



## CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
  - A. City Manager's Report
5. City Council Comments
6. Presentations
  - A. Employee Service Awards Presentation
  - B. Certificate of Achievement for Excellence in Financial Reporting
  - C. 2008 Colorado Government Finance Officer's Association Significant Contribution Award
  - D. Earth Hour Proclamation
7. Citizen Communication (5 minutes or less)

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to remove an item for separate discussion. Items removed from the consent agenda will be considered immediately following adoption of the amended Consent Agenda.

8. Consent Agenda
  - A. Financial Report for February 2009
  - B. Police Department Patrol Vehicles Purchase
  - C. Excess Workers' Compensation Insurance Purchase
  - D. City Park Fitness Center Renovation Construction Contract
  - E. Public Safety Radio System Maintenance Contract
  - F. Utility Fund Financial Models Contract Revisions
  - G. Annual Large Item Cleanup Program Contract Renewal
  - H. McKay Drainageway Project Engineering Services Contract Amendment
  - I. Short-Term Lease of Consumable Water to Aggregate Industries
  - J. Second Reading of Councillor's Bill No. 6 re Westminster Center Park & City Park Supplemental Appropriation
  - K. Second Reading of Councillor's Bill No. 7 re Funds Transfer re Payment to Metro Wastewater Reclamation District
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Public Hearing on the Third Amended PDP for Panorama Pointe Subdivision Parcel C
  - B. Third Amended Preliminary Development Plan for Panorama Pointe Subdivision Parcel C
  - C. Resolution No. 11 re Service Commitment Award for Panorama Pointe Parcel C Senior Housing Project
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes), Miscellaneous Business, and Executive Session
  - A. City Council
13. Adjournment

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

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, MARCH 9, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Girl Scout Cadets from Troop 2121, assisted by Brownies from Troop 443, presented the colors and led, the Mayor, Council, Staff, and audience in the Pledge of Allegiance.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Councillor Major, to approve the minutes of the regular meeting of February 23, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that the Mayor and several members of City Council would be attending the Congressional Cities Conference in Washington, DC, March 14 through 18, and there would be no Study Session on Monday, March 16. Council's next regular meeting would be on March 23, and there would be no Study Session on March 30, the fifth Monday of the month.

CITY COUNCIL COMMENTS

Councillor Briggs reported that his appointment to the Jefferson County Historic Preservation Board had been ratified by the Commissioners, and he had been immediately selected to co-chair a subcommittee that was preparing to publish a book on historic events that had occurred in the county. Westminster historic events would be included in the publication.

PRESENTATIONS

Councillor Lindsey read a proclamation declaring March 8 to 14 to be Girl Scout Week. March 12 marked the 97<sup>th</sup> anniversary of the founding of Girl Scouts of the USA. Several members of the Girl Scouts Peak to Peak Service Unit were in attendance to accept the proclamation.

Mayor McNally presented a proclamation to Moises Alcalá, the first state champion in the history of the Westminster High School Wolves. Mr. Alcalá had a distinguished record of winning wrestling tournaments and, after posting a 42-2 record in the 2008-2009 season, had won the Class 5A Heavyweight Wrestling Championship title in recent weeks. He accepted the proclamation in the presence of family, his coach, and the District 50 Superintendent of Schools.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: award the bids for purchase of Ferric Chloride to PVS Technologies, Caustic Soda and Sodium Hypochlorite to DPC Industries, and based on the report and recommendation of the City Manager, determine that the public interest would be best served by awarding 15% of the annual usage of Sodium Hypochlorite to Treatment Technologies with unit prices indicated on the bid tabulation for the three chemicals on an as-needed basis up to a maximum of \$578,680; authority for the Fire Department to purchase disposable medical supplies from BoundTree Medical; authority for the City Manager to execute an amended contract, due to the addition of more locations to the contract, for the remaining years 2009/2010 with Schultz Industries in the amount of \$425,943 for bluegrass and right-of-way mowing services; final passage of Councillor's Bill No. 4 providing for supplemental appropriation of funds to the

2008 budget of the General, Water, Fleet, and General Capital Improvement Funds; and final passage of Councillor's Bill No. 5 amending Chapters 1, 2, and 5 of Title XIII of the Westminster Municipal Code concerning parkland and open space.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. Councillor Major removed item 8C and moved to approve the consent agenda as amended by exclusion of item 8C. The motion was seconded by Councillor Kaiser and passed unanimously.

BLUEGRASS AND RIGHT-OF-WAY MOWING AMENDED CONTRACT

It was moved by Councillor Major and seconded by Councillor Lindsey to authorize the City Manager to execute an amended contract, due to the addition of more locations to the contract, for the remaining years 2009/2010 with Schultz Industries in the amount of \$425,943 for bluegrass and right-of-way mowing services. The motion passed by a 6:1 margin with Councillor Kaiser abstaining because of a potential conflict of interest.

COUNCILLOR'S BILL NO. 6 APPROPRIATING SUPPLEMENTAL GRANT FUNDING

Upon a motion by Councillor Briggs, seconded by Councillor Winter, the Council voted unanimously at roll call to pass Councillor's Bill No. 6 on first reading to provide for supplemental appropriation of a \$200,000 Great Outdoor Colorado grant for Westminster Center Park and of a \$300,000 Jefferson County Open Space Grant for the City Park Recreation Center Aquatics Renovation.

RESOLUTION NO. 10 CONCERNING PAYMENT FOR EXCLUSION OF PROPERTIES FROM MWWRD

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Kaiser, to adopt Resolution No. 10 consenting to the terms and conditions set forth by the Metro Wastewater Reclamation District excluding a portion of Westminster from the Metro Wastewater Reclamation District and authorizing payment of \$1,964,350 to the Metro Wastewater Reclamation District. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 7 TRANSFERRING FUNDS FOR MWWRD PAYMENT FOR EXCLUSION

Mayor Pro Tem Dittman moved to pass Councillor's Bill No. 7 on first reading transferring \$1,964,350 from the Utility Capital Project Reserve Fund to the Special Assessments Metro Wastewater Reclamation District regular operating account to cover payment to Metro Wastewater Reclamation District. The motion was seconded by Councillor Kaiser and passed unanimously on roll call vote.

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser, seconded by Councillor Major, to adjourn. The motion passed unanimously, and the Mayor adjourned the meeting at 7:18 p.m.

ATTEST:

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

\_\_\_\_\_  
Mayor



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Presentation of Employee Service Awards

**Prepared By:** Debbie Mitchell, Human Resources Manager  
Dee Martin, Human Resources Administrator

**Recommended City Council Action**

Present service pins and certificates of appreciation to employees celebrating 20, 25, 30 and 35 years of service with the City, and provide special recognition to the City's 25-year employees with the presentation of a \$2,500 bonus.

**Summary Statement**

- City Council is requested to present service pins and certificates of appreciation to those employees who are celebrating their 20<sup>th</sup>, 25<sup>th</sup>, 30<sup>th</sup> and 35<sup>th</sup> anniversaries of employment with the City.
- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In 1986, City Council adopted a resolution to award individuals who have given 25 years of service to the City with a \$2,500 bonus to show appreciation for such a commitment. Under the program, employees receive \$100 for each year of service, in the aggregate, following the anniversary of their 25th year of employment. The program recognizes the dedicated service of those individuals who have spent most, if not all, of their careers with the City.
- The 20, 25, 30, and 35 year employees for the second grouping in 2009 will be celebrated tonight.
  - Mayor Pro Tem Dittman will present the 30 and 35-year certificate.
  - Mayor McNally will present the 25-year certificates.
  - Councillor Major will present the 20-year certificates.

**Expenditure Required:** \$ 7,500

<b>Source of Funds:</b>	General Fund	-Parks, Recreation & Libraries \$2,500
	Utility Fund	-Information Technology \$2,500
		-Public Works & Utilities \$2,500

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The following 20-year employees will be presented with a certificate and service pin:

Jim Cloud	Fire Chief	Fire
Rob Martinez	Fire Lieutenant, Fire Investigator	Fire
Pam Mayhew	Volunteer Coordinator	General Services
Sandy Thornton	Revenue Services Representative	Finance

The following 25-year employees will be presented with a certificate, service pin and check for \$2,500, minus amounts withheld for Federal and State income taxes after their anniversary date:

Bill Hall	Traffic Accident Investigator	Police
Roger Harshman	Foreman	Public Works & Utilities
Dan Stadler	Internet Software Engineer	Information Technology

The following 30-year employee will be presented with a certificate and service pin:

Mark Schmidt	Fire Engineer	Fire
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The following 35-year employee will be presented with a certificate and service pin:

Jim Kautz	Senior Police Officer	Police
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On March 3, 2009, the City Manager hosted an employee awards luncheon. During that time, 3 employees received their 15 year service pin, 3 employees received their 10 year service pin, and 16 employees received their 5 year service pin, while recognition was also given to those who celebrate their 20<sup>th</sup>, 25<sup>th</sup>, 30<sup>th</sup> and 35<sup>th</sup> anniversary this quarter. This was the second luncheon to recognize and honor City employees for their service to the public in 2009.

The aggregate City service represented among this group of employees for the second luncheon is 375 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

The recognition of employee’s years of service addresses Council’s Strategic Plan goal of Financially Sustainable City Government as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 6 B

WESTMINSTER  
COLORADO

### Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Certificate of Achievement for Excellence in Financial Reporting

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

#### **Recommended City Council Action**

Kathy Barta, Colorado Government Finance Officer Association Administrator, will present the Government Finance Officer's Certificate of Achievement for Excellence in Financial Reporting to the City's Comprehensive Annual Financial Report (CAFR) project team.

#### **Summary Statement**

- The Government Finance Officer's Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City of Westminster for its comprehensive annual financial report for the fiscal year ended December 31, 2007.
- The CAFR is judged by an impartial review panel to meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.
- The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.
- This is the twenty-fifth consecutive year the City has received this prestigious award from GFOA. As one of Council's primary goals is a Financially Sustainable City Government Providing Exceptional Services, staff is honored to receive this award.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The Certificate of Achievement is conferred by the GFOA of the United States and Canada, and is the highest form of recognition in the area of governmental accounting and financial reporting. Its attainment represents a significant accomplishment by a government and its management.

To satisfy the requirements of the Certificate program, a CAFR must be easily readable and understandable based on a defined reporting framework that incorporates relevant Generally Accepted Accounting Principles and applicable GFOA program policies. Additionally, the information must be reliable as indicated by an unqualified opinion of the City's independent auditor.

Audit reports qualifying for the Certificate of Achievement provide a clear and complete financial story to be utilized by citizens, City Council, and various oversight groups as an accountability mechanism, by investors and creditors as a credit analysis tool, and by others as a reference to the financial operation and position of the City.

Westminster's report was evaluated by GFOA's special review committee comprised of government finance officers, independent CPAs, educators and others with particular expertise in governmental accounting and financial reporting from across the nation. The award acknowledges that Westminster fulfills the spirit of full disclosure in communicating its financial story.

Special thanks go to Accounting Manager Cherie Sanchez, Accountants Karen Creager, Gary Newcomb, Sherri Rickard, and Sam Trevino, Retirement Administrator Kim McDaniel, and Accounting Specialist Leslie Krough who were primarily instrumental in achieving the certificate. Other Finance Staff that provided vital assistance includes Senior Financial Analyst Bob Byerhof and Administrative Secretary Maggie Hunter. The Certificate of Achievement Award reflects the hard work and commitment to excellence of the CAFR project team, and the overall commitment of the City to being financially accountable.

Respectfully submitted,

J. Brent McFall  
City Manager





**WESTMINSTER**  

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**COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** 2008 CGFOA Significant Contribution Award

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

**Recommended City Council Action**

Kathy Barta, Colorado Government Finance Officer's Association (CGFOA) Administrator will present the 2008 CGFOA award for Significant Contributions to Government Finance for the City's Geographical Information Systems (GIS) assisted tax audit program. Councillor Major will receive this award on behalf of the City.

**Summary Statement**

- The CGFOA presented the City with an award for Significant Contributions to Government Finance at its annual conference last November. The City was recognized for its use of GIS in tax auditing.
- The GIS automates the audit of address information for deliveries and property use. This innovative partnership between Community Development, Information Technology, and Finance staff has improved audit accuracy and saved over 1,500 audit hours to date.
- The Significant Contribution award is given annually to one governmental agency in Colorado. Nominations are evaluated based upon their significance to the field of government finance, transferability among organizations, cost vs. benefit, originality, and innovation.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The City's GIS stores, manages, and analyzes a variety of information about the City and surrounding communities. Business processes in every City department depend upon the GIS for support. In the fall of 2006, GIS and IT Staff approached Sales Tax Staff about the potential for uses of GIS in tax collection. A brief exchange regarding basic GIS functionality and tax collection procedures revealed that GIS would be a very useful tax collection tool, particularly with respect to auditing.

One of the most onerous audit processes is address verification. Because goods are taxed based upon where they are delivered or consumed, auditors must confirm that taxpayers have attributed addresses to the correct jurisdiction. Traditionally, auditors manually checked thousands of transactions against City address listings to determine whether or not City tax was due. For a minimal investment, the GIS has automated this process, saving an estimated 1,500 audit hours to date. The GIS has also proven a useful tool for other areas of tax administration including enforcement and special district accounting.

Because of the impact this tool has made in Westminster, Sales Tax staff has committed to educating their colleagues in other jurisdictions on the use of GIS. Audit Supervisor Josh Pens has presented several times to the Colorado Association of Municipal Tax Auditors and the CGFOA. Last year, he hosted the City of Greenwood Village for a live demonstration and has invited other cities to do the same. He was also asked to write an article on GIS assisted audits which will appear in the April edition of *Government Finance Review*, a bi-monthly journal for governmental and non-governmental public finance professionals throughout the United States and Canada.

CGFOA is a non-profit organization comprised of finance officers from a variety of governments in Colorado. Its primary purposes include improving the practice of government finance in Colorado; promoting ethical, high quality government service; and facilitating information sharing among members. Each year, CGFOA awards one government with the award for Significant Contributions to Government Finance. This award recognizes projects and programs that are original and represent a significant contribution to the field of government finance. Nominations are judged not only on their originality, but on the degree to which other members could benefit by implementing a similar program. This award reflects Staff's commitment to innovation and teamwork as well as the City's strong reputation among its peers.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 6 D

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Earth Hour Proclamation

**Prepared By:** Carey Rangel, Environmental Analyst  
Rachel Harlow-Schalk, Environmental and Administrative Services Officer

### Recommended City Council Action

Councilor Lindsey to present a proclamation to City Environmental Analyst Carey Rangel proclaiming March 28, 2009, from 8:30 to 9:30 p.m. as Earth Hour in the City of Westminster.

### Summary Statement

- City Council is being asked to proclaim Saturday, March 28, 2009, 8:30 to 9:30 p.m. as Earth Hour. At 8:30 p.m. all non-essential lighting at City Hall, including the iconic bell tower, will be turned off for one hour in observance of Earth Hour. Residents and businesses will be encouraged to do the same.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Earth Hour is the World Wildlife Fund's global initiative to focus communities on the impact one hour can have on the environment. Individuals, businesses and governments are asked to turn off their lights for one hour to show their support for action on climate change.

The event began in Sydney, Australia and on March 31, 2007, 2.2 million people and 2,100 businesses turned off their lights for one hour - a massive collective effort that reduced Sydney's energy consumption by 10.2 percent for one hour. That's the equivalent effect of taking 48,000 cars off the road for a year.

Earth Hour 2009 takes place from 8:30 - 9:30 p.m. Mountain Standard Time on Saturday, March 28. During this hour, Westminster households, businesses and non-emergency operations are urged to switch off lights and non-essential appliances. Westminster is one of hundreds of cities worldwide participating in this event.

The events scheduled for Earth Hour are as follows:

All non-essential lighting at City Hall including the clock tower will be shut down for one hour beginning at 8:30 pm on Saturday, March 28, 2009.

The City Green Team and the Environmental Advisory Board will partner to educate residents interested in energy conservation by distributing compact fluorescent light bulbs, promoting curbside recycling, helping residents sign up to eliminate junk mail, planting street trees, and providing energy conservation tips.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

**WHEREAS**, our community is concerned with the impact of climate change and the future health and well-being of our planet and believes energy efficiency and natural resource conservation are important elements to combating climate change; and,

**WHEREAS**, Earth Hour is both an international and local symbolic event organized by World Wildlife Fund to raise awareness about climate change issues and to encourage businesses, individuals and government to take actions to reduce carbon emissions in their daily lives and operations; and

**WHEREAS**, Earth Hour asks all citizens, businesses, government agencies, and establishments to turn off all non-essential lighting for one hour beginning at 8:30 p.m. on Saturday, March 28, 2009 and to encourage citizens and businesses to commit to actions they can take in the coming year to reduce conserve energy; and,

**WHEREAS**, the City of Westminster will turn off all non-essential lighting at City Hall, including the clock tower, for the hour between 8:30 and 9:30 p.m. on Saturday, March 28, 2009 to conserve energy and raise awareness about global climate change as part of the city-wide energy conservation event: Earth Hour.

**NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim Saturday, March 28, 2009, 8:30 p.m.**

## **EARTH HOUR**

Signed this 23rd day of March 2009.

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Nancy McNally, Mayor



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
February 23, 2009



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

**Recommended City Council Action**

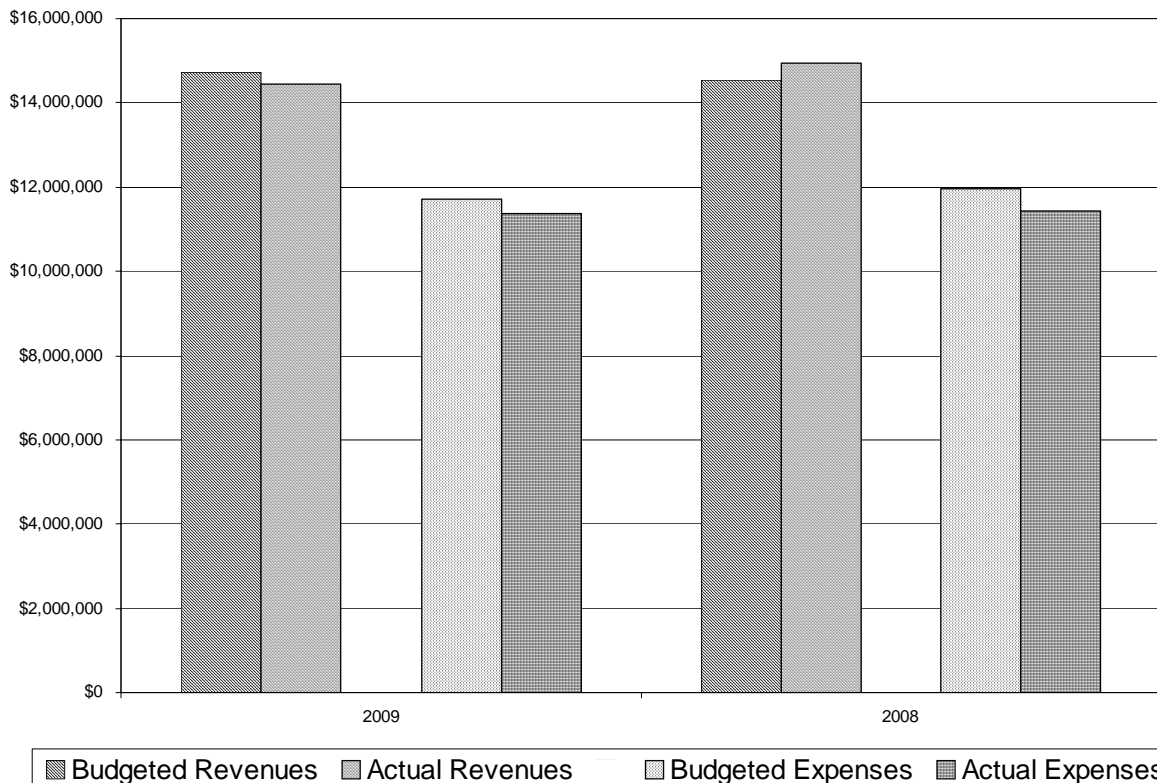
Accept the Financial Report for February as presented.

**Summary Statement**

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

The General Fund revenues and carryover exceed expenditures by \$3,069,585. The following graph represents Budget vs. Actual for 2008 – 2009. It is important to point out here that these numbers include the sales and use tax transfer to the General Fund at 100% of the budgeted amount, which will be adjusted in the coming months. The City is currently experiencing a shortfall in Sales and Use Tax collections that is being addressed through a variety of budget modifications to assure that the City's budget remains balanced.

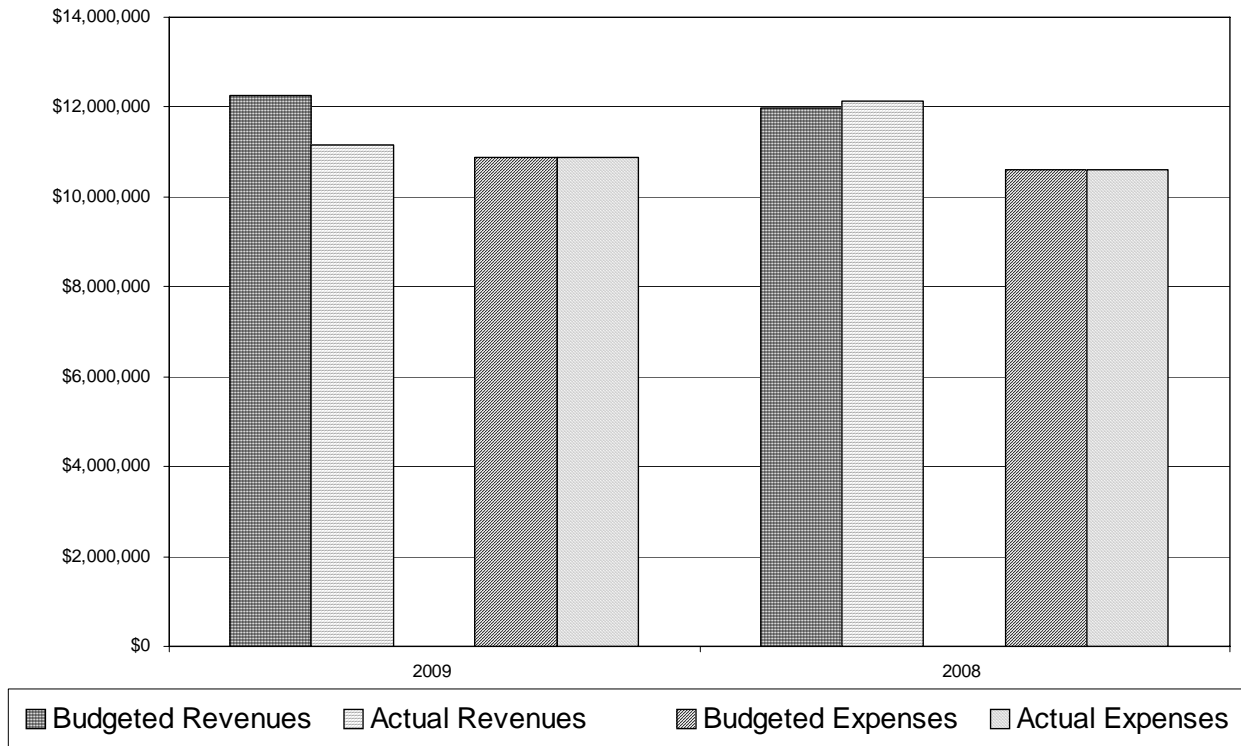
**General Fund  
Budget vs Actual**



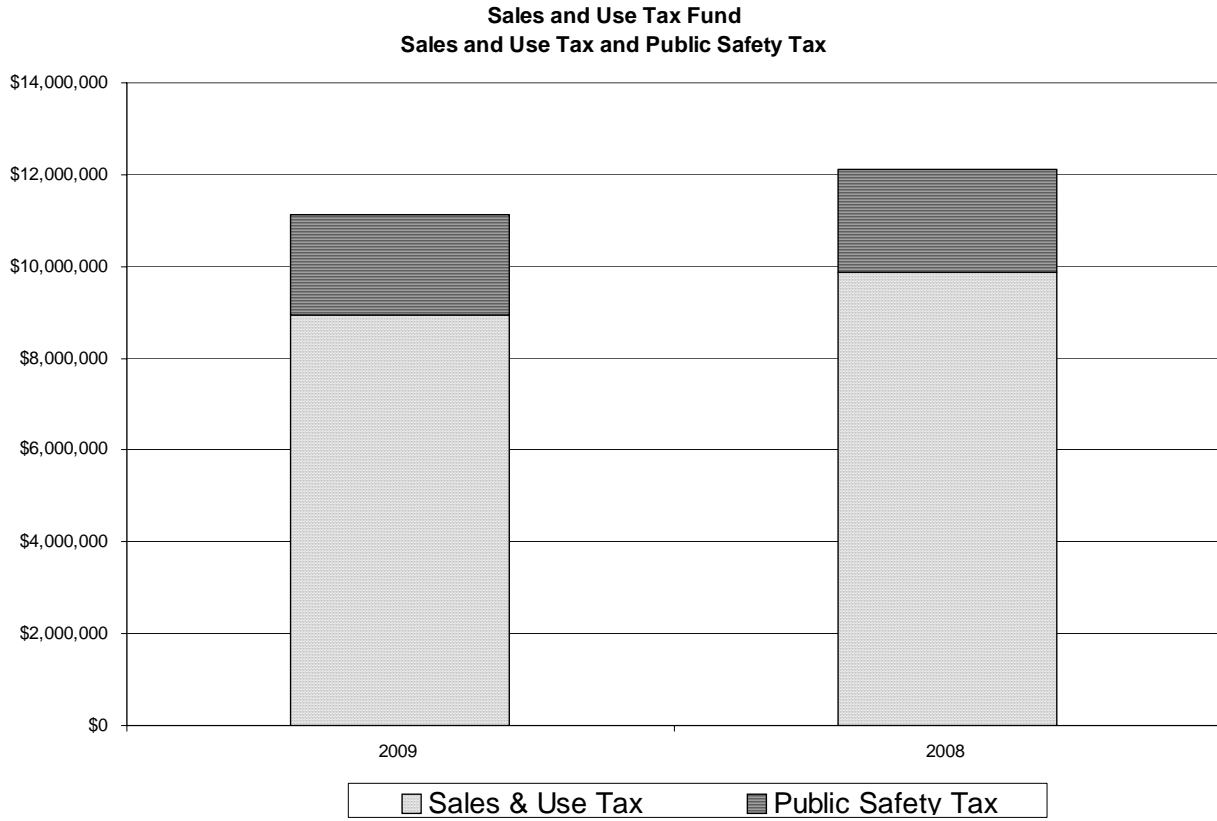
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$268,353.

- On a year-to-date cash basis, sales & use tax returns are down 5.5% from 2008.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 2.7% from the prior year. This includes Urban Renewal Area money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 10.4%.
- The top 50 Sales Taxpayers, who represent about 62% of all collections, were down 5.4% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 22.0% on a year-to-date basis.
- Building Use Tax is down 57% year-to-date from 2008.

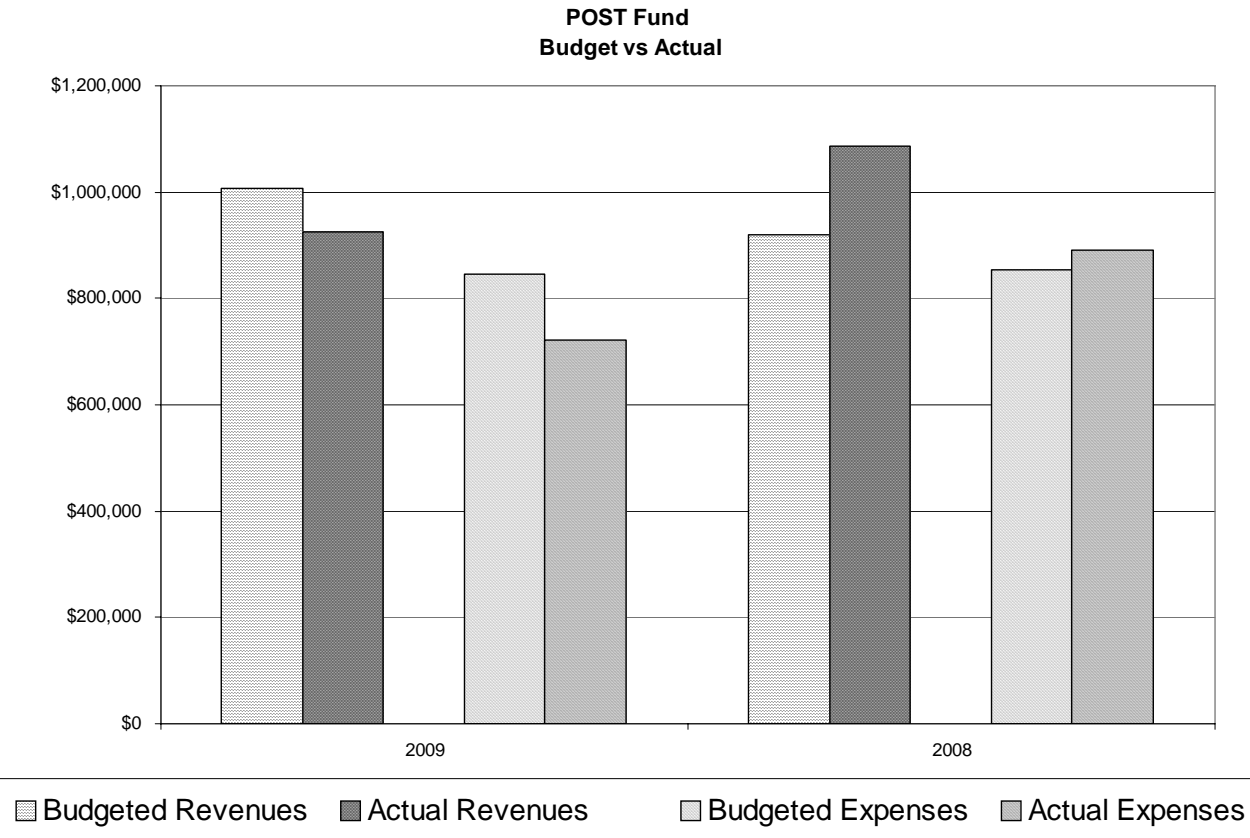
**Sales & Use Tax Fund  
Budget vs Actual**



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



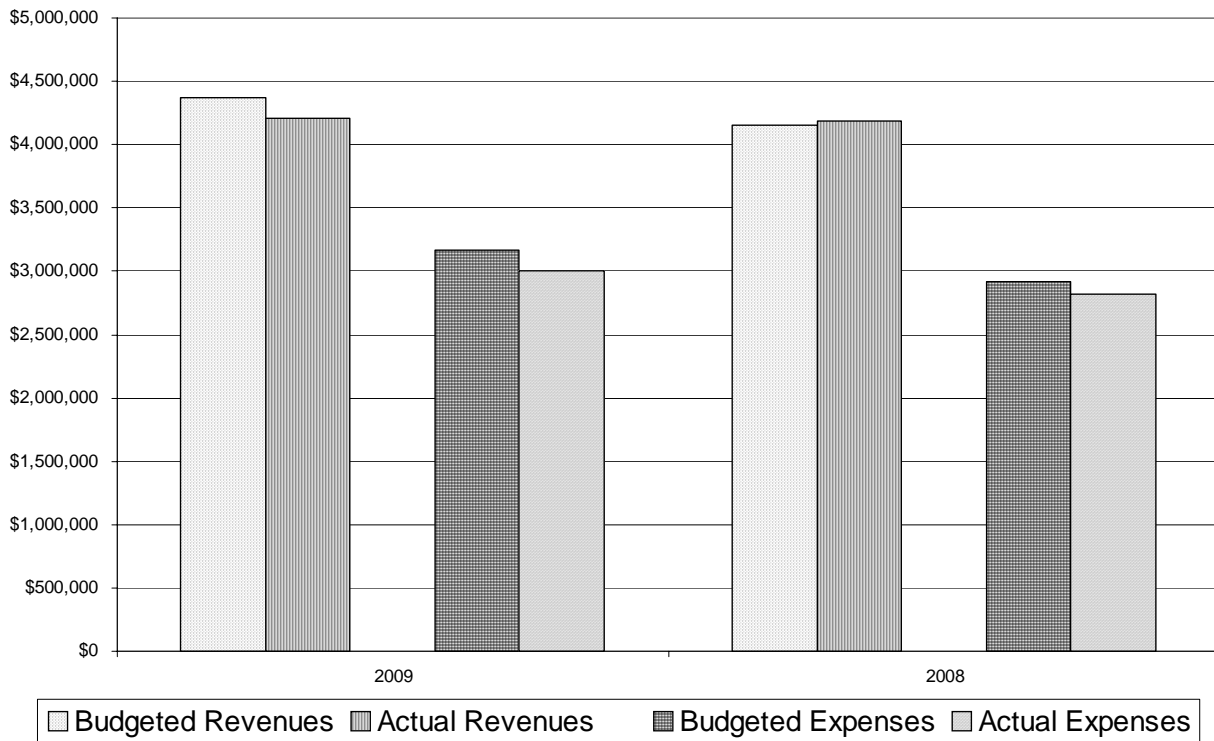
The Parks Open Space and Trails Fund revenues exceed expenditures by \$202,263.





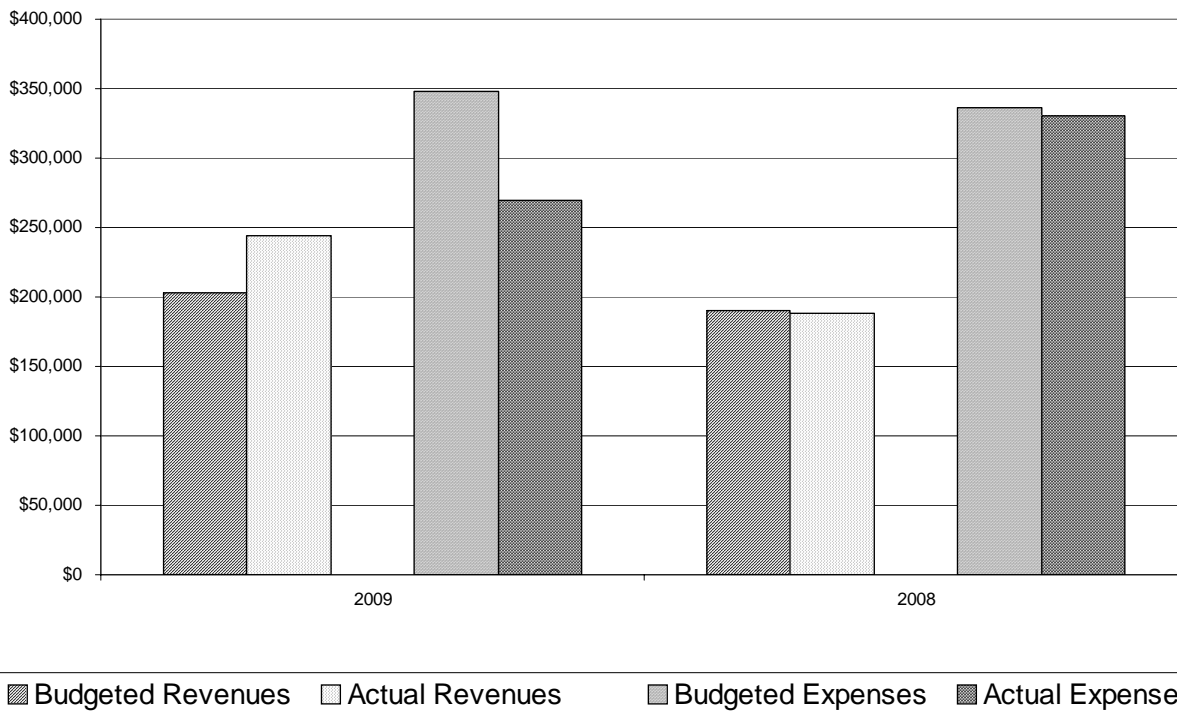
The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$4,602,802. \$23,883,469 is budgeted for capital projects and reserves.

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



The combined Golf Course Fund expenditures exceed revenues by (\$25,970).

**Golf Course Enterprise  
Budget vs Actual**



Golf course expenses are down due to salary costs charged back to 2008, a timing difference in the airport land lease payment and conclusion of the 2004 golf cart lease in January 2008.

**Policy Issue**

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

**Alternative**

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

**Background Information**

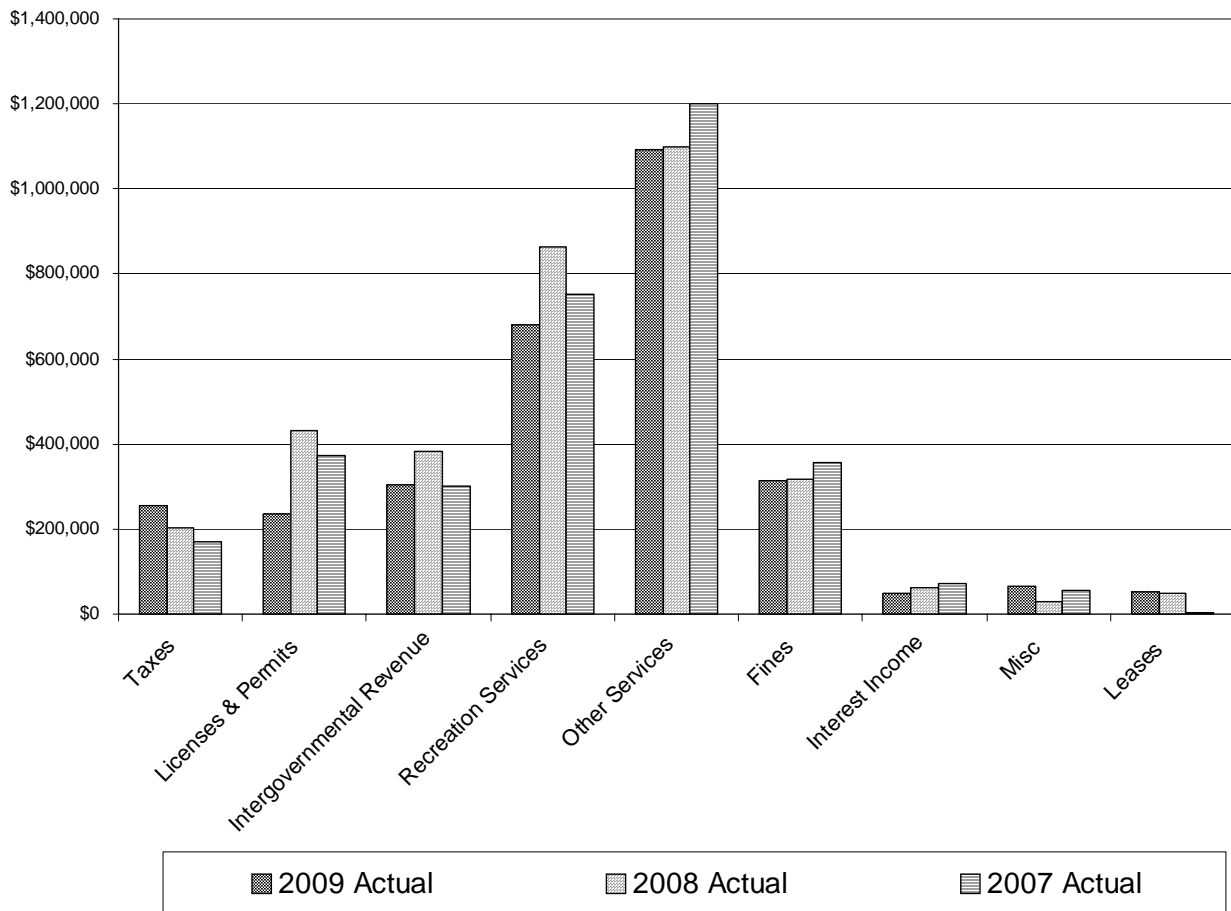
This section includes a discussion of highlights of each fund presented.

**General Fund**

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

The following chart represents the trend in actual revenues from 2007 – 2009 year-to-date.

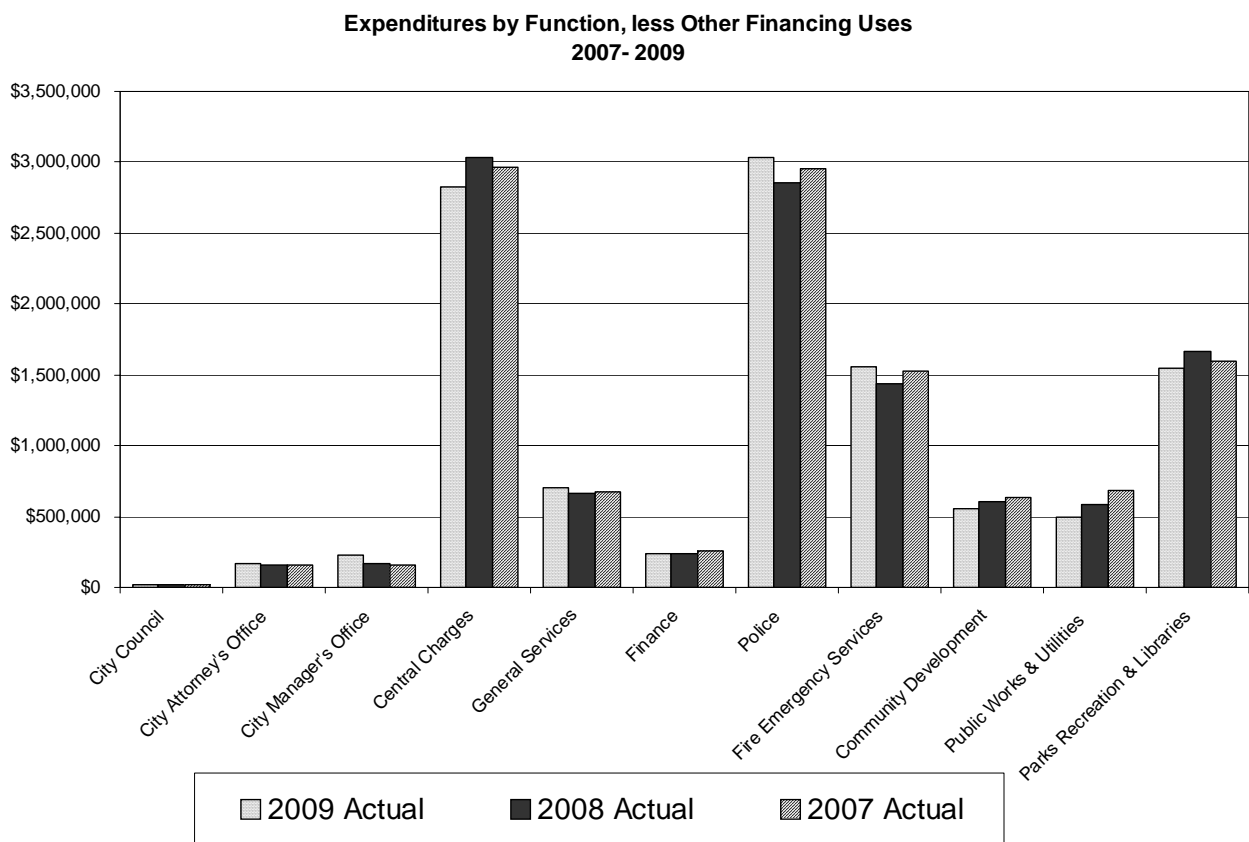
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources  
2007 - 2009**



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

- The increase in Taxes reflects Accommodations taxes previously budgeted in the General Capital Improvement Fund.
- The decrease in License and Permit revenue reflects commercial and residential building permit activity.
- The variance in Intergovernmental Revenues is reflective of a one time grant reimbursement received in 2008.
- The decrease in Recreation Services revenue is primarily reflective of activity at the Sports Center, City Park Recreation Center, and City Park Fitness Center; a timing difference in the collection of Standley Lake boating permits; and a decline in adult and youth sports and activities.

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

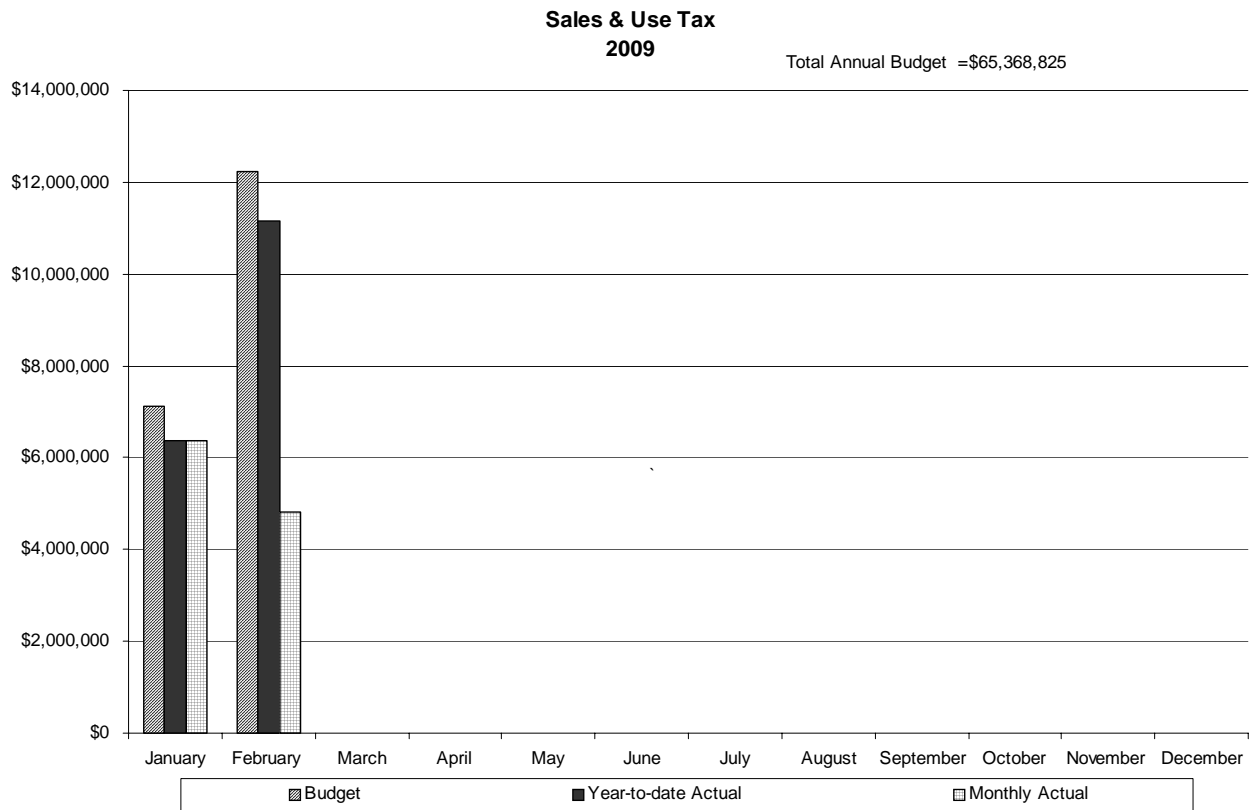


- The increased expense in City Manager’s Office reflects the move of the Economic Development Division from Community Development.
- The increase in expenses in Police and Fire Emergency Services is due primarily to timing of equipment lease and maintenance contract payments.

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

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

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

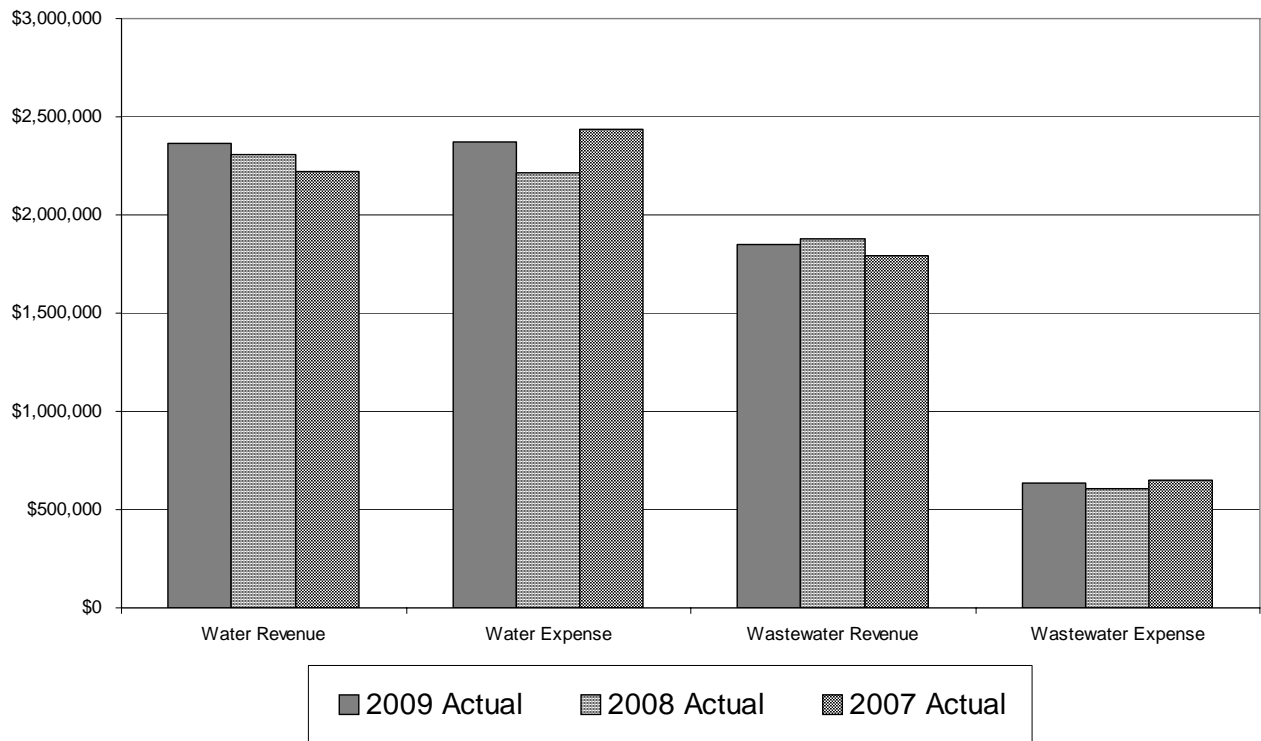


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

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

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

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

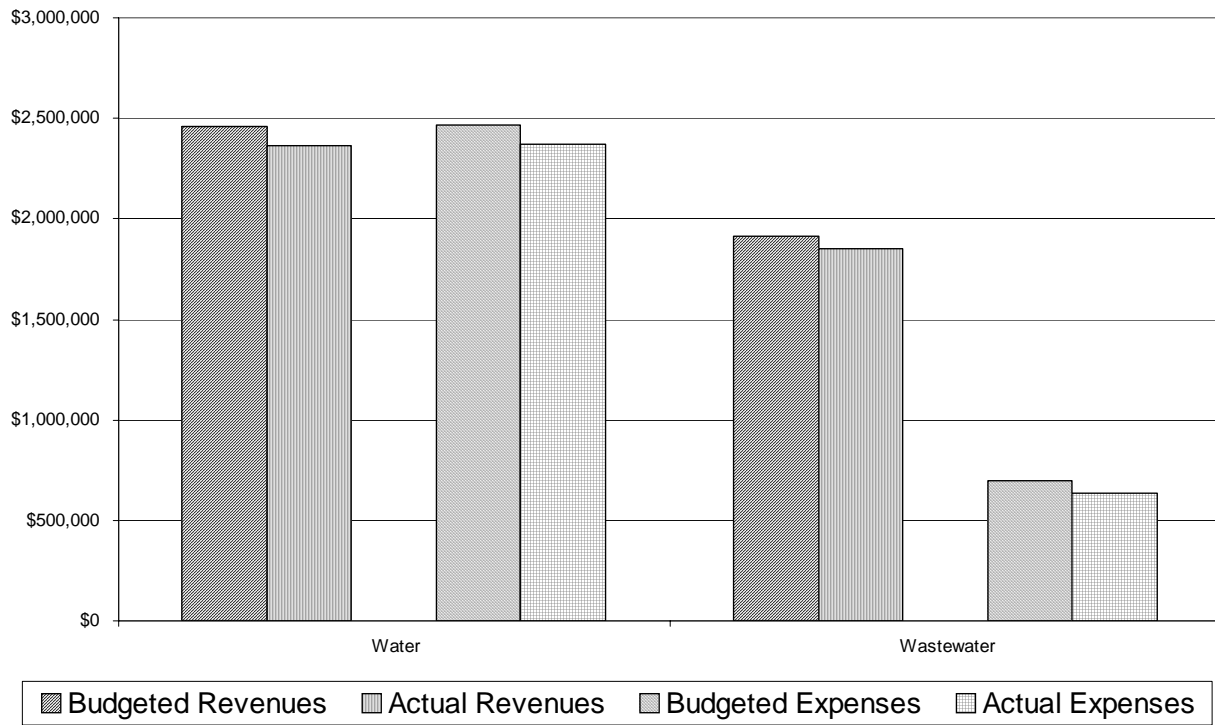


Fluctuation in water revenue between years reflects the effect of weather variations on water consumption as well as changes in billing rates.

The water expenditure increase for 2009 is primarily reflective of higher charges for benefits, expenses related to zebra mussel control, and timing of the payment for a software support contract for the Utility Billing system.

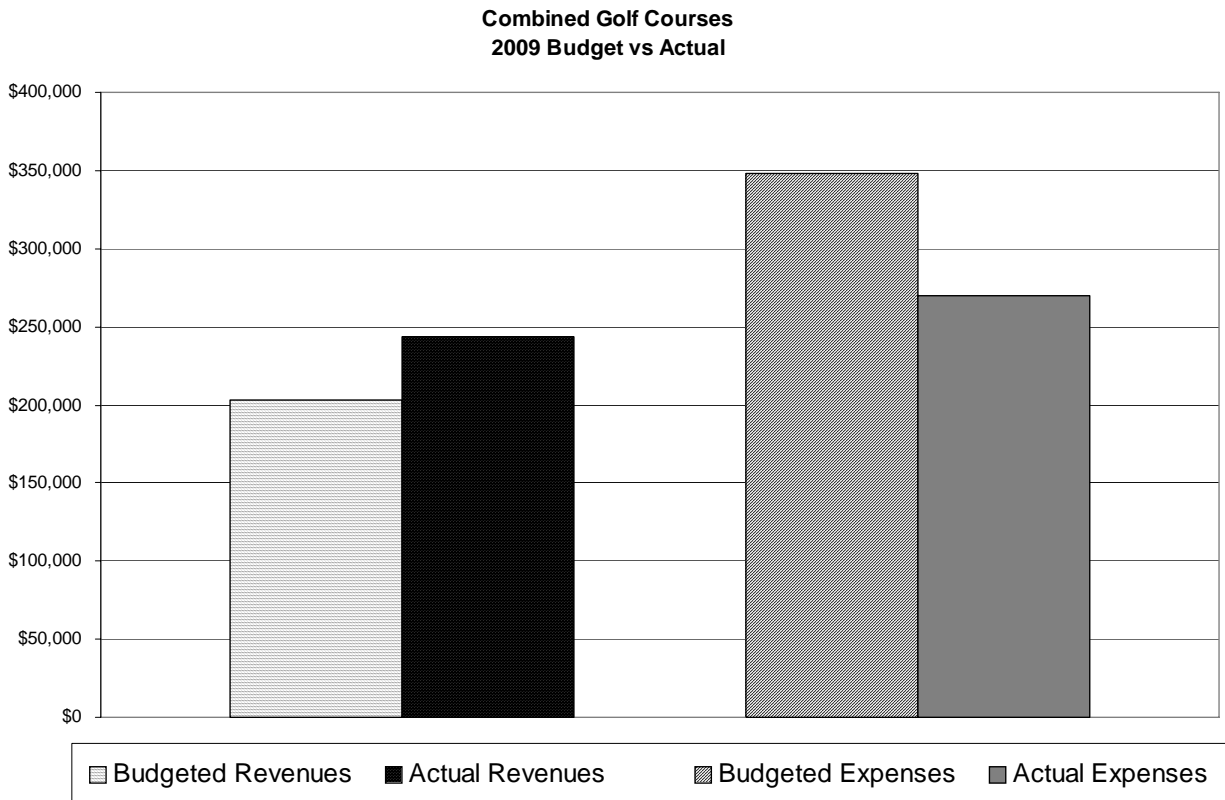
Wastewater revenues for 2009 are running below 2008 levels as a result of rate adjustments calculated each April based on customer usage for the January, February, and March billing periods.

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

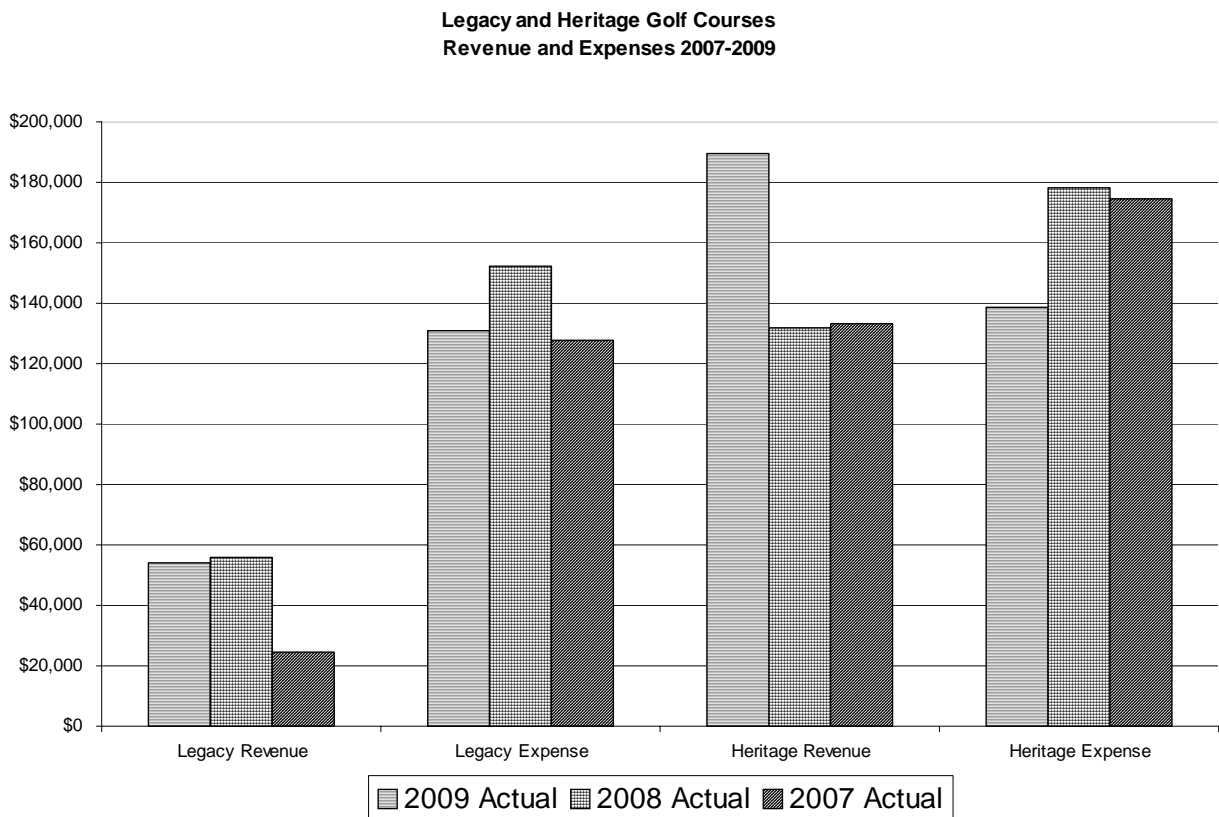


**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

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

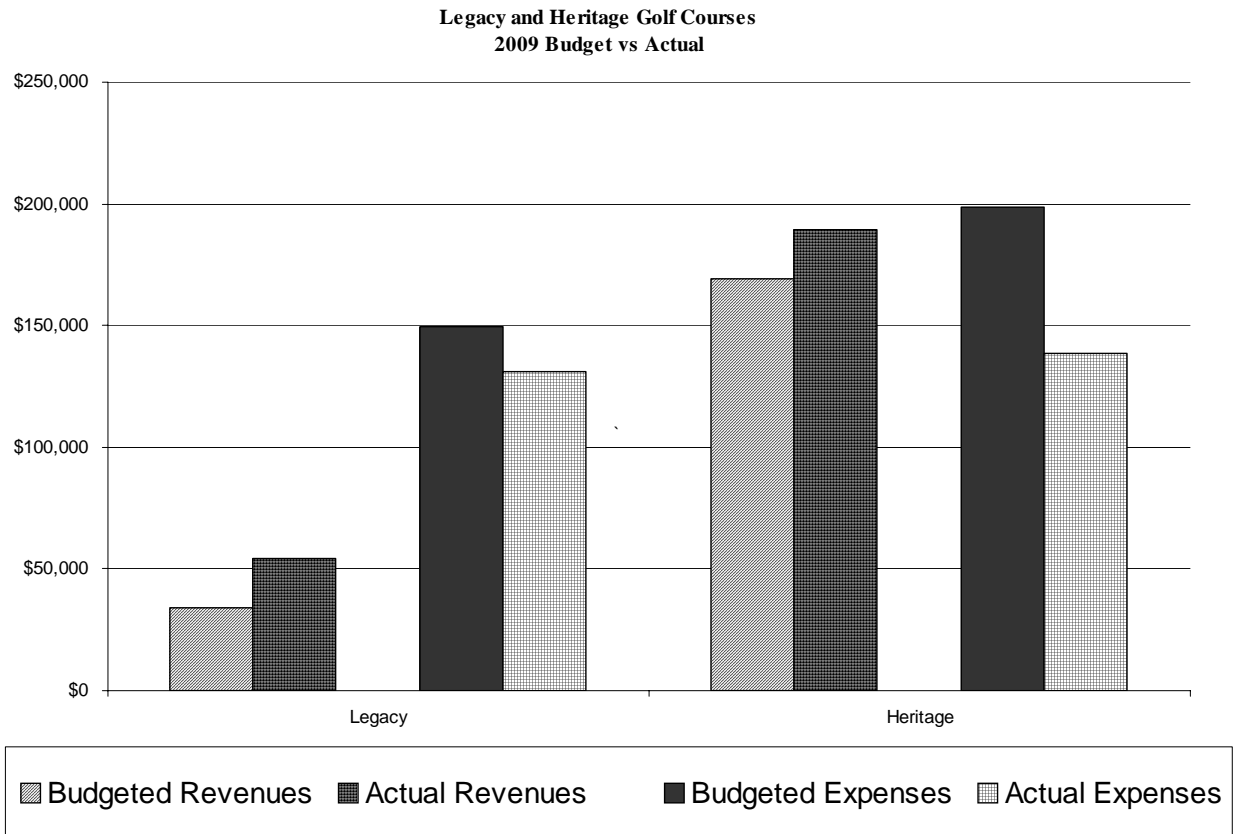


The following graphs represent the information for each of the golf courses.



Mild weather contributed to increased revenues of \$30,279 and \$25,592 for Legacy and Heritage, respectively; allocation of \$32,052 in carryover from Legacy to Heritage impacts this revenue representation. The remaining difference, between the revenue at the two courses, is attributed to the transfer the Heritage receives to help pay outstanding bonds.

Golf course expenses are down from 2008 due primarily to a timing difference in the airport land lease payment by Heritage and conclusion of the 2004 equipment lease in January 2008 for both.



Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Taxes	6,089,541	265,195		254,610	-10,585	96.0%
Licenses & Permits	1,597,600	251,161		234,495	-16,666	93.4%
Intergovernmental Revenue	5,034,622	316,700		302,978	-13,722	95.7%
Recreation Services	5,910,792	964,485		681,198	-283,287	70.6%
Other Services	9,231,219	1,089,883		1,093,341	3,458	100.3%
Fines	2,211,050	346,455		315,319	-31,136	91.0%
Interest Income	515,000	59,488		49,999	-9,489	84.0%
Misc	1,641,905	22,121		64,445	42,324	291.3%
Leases	295,925	40,792		53,581	12,789	131.4%
Interfund Transfers	62,305,840	10,384,307		10,384,307	0	100.0%
Sub-total Revenues	<u>94,833,494</u>	<u>13,740,585</u>		<u>13,434,273</u>	<u>-306,314</u>	<u>97.8%</u>
Carryover	1,000,000	1,000,000		1,000,000	0	100.0%
Revenues and Carryover	<u>95,833,494</u>	<u>14,740,585</u>		<u>14,434,273</u>	<u>-306,314</u>	<u>97.9%</u>
<b>Expenditures</b>						
City Council	213,244	23,503		18,223	-5,280	77.5%
City Attorney's Office	1,174,235	161,359		167,741	6,382	104.0%
City Manager's Office	1,625,634	221,270		224,974	3,703	101.7%
Central Charges	24,087,857	3,114,710		2,821,588	-293,122	90.6%
General Services	5,892,442	749,083		706,746	-42,337	94.3%
Finance	1,984,987	243,992		237,070	-6,922	97.2%
Police	21,263,639	2,853,371		3,029,897	176,526	106.2%
Fire Emergency Services	11,910,586	1,469,792		1,552,950	83,158	105.7%
Community Development	4,353,877	575,586		554,833	-20,753	96.4%
Public Works & Utilities	7,650,782	568,535		500,449	-68,086	88.0%
Parks, Recreation & Libraries	15,676,211	1,722,219		1,550,217	-172,002	90.0%
Total Expenditures	<u>95,833,494</u>	<u>11,703,422</u>		<u>11,364,688</u>	<u>-338,734</u>	<u>97.1%</u>
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>3,037,163</u>		<u>3,069,585</u>	<u>32,420</u>	

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues and Carryover</b>						
Sales Tax						
Sales Tax Returns	42,096,853	8,590,533		7,701,796	-888,737	89.7%
Sales Tx Audit Revenues	697,800	162,983		52,504	-110,479	32.2%
S-T Rev. STX	<u>42,794,653</u>	<u>8,753,516</u>		<u>7,754,300</u>	<u>-999,216</u>	<u>88.6%</u>
Use Tax						
Use Tax Returns	9,037,161	1,144,437		1,000,128	-144,309	87.4%
Use Tax Audit Revenues	777,018	0		196,417	196,417	N/A
S-T Rev. UTX	<u>9,814,179</u>	<u>1,144,437</u>		<u>1,196,545</u>	<u>52,108</u>	<u>104.6%</u>
Total STX and UTX	<u><u>52,608,832</u></u>	<u><u>9,897,954</u></u>		<u><u>8,950,845</u></u>	<u><u>-947,108</u></u>	<u><u>90.4%</u></u>
Public Safety Tax						
PST Tax Returns	12,401,153	2,299,133		2,142,416	-156,717	93.2%
PST Audit Revenues	128,840	10,057		49,767	39,710	494.9%
Total Rev. PST	<u>12,529,993</u>	<u>2,309,189</u>		<u>2,192,183</u>	<u>-117,007</u>	<u>94.9%</u>
Total Interest Income	230,000	38,333		20,129	-18,204	52.5%
Carryover	0	0		0	0	N/A
Total Revenues and Carryover	<u><u>65,368,825</u></u>	<u><u>12,245,476</u></u>		<u><u>11,163,157</u></u>	<u><u>-1,082,319</u></u>	<u><u>91.2%</u></u>
<b>Expenditures</b>						
Central Charges	<u>65,368,825</u>	<u>10,894,804</u>		<u>10,894,804</u>	<u>0</u>	<u>100.0%</u>
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>1,350,672</u></u>		<u><u>268,353</u></u>	<u><u>-1,082,319</u></u>	

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description POST Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Sales & Use Tax	5,228,386	965,203		913,175	-52,028	94.6%
Interest Income	31,000	5,177		8,606	3,429	166.2%
Miscellaneous	88,832	6,485		2,614	-3,871	40.3%
Interfund Transfers	180,000	30,000		0	-30,000	N/A
Sub-total Revenues	<u>5,528,218</u>	<u>1,006,864</u>		<u>924,395</u>	<u>-82,470</u>	<u>91.8%</u>
Carryover	0	0		0	0	N/A
Total Revenues and Carryover	<u>5,528,218</u>	<u>1,006,864</u>		<u>924,395</u>	<u>-82,470</u>	<u>91.8%</u>
<b>Expenditures</b>						
Central Charges	5,187,989	786,016		690,450	-95,566	87.8%
Park Services	340,229	58,743		31,682	-27,061	53.9%
	<u>5,528,218</u>	<u>844,759</u>		<u>722,132</u>	<u>-122,627</u>	<u>85.5%</u>
Over(Under) Expenditures	<u>0</u>	<u>162,105</u>		<u>202,263</u>	<u>40,157</u>	

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water and Wastewater Fund-Combined</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	12,500		13,740	1,240	109.9%
Rates and Charges	38,674,370	4,288,109		4,168,180	(119,929)	97.2%
Miscellaneous	435,000	72,500		29,458	(43,042)	40.6%
Total Operating Revenues	<u>39,184,370</u>	<u>4,373,109</u>		<u>4,211,378</u>	<u>(161,731)</u>	<u>96.3%</u>
<b>Operating Expenses</b>						
Central Charges	5,830,390	971,732		953,929	(17,803)	98.2%
Finance	671,815	117,688		110,694	(6,994)	94.1%
Public Works & Utilities	20,434,951	1,617,691		1,555,005	(62,686)	96.1%
Parks, Recreation & Libraries	157,226	26,204		1,153	(25,051)	4.4%
Information Technology	2,808,228	432,467		387,166	(45,301)	89.5%
Total Operating Expenses	<u>29,902,610</u>	<u>3,165,782</u>		<u>3,007,947</u>	<u>(157,835)</u>	<u>95.0%</u>
Operating Income (Loss)	<u>9,281,760</u>	<u>1,207,327</u>		<u>1,203,431</u>	<u>(3,896)</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	7,020,000	1,207,192		110,369	(1,096,823)	9.1%
Interest Income	1,600,000	266,667		205,102	(61,565)	76.9%
Interfund Transfers	12,430,474	3,229,246		3,229,246	0	100.0%
Carryover	(145,346)	(145,346)		(145,346)	0	100.0%
Debt Service	(6,303,419)	0		0	0	N/A
Total Other Revenue (Expenses)	<u>14,601,709</u>	<u>4,557,759</u>		<u>3,399,371</u>	<u>(1,158,388)</u>	<u>74.6%</u>
Increase (Decrease) in Net Assets	<u>23,883,469</u>	<u>5,765,086</u>	(1)	<u>4,602,802</u>	<u>(1,162,284)</u>	

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

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water Fund</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	12,500		13,740	1,240	109.9%
Rates and Charges	26,956,370	2,378,075		2,319,634	(58,441)	97.5%
Miscellaneous	425,000	70,833		28,783	(42,050)	40.6%
Total Operating Revenues	<u>27,456,370</u>	<u>2,461,408</u>		<u>2,362,157</u>	<u>(99,251)</u>	<u>96.0%</u>
<b>Operating Expenses</b>						
Central Charges	4,092,873	682,146		671,287	(10,859)	98.4%
Finance	671,815	117,688		110,694	(6,994)	94.1%
Public Works & Utilities	13,817,464	1,208,945		1,202,133	(6,812)	99.4%
Parks, Recreation & Libraries	157,226	26,204		1,153	(25,051)	4.4%
Information Technology	2,808,228	432,467		387,166	(45,301)	89.5%
Total Operating Expenses	<u>21,547,606</u>	<u>2,467,450</u>		<u>2,372,433</u>	<u>(95,017)</u>	<u>96.1%</u>
Operating Income (Loss)	<u>5,908,764</u>	<u>(6,042)</u>		<u>(10,276)</u>	<u>(4,234)</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	5,739,000	959,519		87,622	(871,897)	9.1%
Interest Income	900,000	150,000		155,115	5,115	103.4%
Interfund Transfers	10,859,076	2,967,346		2,967,346	0	100.0%
Carryover	(145,346)	(145,346)		(145,346)	0	100.0%
Debt Service	(4,798,025)	0		0	0	N/A
Total Other Revenues (Expenses)	<u>12,554,705</u>	<u>3,931,519</u>		<u>3,064,737</u>	<u>(866,782)</u>	<u>78.0%</u>
Increase (Decrease) in Net Assets	<u>18,463,469</u>	<u>3,925,477</u>	(1)	<u>3,054,461</u>	<u>(871,016)</u>	

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

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Wastewater Fund</b>						
<b>Operating Revenues</b>						
Rates and Charges	11,718,000	1,910,034		1,848,546	(61,488)	96.8%
Miscellaneous	10,000	1,667		675	(992)	40.5%
Total Operating Revenues	<u>11,728,000</u>	<u>1,911,701</u>		<u>1,849,221</u>	<u>(62,480)</u>	<u>96.7%</u>
<b>Operating Expenses</b>						
Central Charges	1,737,517	289,586		282,642	(6,944)	97.6%
Public Works & Utilities	6,617,487	408,746		352,872	(55,874)	86.3%
Total Operating Expenses	<u>8,355,004</u>	<u>698,332</u>		<u>635,514</u>	<u>(62,818)</u>	<u>91.0%</u>
Operating Income (Loss)	<u>3,372,996</u>	<u>1,213,369</u>		<u>1,213,707</u>	<u>338</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	1,281,000	247,673		22,747	(224,926)	9.2%
Interest Income	700,000	116,667		49,987	(66,680)	42.8%
Interfund Transfers	1,571,398	261,900		261,900	0	100.0%
Debt Service	(1,505,394)	0		0	0	N/A
Total Other Revenues (Expenses)	<u>2,047,004</u>	<u>626,240</u>		<u>334,634</u>	<u>(291,606)</u>	<u>53.4%</u>
Increase (Decrease) in Net Assets	<u>5,420,000</u>	<u>1,839,609</u>	(1)	<u>1,548,341</u>	<u>(291,268)</u>	

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

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Storm Drainage Fund</b>						
<b>Revenues and Carryover</b>						
Charges for Services	1,900,000	316,667		332,856	16,189	105.1%
Interest Income	0	0		12,367	12,367	N/A
Miscellaneous	0	0		485	485	N/A
Sub-total Storm Drainage Revenues	<u>1,900,000</u>	<u>316,667</u>		<u>345,708</u>	<u>29,041</u>	<u>109.2%</u>
Carryover	0	0		0	0	N/A
Total Revenues and Carryover	<u>1,900,000</u>	<u>316,667</u>		<u>345,708</u>	<u>29,041</u>	<u>109.2%</u>
<b>Expenses</b>						
General Services	92,000	460		440	(20)	95.7%
Community Development	140,000	21,560		11,281	(10,279)	52.3%
Park Services	200,000	33,333		12,298	(21,035)	36.9%
Public Works & Utilities	396,000	3,564		22,370	18,806	627.7%
Total Expenses	<u>828,000</u>	<u>58,917</u>		<u>46,389</u>	<u>(12,528)</u>	<u>78.7%</u>
Increase (Decrease) in Net Assets	<u>1,072,000</u>	<u>257,750</u>	(1)	<u>299,319</u>	<u>41,569</u>	

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

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Golf Courses Combined</b>						
<b>Revenues</b>						
Carryover	0	0		0	0	N/A
Charges for Services	3,336,142	124,991		161,684	36,693	129.4%
Interest Income	0	0		4,203	4,203	N/A
Interfund Transfers	467,272	77,879		77,879	0	100.0%
<b>Total Revenues</b>	<u>3,803,414</u>	<u>202,870</u>		<u>243,766</u>	<u>40,896</u>	<u>120.2%</u>
<b>Expenses</b>						
Central Charges	197,920	29,884		32,448	2,564	108.6%
Recreation Facilities	3,105,929	318,294		237,288	(81,006)	74.5%
<b>Total Expenses</b>	<u>3,303,849</u>	<u>348,178</u>		<u>269,736</u>	<u>(78,442)</u>	<u>77.5%</u>
Operating Income (Loss)	499,565	(145,308)		(25,970)	119,338	
Debt Service Expense	499,565	0		0	0	N/A
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>(145,308)</u>		<u>(25,970)</u>	<u>119,338</u>	



**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Pro rated Budget	% Budget
<b>Legacy Ridge Fund</b>						
<b>Revenues</b>						
Carryover	(192,312)	(32,052)		(32,052)	0	100.0%
Charges for Services	1,782,013	65,934		82,109	16,175	124.5%
Interest Income	0	0		4,203	4,203	N/A
Total Revenues	<u>1,589,701</u>	<u>33,882</u>		<u>54,260</u>	<u>20,378</u>	<u>160.1%</u>
<b>Expenses</b>						
Central Charges	98,780	15,410		16,665	1,255	108.1%
Recreation Facilities	1,490,921	134,183		114,409	(19,774)	85.3%
Total Expenses	<u>1,589,701</u>	<u>149,593</u>		<u>131,074</u>	<u>(18,519)</u>	<u>87.6%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>(115,711)</u>		<u>(76,814)</u>	<u>38,897</u>	

**City of Westminster  
Financial Report  
For Two Months Ending February 28, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Heritage at Westmoor Fund</b>						
<b>Revenues</b>						
Carryover	192,312	32,052		32,052	0	100.0%
Charges for Services	1,554,129	59,057		79,575	20,518	134.7%
Interfund Transfers	467,272	77,879		77,879	0	100.0%
Total Revenues	<u>2,213,713</u>	<u>168,988</u>		<u>189,506</u>	<u>20,518</u>	<u>112.1%</u>
<b>Expenses</b>						
Central Charges	99,140	14,474		15,783	1,309	109.0%
Recreation Facilities	1,615,008	184,111		122,879	(61,232)	66.7%
Sub-Total Expenses	<u>1,714,148</u>	<u>198,585</u>		<u>138,662</u>	<u>(59,923)</u>	<u>69.8%</u>
Operating Income	499,565	(29,597)		50,844	80,441	
Debt Service Expense	<u>499,565</u>	<u>0</u>		<u>0</u>	<u>0</u>	N/A
Increase (Decrease) in Net Assets	<u>0</u>	<u>(29,597)</u>		<u>50,844</u>	<u>80,441</u>	

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

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	317,889	1,282	319,171	355,539	3,056	358,595	-11	-58	-11
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	214,941	670	215,611	175,028	14,217	189,246	23	-95	14
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	203,638	8,461	212,099	112,329	3,288	115,617	81	157	83
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	197,821	191	198,012	173,790	469	174,258	14	-59	14
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	184,569	878	185,447	213,861	8,100	221,961	-14	-89	-16
SHOPS AT WALNUT CREEK 104TH & REED TARGET	181,561	1,614	183,175	184,188	818	185,006	-1	97	-1
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN CIRCUIT CITY	176,692	770	177,462	216,589	807	217,396	-18	-5	-18
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	160,710	5	160,715	312	0	312	51486	*****	51487
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	150,689	2,681	153,370	174,885	4,124	179,008	-14	-35	-14
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	110,681	17,160	127,841	125,080	16,017	141,097	-12	7	-9
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	97,733	1,511	99,244	95,362	696	96,058	2	117	3
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	93,505	2,992	96,497	94,581	930	95,511	-1	222	1
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	83,542	761	84,303	68,592	242	68,835	22	214	22
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	65,365	719	66,083	62,759	155	62,914	4	364	5
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	48,217	1,068	49,285	50,174	372	50,546	-4	187	-3

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

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	46,322	1,032	47,354	41,194	111	41,304	12	832	15
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	46,424	301	46,725	51,667	3,704	55,372	-10	-92	-16
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	44,393	199	44,591	42,893	261	43,155	4	-24	3
WILLOW RUN 128TH & ZUNI SAFEWAY	43,730	91	43,821	45,937	336	46,273	-5	-73	-5
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	37,181	174	37,355	54,268	630	54,898	-31	-72	-32
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	30,587	30	30,617	29,525	0	29,525	4	*****	4
BROOKHILL IV E SIDE WADS 90TH-92ND HANCOCK FABRICS	27,547	54	27,600	21,952	32	21,984	25	68	26
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	3,540	24,030	27,570	9,586	16,136	25,722	-63	49	7
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	23,392	128	23,519	21,961	87	22,048	7	47	7
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	22,021	241	22,262	25,229	316	25,545	-13	-24	-13
	<u>2,612,686</u>	<u>67,042</u>	<u>2,679,727</u>	<u>2,447,281</u>	<u>74,905</u>	<u>2,522,186</u>	<u>7</u>	<u>-11</u>	<u>6</u>

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

Center Location Major Tenant	/----- YTD 2009 -----/			/----- YTD 2008 -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	854,041	9,695	863,736	979,416	4,960	984,376	-13	95	-12
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	655,900	2,475	658,374	831,879	14,376	846,255	-21	-83	-22
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	650,931	34,085	685,016	342,071	17,595	359,666	90	94	90
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	518,917	1,505	520,422	443,064	14,963	458,027	17	-90	14
SHOPS AT WALNUT CREEK 104TH & REED TARGET	483,616	6,032	489,648	498,693	3,195	501,888	-3	89	-2
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	436,412	414	436,827	415,317	2,052	417,369	5	-80	5
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN CIRCUIT CITY	425,813	2,124	427,936	547,309	3,309	550,618	-22	-36	-22
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	390,574	4,571	395,145	482	0	482	81016	*****	81965
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	360,915	5,984	366,899	410,113	5,666	415,779	-12	6	-12
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	309,765	6,223	315,988	289,898	2,821	292,719	7	121	8
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	291,688	2,313	294,000	284,536	1,779	286,314	3	30	3
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	268,868	33,286	302,154	302,464	130,660	433,125	-11	-75	-30
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	234,386	1,116	235,502	241,219	815	242,034	-3	37	-3
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	188,878	898	189,776	182,231	695	182,926	4	29	4
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	110,882	1,512	112,395	105,782	330	106,112	5	359	6

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

Center Location Major Tenant	YTD 2009			YTD 2008			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	109,430	635	110,065	131,919	843	132,762	-17	-25	-17
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	106,329	529	106,858	111,261	3,891	115,152	-4	-86	-7
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	104,906	2,352	107,258	106,163	733	106,896	-1	221	0
WILLOW RUN 128TH & ZUNI SAFEWAY	102,319	453	102,772	99,286	471	99,757	3	-4	3
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	84,899	657	85,556	83,972	927	84,899	1	-29	1
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	57,498	1,223	58,721	50,421	1,450	51,871	14	-16	13
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	48,290	246	48,536	40,400	126	40,526	20	96	20
BROOKHILL IV E SIDE WADS 90TH-92ND HANCOCK FABRICS	45,273	1,967	47,240	64,970	318	65,289	-30	518	-28
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	43,329	202	43,531	45,163	203	45,366	-4	-1	-4
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	43,122	721	43,842	44,694	968	45,662	-4	-26	-4
	<u>6,926,981</u>	<u>121,216</u>	<u>7,048,197</u>	<u>6,652,721</u>	<u>213,146</u>	<u>6,865,867</u>	<u>4</u>	<u>-43</u>	<u>3</u>



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Purchase of Police Department Patrol Vehicles

**Prepared By:** Jeffery H. Bowman, Fleet Manager

**Recommended City Council Action**

Award the bid for eleven Police Department patrol vehicles to Lakewood Fordland in the amount of \$252,297.50.

**Summary Statement**

- City Council action is requested to award the bid for eleven Police patrol cars, based on the City of Westminster's solicitation to five Denver area dealerships for patrol vehicles.
- Of the five dealerships that responded to the request for bids, Lakewood Fordland submitted the lowest price. Their bid meets all of the specifications in the City's bid request.
- City Council previously approved \$264,000 in the 2009 General Capital Outlay Replacement Fund (GCORF) budget to purchase these vehicles.

**Expenditure Required:** \$252,297.50

**Source of Funds:** General Capital Outlay Replacement Fund

**Policy Issue**

Should the City proceed with the purchase of eleven Police Department patrol vehicles?

**Alternatives**

1. Reject the City’s recent solicitation to five area dealerships and instruct City Staff to re-bid vehicles to additional state dealerships. This is not recommended because the recent City Bid reflects a competitive bid process that provided five dealerships the opportunity to compete fairly to provide the eleven patrol cars.
2. Purchase the Ford Crown Victoria off of the Colorado State bid. This is not recommended, because the State Bid was written to meet general specifications for multiple jurisdictions and does not meet the vehicle standard that Westminster currently uses. There are five options included as a minimum specification on the State Bid that Westminster does not require.
3. Do not purchase some or all of the proposed replacement vehicles in 2009. This is not recommended because all of these vehicles will have a maintenance history that makes it impractical to keep them in regular service, based on Fleet Maintenance recommendations.

**Background Information**

As part of the 2009 Budget, City Council funded the purchase eleven patrol vehicles. The patrol units will be replaced on a “to be determined” basis, based on the condition and maintenance history of each of the vehicles currently in operation. Replaced units are sent to auction; none are kept in the fleet in other capacities. There are currently fifty marked patrol units in the fleet.

The State of Colorado sends out a request for bids for vehicles every year to car dealers in Colorado. This bid request was sent out in September of 2008 and received responses from Colorado vendors. After carefully reviewing the bid specifications, it was determined that the bid was broad enough in scope that it included items that were not necessary, yet excluded some items that are standard. Some items on the State bid that the Westminster Police Department does not require include; engine block heaters, carpeting, cruise control, individual key sets, trunk packs and large diameter wheel covers. After this was considered, it was determined that a bid that was specific to Westminster’s needs should be solicited.

The City is purchasing eleven Ford Crown Victoria marked units. The bid price of the Ford Crown Victoria marked units from Lakewood Fordland is \$22,865.50 Last year, using the State award the bid price was \$22,981, so writing a specification unique to Westminster Police Departments’ needs saved the City of Westminster \$115.50 per car over last year’s prices. A summary of the bid results is as follows:

<b>Dealer</b>	<b>Lakewood Fordland</b>	<b>Sill-Terhar Ford</b>	<b>Go Courtesy Ford</b>	<b>O’Meara Ford</b>	<b>Phil Long Ford</b>
<b>Total Price</b>	\$22,865	\$23,697	\$23,244	\$23,722	\$23,958



The present condition and maintenance history of the vehicles to be replaced would make it impractical to continue to operate them in regular service based on Fleet Maintenance replacement criteria, which are based on a combination of vehicle age, maintenance costs, utilization, cost per mile to operate, and depreciation.

This recommended purchase meets Council's Strategic Plan goals of Financially Sustainable City Government and Safe and Secure Community by keeping the Police fleet on the street and improving their service level at the best possible price.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Purchase of Excess Workers' Compensation Insurance

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

**Recommended City Council Action**

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by authorizing the purchase of Workers' Compensation Excess insurance for \$76,845 from Midwest Employers Casualty Company.

**Summary Statement**

- City Council action is requested to authorize the expenditure for the 2009/2010 annual premium for excess workers' compensation insurance effective April 1, 2009.
- The City annually purchases specific stop loss insurance to cover the cost of catastrophic on-the-job employee injuries that would exceed the City's self insured amount. This insurance is purchased through a broker, IMA of Colorado, Inc., who will purchase the coverage for the City through Midwest Employers Casualty Company. The recommended quote from IMA for excess workers' compensation coverage through March 31, 2010 is \$76,845.
- The cost of coverage in 2008 was \$72,367. The quote for 2009/2010 of \$76,845 represents an increase in premium of \$4,478 (approximately 6%) from 2008. This quote reflects no change from 2008 in the City's excess policy coverage. The increase in premium is due to the City's recent loss history and a potential exposure to the excess carrier from one 2008 claim.

**Expenditure Required:** \$76,845

**Source of Funds:** Workers' Compensation Self Insurance Fund

## **Policy Issue**

Should the City continue to self-insure its workers' compensation coverage, purchasing excess insurance to cover any catastrophic claims?

## **Alternatives**

1. Take on a higher self-insured retention (SIR) per claim of \$400,000 and a lower corridor deductible of \$50,000 for a premium of \$73,544. This alternative is not recommended due to a Workers' Compensation law enacted in 2007 that created an increased risk to the City of experiencing a claim that could exceed the City's current retention.
2. Consider fully insuring the City's Workers' Compensation Insurance Program. This alternative is not recommended due to the almost certain increase in expense and the reduction in the City's ability to manage claims.

## **Background Information**

The Risk Management Staff completed and submitted the application for excess workers' compensation coverage to IMA of Colorado, Inc. in late January 2009. IMA, acting as insurance broker on behalf of the City, then sought proposals on the open insurance market for this coverage. They received responses from only two carriers and submitted their renewal proposal to the City's Risk Management Officer on February 27.

The City currently self-insures the first \$350,000 of each workers' compensation claim with an additional corridor deductible of \$100,000. This high retention type of program allows for more control over claims handling and payment and reaps immediate rewards from the City's loss control and safety programs. By self-insuring the City also avoids some of the increases in premiums that continue to affect the government entity insurance market.

The City's broker received two responses on behalf of the City, but reported only one quote. Midwest Employers Casualty Company quoted an increase from last year's premium with a bid of \$76,845. Safety National Casualty Company responded that they declined to provide a quote since they knew they were not competitive with the present carrier. Staff is comfortable remaining with the incumbent carrier, Midwest Employers, based on the reasons provided below:

- Continuing a relationship with one carrier can benefit the City on future years' quotes. The City has been with Midwest Employers for four years, and they know our safety programs and loss history well.
- The Midwest policy includes a blanket waiver of subrogation. This means that they permit the City to relinquish any rights the City might have to collect from another party for damages when it is required by contract.
- The Midwest policy does not include a commutation clause that many policies have. Commutation is the right of a carrier to value an open claim after the policy expires and pay that amount to the insured, thereby releasing the carrier from any further liability for the claim.
- The Midwest policy includes a Cash Flow Endorsement which, in the case of a catastrophic claim, would allow the City to spread its payments out over time with the excess carrier assisting with cash advances.
- Midwest Employers also offers the City several loss control resources such as on-line training and Best Practice seminars, as well as benchmarking reports, that Staff has found very helpful over the last four years.

In 2006, the City added a corridor deductible of \$100,000 to the self-insured program. This deductible would be payable by the City if any claims exceed the City's current retention limit but would be aggregate on all claims. Once the first \$100,000 over \$350,000 was paid it would be satisfied for the year and the excess carrier would pick up dollar one over \$350,000. Although Midwest Employers has offered another option for decreasing the 2009/2010 premium by increasing the self insured retention limit per claim, Staff believes the City should maintain its current retention and deductible. With the passage of HB07-1008, that created a presumption that cancer in a fire fighter with a career of five or more years is work related and covered under the Workers' Compensation program, the City's risk of having a claim that goes over the City's self-insured retention limit is greater.

Given the current market conditions, a 3.5% increase to the City's payroll over the 2008 policy period, and one severe claim that may hit the City's retention limit, Risk Management Staff is pleased with the renewal terms.

The Risk Management program addresses Council's Strategic Plan goals of Financially Sustainable City Government by working to mitigate the cost of insurance to the City by maintaining a loss control program to continually improve the City's loss history.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**

**COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** City Park Fitness Center Renovation Construction Contract

**Prepared By:** Peggy Boccard, Recreation Services Manager

**Recommended City Council Action**

Authorize the City Manager to sign a contract with Sand Construction in the amount of \$83,164 for construction services for the renovation of the former Colorado Rapids portion of the City Park Fitness Center, and authorize a contingency in the amount of \$8,316 for a total project budget of \$91,480.

**Summary Statement**

- Staff is proposing to renovate approximately 1,200 square feet of the former Colorado Rapids portion of the Fitness Center to be used for expanded, revenue generating, programming by Staff.
- Sink Combs Dethlefs prepared construction drawings for the renovation.
- The renovation will include three private multi-use therapy rooms, a uni-sex restroom, an office, and a large multi-use classroom space. There will also be a new entrance into this space from the lobby of the City Park Fitness Center, see attached plan.
- Sand Construction submitted the lowest bid, and is a qualified contractor that the City has worked with before when Sand renovated the space currently occupied by FIT Physical Therapy.
- The renovation is expected to take approximately 8 weeks and be completed by the end of May 2009.

**Expenditure Required:** \$ 91,480

**Source of Funds:** General Capital Improvement Fund - Recreation Improvements Project

**Policy Issue**

Should the City of Westminster proceed with the renovation of 1,200 square feet of the former Colorado Rapids Space, to be used for Staff programming?

**Alternatives**

1. The City could choose to not enter into a contract with Sand Construction, however, Sand Construction was the low bidder and they have successfully completed projects for the City in the past..
2. The City could choose to not move forward with the renovation of that portion of the facility. Staff does not recommend this because the City would not benefit from the additional revenue realized as a result of the renovation.

**Background Information**

When the Colorado Rapids moved from City Park Fitness Center, Staff took the opportunity to assess current programming and facility usage needs. It was determined that there was sufficient demand for additional space for adult exercise classes, such as Pilates, and for smaller spaces that can be rented out for related services or used by Staff for private Pilates, massage or other similar uses. Staff worked with Sink Combs Dethlefs to develop a useable floor plan that preserves much of the existing infrastructure in order to reduce the cost of the renovation.

Three qualified bidders submitted bids for this work and a summary of the bid results follows:

Sand Construction	\$83,164
Adolphson and Peterson Construction	\$85,805
Evolution Builders	\$102,091

This project meets City Council’s Strategic Plan Goal of “Financially Sustainable City Government” by providing the City with additional recreation space that will allow for additional revenue generation.

Respectively submitted,

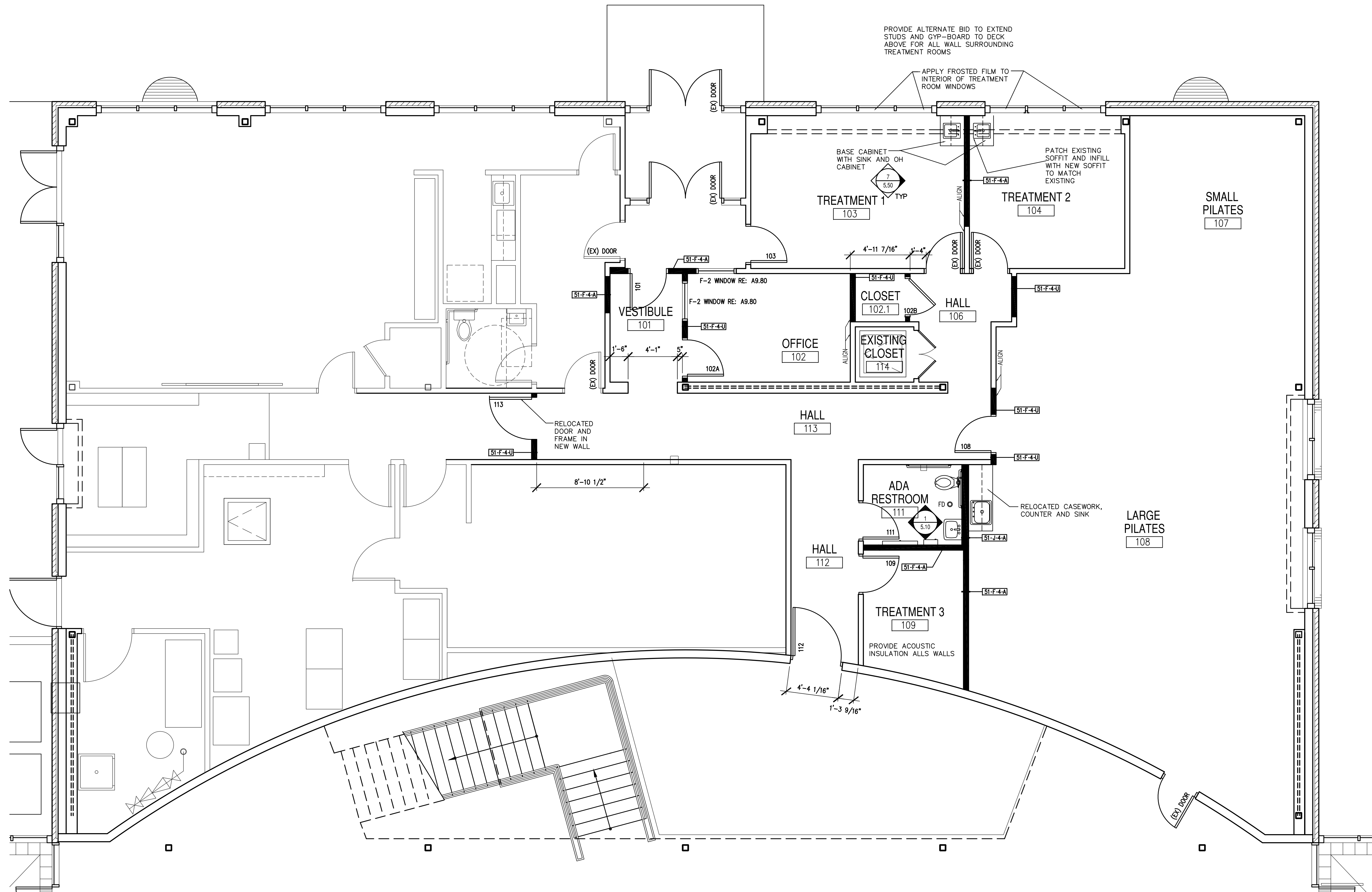
J. Brent McFall  
City Manager

Attachment

All information appearing herein shall not be duplicated, discharged or otherwise used without the written consent of Sink Combs Dethlefs.

**SINK COMBS DETHLEFS**

A Professional Corporation 475 Lincoln Street, Suite 100, Denver, Colorado 80203 303.308.0200 Fax 308.0222



- GENERAL NOTES:**
1. REFERENCE SHEET A5.10 FOR TOILET ROOM FIXTURES AND ACCESSORIES.
  2. REFERENCE SHEET A5.50 FOR NEW CASEWORK.
  3. NEW FLOOR DRAINS IN RESTROOMS TO BE TIED TO EXISTING SANITARY SYSTEM.
  4. REFERENCE A9.00 FOR WALL TYPES.
  5. FRAMELESS DOOR FRAMES TO HAVE 7'-0" CLEAR OPENING UNLESS NOTED OTHERWISE.
  6. GC TO VERIFY THAT TOILET FLANGES WILL NOT HIT EXISTING STRUCTURAL T'S BELOW THE SLAB.
  7. GC TO PROVIDE WALL MOUNTED DOOR BUMPERS FOR ALL DOORS.

**1 FLOOR PLAN**  
1/4" = 1'-0"

Issues/Revisions:	Date:
CONSTRUCTION DOCUMENTS	11-21-08
CHANGES CHECK SET	2-8-09
CONSTRUCTION DOCUMENTS	2-23-09

**CITY PARK FITNESS CENTER RENOVATION**  
WESMINSTER, CO

SCD Project No.: 0805.01

**FLOOR PLAN**

Drawn by:  
Checked by:

**A2.00**



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Public Safety Radio System Maintenance Contract

**Prepared By:** Russ Bowers, Communications Administrator  
Mike Cressman, Deputy Chief

**Recommended City Council Action**

Find that the public interest will best be served by entering into a sole source contract with Frontier Radio Communications and authorize the City Manager to sign an annual contract with two one year renewals in the amount of \$74,113.56 for the City of Westminster and City of Arvada combined 800 MHz radio system. The contract is for Westminster’s share of the radio system.

**Summary Statement**

- Since 1992, the City of Westminster and the City of Arvada have worked under an Intergovernmental Agreement (IGA) that enables both cities to share the 800 MHz radio system that is utilized by both cities. Westminster’s radio system serves the Police Department, Fire Department, Public Works and Utilities, Community Development, and Parks, Recreation and Libraries and is managed by the Police Department.
- The maintenance and repair contract was previously with Legacy Communications; however, this company proved unable to meet our needs and ultimately lost their factory radio certification. Subsequently, the Police Department negotiated an interim agreement with Frontier Radio Communications on a month-to-month basis, which allowed Staff time to explore options for another radio system service provider for the radio system.
- During the process of researching other certified service providers, the Police Department determined that Frontier Radio Communications was the only company in the State of Colorado that could handle the maintenance/repair of the City’s radio system because of the system size and complexity, and they are factory radio certified.
- Staff from the City of Westminster and City of Arvada are recommending that it is in the best interest of the respective cities to pursue a joint contract with Frontier Radio Communications.
- Arvada City Council will be presented with the City of Arvada portion of the contract on April 6, 2009.
- Funds were specifically budgeted in the Police Department’s 2009 Operations Budget for the City of Westminster’s share of the total contract and the expenditure is within budget.
- The City Attorney’s Office has reviewed and approved the contract.

**Expenditure Required:** \$ 74,113.56

**Source of Funds:** General Fund - Police Operating Budget



**Policy Issue**

Should the City of Westminster enter into a contract with Frontier Radio Communications for radio maintenance of the 800 MHz combined radio system?

**Alternatives**

1. City Council could choose not to authorize the City Manager to sign a contract for radio maintenance with Frontier Communications. Staff does not recommend this alternative because this action would leave the City without radio system service, which could endanger public safety and compromise the various City departments' ability to communicate. Frontier Communications is the only vendor in the Denver area that is capable of maintaining the large, combined radio systems with Westminster and Arvada.
2. City Council could direct Staff to continue utilizing the service of Frontier Communications on a month-to-month basis for radio maintenance. However, this action would result in higher service costs and a longer wait when parts are necessary.

**Background Information**

Since 1992, the City of Westminster and the City of Arvada have worked under an Intergovernmental Agreement (IGA) that enabled both cities to share the heart (backbone) of the system that transmits and receives radio signals and includes all of the auxiliary sites that receive the signals, Eldorado Mountain, and the associated microwaves (the system "backbone"). Both cities depend on each other for radio communication needs and the partnership has proven successful and has saved both cities considerable costs. The City of Westminster's radio system serves Police, Fire, Public Works and Utilities, Community Development, and Parks, Recreation and Libraries.

The radio system is a large and complex multi-site system that requires a service provider large enough to serve a combined 24 hour, 7 day per week public safety operation. Both cities recognize the critical role that radio system maintenance plays and continue to work collectively to maintain the integrity of the shared radio system. Over the last several years, the maintenance agreement was held with Legacy Communications, Inc. In April of 2008, it was determined that Legacy Communications was in breach of contract in several areas regarding adequate service to our system. Therefore, it was necessary for Westminster and Arvada Staff to explore other certified service providers in the Denver Metropolitan area that are capable of working on a large, combined radio system.

Frontier Communications was identified and approached to service our system on a month-to-month interim basis to determine if they could meet the needs of the shared radio system. Because this type of program is more costly and results in a longer wait when parts are necessary, it has been determined by both cities that an annual contract would result in better service. Frontier has performed very well in both service and diagnostics and they are the only maintenance provider that is factory trained with the expertise, personnel and all weather fleet capability within the State of Colorado to service a system with our size and complexity and to provide round the clock, year round service. Other service providers were investigated as to certifications, number of trained staff, fleet capabilities and guaranteed response time. Based on the afore-mentioned criteria, none possessed the capabilities to service a system of this size, complexity and critical nature with the exception of Frontier. Staff met with Frontier to explore the possibility of moving from a month-to-month service to an annual contract because it would enhance our current level of service and be more cost effective.

The term of the contract is for one year following its execution. Subject to annual appropriation by the cities, this agreement shall renew automatically for two additional one year terms, unless the cities give written notice of their intent not to renew the agreement no less than 60 days prior to its expiration. Any potential annual increase in fees is to be negotiated at the time of contract renewal and is subject to a 5% cap year over year. The contract is based on a 50/50 arrangement, plus the number of units served, which means the common portions (backbone) of the system are a 50/50 shared cost, and then the number of individual portables and mobile radios utilized by each City creates the difference in total pricing. Because Westminster has more portables and mobile radios, the cost for Westminster is higher than Arvada's portion of the contract which is \$65,877.24 per year.

The terms of the contract were negotiated by both the staff and attorneys of the City of Arvada and the City of Westminster. It is anticipated the Arvada's City Council will approve the contract with Frontier Communications for radio maintenance April 6, 2009.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Utility Fund Financial Models Contract Revisions

**Prepared By:** Mike Happe, Water Resources and Treatment Manager  
Christine Gray, Management Analyst

**Recommended City Council Action**

Based on the report and recommendation of the City Manager, determine that the public interest will best be served by authorizing the City Manager to execute a sole source agreement with Financial Consulting Solutions Group, Incorporated for completion of financial model analyses and revisions to the model in an amount not to exceed \$60,720.

**Summary Statement**

- The Public Works and Utilities Department has worked with Financial Consulting Solutions Group, Incorporated (FCS Group) during the last several years to assist with the creation of individual water and wastewater financial models that assist Staff in making decisions regarding rate setting, tap fees and capital project financing while keeping in compliance with the City's reserve policies.
- Now that financial polices have been adopted, the model can be simplified and operated by City Staff. Staff requested a simplified version of the financial models. The consultant has provided a scope of work to produce a streamlined and simple version of the existing models for Staff use.
- Additionally, FCS Group will provide completed forecasting rate and debt issuance scenarios using the existing financial models.
- FCS Group has specialized experience and expertise with water and sewer rates, tap fees and rate structures. FCS Group has worked with the City recently to determine equitable water and sewer rate structures. Due to this level of familiarity with the City's water and sewer rate and tap fee components, Staff recommends that the contract be issued to FCS Group for their knowledge and ability to respond to this project in a timely manner.
- FCS Group has continuously safeguarded confidential and proprietary information shared by the City. Additionally, FCS Group provides very competitive billing rates, responds quickly to requests and delivers satisfactory work.

**Expenditure Required:** \$60,720

**Source of Funds:** Utility Fund – Water Resources Operating Budget

**Policy Issue**

Should the City accept a contract to complete the Utility Fund Financial Model analyses and financial model revisions?

**Alternatives**

Do not retain FCS Group for the completion of the rate scenario analyses and the simplification of the financial models. The City could hire another consulting firm with a similar background to provide this work. Staff does not recommend this alternative. Hiring a new consultant to complete another's work would be time consuming, more costly and could potentially result in inconsistent data.

Do not accept any contract to complete the financial model analyses and model revisions. Staff does not recommend this alternative, as the financial models integrate a variety of data to assist Staff with rate setting, capital project timing and debt issuance.

**Background Information**

In 2005 and 2006, the City contracted with FCS Group to assist with the creation of water and wastewater rate structures in a platform that included the City's recently adopted financial reserve policies. Separate financial models were constructed for water and wastewater, incorporating such inputs as revenues, operating and maintenance expenses, capital project plans and existing debt to produce water and wastewater rates that would fairly and equitably recover costs and keep the financial reserve balances in compliance with Council direction. The original intent of these actions was to train Staff in the use of the models, tapering off the use of the consultants to ultimately operate the models independently. Since these financial models were created, many options have been eliminated, so the models can now be simplified for Staff use. Ideally, Staff would prefer to operate these models with minimal external support and communicated this request to FCS Group. They have provided a scope of work to complete a variety of financing scenarios and to simplify the existing water and wastewater models.

FCS Group has been providing consulting services to the City of Westminster for several years and has specialized experience and expertise with water and sewer rates, tap fees and rate structures. They have developed a very thorough knowledge of Westminster's cost of service structures. Due to this level of familiarity with the City's water and sewer rate and tap fee components, Staff recommends that the contract be issued to FCS Group for their knowledge and ability to respond to this project in a timely manner.

This contract meets the Goal of a Financially Sustainable City Government Providing Exceptional Services by working towards the creation of rates and tap fees which fully recover the costs of providing water and wastewater services to the City's residents.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 G

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Annual Large Item Cleanup Program Contract Renewal

**Prepared By:** Dave Cantu, Contract Maintenance Supervisor  
Ray Porter, Street Operations Manager

### Recommended City Council Action

Authorize the City Manager to execute a renewal of the current Large Item Cleanup Services contract with Waste Management of Colorado for the 2009 calendar year in the amount of \$87,000 and authorize a contingency of \$600, for a total budget of \$87,600.

### Summary Statement

- City Council approved funds for this expense in the 2009 Department of Public Works and Utilities, Street Operations Division budget.
- On March 26, 2007, City Council approved the current Large Item Cleanup Program Contract. The program was bid for one year with the option of annual contract renewals for 2008 and 2009.
- Staff met with Waste Management Inc., concerning contract renewal and negotiated a reduction in price from \$66/per pickup in 2007 to \$60/per pickup in 2008. Waste Management Inc. has agreed to hold \$60/per pickup in 2009.
- 1,450 residents have registered for the program in 2009. Representing 4.7% of Westminster homeowners' who are eligible to take advantage of the program.
- Because Waste Management attended to and performed all terms and conditions of the contract documents, demonstrated exceptional responsiveness to citizen concerns and agreed to hold the 2008 program unit price; Staff recommends extension of the current contract for the 2009 project.

**Expenditure Required:** \$87,600

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

**Policy Issue**

Should the City extend the current Large Item Cleanup Program Contract with Waste Management of Colorado for performance of the 2009 Large Item Cleanup?

**Alternatives**

An alternative to this program includes refunding registration fees and discontinue the program. Staff does not recommend this alternative. This alternative will likely upset residents who took the time to register and anticipate the service.

Another alternative would be to re-bid the program in the hopes of getting more bidders and a more competitive price. Staff does not recommend this alternative as it is highly doubtful that another round of bidding would result in any savings to the City. The private haulers do not see this as a lucrative service to pursue.

**Background Information**

- Formal bids were solicited in accordance with the City bidding requirements for the 2007, 2008 & 2009 Large Item Cleanup Programs. Eight contractors were solicited for bids with only two responding. Waste Management was the only bidder meeting the bid requirements.
- Due to the rising cost this program experienced in 2006, changes were initiated in the 2007 Program to reduce those costs yet continue the program. Changes included a \$10 fee per household, and a participation registration process and a maximum debris pile of 4' x 4' x 8'.
- In 2007, under new program guidelines 1,049 residents registered for participation; 903 residents in 2008; and 1,450 residents have registered for participation in 2009.
- Waste Management agreed to a slightly lower unit price of \$60/pickup for the 2008 program instead of \$65/pickup as bid for the 2007 program and has agreed to hold the \$60/pickup price for the 2009 program. The contractor cited that the City's strict adherence to the program guidelines resulted in less damage to their trucks and a reduction in time spent at each stop.
- In order to better assess whether the program participation drop off might have been due to the back-to-back blizzards experienced during the 2007 program registration, Staff was directed to continue the program for another year under current guidelines. Based on the 2008 registrant count of 903, down from 1,049 in 2007, it seems that preoccupation with the winter weather (as Staff was hearing from residents) was not a factor in the drop off of participation.
- 2009 participation has increased by 547 additional stops above 2008 registrants. The budget for the 2009 program was reduced to \$60,000 based on an estimated 1,000 participants. Actual number of registrants increased 60.6% resulting in a funding short fall of \$27,600, which will be offset by utilization of the \$14,500 revenue collected from the \$10 fee and the \$13,100 balance being absorbed within the Street Division Operating Budget.
- Upon conclusion of the 2009 project Staff will re-evaluate the program and make recommendations to City Council for future years.
- The proposed action supports City Council's goals and objectives for vibrant neighborhoods and beautiful city by providing a program important to maintaining the appearance and aesthetics of the Westminster community.

Respectfully submitted,




J. Brent McFall  
City Manager

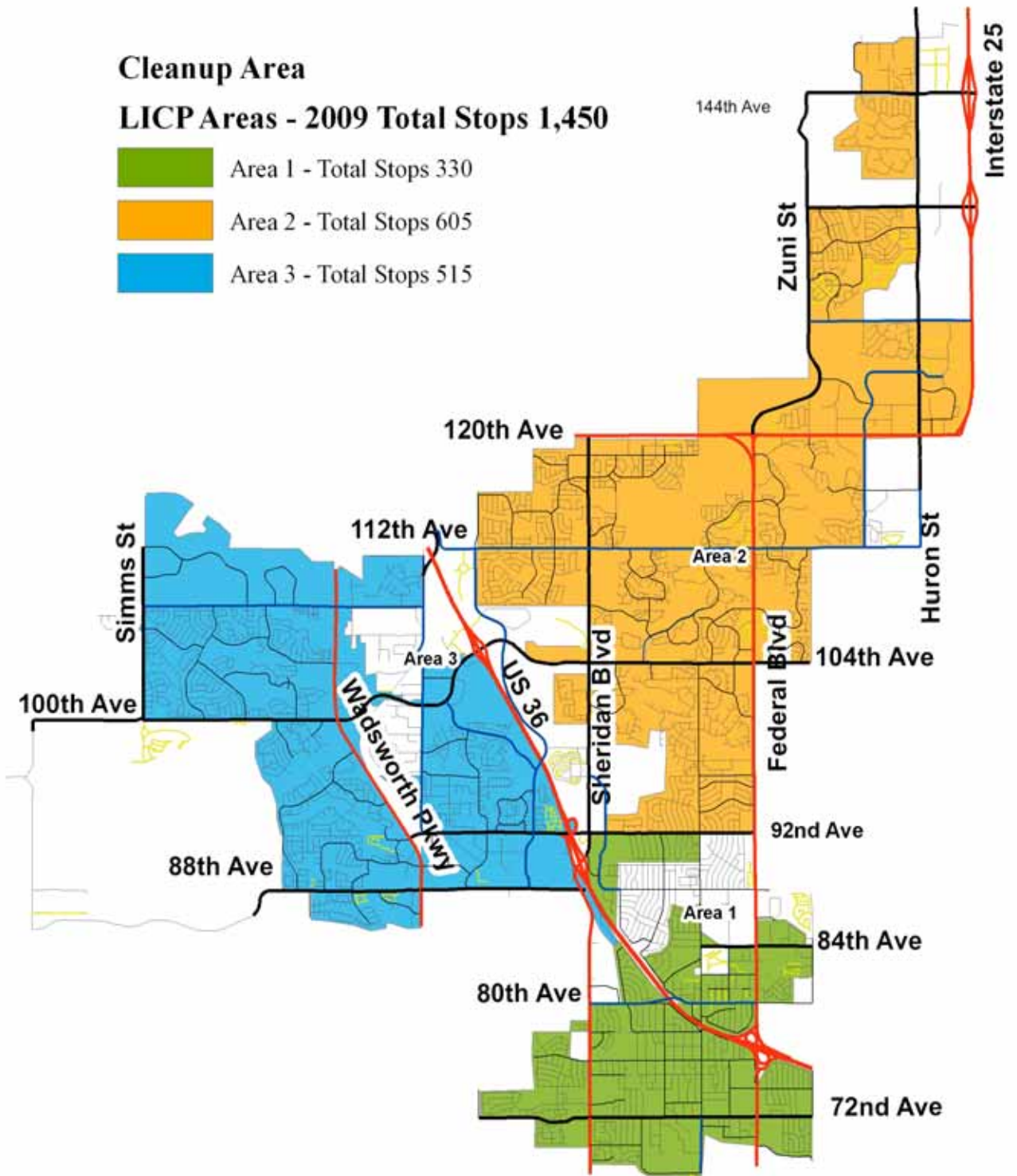
Attachment

# 2009 Large Item Cleanup Program

## Cleanup Area

LICP Areas - 2009 Total Stops 1,450

-  Area 1 - Total Stops 330
-  Area 2 - Total Stops 605
-  Area 3 - Total Stops 515





# Agenda Item 8 H

**WESTMINSTER**  
**COLORADO**

## Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** McKay Drainageway Project Engineering Services Contract Amendment

**Prepared By:** Stephen C. Baumann, Assistant City Engineer

### Recommended City Council Action

Authorize the City Manager to sign an amendment to the engineering design services contract with WH Pacific, Inc for the McKay Drainageway project totaling \$73,650 for the amendment and charge the expense to the project account.

### Summary Statement

- Construction of the McKay Drainageway project is expected to get underway in summer 2009 and the project will build drainage facilities between Huron Street and Big Dry Creek, reducing and confining what is now a significant floodplain on those properties. The multi-million dollar project is jointly sponsored by the Cities of Thornton and Westminster under an Intergovernmental Agreement adopted by City Council in October 2006.
- In July of 2008, City Council authorized a contract for final design engineering services with WH Pacific, Inc, in the amount of \$421,880. As the engineering plans for the project evolved, the planning for the development of the North Huron Planned Unit Development (PUD) in the same area was also being pursued, and the coordination of these two projects necessitated adding tasks to the WH Pacific contract.
- The additional effort by WH Pacific translates to increased engineering costs of \$73,650. Approximately \$49,000 of this amount can be attributed to the North Huron PUD and this amount will be recoverable from the developer. The remainder, \$24,650, covers extra engineering costs related to the drainageway project itself, amounting to 5.8% of the original contract amount. Staff is recommending approval of the contract amendment and the \$73,650 in costs associated with it.

**Expenditure Required:** \$73,650

**Source of Funds:** General Capital Improvement Fund  
- McKay Outfall Drainage Improvements Project Account



**Policy Issue**

Should the contract with WH Pacific be amended to include additional design services?

**Alternative**

Alternatives to the proposed action would have to take the position that the additional efforts by WH Pacific are included in the original scope of work. They clearly are not. City Staff has acknowledged that the developer's project and the McKay project area essentially occupy the same area. The timing of planning/engineering activities is coincident as well. This circumstance was not fully considered in the original contract scope of work. The drainage improvements are best planned and constructed if the engineering takes into account all of the possible grading, structures, storm sewer connections and utility crossings that are expected with the adjoining development. Since the cost of most of these additional services will be included in the developer's share of the cost of the drainage project and reimbursed to the City, the expenditures are necessary and appropriate. Staff recommends that the contract amendment be approved.

**Background Information**

In July 2008, City Council authorized a contract in the amount of \$421,880 with WH Pacific, Inc. (WHP) for final design engineering services associated with the McKay Drainageway project. WHP's assignment consisted of preparing plans and specifications for an engineered channel to be built upstream from Big Dry Creek (east of Washington Street) and west to Huron Street with culvert crossings at Washington Street, I-25, and the Bull Canal. As called for in an Intergovernmental Agreement with Thornton, approved by Council in October of 2006, the project is planned to start construction in 2009.

Once underway, project progress became linked to the planning for the North Huron Planned Unit Development located between I-25 and Huron Street. The McKay Drainageway project will reduce/confine the floodplain that now restricts development of that site. It became necessary for WHP to spend unanticipated time and effort to incorporate facilities that would otherwise have been designed and installed by the developer. Examples include a drainage/pedestrian box culvert that will carry future 142<sup>nd</sup> Avenue/Orchard Parkway over the McKay Drainageway, several planned utility crossings and storm sewer connections from the development to the drainageway, and activities associated with the developer's planned relocation of the Bull Canal. Even though needed only for the development, these facilities are best constructed as part of the drainageway work to minimize disruption in the future. At the time the design contract with WHP was made it was not clear that the timing of the North Huron PUD planning would coincide so closely with the planning for McKay project.

The portion of WHPacific's effort that is directly attributable to the developer's project is \$49,000. According to the approved Preliminary Development Plan (PDP) for the North Huron PUD, the developer is responsible for a share of the cost the McKay project based on the extent of floodplain now on the property. In addition to this assessment, the developer will also be responsible for costs of components included in the McKay project that are directly attributable or part of the proposed development, including these additional design costs.

In addition to the cost of the efforts on behalf of the developer, it was necessary for WHP to perform added engineering services amounting to \$24,650 for their work in designing architectural features for structures, designing grading involving the neighboring property, performing a cost/benefit analysis of the proposed I-25 crossing and other miscellaneous extra work. This is about 5.8% of the original contract amount. The cost/benefit analysis conducted by WHP will result in cost-savings of several hundred thousand dollars for the crossing. These activities were not related to the North Huron PUD, although those properties also benefit from them.

The total requested amendment to the design engineering contract is \$73,650. Project plans are close to complete, so this is expected to be the only significant contract modification needed before the project is advertised for bid. Both portions of the proposed contract amendment will be paid for from contingency or other available funds in the project account. As mentioned above, the developer's portion is estimated to be recoverable as development approvals are sought.

It is recommended that City Council approve the amendment of the design engineering contract with WH Pacific and authorize the expenditure of \$73,650 from the project account for this purpose.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**  
Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Short-Term Lease of Consumable Water to Aggregate Industries

**Prepared By:** Mary Jay Vestal, Water Resources Engineer  
Josh Nims, Water Resources Engineering Coordinator

**Recommended City Council Action**

Authorize the City Manager to sign a one year Consumable Water Lease Agreement with Aggregate Industries for 152 acre feet of water in the amount of \$53,200.

**Summary Statement**

- The City of Westminster has surplus consumptive water credits that are available from Westminster’s wastewater discharges at the Metropolitan Wastewater Reclamation District (Metro) and the Big Dry Creek Wastewater Treatment Facility (Big Dry Creek). This water is fully consumable pursuant to the terms of Westminster’s water rights decrees and is not needed for any short term current uses of Westminster’s water supply system.
- City Staff has negotiated a contract for a short-term lease of 152 acre feet of this consumable water to Aggregate Industries (AI) in 2009.
- This agreement would obligate Westminster to deliver water from Metro and/or Big Dry Creek water reclamation facilities, or from Westminster’s gravel lake storage facilities into the South Platte River for AI’s credit.
- AI would use these credits to augment out-of-priority exposure of groundwater. These credits may be incorporated by AI into a substitute water supply plan (SWSP) by appropriate administrative procedures.
- The agreement obligates AI to purchase 152 acre feet of this water upon execution of the agreement for \$350 per acre foot with a payment of \$26,600 due upon signing and a payment of \$26,600 due on or before October 1, 2009.
- The agreement obligates Westminster to deliver 52 acre feet in January through March of 2009 and 100 acre feet in November through December of 2009. The City had surplus consumable water in January and February, which will be booked over to AI contingent upon approval of this lease agreement.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City lease to AI a portion of its consumable water for which it has no current use and provide revenue to the City?

**Alternative**

Do not lease any of the City's excess consumable water to AI. Such consumable water may instead be sold or leased to another entity or be used for enacting water rights exchanges. However, as Westminster has a working relationship with AI related to their future delivery of a raw water storage facility near Wattenberg, it is recommended to make this consumable water available for their use.

**Background Information**

Westminster has accumulated agricultural water rights for its raw water supply over the last 60 years and has obtained several water rights decrees from the State Water Court allowing the City to use and reuse these water rights for municipal purposes. Westminster has excess consumable water available from its wastewater discharges from the Metro and Big Dry Creek water reclamation facilities. Westminster plans to reuse much of this consumable water to irrigate parks and golf courses during the summer, but it is not needed in the winter and is currently excess to the City's needs.

AI has a need for consumable water on the South Platte River during the winter months. Staff and AI have negotiated an agreement for AI to lease 152 acre feet of water in 2009. The agreement is structured to allow AI to purchase the water in two stages at a price of \$350 per acre foot. The first payment of \$26,600 will be due upon execution of the Consumable Water Lease Agreement. The second payment of \$26,600 will be due on or before October 1, 2009.

The lease is structured to terminate upon failure of AI to make payments or upon failure of Westminster and AI to execute an amendment to the Storage Facility Agreement of October, 2000 related to the Wattenberg gravel lakes. This agreement supports a good working relationship with AI, which is fundamental to development of the City's raw water system.

Enactment of this lease supports City Council's goal of Financially Sustainable City Government Providing Exceptional Services by bringing in revenues to support defined city services and securing and developing long-term water supply.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

## Consumable Water Lease Agreement

This Consumable Water Lease Agreement (“Water Lease Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2009 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and Aggregate Industries – WCR, Inc. (“AI”), a corporation organized pursuant to the laws of the State of Colorado. Westminster and AI are also hereinafter referred to as the “parties” or separately as a “party”.

### 1. Recitals.

1.1. Westminster owns and operates a municipal water supply system for the provision of municipal water supply to its inhabitants and to contract municipal water supply customers. In this connection, it owns and uses various decreed water rights in its system, which water rights and uses generate certain volumes of water that can be fully consumed and credited against other consumptive uses of water (“Consumable Water”). Westminster has determined that some of the Consumable Water in its water supply system is in excess of its current needs and desires to lease some Consumable Water to AI on the terms and conditions expressed herein.

1.2. AI is in the aggregate production business and, as such, it operates a number of gravel pits in the South Platte River basin. In connection with its business activities, AI needs additional consumptive use credits to augment out-of-priority exposure of groundwater. These credits may be incorporated by AI into a substitute water supply plan by appropriate administrative process. AI desires to lease fully consumable water from Westminster pursuant to the terms and conditions set forth herein.

1.3. Westminster and CAMAS Colorado, a former subsidiary entity of AI, previously entered into an effluent lease dated December 21, 1999. Said lease expired by its own terms on December 22, 2007, and is no longer in effect.

1.4. Westminster and AI have entered into a Storage Facility Agreement dated October 24, 2000, (the “Storage Facility Agreement”), concerning the construction of certain storage reservoirs located in Weld County, Colorado. Nothing in this agreement modifies the terms of said Storage Facility Agreement unless specifically and expressly stated herein.

1.5. Pursuant to Section 14.2 of the Westminster City Charter, Westminster may dispose of property constituting part of its utility system upon certain findings by the Westminster City Council.

1.6. Pursuant to Section 14.3 of the Westminster City Charter, the City is further authorized to lease water subject to subsections (a) and (b) of said Section 14.3. In the judgment of the Westminster City Council, the terms of this Water Lease, and the payments generated thereby, satisfy the requirements of Section 14.3 (a) and Section 14.3 (b) of the Westminster City Charter.

2. Consumable Water Lease. Westminster will lease to AI for the term of this Agreement 152 acre-feet (AF) annually of Consumable Water from Westminster’s municipal water supply system subject to the further terms and conditions of this Agreement.

2.1 Term of Lease. The term of this Water Lease Agreement shall be from January 1, 2009 through December 31, 2009.

2.2 Amounts of Consumable Water Leased. The 152 acre feet of Consumable Water to be leased and delivered to AI shall be delivered on the following schedule:

<b>Month</b>	<b>Amount in acre feet</b>
January 2009	22.00
February 2009	15.00
March 2009	15.00
November 2009	60.00
December 2009	40.00
<b>Total</b>	<b>152.00</b>

Delivery shall be, as nearly as practicable, at a constant flow rate during each month of delivery consistent with the total volume of water to be delivered in each month. The parties may revise the delivery schedule in the future by mutual written agreement.

2.3 Delivery.

2.3.1 Delivery Locations. The Consumable Water shall be delivered to AI at or above the confluence of Big Dry Creek and the South Platte River, at one or more of the following locations:

2.3.1.1. The Metropolitan Denver Wastewater Reclamation Plant (“Metro”) currently located near Sand Creek and the South Platte River;

2.3.1.2. Westminster’s Big Dry Creek Wastewater Treatment Plant located on Big Dry Creek above its confluence with the South Platte River;

2.3.1.3. Jim Baker Reservoir and/or West Gravel Lake, both located near Clear Creek;

2.3.1.4. Any other location where Westminster can, currently, or in the future, deliver Consumable Water from its water supply system to Clear Creek or to the South Platte River at or above the confluence of Big Dry Creek with the South Platte River.

Westminster shall determine, and may from time to time in its discretion change, the location or locations where the Consumable Water will be delivered to AI. After delivery at any of the locations described above, AI shall bear any transit or evaporative losses from the point of delivery to the point of AI’s uses.

2.4 Lease Payments. AI shall pay the sum of \$350 per acre-foot of Consumable Water leased hereunder. In consideration for the water delivered hereunder, AI agrees to make the following payments to Westminster:

2.4.1. A payment of \$26,600.00 upon execution of this Water Lease Agreement; and,

2.4.2. A payment of \$26,600.00 on or before October 1, 2009.

3. Other.

3.1. Findings of Westminster City Council. This lease of Consumable Water is made pursuant to the following findings hereby entered by the Westminster City Council: In the judgment of City Council, the terms of this Water Lease Agreement, including the payments received from the lease, will result in improvement of the capacity, efficiency, or service of Westminster’s utility system, and Westminster enters into this Water Lease Agreement and will effect the lease of Consumable Water from Westminster’s utility system and use the payment to facilitate improvements of Westminster’s utility system.

3.2 Source and Quality of Consumable Water. The parties acknowledge that the Consumable Water delivered pursuant to this Water Lease Agreement may comprise treated municipal wastewater effluent, or, at Westminster's discretion, consumable raw water released from Westminster's raw water supply system. Westminster makes no representation or warranty as to the quality, or the fitness for a particular use, of the Consumable Water leased hereunder, except that to the extent the Consumable Water comprises treated municipal wastewater effluent, it shall be discharged in accordance with the limits and terms of wastewater discharge permits issued for the operation of any treatment plant from which the effluent is discharged; subject, however, to the terms of any compliance schedules imposed upon such plant, and to short term upsets or similar malfunctions of the treatment facilities. The parties further acknowledge that the Consumable Water leased hereunder is delivered on an "as-is" basis. AI accordingly waives any actual or potential rights it might have concerning any warranties or representations by Westminster as to the quality of the Consumable Water or its fitness for a particular use, any product liability claim and all other existing or later-created or conceived-of strict liability or strict liability claims and rights concerning the quality, or fitness for use, of the Consumable Water sold and delivered pursuant to this Agreement.

3.3. The water delivered pursuant to this Water Lease Agreement is provided strictly on a lease basis. AI shall not have any right of ownership of the water delivered hereunder. Westminster will properly account for the delivery of the water contemplated herein in a manner consistent with its current accounting practices and will provide copies of said accounting to AI upon request. Said accounting will identify the location of the delivery of water to AI.

3.4. This Water Lease Agreement may not be assigned by AI without the prior written consent of Westminster, which consent may be withheld in Westminster's sole discretion. AI shall provide Westminster with notice of any intention to assign this Water Lease to any other third party.

3.5. This Water Lease Agreement shall terminate upon the occurrence of any one of the following events:

- a. AI's failure to make a payment required by paragraph 2.4., above; or
- b. Failure of the parties, on or before June 1, 2009, to execute an amendment to the Storage Facility Agreement dated October 24, 2000; or
- c. On December 31, 2009, unless a later date is subsequently agreed to by the parties.

3.6. As additional consideration for entering into this Water Lease Agreement, AI waives its right, if any, to terminate the Storage Facility Agreement for any reason other than a breach of said Storage Facility Agreement by the City of Westminster. AI further acknowledges and agrees that as of the date of this Water Lease Agreement, Westminster has not breached said Storage Facility Agreement, nor has there been an act or neglect by the City of Westminster, or its agents or representatives causing a delay in the progress of the Storage Facility. The provisions of this paragraph shall survive the expiration or termination of this Water Lease Agreement.

3.7. Notices. All notices required to be given or made under this Water Lease Agreement shall be in writing and sent by United States mail or hand delivery to the following addresses:

To Westminster: City of Westminster  
Director of Public Works  
4800 West 92nd Avenue  
Westminster, Colorado 80031  
Facsimile: (303) 706-3927

To AI: Mike Refer  
Aggregate Industries, Inc.  
3605 South Teller Street  
Lakewood, Colorado 80235

All notices will be deemed effective one (1) day after hand delivery, or if mailed, upon receipt. Either party, by written notice, may change the address to which future notices, billings, or payments shall be sent.

3.8. AI's use of this water shall be limited to use in a substitute water supply plan. AI shall not identify or otherwise attempt to use the water delivered hereunder in a Water Court application for a plan for augmentation or in any plan for augmentation decree. AI agrees it will not jeopardize Westminster's water rights decrees by taking any action that causes, or could potentially cause, a reopening of any Westminster decree. AI will indemnify Westminster for any costs or expenses incurred if any Westminster water rights decree is reopened as a result of AI's application for use of the delivered water, or if any AI application causes Westminster or its staff to be deposed, subject to a subpoena, compelled to testify at trial, or otherwise subject to discovery requests. In such an event, AI agrees to promptly reimburse Westminster for its costs and expenses associated with the same, including staff time and reasonable attorney fees.

3.9 In accordance with the requirements of Section 14.3 (a) of the Westminster City Charter, Westminster's obligations to deliver water under this Water Lease Agreement may be curtailed under the following circumstances. If, in Westminster's sole discretion, Westminster adopts mandatory citywide water use restrictions as a result of drought conditions, dam failure, or other catastrophic circumstance limiting Westminster's ability to satisfy the indoor water supply needs of its citizens, Westminster may curtail daily deliveries to AI under this lease by an amount consistent with said mandatory citywide water use restrictions. Once any such mandatory citywide water use restrictions expire or are otherwise lifted, Westminster shall immediately thereafter resume full daily deliveries under this Water Lease Agreement.

3.10. If, for any reason Westminster is temporarily unable to satisfy its obligations for delivery of water to AI under this Water Lease Agreement for any period of time, the parties agree that any damages resulting to AI therefrom shall be limited to a pro rata refund of the total lease payment. Westminster shall not be liable for any consequential, exemplary or punitive damages for failure to deliver water pursuant to this Water Lease Agreement. Other than a pro rata refund of the total lease payment, no other damages may be asserted or paid by Westminster to AI as a result of the inability to deliver water. AI expressly waives any and all other claims of damages.

3.11. A default shall be deemed to have occurred if either party breaches its obligations hereunder and fails to cure such breach within 15 days of written notice from the non-breaching party specifying the breach. Waiver or failure to give notice of the particular default or defaults shall not be construed as acquiescence to any continuing or subsequent default. The parties hereto shall have all remedies available at law and in equity.

3.12. This Water Lease Agreement represents the entire agreement of the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the delivery of 152 acre feet of Consumable Water contemplated herein.

3.13. This lease may only be amended in writing by the mutual agreement of the undersigned parties, or their successors and assigns.

3.14. If any covenant, term, condition, or provision of this lease shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained in this lease. The intention of Westminster and AI is that all provisions hereof are severable.

3.15. Each of the persons executing this lease on behalf of the parties hereto, covenants and warrants that he or she is fully authorized to execute this lease on behalf of the party he or she represents.

3.16. Counterparts. This agreement may be executed in duplicate original counterparts.



**AGGREGATE INDUSTRIES**

\_\_\_\_\_

STATE OF COLORADO     )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_.

My commission expires: \_\_\_\_\_

Witness my hand and official seal.

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

ATTEST:

**CITY OF WESTMINSTER**

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

\_\_\_\_\_  
J. Brent McFall  
City Manager  
City of Westminster

APPROVED AS TO LEGAL FORM:

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



# Agenda Item 8 J

## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Second Reading Councillor's Bill No. 6 re Westminster Center Park and the City Park Recreation Center Aquatics Renovation Supplemental Appropriation

**Prepared By:** Kathy Piper, Landscape Architect II  
Becky Eades, Landscape Architect II

### Recommended City Council Action

Pass Councillor's Bill No. 6 on second reading approving a supplemental appropriation in the amount of \$200,000 reflecting the City's receipt of a Great Outdoors Colorado Grant for Westminster Center Park, and in the amount of \$300,000 reflecting the City's receipt of a Jefferson County Open Space Grant for the City Park Recreation Center Aquatics Renovation.

### Summary Statement

- In July of 2008, Staff received City Council's approval to submit a request for a Great Outdoors Colorado Grant (GOCO) to help fund the development of Westminster Center Park. The City was notified in December of 2008 that it was successful in receiving grant funds for the full amount of the application, \$200,000.
- In November of 2008, Staff received City Council's approval to submit a request for a Jefferson County Open Space Grant to help fund the development of the City Park Recreation Center Aquatics Renovation. The City was notified in January of 2009 that it was successful in receiving grant funds for the full amount of application, \$300,000.
- The Parks, Recreation and Libraries Department has the appropriate matching funds available in the Parks, Open Space and Trails Bond Fund.
- Construction of both projects is anticipated to begin in the Spring of 2009.
- This Councillor's Bill was passed on first reading March 9, 2009.

**Expenditure Required:** \$200,000 - Westminster Center Park  
\$300,000 - City Park Recreation Center Aquatics Renovation

**Source of Funds:** \$200,000 - Great Outdoors Colorado Grant  
\$300,000 - Jefferson County Open Space Grant

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **6**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
**Briggs - Winter**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$500,000. This appropriation is due to the receipt of grants.

Section 2. The \$500,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10A dated March 9, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$500,000</u>
Total	<u>\$500,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9<sup>th</sup> day of March, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of March, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

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



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
March 23, 2009



**SUBJECT:** Second Reading of Councillor's Bill No. 7 re Payment to Metro Wastewater Reclamation District for Exclusion of Service Area in the Vicinity of 94<sup>th</sup> Avenue and Quitman Street

**Prepared By:** Mike Happe, Water Resources and Treatment Manager  
Christine Gray, Management Analyst

**Recommended City Council Action:**

Pass Councillor's Bill No. 7 on second reading transferring \$1,964,350 from the Utility Capital Project Reserve Fund to the Special Assessments Metro Wastewater Reclamation District Regular operating account to cover the payment to Metro Wastewater Reclamation District.

**Summary Statement:**

- This Councillor's Bill was approved on first reading by City Council on March 9, 2009.
- At the March 9, 2009 City Council meeting, Council adopted Resolution No. 10 consenting to the terms and conditions set forth by the Metro Wastewater Reclamation District excluding a portion of Westminster from the Metro Wastewater Reclamation District and authorizing the payment of \$1,964,350 to the Metro Wastewater Reclamation District.
- Approximately 35% of the City's wastewater flow is treated by the Metro Wastewater Reclamation District (District). The City pays the District for treatment of these flows.
- Due to significant repair issues arising with a failing sewer lift station located at 94<sup>th</sup> Avenue and Quitman Street, Staff began discussion with the District in 2007 requesting an exclusion of that region of Westminster from the District.
- District regulations state that connectors cannot be excluded from the District service area when the District's finances will be negatively affected.
- Rather than repair the lift station for pumping flows to the District, the lift station will be eliminated and the area's wastewater will be re-directed via gravity to the City's Big Dry Creek Wastewater Treatment Facility for treatment.
- The District is willing to exclude the area in exchange for financial compensation for the loss of treatment revenue from that lift station's flows.
- Staff recommends payment of \$1,964,350 to the District, which represents ten years' worth of charges that the District would stand to lose in the exclusion.
- Elimination of this lift station will result in the reduction of over \$250,000 in annual payments to the District and will eliminate all costs to repair and maintain this lift station in the future.
- Over the long term, the City will save more than \$3.4 million dollars by treating this area's flows at the Big Dry Creek Wastewater Treatment Facility, resulting in a net savings to the City of over \$1.4 million dollars in the next twenty years.
- Funds are available in the Utility Capital Reserve Fund to make this payment to Metro Wastewater Reclamation District.

**Expenditure Required:** \$1,964,350  
**Source of Funds:** Utility Capital Project Reserve Fund

Respectfully submitted,

J. Brent McFall, City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **7**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
**Dittman - Kaiser**

**A BILL**

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the Wastewater and Utility Reserve Funds initially appropriated by Ordinance No. 3432 is hereby increased by \$3,928,700. This appropriation is due to the transfer of reserve funds.

Section 2. The \$3,928,700 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10B dated March 9, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Wastewater Fund	\$1,964,350
Utility Reserve Fund	\$1,964,350
Total	<u>\$3,928,700</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 9<sup>th</sup> day of March, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of March, 2009

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Item 10 A&B**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Public Hearing and Action on the Third Amended Preliminary Development Plan for Panorama Pointe Subdivision, Parcel C

**Prepared By:** Hazel Leem, Planner II

**Recommended City Council Action**

1. Hold a public hearing.
2. Approve the Third Amended Preliminary Development Plan for Panorama Pointe Subdivision, Parcel C. This recommendation is based on a finding that the criteria set forth in Section 11-5-14 of the Westminster Municipal Code have been met.

**Summary Statement**

- The site of the proposed Panorama Pointe project (Parcel C) is approximately 4.09 acres in size and is generally located south of 84<sup>th</sup> Avenue and west of 83<sup>rd</sup> Way. Approval of the proposed Third Amended Preliminary Development Plan (PDP) for Panorama Pointe Subdivision, Parcel C is required to re-establish senior housing as an allowed use for the property. Westminster Municipal Code Section 11-5-17, Duration of Plan Approvals, requires that Preliminary Development Plans more than five (5) years from the approval date are expired, and must be submitted for review and reconsideration in accordance with the current code requirements and City standards.
- City staff supports the proposed use (senior housing), as it is consistent with the previous allowed use for Parcel C. The Comprehensive Land Use Plan (CLUP) designation is R-18 Residential and allows a maximum density of up to 18 dwelling units/acre. The proposed development plan is for a 72-unit independent living senior housing facility (17.6 dwelling units per acre). The Official Development Plan (ODP) is currently in review and the applicant is working with City staff to meet all the applicable current City requirements. It is anticipated that construction of this project will begin within one year of approval and be completed in 14 months.
- The subject parcel was previously owned by the Westminster Housing Authority and was sold to the current property owner, M.E.M. Westminster Property, LLP, in August of 2000 to develop a campus of various types of housing at different ranges of affordability for senior residents. The City of Westminster owns Parcel D, the adjacent parcel to the east of the subject property, and the property was developed as a senior center by the associated members of M.E.M. Westminster Property to serve the senior housing community within the area. Other senior housing within the Panorama Pointe PDP area include: Clare of Assisi (Section 8) with 60 units, the senior cottage homes to the south (market rate) with 50 units, and the Villa Maria (Section 8) with 40 units.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

### **Planning Commission Recommendation**

The Planning Commission reviewed this proposal on March 10, 2009, and voted unanimously (5-0) to recommend that the City Council approve the Preliminary Development Plan amendment.

### **Policy Issue**

Should the City approve the Third Amended Preliminary Development Plan for Panorama Pointe Subdivision, Parcel C?

### **Alternative**

Deny the Preliminary Development Plan Amendment for the subject property. This alternative is not supported by City staff because the proposed Preliminary Development Plan Amendment is in compliance with provisions of City Code regarding approval of Preliminary Development Plan Amendments.

### **Background Information**

#### Nature of Request

The Preliminary Development Plan is intended to establish the overall development parameters for a specific property; including establishing land use, density/intensity, proposed subdivision parcel lines, etc. This proposal will be the third amendment to Panorama Pointe Subdivision and proposes a 72-unit (17.6 dwelling units per acre) senior housing development for independent living. Westminster Municipal Code Section 11-5-17, Duration of Plan Approvals, requires that Preliminary Development Plans more than five (5) years from the approval date, or expired, must be submitted for review and reconsideration in accordance with the current code requirements and City standards. The PDP that is now expired for Parcel C was approved on February 25, 2002 and previously allowed residential development on Parcel C specifically apartments for seniors, an assisted living facility, and/or independent residential cottages. This request is effectively the same as the previous entitled land use. The site complies with the Comprehensive Land Use Plan designation, R-18 Residential.

The applicant submitted the Preliminary Development Plan (PDP) and Official Development Plan (ODP) to the City on November 7, 2008, and indicated that there are strict funding requirements in order to aid in development costs for the project. The applicant will be provided federal tax credits for the project with the condition that PDP and ODP approvals are achieved by the end of March 2009. City staff is supportive of the use and has worked with the applicant to bring the PDP to Planning Commission and City Council for review and approval and the ODP for administrative approval by the applicant's deadline.

#### Location

The site, Parcel C, is generally located east of Federal, south of 84<sup>th</sup> Avenue and west of 83<sup>rd</sup> Way. (Please see attached vicinity map).

#### Public Notification

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

- **Published Notice:** Notice of public hearings scheduled before Planning Commission shall be published and posted at least 10 days prior to such hearing and at least four days prior to City Council public hearings. Notice was published in the Westminster Window on February 26, 2009.
- **Property Posting:** Notice of public hearings shall be posted on the property with one sign in a location reasonably visible to vehicular and pedestrian traffic passing adjacent to the site. Two signs were posted on the property on February 27, 2009.

- **Written Notice:** At least 10 days prior to the date of the public hearing, the applicant shall mail individual notices by first-class mail to property owners and homeowner’s associations registered with the City within 300 feet of the subject property. The applicant has provided the Planning Manager with a certification that the required notices were mailed on February 27, 2009.

Applicant/Property Owner

*Property Owner:*

M.E.M Westminster Property, L.L.P  
Represented by: Mr. Lee S. Mendel  
1873 S. Bellaire St. #1105  
Denver, Colorado 80222

*Applicant:*

Miles-Lambert Architecture, Inc.  
Represented by: Mr. James Miles-Lambert  
6463 E. Bethany Pl.  
Denver, Colorado 80222

Surrounding Land Use and Comprehensive Land Use Plan Designation

<b>Development Name</b>	<b>Zoning</b>	<b>CLUP Designation</b>	<b>Current Use</b>
North: Un-platted land (Pillar of Fire)	B-1	Office	Vacant Land
West: Un-platted land (City owned land)	PUD	Public Parks	Future Park or Open Space Area
East: Panorama Pointe Subdivision Filing No. 6	PUD	R-18 Residential	Senior Center
South: Panorama Pointe Subdivision Filing No. 7	PUD	R-18 Residential	Residential

Site Plan Information

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

- **Traffic and Transportation:** The site’s access will be from the south via a private drive to connect with Clay Street. The Fire Department has approved the vehicular access plan and no further traffic issues have been identified.
- **Public Land Dedication:** Panorama Pointe Subdivision satisfied the public land dedication with the dedication of the parcel located to the immediate west of Parcel C.
- **School Land Dedication:** Senior housing projects are exempt from school land dedications.
- **Site Design:** The specific site design for the Official Development Plan (ODP) is currently in review and the applicant is working with City staff to address ODP requirements for landscape design, private open space, building design, signage, and lighting.

Service Commitment Category

The development of Panorama Pointe Subdivision for senior housing has historically been considered as an “active” senior housing project and was exempt from the competition process for Growth Management. Panorama Pointe is no longer considered active and requires 25.2 service commitments for Parcel C to develop as a 72-unit attached senior housing project. Anticipated time delays in holding the 2009 Growth Management competition process in order to include Sustainable Design criteria resulted in staff’s decision to bring a resolution for City Council to approve an exemption from the growth management competition requirement for Parcel C. The resolution will also award Parcel C with 25.2 service commitments. (See the Nature of Request section for the project’s deadline to receive federal tax credits.)



Referral Agency Responses

A copy of the proposed plan was sent to the following agencies: Xcel Energy, Adams County Planning, and the City of Federal Heights Planning. Staff received response from Xcel Energy and their comments regarding the proposed development have been addressed.

Neighborhood Meeting and Public Comments

The neighborhood meeting for this development was held on February 4, 2009. One person attended the meeting and was in support of the development.

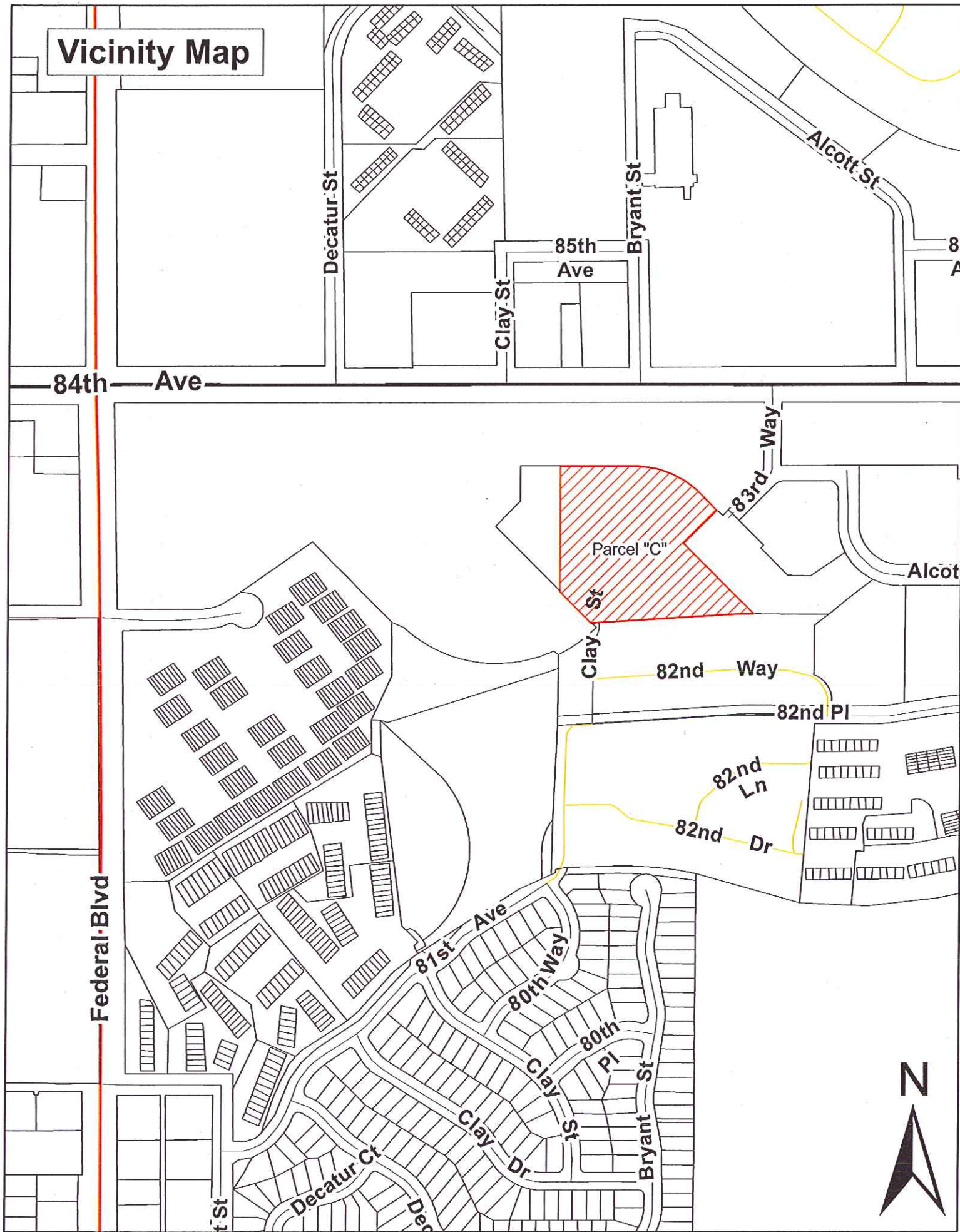
Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

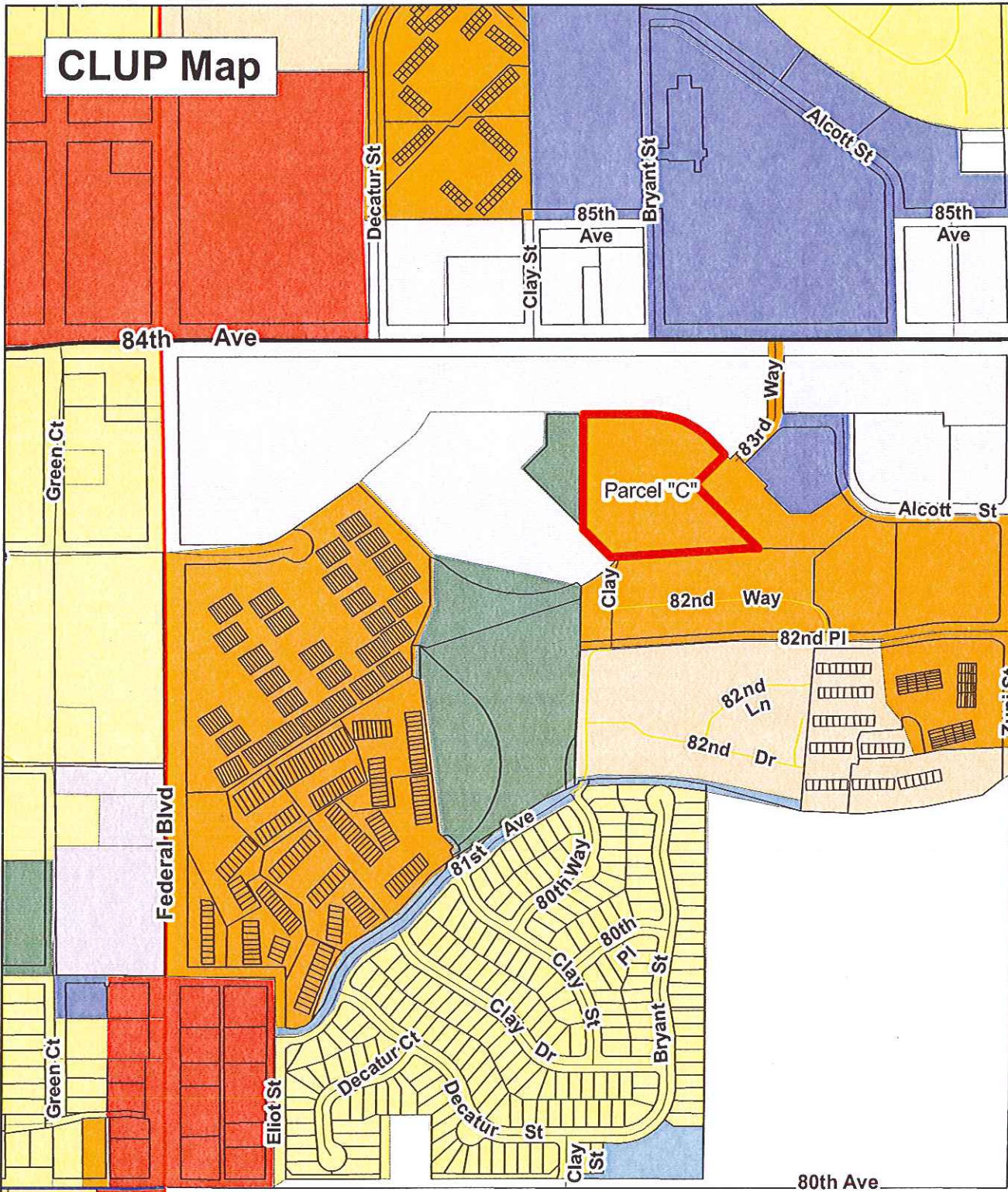
- Vicinity Map (Attachment 1)
- Comprehensive Land Use Plan Map (Attachment 2)
- Criteria and Standards for Land Use Applications (Attachment 3)
- PDP Amendment for Panorama Pointe, Parcel C

# Vicinity Map



420 210 0 420 Feet

# CLUP Map



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

**Criteria and Standards for Land Use Applications*****Approval of Planned Unit Development (PUD), Preliminary Development Plan (PDP) and Amendments to Preliminary Development Plans (PDP)***

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

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

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

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



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
March 23, 2009



**SUBJECT:** Resolution No. 11 re Service Commitment Award for Panorama Pointe (Parcel C) Senior Housing Project

**Prepared By:** Hazel Leem, Planner II

**Recommended City Council Action**

Adopt Resolution No. 11 awarding Service Commitments to the senior housing project proposed for Parcel C of the Panorama Pointe Subdivision.

**Summary Statement**

- M.E.M. Westminster Properties is the owner of Parcel C of the Panorama Pointe Subdivision. It is approximately 4.09 acres in size and generally located south of 84<sup>th</sup> Avenue and west of 83<sup>rd</sup> Way.
- The owner is proposing the construction of a 72-unit independent living senior housing facility.
- City Staff supports the proposed use as senior housing as it is consistent with the previously allowed use for Parcel C, and is surrounded by other senior housing within the Panorama Pointe Planned Unit Development (PUD). (Note: The Preliminary Development Plan Amendment is on tonight’s agenda as a separate action item to re-approve the use as the latest PDP Amendment for the development of Parcel C is expired, per Westminster Municipal Code Section 11-5-17 Duration of Plan Approvals.)
- In order to receive federal tax credits for this project, the Preliminary Development Plan (PDP) and Official Development Plan (ODP) must be approved by the end of March 2009. In order to approve the ODP for the project, and preserve the federal financing, 25.2 Service Commitments for the project need to be approved, as well.
- W.M.C. § 11-3-5(H) provides that Service Commitments for senior housing projects shall be allocated periodically by City Council resolution. Normally, Service Commitments for new senior housing projects must be awarded on a competitive basis pursuant to W.M.C. § 11-3-5(H). However, the 2009 competition under the Growth Management Program has been delayed while Staff works on proposed revised criteria that incorporate sustainable design criteria (a/k/a “green/building standards”). Staff supports exempting this project from the competition requirements of the City Code given that a competition has not yet been scheduled. The City Council has previously indicated its support for quality housing projects for its senior residents. The proposed project meets the City’s design guidelines for senior housing projects and construction of this project will further the completion of the Panorama Pointe Subdivision. The Official Development Plan (ODP) is currently in review and the applicant is working with City staff to meet all the applicable current City requirements.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City exempt the senior housing project proposed for Parcel C of the Panorama Pointe subdivision from the 2009 Service Commitment Competition and award the project 25.2 Service Commitments?

**Alternative**

Do not adopt the attached resolution awarding Service Commitments to the senior housing project. Staff does not recommend this alternative, as this project could be a long-term asset to the community by providing Westminster residents with additional retirement options within the City.

**Background Information**

The proposed senior housing project is consistent with the previously allowed use for Parcel C. A PDP Amendment was approved on February 25, 2002. After 5 years the PDP expires when no development has occurred and requires re-approval of the PDP to be in accordance with the current Code requirements and City standards. City Council will be reviewing the request to re-approve the PDP Amendment for Parcel C on tonight's agenda. The Comprehensive Land Use Plan (CLUP) allows a maximum density of up to 18 dwelling-units per acre, and the proposed development plan is for a 72-unit, independent living senior housing facility at 17.6 dwelling-units per acre. It is anticipated that construction of this project will begin within one year of approval and be completed in 14 months.

Parcel C was previously owned by the Westminster Housing Authority, but was sold to the current property owner, M.E.M. Westminster Properties, LLP, in August of 2000 to develop a campus of various types of housing at different ranges of affordability for senior residents. The City of Westminster owns Parcel D, the adjacent parcel to the east of the subject property. Parcel D was developed as a senior center, in cooperation with M.E.M. Westminster Properties, to serve the senior housing community within the area. Other senior housing within the Panorama Pointe PUD area include Clare of Assisi (Section 8) with 60 units, senior cottage homes to the south (private) with 50 units, and the Villa Maria (Section 8) with 40 units.

Historically, the senior housing development within the Panorama Pointe Subdivision has been considered an "active" senior housing project within the meaning of the City's Growth Management Program. With the lapse of the previous PDP approval for Parcel C under the 5-year duration limit under City Code for PDP approvals, this parcel is no longer considered active. Anticipated time delays in holding the 2009 Growth Management Program competition process in order to include "Sustainable Design Criteria" resulted in Staff deciding to bring this resolution to City Council to approve an exemption from the Growth Management Program competition requirements for Parcel C.

City Staff will be bringing a proposed set of revised competition criteria for City Council review at the April 6, 2009, Study Session that includes "Sustainable Design Criteria." These "Sustainable Design Criteria" will include criteria intended to result in more "green" energy-conserving projects.

The proposed resolution would exempt Parcel C of the Panorama Pointe Subdivision from the 2009 Competition and award the project 25.2 Service Commitments. City Staff is supporting the approval of this special exemption for at least the following reasons:

1. There are sufficient Service Commitment allocations available for this project and senior housing is in demand.
2. The current economy is in recession and housing activity should be encouraged when viable.
3. This project will complement the other senior housing types within the Panorama Pointe Subdivision, and is intended to be an affordable product priced in between the Clare of Assisi project and the senior cottage homes.

4. The applicant has been diligent in its submittal of its PDP and ODP applications, and Staff does not believe that the property owner should be penalized as a result of the City's decision to delay the 2009 competition while updating its competition criteria based on new Sustainable Design Standards. The failure to receive the City's approval of its PDP and ODP by the end of March 2009 will cause the applicant to lose its federal grant funding for the project.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

- Resolution re Service Commitment Award for New Senior Housing (Category E)

RESOLUTION

RESOLUTION NO. **11**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**NEW SENIOR HOUSING COMPETITION EXEMPTION AND  
SERVICE COMMITMENT AWARD**

WHEREAS, through the enactment of Ordinance No. 2848, City Council has previously adopted a Growth Management Program for the period 2000 - 2010; and

WHEREAS, the City's Growth Management Program is codified as Chapter 3 of Title 11 of the Westminster Municipal Code (the "GMP"); and

WHEREAS, the City's GMP anticipates that, at the end of each year, City Council will allocate Service Commitments to various categories of development to be available for the following year, and that Service Commitments within each category shall be awarded based on a competitive process in accordance with criteria adopted by City Council; and

WHEREAS, City Council finds that the allocation of Service Commitments for 2009 and the resulting competition for those Service Commitments has been delayed in order that Staff may prepare and propose for City Council consideration an updated set of criteria for future competitions based on more modern, sustainable development criteria, that incorporate so-called "green" and "LEED's" approved building standards that will further City Council's goals of fostering more energy efficient and environmentally sustainable development; and

WHEREAS, City Council finds that an application has been received for the approval of a 72-unit, independent living senior housing project for Parcel C of the Panorama Pointe Subdivision (the "Parcel C Project"), a subdivision devoted to senior housing facilities located approximately at the southeast corner of 84<sup>th</sup> Avenue and Federal Boulevard; and

WHEREAS, Westminster Municipal Code § 11-3-5(I) provides that if for any reason an allocation is not made to any specific category under the GMP on or before December 31 of the year in which the previous allocation has expired, the previous year's allocation for such category shall automatically become the new allocation for the following year for that category until such time as City Council determines to make a different allocation; and

WHEREAS, pursuant to Westminster Municipal Code §11-3-5(I), until such time as City Council makes a different allocation of Service Commitments for 2009, the previous year's allocation of 95.9 Service Commitments is in effect for 2009; and

WHEREAS, Staff has determined that there are sufficient Service Commitments available for the Parcel C Project; and

WHEREAS, City Council finds that it is in the best health, safety, and welfare interests of the City to exempt the Parcel C Project from the 2009 senior housing Service Commitment competition; and

WHEREAS, the Panorama Pointe Subdivision is devoted to senior housing projects and, although the proposed Project does not technically qualify under the GMP as a "in-fill" or "build-out" development, the completion of the Project will nevertheless advance the City's interest in the completion of this important senior housing development, thereby advancing City Council's Strategic Plan goals relative to the provision of available and affordable senior housing within the City of Westminster; and



WHEREAS, in exempting the proposed senior housing project for Parcel C of the Panorama Pointe Subdivision, nothing in this Resolution shall be deemed to be construed as an exemption of any future senior housing projects in the City, and City Council specifically reserves the right to conduct a 2009 competition for Category E Service Commitments or to temporarily suspend consideration of future City senior housing projects until such time as necessary to complete the process of developing new Category E award criteria incorporating sustainable development standards.

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

1. Category E Service Commitment Awards are hereby made to the following project as follows:

<u>Project</u>	<u>Location</u>	<u>Service Commitments Per Year</u>	
		<u>2009</u>	<u>Total</u>
Panorama Pointe Subdivision, Parcel C	S of 84 <sup>th</sup> Avenue & W of 83 <sup>rd</sup> Way	25.2	25.2

2. This Service Commitment Award is conditional and subject to the following:

- a. The applicant must complete and submit all necessary development plans to the City for the required development review processes;

- b. Service Commitment Awards for the Project are non-transferable and may be used only in the development for which the Commitments are being granted.

- c. Except as otherwise provided in this Resolution, this Service Commitment Award shall be subject to all of the provisions specified in the GMP within Chapter 3 of Title XI of the Westminster Municipal Code.

- d. The Service Commitment Award is conditional upon City approval of the Project and does not guarantee City approval of the Project, including, but not limited to, the Project's density or number of units.

- e. The City of Westminster is not required to approve any Comprehensive Land Use Plan amendment, Preliminary Development Plan or amendment, Official Development Plan or amendment, or any rezoning action that may be necessary for development of the property that is the subject of this Category E award, nor shall any other binding effect be interpreted or construed to occur on behalf of the City as part of this Category E award.

3. The award granted by this Resolution is effective as of the date of the Resolution. Any award extended over more than a one-year period may not be drawn prior to January 1 of the year following the effective date of this Resolution. If fewer Service Commitments are needed for the Project in any given year, the unused amount in that year will be carried over to the following year provided the Service Commitments have not expired.

4. In order to demonstrate continued progress on the Project, the following deadlines and expiration provisions apply:

- a. The Project must proceed with the development review process and receive Official Development Plan approval by December 31, 2012, or the entire Service Commitment award for the Project shall expire.

- b. The Project must be issued at least one building permit within three years of Official Development Plan approval, or the entire Service Commitment award for the project shall expire.

- c. Following the issuance of the first building permit for the Project, all remaining Service Commitments for the Project shall expire if no building permit is issued for the Project during any consecutive 12-month period.

5. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.

6. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.

7. Category E Service Commitment awards are intended to be reviewed and updated each year. If it is determined by City Council that additional or fewer Service Commitments are needed in the year specified of any given award, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 23<sup>rd</sup> day of March, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
WESTMINSTER CITY HALL, 4800 W. 92<sup>ND</sup> AVENUE  
MONDAY, March 23, 2009  
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (February 23, 2009)
- 3. New Business**
  - A. Compass Bank Loan to WEDA to Refund the Remaining Series 2005 Bonds  
(North Huron Urban Renewal Area Project)
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, FEBRUARY 23, 2009 AT 7:42 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Dittman, and Board Members Briggs, Kaiser, Lindsey, Major, and Winter. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney for the Authority, and Linda Yeager, Secretary.

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Kaiser, to approve the minutes of the meeting of December 22, 2008 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING ON 4<sup>TH</sup> QUARTER 2008 BUDGET AMENDMENT

At 7:43 p.m., the Chairperson opened a public hearing on the 4<sup>th</sup> quarter budget amendment for the Westminster Economic Development Authority. Mr. McFall stated that staff was present to answer any questions Authority members might have. The supplemental appropriations proposed were thoroughly summarized in the agenda memorandum. There were no questions. Chairperson McNally invited public comment. There was none, and the Chair closed the public hearing at 7:44 p.m.

RESOLUTION NO. 105 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2008 BUDGET

It was moved by Dittman, seconded by Kaiser, to adopt Resolution No. 105 authorizing a supplemental appropriation to the 2008 budget of the Westminster Economic Development Authority. At roll call, the motion passed unanimously.

RATIFICATION OF DEED TRANSFER TO MANDALAY GARDENS URA PROPERTY

Upon a motion by Dittman, seconded by Major, the Board voted unanimously to ratify the transfer of the deed to property in the Mandalay Gardens Urban Renewal Area to the City of Westminster.

ADJOURNMENT

There being no other business to come before the Authority, the meeting adjourned at 8:49 p.m.

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
March 23, 2009



**SUBJECT:** Compass Bank Loan to WEDA to Refund the Remaining Series 2005 Bonds (North Huron Urban Renewal Area Project)

**Prepared By:** Tammy Hitchens, Finance Director  
Robert Smith, Treasury Manager

### Recommended Board Action

Authorize the Executive Director to execute and implement the Commitment Letter with Compass Bank regarding a term Loan for the Westminster Economic Development Authority (WEDA) North Huron Urban Renewal Area (URA).

### Summary Statement

- In May 2005 WEDA issued \$68.3 million Series 2005 Bonds to finance public improvements in the North Huron Urban Renewal Area. These bonds were issued as weekly reset Variable Rate Demand Obligations (VRDO) bonds with a liquidity facility provided by DEPFA Bank, plc.
- In mid-September 2008, a crisis in the credit markets caused the interest rate on these bonds to increase from 1.90% to 9.00% over a two week period.
- Also in mid-September, the rating agencies downgraded the bank that provided the liquidity facility for these bonds, DEPFA Bank Plc, to below investment grade (S&P BBB+) and lowered the rating another notch to BBB in October. Since investors looked to the credit rating of the liquidity provider and not the creditworthiness of the underlying credit (WEDA), the result was that the remarketing agent was no longer able to resell the bonds at any interest rate.
- By the end of November 2008 all of the bonds had been “sold” to the letter of credit bank, DEPFA, with the result that the bonds became Bank Bonds.
- Beginning in October Staff and the Authority’s investment banker contacted several banks to determine their interest in becoming the substitute letter of credit bank for the WEDA 2005 bonds or providing the authority a loan to replace the WEDA Series 2005 bonds outright. Compass Bank was willing to provide a term loan to the Authority to replace the Bank Bonds owned by DEPFA bank and has provided a Commitment Letter outlining the terms of this loan to the WEDA Board for its consideration.
- As part of the agreement for this replacement loan, Compass Bank has agreed to a formula for release of sales tax funds that are not required to meet debt service requirements. These funds will be released for use by the City to meet General Fund operating and other needs.

**Expenditure Required:** Approximately \$67,000,000

**Source of Funds:** Loan proceeds from Compass Bank

**Policy Issue**

Should WEDA sign the Commitment Letter from Compass Bank and continue to negotiate with the Bank to obtain a loan to pay off the existing WEDA Series 2005 Bank Bonds?

**Alternatives**

Do not continue to negotiate with Compass Bank to obtain a loan to purchase the bank bonds owned by DEPFA Bank, plc. This option is not recommended since if the bonds remain bank bonds the amortization of principal is calculated on a 10 year basis, rather than the original 23 year basis. Further, Bank Bond Principal payments are made on a quarterly, rather than an annual basis. This option is not recommended because as Bank Bonds the annual principal payments would exceed those required under the loan agreement by about a factor of three, which would put considerable strain on the cash flow from the URA. Further, at this time of continued credit market crisis, no other bank that Staff and WEDA's investment banker approached has been willing to commit to being a substitute LOC bank or providing a loan to refund the Bank Bonds.

**Background Information**

The City created the WEDA North Huron URA in January 2004. In May 2005 WEDA issued \$68,300,000 of Bonds with a final maturity of December 1, 2028 to finance public improvements in the URA including construction of an interchange at 144<sup>th</sup> Avenue and I-25, widening Huron Street, onsite improvements at the location of the commercial development at The Orchard, and widening of 144<sup>th</sup> Avenue from Huron Street to Zuni. These bonds were issued as Variable Rate Demand Obligation (VRDO) Bonds, to be remarketed each week. Issuing the bonds in this mode required that WEDA obtain a liquidity facility from a bank. WEDA hired DEPFA Bank, plc to provide the direct pay letter of credit facility for these bonds for a fee of 38 basis points (0.38%), much lower than pricing quoted by other banks at the time. At the time the bonds were issued DEPFA Bank plc was rated AA- by Standard & Poors.

From May 2005 to September 2008 these bonds were successfully remarketed each week at a very low rate, averaging about 3.10% during that time, well below the 4.35% rate that WEDA would have obtained if it had done a 25 year fixed rate financing. During this three plus year time frame this saved the Authority about \$1.8 million in interest expense. Cash flow from the tax increment generated by the development at The Orchard and those at 136<sup>th</sup> Ave and I-25 (anchored by Lowe's and Wal-Mart) were more than adequate to service the debt.

In mid-September 2008 the simmering financial crisis in the credit markets came to a head with the declaration of bankruptcy by Lehman Brothers and the "bail-out" of other investment banks by the federal government. These events caused the credit markets to seize up. In one week the rates at which owners of the WEDA paper would agree to retain the bonds increased from 1.90% to 5.90%. At the next week's reset, September 25, the rates increased again to 9.00%.

In July 2008 the rating agencies downgraded the letter of credit bank DEPFA to A and in late September lowered the Bank's rating again, this time to BBB+ which is non-investment grade. A month after that DEPFA was downgraded again to BBB. Investors look to the credit rating of the bank providing the liquidity facility, not the financial soundness of the underlying credit. Though the cash flow from the commercial projects in the North Huron Urban Renewal Area was strong, with the successive downgrades of DEPFA Bank, investors in the WEDA Series 2005 bonds no longer wanted to hold the bonds at any interest rate. Within three weeks, all \$68.3 million of the bonds could no longer be marketed to investors and were "sold" to the bank and became Bank Bonds as called for under the terms of DEPFA's Reimbursement Agreement with WEDA.

If the bonds remained Bank Bonds the interest rate eventually would increase to the Prime Rate plus 1.25% (currently about 4.75%) and the principal would be amortized over a ten year period with payments due quarterly. On February 2, 2009 WEDA had to make its first quarterly principal payment of \$952,625 as required. While cash flow from tax increment in the North Huron URA would have been more than adequate to make debt service under the original terms for the WEDA 2005 bonds, Staff projected after about one or two years existing accumulated surplus revenue would be expended and annual cash flow from tax increment would not be sufficient to continue to make the significantly accelerated debt service payments required as Bank Bonds. Thus, Staff started to contact other financial institutions to determine their willingness to become the substitute letter of credit bank for the WEDA 2005 bonds.

Because of the credit market freeze, banks became unwilling to extend credit to anyone, even other banks. Most banks contacted concerning this credit responded that they were not looking at new credits. However, one financial institution, Compass Bank, a wholly owned subsidiary of Banco Bilbao Vizcaya Agentaria (BBVA), a large Spanish Bank, did come forward with a proposal to provide a term loan to WEDA in an amount of approximately \$68,300,000 to refund the outstanding WEDA Series 2007. On January 20, 2009 the acting Executive Director of the Authority signed a non-binding term sheet that permitted the Denver staff of Compass Bank to proceed with the next step in obtaining formal credit approval for this loan from the parent bank in Spain.

In early February, the BBVA gave its approval for Compass Bank to lend WEDA up to \$69,000,000 so that WEDA could purchase the Bank Bonds from DEPFA. The terms of the loan are outlined in a Commitment Letter to the Authority for its consideration. Staff is currently in negotiations with Compass Bank on the closing date, break fee and swap rate floor. If the terms change substantially in a manner that would negatively impact WEDA, Staff will bring the agreement back to the Board for approval.

The general terms of the loan commitment are as follows:

- Loan Amount: Up to \$69,000,000 (Note: Currently \$66,592,500 of the WEDA 2005 bonds remain as Bank Bonds)
- Term: Seven (7) years, with principal amortized over a 20 year period
- Interest Rate: Variable at 65% of one month LIBOR + 2.3% (Tax-exempt)
- Interest Rate Swap: WEDA will enter into an interest rate swap by which the Authority will receive 65% of one month LIBOR + 2.3% and pay a fixed rate (which at current market rates would be about 4.26%) This represents a perfect hedge of WEDA's variable rate interest exposure (Council / WEDA Board was briefed on the mechanics, benefits and risks of interest rate swaps on January 26 and February 23, 2009)
- Security: Pledged Property Tax and Sales Tax Increment
- Reserve Fund: Funded in an amount approximately equal to the existing Reserve Fund for the WEDA 2005 bonds, or about \$5,101,200.
- Upfront Fee: 0.50% (approximately \$333,000) payable on the Closing Date

For years 1 – 7 of the loan the debt principal payments would be approximately the same as the principal payments of the WEDA 2005 bonds when they were originally issued. At the end of year seven, WEDA will have to refinance the remaining principal of about \$46.8 million. The effective fixed interest rate of about 4.26% under the Loan Agreement and Interest Rate Exchange Agreement proposed by Compass

Bank would be slightly lower than the all-in debt costs budgeted when the bonds were VRDOs (an all-in rate of about 4.50% when adding together the budgeted interest rate of 4.00% and the letter of credit bank and remarketing agent fees).

By signing the Commitment Letter, if the Authority subsequently were to decide to not finalize the loan transaction, WEDA will be obligated to pay Compass Bank a “Break Fee” for liquidated damages and reimbursement of expenses. Requiring a Break Fee, if the borrower should back out, is a common practice that banks require when agreeing to commit funds to a borrower. This fee would be \$50,000.

Staff anticipates returning to the WEDA Board for approval of the final loan documents before May 11.

A copy of the term sheet is attached to this agenda memo. City Staff and the Authority’s investment banker will be at the Board meeting to answer any questions that the Board might have concerning this loan transaction with Compass Bank.

Respectfully submitted,

J. Brent McFall  
Executive Director  
Attachment



March 5, 2009

Mr. David Bell  
Stifel Nicolaus  
1125 17th Street, Suite 1600  
Denver, CO 80202

Mr. Bob Smith, Treasury Manager  
Ms. Tammy Hitchens, Finance Director  
City of Westminster  
4800 West 92nd Ave.  
Westminster, CO 80031

Dear David, Bob and Tammy:

Compass Bank ("Compass" or the "Bank") is pleased to provide a commitment (the "Commitment") to Westminster Economic Development Authority (the "Authority") for: (1) a Tax Free Loan of up to \$69,000,000 (the "Loan Facility"), the proceeds from which will be used to: (a) refund the Authority's Tax Increment Adjustable Rate Revenue Bonds, Series 2005 (the "Series 2005 Bonds"), in the current par amount of approximately \$68,300,000, and (b) pay the costs related to the issuance of the Loan; and (2) an interest rate swap (the "Hedge Facility") with a notional amount sufficient to cover the principal amount and the term of the Loan Facility. The Summary Terms and Conditions of the Loan Facility and Hedge Facility Commitment are attached hereto as Exhibit A.

The Commitment is subject to satisfactory negotiation and execution of all documentation required to consummate the transaction, including but not limited to a Loan Agreement, a standard ISDA Agreement and any related schedules thereto, and any other documentation as required by Bank counsel (collectively, the "Financing Documents"). The terms of the Loan Facility and Hedge Facility shall be substantially based on the Summary Terms and Conditions attached hereto as Exhibit A and other provisions viewed by the Bank and its counsel as appropriate for this transaction and for transactions of this type. Accordingly, it should be recognized that this Commitment and the Summary Terms and Conditions are indicative, but not exhaustive, as to the terms and conditions that shall govern the Loan Facility and the Hedge Facility. Any matters which are not covered by or made clear in this letter or the Summary Terms and Conditions attached hereto shall be subject to mutual agreement between the Authority and the Bank. The Commitment is further subject to the absence of any material adverse change in the financial condition of the Authority prior to the time of closing. In issuing this Commitment, the Bank is relying on the accuracy of the information furnished to it by or on behalf of the Authority.

By acceptance of this letter, the Authority, to the extent permitted by law, agree to indemnify, protect, defend, save and hold harmless the Bank and its affiliates, and its respective directors,

officers, agents, attorneys and employees (collectively, the "Indemnitees") from and against all claims, losses, liabilities, damages, costs and expenses which may be suffered or incurred by or asserted against any Indemnatee as a result of, or arising out of, the negligence or other misconduct of the Authority, or any claim made against the Authority, in connection with this letter or the proposed financing, provided that no Indemnatee shall be entitled to indemnification under this paragraph for matters caused solely by such Indemnatee's gross negligence or willful misconduct. Notwithstanding anything in the foregoing to the contrary, nothing herein shall be deemed or construed as a waiver by the Authority of any of the rights, limits or protections accorded to it for actions which lie in tort or could lie in tort pursuant to the Colorado Governmental Immunity Act, CRS 24-10-101, et seq.

In further consideration of the Commitment hereunder and recognizing that in connection with such Commitment the Bank is incurring various costs and expenses, including without limitation fees and expenses of legal counsel, the Authority hereby acknowledges its obligation to pay such costs and expenses (whether incurred before or after the date hereof) from the proceeds of the Loan Facility or from funds of the Authority at the closing of the Loan Facility. If the transaction is not consummated and the Loan Facility is not granted or the Hedge Facility is not executed for any reason, the Authority's obligation to pay such costs and expenses shall be limited to \$50,000 and, in the event the Break Fee (defined below) is due to the Bank, all amounts paid by the Authority for such costs and expenses shall be counted as an offset to the Break Fee. This obligation shall survive the termination or expiration of the Commitment.

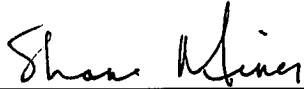
The Authority agrees that this letter and the Summary Terms and Conditions attached hereto are for the confidential use of the Authority and will not be disclosed to any person other than its officers, accountants, attorneys and other advisors and then only in connection with the transaction contemplated hereby and on a confidential basis, except as required by law. Further, this Commitment shall not be assignable by the Authority without the express written consent of the Bank.

If the terms of this Commitment are acceptable to the Authority, please evidence the Authority's acceptance of the provisions of this letter and the Summary Terms and Conditions attached hereto by having an authorized representative of the Authority sign this letter and the Summary Terms and Conditions and return a copy to the Bank on or before 5:00 p.m. on March 24, 2009. If the Loan Facility and Hedge Facility have not been closed prior to April 30, 2009 (the "Expiration Date"), this Commitment shall terminate and the Bank shall have no further responsibility or liability hereunder, provided, however, that if the proposed transaction is not closed on or prior to the Expiration Date, the Bank shall have the option, in its sole discretion and on such terms and conditions as the Bank and the Authority shall mutually agree, to extend the Commitment beyond the Expiration Date.

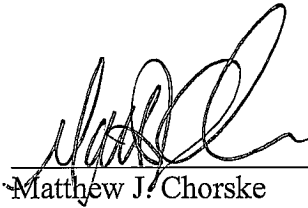
If after acceptance of the Commitment by the Authority, the Authority determines not to close the Loan Facility or the Hedge Facility for any reason within the control of the Authority, the Bank shall be owed a break fee of \$50,000 for liquidated damages and reimbursement of expenses (the "Break Fee"). Additionally, if the Authority consummates a different transaction for a substantially similar purpose prior to December 31, 2009, the Break Fee shall be due to the Bank.

We are very pleased to have the opportunity to support the Authority on this transaction. Please feel free to call me if you have any questions or comments. We look forward to working with you on this transaction and to a long and mutually beneficial relationship.

Sincerely,



Shane M. Miner  
Vice President  
Compass Bank  
Phone: (303) 217-2234  
Fax: (303) 217-2260



Matthew J. Chorske  
Senior Vice President & Manager  
Compass Bank  
Phone: (303) 217-2235  
Fax: (303) 217-2260

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2009

Westminster Economic Development Authority

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

**BBVA COMPASS**  
**TAX FREE LOAN FACILITY**  
**SUMMARY TERMS AND CONDITIONS**

<u>Borrower</u>	Westminster Economic Development Authority (the "Authority").
<u>Lender</u>	Compass Bank Mortgage Corporation ("Lender").
<u>Swap Provider</u>	Compass Bank.
<u>Credit Facility</u>	Direct tax-free loan (the "Loan").
<u>Loan Amount</u>	An amount up to \$69,000,000 (the "Loan Amount").
<u>Use of Proceeds</u>	Proceeds from the Loan will be used to: (a) refund the Authority's Tax Increment Adjustable Rate Revenue Bonds, Series 2005 (the "Series 2005 Bonds") for the North Huron Urban Renewal Project in the current par amount of approximately \$68,300,000, and (b) pay the costs related to the issuance of the Loan.
<u>Term</u>	A term of up to seven (7) years (the "Maturity Date").
<u>Closing Date</u>	Expected to be on or before March 31, 2009 (the "Closing Date").
<u>Interest Payment Dates</u>	Interest shall be payable on the first day of each June and December, commencing on June 1, 2009 and continuing through the Maturity Date.
<u>Principal Payment Dates</u>	Principal payments shall be due on December 1 of each year, commencing December 1, 2009 and continuing through the Maturity Date. The principal payments shall be based on an amortization schedule acceptable to the Bank which would fully amortize the Loan by December 1, 2028. It is expected that the required principal payments prior to the Maturity Date would approximate the existing scheduled principal payments on the Series 2005 Bonds. Any unpaid principal shall be due and payable on the Maturity Date.
<u>Optional Prepayments</u> <u>Before Prepayment Period</u>	The Loan may be prepaid, in whole or in part, on any date prior to the applicable Maturity Date, at the option of the Authority, upon payment of the principal amount of the Loan so prepaid plus accrued interest thereon to the date of prepayment, together with a

prepayment penalty of 3% on amounts prepaid through the fourth anniversary of the Closing Date.

However, if on the date of such prepayment there is a termination payment due and owing from the Authority to Compass Bank under the Interest Rate Exchange Agreement (as defined below), the Authority shall not be entitled to prepay the Loan unless the termination payment is concurrently paid in full at the time of such prepayment. Principal prepayments on the Loan shall be applied by the Lender in inverse order of maturity, commencing with the principal payment due and owing on the Maturity Date.

Certain prepayments may be made without penalty from excess cash flow as described below under "Early Principal Payments".

Optional Prepayment After  
Prepayment Period

The Loan may be prepaid, in whole or in part, on any date after the fourth anniversary of the Closing Date without penalty; provided, however, that if on the date of such prepayment there is a termination payment due and owing from the Authority to Compass Bank under the Interest Rate Exchange Agreement (as defined below), the Authority shall not be entitled to prepay the Loan unless the termination payment is concurrently paid in full at the time of such prepayment. Principal prepayments on the Loan shall be applied by the Lender in inverse order of maturity, commencing with the principal payment due and owing on the Maturity Date.

Upfront Fee

0.50% on the Loan Amount payable on the Closing Date.

Base Margin

2.30% (the "Base Margin").

Index

30-Day LIBOR (the "Index").

Interest Rate

The Loan shall bear interest at a variable rate equal to the Base Margin plus 65% of the Index (the "Variable Rate"). The Variable Rate on the Loan will be reset monthly with interest payable semi-annually, as provided above.

Based on 30-Day LIBOR at 0.4700%, the current Variable Rate on the Loan would be as follows:

30-Day LIBOR	65% of 30-Day LIBOR	Base Margin	Initial Variable Rate
0.4700%	0.3055%	2.30%	2.61%

<sup>1</sup> Rates as of February 18, 2009, and subject to change.

#### Interest Rate Floor

During all times which (i) an Interest Rate Agreement is in effect but Compass Bank is not the Swap Provider or (ii) no Interest Rate Exchange Agreement is in effect, the minimum interest rate payable under the Loan shall be an annual rate of interest equal to 2.925% (the "Base Floor Rate"); provided, however, that upon the occurrence of any one or more of the events set below, the minimum interest rate payable under the Loan shall be an annual rate of interest equal to the Default Interest Rate until such time as such event or events are cured to the satisfaction of the Lender.

#### Default Interest Rate

Upon the occurrence of an Event of Default, the interest rate payable under the Loan shall be an amount equal to the sum of 65% of the Index on the date of occurrence of such event(s) of default, plus the Base Margin, plus 6.50% (the "Default Interest Rate"); provided however, that if Compass Bank is the Swap Provider, the Default Interest Rate shall not apply if the occurrence such event(s) of default is caused by the Swap Provider's failure to make a payment required under the Interest Rate Exchange Agreement. The Default Interest Rate shall be the applicable interest rate payable under the Loan until such time as the applicable event is cured to the satisfaction of the Lender. The Bank will require that no limitation be imposed on the interest payable on the Loan, unless specifically required by law. However, if under such law a limitation must be imposed, an agreed-upon interest recovery, or "clawback" mechanism shall be utilized.

#### Interest Rate Exchange Agreement

The Authority shall be required to enter into, and at all times while the Loan is outstanding, maintain an interest rate protection agreement for the purpose of achieving the synthetic equivalent of a fixed interest rate on the Loan (the "Interest Rate Exchange Agreement"). The Interest Rate Exchange Agreement will provide for the Authority to pay a fixed interest rate and receive a variable rate calculated at 65% of the Index, plus the Base Margin,

providing the Authority with a perfect hedge to the variable interest rate under the Loan. The Interest Rate Exchange Agreement will have a term equal to the Maturity Date and a notional amount equal to the Loan Amount. In the event the counterparty under the Interest Rate Exchange Agreement is not Compass Bank, all amount payable under the Interest Rate Exchange Agreement shall be subordinate to all amounts due and payable to the Lender under the Loan. The provisions of this term sheet are based on Compass Bank as counterparty under the Interest Rate Exchange Agreement.

As of February 18, 2009 an indicative swap rate is as follows:

	<u>7-Year</u>
65% of LIBOR Swap <sup>1,2</sup>	1.96%
Plus: Loan Margin	<u>2.30%</u>
<b>All-in Fixed Rate</b>	<b>4.26%</b>

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<sup>1</sup> Includes Swap Provider fees.

<sup>2</sup> Rates subject to change until locked in writing by the Authority.

#### Set-Off Provision

If Compass Bank is in payment default under the Interest Rate Exchange Agreement and the Authority is not in default under the Interest Rate Exchange Agreement and no event of default has occurred or is continuing under the Loan Agreement, the Authority may offset principal and interest payments it owes to the Lender under the Loan Agreement to the extent of such payment default by Compass Bank under the Interest Rate Exchange Agreement. In connection therewith, the Authority shall assign to the Lender all of its rights to collect the defaulted payments of Compass Bank under the Interest Rate Exchange Agreement which were used to offset amounts the Authority owed the lender under the Loan Agreement.

#### Security

The Loan shall be secured by and payable from the following (collectively, the "Collateral"): (a) the Pledged Revenues (defined below); (b) all funds and accounts established for the Loan, including the Reserve Fund (defined below) and the Supplemental Reserve Fund (defined below); (c) all amounts appropriated to the Authority by the City of Westminster (the "City") pursuant to the

Replenishment Resolution adopted by the City Council of the City on April 11, 2005 (as amended for the Loan, if appropriate), which shall express the City's intent to lend additional moneys to the Authority if necessary to maintain the Reserve Fund the Reserve Fund Requirement (defined below); and (d) an assignment of any agreements that have been entered into between the Authority, City, and/or Forest City Commercial Group, Inc. or affiliates (only if deemed necessary and appropriate after review by the Bank's counsel).

#### Pledged Revenues

The Pledged Revenues shall include (1) the incremental property tax revenue generated on all taxable property within the boundaries of the North Huron urban renewal area; (2) the incremental sales tax revenue generated by a portion of the City of Westminster's sales tax at a rate of up to 2% of taxable sales within the North Huron urban renewal area; and (3) all interest income earned on the funds and accounts established for the Loan.

#### Annual Minimum Sales Tax Pledge

On an annual basis, the sales tax rate that is pledged for debt service may be less than 2%, subject to the following conditions:

- i. The sum of: (a) the proposed annual lower sales tax pledge rate multiplied by the actual taxable sales in the previous twelve months, (b) Projected Pledged Property Tax Revenues (defined below), and (c) Available Supplemental Reserve Funds (defined below), divided by estimated annual debt service results in debt service coverage of at least 1.40x.
- ii. The ability for the pledged sales tax rate to be increased up to 2% shall be preserved and will be required if necessary to meet the 1.40x coverage test in any year, to replenish the Supplemental Reserve Fund to 50% of maximum annual debt service or under an Event of Default.

#### Projected Pledged Property Tax Revenues

For purposes of calculating the Annual Minimum Sales Tax Pledge above, "Projected Pledged Property Tax Revenues" shall mean the most recently certified incremental assessed value of the North Huron urban renewal area multiplied by the sum of the mill levy rates for the various taxing jurisdictions whose mill levy will be pledged for repayment of the Loan.



Debt Service Reserve Fund

There shall be established and maintained at the Bank so long as the Loan and/or the Interest Rate Exchange Agreement remain outstanding a Debt Service Reserve Fund (the "Reserve Fund") in an amount equal to maximum annual debt service (the "Reserve Fund Requirement"). The Reserve Requirement shall be funded on the Closing Date from proceeds of the Loan and/or the existing similar reserve fund from the Series 2005 Bonds.

Supplemental Reserve Fund

There shall be established and maintained at the Bank so long as the Loan and/or the Interest Rate Exchange Agreement remain outstanding a supplemental reserve fund (the "Supplemental Reserve Fund"), which shall be funded with all excess cash flow that has been generated to date (estimated at approximately \$5 million) and all cash flow from the Pledged Revenues in excess of debt service requirements during the term of the Loan. The Supplemental Reserve Fund shall be utilized for payment of debt service to the extent Pledged Revenues are insufficient, and before any draws on the Reserve Fund.

Available Supplemental Reserve Funds

For purposes of calculating the Annual Minimum Sales Tax Pledge above, "Available Supplemental Reserve Funds" shall mean any amounts in the Supplemental Reserve Fund in excess of 50% of maximum annual debt service.

Early Principal Payments

If the Authority prefers to use excess cash flow to retire portions of the Loan prior to scheduled maturities, this shall be negotiated between the Bank and the Authority and allowed without prepayment penalty after the Supplemental Reserve Fund has a balance equal to at least 50% of maximum annual debt service.

Events of Default Under the Loan

Events of Default under the Loan shall include, but are not limited to the following:

- i. a failure to pay interest on the Loan when due;
- ii. a failure to pay the principal or any prepayment penalty on the Loan when due;
- iii. a default under the Interest Rate Exchange Agreement;

- iv. the Authority defaults in the performance of any covenants established under the Loan Agreement or the Interest Rate Exchange Agreement and such default continues beyond the applicable cure period;
- v. the Authority files a petition under the federal bankruptcy laws or other applicable bankruptcy laws seeking to adjust the debt represented by the Loan or the Interest Rate Exchange Agreement;
- vi. 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 Baa1, BBB+ or below;
- vii. the City shall fail to pay any debt subject to appropriation when due.
- viii. interest on the Loan is no longer exempt from taxation.

Additional Debt

Additional debt issued by the Authority which would be secured by a lien on all or any portion of the Collateral shall require the consent of the Bank.

Anticipated Covenants  
of the Authority

The Authority's obligations in connection with the Loan shall be set forth in a Loan Agreement and the related financing documents between the Authority and Lender, and with respect to the Interest Rate Exchange Agreement, the obligations of the Authority shall be set forth in a standard ISDA Agreement and any related schedule thereto entered into between the Authority and Compass Bank (collectively, the "Financing Agreements"). The Financing Agreements shall contain provisions for warranties, representations, legal opinions and covenants of the Authority, as appropriate, and closing conditions which are customary in similar transactions and are in form and substance satisfactory to the Bank in its sole and absolute discretion. The Loan shall include, but is not limited to, the following covenants.

- i. the Authority will continue to operate in accordance with all applicable laws, rules, regulations, and intergovernmental agreements, and keep and maintain separate accounts of the receipts and expenses thereof in such manner that the Collateral may at all times be readily and accurately determined;

- ii. at least once a year in the time and manner provided by law, the Authority will cause an audit to be performed of the records relating to the Authority's revenues and expenditures. In addition, at least once a year in the time and manner provided by law, the Authority will cause a budget to be prepared and adopted. The audits and budgets of the Authority may be presented as a component of the City. Copies of the budget and the audit will be filed and recorded in the places, time, and manner provided by law;
- iii. in the event the Collateral is insufficient or is anticipated to be insufficient to pay principal and interest on the Loan when due, or regularly scheduled payments required under the Interest Rate Exchange Agreement, the Authority shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such default;
- iv. the Authority shall take no action that could have the effect of excluding property from the North Huron urban renewal area.

Reporting Requirements  
of the Authority

The Authority and shall furnish to the Bank:

- i. as soon as available but in any event within 210 days following the end of each fiscal year, a copy of the City's comprehensive annual financial report (CAFR) which shall include audited financial statements of the City and the Authority as a component of the City;
- ii. as soon as available but not later than December 31 of each year a copy of the Authority's annual budget for the next fiscal year;
- iii. promptly upon receipt thereof, a copy of the preliminary assessed value of the North Huron urban renewal area received by the Authority from the county assessor, and the final assessed value of the North Huron urban renewal area received by the Authority from the county assessor.
- iv. within 45 days following the end of each quarter, a summary of the Pledged Revenues received by the Authority during the previous quarter and the last twelve months, separating the amount of property tax revenue and sales tax revenue received;

- v. promptly at the time or times at which such event occurs, written notice of any events likely to have a material adverse effect on the Authority or the Loan;
- vi. as soon as available a copy of any report to the Authority of any auditors of the Authority, following approval thereof by the Authority;
- vii. promptly upon request of the bank, such other reports or information regarding the Pledged Revenue, the financial condition, business or operations of the Authority or the City, or development information related to the project as the Bank may reasonably request and is legally permissible for the Authority to provide the Bank.

Other Conditions

The Bank's proposal to extend the Loan and the Interest Rate Exchange Agreement will be subject to the following conditions:

- i. completion of any remaining due diligence required for the Bank to issue a commitment for the Loan;
- ii. satisfactory review by Bank's counsel of any outstanding agreement(s) entered into by the Authority which may impact the Collateral or the Authority's obligations under the Loan and the Interest Rate Exchange Agreement;
- iii. review and approval by Bank's counsel of all transaction documents;
- iv. opinions of counsel as required by the Bank and Bank's counsel, including but not limited to an opinion from counsel that interest payable on the Loan is tax-exempt;
- v. any authorizing resolution(s) of the Authority required for the issuance and repayment of the Loan and the obligations of the Authority under the Interest Rate Exchange Agreement;
- vi. opinions of counsel as required by the Bank, including but not limited to, opinions from counsel to the Authority (as applicable, general counsel, bond counsel, or special counsel engaged for specific purposes) as to the enforceability of any resolutions authorizing the Loan, the Interest Rate Exchange Agreement and the Bank's security in the Collateral;
- vii. any other reasonable conditions following review of the transaction documents by Bank counsel;

Legal Fees

The Bank will be represented by Kutak Rock. Bank counsel fees shall be paid by the Authority on or prior to the Closing Date.

Indemnification

To the extent permitted by law, the Borrower shall indemnify and hold the Bank harmless from and against any and all claims by reason of the execution and delivery of this transaction, except as may result from the Bank's gross negligence or willful misconduct.

The terms and conditions of the Loan and any Interest Rate Exchange Agreement may not be limited to the above terms and conditions. Those matters which are not covered by, or made clear, in the above outline are subject to mutual agreement of the Bank and the Authority.

ACCEPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

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