wording of signs and placards shall be submitted to the Board for review and approval prior to completion of the Project.

ii. Final payment may be withheld by the Board pending placement of permanent signage and photographs submitted in the manner approved by the Board;

e. Grantee shall give the Board a minimum 30-day notice of an opportunity to participate in Project dedications.

f. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials;

g. Grantee shall provide quality photographs or slides of the completed Project upon request of GOCO; and

h. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

16. **Liability.**

a. Grantee shall be responsible for, and to the extent permitted by law (including any constitutional or statutory limitations on the ability of a governmental entity to provide indemnification), indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its members, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner of the Project and the Property upon which it is located, or has control of the Project and the Property, and that GOCO neither possesses nor controls the Project, the Property, nor the operations of the Project.

b. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Board under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This provision may apply to the Grantee if the Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq. The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

17. **Audits and Accounting.** Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by the Grantee for not less than five (5) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to the Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of Board funds. While the Grantee is not required to use GAAP (Generally Accepted Accounting Principles), the Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

18. **Inspection.** Throughout the term of this Agreement (25 years from date of this Agreement, unless otherwise agreed in writing), GOCO shall have the right to inspect the Project area to ascertain compliance with this Agreement.

19. **Withdrawal of Board Funding; Termination of Agreement.** Anything else in this Agreement or otherwise to the contrary notwithstanding, the Board may withdraw funding for the Project and/or terminate this Agreement if the Board determines in its discretion that (A) facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical; (B) any material changes in the scope or nature of the Project have occurred from that which was presented in the Project Application (and such material change(s) has not received the prior written approval of GOCO), (C) any statement or representation made by the Grantee in the Project Application or this Agreement is untrue, inaccurate or incomplete in any material respect, (D) the results of GOCO's Project Expenditure Documentation review are not acceptable to GOCO; (E) GOCO determines in its discretion that the Project cannot be completed within the Timeline or any extensions granted thereto, or within the Budget or any modifications granted thereto; or (F) sufficient net lottery proceeds are not available to fund the Project.

20. **Completion Date.** Grantee shall complete the project no later than (December 16, 2010) (the "Completion Date") which is two calendar years after the Board's approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO's Overdue Grant Policy, a copy of which is attached as Appendix H ("Overdue Grant Policy"). In addition to other rights set forth in this Agreement, the Board may elect to terminate this Agreement and deauthorize the Project in the event this Completion Date is not met or an extension is not sought and/or granted as provided by the Overdue Grant Policy. If the Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, the Grantee will promptly so advise the Board, and cooperate in good faith with respect to alternative solutions to the problem before any further funds are advanced.

21. **Breach.** In the event that the Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, the Board may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:

- a. Prior to payment of Grant:
 - i. Withdraw the Grant and terminate this Agreement; and,
 - ii. Deny the Grantee eligibility for participation in future Board grants, loans or projects.
- b. After payment (partial or full) of Grant:
 - i. Deny the Grantee eligibility for participation in future Board grants, loans or projects;

- ii. Seek specific performance of the Grantee's obligations under this Agreement;
- iii. Receive reimbursement in full of the original Grant,

The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. In the event GOCO must pursue any remedy hereunder and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

22. **Good Faith.** There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information, which may reasonably be believed to be material to the other party.

23. **Assignment.** Grantee may not assign its rights under this Agreement without the consent of the Board, which consent shall be in the discretion of the Board. Any assignment shall require, at a minimum, that the assignee assume Grantee's ongoing obligations under this Agreement.

24. **Applicable Law.** This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the State Courts of the City and County of Denver.

25. **No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties hereto other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

26. **Severability.** If any provision of the Grant Agreement, or the application thereof is found to be invalid, the remainder of the provisions of this Grant Agreement, or the application of such provision other than those as to which it is found to be invalid, shall remain in full force and effect.

27. **Time is of the Essence.** Time is of the essence in this Agreement.

28. **Survival.** The terms and provision of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the acquisition of the real property interest by Grantee.

29. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy as if they were original signatures.

30. **Third Party Beneficiary.** The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third party beneficiaries are intended.

31. **Construction.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

32. **Waiver.** The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.

33. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties in this Agreement.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the ___ day of _____ 2009.

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

GRANTEE:
City of Westminster

By: _____
Lise Aangeenbrug
Executive Director

By: _____
Name: _____
Title: _____



Agenda Item 10 C&D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Resolution No. 6 re Year-End Contingency Transfers and
Councillor's Bill No. 2 re FY2008 Budget Amendment

Prepared By: Aric Otzelberger, Management Analyst

Recommended City Council Action

1. Adopt Resolution No. 6 authorizing the transfer of \$82,000 from the 2008 General Fund contingency account into various operating budgets.
2. Pass Councillor's Bill No. 2 on first reading amending the FY2008 budgets of the General Fund, Fleet Maintenance Fund and General Capital Improvement Fund.

Summary Statement

- No contingency transfers are being requested into any other of the City's funds.
- These actions are part of the routine year-end housekeeping functions to address certain unanticipated expenses in various budget accounts that could not be absorbed within the operating budget. Each year, contingency funds are budgeted for unanticipated expenses that cannot be absorbed within the adopted operating budget such as the ones included in this agenda memorandum.
- Funds for these transfers are available in the General Funds contingency account. The balance in the General Fund contingency account, prior to these transfers, is \$1,000,000, leaving a balance of \$918,000 to be carried over to 2009.

Expenditure Required: \$82,000

Source of Funds: General Fund Contingency Account

Policy Issue

Should the City Council appropriate and transfer General Fund contingency money to offset the identified unanticipated operating costs explained within this agenda memorandum?

Alternative

City Council could choose not to move any contingency funds to offset these additional expenses. Staff does not recommend this option as not appropriating these funds may cause the Fleet Maintenance Fund to end the year over budget. Also, per the 2008 Budget Retreat, City Council gave Staff direction to bring \$10,000 in a 2008 year-end contingency request to fund the Westminster Commemorative 100th Anniversary of Incorporation Photo Book.

Background Information

During budget development each year, City Council appropriates money in the City's General Fund that is designated as contingency funding. In 2008, City Council appropriated \$1,000,000 in contingency funding in the General Fund. Contingency is funding set aside in the budget to act as an operating reserve for unanticipated expenditures. Over the course of a year, special projects, studies, weather impacts (dry summers, heavy snows, etc.) and other activities that cannot be anticipated occur, negatively impacting departments' operating budgets. Under these special circumstances, Staff recommends the use of contingency funds to cover these expenses.

At year-end, departments review their respective budgets to identify where they can absorb any unanticipated expenses. However, if, after reviewing all accounts within a department, the department finds that it cannot absorb these additional costs, the department forwards a request to the City Manager's Office to review and make recommendations to the City Council for the transfer of contingency funds to cover these expenses. No year-end contingency fund transfer requests were made in 2007.

The transfers requested from the 2008 General Fund's contingency account are outlined below:

Transfer from the General Fund into the Fleet Maintenance Fund:

\$72,000 This amount is needed in the Fleet Maintenance Fund due to several factors. During the first three quarters of 2008, the City experienced a significant increase in expenses for commodities, especially for all petroleum-based products and parts with metal components. Although the City was able to secure a lock in fuel prices below market prices, the Fleet operation was impacted by cost increases for oil and other lubricants, tires and parts. The other major factor for the shortfall in Fleet centered on unexpected and higher-than-anticipated costs for contracted repairs. These repairs included the rebuild of the engine in a Cat Loader (\$11,500), the replacement of rear suspension springs and the repair of frame and body damage on four Fire Department trucks (\$54,000), the rebuild of twelve transmissions (\$38,000) and suspension repairs on eleven City vehicles (\$25,000). This action will require an ordinance for City Council action since it is officially moving money across funds (i.e., from the General Fund into the Fleet Maintenance Fund).

In order to address these unanticipated costs and to balance the 2008 budget for the Fleet Maintenance Fund, it is necessary to transfer \$172,000 into the Fleet Maintenance Fund. The proposed action in this agenda memorandum would transfer \$72,000 in General Fund contingency into the Fleet Maintenance Fund. As part of the City's 4th quarter 2008 supplemental appropriation that will be presented to City Council on February 23, Staff will propose transferring \$100,000 in savings from the General Fund budget of the General Services Department to address the remaining shortfall in the Fleet Maintenance Fund.

\$72,000 FLEET MAINTENANCE FUND TOTAL

Transfer from the General Fund into the General Capital Improvement Fund:

\$10,000 This transfer would fund a Westminster Commemorative 100th Anniversary of Incorporation Photo Book project. At City Council’s 2008 Budget Retreat, City Council directed Staff to fund this project at the end of 2008 through a contingency transfer from the General Fund. Per City Council’s direction, Staff is now presenting this item for official Council action in order to fund this project. The Photo Book project was a 2008 citizen budget request. Members of the Westminster 100th Anniversary Book Committee, including Bob Briggs, Wilbur Flachman, and Linda Cherrington, requested funding for the hiring of a professional editor for the project in the amount of \$40,000 in 2009, \$60,000 in 2010, and \$20,000 in 2011 for a total of \$120,000 over three years. City Council gave direction to Staff to fund \$10,000 of this request utilizing 2008 contingency funds in the General Fund. This action will require an ordinance for City Council action since it is officially moving money across funds.

\$10,000 GENERAL CAPITAL IMPROVEMENT FUND TOTAL

Currently, the 2008 General Fund contingency account has \$1,000,000 available to fund these unanticipated expenses, leaving a balance of \$918,000 to be carried over to 2009 as unappropriated revenue.

REVENUE/EXPENDITURE DETAIL BY FUND

These transfers will amend the General Fund expense accounts as follows:

EXPENSES – GENERAL FUND

Description	Account Number	Current Budget	Amendment	Revised Budget
Contingency	10010900.79900.0000	\$1,000,000	(\$82,000)	\$918,000
Transfer to Fleet	10010900.79800.0300	0	\$72,000	\$72,000
Transfer to GCIF	10010900.79800.0750	\$3,986,482	\$10,000	\$3,996,482
Total Change to Expenses			\$0	

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

REVENUES – FLEET FUND

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from General Fund	3000.45000.0100	\$0	\$72,000	\$72,000
Total Change to Revenue			\$72,000	

EXPENSES – FLEET FUND

Description	Account Number	Current Budget	Amendment	Revised Budget
Maint. Repair – Rolling Stock	30012460.68800.0000	\$104,600	\$10,000	\$114,600
Parts	30012460.73600.0000	\$229,312	\$52,000	\$281,312
Tires	30012460.73800.0000	\$77,000	\$10,000	\$87,000
Total Change to Expenses			\$72,000	

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

REVENUES – GENERAL CAPITAL IMPROVEMENT FUND

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from General Fund	7500.45000.0100	\$4,331,482	\$10,000	\$4,341,482
Total Change to Revenue			<u>\$10,000</u>	

EXPENSES - GENERAL CAPITAL IMPROVEMENT FUND

Description	Account Number	Current Budget	Amendment	Revised Budget
Westminster 100 th Anniversary Photo Book	80875001878.80400.8888	\$0	\$10,000	\$10,000
Total Change to Expenses			<u>\$10,000</u>	

The two requested actions are necessary in this case due to the nature of the transfers proposed. A Resolution is necessary to transfer moneys across departments; an Ordinance is required to transfer moneys across funds. Since both transfer types are being requested, this agenda memorandum includes both a Resolution and Ordinance for City Council's consideration.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **6**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION
AUTHORIZING THE REALLOCATION OF MONEYS FROM THE GENERAL FUND
CONTINGENCY BUDGET TO APPROPRIATE DEPARTMENTS IN THE 2008 BUDGET**

WHEREAS, City Council supports year end transfers from the General Fund's contingency account to balance various expenditure accounts due to unanticipated or additional costs, and

WHEREAS, the 2008 General Fund contingency balance is \$1,000,000.

NOW, THEREFORE, the Westminster City Council resolves that:

\$82,000 be transferred from the 2008 General Fund Contingency to the appropriate 2008 Operating Budget accounts as follows:

10010900.79800.0300	Central Charges Transfer to Fleet Maintenance Fund	\$72,000
10010900.79800.0750	Central Charges Transfer to General Capital Improvement Fund	\$10,000
GENERAL FUND TOTAL		\$82,000

PASSED AND ADOPTED this 9th day of February, 2009.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **2**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE INCREASING THE 2008 BUDGET OF THE FLEET MAINTENANCE
AND GENERAL CAPITAL IMPROVEMENT FUNDS
AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE
2008 ESTIMATED REVENUES IN THESE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the Fleet Fund, initially appropriated by Ordinance No. 3316 is hereby increased by \$72,000. The 2008 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3316 is hereby increased by \$10,000. This appropriation is due to an increase in the transfer from the General Fund.

Section 2. The \$72,000 increase in the Fleet Fund and the \$10,000 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 C&D, dated February 9, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Fleet Fund	<u>\$72,000</u>
General Capital Improvement Fund	<u>\$10,000</u>
Total	<u>\$82,000</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 9th day of February, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of February, 2009.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Engineering Services for the Reclaimed Water Influent Storage Tank, Pump Station and Plant Expansion

Prepared By: Kent W. Brugler, Senior Engineer, Capital Projects and Budget Management
Jenny Fifita, Reclaimed Water System Coordinator

Recommended City Council Action

1. Based on the report and recommendation of the City Manager, City Council finds that the public interest will best be served by authorizing the City Manager to execute a professional services agreement with Black & Veatch Corporation as the sole source for providing design services for the reclaimed water influent storage tank, pump station and treatment plant expansion in an amount not to exceed \$873,604, and authorize a 10% contingency in the amount of \$87,360.
2. Pass Councillor’s Bill No. 3 on first reading transferring \$1,389,000 from the Utility Capital Project Reserve Fund in accordance with City Council’s adopted budget authorization.

Summary Statement

- A new covered influent storage tank and pump station are required to adequately and reliably supply current and future reclaimed water demands from the Big Dry Creek Wastewater Treatment Facility to the Reclaimed Water Treatment Facility.
- The Reclaimed Water Treatment Facility capacity must also be expanded to meet future demands.
- Black & Veatch successfully provided engineering services for the design and construction of the reclaimed water treatment facility and distribution system improvements in 1998-2000.
- Black & Veatch completed the preliminary design of the storage tank and pump station in 2008.
- City Staff has negotiated a scope of services and fees with Black & Veatch for the final design of the influent storage tank and pump station, the development of a Guaranteed Maximum Price proposal for the design/build construction of the tank and pump station, and the preliminary design of the expansion of the reclaimed water treatment facility. City Staff believes these scopes of work are thorough and the fees presented are reasonable for the work involved.
- City Council approved \$15,575,000 in funding for the design and construction of these projects in the 2009/2010 Budget, with the costs to be funded through a debt issue in 2010. The approved 2009 budget for these engineering design services is \$1,389,000. Since it was planned to be debt financed in 2010, City Council needs to appropriate the funds for the 2009 engineering design services at this time.
- Due to the current favorable construction climate and the desire to start the construction of the storage tank and pump station in 2009 for use at the start of the 2010 reclaimed water season, City Staff recommends that the design costs be funded in 2009 from the Utility Capital Project Reserve Fund and be reimbursed by the debt funding later in 2009 or 2010.

Expenditure Required: \$960,964

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

Policy Issue

Should the City proceed with the engineering design services related to the influent storage tank, pump station and plant expansion utilizing the Utility Capital Project Reserve Funds, and reimburse these funds with debt funding at a later date?

Alternative

The City could delay the design of these projects until the debt funding is secured, however the schedule for this is unknown and the construction of the facilities would be delayed. Based on the current favorable construction climate, a delay would likely result in higher construction costs.

Background Information

The Reclaimed Water Treatment Facility (RWTF) expansion has been an important component in reclaimed water system planning since its design in 1998. Black & Veatch designed the plant with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to 10 mgd as the system grew.

In 2006, the Extended Reclaimed Water Master Plan (Master Plan) identified the RWTF expansion as one of the major improvements needed for a 2,600 acre-foot reclaimed water system. Other recommended improvements included the reclaimed/raw water interconnect (scheduled completion - early 2009) and a 3 million gallon storage tank. A 2008 Reclaimed Water System Evaluation recommended expediting construction of the RWTF. In July of 2008, the demand for reclaimed water met the existing capacity of 6 mgd, further signaling the need to expand the capacity of the RWTF.

Effluent from the Big Dry Creek Wastewater Treatment Facility is currently supplied to the RWTF from open ponds that frequently experience fouling from algae growth, water fowl waste and weeds that in turn affect the treatment efficiency at the RWTF. The fouling reduces the filtering capacity of the RWTF and increases the amount of operator time required to operate the facility. The proposed covered influent storage tank would eliminate these problems by preventing sunlight and water fowl from affecting the quality of the stored water. The tank will also provide a larger storage volume than the current ponds, dampening the daily flow variations from the wastewater facility and allowing the RWTF to operate at more consistent flow rates. Since the proposed tank would be much deeper than the existing ponds, a new pump station must be constructed to pump water from the tank to the RWTF. The existing pumps will be relocated and reused.

In 2008, Black & Veatch completed the preliminary design of the storage tank and pump station that included verifying the required storage volume (2.2 million gallons), the type of tank (circular concrete), the size and location of the pump station, related piping and valving requirements, and estimated the project costs. Due to Black & Veatch's inherent knowledge about the RWTF, their successful history of providing design and construction services for past projects and the availability of the same core project team, including senior level project management, that worked on the previous reclaimed water projects, City Staff believes they are most qualified to provide these services and has successfully negotiated a scope of work and competitive fee breakdown for this phase of the project.

During this phase, Black & Veatch will complete the final design of the storage tank and pump station, and will develop a Guaranteed Maximum Price proposal for the construction of the facilities utilizing the Design/Build contract method. Utilizing the Design/Build method will allow the construction phase to start earlier thereby taking advantage of the favorable construction climate, minimizing the amount of winter construction required and completing the facilities in time for use at the start of the 2010 reclaimed water season. The design/build contract for the tank and pump station will be presented to City Council for approval later this year.

Also during this phase, Black & Veatch will complete the preliminary design of the expansion of the RWTF to a firm capacity of 10 mgd including filters, chemical feed systems and high service pumping. They will evaluate options to address the sodium levels in the treated reclaimed water and identify the facilities required to move water between the RWTF and the open storage reservoir planned to be constructed to the north of the Big Dry Creek Wastewater Treatment Facility at a later date. The final design contract for the plant expansion will be presented to City Council later this year.

City Council approved funding for these projects during the 2009/2010 budget cycle, authorizing \$1,389,000 in 2009 and \$14,186,000 in 2010, and approved the funding to be debt issued in 2010. In order to fund the work in 2009, an ordinance authorizing the supplemental appropriation from the Utility Reserve must be enacted. This funding is intended to be reimbursed once the debt funding is completed.

This appropriation will amend Water Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF Utility Reserve	2000.45000.0205	\$9,470,076	\$1,389,000	\$10,859,076
Total Change to Revenues			<u>\$1,389,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Reclaimed WTF Expansion	80920035858.80400.8888	\$0	\$1,389,000	\$1,389,000
Total Change to Expenses			<u>\$1,389,000</u>	

This appropriation will amend Utility Reserve Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2050.40020.0000	\$9,892,853	\$1,389,000	\$11,281,853
Total Change to Revenues			<u>\$1,389,000</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers to Water	20510900.79800.0200	\$9,470,076	\$1,389,000	\$10,859,076
Total Change to Expenses			<u>\$1,389,000</u>	

The Reclaimed Water Treatment Facility Expansion and Influent Storage Tank and Pump Station project helps achieve the City Council’s Strategic Plan goals of “Financially Sustainable City Government” by contributing to the objective of well-maintained and operated City facilities; and “Beautiful City” by enhancing the City’s reclaimed water treatment and distribution system.

Respectfully submitted,

J. Brent McFall
 City Manager
 Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **3**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE WATER AND UTILITY
RESERVE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE
2009 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the Water and Utility Reserve Funds initially appropriated by Ordinance No. 3432 is hereby increased by \$2,778,000. This appropriation is due to the transfer of reserve funds.

Section 2. The \$2,778,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 E&F, dated February 9, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Water Fund	\$1,389,000
Utility Reserve Fund	\$1,389,000
Total	<u>\$2,778,000</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 9th day of February, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of February, 2009

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 9, 2009



SUBJECT: Resolution No. 7 re Triennial Renewal of the Rocky Flats Stewardship Council Intergovernmental Agreement

Prepared By: Ron Hellbusch, Special Projects Coordinator

Recommended City Council Action

Adopt Resolution No. 7 supporting the continuation of the Rocky Flats Stewardship Council for an additional three years.

Summary Statement

- The Intergovernmental Agreement establishing the Rocky Flats Stewardship Council was entered into on February 13, 2006.
- The Intergovernmental Agreement requires that every third calendar year from the commencing effective date of the IGA the participating local governments unanimously agree whether to continue the Stewardship Council's existence.
- Lack of a unanimous triennial determination by the Parties will result in the dissolution of the Stewardship Council.
- Council previously re-appointed City Councillor Bob Briggs as the City's representative to the Rocky Flats Stewardship Council Board of Directors and re-appointed Special Projects Coordinator Ron Hellbusch as the alternate representative at the January 12 City Council meeting,

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City agree supporting the continuation of the Rocky Flats Stewardship Council for an additional three years?

Alternative

Determine that it is not in the best interest of the City of Westminster to support the continuation of the Rocky Flats Stewardship Council for an additional three years. This alternative is not recommended as lack of a unanimous approval would result in the dissolution of the RFSC. The City would lose an opportunity to continue to work with the other local governments that are contiguous to Rocky Flats in order to "speak with one voice" to the Department of Energy, State and Federal Governments, and elected delegations on issues related to the long-term stewardship issues of Rocky Flats.

Background Information

The Rocky Flats Stewardship Council is made up of elected officials and staff representing nine local governments that are contiguous to the Rocky Flats National Wildlife Refuge and the retained lands held by the Department of Energy, three community organizations and one individual. The nine local governments include the cities of Westminster, Arvada, Golden/Northglenn (alternating years), Boulder, Boulder County, Jefferson County, the City and County of Broomfield and the Town of Superior, plus the League of Woman Voters, Rocky Flats Cold War Museum, Rocky Flats Homesteaders and an individual Karen Imbierowicz (Superior).

The purpose of the RFSC now is to provide communication and coordination among the nine members and the Department of Energy (DOE); to provide oversight of the ongoing ground and surface water monitoring programs and serve as an advocate for the surrounding communities with state and federal agencies regarding DOE regulatory closure issues, and site monitoring programs and commitments.

The RFSC was formed in February 2006 to meet the mandates of Congressional legislation that requires that all former DOE facilities once closed must have a Local Stakeholders Organization (LSO) to provide environmental oversight, communication and advocacy between the DOE and nearby communities on any issues involving the retained DOE lands. Membership in the RFSC by the City continues to be based on continued focus on site water quality monitoring and maintenance and related environmental issues and federal funding support for the RFSC. The RFSC meeting schedule has been reduced to five times per year, since site cleanup has been accomplished.

This action helps achieve the City Council's Strategic Plan Goal of a Safe and Secure Community by overseeing the City's interests and ensuring a safe, long-term water quality monitoring of Rocky Flats. This action also supports City Council's Strategic Plan Goal of a Beautiful and Environmentally Sensitive City by providing oversight of the post-closure management of the Rocky Flats Environmental Technology Site as it transitions to a national wildlife reserve.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. 7

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH
AREA COMMUNITIES FOR THE CONTINUATION OF
THE ROCKY FLATS STEWARDSHIP COUNCIL**

WHEREAS, effective as of February 13, 2006, the City of Westminster, City and County of Broomfield, the Counties of Boulder and Jefferson, the Cities of Arvada, Boulder, Golden, Northglenn and the Town of Superior (collectively, the "Parties"), entered into an intergovernmental agreement ("IGA") establishing the Rocky Flats Stewardship Council, a separate legal public entity created by such IGA as permitted by Colorado Constitution Article XIV and section 18(2), part 2 of article 1, title 29, C.R.S. ("Stewardship Council"); and

WHEREAS, the Stewardship Council was established to allow local governments to continue working together on issues related to the long-term protection of Rocky Flats, as described in the IGA ; and

WHEREAS, pursuant to the terms of the IGA, the Stewardship Council shall terminate absent the unanimous triennial determination by all Parties that the Stewardship Council should continue for another three years; and

WHEREAS, the City of Westminster now desires to consider and make a determination concerning the continuation of the Stewardship Council;

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

THAT THE CITY COUNCIL OF THE CITY WESTMINSTER, COLORADO DOES HEREBY FIND AND DETERMINE THAT, IT IS NOT DESIRABLE FOR THE STEWARDSHIP COUNCIL TO TERMINATE AT THIS TIME ; AND THE STEWARDSHIP COUNCIL SHOULD CONTINUE FOR AN ADDITIONAL THREE (3) YEARS FROM FEBRUARY 13, 2009, PURSUANT TO THE TERMS AND PROVISIONS OF THE IGA .

PASSED AND ADOPTED this 9th day of February, 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney