



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 (item 7) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed 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. 2006 Metropolitan Mayors' and Commissioners' Youth Award
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. Recreation Center Rental Fees
 - B. Sale of 3.243 Acre Parcel East of the Southeast Corner of 100th Avenue and Wadsworth Parkway
 - C. Appropriation of Funds for Thornton Investments Property Irrigation Pump Station
 - D. Intergraph Public Safety Software Maintenance Payment
 - E. Award of Asphalt Materials Bid
 - F. Purchase of Gasoline and Diesel Fuel for City Vehicles
 - G. Purchase of a Tandem Dump Truck with Plow
 - H. 2006 Traffic Calming Construction
 - I. Second Reading CB No. 1 re TMUND Land Use Category CLUP Amendment
 - J. Second Reading CB No. 8 re Appropriation of Lease Proceeds for Heritage Golf Course Equipment
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Re-open Public Hearing re Huntington Trails Metropolitan District Service Plan
 - B. Public Hearing re Huntington Trails Metropolitan District Service Plan
 - C. Public Hearing re Country Club Village and Country Club Highlands Service Plans
 - D. Resolution No. 5 re Amended Service Plan for Country Club Village (Metropolitan District 1)
 - E. Resolution No. 6 re Amended Service Plan for Country Club Highlands (Metropolitan District 2)
 - F. Resolution No. 7 re Compliance Hearing for the Kalmar Property Annexation
 - G. Resolution No. 8 re IGAs with the State of Colorado re Historic Preservation Grants
 - H. Resolution No. 9 re WEDA Refunding Bond Issue for the Mandalay Urban Renewal Area
 - I. Resolution No. 10 re Termination of the Rocky Flats Coalition of Local Governments
 - J. IGA Establishing the Rocky Flats Stewardship Council
 - K. Appoint a Director and Two Alternate Directors to the Rocky Flats Stewardship Council
 - L. Councillor's Bill No. 9 re 2005 4th Quarter Budget Supplemental Appropriation
 - M. Councillor's Bill No. 10 re Rights-of Way Vacations for Greenbriar I and Medical North Subdivision Plats
 - N. Addendum to the IGA with Hyland Hills Park and Recreation District
 - O. Councillor's Bill No. 11 re Un-appropriation from the Westfield Village CIP Project Budget
11. Old Business and Passage of Ordinances on Second Reading

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

- A. City Council
- B. Executive Session – Obtain direction from City Council re proposed economic development incentive agreement with Octagon Systems Corp. pursuant to WMC 1-11-3(C)(4) and 1-11-3(C)(7).

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (Separate Agenda)

WESTMINSTER HOUSING AUTHORITY (Separate Agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, FEBRUARY 13, 2006 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major and Price were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Price, to approve the minutes of the regular meeting of January 23, 2006. The motion passed unanimously.

CITY MANAGER COMMENTS

Mr. McFall announced that City Hall would be closed on Monday, February 20, in observance of President's Day, and there would be no Council study session. The Westminster Economic Development Authority (WEDA) and the Westminster Housing Authority (WHA) would meet immediately following this meeting. Additionally, Council would be asked to convene an executive session to provide direction regarding a proposed economic development incentive agreement with Octagon Systems Corporation pursuant to Westminster Municipal Code, §1-11-3(C)(4) and § 1-11-3(C)(7). In response to recent publicity, Mr. McFall read a prepared statement to set forth facts concerning an incident that had occurred in May of 2005 and resulted in an allegation that excessive force was used by Westminster Police Officers to take a man into custody who had barricaded himself and two women hostages inside a room at the La Quinta Inn.

CITY COUNCIL COMMENTS

Mayor Pro Tem Kauffman reported having helped to host a meeting of the arts' community to kick off a survey of local artists and their space needs. Artists who had not attended were encouraged to complete the survey, which was posted on the City's webpage. The Mayor Pro Tem also reported having attended the initial class of the Citizens Police Academy and a reception to celebrate Mr. McCullough's 20th year of service to the City.

Councillor Kaiser thanked emergency response personnel for responding promptly and professionally the night before when his father-in-law had fallen and injured himself.

Councillor Major reported that he and Councillor Price had played in the Frozen Open at Hyland Hills, an annual fundraising event to benefit the Foundation.

Mayor McNally and Councillor Price enjoyed attending the Historical Society's Valentine Tea and Quilt Show. The Mayor reported having been in Washington, D.C. last week with Mayors and Commissioners from communities along US Highway 36 lobbying for funding to make needed improvements to the highway corridor. To promote fitness and set an example for residents of metro communities, Mayor McNally had joined the metro Mayors in wearing pedometers to measure steps taken daily in an effort to increase physical activity by 30%.

PRESENTATION

Mayor McNally and Councillor Major recognized youth selected for the first phase of the Metropolitan Mayors' and Commissioners' Youth Award. Certificates of achievement were presented to Catherine Richardson of Hodgkins Middle School and Erica Krahl of Standley Lake High School. Stephany Griswold of Standley Lake High School

was unable to attend. Twenty-four students of the Community Reach Center's Compass Day Treatment School were present to receive municipal-level recognition.

CITIZEN COMMUNICATION

Shannon Mayes, 5960 West 72nd Avenue, and Mike Murphy, 6110 West 73rd Avenue, commented on the allegations of excessive force by Westminster Police Officers, about which Mr. McFall had remarked earlier in the meeting. They objected to the conduct of the Police Officers, as well as the Police Chief and City Manager. Ben Beaty, 4580 West 110th Circle, spoke in support of the Police Department and suggested that officers should not be judged before the investigation was complete and all the facts known.

Jane Fancher, 7260 Lamar Court, inquired about financial implications of four agenda items, the competency of survey results given the low sampling to be taken, and monitoring of job creation promised in business assistance packages.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: approval of the fee schedule for recreation facility usage; authorize the sale of a City-owned, 3.243-acre parcel on 100th Avenue east of Wadsworth Parkway to Eastcor Company and Cadence Development LLC for \$750,000 and the City Manager to execute all documents necessary to complete the closing; authorize the transfer of \$75,000 from the Water Project Reserve account to the Orchard Development Irrigation Pump Station account; authorize a \$123,324.92 payment to Intergraph Public Safety for yearly software maintenance; award the bid for purchase of asphalt materials to Brannan Sand & Gravel at the unit prices indicated on the bid tabulation on an as-needed basis up to a maximum of \$250,312; award the bid for unleaded gasoline and diesel fuel to Gray Oil for delivery on an as-needed basis, authorize a maximum expenditure of \$766,075 for the purchase, and charge the expense to the 2006 Fleet Maintenance Fund budget; award the Colorado Department of Transportation bid for a Tandem Dump Truck Cab and Chassis to the low bidder, Navistar, Inc., for an International truck in the amount of \$63,877 and, based on the report and recommendation of the City Manager, determine that the public interest would be best served by awarding the negotiated contract for the body and snow plow to O.J. Watson Co. in the amount of \$49,798.68 and charge the expense to the 2006 General Capital Outlay Replacement fund; authorize the City Manager to execute a contract for the construction of traffic-calming devices with the low bidder, New Design Construction, in the amount of \$303,893.80 and authorize a total project budget of \$334,282.80, including a \$30,389 construction contingency; final passage of Councillor's Bill No. 1 amending the Comprehensive Land Use Plan to remove the minimum size restriction of 50 acres from the text describing the Traditional Mixed Use Neighborhood Development category; and final passage of Councillor's Bill No. 8 appropriating \$582,144 in the Golf Course Fund for the lease of golf course maintenance equipment at the Heritage Golf Course.

Mayor McNally asked if any member of Council wished to remove an item from the consent agenda for discussion purposes or separate vote. There was no request.

It was moved by Councillor Dittman and seconded by Mayor Pro Tem Kauffman to approve the consent agenda as presented. The motion passed unanimously.

HEARING ON AMENDMENTS TO HUNTINGTON TRAILS METROPOLITAN DISTRICT SERVICE PLAN

At 7:34 p.m., the Mayor re-opened a hearing to consider amendments to the Huntington Trails Metropolitan District service plan. Councillor Major moved to continue the hearing to February 27, 2006 to allow outside consultants sufficient time to evaluate the impacts of changes the developer proposed to the finance plan for the District. Councillor Price seconded the motion, and it passed unanimously.

HEARING ON AMENDED SERVICE PLANS FOR COUNTRY CLUB VILLAGE/HIGHLANDS DISTRICTS

At 7:35 p.m., the Mayor opened a public hearing to consider the amended service plans for Country Club Village (Metropolitan District 1) and Country Club Highlands (Metropolitan District 2). John Carpenter, Community Development Director, provided background information. In September 2005, Council had approved the consolidated service plan for Country Club Village Metropolitan District 1 and Country Club Village Metropolitan District 2 so developers could proceed with the formation of the districts at a November election. The districts were not allowed to levy any tax, impose any fee, construct any improvements or incur any debt until amended service plans for each district were reviewed by staff and approved by Council. Country Club Village consisted of approximately 20 acres of commercial development while Country Club Highlands consisted of a 40-acre residential parcel adjacent to the commercial property. Developers were Country Club Village Enterprises, LLC (managing members, Mike Byrne and Tim Wiens) and WL Homes LC, doing business as John Laing Homes. The City had retained two consultants, at the developers' expense, to assist with evaluation of the amended service plans. Both consultants had opined that the service plans were reasonable and the results attainable. Sherman and Howard, also hired at the developers' expense, had ensured legal compliance. These projects were bordered by Federal Boulevard, 120th Avenue, and Zuni Street. Mr. Carpenter reviewed the terms of the proposed plans. The property tax to be levied per the proposed plans would be paid only by property owners within the two districts, not by any other property owners of the City.

Mayor McNally invited comment. No one wished to speak, and the hearing was closed at 7:41 p.m.

RESOLUTION NO. 5 APPROVING THE COUNTRY CLUB VILLAGE AMENDED SERVICE PLAN

Upon a motion by Councillor Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to adopt Resolution No. 5 approving the amended service plan for Country Club Village.

RESOLUTION NO. 6 APPROVING THE COUNTRY CLUB HIGHLANDS AMENDED SERVICE PLAN

Councillor Dittman moved, seconded by Major, to adopt Resolution No. 6 approving the amended service plan for Country Club Highlands. At roll call, the motion passed unanimously.

RESOLUTION NO. 7 ACCEPTING ANNEXATION PETITION FOR KALMAR PROPERTY

It was moved by Councillor Price and seconded by Councillor Dittman to adopt Resolution No. 7 accepting the annexation petition submitted by Americus Kalmar and Assuncion Palmer, making the findings required by State Statute as to the sufficiency of the petition, and setting March 27, 2006, as the date for the annexation hearing. At roll call, the motion passed unanimously.

RESOLUTION NO. 8 RE IGAS WITH STATE ON HISTORIC PRESERVATION GRANTS

Councillor Major moved to adopt Resolution No. 8 authorizing the City Manager to execute two Intergovernmental Agreements (IGAs) with the State of Colorado concerning the use of State Historical Funds and Certified Local Government grant funds awarded to the City of Westminster. Councillor Price seconded the motion, and it passed unanimously on roll call vote.

RESOLUTION NO. 9 RE WEDA REFUNDING BOND ISSUE FOR MANDALAY URA

Citing a conflict of interest, Mayor McNally recused herself and left the Council Chambers. Mayor Pro Tem Kauffman presided.

It was moved by Councillor Dittman and seconded by Councillor Price to adopt Resolution No. 9 providing City approval of selected documents for the Westminster Economic Development Authority (WEDA) Series 2006 Refunding Bonds of up to \$40,000,000 to which the City was a party, including the Replenishment Resolution as well

as the approval of the Amended and Restated 2003 City Cooperation Agreement with WEDA and the Letter of Credit Reimbursement Agreement. At roll call, the motion passed unanimously with all six Council members voting affirmatively.

Mayor McNally re-entered Council Chambers and presided over the balance of the meeting.

RESOLUTION NO. 10 RE TERMINATION OF ROCKY FLATS COALITION OF LOCAL GOVERNMENTS

Upon a motion by Councillor Major, seconded by Councillor Dittman, the Council voted unanimously on roll call vote to adopt Resolution No. 10 providing for the termination of the Rocky Flats Coalition of Local Governments (RFCLOG).

IGA ESTABLISHING THE ROCKY FLATS STEWARDSHIP COUNCIL (RFSC)

Councillor Dittman moved, Major seconded, to authorize the Mayor to sign the Intergovernmental Agreement establishing the Rocky Flats Stewardship Council (RFSC) to oversee all post-closure Rocky Flats activities. The motion carried with all Council members voting in the affirmative.

CITY REPRESENTATIVES TO RFSC APPOINTED

Councillor Major moved to appoint JoAnn Price as Director and Ron Hellbusch and Jim Arndt as Alternate Directors to represent the City on the RFSC (Rocky Flats Stewardship Council). The motion passed with all Council members voting yes.

COUNCILLOR'S BILL NO. 9 RE 4TH QTR 2005 BUDGET SUPPLEMENTAL APPROPRIATION

It was moved by Mayor Pro Tem Kauffman, seconded by Price, to pass Councillor's Bill No. 9 on first reading providing for supplemental appropriations to the 2005 budget of the General, General Capital Improvement, Sales Tax and Debt Service Funds. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 10 VACATING CERTAIN R-O-W IN GREENBRIAR I/MEDICAL NORTH PLATS

Councillor Dittman moved, seconded by Major, to pass Councillor's Bill No. 10 on first reading, vacating portions of Bryant and Alcott Streets located within the Greenbriar 1 Subdivision Plat (File 12, Map 226) and Medical Plaza North Subdivision (File 16, Map 145), all from Adams County Public Records. On roll call vote, the motion passed unanimously.

ADDENDUM TO IGA WITH HYLAND HILLS PARK AND RECREATION DISTRICT

Upon a motion by Councillor Price, seconded by Councillor Major, the Council voted unanimously to authorize the City Manager to sign an addendum to the revised Intergovernmental Agreement (IGA) with Hyland Hills Park and Recreation District dated August 12, 2002, regarding the distribution of Hyland Hills Bond proceeds to the City of Westminster for Westfield Village Park. The motion passed with all Council members voting affirmatively.

COUNCILLOR'S BILL NO. 11 UN-APPROPRIATING FUNDS FROM THE WESTFIELD VILLAGE CIP

Councillor Price moved to pass Councillor's Bill No. 11 on first reading authorizing the un-appropriation of \$57,300 from the Westfield Village CIP project budget. Councillor Major seconded the motion, which passed unanimously on roll call vote.

ADJOURNMENT:

Before the meeting adjourned Mayor McNally reiterated that City Council would be asked to meet in executive session following the meetings of the Westminster Economic Development Authority and the Westminster Housing Authority. The purpose of the executive session would be to obtain direction from City Council regarding a proposed economic development incentive agreement with Octagon Systems Corp. pursuant to Sections 1-11-3(C)(4) and 1-11-3(C)(7) of the Westminster Municipal Code.

There was no further business to come before City Council, and the meeting adjourned at 7:53 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006

SUBJECT: 2006 Metropolitan Mayors' and Commissioners' Youth Award (MMCYA)

Prepared By: Emily Moon, Senior Management Analyst

Recommended City Council Action

- Recognize the youth selected for the first phase of the Metropolitan Mayors' and Commissioners' Youth Award.
- Recognize and present certificates of achievement to:
 - Catherine Richardson, Hodgkins Middle School, nominated by Crystal Bomeke
 - Stephany Griswold, Standley Lake High School, nominated by Mary Hamilton
 - Erica Krahl, Standley Lake High School, nominated by Lisa Perry
 - Students of the Community Reach Center's Compass Day Treatment School

Summary Statement

- Three Westminster youth have been nominated through the Metropolitan Mayors' and Commissioners' Youth Award program for municipal-level recognition.
- Twenty-four students of the Community Reach Center's Compass Day Treatment School have been nominated through the Metropolitan Mayors' and Commissioners' Youth Award program for municipal-level recognition. Some of these students are Westminster residents and the Community Reach Center receives Human Services Board funding from the City of Westminster.
- City Council is requested to recognize these youth privately at a reception preceding the February 13, 2006 City Council meeting and publicly during the meeting.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

No policy issues identified.

Alternative

No alternatives identified.

Background Information

The Metropolitan Mayors' and Commissioners' Youth Award (MMCYA) was established in 1986. This exciting program recognizes young people in our community whose contributions and achievements might otherwise be overlooked. The award honors young people who have overcome personal adversity, created positive change in a difficult environment, or have made strides beyond their limitations. This fall, nominations were sought for youth ages 13 through 19 who have shown outstanding achievement in the areas of direct service to the community, other youth, the family, or to self. All of the nominees are honored by their respective municipalities. Additionally, if a nominee is selected to continue in the awards process, he or she may also be honored by his or her county and by the entire metropolitan area. Introductory letters and nomination forms were sent to local churches in Westminster, local non-profit organizations, school principals, and school counselors.

Adams County Commissioners will hold a banquet honoring youths who were selected for county-level recognition on March 17. Catherine Richardson will be recognized at the Adams County banquet. The Jefferson County recognition event will be held sometime in March or early April, where Stephany Griswold and Erica Krahl will be recognized. The metro area recognition will be held on April 23.

The youths being recognized tonight by City Council have faced trauma with courage, emotional and physical health ailments with determination, financial hardship with resourcefulness, and challenges in school with perseverance. Due to the sensitive and confidential nature of many of the nominees' backgrounds, the Adams and Jefferson County MMCYA Selection Committees recommend conducting a more general recognition ceremony where descriptions of the adversity each nominee has overcome are not disclosed. Instead, a description of the award and its criteria will be conveyed, and each nominee's name, age, school and nominator's name will be read as they receive their certificate. Additionally, City Council will host a brief reception for the nominees, nominators, principals and families prior to the Council meeting.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Recreation Center Rental Fees

Prepared By: Peggy Boccard, Recreation Services Manager

Recommended City Council Action

Approve the schedule of fees for recreation facility usage.

Summary Statement

- Staff is recommending the establishment of fees for facility rentals in areas not previously identified, such as pools and gymnasiums.
- Requests from the community to provide additional recreation facility rentals have been received. While exploring the possibility of meeting these requests, it was discovered that the only fees in place and approved by City Council were for specific room rentals at the various recreation facilities.
- Staff would like to pursue renting the gymnasium, pool and other rooms not previously identified and have created a fee structure that aligns with previously approved fees and is consistent with surrounding communities.
- Providing these additional rental opportunities would better meet the community needs while creating a positive revenue stream.
- Community rentals of areas such as the gymnasiums and pools would allow for better use of facilities during the “off-peak” times.
- Recreation Staff have reviewed usage statistics, budgets, and fee survey information to determine recommended fees. Survey data from other parks and recreation agencies supports these proposed fee increases. Please refer to Chart A (attached) for fee comparisons.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should Council approve the addition of recreation center rental fees?

Alternative

City Council could reject the recommended fees. However, Staff does not recommend this as these fees would provide additional options for the community to use the City's facilities and would also allow for better use the facilities during off-peak times and provide revenue generating opportunities.

Background Information

City Council has previously approved fees for room rentals at the various recreation facilities. Rental fees for facility areas such as the pool and gymnasium were not identified in the previously approved fee structures.

Requests from the community, along with the assessment of current facility use and competition from other community centers, indicate the need to offer additional usage/rental options. Creating an opportunity for the community to reserve facility space will better meet the community needs, along with creating a positive revenue stream.

Chart A (attached) reflects a fee structure aligned with what Council had previously approved and is consistent with surrounding communities. Survey data from other parks and recreation agencies supports these proposed fee increases.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Chart A

The purpose of this proposal is to develop pool and gym rental fees. There are currently no set, consistent fees in place for these types of rentals. Developing rental guidelines for these areas will aid Staff in booking after-hour rentals as well as exploring rentals during slow use times. Guests wishing to use the City of Westminster pools for therapy or scuba purposes could also use the rental policy. Areas will only be rented based on availability and during non prime time for program and drop-in use.

Rentals	Fees
Gym Rental	
City Park Rec Center – ½ Gym Rental	\$35/hour
West View Rec Center – ½ Gym Rental	\$35/hour
Gym Rental – After-Hours	
City Park Rec Center – Full Gym	\$100/hour + staff cost
West View -Full Gym	\$100/hour + staff cost
Pool Rental	
City Park Rec Center – One lap lane (1-5 guests)	\$15/hour
Swim & Fitness – One lap lane (1-5 guests)	\$15/hour
City Park Rec Center – Teaching pool (1-25 guests)	\$75/hour
Swim & Fitness – Teaching pool (1-25 guests)	\$75/hour
City Park Rec Center – Diving Well/Deep Pool	\$20/hour
Swim & Fitness – Diving Well/Deep Pool	\$20/hour
Pool Rental – After Hours	
City Park Rec Center – Full Pool – Two-hour minimum	\$160/hour + staff costs
Countryside	\$100/hour + staff costs
Swim & Fitness	\$160/hour + staff costs
Aerobics Studio	
City Park Rec Center	\$35/hour (same as classrooms)
West View Rec Center	\$35/hour (same as classrooms)

Recreation Facility Rental Fee Survey

2005 Pool Rental Fees

TYPE	Boulder East	Broomfield	Englewood	Hyland Hills	Lakewood	Thornton
One lap lane	\$20/hour	\$5/hour	\$6/hour	\$20/hour	\$10/hour	NA
All Pool (1-25 guests)	\$80/hour	\$100/hour	\$66/hour	\$40/hour	\$75/hour	\$70/hour
All Pool (50+ guests)	NA	\$250/hour	\$86/hour	NA	NA	\$90/hour
Diving Well	NA	NA	NA	NA	\$15/hour	NA

2005 Gym Rental Fees Survey

TYPE	Boulder East	Broomfield	Englewood	Lakewood
½ Gym	\$25/hour	\$15-\$30/hour	\$25/hour	\$25/hour
Full Gym	\$50/hour	\$30-\$60/hour	\$50/hour	NA
After Hours		\$30-\$60/hour + staff	\$100/hour + staff	\$75/hour + staff



Agenda Item 8 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Sale of 3.243 Acre Parcel East of the Southeast Corner of 100th Avenue and Wadsworth Parkway

Prepared By: Susan Grafton, Economic Development Manager

Recommended City Council Action

Authorize the sale of the City owned 3.243 acre parcel on 100th Avenue east of Wadsworth Parkway to Eastcor Company and Cadence Development LLC for \$750,000, and authorize the City Manager to execute all documents necessary to complete the closing of this transaction.

Summary Statement

- The parcel being sold has been vacant for a number of years.
- It is a remnant parcel acquired during right-of-way acquisition for the widening and extension of 100th Avenue/Church Ranch Boulevard.
- Eastcor Company and Cadence Development LLC have negotiated a Purchase and Sale Agreement with City Staff to acquire the property for \$750,000 or \$5.31 per square foot.
- Closing on the sale of the property is expected to occur by January 11, 2007.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City sell the 3.243 acre parcel to Eastcor Company and Cadence Development LLC for \$750,000?

Alternatives

1. Do not sell the property. This action would preclude or make more difficult development in this area.
2. Request more money for the property. This is a very fair offer at \$5.31 per s.f. and more than reimburses the City's acquisition cost.

Background Information

The City acquired this triangular parcel in 1997 as a part of right of way acquisitions for the widening and extension of Church Ranch Boulevard from Old Wadsworth Boulevard to Wadsworth Parkway. The property has been looked at several times by potential buyers but no offer has ever been proffered before.

City Staff was approached by two separate developers (Cadence and Eastcor) to acquire the City's property. Cadence controls the property to the west of the City parcel and Eastcor controls the property on the east side. In an effort to facilitate optimum development of all these properties, Staff asked that the two parties cooperate in the acquisition. Cadence and Eastcor were agreeable to doing so, and the Purchase and Sale Agreement now shows them as joint buyers.

Cadence and Eastcor plan to build additional retail space that will be complementary and a continuation of the existing Colonnades at Standley Lake Shopping Center at the southeast corner of 100th Avenue and Wadsworth Parkway. It is expected that the buyers will execute the purchase contract with the City by February 15, 2006, and that the closing will occur no later than January 2007.

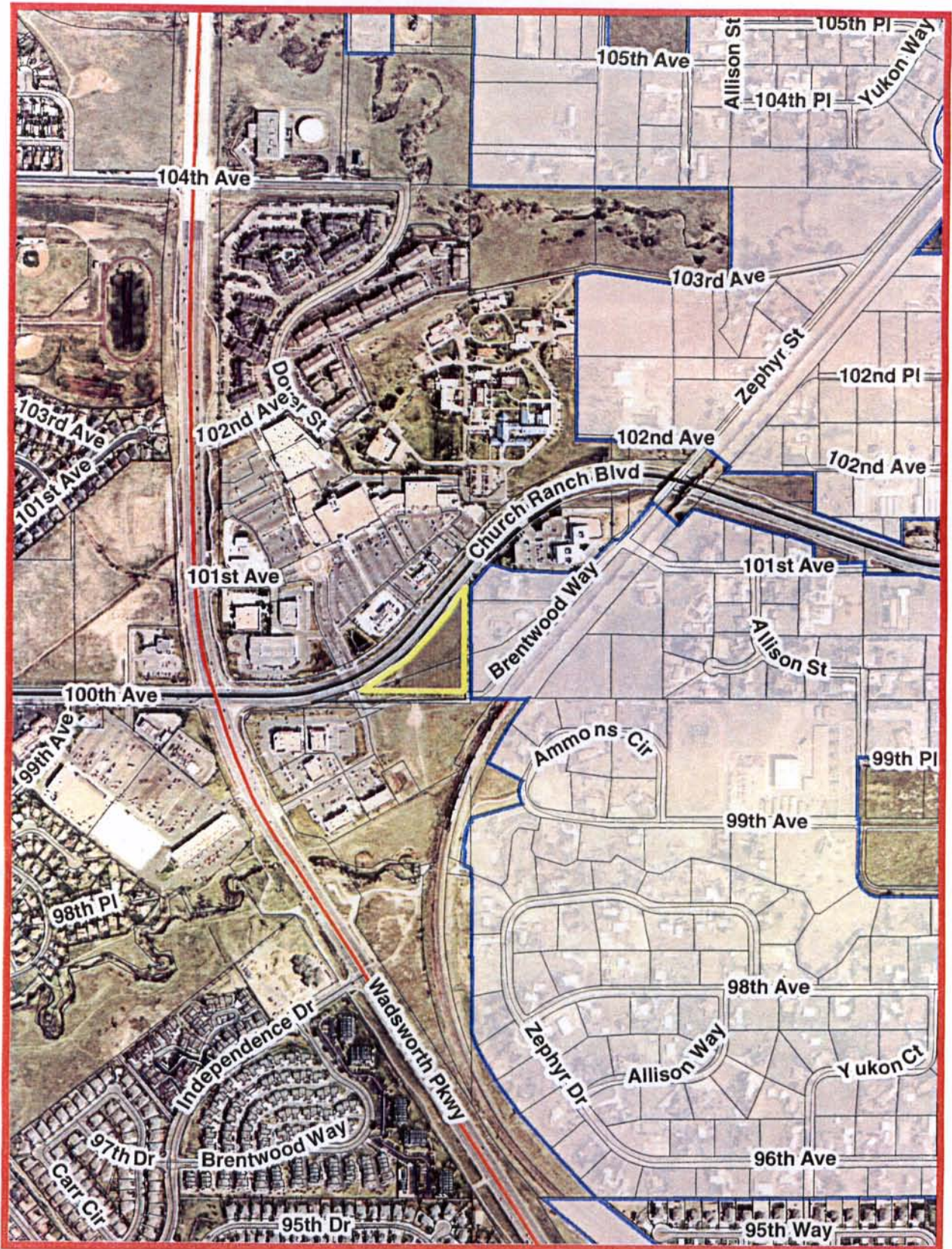
Council authorization is needed to allow the City Manager to execute the Purchase and Sale Agreement as well as all other documents necessary to close this land transaction with Eastcor Company and Cadence Development.

Respectfully submitted,


J. Brent McFall
City Manager

Attachment:
Vicinity Map

Dover Street Property



0 250 500 1,000 Feet





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
June 16, 2006



SUBJECT: Conveyance of Ownership for Thornton Investments Property Irrigation Pump Station

Prepared By: Abel Moreno, Capital Projects and Budget Manager

Recommended City Council Action

Authorize the City Manager to sign a “Bill of Sale” conveying the ownership of the Thornton Investment Pump Station to Thornton Investments, LLC.

Summary Statement

- As a result of The Orchard Town Center development north of 144th Avenue and east of Huron Street, an irrigation ditch lateral currently running through this property has been taken out of use.
- Per a previous agreement with Thornton Investments, LLC, the City would provide an alternative for the historic delivery of 1.0 cubic feet per second (cfs) of irrigation water, which included designing and constructing an irrigation pump station adjacent to the Bull Canal (owned and operated by FRICO) on the east side of Interstate 25.
- The construction of the pump station has been completed and is now fully operational.
- The ownership of the pump station needs to be transferred to Thornton Investments, LLC for its operations and maintenance. By way of the conveyance of ownership, the City will be indemnified from any liabilities in the future.
- Pursuant to Westminster Municipal Code Section 15-2-1(B), City Council needs to authorize the conveyance of City property greater than \$5,000 in value.

Expenditure Required: None.

Source of Funds: Not applicable.

Policy Issue

Should City Council authorize the transfer of ownership of the pump station to Thornton Investments, LLC?

Alternative

The City could retain ownership of the pump station and use it to provide irrigation water to the Thornton Investment property, which is located in the City of Thornton on the east side of I-25 and north of 144th Avenue. However, the City would be responsible for its long term operations and maintenance, as well as any liabilities resulting from its usage.

Background Information

Through negotiations with Thornton Investments, an alternative delivery plan was formulated wherein the City of Westminster built a pump station to provide 1.0 cfs irrigation water to the Thornton Investment property by pumping directly from the Bull Canal on the east side of Interstate 25 in the City of Thornton. The pump station, which is located on land owned by Thornton Investments, is completed and ready for the 2006 irrigation season. City Council approved the authorization of \$75,000 for the construction of the pump station at the February 13, 2006 City Council Meeting. At that time, staff informed City Council that upon completion and proved to be fully operational, ownership of the facility would be transferred to Thornton Investments, LLC.

The subject pump station has been completed and it is fully operational since May 12, 2006. Staff recommends that it is now the appropriate time to transfer the ownership to Thornton Investments, LLC. The final cost of the pump station was approximately \$80,000. To convey the ownership of this pump station to Thornton Investments, LLC will require the approval of the City Council to authorize the City Manager to do so.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Thornton Investments Irrigation Pump Station





Agenda Item 8 D

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Intergraph Public Safety Software Maintenance Payment

Prepared By: Carol Workman, Senior Management Analyst

Recommended City Council Action

Authorize the payment of \$123,324.92 to Intergraph Public Safety (IPS) for yearly software maintenance.

Summary Statement

- The City of Westminster purchased an integrated Computer Aided Dispatch (CAD), Police Records Management System (RMS), Fire Records Management System and Mobile application from Intergraph Public Safety (IPS). This system is heavily relied on by police and fire personnel for entering call data from the public, entering in police and fire offense reports and incident reports and provides a tool for field units to receive dispatch data and handle calls in the field. Funds were specifically budgeted in the Police and Fire Departments and approved by City Council for this expense in 2006.
- It is necessary that the systems remain operational at all times and that problems in the system be addressed in a timely manner. Additionally, the yearly maintenance provides for upgrades in existing software to ensure that the applications have current functionality and any mid-year fixes or updates (the cost of on site installation is not included). The Information Technology Department has also requested that departments keep current with any software applications and maintain a current software maintenance contract with their vendor to avoid any system problems.

Expenditure Required: \$123,324.92

Source of Funds: 2006 General Fund - Police and Fire Departments' Operating Budgets

Policy Issue

Should the City of Westminster pay IPS for yearly software maintenance and support on the current CAD, Police RMS, Fire RMS and Mobile system?

Alternative

Do not pay for yearly software maintenance and support for the outlined applications and pay IPS an hourly rate to include emergency after hour costs to troubleshoot and/or fix the system if the application(s) should go down or have problems. Staff does not recommend this alternative because by doing this, it could be cost prohibitive and the City would also not receive any software upgrades without additional cost, thus falling behind in keeping this critical software current.

Background Information

The IPS system was purchased in 2000. The system includes a CAD (Computer Aided Dispatch) system, Police RMS (records management system), Fire RMS (records management system), Mobile Application and various system interfaces to include E911 and Automatic Vehicle Locating. The system was designed to integrate all applications and components together to allow for a seamless transmission of data. 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. The Fire RMS component is used for tracking building inspections, EMS reporting and National Fire Incident Reporting (NFIRS).

Yearly maintenance allows all components of the system to have coverage by the vendor IPS. This includes not only the applications but also the Oracle Software. The CAD system is on a 24 X 7 (24 hours a day, seven days a week) maintenance plan due to the critical nature of the application. The remaining applications are on a normal weekday plan unless the situation is urgent.

Support by IPS allows customers several options; the first is to have immediate response to a problem by calling a telephone service support line which provides software support to requests. The support line is answered by IPS support engineers for product specific technical needs and problems. The second response generally used for non emergent requests is to submit on-line help via the service request. Additionally, the yearly maintenance provides for upgrades in existing software to ensure that the applications have current functionality and any mid year fixes or updates (the cost of on site installation is not included). The Information Technology Department has also requested that departments keep current with any software applications and maintain a current software maintenance contract with their vendor to avoid any system problems.

The cost of the yearly software maintenance is shared by both the Police and Fire Departments with the Police Department paying \$79,826.54 of the cost and the Fire Department paying the remaining \$43,498.38.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 E

WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Award of Asphalt Materials Bid

Prepared By: Ray Porter, Street Operations Manager

Recommended City Council Action

Award the bid to Brannan Sand & Gravel Company for purchase of asphalt materials at the unit prices indicated on the bid tabulation on an as-needed basis up to a maximum of \$250,312.

Summary Statement

- City Council approved funds in the 2006 Street Operations budget to purchase hot mix asphalt material.
- Hot mix asphalt material is used for all types of street maintenance repairs including; pothole patching, surface replacement, and preparation of streets earmarked for 2006 resurfacing improvements.
- An estimated 8,820 tons of various grades of asphalt material will be purchased on an as-needed basis throughout 2006.
- Bids were solicited through the MAPO (Multiple Assembly of Procurement Officials).

Expenditure Required: Not to exceed \$250,312

Source of Funds: General Fund - 2006 Street Operations Division Operating Account

Policy Issue

Should the City accept the lowest MAPO bid for asphalt from Brannan Sand & Gravel Company?

Alternative

An alternative for 2006 asphalt purchasing would be to execute a bid for just the City of Westminster's hot mix asphalt requirements. This alternative is not recommended because the smaller quantity would increase the costs.

Background Information

The results of the bidding are attached to this agenda memorandum.

Brannan Sand & Gravel is the low bidder, after hauling costs are added and unit prices are adjusted. The plant is fully automated and the mix design meets City specifications. Street Operations Division Staff has inspected the facility and does not anticipate any problems with the quality of materials or the service that Brannan Sand and Gravel Company can provide.

The 2006 asphalt materials bid reflects a 9% increase over the 2005 prices. The reasons given for the increase are due to the higher costs of oil and utilities costs to operate the plant.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

HOT MIX ASPHALT BIDS

	Brannan Sand & Gravel	Asphalt Specialties	Aggregate Industries	LaFarge
Grading "S"/ton	\$26.75	\$28.04	\$28.75	\$29.50
Grading "SX"/ton	\$30.00	\$28.25	\$29.75	\$30.75
Average/ton	\$28.38	\$28.15	\$29.25	\$30.13
Miles	18	22	19	11

Grading "SX" – ½ " material
 Grading "S" – ¾" material

BIDDING RESULTS

<u>COMPANY</u>	<u>COST PER TON WITH HAULING</u>	<u>TONS BID</u>	<u>TOTAL BID (Actual Cost)</u>	<u>COST PER MILE</u>	<u>ROUND TRIP MILEAGE</u>	<u>TRIPS PER YEAR</u>	<u>TOTAL MILEAGE FOR HAULING</u>	<u>COST OF HAULING</u>	<u>TOTAL BID WITH HAULING (Basis for Award)</u>
Brannan Sand and Gravel	\$30.31	8820	\$250,312	\$1.50	18	630	11340	\$17,010	\$267,322
Asphalt Specialties	\$30.51	8820	\$248,283	\$1.50	22	630	13860	\$20,790	\$269,073
Aggregate Industries	\$31.29	8820	\$257,985	\$1.50	19	630	11970	\$17,955	\$275,940
LaFarge North America	\$31.31	8820	\$265,747	\$1.50	11	630	6930	\$10,395	\$276,142



Agenda Item 8 F

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Purchase of Gasoline and Diesel Fuel for City Vehicles

Prepared By: Carl F. Pickett, Purchasing Officer

Recommended City Council Action

Award the bid for unleaded gasoline and diesel fuel to Gray Oil to be delivered on an as-needed basis, authorize a maximum expenditure of \$766,075 for this purchase, and charge the expense to the 2006 Fleet Maintenance Fund Budget.

Summary Statement

- City Council previously approved \$766,075 for the purchase of fuel in the 2006 Fleet Maintenance Fund Budget.
- In December 2004, the Multiple Assembly of Procurement Officials (MAPO) awarded Gray Oil a price agreement for gasoline and diesel fuel for 2005, with two renewable optional years. MAPO renewed the award for 2006.
- Gray Oil was the low bidder in the MAPO bid for fuel and is being recommended for award for fuel for 2006.

Expenditure Required: Not to Exceed \$766,075

Source of Funds: Fleet Maintenance Fund, Fleet Maintenance Division

Policy Issue

Should the City utilize the MAPO bid for its fuel purchases for 2006?

Alternative

Do not use the MAPO bid and re-bid fuel. This is not recommended as the volume of fuel used by the City of Westminster is about one tenth the volume of MAPO, and it is very doubtful that better pricing can be obtained.

Background Information

As part of the 2006 Budget, City Council approved the purchase of fuel for the City's vehicles. For the past eighteen months, the City has used Gray Oil for fuel services.

A bid was put out on behalf of MAPO, a cooperative of state, municipal, county, special district, school district or other local government agencies, in 2004. This was a competitive bid and offers greater volume and lower prices to the City than the City can obtain on its own. Five local vendors responded to MAPO's Invitation for Bid, and the low bid for both gasoline and diesel fuel was recommended for award. MAPO included in its 2004 bid two optional, renewable years to the bid. MAPO has extended the award for 2006, and staff recommends the City of Westminster accept that extension.

The MAPO bid was structured such that the bidders were essentially quoting a price differential above/below the current weekly Oil Price Information Service (OPIS) or the New York Mercantile Exchange (NYMEX) average futures price, depending on whether the fuel would be purchased with either a "floating" or "fixed" price, respectively. The City is choosing to "float" the price until the end of the year, since fixing the price requires committing to a high locked price (NYMEX +.08). Floating the price means that the gas and diesel prices will fluctuate up and down over the remaining course of the year, just as they do at the gas pump.

Staff has looked at other methods of controlling the City's vulnerability to the fluctuating gas prices. One option that is available to us is called "Ceiling with downside protection." The ceiling price is set at OPIS daily average plus 8% on the day of lock in. That would be the highest price the City would pay through the course of the contract. If prices go lower, the City's price could also go down, but always with the 8% cap markup. At today's prices, 8% is equal to about fourteen cents. Staff feels that floating with market is the more prudent approach in selecting our pricing structure.

The formula to figure weekly pricing included in the price agreement with Gray Oil is as follows:

- Unleaded – Past week average OPIS fuel price less \$0.035 (-3.5 cents per gallon), plus freight and the Colorado Environmental tax.
- #2 Diesel – Past week average OPIS fuel price less \$0.035 (-3.5 cents per gallon) plus freight and Colorado Environmental.

The full load freight rates to the City of Westminster are \$.0142 per gallon for Gasoline and \$.0161 per gallon for Diesel Fuel.

Using the above formula, the estimated cost for fuel in the rest of the current year is based on the approximate annual usage and approximate price as follows:

FUEL	APPROXIMATE QUANTITY	APPROXIMATE PRICE	EXTENDED PRICE	VENDOR
Un-Leaded	220,000 gallons	\$2.00 gal	\$440,000	Gray Oil
Diesel	110,000 gallons	\$2.10 gal	\$231,000	Gray Oil

Westminster City Code 15-1-4-A1 specifically states that using a bid by another unit of government is an acceptable form of purchasing for the City.

The not to exceed total cost of \$766,075 is the amount already approved by City Council in the budget process. The total annual estimated cost of \$671,000 is based on estimated consumption for the year and current fuel costs as shown in the table above. With the volatility of the fuel market, it is very difficult to predict where costs will be through the year and fuel costs may exceed the \$671,000 estimated above, which is why Staff is requesting authorization not to exceed the \$766,075 budgeted for fuel and oil in 2006.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Purchase of a Tandem Dump Truck with Plow

PREPARED BY: Carl F. Pickett, Purchasing Officer

Recommended City Council Action

Award the Colorado Department of Transportation (CDOT) bid for a Tandem Dump Truck Cab and Chassis to the low bidder, Navistar, Inc., for an International truck in the amount of \$63,877 and based on the report and recommendation of the City Manager, determine that the public interest will be best served by awarding the negotiated contract for the body and snow plow to O.J. Watson Co. in the amount of \$49,798.68 and charge the expense to the 2006 General Capital Outlay Replacement Fund.

Summary

- The City will save considerable dollars by purchasing this vehicle through the CDOT Bid.
- This equipment is used primarily by the Utilities Department. It is used as a snow plow in the winter and used as a dump truck for hauling asphalt and dirt in the summer. The price negotiated for 2006 equals the low bid received for this equipment in 2002.
- This expense was previously approved by City Council in the 2006 budget and the funds have been specifically allocated in the 2006 General Capital Outlay Replacement Fund Budget.

Expenditure Required: \$113,675.68

Source of Funds: General Capital Outlay Replacement Fund

Policy Issue

Whether or not to approve the bid by the State of Colorado Department of Transportation for heavy duty trucks and whether or not to approve the negotiated contract with OJ Watson.

Alternatives

1. Reject CDOT bid and instruct City Staff to re-bid vehicle. This is not recommended because the CDOT bid reflects the purchasing power of all the political sub-divisions in the state. The City would not be able to match the bid prices afforded by the CDOT Bid.
2. Do not purchase the proposed replacement vehicle in 2006. This is not recommended because this vehicle has a maintenance history that makes it impractical to keep it in regular service, based on Fleet Maintenance recommendations.

Background Information

As part of the 2006 budget, City Council approved the purchase of a replacement Tandem Dump Truck for 2006. This vehicle will be utilized by the Utilities Division for hauling asphalt and dirt for water projects, and is a snow plow in the winter.

Unit #9304 has reached a point that it is no longer economically reasonable to maintain in service. Information regarding this vehicles replacement and trade-in is as follows:

UNIT #	YEAR	MAKE	HOURS	VEHICLE MAINTENANCE COSTS LIFE TO DATE (LTD)	TRADE IN ALLOWANCE
9304	1997	Volvo	7,546	\$89,028.97	\$26,000.00

Unit 9304 has had over fifty shop invoices in its nine year history. No single repair stands out for the high cost of maintenance for this vehicle. The present condition and maintenance history of this vehicle would make it impractical to continue to operate it in regular service based on the Fleet Maintenance Division’s replacement recommendations.

Bids were not solicited from vendors for the body and plow this year. The low qualified bid that was submitted from OJ Watson in 2002 was negotiated to be the same cost in 2006. Staff is confident that bidding this equipment would not result in a lower price.

CDOT bids out heavy equipment for the State of Colorado. The CDOT bid received from Navistar, Inc. and the negotiated price from O.J. Watson Equipment Co. meet all specifications and requirements set by the City. The total cost of the Tandem Dump Truck, with body and plow, of \$113,675.68 is within the amount previously authorized by City Council for this expense.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: 2006 Traffic Calming Construction

Prepared By: Mike Normandin, Transportation Engineer

Recommended City Council Action

Authorize the City Manager to execute a contract for the construction of traffic calming devices with the low bidder, New Design Construction, in the amount of \$303,893.80 and authorize a total project budget of \$334,282.80, which includes a \$30,389 construction contingency.

Summary Statement

- In January 2004, City Council approved the enactment of a moratorium for new traffic calming projects. The moratorium did not pertain to those projects that had completed the Traffic Calming Approval Process prior to the enactment of the moratorium. These proposed traffic calming construction projects fall within that category.
- The subject traffic calming projects were bid last summer and only one contractor submitted a bid for the projects. The bid of \$355,901 was substantially higher than the Engineer's Estimate. City Staff rejected the bid and re-bid the project in January 2006. Eight contractors submitted bids for the Traffic Calming Projects. The bids were opened on January 31, 2006. The lowest bidder is New Design Construction with a bid of \$303,893.80.

Expenditure Required: \$334,282.80

Source of Funds: General Capital Improvement Fund – Traffic Calming Project

Policy Issue

Should the City finalize the construction of the remaining traffic calming devices?

Alternatives

Alternative 1 – Do not construct the traffic calming devices. This action would be a disappointment to residents in the affected neighborhoods who have participated in planning these projects.

Alternative 2 – Postpone construction of the traffic calming devices until a future year. This action would disappoint many residents who have been anticipating these projects for several years. Costs may increase in the future as the price of materials and services increase.

Background Information

In past years, the City has pursued an active program for the installation of traffic calming devices in residential neighborhoods. In January 2004, City Council placed a nine-month moratorium on new Neighborhood Traffic Mitigation Program projects to allow time for City Staff and the City Council to evaluate the effectiveness of this program and consider alternative means of addressing the issue of speeding within residential subdivisions. In December 2004, City Council placed a permanent moratorium on new Traffic Mitigation Program projects. The decision was made to implement a measured move away from traffic mitigation devices and transition to residential traffic enforcement and education efforts along with a thorough study and possible implementation of photo enforcement. The subject moratorium did not pertain to projects that had completed the Traffic Calming Approval Process. There are five traffic calming devices, located in three neighborhoods that fall under this category.

The funds available in the General Capital Improvement Program are sufficient to complete the five remaining devices. The remaining devices include the following:

1. Stratford Lakes Drive at 112th Avenue – Raised center median
2. Stratford Lakes Drive at Federal Boulevard – Raised center median
3. Alcott Street between 108th Place and 109th Avenue – Curb extensions (roadway narrowing)
4. Alcott Street south of Alcott Way – Raised center median
5. Bruchez Parkway between Decatur Street and 107th Avenue – Raised center median

These locations are identified on the attached map.

Bids for the proposed 2006 projects were received and are listed below.

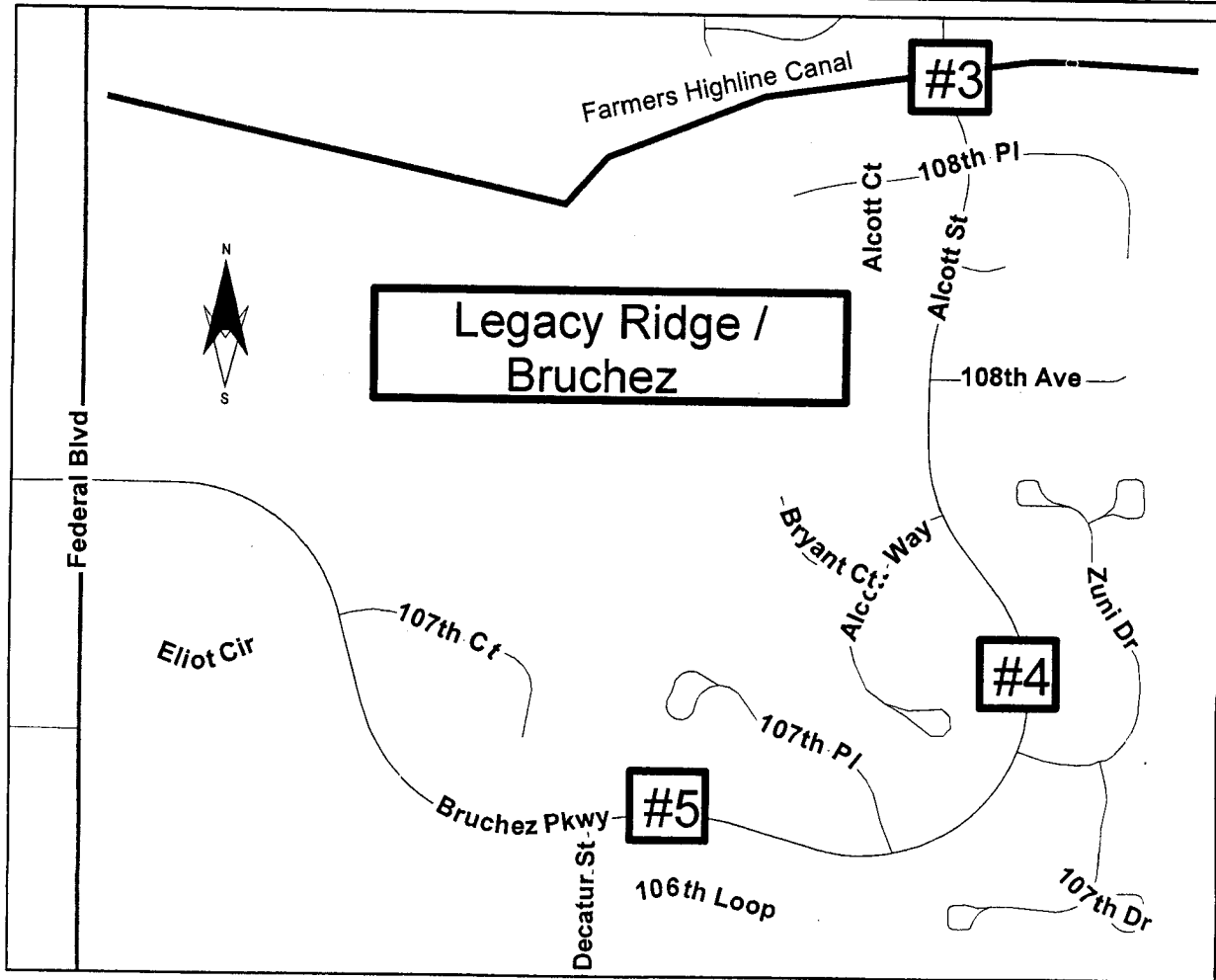
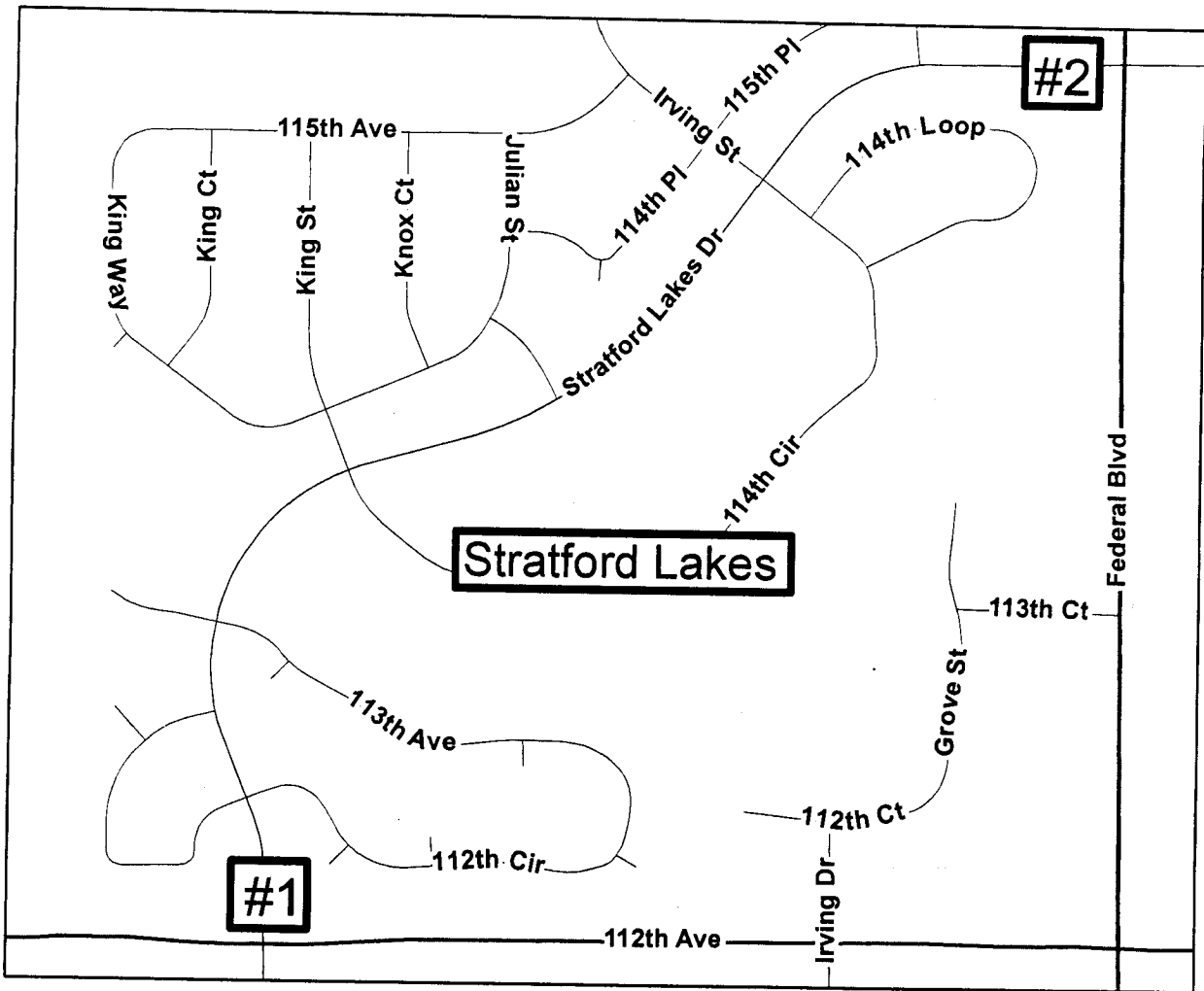
Contractor	Bid Amount
New Design Construction	\$303,893.80
K.E.C.I. Colorado, Inc.	\$304,616.00
Concrete Works of Colorado	\$334,466.00
Goodland Constructors	\$336,434.50
Hallmark, Inc.	\$337,038.00
Brown Brothers	\$353,698.00
Technology Constructors	\$358,895.20
Keene Construction, Inc.	\$373,553.50
Engineer's Estimate	\$273,126.00

The low bidder, New Design Construction, has met all of the bid requirements and has successfully constructed roadway projects for the City of Westminster in years past. Staff is recommending the award of the bid to New Design Construction. Construction will begin in mid-March and should be completed by late May 2006.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Map





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Second Reading of Councillor’s Bill No. 1 re the Comprehensive Land Use Plan Amendment to Remove the Minimum Size Restriction from the Traditional Mixed Use Neighborhood Development (TMUND) Land Use Category

Prepared By: Max Ruppeck, Senior Projects Manager

Recommended City Council Action

Pass Councillor’s Bill No. 1 on second reading amending the Comprehensive Land Use Plan (CLUP) to remove the minimum size restriction of 50 acres from the text describing the Traditional Mixed Use Neighborhood Development category. This recommendation is based upon a finding that the proposed amendment is in the public good and that:

- a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
- b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
- c) The proposed amendment is compatible with existing and planned surrounding land uses; and
- d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.

Summary Statement

- This Councillor’s Bill was approved on first reading by City Council on January 23, 2006 after the public hearing was continued from January 9, 2006 in response to requests from public hearing attendees for additional time to review the proposed amendment.
- The Traditional Mixed Use Neighborhood Development (TMUND) category in the CLUP allows a wide range of uses and densities including single family and multiple family residential, offices, and retail and service commercial. The guidelines allow these uses to be mixed in a single building. The TMUND Design Guidelines have been developed and incorporate a number of design features such as compact, mixed use, walkable developments, narrower streets where alley-loaded or recessed garages occur, and a wide variety of housing types and densities. The current description of the TMUND category under Policy B1b states that such developments are appropriate in “...undeveloped areas of at least 50 acres in size...” In order to be clear that the TMUND designation can be applied to areas of less than 50 acres and in redevelopment areas currently within a mixed use neighborhood, staff is proposing the 50 acre limitation language be removed. The 50 acre minimum requirement was to insure a large enough area to accommodate these mixed uses and features, but occasionally this range of uses may already be in place in surrounding areas and/or a minimum development/redevelopment area is not necessary, particularly in the older, developed parts of the City. This proposed amendment will significantly increase the opportunities for mixed use development and redevelopment in the City.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO. **3264**

COUNCILLOR'S BILL NO. **1**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
DITTMAN - PRICE

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the City requesting a text change in the Westminster Comprehensive Land Use Plan described in Exhibit A, attached hereto and incorporated herein by reference.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B).

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

e. That the requested amendments will further the public good, that there is a justification and need for the revisions, and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly its goals and policies regarding redevelopment and economic revitalization.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the text of the Westminster Comprehensive Land Use Plan to change the text described in Exhibit A.

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

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

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of February, 2006.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

EXHIBIT A

In order to encourage the development of additional TMUND's in the City, staff is recommending the 50 acre minimum required area be removed from the Westminster Comprehensive Land Use Plan. Specifically, the language to be amended/deleted is as follows:

Comprehensive Land Use Plan Amendment
Section III "Community Goals and Policies" Page III-3

Policy B1b

Encourage Traditional Mixed-Used Neighborhood Developments in appropriate ~~undeveloped~~ areas ~~of at least 50 acres in size~~ which have a number of characteristics including a mix of land uses including retail and other businesses, various housing types and densities, parks and open space, civic and educational uses, all in close proximity and easily walkable from one use to another.

Comprehensive Land Use Plan
Section IV "Land Use and Development Plan" Page IV-31

The purpose of this category is to depict those areas of the City that are now developed, or are appropriate to be developed in a TMUND pattern. The traditional mixed-use neighborhood development represents a pattern of development that has a number of characteristics, including business, residential, park, school, and civic uses in close proximity and easily walkable from one use to another. ~~In order to accommodate this mix of uses, projects of this nature shall comprise a minimum of 50 acres, or when combined with an adjacent neighborhood mixed use land use area meet the minimum land area requirement.~~



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Second Reading of Councillor's Bill No. 8 re Appropriation of Lease Proceeds for Heritage Golf Course Equipment

Prepared By: Lance Johnson, Golf Course Superintendent
Ken Watson, Regional Parks and Golf Manager

Recommended City Council Action

Pass Councillor's Bill No. 8 on second reading appropriating \$582,144 in the Golf Course Fund for the lease of golf course maintenance equipment at the Heritage Golf Course.

Summary Statement

Approval of the lease/purchase will:

- Fund the lease/purchase and financing costs of the new golf course maintenance fleet;
- Replace an aging fleet of equipment that requires increased labor and parts purchases to keep the fleet running efficiently;
- Provide essential equipment necessary to maintain the Heritage Golf Course to the high standards demanded in a competitive golf market;
- Continue standardization of equipment at both golf courses to reduce maintenance costs and inventory; and
- Provide staff the flexibility to maximize revenue through decreased course preparation time.

This item was passed by City Council on first reading on January 23, 2006.

Expenditure Required: Not to exceed \$693,544

Source of Funds: Golf Course Fund - Heritage Operating Accounts

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO. **3265**

COUNCILLOR'S BILL NO. **8**

SERIES OF 2006

INTRODUCED BY COUNCILLORS
DITTMAN - KAUFFMAN

A BILL

**FOR AN ORDINANCE AMENDING THE 2006 BUDGET OF THE GOLF COURSE FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2006 ESTIMATED
REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the Golf Course Fund initially appropriated by Ordinance No. 3162 in the amount of \$1,996,718 is hereby increased by \$582,144 which, when added to the fund balance as of the City Council action on January 23, 2006 will equal \$2,578,862. The actual amount in the Golf Course Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of Heritage maintenance equipment lease proceeds.

Section 2. The \$582,144 increase in the Golf Course Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Note Proceeds	2300.46000.0225	\$0	<u>\$582,144</u>	\$582,144
Total Change to Revenues			<u>\$582,144</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Use	23010900.78800.0000	\$0	<u>\$582,144</u>	\$582,144
Total Change to Expenses			<u>\$582,144</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 23rd day of January, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of February, 2006.

ATTEST:

City Clerk

Mayor



Agenda Item 10 A&B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Public Hearing and Action on Proposed Amendments to the Service Plan,
Huntington Trails Metropolitan District

Prepared By: Robert C. Smith, Treasury Manager

Recommended City Council Action

1. Re-open the public hearing.
2. Continue the public hearing until February 27, 2006, to permit outside consultants sufficient time to evaluate the impacts of changes the developer has proposed to the finance plan for the District.

Summary Statement

- The Huntington Trails Metropolitan District was created in 2000 when Council approved the Service Plan for the District on September 25, 2000.
- The District has petitioned the City to amend the Service Plan to permit it to issue up to \$6,000,000 of debt that is in excess of the amount stipulated in the Service Plan.
- The developer recently changed the assumptions contained in the original petition Staff had reviewed that affect the assessed value of the properties in the District. The outside consultants Staff has hired to review financial information related to the District requires additional time to evaluate the impact of these changes on the ability of the District to generate sufficient property tax revenue to pay the debt service.
- Notice of the January 13, 2006 Public Hearing on the proposed amendment to the Service Plan was published in the Westminster Window on January 19, 2006. The public meeting was opened on January 23, 2006 and continued to the Council Meeting of February 13, 2006.
- This item will be brought back before City Council on February 27, 2006.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should City Council continue the public hearing to allow Staff more time to evaluate the proposed amendment?

Alternative

The City Council not open and continue the Public Hearing on the proposed amendment to the Service Plan for Huntington Trails Metropolitan District. This is not recommended as Staff requires additional time to assess recent changes to the Financing Plan in the Service Plan that the Developer has proposed.

Background Information

The Huntington Trails Metropolitan District was created in 2000 when Council approved the Service Plan for the District on September 25, 2000. In an election held on November 7, 2000, voters of the District authorized the District to issue up to \$6,000,000 of debt that would be paid for by a voter authorized mill levy not to exceed 35 mills on the assessed value of properties in the District. The Service Plan approved by Council in 2000 stipulated that the District would be required to obtain Council approval prior to issuing debt in excess of \$4,750,000. The District has petitioned the City to amend the Service Plan to permit it to issue up to \$6,000,000 of debt.

The developer recently changed the assumptions contained in the petition that affect the assessed value of the properties in the District. Between the meeting on January 23, 2006 and February 2, 2006, the information in the Financing Plan was revised again. As of February 3, 2006, the consultant that Staff has retained to evaluate this information had not received written details of the new information. The consultant and Staff will require additional time to evaluate the impact these change might on the ability of the District to generate sufficient property taxes to pay the debt service.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 10 C-E

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Public Hearing and Action re the Amended Service Plan for Country Club Village (Metropolitan District 1) and Country Club Highlands (Metropolitan District 2)

Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

1. Hold a public hearing.
2. Adopt Resolution No. 5 approving the Amended Service Plan for Country Club Village.
3. Adopt Resolution No. 6 approving the Amended Service Plan for Country Club Highlands

Summary Statement

On September 26, 2005, City Council approved the consolidated service plan for Country Club Village Metropolitan District 1 (MSD) and Country Club Village Metropolitan District 2 Service Plan in September, 2005. This approval allowed the developers to proceed with the formation of the districts at the November election. The districts were not allowed to levy any tax, impose any fee, construct any improvements or incur any debt until the Amended Service Plans (one for each district) are reviewed by City staff and approved by Council. In order to help avoid confusion between the districts, the Amended Service Plans have been submitted as Country Club Village (Metropolitan District 1) and Country Club Highlands (Metropolitan District 2).

Country Club Village, consists of approximately 20 acres of commercial development. Country Club Highlands consists of a 40-acre residential parcel adjacent to the commercial property within District No. 1. The developers are Country Club Village Enterprises, LLC (the managing members are Mike Byrne and Tim Wiens) and WL Homes LLC d/b/a John Laing Homes.

The developers have submitted two Amended Service Plans for the City's review and approval. The City hired two consultants, at the developer's expense, to assist in the evaluation of the Amended Service Plan. Those consultants were Stifel, Nicolaus & Company, Inc., Hanifen, Imhoff Division to review the financing plan and King & Associates to do a market feasibility analysis. Both consultants opined that the service plans were reasonable and the results attainable.

In addition, the City hired Sherman and Howard, again at the developer's expense, to work with the developers and their Counsel to ensure legal compliance.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City Council approve the Amended Service Plans submitted for Country Club Village and Country Club Highlands.

Alternatives

Do not approve the Amended Service Plans. This would cause significant financial burden to the developers and would possibly cause the development to not be completed in the case of the Country Club Village or not to occur at all in the case of Country Club Highlands.

Direct staff to work with the developer to reduce the amount of debt and associated mill levy. The developer has indicated that this is the amount needed to construct the required public improvements.

Background Information

The developers of the Country Club Village (retail) and Country Club Highlands (residential) have requested that the City approve two separate MSD’s to fund infrastructure to serve these developments. These projects are located on sites bounded by Federal Boulevard, 120th Avenue and Zuni Street.

The preliminary development plan (PDP) for the retail project included language regarding metro district formations. Subsequently, the Council adopted a MSD policy that generally discourages the formation of metro districts for residential areas and places restrictions on metro districts for commercial areas.

The request for the two MSD’s was discussed at a City Council Study Session on July 11, 2005. At that meeting, Council gave general support for these two district formation requests. Council supported the residential request since approval was implied in the PDP that was approved before adoption of the Council’s MSD policy.

Council approved a “skeleton” service plan on September 26, 2005. The skeleton service plan was approved to allow the issue of district formation to be placed on the fall 2005 ballot (where it passed). However, no bonds can be issued or property taxes levied until the comprehensive service plans are approved by City Council.

The relevant terms of the service plans are as follows:

Term	Country Club Village (commercial)	Country Club Highlands (residential)
Maximum Debt	\$3,000,000	\$2,057,000
Initial Debt	\$2,450,000	\$1,440,000
Maximum total mill levy	50 mills except for Gallagher effect*	25 mills except for Gallagher effect*
Proposed operating mill levy	10 mills	6 mills
Proposed debt mill levy	35 mills	19 mills
Assessed valuation at buildout	\$4,813,124	\$5,383,311
Year of buildout	2007	2010
Total Public Improvements	\$2,476,533	\$1,099,980
Public Improvements Paid by District	\$1,935,085	\$1,099,980

* In 1982, the voters of Colorado approved an amendment to the Colorado Constitution that included the so-called "Gallagher Amendment." The Gallagher Amendment requires that the assessment rate for residential property be adjusted to maintain the assessed valuation at a 45% to 55% ratio to all other property. This can result in the assessed valuation of a residential property to go down despite

the fact that the actual value is going up. In order to generate the same amount of revenue, the mill levy will need to be raised. This is the only situation that would allow the mill levy to go over the defined maximum mill levy. Bonds would be difficult if not impossible to issue if this exception was not allowed.

The City engaged King and Associates to complete a market feasibility analysis of the Country Club Village MSD and Country Club Highlands service plans. Based on the information in the service plan, King & Associates opined that the absorption schedules for both office and retail land uses planned in the commercial District are attainable. They also opined that the absorption schedule and price points for the proposed residential development in the District are attainable.

In addition, the City engaged Stifel, Nicolaus, & Company, Inc., Hanifen Imhoff Division to review the financing plan presented in each of the service plans. They opined that the service plans were reasonable and in compliance with City policy regarding special district formation.

The costs associated with the independent analysis of these plans were paid for by the developer.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. 5

INTRODUCED BY COUNCILLORS

SERIES 2006

DITTMAN - MAJOR

**RESOLUTION APPROVING THE SERVICE PLAN
FOR COUNTRY CLUB VILLAGE METRO DISTRICT**

WHEREAS, a service plan dated September 13, 2005 was approved by City Council of the City of Westminster (the "City") for the Country Club Village Metropolitan Districts 1 and 2 (the "Districts") in compliance with § 32-1-204.5, and City policies (hereinafter referred to as the "Service Plan"); and

WHEREAS, the Districts and the City anticipated that the Service Plan would be revised in the future, such revision to be approved by the City; and

WHEREAS, the name of the District is being changed from Country Club Village Metropolitan District 1 to Country Club Village Metro District; and

WHEREAS, the territories of the proposed Districts are located wholly within the boundaries of the City; and

WHEREAS, the District has submitted an Amended Service Plan for review; and

WHEREAS, adequate notice has been published and sent to property owners and interested parties of a public hearing of the City Council of the City of Westminster to review the Amended Service Plan; and

WHEREAS, the City Council of the City of Westminster has conducted a public hearing on the Amended Service Plan for the Country Club Village Metro District.

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

Section 1. That notice of the hearing was properly given and the City Council has jurisdiction to hear this matter.

Section 2. The City Council makes the following findings:

a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special districts.

b. The existing service in the areas to be served by the proposed special districts is inadequate for present and projected needs.

c. The proposed special districts are capable of providing economical and sufficient service to the areas within their proposed boundaries.

d. The areas to be included in the proposed special districts have, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Amended Service Plan for the Country Club Village is hereby approved. Nothing herein limits the City's powers with respect to the Districts, the property within the Districts, or the improvements to be constructed by the Districts. The City's findings are based solely upon the evidence in the Service Plan and such other evidence presented at the public hearing, and the City has not conducted any independent investigation of the evidence presented at the public hearing. The City makes no guarantee as to the financial viability of the Districts or the achievability of the results.

PASSED, ADOPTED AND APPROVED this 13th day of February 2006.

ATTEST:

By: _____
Clerk

Mayor

RESOLUTION

RESOLUTION NO. **6**

INTRODUCED BY COUNCILLORS

SERIES 2006

DITTMAN - MAJOR

**RESOLUTION APPROVING THE SERVICE PLAN
FOR COUNTRY CLUB HIGHLANDS METRO DISTRICT**

WHEREAS, a service plan dated September 13, 2005 was approved by City Council of the City of Westminster (the "City") for the Country Club Village Metropolitan Districts 1 and 2 (the "Districts") in compliance with § 32-1-204.5, and City policies (hereinafter referred to as the "Service Plan"); and

WHEREAS, the Districts and the City anticipated that the Service Plan would be revised in the future, such revision to be approved by the City; and

WHEREAS, the name of the District is being changed from Country Club Village Metropolitan District 2 to Country Club Highlands Metro District; and

WHEREAS, the territories of the proposed Districts are located wholly within the boundaries of the City; and

WHEREAS, the District has submitted an Amended Service Plan for review; and

WHEREAS, adequate notice has been published and sent to property owners and interested parties of a public hearing of the City Council of the City of Westminster to review the Amended Service Plan; and

WHEREAS, the City Council of the City of Westminster has conducted a public hearing on the Amended Service Plan for the Country Club Highlands Metro District.

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

Section 1. That notice of the hearing was properly given and the City Council has jurisdiction to hear this matter.

Section 2. The City Council makes the following findings:

a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special districts.

b. The existing service in the areas to be served by the proposed special districts is inadequate for present and projected needs.

c. The proposed special districts are capable of providing economical and sufficient service to the areas within their proposed boundaries.

d. The areas to be included in the proposed special districts have, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Amended Service Plan for the Country Club Highlands is hereby approved. Nothing herein limits the City's powers with respect to the Districts, the property within the Districts, or the improvements to be constructed by the Districts. The City's findings are based solely upon the evidence in the Service Plan and such other evidence presented at the public hearing, and the City has not conducted any independent investigation of the evidence presented at the public hearing. The City makes no guarantee as to the financial viability of the Districts or the achievability of the results.

PASSED, ADOPTED AND APPROVED this 13th day of February 2006.

ATTEST:

By: _____
Clerk

Mayor



Agenda Item 10 F

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Resolution No. 7 re Compliance Hearing for the Kalmar Property Annexation

Prepared By: David Falconieri, Planner III

Recommended City Council Action

Adopt Resolution No. 7 accepting the annexation petition submitted by Americus Kalmar and Assuncion Palmer and make the findings required by State Statute on the sufficiency of the petition. This resolution sets the date of March 27, 2006, for the annexation hearing.

Summary Statement

- The Kalmar property is located at 9505 Teller Street and is approximately one acre in area.
- The applicant wishes to annex in order to subdivide the property into two lots and acquire City water and sewer services for the new parcel.
- The Kalmar property is subject to the requirements of the Northeast Comprehensive Development Plan that would permit the proposed lot split, with a minimum lot size for both parcels of 12,500 square feet.

Expenditure Required: \$0

Source of Funds: NA

Policy Issue

Should the City annex the Kalmar property at this time?

Alternative

Make a finding that there is no community of interest with the Kalmar property and take no further action. If this course is taken, the property in question will remain unincorporated, and the owners could proceed with their proposed subdivision in the County. The City would still be required to provide water and sewer service to both parcels if this action is taken.

Background

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

1. An allegation that the annexation is desirable and necessary;
2. An allegation that the requirements of Section 31-12-104 and 31-12-105 C.R.S have been met; (These sections are to be reviewed by the Council at the formal public hearing.)
3. Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed; (In this case, the Kalmar's, signers of the petition, own 100% of the property.)
4. The legal description of the land to be annexed;
5. The date of each signature; and
6. An attached map showing the boundaries of the area.

Planning Staff has reviewed the petition and has determined that it complies with the above requirements.

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date at which time the Council will review the merits of the proposed annexation.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

- Petition
- Resolution
- Vicinity Map

RESOLUTION

RESOLUTION NO. **7**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

**A RESOLUTION ACCEPTING A PETITION FOR ANNEXATION
OF THE KALMAR PROPERTY**

WHEREAS, there has been filed with the City Clerk of the City of Westminster, a petition, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City;

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petition and accompanying map are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended;

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

1. City Council finds the said petition and annexation map to be in substantial compliance with all state statutory requirements, including C.R.S. Section 31-12-107 (1).
2. City Council hereby establishes March 27, 2006, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. Section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. Section 31-12-108 (2).

PASSED AND ADOPTED this 13th day of February, 2006.

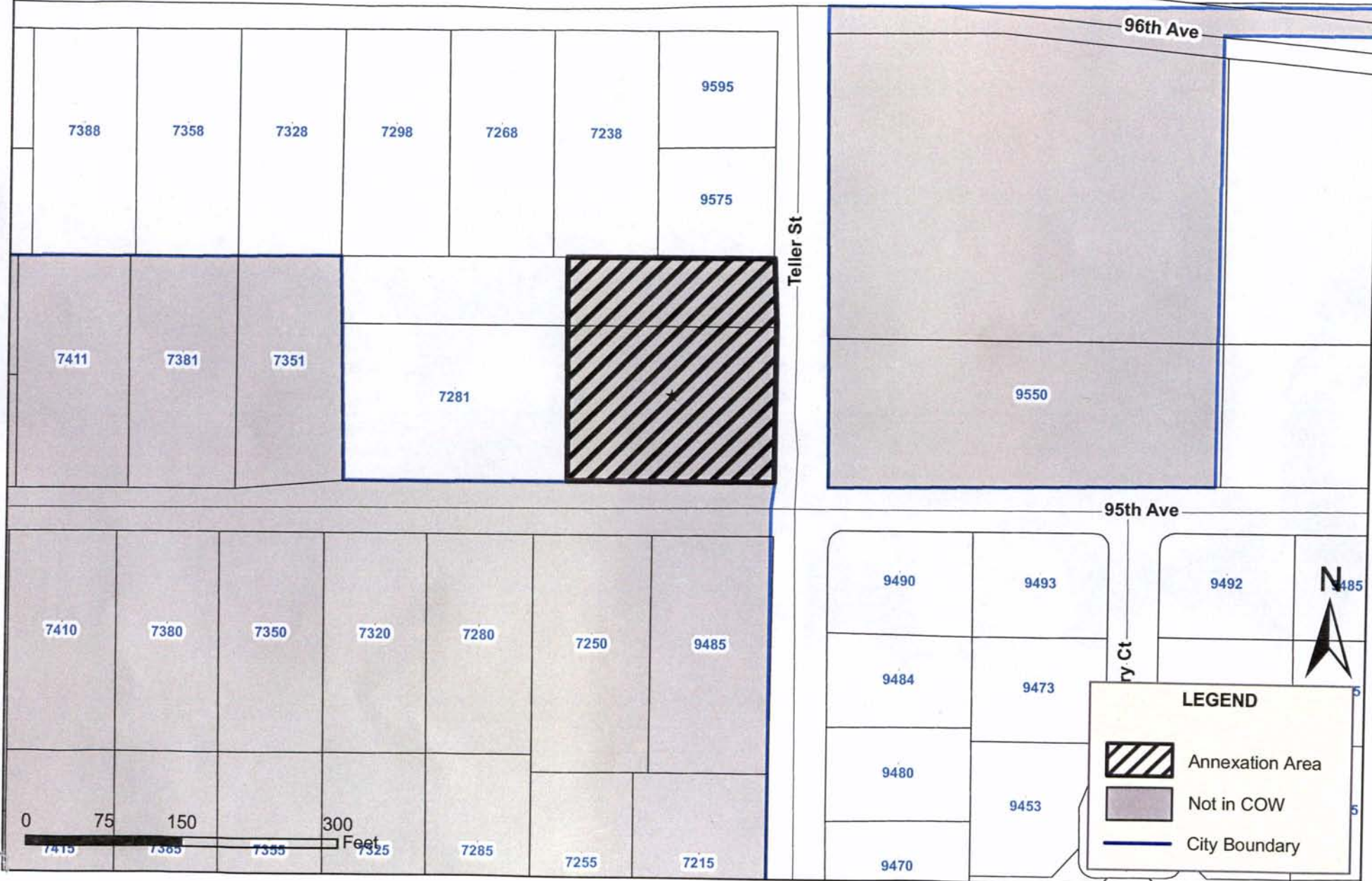
ATTEST:

Mayor




City Clerk

Kalmar Annexation Vicinity Map

9609 9608



LEGEND

-  Annexation Area
-  Not in COW
-  City Boundary



Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Resolution No. 8 re Intergovernmental Agreements with the State of Colorado
re Historic Preservation Grants

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Adopt Resolution No. 8 authorizing the City Manager to execute two Intergovernmental agreements with the State of Colorado concerning the use of State Historical Fund and Certified Local Government grant funds awarded to the City of Westminster.

Summary Statement

The City has applied for and has been awarded grants from the State Historical Fund for 1) a historic structure assessment at the Semper Farm and 2) from the Colorado Historical Society Certified Local Government program for a historic resource survey project. The State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed to regulate the use and accounting of the funds.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council authorize IGAs with the State of Colorado concerning the use of State Historical Fund and Certified Local Government program grant money awarded for City of Westminster historic preservation projects?

Alternative

Do not enter into the IGAs with the State of Colorado and decline the grant money awarded by the State Historical Fund for two City historic preservation projects. This alternative is not recommended because the funding supports historic preservation work and requires no matching funds from the City.

Background Information

Since 2002 and including the two grants described in this memo, the City has received a total of \$185,679 in grants from the State Historical Fund and the Colorado Historical Society Certified Local Government program. These grants have funded archeological and structure assessments, the exterior restoration of the Westminster Grange Hall, and reconnaissance and intensive historical resource surveys throughout the City.

Most recently, the State Historical Fund notified the City of its \$9,900 grant to fund an assessment of the Charles and Julia Semper home at West 92nd Avenue and Pierce Street, as well as the small barn associated with the home. The Semper home was originally built in 1880 under the Homestead Act and has a 1961 addition. The small barn was built in the early 20th century. These structures are part of the significant historical site characteristics listed by the City Council in its local landmark designation of the site last year. The assessment work will begin after the intergovernmental agreement with the State of Colorado is approved and will take six to eight months. Based on the findings of the assessment report, Staff will determine whether restoration work can be organized in phases and funded with further grant applications.

The Colorado Historical Society's Certified Local Government program has also awarded the City \$38,750 to fund intensive architectural and historical resource surveys of 1) about 100 buildings in the Harris Park neighborhood, 2) about 25 buildings associated with Pillar of Fire Church and 3) ten transportation-related resources scattered through the southeast portion of the City. This intensive survey work was funded due to the City's reconnaissance survey work completed in 2005. The 2005 work provided an overview of resources throughout the City and identified priorities for intensive analysis. The top three priorities established in that report are what have been funded by the Colorado Historical Society's \$38,750 grant. This intensive survey work will document the physical characteristics of these structures but does not cause them to be regulated in any way. The project is simply one of documentation and it will be the landowners' decision whether they want to pursue local landmark status.

The City will be reimbursed for expenses after they are incurred. As a result, these funds will be requested for appropriation in future supplemental appropriations.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **8**

INTRODUCED BY COUNCILLORS

SERIES OF 2006

**A RESOLUTION AUTHORIZING IGAs WITH THE STATE OF
COLORADO CONCERNING THE USE OF
GRANTS FOR HISTORIC PRESERVATION PURPOSES**

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

Charles and Julia Semper Farm	Historic Structure Assessment (2006)	\$9,900
Certified Local Government Survey	Intensive Historical Resource Surveys for Harris Park and Pillar of Fire Areas, and Transportation Resources (2006)	\$38,750

WHEREAS, the State of Colorado requires IGAs to be executed before funds are disbursed, which contracts regulate the use of funds and accounting therefore.

NOW, THEREFORE, the City Council of the City of Westminster resolves that the City Manager is authorized to execute and carry out the provisions of these IGAs with the State of Colorado concerning the use of grants for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 13th day of February, 2006.

Mayor

ATTEST:

City Clerk



Agenda Item 10 H

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Resolution No. 9 re Approval of Selected Documents for the Westminster Economic Development Authority's Refunding Bond Issue in the amount up to \$40,000,000 for the Mandalay Urban Renewal Area

Prepared by: Robert Smith, Treasury Manager

Recommended City Council Action:

Adopt Resolution No. 9 that provides City approval on selected documents for the Westminster Economic Development Authority (WEDA) Series 2006 Refunding Bonds of up to \$40,000,000 to which the City is a party, including the Replenishment Resolution as well as the approval of the Amended and Restated 2003 City Cooperation Agreement with WEDA and the Letter of Credit Reimbursement Agreement.

Summary

Replenishment Resolution: Adoption by the City Council of the Replenishment Resolution is required to complete the part of the bonding structure known as the "moral obligation."

- The basis of the Resolution is such that if, at any time, the balance in the WEDA Bond Reserve Fund falls below the required amount of \$3,160,000, the City Manager will request that Council budget, appropriate, and transfer to the trustee bank the funds necessary to replenish this bond reserve. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
- This Resolution will assist the Authority in obtaining credit enhancement for its bonds, thus serving to minimize interest costs and improve the marketability of the bonds. Because of the expected revenues WEDA will realize from tax increment, Staff does not anticipate the need for the City to actually transfer funds at any time.

Amended and Restated 2003 Cooperation Agreement

In addition, the proposed resolution approves the Amended and Restated 2003 Cooperation Agreement between the City and the Authority, which provides for the repayment to the City of funds advanced to and on behalf of the Authority from tax increment, if such revenue is available after other debts are paid. This would permit the City to recover any amounts paid by the City to replenish the Reserve Fund held by the trustee bank in connection with the Authority's bonds. This is a routine WEDA-City action when WEDA is issuing bonds: three other agreements have been approved in 1991, 1997 and 2005.

Letter of Credit Reimbursement Agreement

Lastly, the proposed Resolution approves the three-party Letter of Credit Reimbursement Agreement between the Letter of Credit Bank DEPFA Bank, plc, WEDA and the City. This is necessary because the City is referenced in this agreement as a party to the Replenishment Resolution and the bank is desirous of City participation in this agreement. The City Attorney and Bond Counsel have agreed this is in conformance with state and local laws.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

1. Does the City desire to provide its non-binding moral obligation pledge to replenish the reserve fund on the WEDA bonds in the event it is drawn down to meet debt service requirements?
2. Does the City desire to participate in the WEDA Cooperation Agreement and the Letter of Credit Reimbursement Agreement?

Alternatives

1. Decline or delay approval of the Replenishment Resolution. This is not recommended. Although non-binding, this would not be favorably viewed by the letter of credit bank, the bond investors and the marketplace, and would result in the failure of the refunding bond sale.
2. Decline or delay approval of the Cooperation Agreement and the Letter of Credit Reimbursement Agreement. This is not recommended, as it will result in the failure of the bond sale and prevent WEDA from lowering debt service costs by replacing the existing taxable 2003 WEDA bonds with tax-exempt WEDA Series 2006 Bonds.

Background Information

In 2003, WEDA issued \$38,525,000 in taxable variable rate bonds for development within the Mandalay Gardens Urban Renewal Area (URA), also known as the Shops at Walnut Creek. The bonds were issued primarily to pay for land purchases and public improvements. At that point in time, the bonds were issued as taxable since the extent to which bond proceeds were to be expended between public and private improvements could not be ascertained. The use of public issued tax-exempt debt is limited to 10% of the bond issue for private use, thus, taxable bonds were issued with the intent of converting the taxable bonds into tax-exempt bonds after the bond proceeds were spent and the amount spent for public use could be ascertained.

In mid-2005 the bond proceeds were exhausted and subsequently, City Staff and the City's bond counsel, Sherman and Howard, evaluated the expenditures associated with the Mandalay Gardens' project. The tax specialist at Sherman and Howard determined that all of the WEDA 2003 bonds could be refunded by a new tax-exempt bond issue.

Conversion to tax-exempt bonds will provide significant financial benefits to WEDA relative to the Mandalay Gardens URA. Given the tax benefit accruing to investors holding the 2006 bonds, a lower interest rate on a tax-exempt issue will reduce the interest cost to WEDA on the bonds. In addition, changing the bank that provides the letter of credit will reduce the bank fees by 0.37% per year. The estimated combined debt service savings is approximately 1% below the existing debt service and is projected to save approximately \$190,000 in 2006 and approximately \$250,000 per year thereafter for a total savings of \$5,500,000 over the course of the bond amortization into 2028. The estimated savings factors in an approximate .6% savings of interest rate reduction between taxable and tax-exempt rates and the 0.37% savings of Letter of Credit fees by changing bank providers.

The market acceptance of the value of a promise to pay by a local unit of government is a relatively recent phenomenon. Because the City's credit rating is AA/AA-, the word of the City has value and can and should be used to reduce the costs and improve the marketability of the Authority's (WEDA) bonds. The moral obligation is a promise to pay, but is also subject to annual appropriation, and is non-binding and thus does not constitute a multiple fiscal-year obligation.

Staff does not anticipate the need for the City's moral obligation to replenish the Reserve Fund at any time. The Mandalay Gardens Urban Renewal Area (URA) has collected tax increment since November 2004. A summary of the historical and revenue projections and debt service is as follows:

- As of December 31, 2005 a balance of \$1,431,000 was available in capitalized interest to cover debt service. The capitalized interest balance transferred to the new trust is anticipated to cover debt service into early fall of 2006 at which time the tax increment collected will cover debt service.
- The adjusted projected combined sales and property tax increment for 2006 is \$2,368,000 with an anticipated total debt service, inclusive of fees of \$2,449,000. After using the available \$1.0 million in capitalized interest to pay debt service, surplus revenues will equal \$918,000.
- Projections into 2007 and beyond indicate an annual excess of increment revenue over debt service between \$915,000 and \$1,042,000 per year through 2027. In 2028, the last year of the URA, debt service is projected to be \$1,360,000 more than revenues due to a partial year of increment collections; however, this negative projection in 2028 is offset by the balance of \$3,160,000 in the Reserve Fund that can be used for the final debt service obligation.
- The increment projections are inclusive of revenue derived from the General Improvement District (GID) within the URA. The Mandalay Town Center GID was created in 2003 with district voters approving a mill levy of 35 mills applied to properties within the District. The GID is expected to generate about \$338,000 in property taxes annually to help cover debt service.
- WEDA will have the ability to change the interest rate mode (term) it will incur on the bonds it issues. Initially the WEDA bonds will be issued on a variable weekly interest rate reset mode.
- The expected annual total debt service, inclusive of fees, over the 23 year term of the refunding bonds will average \$2.73 million. This is based on the assumption that the variable interest rate will average 4.0 % over the remaining 23 year debt period and includes all fees for the bank letter of credit and the remarketing agent. In total, revenues are projected to exceed debt service by \$24.5 million over the remaining life of the Bonds.
- From November 2004 through December 2005 the Mandalay Gardens URA collected approximately \$1,387,000 in sales tax increment and approximately \$176,000 in property tax increment for a total of \$1,563,000. These funds will be available to WEDA to repay advances from the City related to the project and for future project expenses.

The Amended and Restated 2003 Cooperation Agreement (the "2006 Cooperation Agreement") is between WEDA and the City and is a continuation of earlier Cooperation Agreements from 1991, 1997 and 2005 wherein the City agrees to loan funds to WEDA as it needs to do so and WEDA agrees to pay the City back for funds it has been advanced (for reserve fund replenishment and other loans for staffing time, etc.).

The Letter of Credit Reimbursement Agreement is the central document for providing payments to DEPFA Bank, plc when the Bank makes debt service payments on WEDA's behalf under the letter of credit. It governs how and when WEDA would reimburse DEPFA Bank for the draws on the letter of credit as the Bank pays the bondholders the interest and principal payments due to them. It also describes covenants the City and WEDA make, defines defaults and the remedies. This is a standard document that is executed with each variable rate transaction.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Resolution No. 9
2006 Cooperation Agreement
Letter of Credit Reimbursement Agreement

**AMENDED AND RESTATED 2003 COOPERATION AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

THIS AMENDED AND RESTATED COOPERATION AGREEMENT (this “Agreement”) is dated as of March 1, 2006, between THE CITY OF WESTMINSTER (the “City”) and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”) and amends and restates the 2003 Cooperation Agreement made and entered into as of August 25, 2003 by the City and the Authority (the “2003 Agreement”).

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

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

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

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority Mandalay Gardens Urban Renewal Plan (the “Plan”) and the urban renewal project described therein (the “Project”); and

WHEREAS, the Project is being undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, the Authority has issued its Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 (the “2003 Bonds”), in the original aggregate principal amount of \$38,525,000 for the purpose of financing the acquisition, construction and equipping of the Project; and

WHEREAS, the City and the Authority have previously entered into the 2003 Cooperation Agreement in connection with the 2003 Bonds and the Project; and

WHEREAS, the Authority is issuing its Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2006 for the purpose of refunding the 2003 Bonds; and

WHEREAS, the City Council of the City (the "Council") has adopted its Resolution 06-___ declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Bond Reserve Requirement (the "Replenishment Resolution") as defined in the Indenture of Trust dated as of March 1, 2006 between the Authority and U.S. Bank National Association, as trustee (the "Trustee"); and

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan and the Project. The Authority shall pay to the City the City's actual costs for services rendered to the Authority in connection with the Plan and the Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan or the Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT.** (a) When Pledged Revenues (as defined in the Indenture) are available pursuant to the Section 3.03(b)(vi) of the Indenture, the Authority shall repay the City for all amounts due hereunder to the extent that such moneys are available.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. **FURTHER COOPERATION.** (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all

Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues for the Project.

4. **SUBORDINATION.** The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by revenues of the Authority.

5. **GENERAL PROVISIONS.** (a) **Dispute Resolution.** If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) **Separate Entities.** Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(c) **Third Parties.** Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Bank or Substitute Bank (each as defined in the Indenture).

(d) **Modifications.** No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties with the prior written consent of the Bank or Substitute Bank and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) **Entire Agreement.** This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

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

(g) Assignment. Except for pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Bank or Substitute Bank.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

(i) 2003 Agreement. This Agreement amends and restates the 2003 Agreement in full. Any amounts owing to the City by the Authority pursuant to the 2003 Agreement shall be payable under the terms and conditions described in this Agreement.

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER

BY _____
Executive Director

BY _____
City Manager

ATTEST:

ATTEST:

Assistant Secretary

City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

BY _____
Authority Attorney

BY _____
City Attorney

REIMBURSEMENT AGREEMENT

Among

DEPFA BANK PLC,
acting through its New York Branch,

CITY OF WESTMINSTER, COLORADO

and

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Dated as of March 1, 2006

REIMBURSEMENT AGREEMENT

(This Table of Contents is not a part of
this Reimbursement Agreement
and is only for
convenience of reference)

SECTION

HEADING

PAGE

REIMBURSEMENT AGREEMENT

Dated as of March 1, 2006

City of Westminster, Colorado
4800 W. 92nd Avenue 80030
Westminster, Colorado

Westminster Economic Development Authority
4800 West 92nd Avenue
Westminster, Colorado 80030

Ladies and Gentlemen:

The Issuer and the City (each such term and each other capitalized term used herein having the meaning set forth in Article One hereof) desire to secure a source of funds to be devoted exclusively to the payment by the Trustee, when and as due, of the principal of and interest on the Bonds, and in that connection has applied to the Bank for issuance by the Bank of the Letter of Credit in an Original Stated Amount of \$_____. Further, the Bank has been requested by the Issuer and the City to provide a liquidity facility in the form of a Liquidity Drawing under the Letter of Credit and to provide such liquidity facility in the following manner and subject to the following terms and conditions. Accordingly, the Issuer, the City and the Bank hereby agree as follows:

ARTICLE ONE DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*Act*” - means the Colorado Urban Renewal Law, constituting part 1 of Article 25 of title 31, Colorado Revised Statutes, as amended.

“*Additional Bonds*” - shall have the meaning set forth in the Indenture.

“*Agreement*” - means this Reimbursement Agreement, as amended and supplemented.

“*Available Amount*” - shall have the meaning set forth in the Letter of Credit.

“*Bank*” - means DEPFA BANK plc, acting through its New York Branch, and its successors and assigns.

“*Bank Bonds*” shall have the meaning set forth in the Indenture.

“*Bank Rate*” - means the rate of interest per annum with respect to a Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) equal to (i) from and including the Purchase Date relating to each Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) through and including the date ninety (90) days thereafter, the Base Rate, (ii) from and including the date ninety-one (91) days following the Purchase Date relating to each Liquidity Advance (and the Bank Bond which evidences and secures such Liquidity Advance) and thereafter, the Base Rate plus 1.25%; *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice being given with respect thereto) and during the continuance of such Event of Default, “*Bank Rate*” shall equal the Default Rate.

“*Base Rate*” - means for any day the greater of (i) the Prime Rate, or (ii) the Federal Funds Rate plus 0.50%.

“*Bond Documents*” - means the Indenture, the Bond Purchase Agreement, the Resolution, the Replenishment Resolution, the Cooperation Agreements, the Remarketing Agreement, the Development Agreement, the Official Statement and the Bonds.

“*Bond Purchase Agreement*” - means the Bond Purchase Agreement dated _____, 2006, between the Issuer and the Original Purchaser.

“*Bond Reserve Fund*” - shall have the meaning set forth in the Indenture.

“*Bond Reserve Requirement*” - shall have the meaning set forth in the Indenture.

“*Bonds*” - means the Issuer’s Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2006.

“*Business Day*” - shall have the meaning set forth in the Letter of Credit.

“*Cap Interest Rate*” - shall have the meaning set forth in the Letter of Credit.

“*Capital Lease*” - means any lease of Property by any Person which in accordance with GAAP would be required to be capitalized on the balance sheet of such Person.

“*City*” - means the City of Westminster, Colorado.

“*Closing Date*” - means the date on which the Letter of Credit is issued.

“*Code*” - means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

“*Cooperation Agreements*” - shall have the meaning set forth in the Indenture.

“Debt” - means, for any Person (without duplication), (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all Capital Leases of such Person, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under the letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, including any Guaranties, whether or not such Debt is assumed by such Person, (h) all Debt of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a Guaranty and (i) obligations in respect of interest rate protection programs.

“Default Rate” - shall mean a rate of interest per annum determined in accordance with Section 2.10 hereof.

“Debt Service Requirement” - shall have the meaning set forth in the Indenture.

“Developer” - shall mean Westminster Development Company, LLC, as developer pursuant to the Development Agreement.

“Development Agreement” - means the Redevelopment Agreement dated as of June 23, 2003, by and among the City, the Issuer and the Developer, as supplemented and amended from time to time.

“Event of Default” - has the meaning set forth in Section 6.1 hereof.

“Federal Funds Rate” - shall mean, for any day, the rate of interest per annum as determined by the Bank at which overnight Federal Funds are offered to the Bank for such day by major banks in the interbank market, with any change in such rate to become effective as to the Issuer on the date of any change in such rate. Each determination of the Federal Funds Rate by the Bank shall be deemed conclusive and binding on the Issuer absent manifest error.

“Funds” - shall have the meaning given such term in Section 4.1(j) hereof.

“GAAP” - means generally accepted accounting principles in the United States as in effect from time to time, applied by the Issuer and the City on a basis consistent with the Issuer’s and the City’s most recent financial statements furnished to the Bank pursuant to Section 4.1(h) and 4.2(g) hereof, respectively.

“Governmental Approval” - means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“Governmental Authority” - means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“Guaranty” - means, for any Person, any agreement or undertaking pursuant to which such Person guarantees, endorses (other than for collection or deposit in the ordinary course of business) assumes or otherwise becomes secondarily, contingently or otherwise liable for any obligation of any other Person and shall include, without limitation, any agreement to purchase, to provide funds for payment, to supply funds to invest in such other Person or otherwise to assure a creditor of such other Person against loss.

“Indenture” - means the Indenture of Trust dated as of March 1, 2006, between the Issuer and the Trustee, as amended and supplemented through the date hereof, and as further amended and supplemented in accordance with its terms and the terms of this Agreement.

“Interest Payment Date” - shall have the meaning given such term in the Indenture.

“Issuer” - means the Westminster Economic Development Authority, a public body corporate and politic duly organized and validly existing as an urban renewal authority under the laws of the State of Colorado.

“Letter of Credit” - means the irrevocable transferable letter of credit issued by the Bank for the account of the Issuer in favor of the Trustee, in the form of Appendix I hereto with appropriate insertions, as amended.

“L/C Fee Rate” - is defined in Section 2.5(a) hereof.

“Lien” - means any mortgage, deed of trust, lien, security interest, assignment, pledge, charge, hypothecation or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“Liquidity Advance” - has the meaning set forth in Section 2.3 hereof.

“Liquidity Drawing” - means a drawing under the Letter of Credit resulting from the presentation of a certificate in the form of Exhibit E to the Letter of Credit.

“Maximum Rate” - means the maximum non-usurious lawful rate of interest permitted by applicable law.

“*Moody’s*” - means Moody’s Investors Service, Inc. and its successors and assigns.

“*Obligations*” - means the Reimbursement Obligations, the letter of credit fees payable pursuant to Section 2.5(a) hereof, the Bank Bonds and all other obligations of the Issuer owed to the Bank arising under or in relation to this Agreement.

“*Official Statement*” - means the Official Statement dated _____, 2006, relating to the Bonds.

“*Original Purchaser*” - shall have the meaning set forth in the Indenture.

“*Original Stated Amount*” - shall mean, with respect to the Letter of Credit, the original stated amount thereof as provided in Section 2.1 hereof.

“*Permitted Investments*” - shall have the meaning set forth in the Indenture.

“*Person*” - means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*Pledged Revenues*” - shall have the meaning set forth in the Indenture.

“*Potential Default*” - means an event or condition which, but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

“*Prime Rate*” - for any day shall mean the per annum rate of interest for such day announced by the Bank from time to time as its prime commercial rate or equivalent rate for United States dollar denominated loans, with any change in such prime rate or equivalent to be effective on the date of such change, it being understood that such rate may not be the best or lowest rate offered by the Bank.

“*Property*” - means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Purchase Date*” - shall have the meaning set forth in Section 2.3(a) hereof.

“*Quarterly Date*” - means the first day of each May, August, November and February.

“*Rating Agency*” - means Moody’s or S&P, individually, or Moody’s and S&P, collectively, as the context requires.

“*Reimbursement Obligations*” - means any and all obligations of the Issuer to reimburse the Bank for any drawings under the Letter of Credit and all obligations to repay the Bank for any Liquidity Advance or Term Loan, including in each instance all

interest accrued thereon (each of which shall be evidenced and secured by the related Bank Bonds).

“Related Documents” - means this Agreement, the Letter of Credit and the Bond Documents.

“Remarketing Agent” - means, initially, Stifel, Nicolaus & Company, Incorporated, Hanifer and Imhoff Division, and its successors and assigns, or any successor remarketing agent appointed in accordance with the terms of the Indenture.

“Remarketing Agreement” - means the remarketing agreement entered into between a Remarketing Agent and the Issuer.

“Replenishment Resolution” shall have the meaning set forth in the Indenture.

“Resolution” - means the Resolution authorizing the issuance of the Bonds adopted by the Issuer on February 13, 2006.

“S&P” - means Standard & Poor’s Ratings Group, a Division of The McGraw-Hill Companies, Inc. and its successors and assigns

“Stated Amount” - means the Original Stated Amount less the amount of any Redemption or Stated Maturity Drawings (as defined in the Letter of Credit).

“Stated Expiration Date” - shall have the meaning set forth in the Letter of Credit.

“Subordinate Debt” - shall have the meaning given such term in the Indenture.

“Substitute Credit Facility” - shall have the meaning given such term in the Indenture.

“Termination Date” - shall have the meaning set forth in the Letter of Credit.

“Term Loan” is defined in Section 2.3(b) hereof.

“Term Loan Commencement Date” means, subject to the satisfaction of the conditions precedent set forth in Section 3.2(b) hereof, the earlier to occur of (i) the Termination Date and (ii) the ninety-first (91st) day following the date on which the Bank makes available to the Issuer any Liquidity Advance.

“Term Loan Maturity Date” means the date which is the tenth anniversary of the Term Loan Commencement Date.

“Trustee” - means U.S. Bank National Association, as trustee under the Indenture, and any successor trustee thereunder.

“*Trust Estate*” - shall have the meaning set forth in the Indenture.

“*Urban Renewal Plan*” - shall have the meaning set forth in the Indenture.

“*Urban Renewal Project*” - shall have the meaning set forth in the Indenture.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Indenture. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

ARTICLE TWO LETTER OF CREDIT

Section 2.1. Issuance of Letter of Credit. Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit to the Trustee for the account of the Issuer. The Letter of Credit shall be in the Original Stated Amount of \$_____, which is the sum of (i) the principal amount of the Bonds outstanding on the Closing Date, plus (ii) interest thereon at the Cap Interest Rate for a period of forty-six (46) days (calculated on the basis of a 365-day year for the actual number of days elapsed).

Section 2.2. Letter of Credit Drawings. The Trustee is authorized to make drawings under the Letter of Credit in accordance with its terms. The Issuer hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The Issuer hereby irrevocably approves reductions and reinstatements of the Available Amount with respect to the Letter of Credit as provided in the Letter of Credit.

Section 2.3. Liquidity Drawings; Term Loans.

(a) *Liquidity Drawings.* If the conditions precedent in Section 3.2(a) hereof are satisfied at the time of payment by the Bank of any Liquidity Drawing, each Liquidity Drawing made under the Letter of Credit shall constitute an advance (a “*Liquidity Advance*”) to the Issuer. The Issuer promises to pay to the Bank each Liquidity Advance on the earliest to occur of (i) the date on which any Bonds purchased with funds disbursed under the Letter of Credit in connection with such Liquidity Drawing (the “*Purchase Date*”) are redeemed or cancelled pursuant to the Indenture, (ii) the date on which any such Bonds are remarketed pursuant to the Indenture, (iii) the date on which the Letter of Credit is replaced with a Substitute Credit Facility pursuant to the terms of the Indenture and (iv) the Term Loan Commencement Date. The Issuer’s obligation to repay each Liquidity Advance and to pay interest thereon as hereinafter provided shall be evidenced and secured by the related Bank Bonds.

(b) *Term Loans.* If the conditions precedent in Section 3.2(b) hereof are satisfied on the Term Loan Commencement Date, each Liquidity Advance shall be converted to a term loan (a “*Term Loan*”) to the Issuer. The Issuer promises to repay to the Bank each Term Loan on the earliest to occur of (i) the date on which the Bonds purchased under the Letter of Credit in connection with the related Liquidity Drawing are redeemed, cancelled or remarketed pursuant to the Indenture, (ii) the date on which the Letter of Credit is replaced with a Substitute Credit Facility pursuant to the terms of the Indenture and (iii) the Term Loan Maturity Date. The Issuer shall pay to the Bank the principal amount of the Term Loan in equal (as nearly as possible) quarterly installments commencing on the first Quarterly Date to occur immediately succeeding the Term Loan Commencement Date and on each Quarterly Date thereafter, with the outstanding principal amount to be paid in full on the Term Loan Maturity Date. The Issuer’s obligation to repay each Term Loan and to pay interest thereon as hereinafter provided shall be evidenced and secured by the related Bank Bonds.

(c) Upon the Bank’s honoring any Liquidity Drawing and continuing upon the conversion of any Liquidity Advance to a Term Loan, the Bank shall be deemed to have purchased the Bank Bonds in respect of which such Drawing is made, and the Issuer shall cause the Trustee to hold such Bank Bonds for the benefit of the Bank and register such Bank Bonds in the name of the Bank or its nominee, or to otherwise deliver such Bank Bonds as directed by the Bank pursuant to the Indenture. During such time as the Bank is the owner of any Bonds, the Bank shall have all the rights granted to a Bondholder under the Indenture and such additional rights as may be granted to the Bank hereunder. To the extent that the Bank actually receives payment in respect to principal of or interest on the Bank Bond held by the Bank, the Liquidity Advance or Term Loans, as applicable, made in connection with the purchase of such Bank Bond shall be deemed to have been reduced *pro tanto*, with the Bank crediting any payment on such Bank Bond received, first to the payment of any outstanding interest accrued on the related Liquidity Advance or Term Loans, as applicable, and second to the payment of the principal of such Liquidity Advance or Term Loans, as applicable. Any such payment or prepayment to be applied to principal of Liquidity Advances or Term Loans, as applicable, hereunder shall be applied to the prepayment of related Liquidity Advances or Term Loans, as applicable, in chronological order of their issuance hereunder, and within each Liquidity Advance or Term Loans, as applicable, in inverse order of the principal installments payable thereon. Following the occurrence of an Event of Default, any payments received by the Bank hereunder shall be applied by the Bank to the payment of the Obligations in such order as the Bank shall in its sole discretion determine.

(d) *Interest on Liquidity Advances and Term Loans.* Subject to Section 2.10 hereof, the Issuer also promises to pay to the Bank interest on the unpaid principal amount of each Liquidity Advance and Term Loan (which are evidenced and secured by the related Bank Bonds) from the date such Liquidity Advance or Term Loan is made until it is paid in full as provided herein, at a rate per annum equal to the Bank Rate from time to time in effect, payable quarterly in arrears on the first Business Day of each month (commencing on the first such date to occur after the date of such Liquidity

Advance) and on the date that the final principal installment of each such Liquidity Advance or Term Loan is payable as herein provided.

Section 2.4. Reimbursement of Drawings Other Than Liquidity Drawings Under the Letter of Credit. The Issuer agrees to reimburse the Bank or cause the Bank to be reimbursed for the full amount of all drawings (other than Liquidity Drawings where the conditions precedent set forth in Section 3.2(a) hereof are satisfied) made under the Letter of Credit immediately upon payment by the Bank of each such drawing and on the date of each such payment. If the Issuer does not make such reimbursement on such date, such Reimbursement Obligation shall bear interest at the rate per annum specified in Section 2.10 hereof.

Section 2.5. Fees. The Issuer hereby agrees to pay, or cause to be paid, to the Bank:

(a) On May 1, 2006, for the period commencing on the Closing Date and ending on April 30, 2006, and in arrears on each Quarterly Date occurring thereafter to the Termination Date and on the Termination Date, a non-refundable letter of credit fee on the Available Amount of the Letter of Credit (without regard to any temporary reductions of the Available Amount of the Letter of Credit) at a rate per annum specified below during each related period (the “L/C Fee Rate”).

LEVEL	MOODY’S RATING	S&P RATING	L/C FEE RATE
Level 1	Aa3 or above	AA- or above	0.38%
Level 2	A1	A+	0.405%
Level 3	A2	A	0.43%
Level 4	A3	A-	0.455%
Level 5	Baa1	BBB+	0.505%
Level 6	Baa2	BBB	0.555%
Level 7	Baa3	BBB-	0.605%
Level 8	Below Baa3	Below BBB-	1.605%

In the event that a Rating (as defined below) is suspended or otherwise unavailable from any of the Rating Agencies (for credit related reasons only), the L/C Fee Rate shall be that set forth in Level 8 above. The term “Rating” as used above shall mean the long-term unenhanced debt rating assigned by each of Moody’s and S&P to the general obligation debt of the City. In the event of a split Rating (i.e., one of the foregoing Rating Agency’s Ratings is at a different level than the Rating of the other Rating Agency), the L/C Fee Rate shall be based upon the level in which the lower rating appears. Any change in the L/C Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Ratings from the agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as

currently in effect. The Issuer acknowledges, and the Bank agrees, that as of the Closing Date the L/C Fee Rate is that specified above for Level 1. The letter of credit fees shall be payable quarterly in arrears, together with interest on the letter of credit fees from the date payment is due until payment in full at the Default Rate.

(b) on the date of each drawing under the Letter of Credit, a draw fee equal to \$250;

(c) on the date of each amendment to this Agreement or the Letter of Credit, an amendment fee, of \$2,500; and

(d) on the date of each transfer of the Letter of Credit, a transfer fee of \$2,500.

Section 2.6. Method of Payment; Etc. All payments to be made by the Issuer under this Agreement shall be made to the Bank not later than 3:00 p.m. on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. Payments received by the Bank on any day after 3:00 p.m. shall be deemed to be made on the next succeeding Business Day.

Section 2.7. Termination of Letter of Credit by the Issuer. Notwithstanding any provisions of this Agreement, the Letter of Credit or any Related Document to the contrary, the Issuer agrees not to terminate, replace or substitute the Letter of Credit prior to the first anniversary of the Closing Date unless (a) if the Bonds are then rated by Moody's, Moody's shall have lowered or withdrawn either (i) the long-term rating on the Bonds backed by the Letter of Credit below "A2" or (ii) the short-term rating on the Bonds backed by the Letter of Credit below "VMIG1," (b) if the Bonds are then rated by S&P, S&P shall have lowered or withdrawn either (i) the long-term rating on the Bonds backed by the Letter of Credit below "A" or (ii) the short-term rating on the Bonds backed by the Letter of Credit below "A-1," (c) the Bank seeks recovery of amounts described in Section 7.1 hereof, or (d) the Issuer pays to the Bank a termination fee in an amount equal to the letter of credit fees payable pursuant to Section 2.5(a) hereof (based upon the Original Stated Amount) for one full calendar year at the L/C Fee Rate in effect as of the date of such termination, less the actual amount of letter of credit fees the Issuer has previously paid to the Bank pursuant to Section 2.5(a) hereof. The Issuer agrees that it will pay in connection with any termination of the Letter of Credit pursuant to the terms hereof to the Bank all fees, expenses and other Obligations payable hereunder, including, without limitation, all principal and accrued interest owing on any Liquidity Advances and Term Loans. All payments from the Issuer to the Bank referred to in this Section 2.7 shall be made with immediately available funds. Upon satisfaction of the conditions set forth in the first three sentences of this Section 2.7, or at any time after the first anniversary of the Closing Date, the Issuer may, upon thirty (30) days' written notice to the Bank, to the extent such termination is permitted by the Related Documents, terminate the Letter of Credit.

Section 2.8. Computation of Interest and Fees. All computations of interest and fees payable by the Issuer under this Agreement shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

Section 2.9. Payment Due on Non-Business Day to Be Made on Next Business Day. If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall not be included in the computation of interest and fees.

Section 2.10. Default Rate. If the principal amount of any Obligation is not paid when due or if any Event of Default shall have occurred and be continuing, all Obligations shall bear interest until paid in full at a rate per annum equal to the Base Rate plus 3%.

Section 2.11. Source of Funds. All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

Section 2.12. Collateral Security. As security for the payment of the Obligations of the Issuer, the Issuer has, pursuant to the Indenture, pledged, and pursuant hereto hereby pledges to the Bank all of the Issuer's right, title and interest in and to the Trust Estate, including without limitation, the Pledged Revenues and all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution.

Section 2.13. Maximum Rate; Payment of Fee. If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and (ii) the Maximum Rate (the "*Excess Interest*"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the Issuer shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. To the extent permitted by law, upon the date all Reimbursement Obligations are payable hereunder following the termination of the Letter of Credit, in consideration for the limitation of the rate of interest otherwise payable hereunder, the Issuer shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

ARTICLE THREE CONDITIONS PRECEDENT

Section 3.1. Conditions Precedent to Issuance of Letter of Credit. As conditions precedent to the obligation of the Bank to issue the Letter of Credit, (a) the Issuer and the City shall provide to the Bank on the Closing Date, in form and substance satisfactory to the Bank and its counsel, Chapman and Cutler LLP (hereinafter, "*Bank's counsel*"):

- (i) the written opinion of Sherman & Howard LLC, bond counsel, dated the Closing Date and addressed to the Bank;

(ii) the written opinion of Murray Dahl Kuechenmeister & Renaud LLP, counsel to the Issuer, dated the Closing Date and addressed to the Bank;

(iii) the written opinion of counsel to the City, dated the Closing Date and addressed to the Bank;

(iv) a certificate signed by a duly authorized officer of each of the Issuer and the City, dated the Closing Date and stating that:

(A) the representations and warranties contained in Article Four of this Agreement are true and correct on and as of the Closing Date as though made on such date; and

(B) no Event of Default or Potential Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery or performance of this Agreement or any Related Document to which the Issuer or the City is a party;

(v) a copy of the Resolution and the Replenishment Resolution, and all other necessary approvals, if any, of the Issuer and the City certified as of the Closing Date by the Secretary of the Issuer and the City Clerk, as applicable, authorizing, among other things, the execution, delivery and performance by the Issuer and the City of the Related Documents to which either is a party;

(vi) certificates of appropriate officials of the Issuer and the City certifying the names and true signatures of the officials of the Issuer and the City authorized to execute on behalf of the Issuer, and the City, as applicable, this Agreement and the other Related Documents to which either is a party;

(vii) true and correct copies of all approvals necessary for the Issuer and the City to execute, deliver and perform the Related Documents to which either is a party;

(viii) evidence of the power and authority of the Trustee and the Remarketing Agent to accept and execute their respective responsibilities under the Indenture and the Remarketing Agreement; and certificates of the Trustee and the Remarketing Agent, in each case, as to such matters incident to this Agreement and the transactions contemplated hereby and thereby as the Bank shall have reasonably requested;

(ix) an executed or certified copy of each document, instrument, certificate and opinion delivered pursuant to the Indenture, the Bond Purchase Agreement and the other Related Documents in connection with the issuance and delivery of the Bonds;

(x) evidence that the Issuer shall have duly executed, issued and delivered the Bonds to the Trustee and the bond registrar shall have duly authenticated the Bonds and delivered the bonds against payment;

(xi) executed originals of each of the Related Documents (other than the Letter of Credit and the Bonds) and such other documents, certificates and opinions as the Bank or Bank's counsel may reasonably request.

(b) no law, regulation, ruling or other action of the United States, the State of New York or the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letter of Credit; and

(c) all legal requirements provided herein incident to the execution, delivery and performance of the Related Documents and the transactions contemplated thereby, shall be reasonably satisfactory to the Bank and Bank's counsel.

Section 3.2. Conditions Precedent to Liquidity Advances; Conditions Precedent to Term Loans. (a) Following any payment by the Bank under the Letter of Credit pursuant to a Liquidity Drawing, a Liquidity Advance shall be made available to the Issuer *only if* on the date of payment of such Liquidity Drawing by the Bank (i) the representations and warranties contained in Article Four of this Agreement are true and correct as of such date and (ii) no event has occurred and is continuing which constitutes a Potential Default or an Event of Default.

Unless the Issuer and the City shall have previously advised the Bank in writing that the above statements are no longer true, the Issuer and the City shall be deemed to have represented and warranted on the date of such payment that the above statements are true and correct.

(b) On the Term Loan Commencement Date, a Term Loan shall be made available to the Issuer *only if* (i) the representations and warranties contained in Article Four of this Agreement are true and correct as of such date and (ii) no event has occurred and is continuing which constitutes a Potential Default or an Event of Default.

Unless the Issuer and the City shall have previously advised the Bank in writing that the above statements are no longer true, the Issuer and the City shall be deemed to have represented and warranted on the date of such payment that the above statements are true and correct.

ARTICLE FOUR REPRESENTATIONS AND WARRANTIES

Section 4.1. Representations and Warranties of the Issuer. In order to induce the Bank to enter into this Agreement, the Issuer represents and warrants to the Bank as follows:

(a) *Organization; Power and Authority.* The Issuer is duly organized and validly existing as a public body corporate and politic duly organized and existing as an urban renewal authority under the laws of the State of Colorado. The Issuer has full right and authority to enter into this Agreement and the other Related Documents to which it is a party and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the Issuer of this Agreement, the Indenture and the other Related Documents and the issuance, execution and delivery of the Bonds have been duly authorized by all necessary action, and do not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the Issuer, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the Indenture) upon any of the assets of the Issuer pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the Issuer is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement and the other Related Documents to which it is a party constitute the legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Bonds, when issued and delivered against payment therefor as contemplated by the Bond Purchase Agreement, will have been duly issued, executed and delivered in conformity with the Indenture and will constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and entitled to the benefit and security of the Indenture.

(d) *Status.* As of the Closing Date, no other Debt of the Issuer other than the Bonds is secured by a Lien on the Pledged Revenues. Under the terms of the Indenture, the Pledged Revenues cannot secure any Debt of the Issuer other than the Bonds, Additional Bonds, Subordinate Debt and the Obligations.

(e) *Disclosure.* No representation, warranty or other statement made by the Issuer in or pursuant to this Agreement or any Related Document or any other document or financial statement provided by the Issuer to the Bank in connection with this Agreement or any other Related Document, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they are made. There is no fact known to the Issuer which the Issuer has not disclosed to the Bank in writing and which materially adversely affects or is likely to materially adversely affect the ability (financial or otherwise) of the Issuer to perform its obligations hereunder or under the Related Documents.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against

or affecting the Issuer wherein an unfavorable decision, ruling or finding would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the Issuer or the transactions contemplated by this Agreement or the Related Documents to which it is a party, or which would adversely affect the validity or enforceability of, or the authority or ability of the Issuer to perform its obligations under, this Agreement, the Indenture or the other Related Documents to which it is a party, or the Pledged Revenues or the pledge of the Pledged Revenues pursuant to the terms of this Agreement and the Related Documents.

(g) *Other Agreements.* The Issuer is not in default under (i) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality, or (ii) any law or regulation, or (iii) any other Debt of the Issuer payable from or secured by the Pledged Revenues, or other funds in the Trust Estate, or (iv) any contract, agreement or instrument to which the Issuer is a party or by which it or its property is bound, which default would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the Issuer or the transactions contemplated by this Agreement or the Related Documents, or which would have a material adverse effect on the validity or enforceability of, or the authority or ability of the Issuer to perform its obligations under this Agreement, the Indenture or the other Related Documents to which it is a party; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(h) *Financial Statements and Condition.* The most recent financial reports of the Issuer as of December 31, 2004, copies of which have been delivered to the Bank, are complete and correct and fairly present the financial condition of the Issuer as at such date, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2004, there has been no material adverse change in the condition (financial or otherwise), business or operations of the Issuer.

(i) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the Issuer of this Agreement or any other Related Document to which it is a party or the issuance, execution and delivery and performance of the Bonds, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(j) *Security.* The Indenture creates, for the benefit and security of the Bonds and the Obligations (including, without limitation, Bank Bonds), the legally valid and binding Lien on and pledge of the Trust Estate, including, without limitation, the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution and the funds (the "*Funds*") in which they are from time to time on deposit. There is no Lien on the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution or the Funds other than the Lien created by the Indenture and this Agreement. The Indenture does not permit the issuance of any Debt secured by the Pledged Revenues, all amounts appropriated to the

Issuer by the City pursuant to the Replenishment Resolution or the Funds to rank senior to the Bonds or the Obligations (including, without limitation, Bank Bonds). The payment of the Obligations (including, without limitation, Bank Bonds) constitutes an obligation of the Issuer payable on a parity with all other Additional Bonds issued under the Indenture and senior to all Subordinate Debt. No filing, registering, recording or publication of the Indenture or any other instrument is required to establish the pledge under the Indenture or to perfect, protect or maintain the Lien created thereby on the Pledged Revenues, all amounts appropriated to the Issuer by the City pursuant to the Replenishment Resolution or the Funds and the Trust Estate.

(k) *Related Documents.* The Issuer makes each of the representations, warranties and covenants contained in the Related Documents to which it is a party to, and for the benefit of, the Bank as if the same were set forth at length herein, together with all applicable definitions thereto. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in any Related Document to which the Issuer is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

(l) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the Issuer, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of Colorado or any published administrative interpretation of the Constitution of Colorado or any State of Colorado law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Bonds, or any holder thereof in its capacity as such, or the ability of the Issuer to perform its obligations under this Agreement or the other Related Documents.

(m) *Environmental Matters.* The Issuer does not have knowledge that the operations of the Urban Renewal Project are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Property, business or operations of the Issuer or the Urban Renewal Project.

(n) *Immunity.* Except for actions which lie or could lie in tort, the Issuer has no immunity from jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Issuer under this Agreement or the Related Documents. In the event the Issuer acquires such immunity subsequent to the execution and delivery hereof, the Issuer agrees to waive any such immunity to the fullest extent permitted by law.

(o) *Limitation on Interest Rate.* The maximum interest rate payable on the Bonds or the Issuer's Obligations to the Bank hereunder under the laws or Constitution of the State of Colorado is 45% per annum.

(p) *Approvals.* No authorization, consent, license, exemption, filing or registration with any court or Governmental Authority or any approval or consent of any other Person that has not been obtained, is or will be necessary to the valid execution, delivery or performance by the Issuer of any Related Document to which it is a party.

(q) *No Defaults.* No Event of Default or Potential Default has occurred and is continuing.

Section 4.2. Representations and Warranties of the City. In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as follows:

(a) *Organization; Power and Authority.* The City is duly organized and validly existing as a home rule municipality under the laws of the State of Colorado. The City has full right and authority to enter into this Agreement and the other Related Documents to which it is a party and to perform each and all of the matters and things herein and therein provided for.

(b) *Due Authorization; No Violation.* The execution, delivery and performance by the City of this Agreement and the other Related Documents to which it is a party have been duly authorized by all necessary action, and do not and will not violate any constitutional provisions or any law or any regulation, order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the City, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than the Lien of the Indenture) upon any of the assets of the City pursuant to the terms of, any resolution, ordinance, mortgage, indenture, agreement or instrument to which the Issuer is a party or by which it or any of its properties is bound.

(c) *Enforceability.* This Agreement and the other Related Documents to which it is a party constitute the legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) *Disclosure.* No representation, warranty or other statement made by the City in or pursuant to this Agreement or any Related Document to which it is a party or any other document or financial statement provided by the City to the Bank in connection with this Agreement or any other Related Document, contains any untrue statement of a material fact or omits (as of the date made or furnished) any material fact necessary to make the statements herein or therein not misleading in light of the circumstances under

which they are made. There is no fact known to the City which the City has not disclosed to the Bank in writing and which materially adversely affects or is likely to materially adversely affect the ability (financial or otherwise) of the City to perform its obligations hereunder or under the Related Documents to which it is a party.

(e) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened against or affecting the City wherein an unfavorable decision, ruling or finding would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the City or the transactions contemplated by this Agreement or the other Related Documents to which it is a party, or which would adversely affect the validity or enforceability of, or the authority or ability of the City to perform its obligations under, this Agreement or the other Related Documents to which it is a party.

(f) *Other Agreements.* The City is not in default under (i) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality, or (ii) any law or regulation, or (iii) any other Debt of the City subject to appropriation by the City Council of the City, or (iv) any contract, agreement or instrument to which the City is a party or by which it or its property is bound, which default would have a material adverse effect on the properties, business, condition (financial or otherwise), results of operations or prospects of the City or the transactions contemplated by this Agreement or the Related Documents, or which would have a material adverse effect on the validity or enforceability of, or the authority or ability of the City to perform its obligations under this Agreement or the other Related Documents to which it is a party; and no event has occurred which with the giving of notice or the passage of time or both would constitute such a default.

(g) *Financial Statements and Condition.* The most recent financial reports of the City as of December 31, 2004, copies of which have been delivered to the Bank, are complete and correct and fairly present the financial condition of the City as at such date, for the periods covered by such statements, all in conformity with GAAP. Since December 31, 2004, there has been no material adverse change in the condition (financial or otherwise), business or operations of the City.

(h) *Consents.* No authorization, consent, order or other approval of, or registration or filing with, or taking of any other action in respect of or by, any court or governmental body, agency or other instrumentality is required for the valid execution, delivery or performance by the City of this Agreement or any other Related Document to which it is a party, except such as shall have been duly obtained, given or accomplished prior to the execution and delivery hereof or thereof.

(i) *Related Documents.* The City makes each of the representations, warranties and covenants contained in the Related Documents to which it is a party to, and for the benefit of, the Bank as if the same were set forth at length herein, together with all applicable definitions thereto. No amendment, modification, termination or

replacement of any such representations, warranties, covenants and definitions contained in any Related Document to which it is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

(j) *No Proposed Legal Changes.* There is no amendment, or to the knowledge of the City, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of Colorado or any published administrative interpretation of the Constitution of Colorado or any State of Colorado law, or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Bonds, or any holder thereof in its capacity as such, or the ability of the City to perform its obligations under this Agreement or the other Related Documents to which it is a party.

(k) *Environmental Matters.* The City does not have knowledge that the operations of the Urban Renewal Project are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Property, business or operations of the City or the Urban Renewal Project.

(l) *Immunity.* Except for actions which lie or could lie in tort, the City has no immunity from jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the City under this Agreement or the other Related Documents to which it is a party. In the event the City acquires such immunity subsequent to the execution and delivery hereof, the City agrees to waive any such immunity to the fullest extent permitted by law.

(m) *Limitation on Interest Rate.* The maximum interest rate payable on the Bonds or the Issuer's Obligations to the Bank hereunder under the laws or Constitution of the State of Colorado is 45% per annum.

(n) *Approvals.* No authorization, consent, license, exemption, filing or registration with any court or Governmental Authority or any approval or consent of any other Person that has not been obtained, is or will be necessary to the valid execution, delivery or performance by the City of this Agreement or any other Related Document to which it is a party.

ARTICLE FIVE COVENANTS

Section 5.1. Covenants of the Issuer. The Issuer will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement, unless the Bank shall otherwise consent in writing:

(a) *Performance of This and Other Agreements; Compliance with Laws, Etc.* The Issuer shall punctually pay or cause to be paid all amounts payable under this Agreement and the other Related Documents and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents. The Issuer shall comply with all material applicable laws and orders of any governmental entity (including, without limitation, compliance with environmental laws, ERISA and the rules and regulations thereunder and state securities and blue sky laws in connection with the offering, sale and delivery of the Bonds) and shall promptly notify the Bank of any legislation enacted which would have a material adverse effect on the ability of the Issuer to pay the Obligations hereunder.

(b) *Further Assurances.* The Issuer shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and documents as in the opinion of the Bank are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents.

(c) *Books and Records; Inspection Rights.* The Issuer shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the Issuer; and at any reasonable time and from time to time, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Issuer and to discuss the affairs, finances and accounts of the Issuer with any of the Issuer's officers, trustees and independent auditors (and by this provision the Issuer authorizes said auditors to discuss with the Bank or its agents or representatives, the affairs, finances and accounts of the Issuer).

(d) *Reporting Requirements.* The Issuer shall furnish or cause to be furnished to the Bank:

(i) as soon as available and in any event (i) within 180 days after the end of each fiscal year, the unaudited financial statements for the Urban Renewal Project for such fiscal year, which unaudited financial statements shall include the results of certain operations of the Urban Renewal Project and (ii) within 45 days of each fiscal quarter, the quarterly financial statements of the Urban Renewal Project;

(ii) concurrently with each delivery of the financial statements referred to in clause (a) above, a certificate of the Issuer's chief financial officer stating

that (i) he or she has reviewed this Agreement and the Indenture and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the Issuer and the Urban Renewal Area during the accounting period covered by such financial statements, (ii) based on such review, the Issuer has observed or performed all of its covenants and agreements, and satisfied every condition contained in this Agreement and the Indenture to be observed, performed or satisfied by it, (iii) such review has not disclosed the existence during or at the end of such accounting period, and he or she does not have knowledge of the existence as at the date of the certificate, of any Potential Default or Event of Default or, if he or she has any knowledge of any Potential Default or Event of Default, specifying the same and what action the Issuer is taking or proposes to take with respect thereto and (iv) that the Issuer is in compliance with Section 5.1(p) hereof;

(iii) as soon as possible and in any event within ten days after the adoption thereof, the annual budget of the Issuer, containing estimates of expenditures and anticipated Pledged Revenues for the fiscal year covered thereby;

(iv) as soon as possible and in any event within ten days after the same shall have been requested by the Bank, copies of (i) all final feasibility studies that have been prepared by the Issuer with respect to the Issuer in connection with the issuance of Debt by the Issuer relating to the Urban Renewal Project, and (ii) all final official statements or other final disclosure statement prepared with respect to any Additional Bonds or Subordinate Debt;

(v) as soon as possible and in any event within ten days after an official of the Issuer has knowledge thereof, notice of any action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened which is of the nature described in Section 4.1(f) of this Agreement;

(vi) as soon as possible and in any event within five days after the occurrence of each Event of Default or Potential Default of which the chief financial officer or any responsible officer of the Issuer has knowledge, continuing on the date of such statement, a statement of the Issuer's chief financial officer setting forth details of such Event of Default or Potential Default and the action which the Issuer is taking or proposes to take with respect thereto;

(vii) promptly after the receipt or giving thereof, copies of all notices of resignation by or removal of the Trustee, the Remarketing Agent which are received and/or given by the Issuer;

(viii) the unaudited quarterly reports prepared by the Trustee, as and when available, setting forth the amount of funds on deposit in each fund and account established under the Indenture;

(ix) a report, prepared by the Issuer, detailing receipt by the Issuer of Pledged Revenues, beginning April 30, 2006 (for the period from and including the Closing Date to and including April 30, 2006), and on each October 31, and April 30 occurring thereafter;

(x) as soon as available and in any event within thirty (30) days of the end of each fiscal quarter, sales tax return figures for the Urban Renewal Project for such period; and

(xi) as soon as available, all reports, budgets and financial documentation submitted by the Developer to the Issuer pursuant to Section 8 of the Development Agreement;

(xii) from time to time such additional information regarding the financial position or business of the Issuer as the Bank may reasonably request.

(e) *Special Remedies.* Notwithstanding anything in this Agreement or in any Related Document to the contrary, to the extent the holder of any Additional Bonds or Subordinate Debt, or any other Person, is permitted to accelerate or otherwise cause the maturity of Debt secured by the Pledged Revenues to become due prior to its scheduled terms upon the occurrence of an Event of Default hereunder, the Bank may immediately declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer, and upon the occurrence of an Event of Default under Section 6.1(i) hereof, such acceleration shall automatically occur (unless such automatic acceleration is waived by Bank in writing).

(f) *Preservation of Lien.* The Issuer shall take all necessary action to maintain and preserve the Lien on the Pledged Revenues and the Trust Estate to secure the Obligations and the Bonds on a parity with all Additional Bonds.

(g) *Permitted Investments.* The Issuer shall not permit the Pledged Revenues or any monies in the Trust Estate to be invested in anything other than Permitted Investments.

(h) *Debt.* The Issuer will not issue, incur, assume, create or have outstanding any Debt payable from the Pledged Revenues or the Trust Estate other than as expressly permitted in the Indenture, as in effect as of the Closing Date.

(i) *Liens.* The Issuer will not create, incur or permit to exist any Lien of any kind on the Pledged Revenues or the Trust Estate, other than as expressly provided in the Indenture, as in effect as of the Closing Date.

(j) *Related Documents.* The Issuer shall not (i) modify, amend or supplement any of the Related Documents, (ii) give any consent to any modification, amendment or supplement of any of the Related Documents, or (iii) make any waiver with respect to

any of the Related Documents. The Issuer will supply the Bank with one fully executed copy of any modification, amendment, supplement or waiver of any of the Related Documents within five days after the execution thereof.

(k) *Optional Redemption of Bonds.* The Issuer will not permit an optional redemption or purchase of the Bonds under the Indenture without the prior written consent of the Bank; *provided, however*, that if the Issuer has deposited with the Bank or the Trustee an amount equal to the principal amount of Bonds to be redeemed pursuant to the Indenture, the Bank shall be deemed to have consented to such optional redemption to the extent of the amounts so deposited.

(l) *Substitution.* The Issuer will not provide or permit to be provided credit enhancement for the Bonds provided by a third party other than the Letter of Credit unless the Letter of Credit shall have been returned to the Bank for cancellation and all Obligations shall have been paid in full.

(m) *Inspection.* The Issuer shall permit the Bank and its duly authorized representatives and agents to visit and inspect the Urban Renewal Project, any of its books and records relating thereto, to examine and make copies of such books and records, and to discuss the finances of the Urban Renewal Project and the Pledged Taxes with the Issuer's officers, independent public accountants (and by this provision the Issuer authorizes such accountants to discuss with the Bank the finances and affairs of the Issuer) at such reasonable times and reasonable hours as the Bank may designate.

(n) *No Priority.* No Debt of the Issuer shall be issued having any priority over payment of the Obligations from the Pledged Revenues or the Funds.

(o) *Additional Bonds or Debt Secured by Pledged Revenues.* The Issuer shall not issue Additional Bonds or other Debt secured by Pledged Revenues except as expressly provided in the Indenture.

(p) *Debt Service Coverage Ratio.* The Issuer shall not take any action which would cause the Pledged Revenues for any calendar year to be less than 110% of the Debt Service Requirement of the Bonds and all other Debt secured by the Pledged Revenues for such year.

(q) *Compliance with Act; Payment of Obligations.* The Issuer will comply with the Act and collection procedures for collection of the taxes making up a portion of the Pledged Revenues. The Issuer agrees, to the fullest extent permitted by law, to take such actions, make such filings, prepare such budgets, reports or estimates or do such other things as may be desirable, necessary or appropriate in order to insure at all times that the Obligations are paid in full as the same are due and payable.

(r) *Compliance with other Covenants.* From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Bank, the Issuer agrees that it will, for the benefit of the Bank,

comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the provisions of the Indenture and in the other Related Documents to which it is party, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any of the Indenture or any Related Document to which the Issuer is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

Section 5.2. Covenants of the City. The City will do the following so long as any amounts may be drawn under the Letter of Credit or any Obligations remain outstanding under this Agreement, unless the Bank shall otherwise consent in writing:

(a) *Performance of This and Other Agreements; Compliance with Laws, Etc.* The City shall punctually pay or cause to be paid all amounts payable under this Agreement and the other Related Documents to which it is a party and observe and perform all of the conditions, covenants and requirements of this Agreement and the other Related Documents to which it is a party. The City shall comply with all material applicable laws and orders of any governmental entity (including, without limitation, compliance with environmental laws, ERISA and the rules and regulations thereunder and state securities and blue sky laws in connection with the offering, sale and delivery of the Bonds) and shall promptly notify the Bank of any legislation enacted which would have a material adverse effect on the ability of the City to pay the Obligations hereunder.

(b) *Further Assurances.* The City shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and documents as in the opinion of the Bank are necessary or advisable to carry out the intent and purpose of this Agreement and the Related Documents.

(c) *Books and Records; Inspection Rights.* The City shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the City; and at any reasonable time and from time to time, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the City and to discuss the affairs, finances and accounts of the City with any of the City's officers, trustees and independent auditors (and by this provision the City authorizes said auditors to discuss with the Bank or its agents or representatives, the affairs, finances and accounts of the City).

(d) *Reporting Requirements.* The City shall furnish our cause to be furnished to the Bank:

(i) as soon as available and in any event (i) within 210 days after the end of each fiscal year, the audited financial statements for the City for such fiscal year, City and (ii) within 60 days of each fiscal quarter, the quarterly unaudited financial statements of the City;

(ii) concurrently with each delivery of the financial statements referred to in clause (a) above, a certificate of the City's chief financial officer stating that (i) he or she has reviewed this Agreement and the Indenture and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the City during the accounting period covered by such financial statements, (ii) based on such review, the City has observed or performed all of its covenants and agreements, and satisfied every condition contained in this Agreement and the Indenture to be observed, performed or satisfied by it, and (iii) such review has not disclosed the existence during or at the end of such accounting period, and he or she does not have knowledge of the existence as at the date of the certificate, of any Potential Default or Event of Default or, if he or she has any knowledge of any Potential Default or Event of Default, specifying the same and what action the City is taking or proposes to take with respect thereto;

(iii) as soon as possible and in any event within ten days after the adoption thereof, the annual budget of the City, containing estimates of expenditures and any anticipated appropriations required to pay the principal of and interest on the Bonds and the Obligations for the fiscal year covered thereby;

(iv) as soon as possible and in any event within ten days after the same shall have been requested by the Bank, copies of (i) all final feasibility studies that have been prepared by the City with respect to the City in connection with the issuance of Debt by the Issuer relating to the Urban Renewal Project, and (ii) all final official statements or other final disclosure statement prepared with respect to any Additional Bonds or Subordinate Debt;

(v) as soon as possible and in any event within ten days after an official of the City has knowledge thereof, notice of any action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened which is of the nature described in Section 4.2(e) of this Agreement;

(vi) as soon as possible and in any event within five days after the occurrence of each Event of Default or Potential Default, continuing on the date of such statement, a statement of the City's chief financial officer setting forth details of such Event of Default or Potential Default and the action which the Issuer is taking or proposes to take with respect thereto; and

(vii) from time to time such additional information regarding the financial position or business of the City as the Bank may reasonably request.

(e) *Related Documents.* The City shall not (i) modify, amend or supplement any of the Related Documents to which it is a party, (ii) give any consent to any modification, amendment or supplement of any of the Related Documents to which it is a party, or (iii) make any waiver with respect to any of the Related Documents to which it is a party. The City will supply the Bank with one fully executed copy of any modification, amendment, supplement or waiver of any of the Related Documents to which it is a party within five days after the execution thereof.

(f) *Activities of City.* The City will preserve, renew and maintain all material licenses, approvals, authorizations, permits, rights, privileges and franchises necessary or desirable in the ordinary conduct of its business.

(g) *Urban Renewal Area.* The City will not dissolve the Urban Renewal Area prior to repayment of all Obligations and expiration or termination of the Letter of Credit.

(h) *Compliance with other Covenants.* From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Bank, the City agrees that it will, for the benefit of the Bank, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings contained in the Related Documents to which it is party, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and without regard or giving effect to any amendment or modification of any provisions of any Related Document to which the City is a party or any waiver of compliance therewith, no such amendment, modification or waiver to in any manner constitute an amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

(i) *Covenant to Appropriate.* The City hereby covenants and agrees, from time to time, to consider any request from the City Manager for appropriations to the Bond Reserve Fund in the event that the Bond Reserve Fund is not funded at the Bond Reserve Requirement subject to the terms, provisions and limitations set forth in the Replenishment Resolution.

ARTICLE SIX
DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events shall occur, each such event shall be an “*Event of Default*”:

- (a) any material representation or warranty made by the Issuer or the City in this Agreement (or incorporated herein by reference) or any material representation or warranty made by the Issuer or the City in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents, shall prove to have been incorrect, incomplete or misleading in any material respect;
- (b) any “*event of default*” shall have occurred under any of the Related Documents (as defined respectively therein);
- (c) failure to pay to the Bank any Obligations when and as due;
- (d) default in the due observance or performance by the Issuer of any covenant set forth in the Indenture or in Section 5.1 hereof;
- (e) default in the due observance or performance by the City of any covenant set forth in Section 5.2 hereof;
- (f) default in the due observance or performance by the Issuer or the City of any other term, covenant or agreement set forth in this Agreement and the continuance of such default for 30 days after the occurrence thereof;
- (g) any material provision of this Agreement or any of the Related Documents shall cease to be valid and binding, or the Issuer or the City shall contest any such provision, or the Issuer or the City or any agent or trustee on behalf of the Issuer or the City shall deny that it has any or further liability under this Agreement or any of the Related Documents;
- (h) the Issuer shall fail to pay any Additional Bonds or Subordinate Debt or any other Debt payable from Pledged Revenues or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);
- (i) the City shall fail to pay any Debt subject to appropriation by the City Council of City or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);
- (j) one or more judgments against the Issuer or the City for the payment of money payable out of Pledged Revenues, or attachments against the property of the

Urban Renewal Area or the funds on deposit in the funds estimated under the Indenture shall remain unpaid, unstayed, undischarged, unbonded or undismissed for a period of 30 days;

(k) the occurrence of any one or more of the following events: (i) the Issuer or the City shall generally not pay, or shall be unable to pay, or shall admit in writing its inability to pay its Debts as such Debts become due; (ii) the Issuer or the City shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or for a substantial part of its assets; (iii) the Issuer or the City shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (iv) the Issuer or the City shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and such order, adjudication or appointment shall remain in effect and not be stayed, revoked or dismissed within 30 days after its occurrence; (v) the Issuer or the City shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; (vi) the Issuer or the City shall suffer any such custodianship, receivership, or trusteeship to continue undischarged; or (vii) the taking of any action by the Issuer or the City for the purpose of effecting any of the acts set forth in clauses (i) through (vi) hereof;

(l) this Agreement, the Indenture, the Resolution, or any material provision thereof or hereof, at any time after its execution and delivery, shall, for any reason, cease to be valid and binding on the Issuer or the City or in full force or effect or shall be declared to be null and void by a court of competent jurisdiction, or the validity or enforceability of this Agreement or any of the Related Documents shall be contested by the Issuer, the City or by any Governmental Authority having jurisdiction over the Issuer or the City; or the Issuer or the City shall deny that it has any further liability under this Agreement or the Related Documents;

(m) any pledge or security interest created under any Related Document to secure any Bonds or any amounts due under this Agreement shall fail to be fully enforceable with the priority required under such Related Document by reason of the enactment of or the repeal or amendment of any law applicable to the Issuer or by reason of a judgment of a court of competent jurisdiction;

(n) dissolution or termination of the existence of the Issuer or the Urban Renewal Area;

(o) Moody's or S&P shall have downgraded its rating on the long-term general obligation indebtedness of the City (without regard to any form of credit enhancement) to below "Baa1" (or its equivalent) or "BBB+" (or its equivalent), respectively, or either Rating Agency shall have suspended or withdrawn its rating of the same; or

(p) the occurrence of any action affecting the zoning for the Urban Renewal Area which would have a material adverse effect upon the Issuer's ability to perform its obligations under this Agreement or to repay any indebtedness secured by the Pledged Revenues or the rights and remedies of the Bank under the Related Documents.

Section 6.2. Remedies. Upon the occurrence of any Event of Default the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) give notice of the occurrence of any Event of Default to the Trustee, directing the Trustee to cause a mandatory tender of the Bonds, thereby causing the Letter of Credit to expire 15 days thereafter;

(b) give notice of the occurrence of any Event of Default to the Trustee, directing the Trustee to cause an acceleration of the Bonds, thereby causing the Letter of Credit to expire 15 days thereafter;

(c) by written notice to the Issuer require that the Issuer immediately prepay to the Bank in immediately available funds an amount equal to the Available Amount (such amounts to be held as collateral security for the Obligations), *provided, however*, that in the case of an Event of Default under Section 6.1(k) hereof, such prepayment Obligations shall automatically become immediately due and payable without any notice (unless the coming due of such Obligations is waived in writing by the Bank);

(d) by notice to the Issuer, declare all Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer, provided that upon the occurrence of an Event of Default under Section 6.1(k) hereof, such acceleration shall automatically occur (unless automatic acceleration is waived by the Bank in writing);

(e) pursue any rights and remedies it may have under the Related Documents;

(f) pursue any other action available at law or in equity.

ARTICLE SEVEN MISCELLANEOUS

Section 7.1. No Deductions; Increased Costs. (a) Except as otherwise required by law, each payment by the Issuer to the Bank under this Agreement or any other Related Document shall be made without setoff or counterclaim and without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient imposed by any jurisdiction having control of such recipient) imposed by or within the jurisdiction in which the Issuer is domiciled, any jurisdiction from which the Issuer makes any payment hereunder, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Issuer shall make the withholding, pay the amount withheld to the

appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Bank free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Bank would have received had such withholding not been made. If the Bank pays any amount in respect of any such taxes, penalties or interest, the Issuer shall reimburse the Bank for that payment on demand in the currency in which such payment was made. If the Issuer pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to the Bank on or before the thirtieth day after payment.

(b) If the Code or any newly adopted law, treaty, regulation, guideline or directive, or any change in any, law, treaty, regulation, guideline or directive or any new or modified interpretation of any of the foregoing by any authority or agency charged with the administration or interpretation thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or the transactions contemplated by this Agreement (whether or not having the force of law) shall:

(i) limit the deductibility of interest on funds obtained by the Bank to pay any of its liabilities or subject the Bank to any tax, duty, charge, deduction or withholding on or with respect to payments relating to the Bonds, the Letter of Credit or this Agreement, or any amount paid or to be paid by the Bank as the issuer of the Letter of Credit (other than any tax measured by or based upon the overall net income of the Bank imposed by any jurisdiction having control over the Bank);

(ii) impose, modify, require, make or deem applicable to the Bank any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, an office of the Bank;

(iii) change the basis of taxation of payments due the Bank under this Agreement or the Bonds (other than by a change in taxation of the overall net income of the Bank);

(iv) cause or deem letters of credit to be assets held by the Bank and/or as deposits on its books; or

(v) impose upon the Bank any other condition with respect to any amount paid or payable to or by the Bank or with respect to this Agreement or any of the other Related Documents;

and the result of any of the foregoing is to increase the cost to the Bank of making any payment or maintaining the Letter of Credit, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank, or to reduce the rate of return on the capital of the Bank or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank in its reasonable judgment deems material, then:

(1) the Bank shall promptly notify the Issuer in writing of such event;

(2) the Bank shall promptly deliver to the Issuer a certificate stating the change which has occurred or the reserve requirements or other costs or conditions which have been imposed on the Bank or the request, direction or requirement with which it has complied, together with the date thereof, the amount of such increased cost, reduction or payment and a reasonably detailed description of the way in which such amount has been calculated, and the Bank's determination of such amounts, absent fraud or manifest error, shall be conclusive; and

(3) the Issuer shall pay to the Bank, from time to time as specified by the Bank, such an amount or amounts as will compensate the Bank for such additional cost, reduction or payment.

(c) The protection of Section 7.1(b) hereof shall be available to the Bank regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed; *provided, however*, that if it shall be later determined that any amount so paid by the Issuer pursuant to Section 7.1(b) hereof is in excess of the amount payable under the provisions hereof, the Bank shall refund such excess amount to the Issuer as soon as practicable.

Section 7.2. Right of Setoff; Other Collateral. (a) Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the Issuer (any such notice being expressly waived by the Issuer), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Bank which such balances, credits, deposits, accounts or monies constitute Pledged Revenues to or for the account of the Issuer (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and the Bank is authorized to convert such accounts, monies and indebtedness into United States dollars) against any and all of the Obligations of the Issuer, whether or not the Bank shall have made any demand for any amount owing to the Bank by the Issuer.

(b) The rights of the Bank under this Section 7.2 are in addition to, in augmentation of, and, except as specifically provided in this Section 7.2, do not derogate from or impair other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have.

Section 7.3. Reimbursement. The Issuer agrees, to the extent permitted by law, to reimburse and hold the Bank harmless from and against, and to pay on demand, any and all claims, damages, losses, liabilities, costs and expenses whatsoever which the Bank may incur or suffer by reason of or in connection with the execution and delivery of this Agreement or the Letter of Credit, or any other documents which may be delivered in connection with this Agreement or the Letter of Credit, or in connection with any payment under the Letter of Credit, including, without limitation, the reasonable fees and expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under

this Agreement and the Letter of Credit and all reasonable fees and expenses, if any, in connection with the enforcement or defense of the rights of the Bank in connection with this Agreement or the Letter of Credit, or the collection of any monies due under this Agreement or such other documents which may be delivered in connection with this Agreement or the Letter of Credit; except, only if, and to the extent that any such claim, damage, loss, liability, cost or expense shall be caused by the willful misconduct or gross negligence of the Bank in performing its obligations under this Agreement or in making payment against a drawing presented under the Letter of Credit which does not comply with the terms thereof (it being understood and agreed by the parties hereto that in making such payment the Bank's exclusive reliance on the documents presented to the Bank in accordance with the terms of the Letter of Credit as to any and all matters set forth therein, whether or not any statement or any document presented pursuant to the Letter of Credit proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever shall not be deemed willful misconduct or gross negligence of the Bank). The Issuer, upon demand by the Bank at any time, shall reimburse the Bank for any legal or other expenses incurred in connection with investigating or defending against any of the foregoing except if the same is directly due to the Bank's gross negligence or willful misconduct. Promptly after receipt by the Bank of notice of the commencement, or threatened commencement, of any action subject to the indemnities contained in this Section 7.3, the Bank shall promptly notify the Issuer thereof; *provided, however*, that the failure of the Bank so to notify the Issuer will not affect the obligation of the Issuer to reimburse the Bank with respect to such action or any other action pursuant to this Section 7.3. The obligations of the Issuer under this Section 7.3 shall survive payment of any funds due under this Agreement or the expiration of the Letter of Credit.

Section 7.4. Obligations Absolute. The obligations of the Issuer and the City under this Agreement shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

Section 7.5. Liability of the Bank. The Issuer assumes all risks of the acts or omissions of the Trustee, the Remarketing Agent or any other agent of the Trustee and any transferee of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee and any transferee in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided, however*, that the Issuer shall have a claim against the Bank, and the Bank shall be liable to the Issuer, to the extent of any direct, as opposed to consequential, damages suffered by the Issuer which the Issuer proves were caused by (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms of the Letter of Credit or (ii) the Bank's willful or grossly negligent failure to make lawful payment under the Letter of Credit after the presentation to the Bank by the Trustee or a successor trustee under the Indenture of a draft and certificate strictly complying with the terms and conditions of the Letter of Credit (it being understood that in making such payment the Bank's exclusive reliance on the documents

presented to the Bank in accordance with the terms of the Letter of Credit as to any and all matters set forth therein, whether or not any statement or any document presented pursuant to the Letter of Credit proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein proves to be untrue or inaccurate in any respect whatsoever, shall not be deemed willful misconduct or gross negligence of the Bank). The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Issuer, the Remarketing Agent, the Trustee or any other person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

Section 7.6. Participants. The Bank shall have the right to grant participations in the Letter of Credit to one or more other banking institutions, and such participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 7.1, 7.3 and 7.14 hereof, to the same extent as if they were a direct party hereto; *provided, however*, that no such participation by any such participant shall in any way affect the obligation of the Bank under the Letter of Credit; and *provided further* that no such participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such participant. Notwithstanding the foregoing, the Issuer and the City may look solely to the Bank as the entity to whom performance of any of its obligations hereunder are owed.

Section 7.7. Survival of this Agreement. All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any Obligations shall be outstanding and unpaid. The obligations of the Issuer to reimburse the Bank pursuant to Sections 7.1, 7.3 and 7.14 hereof shall survive the payment of the Bonds and termination of this Agreement.

Section 7.8. Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Bank and no amendment, modification or waiver of any provision of the Letter of Credit, and no consent to any departure by the Issuer or the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Issuer in any case shall entitle the Issuer to any other or further notice or demand in the same, similar or other circumstances.

Section 7.9. Waiver of Rights by the Bank. No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Letter of Credit or this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Letter of Credit and the rights of the Bank under this Agreement are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

Section 7.10. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to conflict of law principles *provided* that the obligations of the Issuer and the City hereunder shall be governed by, and construed in accordance with, the laws of the State of Colorado.

Section 7.12. Notices. All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed:

If to the Bank, to:

DEPFA BANK plc
623 Fifth Avenue, 22nd Floor
New York, NY 10022
Attention: General Manager
Telephone: (917) 286-2025
Telecopier: (917) 286-2050

With a copy to:

DEPFA BANK plc
30 North LaSalle Street
Chicago, Illinois 60602
Attention: Marnin Lebovits
Telephone: (312) 332-9100
Facsimile: (312) 332-9192

If to the City, to:

City of Westminster, Colorado
4800 West 92nd Avenue
Westminster, Colorado 80030-6399
Attention: Finance Director
Telephone: (303) 430-2400 ext. 2036
Telecopier: (303) 429-3950

If to the Issuer, to:

Westminster Economic Development Authority
4800 W. 92nd Avenue
Westminster, Colorado 80030
Attention: Executive Director
Telephone: (303) 430-2400 ext. 2010
Telecopier: (303) 430-1809

If to the Trustee, to:

U.S. Bank National Association
950 17th Street, Suite 300
Denver, Colorado 80202
Attention: Corporate Trust Department
Telephone: (303) 585-4595
Telecopier: (303) 585-6865

Section 7.13. Successors and Assigns. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the Issuer which are contained in this Agreement shall inure to the benefit of such successors and assigns; *provided, however*, that any assignment by the Bank to any other Person of its obligations under the Letter of Credit shall constitute the delivery of a Substitute Credit Facility for purposes of the Indenture. The rights and duties of the Issuer and the City hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the Issuer and the City hereunder shall continue in full force and effect notwithstanding any assignment by the Issuer of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the Issuer and the City to, any supplement or amendment to any of the Related Documents.

Section 7.14. Taxes and Expenses. The Issuer and the City agree to pay to the Bank (i) on the Closing Date, all reasonable costs and expenses incurred by the Bank and its counsel in connection with the preparation, execution and delivery of this Agreement and any other documents and instruments that may be delivered or required in connection therewith (including fees and expenses in an amount not to exceed \$35,000 of Chapman and Cutler LLP, counsel for the Bank, plus a foreign counsel fee of \$3,000), (ii) all costs and expenses incurred by the Bank, including reasonable fees and out-of-pocket expenses of counsel for the Bank, otherwise arising in connection with this Agreement and the Related Documents, including, without limitation, in connection with any amendment hereto or thereto, the enforcement hereof or thereof or the protection of the rights of the Bank hereunder or thereunder, and (iii) any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery of this Agreement and any other documents or instruments that may be delivered in connection herewith. Any taxes (other than any tax measured by or based upon the overall net income of the Bank imposed by any jurisdiction having control over the Bank) payable or ruled payable by any Governmental Authority in respect of this Agreement, the Letter of Credit or the Bonds shall be paid by the Issuer and the City, together with interest and penalties, if any; *provided, however*, that the Issuer and the City may conduct a reasonable contest of any such taxes with the prior written consent of the Bank.

Section 7.15. Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 7.16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

Section 7.17. Entire Agreement This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

Please signify your agreement and acceptance of the foregoing by executing this Agreement in the space provided below.

Very truly yours,

DEPFA BANK plc, acting through its New
York Branch

By: _____
Its: _____

By: _____
Its: _____

Accepted and agreed to:

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Its: _____

CITY OF WESTMINSTER, COLORADO

By: _____
Its: _____

RESOLUTION

RESOLUTION NO. 9

INTRODUCED BY COUNCILLORS

SERIES OF 2006

DITTMAN - PRICE

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS TAX INCREMENT ADJUSTABLE RATE REVENUE REFUNDING BONDS, SERIES 2006; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE AMENDED AND RESTATED 2003 COOPERATION AGREEMENT AND REIMBURSEMENT AGREEMENT; AND OTHER ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH.

WHEREAS, the City Council (the "City Council") of the City of Westminster, Colorado (the "City"), by Resolution No. 40, adopted September 14, 1987, created the Westminster Economic Development Authority of the City ("Authority"); and

WHEREAS, pursuant to Resolution No. 9, adopted on March 17, 2003, the City approved the Mandalay Gardens Urban Renewal Plan (the "Plan") pursuant to the Colorado Urban Renewal Law; and

WHEREAS, pursuant to an Indenture of Trust dated as of March 1, 2006 (the "Indenture"), the Authority is issuing its Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2006, in the original aggregate principal amount of not to exceed \$40,000,000 (the "2006 Bonds") for the purpose of refunding bonds previously issued by the Authority for the purpose of financing the acquisition, construction and equipping of the project described in the Indenture and the Plan (the "Project"); and

WHEREAS, pursuant to a Cooperation Agreement (the "Original Cooperation Agreement") between the City and the Authority, the City agrees, subject to conditions specified in the Original Cooperation Agreement, to loan funds to the Authority for the Project; and

WHEREAS, in connection with the issuance of the 2006 Bonds it is necessary to amend the Original Cooperation Agreement in certain respects and a form of Amended and Restated 2003 Cooperation Agreement (the "Cooperation Agreement") is on file with the City Clerk; and

WHEREAS, there will be created under the Indenture a reserve fund (the "Bond Reserve Fund") which will be funded initially in the amount of the Bond Reserve Requirement (as defined in the Indenture) and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the 2006 Bonds and any obligations secured on a parity with the 2006 Bonds and for certain other payments; and

WHEREAS, the Indenture contemplates that if, at any time, the Bond Reserve Fund is not funded at the Bond Reserve Requirement, the Trustee shall notify the City Manager of any deficiency and the City Manager shall request that the City Council advance sufficient funds pursuant to the Cooperation Agreement to restore the Bond Reserve Fund to the Bond Reserve Requirement immediately thereafter; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Bond Reserve Fund, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for such appropriations to be presented to the City Council for consideration; and

WHEREAS, the 2006 Bonds will be supported by an irrevocable, transferable direct pay letter of credit (the "Letter of Credit") issued by DEPFA BANK plc, acting through its New York Branch (the "Bank") pursuant to a Reimbursement Agreement dated as of March 1, 2006, among the Authority, the City and the Bank, as it may be supplemented and amended from time to time (the "Reimbursement Agreement") the form of which is on file with the City Clerk.

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

Section 1. Appropriations to Replenish Bond Reserve Fund. The City Manager shall, upon notice from the Trustee that the Bond Reserve Fund is not funded at the Bond Reserve Requirement, prepare and submit to the City Council a request for an appropriation of a sufficient amount to replenish the Bond Reserve Fund to the Bond Reserve Requirement. It is the present intention and expectation of the City Council to appropriate such funds as requested, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Council may determine in its sole discretion, but shall never be required, to make the appropriations so requested. All sums appropriated by the City Council for such purpose shall be deposited by the Authority in the Bond Reserve Fund. Nothing provided in this Section 1 shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Section 2. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenues of the Authority, as provided in the Cooperation Agreement, on a basis expressly subordinate and junior to that of the 2006 Bonds and any obligations secured under the Indenture, including, without limitation, Bank Bonds (as defined in the Indenture), Reimbursement Obligations (as defined in the Indenture) and all other obligations owed to the Bank under the Reimbursement Agreement.

Section 3. Limitation to 2006 Bonds and Other Obligations Originally Secured by Indenture. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Bond Reserve Fund originally established in connection with the 2006 Bonds and any obligations secured on a parity with the 2006 Bonds, and shall not apply to any other additional obligations issued under the Indenture.

Section 4. Approval and Authorization of the Cooperation Agreement and Reimbursement Agreement. The forms of the Cooperation Agreement and Reimbursement Agreement are hereby approved. The City shall enter into and perform its obligations under the Cooperation Agreement and Reimbursement Agreement, in the form of such documents as are on file with the City Clerk, with only such changes therein as are not inconsistent herewith. The City Manager is hereby authorized and directed to execute the Cooperation Agreement and Reimbursement Agreement on behalf of the City, and the City Clerk is hereby authorized to attest to the Cooperation Agreement and Reimbursement Agreement.

Section 5. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. Effectiveness. This Resolution shall take effect immediately upon its passage.

RESOLVED AND PASSED this February 13, 2006.

CITY OF WESTMINSTER, COLORADO

Mayor Pro Tempore

ATTEST:

City Clerk

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

I, the City Clerk of the City of Westminster, Colorado, do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council (the “Council”) at a regular meeting held on February 13, 2006.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of February 13, 2006, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				X
Tim Kauffman	X			
Chris Dittman	X			
Mark L. Kaiser	X			
Mary Lindsey	X			
Scott Major	X			
Jo Ann Price	X			

3. The members of the Council were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Mayor Pro Tempore of the City, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Resolution.

6. Notice of the meeting of February 13, 2006, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed this February 13, 2006.

 City Clerk

(SEAL)

Exhibit A
(Form of Notice of Meeting)



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Termination of the Rocky Flats Coalition of Local Governments and Implementation of Intergovernmental Agreement and Appointments to the Rocky Flats Stewardship Council

Prepared By: Al Nelson, Rocky Flats Coordinator
Ron Hellbusch, Special Projects Coordinator

Recommended City Council Action

1. Adopt Resolution No. 10 providing for the termination of the Rocky Flats Coalition of Local Governments (RFCLOG).
2. Authorize the Mayor to sign the Intergovernmental Agreement establishing the Rocky Flats Stewardship Council (RFSC) to oversee all post-closure Rocky Flats activities.
3. Appoint JoAnn Price as Director and Ron Hellbusch and Jim Arndt as Alternate Directors as City representatives to the RFSC.

Summary Statement

- Elected officials and Staff from the local governments of Arvada, Boulder, Golden, Northglenn, Westminster, City and County of Broomfield, and Boulder and Jefferson Counties and the town of Superior representing the Rocky Flats Coalition of Local Governments have been working on the Intergovernmental Agreement (IGA) in order to officially begin the Rocky Flats Stewardship Council.
- The resolution and the IGA are now ready for approval and signature by the governmental entities of the local governments named above. Effectiveness of the Agreement is conditioned upon its approval by each of the local governments named above.
- The new RFSC will replace the former RFCLOG.
- Each City may appoint a Director and two alternates. Councilor Jo Ann Price and Special Projects Coordinator Ron Hellbusch have been representing Westminster on the RFCLOG Board. The City will need to make new appointments to the RFSC Board.
- Each member is being asked to provide \$1,000 per annum to the new RFSC, to supplement Department of Energy Funds.

Expenditure Required: \$1,000/year

Source of Funds Utility Fund – Rocky Flats Budget

Policy Issue

Should the City agree to the resolution terminating the RFCLOG and to the adoption of the Rocky Flats Stewardship Council IGA to become a member of RFSC?

Alternative

Determine that it is not in the best interest of the City of Westminster to become a part of the Rocky Flats Stewardship Council. Westminster could continue to provide recommendations to the Department of Energy on long-term stewardship issues that are of importance to the City. However, by not signing the IGA 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 Local Impacts Initiative (RFLII) oversight group was eliminated on July 1, 1999 with the formation of the Rocky Flats Coalition of Local Governments.

As successor to the Rocky Flats Local Impacts Initiative formed in 1993, the Rocky Flats Coalition of Local Governments ("Coalition") was established by Intergovernmental Agreement dated as of February 9, 1999, and amended by Amended Intergovernmental Agreement, dated as of November 3, 2003, by and among the following seven governments: the City and County of Broomfield, the Counties of Boulder and Jefferson, the Cities of Arvada, Boulder and Westminster, and the Town of Superior, for the purpose of working together to have a coordinated local government involvement in information sharing, advocacy and planning concerning Rocky Flats.

Effective October 13, 2005, the Rocky Flats Site has been declared to be "physically cleaned up" and closed down, with DOE's acceptance of the clean up on December 8, 2005. Regulatory approval of the closure is anticipated to be reached in late 2006/early 2007.

Section 3120 of the 2005 National Defense Authorization Act, Public Law No. 108-375, directs the DOE Office of Legacy Management to establish a "local stakeholder organization" ("LSO") at the Rocky Flats Site. The DOE Office of Legacy Management has provided the Coalition with certain guidance in the establishment of the LSO, based upon the language of the 2005 National Defense Authorization Act, including parameters for the development of an LSO operating plan, and elected official and non-elected membership of the LSO. The RFSC is to be the LSO for Rocky Flats.

The Agreement to form this Council must be reviewed every third calendar year, beginning on the effective date of the agreement, the parties agree to consider whether to continue the Council's existence. An annual report will be prepared at the end of each year of operation in order to evaluate the effectiveness. Any party may withdraw from participation in this Agreement upon 30-day's written notice to the Board of their intent to withdraw.

The signatories to the IGA desire to provide (1) continuing local oversight of activities occurring at the Rocky Flats site, to ensure that local government and community interests are met with regards to long-term stewardship of residual contamination and refuge management; (2) a forum to address issues facing former site employees, including but not limited to long-term health benefits and pension programs; and (3) an ongoing mechanism to maintain public knowledge of Rocky Flats and to educate successive generations of ongoing needs and responsibilities regarding contaminant management and (4) support Fish and Wildlife Service in developing the National Wildlife refuge management.

The Board of Directors of the RFSC will consist of twelve members, each with one equal vote. A Director and two alternates will be designated by each local government upon execution of the agreement and annually thereafter. Alternates may serve in lieu of Directors in the event of absence, resignation or removal of directors. Councilor Jo Ann Price and Special Projects Coordinator Ron Hellbusch had been serving as the elected and staff representatives for the City of Westminster.

The City will provide a formal letter to the Coalition designating elected and staff representatives for the City each February. Local Government staff representatives will meet and work with the RFSC staff to prepare agendas, develop work plans, prepare recommendations for the Board's approval as well as keep the elected official current on Rocky Flats site activities and concerns. Council will be kept apprised by the City's designees of the RFSC's activities and of any recommendation requiring a formal position from the City.

Budget:

Once the RFSC is formed, the Board will determine an annual budget. There will be a carry-over of approximately \$500,000 from RFCLOG to the RFSC. A local Government contribution of \$1,000 per year is being requested from each member.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Resolution Authorizing the Termination of Rocky Flats Coalition of Local Governments
Rocky Flats Stewardship Council Intergovernmental Agreement

RESOLUTION

RESOLUTION NO. 10

INTRODUCED BY COUNCILLORS

SERIES 2006

**RESOLUTION TO TERMINATE
THE ROCKY FLATS COALITION OF LOCAL GOVERNMENTS**

WHEREAS, pursuant to an Intergovernmental Agreement dated as of February 22, 1999, and amended by Amended Intergovernmental Agreement dated as of November 3, 2003 (collectively, the "IGA"), the Rocky Flats Coalition of Local Governments ("Coalition") was established; and

WHEREAS, the IGA provides that the Coalition shall remain in existence until, *inter alia*, the termination or rescission by the unanimous written agreement of all Parties; and

WHEREAS, the Coalition was created to allow local governments to work together on issues related to the safe, prompt and effective cleanup and closure of Rocky Flats, as well as work toward the future use and long term protection of Rocky Flats; and

WHEREAS, the Rocky Flats site has been declared to be physically "cleaned-up," and the "Rocky Flats Stewardship Council" is being created to oversee post-closure Rocky Flats activities and to serve as a successor entity to the Coalition; and

WHEREAS, prior to termination, the Coalition's Board of Directors intends to assign and delegate its remaining obligations and assets to the Stewardship Council, or otherwise as it deems appropriate, as authorized and provided for under paragraph 11 of the IGA; and

WHEREAS, City of Westminster now desires to provide for the termination of the Coalition in accordance with the provisions of the IGA;

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

THAT UPON THE DISTRIBUTION, DISPOSITION OR DIVISION OF ASSETS, AND DELEGATION OF ANY REMAINING RIGHTS AND OBLIGATIONS, AS DEEMED APPROPRIATE BY THE BOARD OF DIRECTORS OF THE ROCKY FLATS COALITION OF LOCAL GOVERNMENTS, THE COALITION SHALL BE TERMINATED.

PASSED AND ADOPTED this 13th day of February 2006.

ATTEST:

Mayor

City Clerk

**INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE
ROCKY FLATS STEWARDSHIP COUNCIL**

This Intergovernmental Agreement (“IGA”) establishing the Rocky Flats Stewardship Council is made and entered into as of this ____ day of _____, 2006, pursuant to Colo. Const. Art. XIV, Section 18(2), part 2 of article 1, title 29, C.R.S., by and among the following parties who have executed this IGA: BOULDER COUNTY, a body politic and corporate and political subdivision of the State of Colorado, JEFFERSON COUNTY, a body politic and corporate and political subdivision of the State of Colorado, the CITY OF ARVADA, a home-rule municipal corporation and political subdivision of the State of Colorado, the CITY OF BOULDER, a home-rule municipal corporation and political subdivision of the State of Colorado, the CITY AND COUNTY OF BROOMFIELD, a Colorado municipality and county, the CITY OF WESTMINSTER, a home-rule municipal corporation and political subdivision of the State of Colorado, the TOWN OF SUPERIOR, a municipal corporation, the CITY OF GOLDEN, a home rule municipal corporation and political subdivision of the State of Colorado, and the CITY OF NORTHGLENN, a home-rule municipal corporation and political subdivision of the State of Colorado (singularly and/or collectively, “Party/Parties”).

RECITALS

WHEREAS, the Rocky Flats site (“Rocky Flats” or “Site”) is a U.S. Department of Energy (“DOE”)-owned cleanup and closure site located in Jefferson County and adjacent to or near Boulder County, the City and County of Broomfield, the cities of Arvada, Westminster, Golden and Northglenn, the Town of Superior, and the City of Boulder; and

WHEREAS, since 1995, Rocky Flats has been undergoing nuclear deactivation and decommissioning, waste management and shipment, special nuclear material removal, environmental cleanup and site closure, pursuant to an accelerated closure contract between DOE and Kaiser-Hill Company; and

WHEREAS, as successor to the Rocky Flats Local Impacts Initiative formed in 1993, the Rocky Flats Coalition of Local Governments (“Coalition”) was established by Intergovernmental Agreement dated as of February 9, 1999, and amended by Amended Intergovernmental Agreement, dated as of November 3, 2003, by and among the following seven governments: the City and County of Broomfield, the Counties of Boulder and Jefferson, the Cities of Arvada, Boulder and Westminster, and the Town of Superior, for the purpose of working together to have a coordinated local government involvement in information sharing, advocacy and planning concerning Rocky Flats; and

WHEREAS, effective October 13, 2005, the Rocky Flats Site has been declared to be “physically cleaned up” and closed down, with DOE’s regulatory approval of the closure anticipated to be reached in late 2006; and

WHEREAS, pursuant to the “Rocky Flats National Wildlife Refuge Act of 2001,” vast portions of Rocky Flats will become a National Wildlife Refuge, managed by the Department of the Interior (“DOI”) through the United States Fish and Wildlife Service (“USFWS”), with retained jurisdiction by DOE for continuing responsibility for management of cleanup remedies; and

WHEREAS, Section 3120 of the 2005 National Defense Authorization Act, Public Law No. 108-375, directs the DOE Office of Legacy Management to establish a “local stakeholder organization” (“LSO”) at the Rocky Flats Site; and

WHEREAS, the DOE Office of Legacy Management has provided the Coalition with certain guidance in the establishment of the LSO, based upon the language of the 2005 National Defense Authorization Act, including parameters for the development of an LSO operating plan, and elected official and non-elected membership of the LSO; and

WHEREAS, the Coalition parties and the parties to this IGA, with participation from representatives of other key stakeholders and members of the public, have developed and submitted to DOE a plan which includes an LSO mission, organizational objectives and scope of work (“LSO Plan”), which LSO Plan was approved by DOE on December 21, 2005; and

WHEREAS, the Coalition parties and the parties to this IGA desire to provide (1) continuing local oversight of activities occurring at the Rocky Flats site, to ensure that local government and community interests are met with regards to long-term stewardship of residual contamination and refuge management; (2) a forum to address issues facing former site employees, including but not limited to long-term health benefits and pension programs; and (3) an ongoing mechanism to maintain public knowledge of Rocky Flats and to educate successive generations of ongoing needs and responsibilities regarding contaminant management and refuge management; and

WHEREAS, the Coalition parties and the parties to this IGA have determined to establish the Rocky Flats Stewardship Council (“Stewardship Council”) to oversee all post-closure Rocky Flats activities, including serving as the LSO and implementing the LSO Plan; and

WHEREAS, following the creation of the Stewardship Council, it is anticipated that the Coalition will conclude its existence, having fulfilled its purposes; and

WHEREAS, the Constitution and the laws of the State of Colorado permit and encourage local governmental entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2), and part 2 of article 1, title 29, C.R.S., the parties may cooperate and contract with each other to provide any function, service or facility lawfully authorized to each and, further, any such contract may provide for joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so; and

WHEREAS, such cooperation would be of particular benefit for the purposes stated in this IGA and, additionally, would be in the best interest of the Parties, the region and the people of the State of Colorado; and

WHEREAS, the Parties are all local governments which shall exist in perpetuity, and which have a fiduciary duty to protect the health and welfare of their communities, and thereby desire to establish the Stewardship Council; and

WHEREAS, it is not intended that the powers and responsibilities of governmental entities be in any way usurped;

THEREFORE, the Parties to this IGA hereby covenant and agree as follows:

DEFINITIONS

As used in this IGA, unless the context otherwise requires:

“Alternate Director” means, in reference to a Permanent or Rotating Party, one of up to two alternates designated by a Party, who may be either an elected official or employed by the Party, to serve as a voting Director in the event of absence or resignation of a Director. In addition, in reference to a Member who is acting on behalf of an entity (as opposed to a Member who is an individual acting for him or herself), “Alternate Director” means one of up to two alternates designated by a Member, to serve as a voting Director in the event of absence or resignation of a Member Director.

“Board” means the Board of Directors of the Rocky Flats Stewardship Council.

“Bylaws” means that set of operational procedures of the Rocky Flats Stewardship Council adopted, revised, repealed, re-enacted and amended from time to time by the Board.

“Committee” means any committee established by the Board as provided in the Bylaws for purposes of assisting the Board in the discharge of its duties and making recommendations on matters before the Board, whose members shall be appointed by the Board and whose membership may include persons representing entities other than local governments.

“Director” means each individual selected by each Party, who shall be an elected official of the Party, to be a voting member of the Board, and shall include Alternate Director(s) who shall act in the absence of his/her director. In addition, in reference to a Member, “Director” means the individual appointed by a Member to be a voting member of the Board.

“DOE” means the U.S. Department of Energy.

“DOI” means the U.S. Department of Interior.

“LSO” or “Local Stakeholder Organization” means the Rocky Flats post-closure entity organized under the direction of the DOE Legacy Management, pursuant to Section 3120 of the 2005 National Defense Authorization Act, Public Law 108-375.

“Meeting” means a regular or special meeting of the Board as more specifically defined in the Bylaws.

“Member” means one of up to four (4) community stakeholder representatives with a right to appoint a Director to the Board, selected pursuant to the procedures established by the Stewardship Council in its Bylaws.

“Party” means a unit of local government who is either a Permanent party or a Rotating Party and a signatory to this IGA.

“Permanent Party” means a public entity signatory to this IGA whose ability to appoint Directors to the Board does not rotate with other Parties, and includes the City and County of Broomfield, the Counties of Boulder and Jefferson, the Cities of Arvada, Boulder and Westminster, and the Town of Superior.

“Rocky Flats” means the entire Rocky Flats closure site, a federal facility currently under the jurisdiction of the United States Department of Energy located in Jefferson County, Colorado, and inclusive of all lands within such site regardless of whether or not management of such lands is transferred to either DOE or to DOI.

“Rocky Flats National Wildlife Refuge” means the area designated as such pursuant to the Rocky Flats National Wildlife Refuge Act of 2001, approved by the U.S. Congress and signed into law on December 28, 2001, and as may be amended from time to time.

“Rocky Flats Stewardship Council” or “Stewardship Council” means the entity established by this IGA.

“Rotating Party” means an eligible public entity signatory to this IGA whose right to appoint Directors to the Board rotates with other parties and includes the Cities of Golden and Northglenn.

“USFWS” means the U.S. Fish and Wildlife Service who is tasked with the management of the Rocky Flats National Wildlife Refuge under the DOI.

COVENANTS AND AGREEMENTS

1. Establishment and Denomination of Stewardship Council. The Parties hereby establish a separate legal entity to be denominated the “Rocky Flats Stewardship Council.”
2. Mission Statement. The mission of the Stewardship Council is --
 - a. To provide continuing local oversight of activities occurring at the Rocky Flats site, to ensure that local government and community interests are met with regards to long-term stewardship of residual contamination and refuge management;
 - b. To provide a forum to track issues related to former site employees, including but not limited to long-term health benefits and pension programs;
 - c. To provide an ongoing mechanism to maintain public knowledge of Rocky Flats and to educate successive generations of ongoing needs and responsibilities regarding contaminant management and refuge management; and
 - d. To provide an ongoing forum to address all other issues pertinent to Rocky Flats, as determined by the Stewardship Council Board of Directors.
3. Purposes. Specifically, the purposes of the Stewardship Council are:
 - a. To provide a forum for elected officials and community members to discuss with federal, state, and local elected officials and agencies issues related to the long-term stewardship and management of the Rocky Flats site.
 - b. To provide a forum for elected officials and community members to be briefed on the results of the operational and performance monitoring data of site operations.
 - c. To provide a mechanism for keeping elected officials and community members informed of the results of the monitoring data.
 - d. To provide a mechanism for educating succeeding generations about the residual hazards and the continued need for a comprehensive site-wide stewardship program.
 - e. To provide a forum for USFWS staff to work with elected officials and community members on issues related to the management of resources under that agency’s jurisdiction.
 - f. To serve as the designated LSO, pursuant to Section 3120 of the 2005 National Defense Authorization Act, Public Law 108-375.
 - g. To serve as a participating agency under the National Environmental Protection Act (NEPA) for preparation of environmental impact assessments, serve as a participating agency under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 120(f), and assist the Parties in their consultative roles as provided in Section 27, Section 281 of the 1996 Rocky Flats Cleanup Agreement.
 - h. To act as a spokesperson for the community’s interest in Rocky Flats in discussions with other public and private entities concerning local issues affecting Rocky Flats.
 - i. To provide a forum for all other issues pertinent to Rocky Flats, as determined by the Stewardship Council Board of Directors.
4. Powers. The Stewardship Council shall have the following powers, to the extent such powers are delegable functions or services lawfully authorized to the Parties, and to the extent they are reasonably related to the purposes stated above:
 - a. Enter into contracts;
 - b. Sue or be sued;
 - c. Solicit and accept funds and in-kind contributions in whatever form, including grants, donations or loans;
 - d. Incur revenue-based or other non-general obligation debt;

- e. Own, buy, sell and lease real estate and personal property;
- f. Hire employees and retain agents, consultants and services;
- g. Administer and supervise grants and loans to other entities;
- h. Obtain insurance;
- i. Advocate policies, programs, funding and legislation with other governmental entities;
- j. Prepare and disseminate public information;
- k. Indemnify its directors, officers and employees to the extent they are operating within the scope of their capacities with the Stewardship Council;
- l. Establish projects, committees, trusts, foundations or other vehicles to help further the purposes of this IGA;
- m. Negotiate agreements on behalf of the Stewardship Council;
- n. Engage in lobbying activities in accordance with state and federal law;
- o. Perform services for a fee;
- p. Adopt bylaws;

And to have such other powers as may, from time to time, be agreed upon by the unanimous consent of the Parties pursuant to recommendation of the Board, except that the Stewardship Council shall not have the power to levy taxes.

5. Reservation of Powers. The powers of the Stewardship Council shall not be construed as restricting or limiting any Party, individually or severally, from performing any governmental or regulatory powers or duties otherwise granted by law. Each Party expressly reserves and retains its right to develop, adopt, implement and enforce, in its sole discretion, land use plans, land use, zoning and building regulations, redevelopment plans, capital improvement plans, and public improvement or service plans for property, buildings, and facilities within its jurisdiction. Nothing in this IGA shall be deemed to restrict, modify or otherwise impair the powers of any Party in any manner, including any separate or discrete actions which may be taken by any Party relating to Rocky Flats. However, it is the intention of the Parties that the Stewardship Council will be the forum for discussion of issues of mutual interest as pertaining to Rocky Flats.

6. Operations. It is the intent of the Parties that the Stewardship Council shall be a political subdivision, and unit of local government of the state of Colorado and that the Stewardship Council shall abide by all federal, state and local laws applicable to governmental entities. To the extent that any of the Stewardship Council's funds are contributed by the Parties, then such funds shall be subject to their lawful appropriation by the respective Party. To the extent it is subject to the provisions of Article X, Section 20 of the Colorado Constitution, the Parties intend to establish the Stewardship Council as an enterprise thereunder. The procedures and operations of the Stewardship Council shall be subject to the provisions of this IGA and the Bylaws of the Board.

The Board shall annually prepare and adopt a budget pursuant to the provisions of Title 29, Art. 1, Part 1, C.R.S. The Board shall provide for an annual audit conducted by an independent accountant which complies with Title 29, Art. 1, Part 6, C.R.S., and with applicable federal regulations for receipt of federal funds. The Treasurer of the Board or his/her designee shall provide a detailed quarterly financial statement to all Directors and Alternate Directors. The Board shall annually prepare and distribute to the Parties and make available to the public a report of its performance. The financial statement shall include all revenues, revenue sources, expenditures and balances. The Stewardship Council shall operate in accordance with the Open Records Act, §§ 24-72-201, *et seq.*, C.R.S.

7. Board of Directors. The legislative and administrative power of the Stewardship Council shall be vested with a Board of Directors not to exceed twelve (12) in number, one representing each of the seven Permanent Parties, one representing one of the Rotating Parties, and one representing each of the Members (not to exceed four); each with one equal vote. The Directors shall be selected as set forth in this paragraph:

- a. Permanent/Rotating Parties. Directors shall be designated in writing by each Party upon execution of this IGA, and annually thereafter on or before February 1 of each year. Parties may appoint one Director who shall be an elected official

of the Party, and up to two Alternate Directors. A Director serves at the pleasure of the Party designating him or her and may be replaced by the Permanent Party at any time. Failure to take action by the specified dates shall not prevent a Party from designating its Director and Alternate Director(s). The Rotating Parties shall annually alternate with each other for each term of office for Director and Alternate Directors on the Stewardship Council Board. The process for selection of the Rotating Party to initially serve on the Board shall be provided for in the Bylaws.

- b. Members. Following selection of the Members to the Board, and annually thereafter on or before February 1 of each year, each Member shall designate in writing one Director and up to two Alternate Directors, to serve on the Board. However, in the event a Member is an individual rather than an entity, then such Member shall not be entitled to the appointment of Alternate Directors. A Member Director serves at the pleasure of the Member designating him or her, and may be replaced by the Member at any time. Failure to take action by the specified dates shall not prevent a Member from designating its Director and Alternate Director(s).
- c. Term. A term of office for each Director shall be for one year, beginning February 1 and expiring January 31 of the following year, without limitation on successive or additional terms served by any Director, except as applicable for Rotating Parties.
- d. Oath. The Directors and Alternate Directors shall take an appropriate oath of office.
- e. Alternate Directors. Alternate Directors may serve in lieu of Directors in the event of absence, resignation or removal of Directors.
- f. Compensation. Directors shall receive no salary or compensation for their services, except to cover such expenses as may be provided in the Bylaws.
- g. Ex-Officio Directors. The Board may provide in the Bylaws for non-voting ex-officio members.
- h. Chair/Officers. The Board shall annually elect a Chair of the Board in accordance with procedures established in the Bylaws, who must also be a Director, who shall preside at all regular or special meetings of the Board and who shall serve at the pleasure of the Board, and such other officers as may be provided in the Bylaws. The Board may act by motion or resolution.
- i. Board Procedures. Board procedural matters, including agenda, quorum, voting, meeting and notice requirements shall be established in the Bylaws, except as set forth in this IGA.
- j. Actions of Board. Actions of the Board require an affirmative vote of at least nine Directors. In the event a decision is made with less than a unanimous vote, a Director in the minority may include a statement in the record reflecting its views.

8. Establishment of Committees. The Board may establish committees to assist the Board in the discharge of its duties and to make recommendations on matters before the Board. Committees may include members who are not Directors. Committee members shall be appointed by the Board. The composition, appointment, duties, and operations of committees shall be defined in the Bylaws.

9. Meetings. Regular meetings of the Board shall be held at such times as the Board shall from time to time establish, but not less than quarterly, unless otherwise provided for in the Bylaws. No regular meeting of the Board shall occur without written notice to each Director and Alternate Director of the time, date, and place of such meeting, together with a written agenda; provided, however, the actions of the Board shall not be limited to matters on such agenda. Special meetings of the Board may be held as provided in the Bylaws. All regular and special meetings of the Board and committees shall be conducted pursuant to the Open Meetings Law, §§ 24-6-401, *et seq.*, C.R.S.

10. Term, Withdrawal and Dissolution. This IGA shall commence on the date of its full execution by all the Parties, and shall remain in effect until the earliest of

- a. termination or rescission by the unanimous written agreement of all Parties, or
- b. decrease of the number of Parties to fewer than six, or
- c. lack of a unanimous triennial determination by the Parties that the Stewardship Council should continue for an additional three (3) years. Every third calendar year, commencing from the effective date of this IGA until termination of the Stewardship Council, the Parties agree to consider whether to continue the Stewardship Council's existence.

Any Party may withdraw from participation in this IGA upon thirty days' written notice to the Board of its intent to withdraw, and contingent upon adequate provision for satisfaction of its outstanding debt or other obligations of the withdrawing Party which such Party had previously agreed to pay.

11. Distribution, Disposition, or Division of Assets. The Board shall have the power to make all decisions regarding the distribution, disposition, or division of assets of the Stewardship Council as it deems appropriate.

12. Amendments. This IGA contains all the terms agreed upon by and among the Parties. Any amendments or modifications to this IGA must be reduced to writing and executed by all Parties to be valid and binding.

13. Indemnification. To the extent permitted by law, the Stewardship Council shall indemnify and defend each Director, Alternate Director, officer and employee in connection with any claim or actual or threatened suit, action or proceeding (civil, criminal, or other, including appeals), in which he or she may be acting in his or her official capacity by reason of his or her being or having been such Director, Alternate Director, officer or employee, or by reason of any action or omission by him or her in any such capacity, and shall pay any judgment resulting therefrom, except any liability arising from criminal offenses or willful misconduct or gross negligence. The Stewardship Council shall further indemnify and defend each Party in connection with any claim or actual or threatened suit, action or proceeding (civil, criminal, or other, including appeals), in which the Party may be acting in its capacity as a participant in the Stewardship Council, and shall pay any judgment resulting therefrom, except for liability arising from criminal offenses or willful misconduct or gross negligence. Such indemnification and duty to defend in either event shall be subject to and limited by the resources of the Stewardship Council available for such purposes. This indemnification shall in no way be construed to be an indemnification of a Party in connection with a claim, suit, action or proceeding brought by another Party, Director, Alternate Director, officer or employee, nor shall it be construed as a waiver of the Governmental Immunity Act. The Board shall obtain and maintain in force liability and public officials' insurance in amounts it deems appropriate.

14. No Obligations. No obligations of the Stewardship Council shall be deemed to be an obligation or indebtedness of any Party. The Stewardship Council may not impose any involuntary charges or assessments on Parties.

15. Severability. If any provision of this IGA, or the application thereof to any person, entity or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA, which can be given effect without the invalid provision or application, and to this end the provisions of this IGA, and each and every provision thereof, are declared to be severable.

16. Applicable Laws. This IGA shall be governed by and construed in accordance with the laws of the State of Colorado.

17. Assignability. No Party to this IGA may assign or transfer any of its rights or obligations hereunder without the prior written consent of all the non-assigning Parties.

18. Binding Effect. The provisions of this IGA shall bind and shall inure to the benefit of the Parties and to their respective successors and permitted assigns, if any.

19. Enforcement. The Parties agree and acknowledge that this IGA may be enforced in law or in equity, by decree of specific performance. No Party's rights under the Colorado Governmental Immunity Act shall be modified, abridged or deemed to be waived pursuant to the application or interpretation of this paragraph.

20. Counterpart Execution. This IGA may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this IGA effective as of the date first written above.

ATTEST:

Mayor Date: _____

City Clerk Date: _____



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Councillor's Bill No. 9 re 2005 4th Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 9 on first reading providing for supplemental appropriations to the 2005 budget of the General, General Capital Improvement, Sales Tax and Debt Service Funds.

Summary Statement

- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2005 4th quarter supplemental appropriation.
- General Fund amendments:
 - \$12,217 Police Department overtime reimbursement
 - \$2,393 Police Department grant
 - \$750 Police Department donation
 - \$18,633 Fire Department overtime reimbursement
 - \$1,887 Fire Department program revenues
 - \$750 Fire Department donation
 - \$4,004 Fire Department grant
 - \$3,919 Youth Scholarship funds
 - \$67,904 Recreation Program revenues
 - \$4,060 Sale of Asset proceeds
 - \$124,587 Building Permit fees
- General Capital Improvement Fund amendments:
 - \$245,930 Bond interest
 - \$156,559 SID prepayments
 - (\$1,100) Grant reduction un-appropriation
 - \$480,731 Inter-fund Transfer Adjustment

Expenditure Required: \$1,123,224

Source of Funds: The funding sources for these expenditures include grants, reimbursements, contributions, donations, program revenues, building permit fees, escrow funds, SID prepayments and inter-fund transfers in the General, General Capital Improvement, Sales Tax and Debt Service Funds.

Policy Issue

Does City Council support amending the appropriations for the 2005 budget of the General, General Capital Improvement, Sales Tax and Debt Service Funds?

Alternative

The alternative would be not to amend the 2005 budget appropriations for the General, General Capital Improvement, Sales Tax and Debt Service Funds and utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred these expenses and covered them in their current budget in anticipation of receipt of the funds.

Background Information

This agenda memo and attached Councillor's Bill is a routine action addressing the need to appropriate additional revenues and offset expenditures that resulted from increased activity or events that were not anticipated during the normal budget process.

The Police Department (PD) received a total of \$12,217 from the City of Thornton on behalf of the North Metro Drug Task Force for High Intensity Drug Trafficking Area (HIDTA) Investigations overtime reimbursement. This reimbursement was for overtime incurred by members of the Police Department while working on Federal HIDTA cases. (General Fund)

The PD also received a grant for \$2,393 from the City of Colorado Springs. The grant is through the Colorado Internet Crimes Against Children Task Force. This Task Force is intended to target sexual predators of children who operate via the Internet. The grant was used to purchase internet service for the program. (General Fund)

Additionally, the PD received a donation for \$750 from the Wal-Mart Corporation. The donation was to be used to help seniors alleviate the possibility of identity theft through the senior liaison program's education and crime prevention program. Funds from the donation were used to purchase paper shredders at the Senior Center. (General Fund)

The Fire Department (FD) received a total of \$18,633 for overtime reimbursement. \$17,474 was reimbursed from the State of Colorado, Division of Emergency Management. This reimbursement was for overtime incurred by members of the Fire Department while working on recovery/cleanup operations after Hurricane Rita. The FD also received a reimbursement of \$1,159 from FEMA through the Colorado Urban Search & Rescue Task Force. The reimbursement was for overtime incurred by members of the Fire Department while assisting in Urban Search and Rescue (USAR) Cache work after Hurricane Katrina. (General Fund)

The FD received \$1,887 in class registration fees for conducting CPR training classes. Funds from the registration fees were used to purchase EMS supplies used during the class and paramedic instructor overtime salaries. (General Fund)

The FD also received a donation for \$750 from the Wal-Mart Corporation. The donation was from Wal-Mart's Good Works community involvement program and was distributed during the Grand Re-Opening celebration of the 94th and Sheridan Avenue Wal-Mart store. Funds from the donation purchased public education supplies used at community events. (General Fund)

Finally, the FD received a grant from the State of Colorado, Division of Emergency Management (CDEM), originally approved by Council on June 27, 2005 in the amount of \$20,000. The CDEM reallocated funds to grant recipients and an additional \$4,004 was awarded to the City of Westminster. Funds from this additional grant award will allow the purchase of an Emergency Response Team Go Kit for the Incident Management Team. (General Fund)

The Westminster Youth Scholarship Fund will benefit from the net proceeds of \$3,919 received in 2005 from community events such as 4th of July, the Holy COW Trail Stampede, art shows, etc. held in Westminster. Funds from the youth scholarship program were used to award scholarships for City-sponsored recreation programs to youth who could not otherwise afford to participate. (General Fund)

The demand for recreation programs in 2005 continued to be high as well as the popularity of tournaments at Christopher Fields. Recreation Staff managed their budget to maximize the programs offered while responding to citizens' needs. Additional youth and preschool activities, adult sports programs and some special events were offered to meet these needs. Offering these additional programs resulted in \$67,904 being expended in Parks, Recreation & Library's (PR&L) Recreation Program Division for temporary salaries, professional services and contract services. These additional programs have generated significantly more revenue than the additional expenditures. Therefore, a portion of the additional revenue is being appropriated to help cover the costs of the programs. (General Fund)

A scrubber used in operations at the Promenade was sold for \$15,000. \$4,060 of the funds from the proceeds of the sale were used to payoff the lease agreement on the scrubber. (General Fund)

Community Development Building Division contracts with a consultant to perform contract review services. These services are used for almost all new commercial building reviews as well as residential projects when requested by the applicant. In order to offset this expense, excess building permit fees in the amount of \$124,587 are being appropriated. (General Fund)

Interest totaling \$245,930 was received throughout 2005 on bond issuance funds from the Public Safety Building COPS and 144th Interchange COPS in the amounts of \$690 and \$245,240 respectively. Issuance restrictions require the interest earnings be appropriated for use on the respective projects. (General Capital Improvement Fund)

On October 25, 2004, Council approved the creation of the Ranch Special Improvement District (SID). The homeowners in the SID were provided a "pre-payment window" to pay the assessment without interest charges. Since the City covered the cost of the project through pay-as-you-go capital funds, the assessments received from the homeowners will be appropriated back to the project to repay the City. The amount received as pre-payments, \$156,559 is being appropriated at this time to replenish the New Development Participations Capital Project. (General Capital Improvement Fund)

On July 11, 2005 Parks, Recreation and Libraries received Council authorization to accept a grant from Great Outdoors Colorado for Big Dry Creek Trail restoration and revitalization. On November 14, 2005 Council appropriated the funds with the 3rd Quarter Budget Supplemental Appropriation in the amount of \$5,100. The actual Great Outdoors Colorado grant award was for \$4,000 requiring the un-appropriation of \$1,100. (General Capital Improvement Fund)

As a general rule, the Finance Department appropriates interest earnings on unspent bond proceeds on a regular basis throughout the construction phase of the bond project. The interest earned on the unspent proceeds is appropriated to projects that meet the criteria established in the bond covenants. For the 2001 Sales and Use Tax Revenue Bonds and the 2002 Sales and Use Tax Revenue Bonds, the bond covenants were very restrictive and specified that the interest earnings could only be used on the bond projects or for debt service. Therefore, the interest earnings were not appropriated until it was determined whether or not they would be needed for the completion of the bond projects. Now that the projects are close to completion and the interest earnings are not needed for the projects, the interest earnings can be appropriated to be transferred to the Debt Service Fund to assist with December 2005 debt service payments. This appropriation of \$480,731 will change the total budget appropriation for the General Capital Improvement Fund only and adjusts the flow of funds used to make the December 2005 debt service payments. (General Capital Improvement Fund, Sales Tax Fund and Debt Service Fund)

SUBJECT: Councillor's Bill re 2005 4th Quarter Budget Supplemental Appropriation

Page 4

These adjustments will bring the City's accounting records up-to-date to reflect the various detailed transactions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **9**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, SALES AND USE TAX, AND DEBT SERVICE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$82,941,554 is hereby increased by \$241,104 which, when added to the fund balance as of the City Council action on February 13, 2006 will equal \$95,384,078. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of grants, reimbursements, special event revenue, donations, contributions and building permit fees.

Section 2. The \$241,104 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$52,470	\$33,243	\$85,713
Contributions	1000.43100.0000	37,175	750	37,925
General Misc.	1000.43060.0000	206,522	750	207,272
Off Duty Fire Svcs	1000.41340.0013	0	1,887	1,887
State Grants	1000.40620.0000	24,370	4,004	28,374
Sale of Assets	1000.43040.0000	50,000	4,060	54,060
Youth Scholarships	1000.41030.0528	4,343	3,919	8,262
Adult Sports	1000.41030.0504	0	10,316	10,316
Youth Sports	1000.41030.0507	0	7,455	7,455
Preschool	1000.41030.0508	0	50,133	50,133
Building Permit ADCO	1000.40185.0010	300,000	124,587	424,587
Total Change to Revenues			<u>\$241,104</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
PD Contract Svcs	10020300.67800.0344	\$2,000	\$2,393	\$4,393
PD Salaries OT	10020300.60400.0344	208,673	12,217	220,890
PD Supplies	10020300.70200.0341	5,000	750	5,750
Fire Salaries OT	10025260.60400.0000	182,646	18,633	200,120
Fire Supplies – Prevention	10025260.70200.0547	4,500	750	5,250
Fire Supplies – EMS	10025260.70200.0546	3,500	871	4,371
Fire Salaries OT	10025260.60400.0546	70,000	1,016	71,016
Fire Contract Svcs	10025260.67800.0000	40,142	4,004	44,146
Lease Payments	10050550.67700.0106	13,903	4,060	17,963
Youth Scholarships	10050760.67600.0528	5,665	3,919	9,584
Rec Professional Svcs	10050760.65100.0504	59,358	10,316	69,674
Rec Contract Svcs	10050760.67800.0507	12,700	7,455	20,155
Rec Salaries Temp	10050760.60600.0508	82,875	50,133	133,008
CD Building Prof Svcs	10030370.65100.0000	50,000	<u>124,587</u>	174,587
Total Change to Expenses			<u>\$241,104</u>	

Section 3. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$882,120 which, when added to the fund balance as of the City Council action on February 13, 2006 will equal \$35,997,601. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to receipt of escrow funds, a rebate, reimbursements, contributions and a donation.

Section 4. The \$882,120 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Interest 01 COPS	7500.42520.0215	\$0	\$690	\$690
Interest COPS 2005	7500.42520.0274	0	245,240	245,240
SID Assessments	7500.40255.0065	0	156,559	156,559
Parks GOCO Grant	7501.40620.0026	5,100	(1,100)	4,000
Transfer from Sales Tax Fund	7500.45000.0530	262,080	<u>480,731</u>	742,811
Total Change to Revenue			<u>\$882,120</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Public Safety Bldg	80175020127.80400.8888	\$63,283	\$690	\$63,973
144 th Interchange	80575030713.80400.8888	15,800,000	245,240	16,045,240
New Development Participation	80175030011.80400.8888	813,401	156,559	969,960
Trails Development	80175050135.80400.8888	151,245	(1,100)	150,145
Transfer to Debt Service Fund	75010900.79800.0800	0	<u>480,731</u>	480,731
Total Change to Expenses			<u>\$882,120</u>	

Section 5. The 2005 appropriations for the Sales and Use Tax Fund do not change with the appropriation, however, the general ledger accounts changed are shown below for informational purposes:

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer to Debt Service Fund	53010900.79800.0800	\$4,400,000	(\$480,731)	\$3,919,269
Transfer to General Capital Improvement Fund	53010900.79800.0750	262,080	<u>480,731</u>	742,811
Total Change to Expenses			<u>\$0</u>	

Section 6. The 2005 appropriations for the General Debt Service Fund do not change with the appropriation, however, the general ledger accounts changed are shown below for informational purposes:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from General Capital Improvement Fund	8000.45000.0750	\$0	\$480,731	\$480,731
Transfer from Sales Tax Fund	8000.45000.0530	4,400,000	(480,731)	3,919,269
Total Change to Revenue			<u>\$0</u>	

Section 7 – 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 8. This ordinance shall take effect upon its passage after the second reading.

Section 9. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 13th day of February, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of February, 2006.

ATTEST:

City Clerk

Mayor



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Councillor’s Bill No. 10 re Rights-of-Way Vacations within the Greenbriar I Subdivision Plat and Medical North Subdivision Plat

Prepared By: Justin Hildreth, Senior Civil Engineer

Recommended City Council Action

Pass Councillor’s Bill No. 10 on first reading, vacating portions of Bryant Street and Alcott Street located within the Greenbriar 1 Subdivision Plat (File 12, Map 226), and Medical Plaza North Subdivision (File 16, Map 145), all from Adams County Public Records.

Summary Statement

- City Council action is requested to pass on first reading the attached Councilor’s Bill to vacate Bryant Street from 85th Avenue to Alcott Street, and two sections of Alcott Street from 85th Avenue to Bryant Street, located within the Greenbriar 1 Subdivision and Medical North Subdivision as shown on the vicinity map. State statute requires that the vacation of all right-of-way and easements be approved by City Council.
- The property owner, Saint Anthony’s North Hospital, is requesting the right-of-way vacations since it owns all of the property served by the streets and they no longer serve a public purpose.
- A utility easement will be dedicated for existing utilities within the rights-of-way on the Saint Anthony’s North Hospital Plat, which will be signed upon the approval of the vacations and development plans. Clay Street will be dedicated along the western edge of the property and will eventually provide a north-south connection between 84th Avenue and 88th Avenue.
- Legal descriptions of these rights-of-way are included in Exhibits A, B, and C.
- This vacation is associated with the First Amended Preliminary Development Plan (PDP) and the Eighth Amended Official Development Plan (ODP) for the St. Anthony’s North Hospital Planned Unit Development (PUD). The ODP and PDP files will add 15 acres to the PUD, which the hospital has purchased, and allow for a new 65,000 square foot medical office building to the hospital campus.
- Approval is proposed to be contingent upon action by City Staff of the final plat for St. Anthony’s North Hospital that will dedicate the new right-of-way for Clay Street.
- City Staff has determined that the subject rights-of-way are no longer needed by the City.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Shall the City Council vacate the rights-of-way, which by state statute must be vacated by an ordinance of the City Council?

Alternative

Do not vacate the rights-of-way. This alternative is not recommended because the subject portions of the rights-of-way are not needed by the City and no longer serve the general public.

Background Information

There are two companion development plans with this project. The first is an Official Development (ODP) and Preliminary Development Plan (PDP) that will remove Parcel 2, Lot 1 from the Prospectors Point Condominium Subdivision and add it to the Saint Anthony's North Subdivision. The second is an ODP and PDP for the construction of a medical office building on the Saint Anthony's North Hospital campus.

Recently, Saint Anthony's North Hospital has purchased the remaining parcels that are served by these streets. The owner has requested that the above referenced portions of Bryant Street and Alcott Street be vacated. Staff has determined that the portions of these streets can be vacated since they only serve Saint Anthony's North Hospital and no longer serve the general public. Utility easements are to be dedicated on the Saint Anthony's North Hospital Subdivision plat that will be signed immediately following the approval of the development applications and these right-of-way vacations.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments – Exhibit A
Exhibit B
Exhibit C
Vicinity Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **10**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE VACATING PORTIONS OF RIGHTS-OF-WAY FOR ALCOTT STREET
AND BRYANT STREET ON PROPERTY OWNED BY SAINT ANTHONY'S NORTH AS
DEDICATED ON THE GREENBRIAR 1 SUBDIVISION PLAT AND MEDICAL PLAZA NORTH
SUBDIVISION PLAT.**

WHEREAS, certain rights-of-way were dedicated on the final plats for Greenbriar 1 Subdivision (File 12, Map 226), and Medical Plaza North Subdivision (File 16, Map 145), all from Adams County Public Records; and

WHEREAS, the vacation is necessary since Saint Anthony's North Hospital has purchased all of the land that is served by these streets and these streets no longer serve the general public; and

WHEREAS, utility easements will be dedicated for existing utilities within the proposed right-of-way vacations; and

THE CITY OF WESTMINSTER ORDAINS:

Section 1. City Council finds and determines that the public convenience and welfare require the vacation of the rights-of-way in Sections 2 and 3 hereof.

Section 2. Legal Descriptions for vacations: See attached legal descriptions in Exhibits A, B and C.

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

Section 4. 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 13th day of February, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of February, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

PROPERTY DESCRIPTION

Exhibit-A

(1 of 2)

A Parcel of land being part of Greenbrier 1 Subdivision, as recorded in the records of Adams County on June 30, 1970, under File 12, Map 226, located in the Northeast Quarter (NE1/4) of Section Twenty-nine (29), Township Two South (T.2S.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Adams, State of Colorado, and being more particularly described as follows:

COMMENCING at the Center Quarter of said Section 29 and assuming the South line of said NE1/4 as bearing North 89°53'56" East a distance of 2691.43, being a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, with all other bearings contained herein being relative thereto;

THENCE North 89°53'56" East along said South line a distance of 1521.15 feet to the Southerly extension of the West Right-of-Way (ROW) line of Bryant Street;
Thence along the West ROW line of Bryant Street the following Two (2) courses and distances:

THENCE North 01°18'54" West 410.00 feet to the North line of 85th Avenue and the **POINT OF BEGINNING**;

THENCE continuing North 01°18'54" West a distance of 622.31 feet to the Westerly prolongation of the North Line of Alcott Street;

THENCE North 89°53'56" East along said North line a distance of 60.01 feet to the East ROW of Bryant Street;

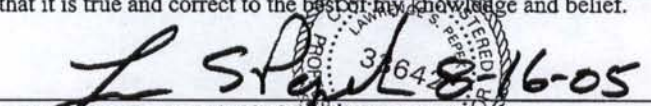
THENCE South 01°18'54" East along said East ROW a distance of 622.31 feet to the Easterly prolongation of said North line of 85th Avenue;

THENCE South 89°53'53" West along said Easterly prolongation a distance of 60.01 feet to the **POINT OF BEGINNING**;

Said Parcel contains 37,338 sq. ft. more or less (+/-), and is subject to any rights-of-way or other easements of record as now existing on said described parcel of land.

SURVEYORS CERTIFICATE

I, Lawrence S. Pepek, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

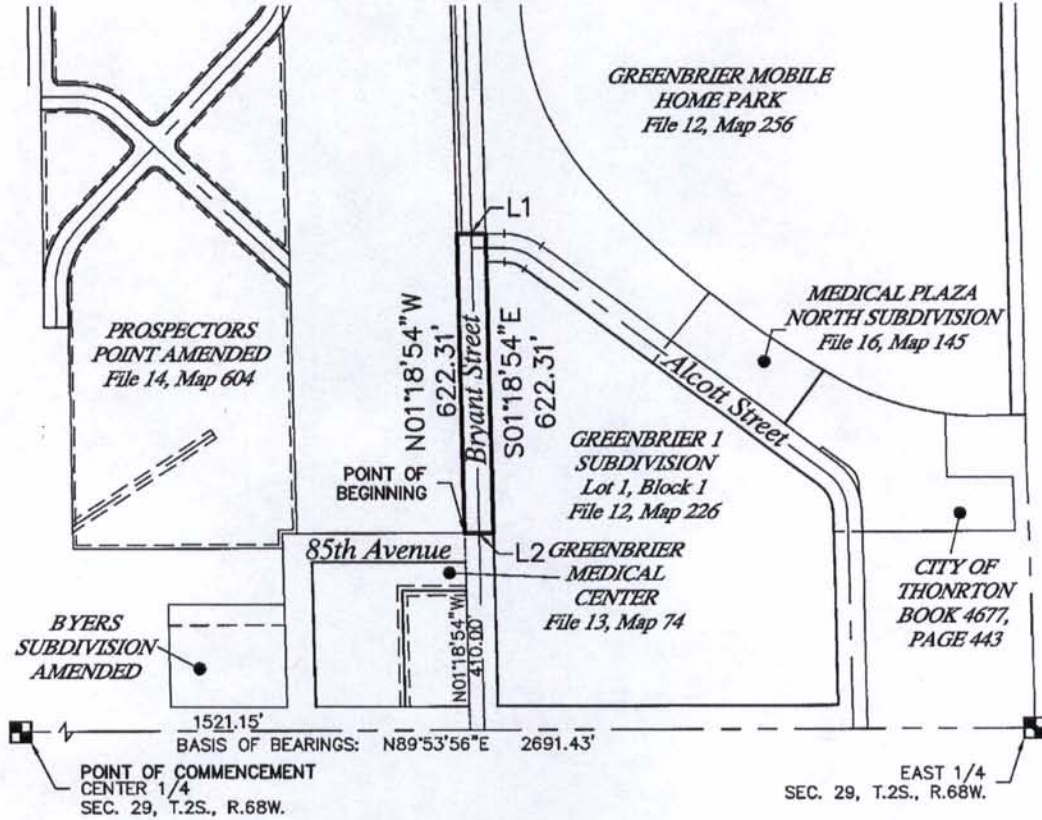


Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #33642



KING SURVEYORS, INC.
9299 Eastman Park Drive
Windsor, Colorado 80550
(970) 686-5011

(2 of 2)



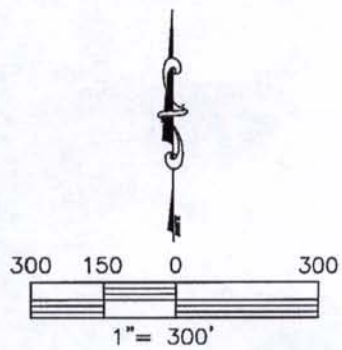
NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supercedes the exhibit drawing.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°53'56"E	60.01'
L2	S89°53'56"W	60.01'

Lawrence S. Pepek

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
LAWRENCE S. PEPEK
33642

Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional Land Surveyor #33642



KING SURVEYORS, INC.
9299 EASTMAN PARK DRIVE, WINDSOR, CO 80550
PHONE: (970) 686-5011 FAX: (970) 686-5821
WWW.KINGSURVEYORS.COM

PROJECT NO: 2004463A
DATE: 8-12-05
CLIENT: DASCO
DWG: 2004463-EXH
DRAWN: KER CHECKED: LSP

PROPERTY DESCRIPTION

Exhibit-B

(1 of 2)

A Parcel of land being part of Greenbrier 1 Subdivision, as recorded in the records of Adams County on June 30, 1970, under File 12, Map 226, located in the Northeast Quarter (NE1/4) of Section Twenty-nine (29), Township Two South (T.2S.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Adams, State of Colorado, and being more particularly described as follows:

COMMENCING at the Center Quarter of said Section 29 and assuming the South line of said NE1/4 as bearing North 89°53'56" East a distance of 2691.43, being a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, with all other bearings contained herein being relative thereto;

THENCE North 89°53'56" East along said South line a distance of 1581.16 feet to the Southerly extension of the East Right-of-Way (ROW) line of Bryant Street;
Thence along the East ROW line of Bryant Street the following Two (2) courses and distances:

THENCE North 01°18'54" West 972.30 feet to the South line of Alcott Street and the **POINT OF BEGINNING**;

THENCE North 01°18'54" West a distance of 60.01 feet to the Northerly line of Alcott Street;

Thence along the Northerly line of Alcott Street the following Three (3) courses and distances:

THENCE North 89°53'56" East a distance of 38.89 feet to a Point of Curvature (PC);
THENCE along the arc of a curve concave to the South a distance of 83.47 feet, whose Radius is 130.00 feet, whose Delta is 36°47'10", whose Long Chord bears South 71°42'29" East a distance of 82.04 feet to a Point of Tangency (PT);

THENCE South 53°18'54" East a distance of 331.22 feet;

THENCE South 38°41'06" West a distance of 60.04 feet to the Southerly line of Alcott Street;

Thence along the Southerly line of Alcott Street the following 3 courses and distances:

THENCE North 53°18'54" West a distance of 329.12 feet to a PC;

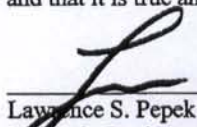

THENCE along the arc of a curve concave to the South a distance of 44.94 feet, whose Radius is 70.00 feet, whose Delta is 36°47'10", whose Long Chord bears North 71°42'29" West a distance of 44.17 feet to a PT;

THENCE South 89°53'56" West a distance of 37.62 feet to the **POINT OF BEGINNING**;

Said Parcel contains 25,957 sq. ft. more or less (+/-), and is subject to any rights-of-way or other easements of record as now existing on said described parcel of land.

SURVEYORS CERTIFICATE

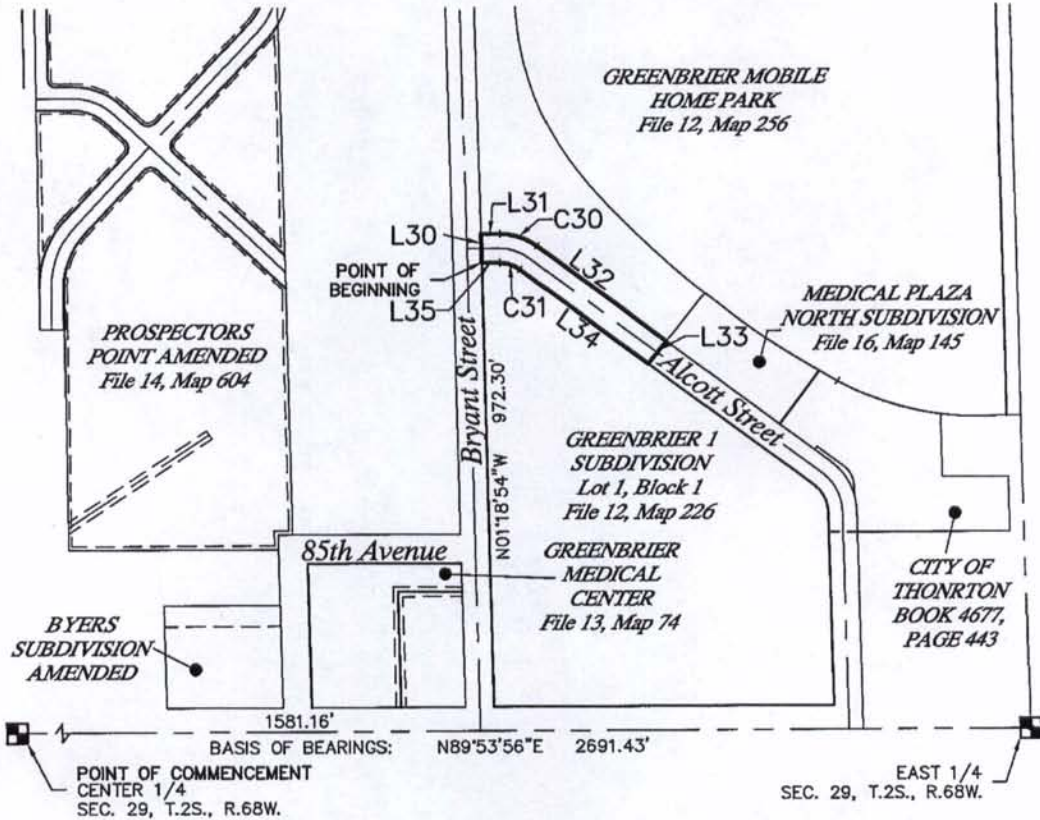
I, Lawrence S. Pepek, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

  33642

Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #33642

KING SURVEYORS, INC.
9299 Eastman Park Drive
Windsor, Colorado 80550
(970) 686-5011

(2 of 2)



LINE TABLE

LINE	BEARING	LENGTH
L30	N01°18'54"W	60.01'
L31	N89°53'56"E	38.89'
L32	S53°18'54"E	331.22'
L33	S38°41'06"W	60.04'
L34	N53°18'54"W	329.12'
L35	S89°53'56"W	37.62'

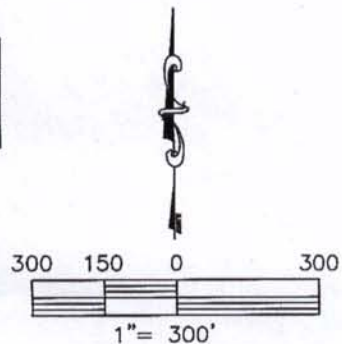
NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supercedes the exhibit drawing.

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C30	83.47'	130.00'	36°47'10"	82.04'	S71°42'29"E
C31	44.94'	70.00'	36°47'10"	44.17'	N71°42'29"W

Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional Land Surveyor #33642

16-06



KING SURVEYORS, INC.

9299 EASTMAN PARK DRIVE, WINDSOR, CO 80550
PHONE: (970) 686-5011 FAX: (970) 686-5821
WWW.KINGSURVEYORS.COM

PROJECT NO: 2004463A
DATE: 8-12-05
CLIENT: DASCO
DWG: 2004463-EXH
DRAWN: KER CHECKED: LSP

PROPERTY DESCRIPTION

Exhibit-C

(1 of 2)

A Parcel of land being part of Medical Plaza North Subdivision, as recorded in the records of Adams County on August 31, 1984, under File 16, Map 145, located in the Northeast Quarter (NE1/4) of Section Twenty-nine (29), Township Two South (T.2S.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), County of Adams, State of Colorado, and being more particularly described as follows:

COMMENCING at the Center Quarter of said Section 29 and assuming the South line of said NE1/4 as bearing North 89°53'56" East a distance of 2691.43 feet, being a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, with all other bearings contained herein being relative thereto;

THENCE North 89°53'56" East along said South line a distance of 2341.34 feet to the Southerly extension of the East Right-of-Way (ROW) line of Alcott Street;
Thence along the East and Northeasterly ROW line of Alcott Street the following Four (4) courses and distances:

THENCE North 01°18'54" West 453.63 feet to a Point of Curvature (PC);
THENCE along the arc of a curve concave to the West a distance of 32.32 feet, whose Radius is 130.00 feet, whose Delta is 14°14'48" and whose Long Chord bears North 08°26'18" West a distance of 32.24 feet to the **POINT OF BEGINNING**;

THENCE continuing along the arc of a curve concave to the West a distance of 85.66 feet, whose Radius is 130.00, whose Delta is 37°45'12", whose Long Chord bears North 34°26'18" West a distance of 84.12 feet to a Point of Tangency (PT),

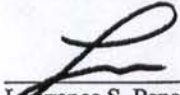
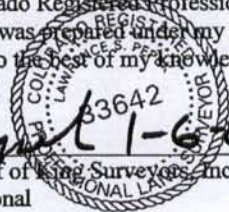
THENCE North 53°18'54" West a distance of 42.37 feet;
Thence along the Northwest, Northeasterly and East lines of a parcel of land described as Street R.O.W. Dedicated To The Public per said Medical Plaza North Subdivision the following Four (4) courses and distances:

THENCE North 36°41'06" East a distance of 8.00 feet;
THENCE South 53°18'54" East a distance of 69.45 feet to a PC;
THENCE along the arc of a curve concave to the West a distance of 46.52 feet, whose Radius is 51.26 feet, whose Delta is 52°00'00", whose Long Chord bears South 27°18'54" East a distance of 44.94 feet to a PT;
THENCE South 01°18'54" East a distance of 19.69 feet to the **POINT OF BEGINNING**;

Said Parcel contains 1,090 sq. ft. more or less (+/-), and is subject to any rights-of-way or other easements of record as now existing on said described parcel of land.

SURVEYORS CERTIFICATE

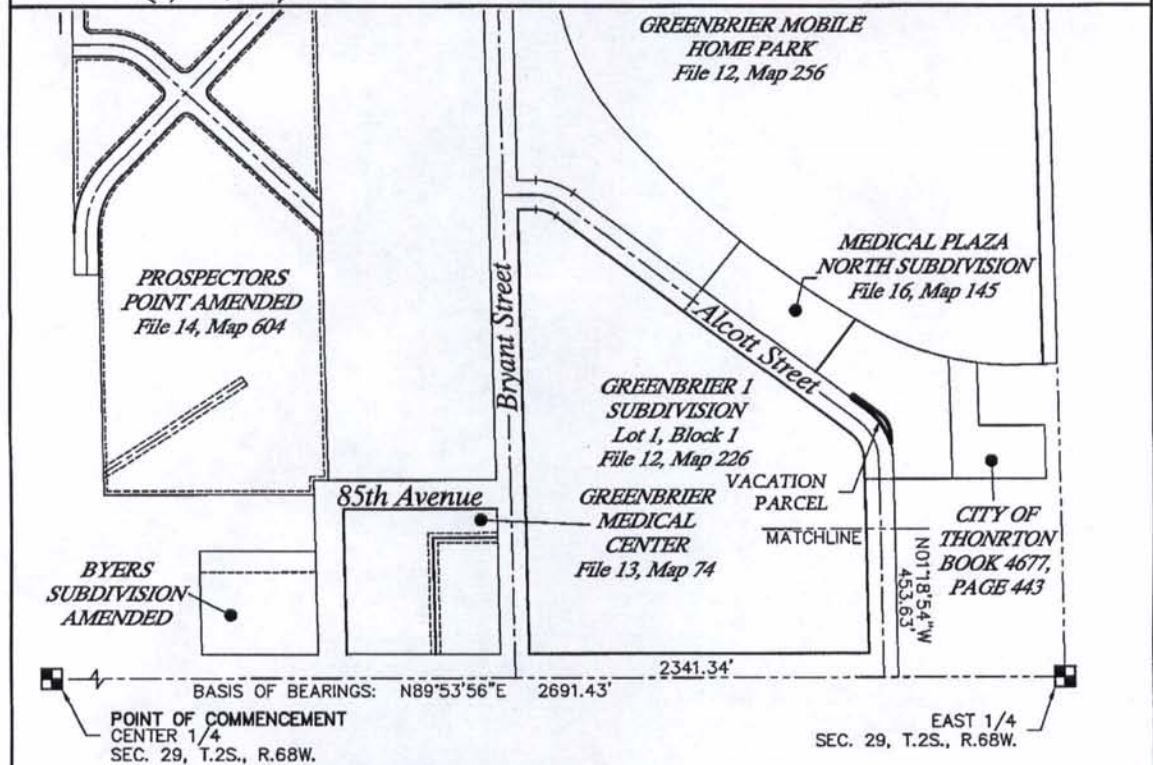
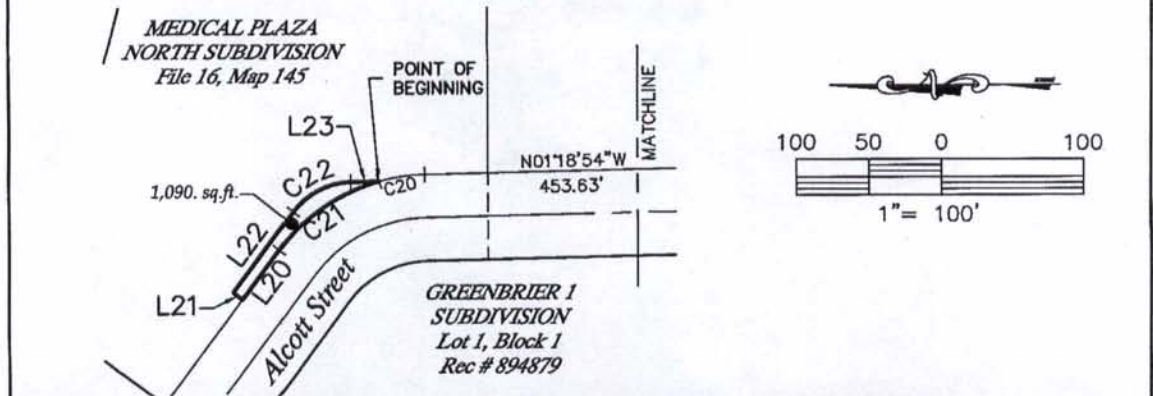
I, Lawrence S. Pepek, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

  1-6-06

Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #33642

KING SURVEYORS, INC.
9299 Eastman Park Drive
Windsor, Colorado 80550
(970) 686-5011

(2 of 2)




LINE TABLE

LINE	BEARING	LENGTH
L20	N53°18'54"E	42.37'
L21	N36°41'06"E	8.00'
L22	S53°18'54"E	69.45'
L23	S01°18'54"E	19.69'

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C20	32.32'	130.00'	14°14'48"	32.24'	N08°26'18"W
C21	85.66'	130.00'	37°45'12"	84.12'	N34°26'18"W
C22	46.52'	51.26'	52°00'00"	44.94'	S27°18'54"E


 Lawrence S. Pepek - on behalf of King Surveyors, Inc.
 Colorado Registered Professional
 Land Surveyor #33642



NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supercedes the exhibit drawing.

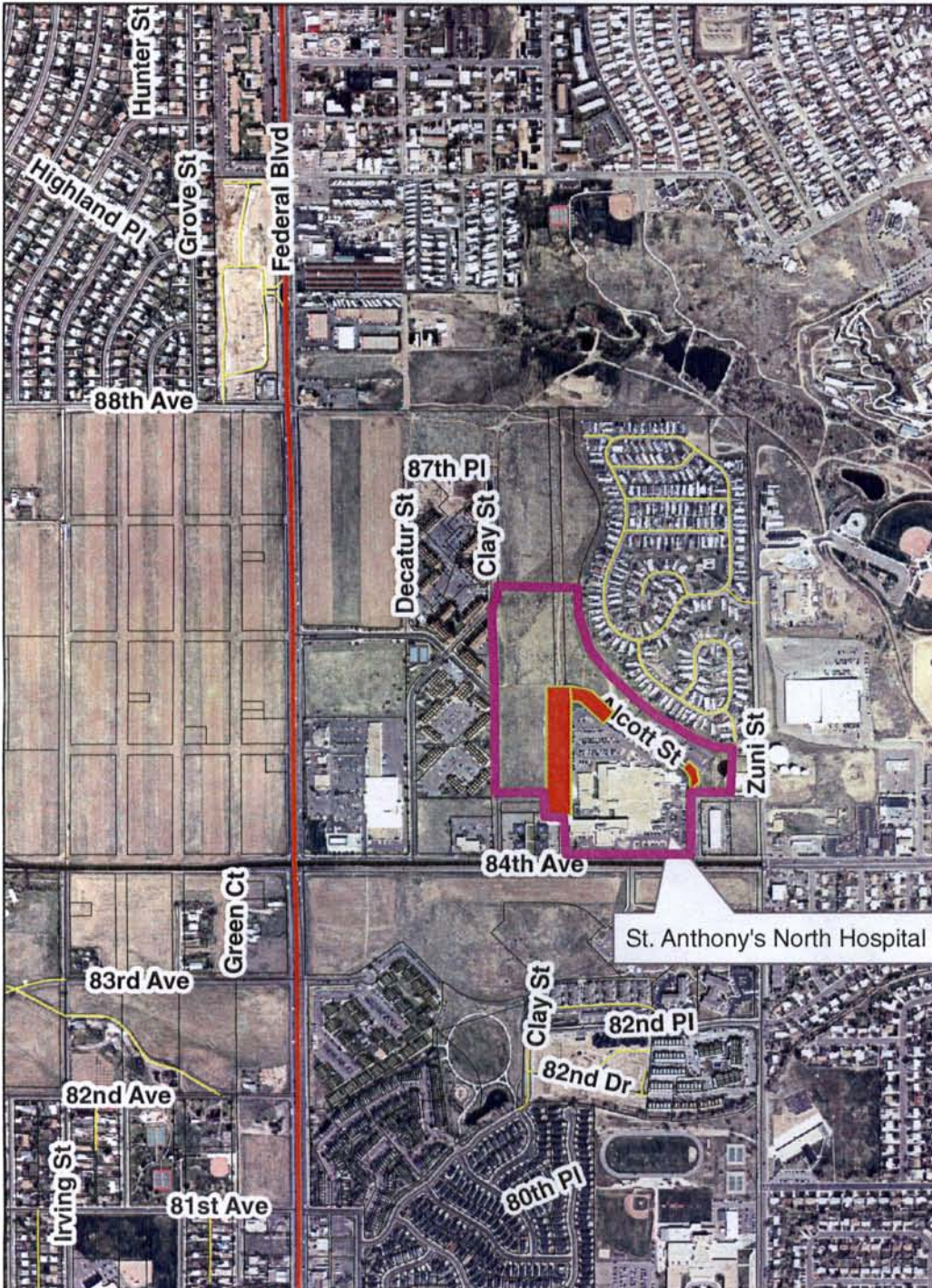


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 9299 EASTMAN PARK DRIVE, WINDSOR, CO 80550
 PHONE: (970) 686-5011 FAX: (970) 686-5821
 WWW.KINGSURVEYORS.COM

PROJECT NO: 2004463A
 DATE: 1-3-06
 CLIENT: DASCO
 DWG: 2004463-EXH
 DRAWN: KER CHECKED: LSP

VICINITY MAP

Vacation of Portions of Alcott and Bryant Streets Saint Anthony's North Hospital



Legend

StreetCenterlines_Layer

<all other values>

Classification

Collector

Highway

Local

MajorArterial

MinorArterial

Private

Unknown

Parcels_Layer

Roads to be Vacated



1 inch equals 1,000 feet



Agenda Item 10 N&O

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
February 13, 2006



SUBJECT: Addendum to the Intergovernmental Agreement with Hyland Hills Park and Recreation District

Prepared By: Julie M. Meenan Eck, Landscape Architect

Recommended City Council Action

1. Authorize the City Manager to sign an addendum to the revised intergovernmental agreement (IGA) with Hyland Hills Park and Recreation District dated August 12, 2002, regarding the distribution of Hyland Hills Bond proceeds to the City of Westminster for Westfield Village Park.
2. Pass Councillor's Bill No. 11 on first reading authorizing the un-appropriation of \$57,300 from the Westfield Village CIP project budget.

Summary Statement

- On May 7, 2002, the Hyland Hills general obligation bond was passed by voters of the district.
- On August 12, 2002, City Council voted to authorize the City Manager to sign a revised intergovernmental agreement (IGA) between the City of Westminster and Hyland Hills Park and Recreation District at the request of the Hyland Hills Board to incorporate language into the IGA reflecting the City's intention to provide matching funds for the development of the L.I.F.E. Fellowship Park (now known as Westfield Village Park).
- In the IGA, Hyland Hills committed \$900,000 for the L.I.F.E. Fellowship Park (Westfield Village Park).
- In a letter agreement to Hyland Hills dated November 10, 2004, the City Manager proposed reducing the amount of Hyland Hills' commitment equal to the amount of one-half the tap fee they owed for the Valley View Park development, since it is a park within the City of Westminster and will be used by Westminster residences.
- Westfield Village Park received a \$600,060 grant from Adams County, and has enough funding to construct the park without the additional amount from Hyland Hills. Hyland Hills paid the City \$842,700 in December of 2005.
- City Council approved a supplemental appropriation in August of 2005, transferring \$900,000 into the Westfield Village CIP account.
- The proposed addendum to the IGA with Hyland Hills Park and Recreation District would formally reduce the amount by \$57,300, revising Hyland Hills' commitment to \$842,700 and the un-appropriation would reduce the park CIP account by \$57,300.
- The IGA will be effective December 31, 2005, to reflect the year the funds were received.

Expenditure Required: \$-57,300

Source of Funds: 2005 CIP Funds

Policy Issue

Is City Council willing to reduce the commitment amount that is owed by Hyland Hills?

Alternatives

1. City Council could elect to not approve the attached addendum to the IGA. However, the City's Finance Department will need this document for their records.
2. City Council could choose to stand by the IGA approved on August 12, 2002, and require Hyland Hills to pay the City the remaining \$57,300. The City, however, does not need this funding to construct the park.

Background Information

On May 7, 2002, voters approved the Hyland Hills Park and Recreation District general obligation bond issue in the amount of approximately \$18 million to acquire open space, develop trails and improve/develop parks and facilities throughout the district.

The following Westminster park was included in the millage proposal:

L.I.F.E. Fellowship Park (Westfield Village Park) – Hyland Hills Contribution - \$900,000 - This undeveloped community park site of approximately 25 acres is located at 115th Avenue, east of Sheridan Boulevard behind the L.I.F.E. Fellowship Church. Development includes soccer and little league fields, trails, play lot and picnic shelters.

In addition, Hyland Hills has agreed to develop Valley View Park, at 105th Avenue and Federal Boulevard which is district-owned parks/facilities located within the City. The City Manager agreed to give Hyland Hills a break on the tap fee for this park in the form of retention of \$57,300, or one-half of the Valley View Park tap fee from the Westfield Village Park project, which secured enough funding to construct the park in full. The City's Finance Department will reduce the Westfield Village budget by said amount.

City Staff and Hyland Hills staff will jointly schedule the use of Westfield Village Park. In May of 2005, City Council approved the hiring of Arrow J Landscape and Design to construct Westfield Village Park. The construction is now 95% complete, and the final construction will finish in April of 2006, once the Wolff Street Expansion project is complete.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **11**

SERIES OF 2006

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2006 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING THE UN-APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,668,000 is hereby decreased by \$57,300 which, when subtracted from the fund balance as of the City Council action on February 13, 2006 will equal \$7,550,700. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The un-appropriation is due an addendum to the IGA with Highland Hills Park and Recreation District.

Section 2. The \$57,300 decrease in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Park Capital Impr. Contributions	7501.43100.0000	\$1,500,060	(\$57,300)	\$1,442,760
Total Change to Revenues			(\$57,300)	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Park Capital Impr. Approp. Holding	80375050302.80400.8888	\$57,300	(\$57,300)	\$0
Total Change to Expenses			(\$57,300)	

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 13th day of February, 2006.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of February, 2006.

ATTEST:

City Clerk

Mayor

**ADDENDUM NO. 1 TO THE
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF WESTMINSTER AND HYLAND HILLS PARK
AND RECREATION DISTRICT FOR FUNDING FOR THE CONSTRUCTION OF
WESTFIELD VILLAGE PARK**

The City of Westminster (hereinafter referred to as "City") and Hyland Hills Park and Recreation District (hereinafter referred to as "District") agree to amend the Agreement described above and attached hereto as follows:

1. The attached Agreement (which was inadvertently not dated) is dated August 12, 2002.
2. The first sentence of Paragraph 4 of said Agreement is amended to read:

“4. Hyland Hills shall contribute ~~\$900,000~~ \$842,700 in financial assistance to Westminster for the development of the community park to be located on the real property ~~now~~ ORIGINALLY known as the LIFE Fellowship property (NOW KNOWN AS WESTFIELD VILLAGE PARK) located at 115th Avenue, east of LIFE Fellowship Church (see attached location map).”
3. This Addendum shall be effective December 31, 2005.
4. All other terms and conditions of this Agreement shall remain in effect.

This Addendum is dated February _____, 2006.

CITY OF WESTMINSTER

By _____
City Manager

ATTEST:

City Clerk

**HYLAND HILLS PARK AND RECREATION
DISTRICT**

By _____
President and Chairman of the Board

ATTEST:

Its: Secretary

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2002, by and between the CITY OF WESTMINSTER, a Colorado home rule municipality ("Westminster") and HYLAND HILLS PARK AND RECREATION DISTRICT, a Colorado special district ("Hyland Hills").

WHEREAS, the electors of Hyland Hills have approved an \$18 million general obligation bond issue and a 2.0 mill levy increase to pay for these bonds, as well as a 0.5 mill levy increase per maintenance issue on May 7, 2002, for the purpose of making capital improvements, several of which are to be in cooperation with Westminster, and for additional park and recreation maintenance funds, and

WHEREAS, Hyland Hills and Westminster desire to continue and enhance the spirit of cooperation between them, prevent wasteful duplication and provide the maximum recreation and park benefits to their respective residents,

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein, Westminster and Hyland Hills agree as follows:

1. Hyland Hills, at its sole expense, shall cause to be developed that certain real property located at approximately Federal Boulevard and 104th Avenue in the City of Westminster, to be known as Valley View Park (see attached location map).

Hyland Hills shall be solely responsible for the construction of improvements, operations and maintenance and any and all associated costs, which shall not be less than \$1 million. Westminster shall vacate the West 105th Drive right-of-way over and across the park site and Hyland Hills shall make reasonable efforts to purchase Lot 7, Block 1, Meadowlark Subdivision as additional park property. The City of Westminster recognizes that the development of this park will benefit Westminster residents.

2. Westminster shall contribute a sum of up to \$500,000 and Hyland Hills shall contribute up to \$750,000 for further renovation and development of Carroll Butts Park located at 95th Avenue and Raleigh Street (see attached location map).

The terms of the existing intergovernmental agreement regarding joint operation of Carroll Butts Park shall govern said renovation and development.

3. Hyland Hills shall expand the existing Gymnastics Center, located adjoining the Community Senior Center at 72nd Avenue and Irving Street. The City of Westminster recognizes that the expansion of the Gymnastics Center will benefit Westminster residents.

4. Hyland Hills shall contribute \$900,000 in financial assistance to Westminster for the development of the community park to be located on the real property now known as the LIFE

Fellowship property located at 115th Avenue, east of LIFE Fellowship Church (see attached location map). It is Westminster's intention to budget the following amounts (subject to City Council approval) in the City's 5-year Capital Improvement Program for this project.

BUDGET YEAR	PROPOSED AMOUNT
2003	\$400,000
2004	\$600,000
2005	<u>\$400,000</u>
GRAND TOTAL	\$1,400,000

Hyland Hills and Westminster shall jointly select the architects, consultants and other design professionals and contractors for development of this park and shall jointly be responsible for park design and development or project specifications. Westminster shall award and administer all contracts. (Westminster shall submit monthly accounting of all invoices to Hyland Hills for payment up to the limit of Hyland Hills' contribution on the project.)

The completed project shall be maintained by Westminster at its sole expense. Westminster and Hyland Hills will jointly schedule use of the park.

5. Hyland Hills shall contribute \$500,000 in financial assistance to Westminster for the development of the community park on the City-owned property known as Big Dry Creek at 128th Avenue (see attached location map).

It is Westminster's intention to budget the following amounts (subject to City Council approval) in the City's 5-year Capital Improvement Program for this project.

BUDGET YEAR	PROPOSED AMOUNT
2005	\$200,000
2006	\$500,000

Hyland Hills and Westminster shall jointly select the architects, consultants and other design professionals and contractors for development of this park and shall jointly be responsible for park design and development or project specifications. Westminster shall award and administer all contracts (Westminster shall submit monthly accounting of all invoices to Hyland Hills for payment up to the limit of Hyland Hills' contribution on the project.) The completed project will be maintained by Westminster at its sole expense. Westminster and Hyland Hills will jointly schedule the use of the park.

6. It is the intent of both parties that these projects shall be substantially under construction no later than 30 months from the sale of the bonds on behalf of Hyland Hills. In the event that any project set forth herein cannot be under construction within said 30-month period or budgeted funds are not allocated in the amounts stated here, the terms and conditions of this Agreement will be subject to renegotiation upon election of either party. In the case of 128th & Big Dry Creek, the criteria will be met if a construction contract is awarded by January 2005.

7. Neither Westminster nor Hyland Hills shall have any obligation to expend more funds than specifically set forth in this Agreement. Any major changes to the projects set forth in this document will be agreed upon by the parties.

8. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of either party, and all amounts otherwise payable by either party under this Agreement over the course of more than one fiscal year are subject to annual appropriation by the governing body of such party. Both parties agree to exercise utmost good faith in appropriating the necessary funds to meet their respective obligations under this agreement.

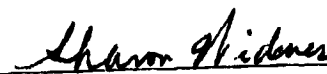
CITY OF WESTMINSTER

By 
City Manager

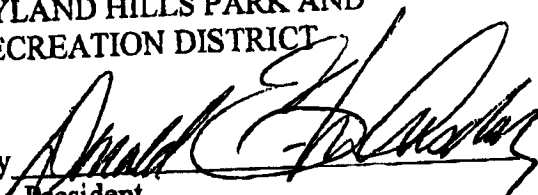
Attest: Approved by Westminster
City Council on 8-12-02


City Clerk

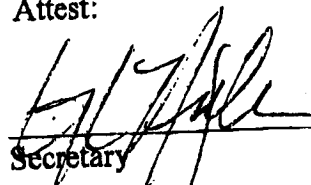
Approved as to form:


City Attorney

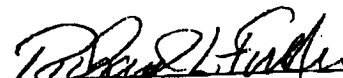
HYLAND HILLS PARK AND
RECREATION DISTRICT

By 
President

Attest:


Secretary

Approved as to form:


Administrative Counsel



Park at
Life Fellowship

Park at
128th / Huron

SHERIDAN

HURON

120 TH.

Hyland Hills
Valley View Park

104th

Carroll Butts
Park

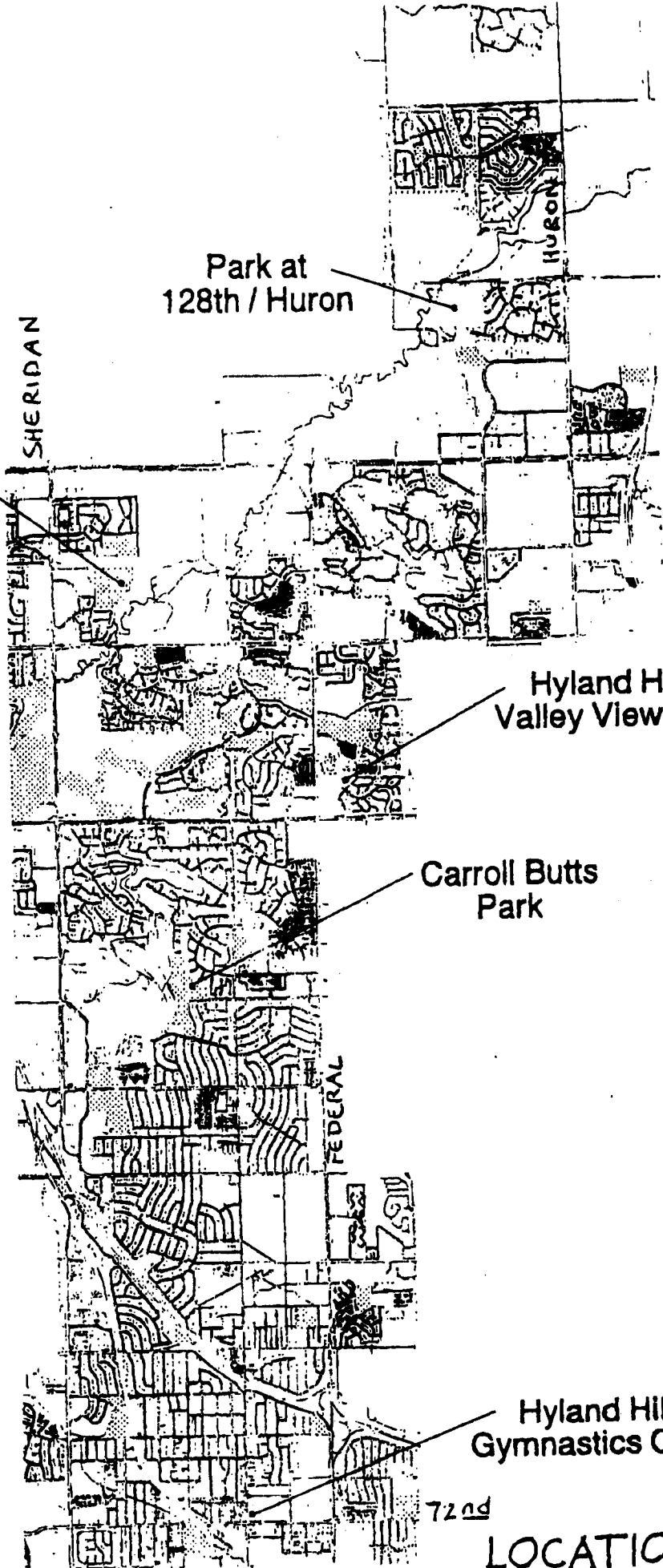
92nd

FEDERAL

Hyland Hills
Gymnastics Center

72nd

LOCATION MAP



Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, February 13, 2006. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the January 23, 2006 regular meeting were approved.

Council recognized the youth selected for the first phase of the Metropolitan Mayors' and Commissioners' Youth Award.

Council approved the following: Recreation Center rental fees; sale of 3.243-acre parcel lying east of the SE Corner of 100th Ave. and Wadsworth Pkwy; appropriation for Thornton Investments property irrigation pump station; Intergraph Public Safety Software maintenance payment; asphalt materials bid award; purchase of gasoline and diesel fuel for City vehicles; purchase of a tandem dump truck with plow; 2006 traffic-calming construction; IGA establishing the Rocky Flats Stewardship Council; appointed a Director and 2 alternate Directors to the Rocky Flats Stewardship Council; addendum to Hyland Hills Park and Recreation District IGA; final passage of CB No. 1 re TMUND land use category CLUP amendment; and final passage of CB No. 8 re appropriation of lease proceeds for Heritage Golf Course Equipment.

A public hearing was conducted re Country Club Village and Country Club Highlands service plans.

Council continued to February 27, 2006, a public hearing re proposed amendments to the service plan for Huntington Trails Metropolitan District.

Council adopted the following resolutions: Res. No. 5 re amended service plan for Country Club Village (Metropolitan District 1); Res. No. 6 re amended service plan for Country Club Highlands (Metropolitan District 2); Res. No. 7 re compliance hearing to accept the annexation petition for the Kalmar property; Res. No. 8 re IGAs with the State re historic preservation grants; Res. No. 9 re WEDA refunding bond issue for the Mandalay URA; and Res. No. 10 re termination of the Rocky Flats Coalition of Local Governments.

The following Councillors' Bills were passed on first reading:

A BILL FOR AN ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, SALES AND USE TAX, AND DEBT SERVICE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUNDS. Purpose: 4th Qtr 2005 budget supplemental appropriation.

A BILL FOR AN ORDINANCE VACATING PORTIONS OF RIGHTS-OF-WAY FOR ALCOTT STREET AND BRYANT STREET ON PROPERTY OWNED BY SAINT ANTHONY'S NORTH AS DEDICATED ON THE GREENBRIAR 1 SUBDIVISION PLAT AND MEDICAL PLAZA NORTH SUBDIVISION PLAT. Purpose: Vacate specific rights-of-way on Greenbriar I and Medical North Subdivision plats.

A BILL FOR AN ORDINANCE AMENDING THE 2006 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING THE UN-APPROPRIATION FROM THE 2006 ESTIMATED REVENUES IN THE FUND. Purpose: Un-appropriate funds from the Westfield Village CIP project budget.

The meeting adjourned at 7:53 p.m.

By Order of the Westminster City Council
Linda Yeager, City Clerk

Published in the Westminster Window on February 23, 2006

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to W.M.C. §11-4-16(D), by the City requesting a text change in the Westminster Comprehensive Land Use Plan described in Exhibit A, attached hereto and incorporated herein by reference.

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on December 13, 2005, after notice complying with W.M.C. §11-4-16(B) and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with W.M.C. § 11-4-16(B).

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

e. That the requested amendments will further the public good, that there is a justification and need for the revisions, and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly its goals and policies regarding redevelopment and economic revitalization.

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the text of the Westminster Comprehensive Land Use Plan to change the text described in Exhibit A.

Section 3. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

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

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd of January, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of February, 2006.

**A BILL
FOR AN ORDINANCE AMENDING THE 2006 BUDGET OF THE GOLF
COURSE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2006 ESTIMATED REVENUES IN THE FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2006 appropriation for the Golf Course Fund initially appropriated by Ordinance No. 3162 in the amount of \$1,996,718 is hereby increased by \$582,144 which, when added to the fund balance as of the City Council action on January 23, 2006 will equal \$2,578,862. The actual amount in the Golf Course Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of Heritage maintenance equipment lease proceeds.

Section 2. The \$582,144 increase in the Golf Course Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:
REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Note Proceeds	2300.46000.0225	\$0	\$582,144	\$582,144
Total Change to Revenues			<u>\$582,144</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Use	23010900.78800.0000	\$0	\$582,144	\$582,144
Total Change to Expenses			<u>\$582,144</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 23rd day of January, 2006. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of February, 2006.