



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 7) and Citizen Presentations (item 13) are reserved for comments on items not contained on the printed agenda.

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings**
4. **Report of City Officials**
 - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
 - A. Arbor Day – Earth Day Proclamation
 - B. Community Pride Day
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 citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

8. **Consent Agenda**
 - A. Sale of City Property at West 120th Ave. and Lowell Blvd. to Kinglet, LLC
 - B. Acquisition of Open Space at 9300 Wadsworth Parkway
 - C. Acquisition of Open Space and Future Purchase Option at West 99th Ave and Wadsworth Blvd.
 - D. Memorandum of Understanding re Colorado Task Force –One
 - E. \$5 Million Transfer to WEDA
 - F. Second Reading of Councillor's Bill No. 17 re Rozek Company Business Assistance Package
 - G. Second Reading of Councillor's Bill No. 18 re McBride Brothers LLC Business Assistance Package
 - H. Second Reading of Councillor's Bill No. 19 re East Bradburn Rezone
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
 - A. TABLED Councillor's Bill No. 13 re Country Club Village Business Assistance Package
 - B. Councillor's Bill No. 21 re COP Financing for City's Share of Constructing 144th Ave./I-25 Interchange
 - C. Resolution No. 17 re Approval of Selected Documents for WEDA Bond Issue
 - D. Councillor's Bill No. 22 re Borrowing for Big Dry Creek Wastewater Treatment Plant Expansion
12. **Old Business and Passage of Ordinances on Second Reading**
 - A. Second Reading of Councillor's Bill No. 20 re Approval of City Council Allowance
13. **Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
 - A. City Council
14. **Adjournment**

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING

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, APRIL 11, 2005 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Dixon moved, seconded by Price, to approve the minutes of the meeting of March 28, 2005. The motion passed unanimously.

CITY MANAGER COMMENTS

Brent McFall, City Manager, announced that Council's diligent review of the Strategic Plan had produced no major deviations from the course already charted. Staff appreciated Council's work. Additionally, Mr. McFall congratulated City crews on their efficient handling of measurable snowfall received over the weekend. Westminster streets were passable and safe throughout the storm. The only closure of City facilities had been at Park Hill Recreation Center, which had been closed early, and College Hill Library, which officials of Front Range Community College had ordered closed all day.

CITY COUNCIL COMMENTS

Mayor Pro Tem Kauffman reported that Senator Shawn Mitchell and Representative Bill Berens would hold a Town Meeting in Council Chambers on April 30. Public participation was encouraged.

Councillor Hicks recognized two Boy Scouts in the audience who were working on their citizenship badges. He also recognized Brie Hawk from Westminster who had recently been named Miss Teen Colorado, noting that Ms. Hawk was Westminster's second Miss Teen Colorado; and he had had the privilege of introducing both young women to the Colorado Legislature.

Councillor Davia announced that he had started a three-month leave of absence from his job to assist the Adams County Interfaith Hospitality Network, a non-profit organization, where he would be working on an affordable housing project.

PROCLAMATION

Mayor McNally proclaimed April 16 to be Arbor Day and Earth Day. Councillor Hicks read the proclamation and proudly presented it on Council's behalf to City Forester Rob Davis and Rachel Harlow-Schalk, Environmental Services Coordinator. Councillor Hicks introduced State Forester Ralph Campbell, who announced that the City had been designated a Tree City USA for the 20th consecutive year, and Mandy Wiedeman, who presented Council with the Tree City USA Growth Award.

Mayor McNally proclaimed May 14 to be Community Pride Day. Councillor Davia read the proclamation and presented it on Council's behalf to Patti Wright of Hyland Hills Park and Recreation District, the City's partner in this annual celebration.

CITIZEN COMMUNICATION

Matthew Bernick, 10710 Eliot Circle and President of the Flats at Legacy Bridge Homeowners Association, discussed the past flooding and potential for more flood damage to five units. The cause of the damage was a promised drainage swale that had not been constructed, and he asked that the City take immediate action to remedy the situation.

Carly Nelson, 5603 West 118th Place and a supporter of the Smoke Free Westminster Coalition, urged Council to pass a resolution endorsing the Colorado Legislature's adoption of a Clean Indoor Air Act would prohibit smoking in public places on a statewide basis. Councillors advised Ms. Nelson that they were studying the City's existing ordinance. Her participation in that process was encouraged. As staunch supporters of local control, Council members opined that this matter should be addressed locally rather than through State legislation.

Beverly Wheeler, 911 West 139th Court, inquired about historic preservation plans in her area of the City, about the next COG meeting, and about the possibility of creating a link to the Westminster Window on the City's website. Mr. McFall responded.

Having grown up in Westminster, Michael Bruin of 1255 Ogden Street in Denver, appreciated that Council had carried on the tradition of allowing citizen input and encouraged Councillors' continued work on behalf of the community.

Gina Raney, 7452 Ames Street, asked why citizens could not address Council about Wal-Mart's planned construction of stores in the City. Marty McCullough, City Attorney, explained Council's role in quasi-judicial land use matters and the rights of citizens and applicants to a fair and impartial consideration through the public hearing process. It was imperative for Council members to remain neutral and unbiased before hearings were conducted. Mr. McFall added that hearings on the Wal-Mart proposals were not yet scheduled, but staff anticipated the Planning Commission and City Council hearings would be held in May and June.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authority for the City Manager to execute a contract to sell 2.2 acres of City-owned property at West 120th Avenue and Lowell Boulevard to Kinglet, LLC for \$194,776.01; authority for the City Manager to execute a Purchase and Sale Agreement, as well as all necessary closing documents, for acquisition of the World Vision, Inc. property located on the west side of Wadsworth Parkway south of 94th Avenue, as open space, and to expend \$100,000 of City Open Space Funds to purchase the property; authority for the City Manager to execute a Purchase and Sale Agreement, Option Agreement, and all necessary closing documents for the acquisition of the Family in Christ Church property located on West 99th Avenue at Wadsworth Boulevard as open space and to expend \$300,000 of City Open Space Funds for purchase of the property and \$30,000 for the option; authority for the City Manager to sign a memorandum of understanding between the West Metro Fire Protection District and the City of Westminster to allow Westminster's participation on the Colorado Task Force – One, an Urban Search and Rescue Task Force; authority to transfer \$5 million to the Westminster Economic Development Authority (WEDA) fund to pay off the Vectra Bank Colorado National Association loan with money already appropriated for widening of Huron between 128th and 140th Avenues; passage on second reading of Councillor's Bill No. 17 authorizing the City Manager to execute and implement the business assistance package with the Rosek Company; passage on second reading of Councillor's Bill No. 18 authorizing the City Manager to execute and implement the business assistance package with McBride Brothers, LLC; and passage on second reading of Councillor's Bill No. 19 to rezone the East Bradburn property from O-1 Open District to Planned Unit Development based on findings in Section 11-5-3 of the Westminster Municipal Code.

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

Councillor Davia moved, seconded by Dittman, to approve the consent agenda items as presented. The motion carried unanimously.

COUNCILLOR'S BILL NO. 21 RE FINANCING HALF OF 144TH AVE/I-25 INTERCHANGE

Citing a conflict of interest posed by employment at Hanifen, Imhoff Inc., Mayor McNally recused herself during consideration of this item and the next. Before leaving the room, she passed the gavel to Mayor Pro Tem Kauffman.

Councillor Dittman moved, seconded by Councillor Davia, to adopt, as an emergency, Councillor's Bill No. 21 for Lease-Purchase Financing (Certificates of Participation) not to exceed \$18.5 million to construct the eastern half of an interchange at 144th Avenue and I-25.

Councillor Hicks moved to amend the motion by striking all references to the Mayor and replacing them with Mayor Pro Tem. The motion was seconded by Councillor Dixon and passed unanimously with Mayor McNally abstaining.

At roll call the motion, as amended, carried by a vote of 6:1 with Mayor McNally abstaining.

RESOLUTION NO. 17 APPROVING SELECTED DOCUMENTS FOR WEDA BOND ISSUE

It was moved by Councillor Davia, seconded by Dixon, to adopt Resolution No. 17 providing City approval to selected documents for the Westminster Economic Development Authority (WEDA) Series 2005 Bonds for up to \$70 million, including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the Letter of Credit Reimbursement Agreement, to which the City was party. The motion carried unanimously with Mayor McNally abstaining at a roll call vote.

Mayor McNally returned to Council Chambers, assumed the gavel, and conducted the balance of the meeting.

COUNCILLOR'S BILL NO. 22 APPROVING ISSUANCE OF CWRPDA BONDS

Councillor Dittman moved to adopt Councilor's Bill No. 22 as an emergency ordinance allowing the issuance of approximately \$16 million in Water and Wastewater Enterprise Subordinate Water and Wastewater Revenue Bonds through the Colorado Water Resources and Power Development Authority in a pooled financing with other Colorado municipalities, and authorizing the Mayor, City Clerk, and Interim Finance Director to sign necessary documents on behalf of the Water and Wastewater Enterprise. The motion was seconded by Councillor Price and passed unanimously at roll call.

SECOND READING OF COUNCILLOR'S BILL NO. 20 APPROVING CITY COUNCIL ALLOWANCE

It was moved by Councillor Davia, seconded by Councillor Price, to adopt Councillor's Bill No. 20 on second reading. Said bill provided City Council an allowance in the amount of \$200 per month for Councillors and the Mayor Pro Tem and \$250 per month for the Mayor to cover cell phone, internet service, fax line and car expenses, such as local community costs, effective November 14, 2005. The monthly allowance included an automatic adjustment every two years in concert with the adoption of the two-year budget and tied to the Denver-Boulder Consumer Price Index.

Councillor Dixon reiterated opposition to this bill based on its inadequacy to offset Council members' commuting expenses.

At roll call the motion passed by a 6:1 margin with Councillor Dixon casting a no vote.

ADJOURNMENT:

There was no further business to come before Council, and the meeting adjourned at 7:54 P.M.

ATTEST:

City Clerk

Mayor



Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Proclamation re Arbor Day/Earth Day/ Tree City USA

Prepared By: Rob Davis, City Forester
Anna Maylett, Environmental Services Analyst

Recommended City Council Action

Councillor Hicks will present a proclamation to City Forester Rob Davis and Environmental Services Analyst Anna Maylett proclaiming April 16, 2005, as Arbor Day and Earth Day in the City of Westminster, and accept the Tree City USA Award and Tree City Growth Award as presented by State Forester Keith Wood from the Colorado State Forest Service.

Summary Statement

- A member from the Colorado State Forest Service will present the Tree City USA award to the Mayor and City Council. This will be the 20th consecutive year that the City has received the Tree City USA Award.
- Additionally, the Tree City USA Growth Award will be presented to City Council.
- The Mayor is requested to present the City's Arbor Day and Earth Day proclamation to City Forester Rob Davis and Environmental Services Analyst Anna Maylett.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

No Policy issue identified.

Alternative

No alternatives identified.

Background Information

In 1872, J. Sterling Morton, the editor of Nebraska's first newspaper, proposed a tree-planting holiday to be called Arbor Day. Since that time, Arbor Day celebrations have spread to every state in the nation and to many foreign countries.

The Tree City USA Award is sponsored by the National Arbor Day Foundation and recognizes towns and cities across America that meet the standards of the Tree City USA Program. This program is designed to recognize those communities that effectively manage their public tree resources and to encourage the implementation of community tree management based on four Tree City USA Program elements:

1. A Tree Board or Department (The City's board consists of Rob Davis, Rich Dahl, Bill Walenczak, and Rod Larsen.)
2. A community tree ordinance, (Title XIII, Chapter 3)
3. A community forestry program with an annual budget of at least \$2/capita
4. An Arbor Day observance and proclamation

The Growth Award is also sponsored by the National Arbor Day Foundation to recognize environmental improvement and encourage higher levels of tree care throughout America. It is designed to recognize achievement, to communicate new ideas, and help the leaders of the entire Tree City USA award recipients plan for improving community tree care. The recipient of the award must be a Tree City USA Award winner in at least its second year, it must spend as much money as the previous year on community forestry, and it must reach certain levels in education and public relations, partnerships, planning and management, as well as tree planting and maintenance.

In 1962, Senator Gaylord Nelson of Wisconsin suggested that, due to rising concern over the state of the environment, one day be set-aside in observance of the environment. The first Earth Day was held on April 20, 1970. Earth Day is now celebrated annually on April 22 to raise awareness of and encourage citizen participation in activities that sway the balance of life and the Earth. For the City of Westminster, April 16, 2005, is established as Earth Day in order to coordinate with Arbor Day events. Each year, a different theme is chosen and for 2005 the theme is "Protecting Our Resources." This theme is intended to raise awareness of the Earth's limited resources.

The calendar of events scheduled for Arbor Day and Earth Day are as follows:

Arbor Day and Earth Day School Program: Thursday, April 14, 1 p.m. at Harris Park Elementary

The presentation at the Harris Park Elementary School will educate 4th grade students about the benefits of trees, tree protection, and the history of Arbor Day and Earth Day. Prizes for the Arbor Day poster contest will be awarded, with the first place winner receiving a potted evergreen tree. Second through tenth place winners will receive a 2 to 3-foot English walnut. The students will be shown how to properly plant and take care of their trees as well. All students will receive buttons, tree seedlings, and tote bags from the Environmental Advisory Board, which include educational materials on protecting our resources. The Environmental Advisory Board members will make a presentation on resource protection including recycling and the effects of storm water pollution on surface water bodies.

Arbor Day and Earth Day Celebration: Saturday, April 16, Westminster Forestry will be holding a tree sale to promote species diversity, 8 a.m. to 12 p.m. at City Park Recreation Center, 10455 Sheridan Boulevard

Park Service Division Staff will distribute English walnut (bare root) saplings, white spruce seedlings, educational literature, and wood chip mulch. A tree sale will be held and members of the Environmental Advisory Board will be on hand to distribute information on the Earth Day theme in tote bags. A drawing will be held for a free balled-in-burlap tree. The winner of the drawing will be contacted by phone and need not be present to win. Additionally, members of the Environmental Advisory Board will be on hand to distribute tote bags with information about Earth Day, recycling, and storm water protection.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day call Arbor Day be set aside for the planting of trees; and

WHEREAS, The holiday called Arbor Day is now observed throughout the nation and the world; and

WHEREAS, Trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, are a source of joy and spiritual renewal, and provide habitat for wildlife; and

WHEREAS, Trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, Westminster has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree planting ways; and

WHEREAS, in 1970, Senator Gaylord Nelson of Wisconsin, suggested in a speech that a one-day demonstration be held to show concern for the environment. April 22, 1970, was designated the original Earth Day. Denis Hayes, then a Harvard Law School student, left school to organize the event, which involved thousands of schools, universities, and environmental groups as well as members of Congress and officials and activists throughout the U.S.; and

WHEREAS, The holiday called Earth Day is now observed throughout the nation and world; and

WHEREAS, Annually a national theme is chosen for all to focus their attention on April 22; and

WHEREAS, The year 2005 Earth Day theme is “Protecting our Resources”;

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, April 16, 2005,

ARBOR DAY and EARTH DAY

in the City of Westminster, and urge all citizens to support efforts to protect our trees and to support our City's urban forestry program; urge all citizens to plant trees to gladden the hearts and promote the wellbeing of present and future generations; and further urge all citizens to become aware of water quality impacts.

Signed this 11th day of April 2005.

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Item 6 B

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Proclamation re Community Pride Day

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Councillor Davia will present a proclamation to Open Space Volunteer Coordinator Patti Wright proclaiming May 14, 2005, as Community Pride Day in the City of Westminster.

Summary Statement

- For several years, the City of Westminster and Hyland Hills Park and Recreation District have partnered for Community Pride Day, the largest annual volunteer trash cleanup in Westminster.
- Community Pride Day activities will include litter pickup in rights-of-way, greenbelts, trails, parks, and open space sites throughout the City and District. This cleanup program fosters residents' commitment to a cleaner community and attracts volunteers from scout troops, homeowners associations, schools, COG groups, civic organizations, businesses, families, and church groups.
- The event will conclude at Westminster City Hall with a barbeque sponsored by the City of Westminster and Hyland Hills Park and Recreation District. Food, entertainment, music, door prizes, and fire engine rides are featured at the barbeque.

Expenditure Required: \$ 3,000

Source of Funds: General Fund - Parks, Recreation, and Libraries Budget

Policy Issue

Community Pride Day has been held for many years with enthusiastic support of residents. City policy issues have not been encountered with this event.

Alternative

City Council could choose not to hold Community Pride Day in 2005. However, Staff still believes that this is a significant event that helps clean up the City, contributes to community pride, and fosters individual responsibility and land stewardship.

Background Information

Community Pride Day was established several years ago in recognition of the Keep America Beautiful anti-litter campaign. This popular volunteer cleanup event has grown from a few hundred volunteers to over 1,200 volunteers last year.

On May 14, 2005, volunteers will begin cleaning up along designated routes at approximately 8 a.m. After completion of their cleanup, volunteers meet at Westminster City Hall to celebrate their hard work with food, entertainment, and prizes. The barbeque's entertainment includes music and games provided by Brice Jackman. Hotdogs and hamburgers will be hot off the barbecue grill at City Hall, courtesy of the Westminster Rotary Club chefs, along with soda pop, chips, and dessert. Sno-cones will be donated and served by volunteers from the 1st National Bank of Colorado. Partnership with the Westminster Rotary Club and donations by Wild Oats, Wal*Mart, Doubletree Hotel, Burger King, Fox and Hound Restaurant, and other area merchants are instrumental in providing a quality event for the volunteers.

Mayor Nancy McNally will read the Community Pride Day proclamation and recognize sponsors. A representative from Hyland Hills Park and Recreation District will also speak to the volunteer group. During the barbecue, the Westminster Fire Department will offer safety demonstrations and antique fire engine rides. Westminster's K-9 team will also amaze the volunteers during the barbeque. The Westminster Youth Advisory Panel is volunteering at the barbecue to help make it a success.

The Community Pride Day Committee, which is made up of volunteers from various City departments, Westminster Rotary, and Hyland Hills Park and Recreation District, has met for several months to plan this event.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, Keep America Beautiful, a national nonprofit organization, strives to empower individuals to take greater responsibility for enhancing their community environments, and therefore sponsors the Great American Cleanup; and

WHEREAS, The City of Westminster and Hyland Hills Park and Recreation District have joined together to mobilize citizens to take action in their communities and to support the nation's largest volunteer beautification and improvement project; and

WHEREAS, The goal of Community Pride Day is to bring together youth, government, businesses, families, neighborhoods, and community leaders to help clean up the City and Hyland Hills Park and Recreation District and share pride in our community; and

WHEREAS, Westminster and Hyland Hills Park and Recreation District have organized a cleanup program with sponsors and donations from the community; and

WHEREAS, The caring citizen-volunteers of our communities are ready and willing to do their part to engage in cleanup activities and demonstrate their civic pride and individual responsibility.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby proclaim May 14, 2005,

COMMUNITY PRIDE DAY

in the City of Westminster and call upon all citizens and civic organizations to recognize and support the efforts of the volunteers and citizens who take pride in keeping Westminster and Hyland Hills Park and Recreation District clean places to live.

Signed this 11th day of April 2005.

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Sale of City Property at W. 120th and Lowell Blvd. to Kinglet, LLC

Prepared By: Ruth C. Becker, Open Space Coordinator

Recommended City Council Action

Authorize the City Manager to execute an agreement for the sale of approximately 2.2 acres to the Kinglet, LLC for \$194,776.01, to execute closing documents for the transaction and authorize the proceeds of the sale to be deposited in the Open Space Fund/Open Space Land Purchases Account.

Summary Statement

- In December 1998, the City acquired approximately 54 acres of land south of 120th Avenue and Lowell Boulevard at a purchase price of \$2,200,000 or an average of \$40,740 per acre. The purpose of the acquisition was to preserve an addition to the Big Dry Creek Open Space and Trail Corridor and to acquire additional lands to be resold for future development and/or a school site. Open Space funds were used to finance this acquisition and it was intended that the Open Space Fund would be reimbursed from the sale of portions of this property in the future.
- The City sold 23.876 acres east of Lowell Boulevard and south of 118th Avenue to the Academy of Charter Schools for a charter school and right-of-way on May 27, 2004 for a price of \$2.75 per square foot or a total of approximately \$2.85 Million.
- To complete this project the property to the north and west of the realigned Lowell Boulevard and 118th Place is proposed to be sold to Kinglet, LLC for a portion of Bradburn East or Kinglet Subdivision (see attached map). Approximately 1.5 acres will be sold for \$194,776.01 with the remaining 0.7 acres that was originally donated as right-of-way conveyed to the buyer at no charge.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City approve the sale of the property to Kinglet, LLC?

Alternatives

1. Not authorize the sale of the property. This is not recommended as the sale of the property has been planned for some time and these funds will enable the City to purchase other higher priority open space parcels. Failure to sell this parcel to Kinglet, LLC would leave an awkward undeveloped parcel in a planned development.
2. Authorize the sale of the property, but not at the terms that have been negotiated.

Background Information

On December 14, 1998, City Council authorized the City Manager to purchase approximately 54 acres of land along Big Dry Creek south of 120th Avenue at Lowell Boulevard for open space and other purposes. The Agenda Memorandum from December 14, 1998, states that open space monies were to be used to finance this acquisition and it was intended that the Open Space Fund would be reimbursed from the sale of a portion(s) of this property in the future. The City acquired additional land beyond what was desired for open space to attract an Adams School District #12 (District #12) middle school to the site. The Agenda Memo also pointed out that acquiring a larger property to preserve key open space, then selling a portion(s) later and reimbursing the Open Space Fund, is allowed by the City's Open Space Ordinance.

The 54 acres of land were acquired two weeks later on December 30, 1998 at a cost of \$2,200,000, or an average of \$40,740 per acre. This per acre cost was a blended average of approximately \$80,000 per acre for the 12 acres near 120th Avenue and an average of \$30,000 per acre for the remaining 42 acres.

The original alignment of Lowell Boulevard from 120th Avenue to 118th Avenue on the drawing attached to the original Agenda Memorandum was a wide sweeping arc. Since the acquisition in 1998, Department of Community Development planners and engineers have had an opportunity to evaluate this alignment and have come to the conclusion that it would be better for the City and the development of the abutting land, if Lowell Boulevard and 118th Avenue met in more of a traditional "L" intersection. This design would slow down traffic and enhance pedestrian safety for Bradburn, which is primarily a pedestrian oriented development (see attached site plan), and for the Academy of Charter Schools that is under construction adjacent to this site.

This new alignment changes the amount of property on both sides of the proposed street. It increases the amount of City owned property to the north and west of realigned Lowell Boulevard and reduces the amount of City owned property to the south and east. It also increases the amount of property required for the street right-of-way.

The developers of the apartment area of Bradburn have purchase the 8-acre remainder of the property retained by the Foster family for an expansion of Bradburn. They have offered to buy the City's property north and west of the proposed realigned street and have agreed to use most of the property as a park to be privately owned and maintained, but open to the public.

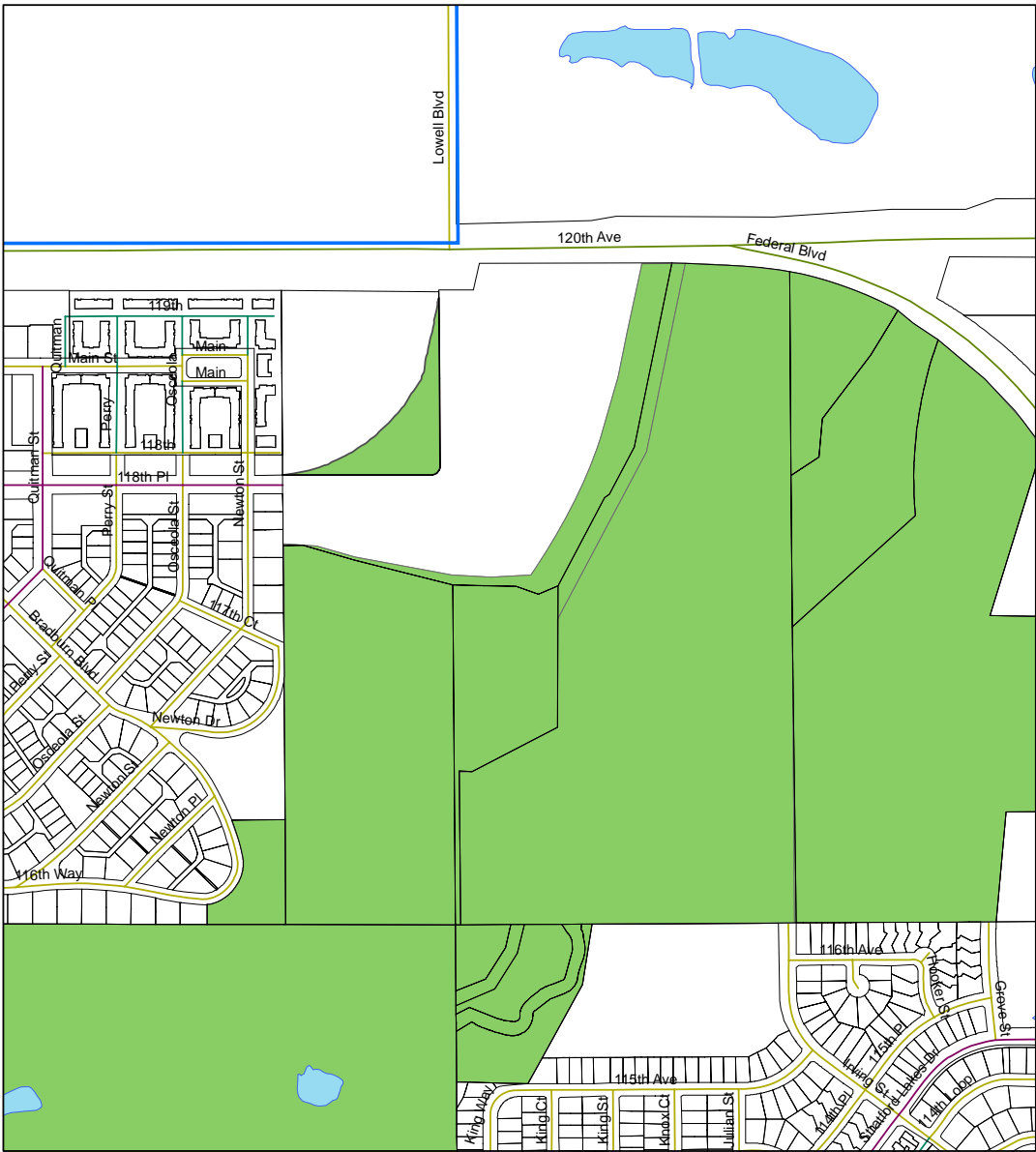
The negotiated purchase price of the property proposed for a conveyance to Kinglet, LLC is \$2.75 per square foot, which equates to \$119,790 per acre, for the area to remain as a park, and \$3.25 per square foot, or \$141,570 per acre, for the area to be developed. Kinglet would purchase 27,278.50 square feet of the park land at a price of \$75,015.88 and 36,849.27 square feet of the development land for \$119,760.13. As part of this negotiated price, the City would also transfer to Kinglet, LLC a 32,209.53 square foot parcel that was donated to the City by the former owners of the Bradburn East property for the original alignment of Lowell Boulevard. The current proposed sale of a total of approximately 2.2 acres is a total purchase price of \$194,776.01 which would be deposited into the Open Space Fund Land Purchases Account to be used for high priority open space acquisitions such as the Metzger Farm, Tanglewood Creek Property (between 128^h and 124th east of Huron), and/or others in the City.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Vicinity Map
Bradburn East Map

Kinglet/Bradburn East Subdivision Vicinity Map



City of Westminster

Map prepared by:
R. Reilly
March 2005





Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Acquisition of Approximately Four Acres of Open Space at 9300 Wadsworth Parkway

Prepared By: Ruth C. Becker, Open Space Coordinator

Recommended City Council Action

Authorize the City Manager to execute a Purchase and Sale Agreement and all necessary closing documents for the acquisition of the World Vision, Inc. property located on the west side of Wadsworth Parkway, south of 94th Avenue, as open space, and authorize the City Manager to expend \$100,000 of City Open Space Funds for the purchase of the property.

Summary Statement

- Staff has negotiated the purchase of the approximately 4 acres located at 9300 Wadsworth Parkway for a purchase price of \$100,000 (or approximately \$.57 per square foot). The property extends from the west side of Wadsworth Parkway, west to Balsam Street, and from just south of the World of Tile parcel to the fence on the north boundary of the homes located on the north side of 93rd Circle. (see attached map) The property is currently marked with a listing sign from Michael Bloom Realty.
- The proposed acquisition parcel is located across the street from the City's Wadsworth Wetlands open space. Acquisition of this parcel would allow a connection with the open space located on the east side of Wadsworth Parkway and the Farmers' High Line Canal Trail.
- This acquisition will preserve about 575 linear feet of open space on the west side of Wadsworth Parkway.
- The owner is willing to sell the property to the City at a price substantially below its listing price.

Expenditure Required: \$100,000

Source of Funds: Open Space Land Purchases Account

Policy Issue

Should the City's Open Space Funds be used for this acquisition?

Alternative

Not acquire the property at this time. This alternative is not recommended because Staff believes the acquisition would provide important open space frontage on Wadsworth Parkway and the acquisition price is very favorable.

Background Information

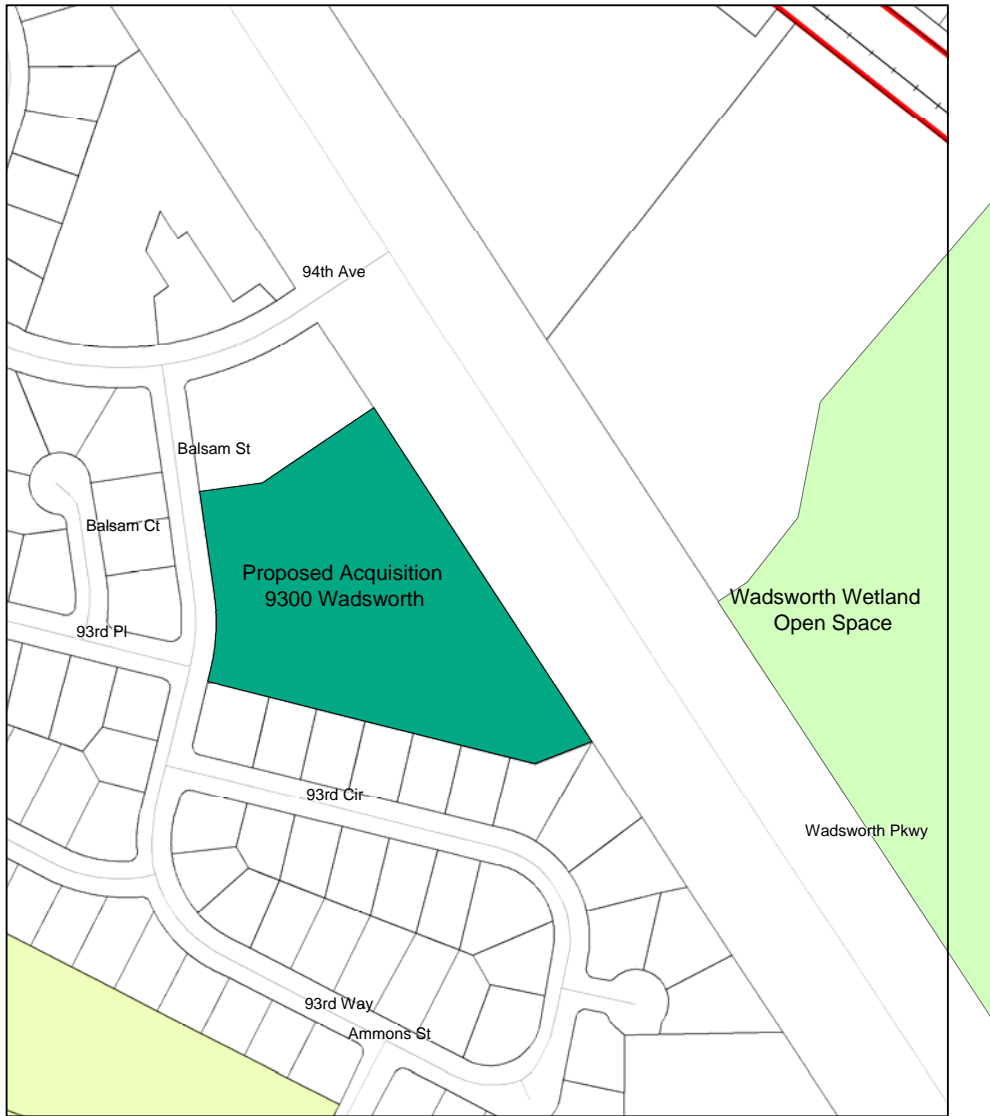
Acquisition of this property will add approximately 4 acres of preserved open space along Wadsworth Parkway, and provide a connection with the City's Wadsworth Wetlands open space located on the east side of Wadsworth Parkway. Acquisition of the property will preserve an additional approximately 575 lineal feet of viewshed along Wadsworth Parkway. The purchase of this property would provide the City with flexibility to redesign and improve the Farmer's Highline Canal Trail. This property has been listed for sale and Staff has negotiated a purchase price substantially below the listing price. This parcel meets the criteria for the selection of open space as established by the City Code, Section 13-5-2, A. Aesthetics, D. Use Potential and F. Acquisition Consideration, as it provides a scenic view corridor, trail linkage and it is available now for a fair price. The City's Open Space Advisory Committee recommends that Council proceed with this acquisition.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Map

9300 Wadsworth Parkway



City of Westminister ®

Scale



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Acquisition of Approximately Two Acres of Open Space at W. 99th Avenue and Wadsworth Boulevard in 2005 and Option to Purchase Adjacent Approximately Two Acres in 2006.

Prepared By: Ruth C. Becker, Open Space Coordinator

Recommended City Council Action

Authorize the City Manager to execute a Purchase and Sale Agreement and Option Agreement and all necessary closing documents for the acquisition of the Family in Christ Church property located on W. 99th Avenue at Wadsworth Boulevard as open space and authorize the City Manager to expend \$300,000 of City Open Space Funds for the purchase of the property and \$30,000 for the option.

Summary Statement

- Staff has negotiated the purchase of the approximately 3.89 acres located between W. 99th Avenue and W. 99th Place and between Wadsworth Boulevard and Jefferson Academy in unincorporated Jefferson County for a total purchase price of \$585,000 (or \$3.45 per square foot). The acquisition is divided into two phases (see attached map). In April, 2005, the City would acquire the western approximately 2 acres of the property for \$300,000. The City will be granted an option to purchase the remaining approximately 2 acres of the property for \$285,000 in February, 2006. The non-refundable option consideration is \$30,000, which will be applied to the purchase price of the option parcel if the option is exercised
- The acquisition of this property will allow the City to preserve a portion of the Big Dry Creek Trail Corridor and assemble a large parcel of open space with the existing City open space to the south of W. 99th Avenue.
- The Department of Community Development staff has considered vacating a portion of West 99th Avenue and realigning the street to improve access to the surrounding property owners and to assemble the open space that will exist north and south of West 99th Avenue into one uninterrupted parcel (see attached map). Staff recommends that the City acknowledge that a portion of the this open space parcel may later be used for road right-of-way for a possible realignment of West 99th Avenue, and that if Council approves this open space acquisition it intends that the road right-of-way may be dedicated from the open space parcel to facilitate planning efforts. If any portion of the open space parcel is later used for road right of way it is intended that the Open Space Fund would be reimbursed for the value of the open space land, if any, needed for the realigned road in excess of the 99th Avenue right of way to be vacated.
- Jefferson Academy officials have expressed a possible interest in acquiring a part of the site north of realigned 99th Avenue next to the school. Staff recommends Council be open to the sale of this land in the future.
- Acquiring this parcel now provides the City with flexibility to preserve key open space, assemble a large parcel of open space along Big Dry Creek and reroute access as needed.

Expenditure Required: \$330,000

Source of Funds: Open Space Land Purchases Account

Policy Issue:

Should the City's Open Space Funds be used for this acquisition?

Alternative

Not acquire the property at this time. This alternative is not recommended because staff believes the acquisition is in a key location along the Big Dry Creek Trail corridor.

Background Information

Staff has been negotiating to purchase this property for several years. Acquisition of this property will expand the open space buffer along the Big Dry Creek trail corridor at W. 99th Avenue and Wadsworth Boulevard and provide a total of approximately 8.2 acres of preserved open space along Wadsworth Boulevard. The property owner is agreeable to dividing the purchase price over two years and that will be beneficial to the Open Space Fund. As negotiated the City will purchase the western approximately two acres of the property in 2005. In 2006, the City will have the choice whether to exercise its option and acquire the remainder of the property. Staff anticipates that the City will exercise its option and acquire the entire parcel. The acquisition of the entire property will preserve an additional approximately 275 lineal feet of view corridor along Wadsworth Boulevard.

The purchase price is based, in part, on an appraisal that was prepared for the Seller in October, 2003. The eastern 1.56 acres of the property are zoned for commercial use (C-1 under the Jefferson County Land Use Code) and the remainder of the property is zoned A-1 for agricultural and low density residential uses. The appraised value, as of October, 2003, was \$3.50 per square foot. The Seller purchased the property in September, 2000 for \$514,600 or \$3.04 per square foot, and the appraisal indicated appreciation since that date. The proposed purchase price for the City of \$3.45 per square foot is slightly less than the appraised value in October, 2003.

The preservation of this property has been a goal of the open space program for many years and is considered a priority by the Open Space Advisory Board. It also meets the criteria for the selection of open space as established by the City Code.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Maps



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Memorandum of Understanding - Colorado Task Force – One

Prepared By: Jim Cloud, Fire Chief

Recommended City Council Action

Authorize the City Manager to sign a memorandum of understanding between the West Metro Fire Protection District and the City of Westminster to allow Westminster’s participation on the Colorado Task Force – One, an Urban Search and Rescue Task Force.

Summary Statement

The Westminster Fire Department has been invited to participate on Colorado Task Force – One, a federally sponsored Urban Search and Rescue (USAR) team. As a participating agency the Westminster Fire Department would be committing to the following:

- Assuring that personnel are able to participate in Colorado Task Force – One activities including deployment on little or no notice, training, meetings, and equipment maintenance assignments. Personnel costs associated with training, meetings and equipment maintenance are the responsibility of a participating agency.
- Providing members with workers compensation, long-term disability, and general liability insurance coverage pursuant to applicable Colorado laws.
- The submittal of personnel costs, including overtime and backfill, to the Sponsoring Organization following activation.

The Federal Emergency Management Agency (FEMA) through the sponsoring organization provides for the following:

- The provision of air or ground transportation for the task force to and from deployment sites
- The cost of sponsored functional training and other non-sponsored training through grants
- The salary, overtime, and benefit costs for deployed personnel
- Personnel backfill costs to maintain local staffing levels in the event of a deployment including salary, overtime, benefits, and provisional pay

The purpose of this task force is to provide assistance in natural and manmade disasters at the local, state and national level.

Expenditure Required: \$0

Source of Funds: General Fund – Fire Department Budget

Policy Issue

Does City Council wish to commit local resources to an Urban Search and Rescue Team that will serve to assist in natural and man made disaster operations on a regional and national level?

Alternative

City Council could direct the Fire Department to decline the opportunity to participate on Colorado Task Force – One. This is not recommended as there is a significant need for intergovernmental cooperation in national disaster assistance.

Background Information

Colorado Task Force – One (CO-TF1) started in 1992 and is one of 28 Urban Search and Rescue Task Forces nationwide under the national Department of Homeland Security, National Urban Search and Rescue Response System. The local sponsoring organization, the West Metro Fire Protection District, has indicated a need to fill eight positions and has approached the Westminster Fire Department to fill these positions. The Management Team of the Fire Department has reviewed this opportunity and with City Council approval is prepared to commit to fill five of these eight positions.

The mission of CO-TF1 is urban search and rescue operations for local, state, and national disasters. CO-TF1 is also equipped and trained to handle weapons of mass destruction incidents encountered during these operations. CO-TF1 personnel have responded to the World Trade Center after 9-11, the Oklahoma City bombing, the Space Shuttle incident, Hurricanes Isabel, Charley, Frances, and Ivan, and the Fort Collins floods in 1997. CO-TF1 can deploy a specialized team of up to 70 personnel. The task force must be able to deploy within four hours by ground and six hours by air for a period of up to ten days.

Personnel for CO-TF1 are all volunteers from area Fire Departments, Police departments, other Emergency Services, and the civilian sector. Current participating agencies on the task force include the sponsoring organization, the West Metro Fire Protection District (FPD), and participating organizations of the Denver Fire Department (FD), Longmont FD, South Metro FPD, Aurora FD, Fort Carson FD, Poudre Fire Authority, Littleton FD, Parker FPD, Arvada FPD, Boulder Rural FD, and Cunningham FPD.

The Department of Homeland Security (DHS), specifically the Federal Emergency Management Agency (FEMA) provides the main funding for CO-TF1. DHS/FEMA is currently providing funding for equipment, training, equipment storage, and management staff. As previously noted, FEMA also provides funding to cover personnel deployment and backfill costs as a result of deployment for participating task force agencies.

This memorandum of understanding has been reviewed and approved as to form by the City Attorney's Office.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

MEMORANDUM OF UNDERSTANDING

1. **PARTIES.** The parties to this Memorandum of Understanding (“MOU”) are: **WEST METRO FIRE PROTECTION DISTRICT**, the Sponsoring Organization of Colorado Task Force – One (“CO-TF 1”), an Urban Search and Rescue (“US&R”) Task Force, herein “Sponsoring Organization;” and _____, a Participating Agency, herein “Participating Agency.”
2. **RECITALS AND PURPOSES.** Sponsoring Organization is responsible for the implementation of Urban Search and Rescue activities pursuant to its memorandum of understanding with the Federal Emergency Management Agency. The purpose of this MOU is too delineate responsibilities and procedures of the Sponsoring Agency and the Participating Agency for US&R activities under the rubric of CO TF 1, and its mission, of search and rescue as delineated in the *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, P.L. 93-288, as amended (“Stafford Act”), Sec. 403(A)(3)(b), and the Federal Response Plan. The provisions of this MOU shall apply to CO-TF 1 activities rendered and performed at the request of local, state or federal governments and in conjunction with, preparation for, or in anticipation of, a State or Presidential declared major disaster or emergency.
3. **DEFINITIONS.** For the purposes of this MOU, the following definitions or descriptions shall be applicable:
 - 3.1 **Activation:** Activation shall be at the direction, control, and funding of the Federal Emergency Management Agency, the calling up of a Task Force, Incident Support Team (IST), or other CO-TF 1 personnel and resources in response to, or in anticipation of, a State or Presidential declaration of a disaster or emergency. The Sponsoring Organization and the State must approve activation of CO-TF 1 assets.
 - 3.2 **Alert:** Placing the Task Force in a state of increased readiness because an event has occurred or is expected to occur, such that CO-TF 1 assets might be activated at some point within a specified time frame.
 - 3.3 **Backfill.** When referring to personnel costs, the term means paying the additional personnel costs/expenses to a Participating Agency resulting from the replacement of a Task Force team member, specifically including overtime paid to the person filling that member’s position or duties while the member is serving on the Team; provided, however, that normal or basic salary/wages for the person filling-in for the member shall not be deemed to be “backfill.”
 - 3.4 **Daily Cost Estimate:** A Task Force estimate of personnel salary/wages, benefits, and backfill expenditures for all members of the Task Force for a 24-hour period of Activation.
 - 3.5 **Deployment:** Transportation and implementation of Colorado Task Force One resources pursuant to an Activation.
 - 3.6 **Equipment Cache List:** The FEMA approved and issued listing of all equipment that a Task Force is required by FEMA to possess for operations. Purchases of equipment are to be made according to this list. The list represents the maximum equipment that should be procured and carried by a Task Force, unless otherwise authorized in writing by FEMA.
 - 3.7 **Emergency:** Any occasion or instance for which, in the determination of the President or the Governor of the State of Colorado, CO-TF 1 assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.
 - 3.8 **Emergency Procurement:** Upon Activation, the purchase by the Task Force of equipment, food and other consumables, medicines and pharmaceuticals, essential to the Urban Search and Rescue mission. The Sponsoring Organization shall perform the initial purchase, of equipment in quantities and at costs as delineated in the approved FEMA Equipment Cache List,

with reimbursement by FEMA. The total amount for the given Activation will be stated in the Activation Order.

3.9 Federal Emergency Management Agency (FEMA): Pursuant to P.L. 93-288, as amended, and Executive Order 12148, as amended, (Stafford Act), the Federal agency responsible for coordinating Federal assistance to State(s) affected by disasters or emergencies, which includes the maintenance and development of the National Urban Search and Rescue Response System.

3.10 FEMA Region: The geographical subdivision of the United States through which FEMA administers its programs, and which is the primary contact for any disaster occurring within that Region. A Regional Director administers each region. The FEMA Regional Office for this agreement is FEMA Region VIII, Denver, Colorado.

3.11 FEMA Sanctioned Training or Exercise: A training session or exercise sponsored by an organization other than FEMA, which has received FEMA sanction.

3.12 FEMA Sponsored Training or Exercise: A training session or exercise arranged for and financed by FEMA, delivered either by FEMA or by another organization or agency through contract or Cooperative Agreement.

3.13 Incident Commander: The person, usually from the local jurisdiction, who is responsible for overall management of an incident.

3.14 Incident Support Team (IST): The IST is a supporting element of the Emergency Support Function (ESF)-9 cell of the Emergency Response Team (ERT). Under the direction of the ESF-9 Leader, it is responsible for the overall command and control of all National Urban Search and Rescue Response System assets deployed for the incident to which it is assigned, and for coordination with local and State officials to meet US&R needs. The ESF-9 Leader is the head of the IST. This individual, a FEMA Regional or Headquarters employee, acts as the first-level authorizing official for ESF-9 expenditures.

3.15 Major Disaster: Any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the State of Colorado or the United States, which in the determination of the Governor or the President causes damage of sufficient severity and magnitude to warrant CO-TF 1 assistance to supplement the efforts and available resources of State, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

3.16 National Urban Search and Rescue Response System (NUS&RRS): The Task Forces, Incident Support Teams, and other personnel and technical teams which respond to disasters or emergencies under the direction and control of FEMA as Emergency Support Function 9 of the Federal Response Plan.

3.17 Participating Agency: A public or private entity that voluntarily participates in the operation of Colorado Task Force One of the FEMA National Urban Search & Rescue System through the provision of personnel, goods, or services.

3.18 Sponsoring Organization: A public entity providing official sanction, and overall sponsorship, of a US&R Task Force. The Sponsoring Organization for this agreement is the West Metro Fire Protection District.

3.19 State: The State for this agreement is the State of Colorado.

3.20 Task Force: An integrated collection of personnel and equipment meeting standardized capability criteria, defined by FEMA, for addressing the special needs of urban search and rescue. For purposes of this Agreement, the term shall mean the Colorado Task Force-One (CO-TF 1).

3.21 Task Force Leader (TFL): The lead official of the Sponsoring Organization who is designated by the Sponsoring Organization and who is responsible for all managerial responsibilities for the Task Force. The TFL is the identified single point of contact within the Sponsoring Organization for FEMA purposes.

3.22 Urban Search and Rescue (US&R): The process of searching for, locating, extricating, and providing for the immediate medical treatment of victims trapped in collapsed structures, regardless of cause.

4. **RESPONSIBILITIES OF SPONSORING AGENCY.** The Sponsoring Agency shall be responsible for all of the following tasks and functions:

4.1 Developing the Task Force, including all operational, functional, and discretionary decision-making regarding the operation of the Task Force, including, without limitation the following:

4.1.1 Generating a proposal that details planned use of FEMA grant funds, determining the budget, and distributing annual grant funds for the operation of CO-TF 1. The Sponsoring Agency shall assure funding availability for US&R activities, including submitting proper funding commitment documents for Alert or Activation prior to actual receipt of any notice of Alert or Activation.

4.1.2 Alerting and notifying the Participating Agencies in the event of a disaster or emergency requiring CO-TF 1 assistance.

4.1.3 Recruiting and organizing members for the Task Force, according to guidelines prescribed in the FEMA US&R Response System Operational System Description, the FEMA US&R Response System Field Operations Guide, and the FEMA US&R Response System Description Manual.4. Registering and qualifying all medical personnel on the Task Force through PHS as a specialized DMAT; and enrolling all medical team members in the PHS, National Disaster Medical System processing system personnel, including, but not limited to, ensuring all System members are registered as Federal excepted temporary volunteers or DAEs in the event of an Activation; credentialing and maintaining appropriate personnel files for all such medical personnel.

4.1.4 Developing, practicing and implementing an internal call-out system for all Task Force members.

4.1.5 Developing a system for maintaining and accounting for US&R specific operational equipment. A list of all non-expendable equipment possessed by the Task Force shall be maintained at all times, which shall designate the method of purchase and proportion of federal funding used for such equipment.

4.1.6 Assuring that any inter-local agreements or memoranda of understandings in support of the US&R capability (as contemplated within this Agreement) parallel the terms, conditions, and responsibilities agreed upon herein between the Sponsoring Organization and FEMA.

4.1.7 Administrative, financial, and personnel management as it relates to the Task Force, including, but not limited to:

a. Submitting to FEMA Headquarters:

- i. A list of all Task Force personnel, including information regarding personnel training, qualifications upgrades, and employment status upon Activation (i.e. State, local, or Federal).
 - ii. SF-171 or OF-612 personnel forms, National Urban Search & Rescue Response System Data Transmittal Sheets, and SF-61 Appointment Affidavits for all Task Force members.
 - iii. An estimate of 24-hour personnel costs during Activations, including backfill, to be updated annually. This estimate should include the pay scales of all Task Force members. The pay scales should include the benefits percentage range for regular time and overtime.
 - iv. A copy of the local or State policy for disaster or emergency work currently in place and utilized by the Sponsoring Organization, to be updated, as needed.
- b. Creating a written “identified relationship” with all members of the Task Force, to include a pay rate used during Activations.
 - c. Scheduling and coordinating annual meetings of all Participating Agency Chiefs (or designees) to review Task Force activities, administrative and financial policies and procedures, and to provide input to increase the efficiency and effectiveness of the Task Force and to review performance of Task Force members.

4.1.8 Purchasing equipment according to the latest National US&R Response System Equipment Cache List; approving all purchases and issuing purchase Orders for the acquisition of items contained in the authorized equipment cache list.

4.1.9 Processing Federal Workers’ Compensation claims for all injured employees of CO-TF 1 members through the FEMA Office of Human Resources Management, as applicable.

4.1.10 Preparing, reviewing and certifying claims for reimbursement which it receives from the Participating Agency for operational expenditures pursuant to System Alerts and Activations, in accordance with cost eligibility guidelines established by FEMA; and approving all reimbursement claims. All reimbursements for Task Force activities are made by FEMA only to the Sponsoring Organization which shall disburse all approved reimbursement funds to the respective Participating Agency within 30 days of receipt from FEMA.

4.1.11 Notifying FEMA when the Task Force is unavailable for any reason, including, but not limited to local and State Activations, inadequate personnel or equipment, or expiration of relevant agreements.

4.1.12 Initiating, coordinating, and overseeing Task Force readiness evaluations.

4.1.13 Conducting an annual meeting of the chiefs or designated leaders of all Participating Agencies for the purpose of updating them on CO-TF 1 and, FEMA National Urban Search and Rescue System operations.

5. **RESPONSIBILITIES OF PARTICIPATING AGENCY.**

Each of the Participating Agencies shall be responsible for all of the following tasks and functions:

5.1 Assuring that the Participating Agency's personnel are able to participate in CO-TF 1 activities.

5.1.1 Release team members from their then current assignments and duties:

- a. for deployment with little or no notice;
- b. to attend two functional training exercises per year for a maximum of 72 hours
- c. for Equipment Cache Maintenance assignments for a maximum 12 hours

5.1.2 Release team managers for the Task Force Managers meeting held on the Second Thursday of each month commencing at 0900 and generally running 3 hours in length.

5.1.3 Personnel shall be made available regardless if they are then currently on or off-duty, to assure compliance with the training requirements of that team's membership.

5.1.4 All team members will have an annual baseline medical review and examination to be scheduled and paid for by each respective Participating Agency. If a member fails such review and examination, the Participating Agency shall notify the Sponsoring Agency as soon as possible. A letter stating the names of the members that have passed the review and examination will be sent by the Participating Agency to the Sponsoring Agency no later than November 30th of each calendar year.

5.2 Providing its members with basic workers compensation, long-term disability, and general liability insurance coverage pursuant to applicable Colorado laws.

5.2.1 Each Participating Agency shall obtain and maintain at all times during the term of this Agreement workers compensation and related benefits, including survivor death benefits, under applicable law for each of its member in the event a member sustains injuries or dies from injuries sustained while participating in non-FEMA sanctioned operations, in the same manner and on the same terms and conditions as if the injury or death were sustained within its own jurisdiction.

5.2.2 Because none of the training or administrative activities conducted by CO-TF 1 is FEMA sponsored and is not subject to federal coverage, each Participating Agency is responsible for providing, at the discretion of the Agency, applicable worker's compensation, disability, and general liability insurance, coverages regarding its personnel while taking part in CO-TF 1 training and administrative activities.

5.3 Submit all personnel costs, including overtime and backfill, to the Sponsoring Organization following an Activation.

5.3.1 The Participating Agency shall submit, to the Sponsoring Agency, Individual Team Member Workbook detailing all salaries for which they are seeking reimbursement. Additionally, a record of disbursement (e.g. payroll printouts), shall be attached. Any request for funds not distributed for personnel costs prior to the reimbursement claim shall be identified. This information shall be forwarded to the Sponsoring Agency within thirty (30) days of Task Force Demobilization.

5.3.2 Errors in the accuracy of the reimbursement claim may result in a denial of the claim and an adjustment of the final reimbursement to the Participating Agency.

5.4 Each Participating Agency must have a signed Participating Agency Agreement on file with the Sponsoring Organization as a condition of payment.

5.5 Each Participating Agency shall provide, upon the request of the Sponsoring Organization, a copy of their Annual Audited Financial statements. A copy of any audit

completed as required in the U. S. Office of Management and Budget Circular A-133 Compliance Supplement, shall be forwarded to the Sponsoring Organization.

6. PROCEDURES FOR TASK FORCE ADVISORY, ALERT, AND ACTIVATION.

There are two stages preceding an Activation: an Advisory and an Alert. Once activated, a deployment may follow. The following outlines each stage of the process.

6.1 Advisory

When a significant event occurs that may result in a need for CO-TF 1 resources, FEMA or the State will issue and transmit an advisory notice to the Task Force Sponsoring Organization, consisting of a brief situation report.

Advisories are for informational purposes only and do not require any specified level of response by the Participating Agency. CO-TF 1 members will not be reimbursed for any costs incurred after an advisory notice is issued.

6.2 Alert

When the State or FEMA determines that CO-TF 1 resources may be needed for response within a specified period of time, the determining agency will contact the Sponsoring Organization to determine the availability of the Task Force for service and to formally request the Task Force to respond for such service. FEMA may request that the Task Force or Region contact the State to coordinate availability.

6.2.1 The Sponsoring Organization and Task Force Leader will review the Task Force's availability for duty and determine whether the Task Force can be placed on Alert.

a. If the Task Force is available, FEMA or the State will transmit an Alert Notice/Order that specifies that the Task Force may be activated within a specified period of time to the Sponsoring Organization. West Metro will notify each of the Participating Agencies of the Task Force's Alert status.

b. When the Task Force has been placed on Alert, the Sponsoring Organization may incur certain administrative costs (personnel costs related to call-down, rostering and backfilling, confirming vendor arrangements, and equipment cache preparation), not to exceed the limit noted on the Alert Notice. Alert funds may not be used to purchase equipment, food or other consumables, medicines and pharmaceuticals, or purchase vehicles or aircraft. Alerts commence at the time noted on the Alert Order, and end at the time of Activation, or at the time noted on the Demobilization Order.

6.2.2 Alert notification may initially be given by a verbal notice followed by a written confirmation, normally within 12 hours of the initial verbal notice.

6.3 Activation

When FEMA or the State determine that CO-TF 1 resources are needed for

possible deployment, the determining agency will contact the Sponsoring Organization to determine the availability of the Task Force for service and to request the release of the Task Force for deployment.

6.3.1 The Sponsoring Organization and the Task Force Leader will review the Task Force's availability for duty. The Sponsoring Organization shall notify the Participating Agencies of the activation request, and report to requesting party within 1 hour of the Activation request whether it will accept the mission.

6.3.2 Upon acceptance of the Activation, the State or FEMA will issue to the Sponsoring Organization, a written Activation Order. The Activation Order will contain: (1) the official time of the Activation; (2) the authorized mode of transportation; (3) the dollar limit that the Sponsoring Organization may spend on emergency procurement; and (4) a point of contact for further instructions. Equipment expenditures beyond the amount specified will not be reimbursed.

6.3.3 Nothing contained in this Agreement shall be construed to compel the Sponsoring Organization or the Participating Agencies to respond to any Activation request when the Task Force, in the opinion of the Task Force Leader, and the Sponsoring Organization, is unavailable. Task Forces shall state the reason(s) for declining a mission request, for documentation purposes.

6.4 Deployment

6.4.1 Within 6 hours of Activation, the Task Force must be fully assembled with its equipment palletized and ready to be loaded at its designated Point of Departure.

6.4.2 FEMA or the State will provide air transportation, or will provide or reimburse the Sponsoring Organization for ground transportation, as needed, from the designated Point of Departure to the Point of Arrival. FEMA or the State will provide air or ground transportation from the Point of Arrival to the Mobilization Center, and as needed during the period of Activation.

6.4.3 Emergency Procurement by the Sponsoring Organization is authorized for 72 hours following the time of Activation. Expenditures beyond the amount specified in the Activation notice will not be reimbursed. All emergency procurement must be confined to purchase of approved equipment in approved quantities. Only equipment listed on the latest approved Equipment Cache List is approved for purchase, and only in the quantities and within the cost constraints listed. FEMA reserves the right to review all such purchases and reject reimbursement for those purchases deemed by FEMA to be unreasonable in light of procurement limitations, those which exceed cost caps identified in the cache list, and those duplicative of prior procurements with Federal funds.

6.4.4 After the initial Emergency Procurement, the Task Force will not individually procure supplies during an Activation. All further purchasing and resupply will be accomplished through the State or the IST. In the event of a Federal deployment, FEMA will not reimburse for purchases made during an Activation, after the period of authorization for Emergency Procurement has terminated.

6.5 *Demobilization*

6.5.1 When the Incident Commander has determined that the assistance of CO-TF 1 is no longer needed, the Task Force will be demobilized or reassigned.

6.5.2 When the Task Force is demobilized, the State or FEMA will issue a written Demobilization Order to the Task Force. This order will include: (1) the official stand-down time; (2) the permitted cache rehabilitation period; (3) the permitted administrative and personnel rehabilitation time; and (4) other information deemed necessary.

6.5.3 Upon receipt of Demobilization Order, the Sponsoring Organization will notify each of the Participating Agencies of the demobilization and the tentative schedule of return.

6.5.4 When a Task Force is demobilized, the IST will order transportation to return the Task Force to its Point of Departure.

6.5.5 Upon demobilization, the ESF-9 cell maintains management of the Task Force until it returns to its Point of Assembly.

7. **COMMAND AND CONTROL**

7.1 Sponsoring Organization

7.1.1 During all phases of operations, West Metro Fire Protection District will maintain overall command and control of the management of CO-TF 1 activities. As the Sponsoring Organization, it is responsible for:

- a. Logistically supporting the Task Force, including coordinating Task Force activities in the field, and resupplying the Task Force while deployed.
- b. Provide periodic updates to the Participating Agencies or CO-TF 1 operations

7.2 Task Force Leader

7.2.1 During all phases of operations the Task Force Leader shall maintain command and control of all CO-TF 1 resources. The TFL will coordinate all CO-TF 1 operations with FEMA, the State, and/or the Incident Commander, as appropriate and is responsible for:

- a. Coordinating with the Incident Commander to identify and address US&R needs; and
- b. Interfacing with local government officials, including the Incident Commander.

The Task Force Leader assumes limited tactical management of CO-TF 1 operations based on the Incident Objectives as outlined by the Incident Commander. The TFL also shall notify the IST that the Task Force is available for reassignment.

8. **TRAINING AND EXERCISES**

8.1 FEMA-Sponsored Functional Training

FEMA-Sponsored Functional Training shall be performed at the direction, control and funding of FEMA in order to develop technical skills of US&R Response System members.

8.2 Non-FEMA Sponsored Training, Drills and Exercises

8.2.1 Non-FEMA Sponsored training, drills and exercises will be performed at the direction, control and funding of the Sponsoring Organization, in order to develop or maintain the US&R proficiency of the Task Force. These may include other Federal, State and Local Agency exercises.

8.2.2 The Sponsoring Organization may authorize CO-TF 1 to utilize the Equipment Cache for non-FEMA sponsored training, drills and exercises, provided that, after such non-FEMA sponsored training, drills or exercises, the equipment cache is returned to its original, pre-deployment condition, including the repair or replacement of any equipment lost, damaged, or destroyed in the course of the drill, training or exercise. The return of the equipment shall be accomplished within a reasonable amount of time after such non-FEMA sponsored training, drills and exercises. FEMA will not reimburse, nor be liable for, any loss, theft or damage to cached equipment used during non-FEMA sponsored training, drills and exercises.

8.2.3 The Sponsoring Organization may utilize grant funds for training, drills, and exercises, and rehabilitation of the equipment cache after such activities.

8.2.4. FEMA will not be financially or legally responsible for non-FEMA sponsored training, drills and exercises.

9. **FINANCIAL AGREEMENTS**

9.1 Reimbursement of Salaries and Costs

9.1.1 FEMA shall reimburse the Sponsoring Organization for the salary, including benefits, of each Task Force member in accordance with the Standard Pay Policy.

a. Upon Activation, FEMA may advance up to 75% of the estimated personnel costs for that Activation. In order to receive the advance of funds, the Task Force must submit a "Request for Advance or Reimbursement" form (SF 270). The estimate of costs must be based on the pay scales and Daily Cost Estimate submitted to FEMA under the terms of this Agreement. The Assistance Officer must approve the advance of funds.

b. FEMA will reimburse the Task Force for the salaries, including benefits, of a reasonable number of additional personnel involved in mobilization, support, and demobilization of the Task Force. This cost shall not exceed ten percent (10%) of the total personnel costs for the Activation.

9.1.2 FEMA will reimburse the Sponsoring Organization for any reasonable costs incurred in transporting personnel or equipment from the Point of Assembly to the Point of Departure, including hiring trucks and buses, and fuel costs.

9.1.3. The Sponsoring Organization will submit certified and notarized annual financial reports to FEMA Headquarters, in accordance with Cooperative Agreement, Article VI, Reports.

9.2 **Reimbursement Request**

9.2.1 The Sponsoring Organization shall submit all personnel costs to FEMA Headquarters following Activation. The Sponsoring Organization shall submit a Master Personnel Costs Workbook Excel Spreadsheet detailing all salaries for which the Sponsoring Organization is seeking reimbursement, and a record of disbursement (e.g. payroll printouts), to FEMA. Any funds not distributed for personnel costs as delineated in the spreadsheet shall be returned to FEMA.

a. A copy of the individual Activated Member's, Participating Agency Payroll/Timesheet for the period containing the reimbursement request, is required for each individual for whom the Participating Agency is seeking reimbursement.

9.2.2 Salary Reimbursement for Deployed Personnel:

a. FEMA will reimburse for the regular salary, overtime, and variable benefits of the individual members that are activated.

NOTE: Reimbursement for Task Force Members scheduled for duty shall be made at the Members Straight Time Rate. For any hours outside the members normal work schedule the reimbursement will be made at the Members normal Overtime Rate.

b. Each day of a deployment is considered a workday until the Activation is terminated and the Task Force returns to its point of original assembly.

c. All FLSA-exempt personnel will be reimbursed at their respective normal hourly rates as determined by their respective salaries for all the hours worked during the Activation. Such exempt employees will not receive overtime compensation for any time worked in excess of the maximum hours established by FLSA.

9.2.3 Backfill:

a. FEMA will pay the costs of backfilling incurred by each Participating Agency employer for all Task Force members while they are activated. Backfill shall consist of the additional expenses incurred by the Participating Agency for the replacement of a Task Force member in the member's position, limited to overtime expenses incurred when necessary to provide coverage for the member's position or duties while absent from normal employment.

i. FEMA will reimburse the Participating Agency for overtime compensation and any increase in variable benefits that are generated in backfilling for the activated member. If the deployed member's position is not filled during the Activation, no backfill expenses will be reimbursed.

ii. Each Participating Agency may include all acting pay differentials and overtime that results from the deployment and shall include that data in the Individual Team Member Workbook spreadsheet.

iii. The Participating Agency shall indicate the name of the Task Force member for each backfill expense for which reimbursement is requested, as well as the chain of acting position, if applicable. When utilizing the forms, the Participating Agency shall enter each backfill position on a separate line. (If one individual was assigned to backfill the deployed member's position for the duration of the activation they can listed on one line.)

9.2.4 Personnel Rehabilitation:

a. FEMA will reimburse the Sponsoring Organization for salaries and benefits of any deployed Task Force member who is scheduled to work, upon return from an Activation, during the allotted personnel rehabilitation period, as specified in the Demobilization Order.

i. Each Task Force Member is allowed up to 72 hours of rehabilitation time commencing immediately upon going off-duty after returning home from Activation. This period is intended to provide personal time-off for those individuals who were deployed, and is not

reimbursable as a personnel cost of the Participating Agency employer. However, FEMA will reimburse for the overtime cost incurred by the person who backfills for this Task Force member's position during the rehabilitation period. If there was no scheduled work for the returning Task Force member during the 72-hour period, no eligible backfill expenses will be reimbursed.

9.3 Property Management

9.3.1 The Sponsoring Organization has ownership and management responsibilities for all equipment purchased with grant funds (including that purchased under emergency procurement), equipment replaced after a deployment by FEMA (provided the equipment which was replaced was the property of the Task Force), and equipment purchased with non-FEMA subsidized State and local funds.

a. Equipment purchased by FEMA for the Task Force will be maintained by the Sponsoring Organization as custodians of the equipment until the termination of the MOU between the Sponsoring Organization and FEMA. At the termination of that MOU, any equipment owned by FEMA will be returned to FEMA for use by other System assets. All property purchased under this agreement shall be subject to the requirements of the Cooperative Agreement, General Provisions, Section 13.

9.3.2 Excess and Surplus Federal Property

a. The Sponsoring Organization may acquire excess Federal property according to guidelines and stipulations of the Cooperative Agreement, Agreement Articles, Article XII (2).

b. Excess Federal property transferred to the Sponsoring Organization shall remain the property of FEMA unless transferred to the Task Force. Transfer may occur only during a presidentially declared disaster in response to an immediate threat to life and property, in accordance with the Stafford Act, Sec. 403(a)(1). The FEMA Office of General Counsel will evaluate all requests for transfer on a case-by-case basis. To be considered, the request must: (1) involve US&R activity; (2) be accompanied by the request for assistance by the State or local government; (3) involve an entire Task Force; and (4) be submitted during the period of the emergency.

9.3.3 The CO-TF 1 may utilize the Equipment Cache for a local or state Activation, provided that, after such Activation, the equipment cache is returned within a reasonable time to its original, pre-deployment condition, including the repair or replacement of any equipment consumed, lost, damaged, or destroyed in the course of the Activation. The Participating Agency acknowledges that FEMA will not be responsible for, and thus will not reimburse the Sponsoring Organization or Participating Agency for, any costs associated with such use, including any consumption, damage, destruction, repair, or rehabilitation of cached equipment during or after such an Activation, nor shall FEMA be liable for any injury to persons or damage to property that occurs from such use.

a. Use of cache equipment other as delineated in Section VII(B)(3) and Section VIII(B)(6) is not authorized by FEMA, and the State and/or Participating Agency shall be solely responsible for all legal and financial liabilities arising out of such unauthorized use.

9.4 Reports, and Information

Participating Agency acknowledges and agrees that all information pertaining to and/or generated during a federal Activation, including interim and final reports, data analyses, special methodology, findings, and their related documents and work products, including reports, work sheets, survey instruments, computer tapes, photographic and video graphic documentation, and other physical materials and products produced by the Task Force pursuant to this Agreement shall be deemed official products of work, owned by FEMA, under applicable federal law. As custodians of such federal materials, the Sponsoring Organization will catalog all such materials, and submit a full index to FEMA Headquarters within 30 days after the Demobilization. Such official products of work shall be retained according to the provisions of the Cooperative Agreement, General Provisions, Section 4. Except for internal training of System members, this information shall not be used or released without the express, written consent of the FEMA Office of General Counsel.

9.5 All financial commitments required of the Participating Agency as set forth herein are made subject to the availability of funds during the current fiscal year of the Participating Agency and shall be subject to annual appropriation of such funds by such Agency's governing body, and shall not be deemed multi-year financial obligations under Article X, Section 20 of the Colorado Constitution.

10. **LIABILITY AND WORKERS' COMPENSATION**

10.1 Liability of Individual Task Force Members

10.1.1 The signature of a representative of the Sponsoring Organization and of the Participating Agency shall constitute the consent of such governmental entities for the purposes of P.L. 93-288, as amended, Sec. 306(a), which, in relevant part, states: "In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government."

10.1.2 The Participating Agency acknowledges and agrees that, upon Activation, each Task Force Member (other than those who may be activated as Disaster Assistance Employees) shall be appointed as an excepted temporary federal volunteer, under the authority of the Stafford Act, Sec. 306(b)(1). This appointment shall not interfere with the Task Force member's seniority or pension rights under applicable state or local laws and regulations, and should not be interpreted as an interruption of continuous service for such pension purposes.

10.1.3 As excepted temporary federal volunteers, Task Force Members shall be considered federal employees solely for the purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. Sec. 2671 et seq.

10.1.4 The Participating Agency further acknowledges that, upon Activation, among other applicable provisions of federal law, the Non-Liability clause as stated in Stafford Act, as amended, Sec. 305, shall be in full force and effect, which in part provides: "The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal government in carrying out the provisions of this Act."

10.2 Workers' Compensation, Long Term Disability, and Death

10.2.1 Immediately upon Activation, as excepted temporary federal volunteers, and when participating in FEMA-sponsored Functional Training or FEMA sanctioned training

and exercises, Task Force Members shall be eligible for coverage under the Federal Employees' Compensation Act

10.2.2 All Federal workers' compensation claims arising from such training or Activation shall be filed with the FEMA Office of Human Resources Management within the statute of limitations delineated in the Federal Employees' Compensation Act.

10.2.3 As employees of the Participating Agency, Task Force members may also file a claim under applicable State workers' compensation statutes and regulations. Depending upon applicable State law, the State workers' compensation board may be responsible for payment of the claim under existing agreements, which may be offset by the Federal workers' compensation award. The Federal government will not reimburse the State for any workers' compensation benefits or payments made pursuant to the State workers' compensation statutes or regulations.

10.2.4 In the event of covered injury, illness or death, the benefit levels and schedule of awards for federal workers' compensation shall be those delineated in the Federal Employees' Compensation Act, as administered by the U.S. Department of Labor.

10.2.5 In the event of the death of a Task Force member in the line of duty, the member shall also be considered a member of a Federal Rescue Squad for the purposes of the Public Safety Officers Benefits Act, 42 U.S.C. Sec. 3796 et seq.

The member is only entitled to federal insurance coverage when participating in FEMA sponsored training, or while on a Federally activated disaster response. The Participating Agency acknowledges and agrees that none of the training conducted by CO-TF 1 is FEMA sponsored.

10.2.6 Participating Agency's personnel who participate in CO TF 1 training exercises shall be subject to applicable State workers' compensation statutes and regulations and the Agencies' individual liability insurance policies, if any.

10.3 Federal Employment Status

10.3.1 In accordance with the common law rule of "Going and Coming," federal employment status shall be interpreted to attach when a Participating Agency employee-member: (1) reaches the Point of Assembly, if the member is to respond as part of the Task Force; (2) leaves his home or place of business, if the member is to respond as part of the Incident Support Team or the Field Assessment Team; or (3) reaches the Point of Assembly, if the member is to respond with the activated Task Force to serve on the Incident Support Team.

10.3.2 In accordance with the common law rule of "Going and Coming," Federal employment status shall be interpreted to detach when a Participating Agency employee-member: (1) departs the original Point of Assembly, if the individual returns with the Task Force, and the Task Force returns as a group to the Point of assembly; (2) arrives at his or her home, if the individual responded as part of the Incident Support Team or Field Assessment Team, and returns independent of the Task Force; or (3) arrives at his or her home, if the Task Force did not return from its Point of Departure to its Point of Assembly.

10.3.3 The interpretation of scope of employment may be subject to the law of the State and not necessarily under applicable federal law.

10.4 The Participating Agency acknowledges that, except for Federal Activation, FEMA-Sponsored Functional Training, and FEMA-Sanctioned Training, all workers' compensation and

tort liability arising from all other activities, including non-FEMA sponsored drills, training, and exercises shall not be the responsibility FEMA

10.5 The Sponsoring Organization, and FEMA is not responsible for the payment or reimbursement of any pension payments or benefits, which may become due to the Participating Agency's employee member as a result of activities arising under this Agreement.

10.6 Nothing herein shall be construed as a waiver by either party of the immunities and defenses available under State law, including without limitation, the Colorado Governmental Immunity Act, as it may be amended from time to time.

11. **CONDITIONS, AMENDMENTS, AND TERMINATION**

11.1 Colorado Task Force One, will not discriminate against any employee or applicant for employment on the grounds of race, color, religion, sex, or national origin in fulfilling any and all obligations under this Agreement.

11.2 Use of federal facilities, supplies and services shall be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination. Distribution of supplies, processing of applications, provision of technical assistance and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

11.3 Any provision of this agreement later found to be in conflict with federal law or regulation, or invalidated by a court of competent jurisdiction, shall be considered inoperable and/or superseded by that law or regulation. Any provision found inoperable is severable from this agreement, and the remainder of the Agreement shall remain in full force.

11.4 This agreement may be modified or amended only with the written agreement of all of the parties. All amendments shall be attached to this Agreement. This Agreement shall be superseded by, and shall terminate on the date of signing of, a new Memorandum of Understanding.

11.5 This Agreement may be terminated by either party for any reason upon 30 days advanced written notice. West Metro Fire Protection District, as the Sponsoring Organization reserves the right to terminate this Agreement, and remove from the Task Force any Participating Agency that does not perform to the standards outlined for CO-TF 1 participation. This includes, but is not limited to, failing to abide by: (1) any provision of this Agreement; (2) any applicable federal law or regulation; (3) any relevant System operational or procedural guidance; and (4) any applicable code of conduct promulgated by FEMA.

12. **EXHIBITS**

12.1 National Urban Search & Rescue Response System Reimbursement Procedure (CD)

12.2 Billing and Appeals Procedures

WEST METRO FIRE PROTECTION DISTRICT

By: _____
President

Date: _____

Attest:

Secretary

Approved as to form:

Legal Counsel

Chief of Department

CITY OF WESTMINSTER

By: _____
City Manager

Chief of Department

Date: _____

Attest:

Approved as to form:

Westminster City Attorney's Office

EXHIBIT

Billing and Appeals Procedures

I. SPONSORING ORGANIZATION BILLING

A. The Sponsoring Organization shall make an accounting to the Federal Emergency Management Agency of eligible costs for each disaster. This shall include personnel and equipment.

1. Personnel

- a. The Sponsoring Organization shall submit a record of payment of all personnel costs, including salaries and benefits, for which it seeks reimbursement.
- b. The Sponsoring Organization must submit its request for reimbursement according to the policy attached as Exhibit A to this Agreement. If the Sponsoring Organization has attached a disaster or special duty pay policy, it may bill according to that policy; if not, it must bill according to the standard policy in place at that time, meaning charges for hours worked.
- c. The Sponsoring Organization may charge for backfill according to Section VIII(A)(3) of the FEMA MOU.
- d. The Sponsoring Organization may charge for a reasonable number of support personnel according to Section VIII(A)(4) and (5) of the FEMA MOU.
- e. The Sponsoring Organization must include a spreadsheet detailing all personnel costs, including: name, rank, rate of pay (converted to 40-hour week), position on Task Force (or "backfill," or "support personnel," or "rehabilitation personnel."), hours worked, hours billed, and total cost. If the person is backfilling a Task Force member, the name of the Task Force member must be referenced on the spreadsheet.

2. Equipment

- a. The Sponsoring Organization shall submit purchase orders and receipts for all equipment purchased.
 - b. Each purchase order and receipt must be cross-referenced to the item number of the purchased item found in the leftmost column of the Equipment Cache List.
 - c. The Sponsoring Organization must also submit a spreadsheet detailing the following information regarding each purchase: item number, quantity, description, vendor, unit price, total price, and whether this was a new purchase or resupply.
 - d. Any purchase which exceeds the cost cap identified in the Equipment Cache List, or is duplicative of prior purchases, or which does not appear on the Equipment Cache List must be accompanied by an explanation for the purchase. If the purchase was verbally approved, the verbal approval must be supported by signed documentation supporting the verbal approval.
 - e. Any purchase which exceeds the amount specified in the Activation Notice must be accompanied by an explanation.
 - f. Any submission for reimbursement for items lost, damaged or stolen must be accompanied by an official "U.S. Government Lost or Damaged Property" form.
- B. The Sponsoring Organization must submit the accounting within a reasonable time after the mission.
- C. The Sponsoring Organization must include an SF 270 with their accounting.

II. APPEALS

A. Initial Appeal

1. The Sponsoring Organization may appeal any determination previously made regarding costs during an event.
2. The appeal shall be made in writing and submitted to the appropriate FEMA program office within 60 days after receipt of notice of the action which is being appealed.
3. The appeal shall contain documentation justification supporting the Sponsoring Organization's position.
4. Upon receipt of an appeal, the FEMA program office shall review the material submitted, make such additional investigations as necessary, and shall make a determination on the appeal and notify the Sponsoring Organization within 90 days.

B. Supplemental Appeals

1. If the Sponsoring Organization is requested to produce further information regarding its initial appeal, the Sponsoring Organization shall submit such information within 90 days of receipt of the action which it is appealing.
2. Upon receipt of subsequent materials, the FEMA Program Office shall review the material submitted, and shall make a determination on the appeal and notify the Sponsoring Organization within 60 days.

C. Final Appeal

1. If the FEMA Program Office denies the appeal, the Sponsoring Organization may submit an appeal to the Director of the Operations and Planning Division, FEMA. Such appeals shall be made in writing, through the appropriate FEMA Program Office,

and shall be submitted not later than 60 days after receipt of notice of all initial and supplemental appeals.

2. The Division Director shall render a determination on the Sponsoring Organization's appeal within 90 days following receipt of the appeal or shall make a request for additional information if such is necessary. Within 90 days following the receipt of such additional information, the Division Director shall render a determination and notify the grantee, in writing, of the disposition of the appeal.
- D. If the Sponsoring Organization does not file an appeal within the time period specified in this Exhibit, the Sponsoring Organization will be deemed to have waived its right to appeal that decision.
 - E. If the Agency does not respond within the time period specified in this Exhibit, it will be deemed to have granted the appeal.

III. PARTICAPTING AGENCY BILLING

- A. The Participating Agency will follow 5.3 of the MOU for the billing process.

IV. PARTICAPTING AGENCY APPEALS

F. Initial Appeal

- 5. The Participating Agency may appeal any determination previously made regarding personnel costs during an event through the Sponsoring Organization.
- 6. The appeal shall be made in writing and submitted to the Sponsoring Organization within 30 days after receipt of notice of the action which is being appealed.
- 7. The appeal shall contain documentation justification supporting the Participating Agency position.
- 8. Upon receipt of an appeal, the Sponsoring Organization shall review the material submitted, make such additional investigations as necessary, and shall make a determination on the appeal and notify the Participating Agency within 15 days if the appeal will or will not be appealed to the FEMA Program Office.

G. Supplemental Appeals and Final Appeal

- 3. If the Participating Agency is requested to produce further information regarding its initial appeal, the Participating Agency shall submit such information within 7 days of receipt of the action which it is appealing. To be able appeal within the allowed 60 days to the FEMA Program Office.
- 4. Upon receipt of subsequent materials, the Sponsoring Organization shall review the material submitted, and shall make a determination on the appeal and notify the Participating Agency within 7 days.

5. If the Participating Agency does not file an appeal within the time period specified in this Exhibit, the Sponsoring Organization will be deemed to have waived its right to appeal that decision.

6. If the Participating Agency does not respond within the time period specified in this Exhibit, it will be deemed to have granted the appeal.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: \$5.0 million transfer to WEDA

Prepared By: Tammy Hitchens, Interim Finance Director

Recommended City Council Action

Approve the transfer of \$5 million to the WEDA fund for purposes of paying off the Vectra Bank Colorado National Association (Vectra) loan, using money already appropriated for widening Huron from 128th/140th.

Summary Statement

The City is partnering with the Westminster Economic Development Authority (WEDA) and Forest City (FC) to develop the Orchard At Westminster. Each entity has financial responsibilities with respect to the Orchard At Westminster. WEDA will be issuing bonds in an amount not to exceed \$70.0 million on or about May 6, 2005 to fund public improvements related to the Orchard At Westminster project.

The City has already appropriated \$8.123 million for the purpose of widening Huron Street from 128th to 140th. These costs are eligible to be paid for from bond proceeds. Of the current \$8.123 million, only \$1.7 is restricted to road improvements. The remaining \$6.423 million is not restricted in its use.

The WEDA Board approved the purchase of property known as the White property on March 29, 2004. The Board also authorized WEDA to borrow \$9 million from Vectra to purchase the land. The principal of the loan was to be repaid with bond proceeds. Interest on the loan has been paid by Forest City.

Bond Counsel has indicated that WEDA cannot use tax-exempt bond proceeds to repay the \$9 million due to private use regulations in the Internal Revenue Service Code.

Staff is proposing that \$5 million of unrestricted City money allocated to the Huron Street 128th/140th project be used to pay off the Vectra loan and the project be made whole with WEDA tax-exempt bond proceeds.

Expenditure Required: \$5,000,000

Source of Funds: General Capital Improvement Fund – Huron Street Project

Policy Issue

Does the City wish to re-allocate \$5 million from the Huron 128th/140th project to a transfer to WEDA for paying off the Vectra loan in order to preserve the tax-exempt status of the WEDA bond issue?

Alternatives

- 1) Do not approve the re-allocation of funds from the Huron 128th/140th project. This is not recommended as it will require WEDA to issue a portion of their bonds in a taxable status increasing the overall cost of the project.
- 2) Transfer \$5 million from another City project. This is not recommended as only projects that are in the North Huron Urban Renewal Area are eligible to use the WEDA bond proceeds.

Background Information

On March 29, 2004 WEDA authorized the Executive Director to purchase the Rick White property that included 80 acres at the northeast corner of Huron Street and 144th Avenue. This property was critical to the Orchard At Westminster project. It was in the City's, WEDA's and Forest City's best interests to close on this property prior to April 27, 2004 primarily because it saved \$1.4 million on the cost of the land.

In order to facilitate the purchase of the land, the WEDA Board authorized the Executive Director to enter into a loan agreement with Vectra Bank in an amount of \$9 million on April 12, 2004. WEDA's intent was to pay off the loan with tax-exempt bond proceeds when bonds were issued in early 2005.

WEDA is scheduled to issue bonds in an amount not to exceed \$70 million in May. In preparing the final documents for the bond issue, Bond Counsel informed staff that WEDA could not pay off the Vectra Bank loan with tax-exempt bond proceeds because of private use restrictions promulgated by the Internal Revenue Service Code. WEDA could issue taxable bonds and use the proceeds to pay off the loan. However, this would increase the cost of the project.

The City has already appropriated \$8.123 million for the widening of Huron from 128th/140th. If the City will use \$5 million from that project to pay the Vectra loan off, the project can be made whole with bond proceeds.

A corresponding action increasing the budget of WEDA and committing WEDA to making the Huron 128th/140th project whole will be presented to the WEDA Board.

Respectfully submitted,

J. Brent McFall
City Manager

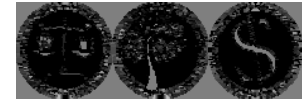
Attachment



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Resolution No. 17 re Approval of Selected Documents for WEDA Bond Issue

Prepared by: Robert Smith, Treasury Manager

Recommended City Council Action:

Adopt Resolution No. 17 that provides City approval to selected documents for the WEDA Series 2005 Bonds of up to \$70 million, to which the City is a party including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the Letter of Credit Reimbursement Agreement.

Summary

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

- The basis of the resolution is such that if, at any time, the balance in the WEDA Bond Reserve Fund falls below the required amount of \$5,122,000 the City Manager will request that Council budget, appropriate, and transfer to the trustee bank the funds necessary to replenish these bonded reserves. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
- This resolution will assist the Authority in obtaining credit enhancement for its bonds, thus serving to minimize interest costs and improve the marketability of the bonds. Because of the expected revenues WEDA will realize from tax increment, Staff does not anticipate the need for the City to actually transfer funds at any time.
- Staff also had discussions with the credit rating agencies in the fall of 2004 about the impact on the City's credit of issuing a moral obligation pledge for the WEDA Bonds. The agencies have told City officials that the City's credit rating will not be affected.

Cooperation Agreement

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

Letter of Credit Reimbursement Agreement

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

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

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

Alternatives

1. Decline or delay approval of the replenishment resolution. This is not recommended. Although non-binding, this would not be favorably viewed by the letter of credit bank, the bond investors and the marketplace, and would result in the failure of the bond sale.
2. Decline or delay approval of the Cooperation Agreement and the Letter of Credit Reimbursement Agreement. This is not recommended, as it will result in the failure of the bond sale. The bond sale is a condition of closing on the land sale to the developer and therefore the construction of the Orchard At Westminster.

Background Information

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

Staff does not anticipate the need for the City's moral obligation to replenish the reserve fund to be used at any time. The forecasts for the tax increment revenues for the various commercial developments currently are anticipated for the North Huron Urban Renewal Area (URA) project are as follows:

- From May 2005 through May 2007: There will be no significant revenues from development in the Urban Renewal Area, and so capitalized interest will be used to make debt service on the bonds. Other bond proceeds will be set aside to pay the letter of credit bank fees and remarketing agent fees for these two years as well.
- After May 2007, WEDA will need to rely on property and sales tax revenues generated within the URA to meet debt service requirements:
 - From November 2006 through November 2007: Some sales tax increment will be realized as approximately 675,000 square feet of new retail development within the URA should be open as of November 2006. One-third of this revenue will be paid to the City of Thornton under the Interstate 25 Corridor Growth Area IGA signed November 9, 2004. The remainder will be retained to begin to make debt service after capitalized interest is exhausted.
 - From November 2007 forward: Annual net sales tax revenues (after the revenue shared with Thornton) will range between \$5.1 and \$6.8 million at full build out and absorption-leasing (which ranges from 65% to 87% during the 25-year period). All property tax increment will be paid to WEDA and will range between \$1.4 million and \$3.6 million during those same years.
 - Together, these forecast revenues are adequate to meet debt service requirements beginning in 2008.
- Total Net sales tax increment and property tax revenues at build out (2009) are projected to be approximately \$10.4 million. In addition the 144th Avenue General Improvement District was created in 2004 and voters approved a mill levy of 20 mills to be applied to properties in the District (generally defined as the areas within the commercial development at the Orchard At Westminster.) This GID is expected to generate about \$640,000 in property taxes annually.

WEDA will have the ability to change the interest rate mode (term) it will incur on the bonds it issues. Initially the WEDA bonds will be issued on a variable weekly interest rate reset mode.

- The expected annual debt service over the 23 year term of the bonds will be \$4.93 million. This is based on the assumption that the variable interest rate will average 4.0 % over the 23 years and includes all fees for the bank letter of credit and remarketing agent.
- This level of debt service will leave over \$5.0 million in excess sales tax revenues.

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

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

Staff will be available at the City Council meeting of April 11th, to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Resolution No. 17
2005 Cooperation Agreement



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Second Reading for Councillor's Bill No. 17 re Rozek Company Business Assistance Package

Prepared By: Becky Hogan, Economic Development Program Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 17 on second reading authorizing the City Manager to execute and implement the business assistance package (BAP) with the Rozek Company. The BAP totals \$6,700, which includes \$1,825 in permit fee rebates, \$1,875 in construction use tax rebates, and \$3,000 in equipment use tax rebates at move-in.

Summary Statement

- The Rozek Company, formerly known as MicroTek has been a Westminster business for 8 years.
- The Rozek Company is expanding their business operations and is looking to sell their facility at 7160 Irving Street to McBride Brothers LLC.
- The company is a light assembler of art and drafting kits for technical education and also assembles computer and related items for educational systems.
- The Rozek Company is considering purchasing the building at 7981 W. 103th Avenue, formerly occupied by Level 3 Communications in Church Ranch Business Center.
- At move-in 14 jobs would be retained, with average salaries of \$43,000.
- Assistance is based upon the retention of a quality Westminster employer, providing light assembly jobs and purchasing existing vacant space in the City.
- Councillor's Bill No. 17 was approved by City Council on first reading on March 28, 2005.

Expenditure Required: \$ 6,700 (Rebates)

Source of Funds: The business assistance package with the Rozek Company will be funded through revenue received from permit fees, construction use tax, and sales and use tax on furniture, fixtures, and equipment at move-in.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3201**

COUNCILLOR'S BILL NO. **17**

SERIES OF 2005

INTRODUCED BY COUNCILLORS
KAUFFMAN - DIXION

**A BILL
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE
WITH THE ROZEK COMPANY TO AID IN THEIR RELOCATION TO
7981 WEST 103TH AVENUE IN CHURCH RANCH BUSINESS CENTER
IN WESTMINSTER, COLORADO**

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, the Rozek Company plans to purchase the building at 7981 West 103th Avenue in Church Ranch Business Center, in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and the Rozek Company is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April 2005.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Second Reading of Councillor's Bill No. 18 re McBride Brothers LLC Business Assistance Package

Prepared By: Becky Hogan, Economic Development Program Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 18 on second reading authorizing the City Manager to execute and implement the business assistance package (BAP) with McBride Brothers LLC, a Colorado limited liability company. The BAP totals \$2,000, which includes \$500 in permit fee rebates, \$375 in construction use tax rebates, and \$1,125 in equipment sale and use tax rebates at move-in.

Summary Statement

- McBride Brothers LLC is a limited liability corporation for KSI Swiss and McBride Machine Tool Corporation. These companies assemble and distribute precision tool machines.
- McBride Brothers LLC is relocating from Louisville, Colorado to 7160 Irving Street, and purchasing the Rozek Company (formerly MicroTek) building in South Westminster.
- McBride Brothers LLC has been informed that this building falls in the boundaries of the Westminster transit development area, in which redevelopment could occur sometime in future.
- McBride Brothers LLC will employ 6 people at move-in, with average salaries of \$81,000.
- Assistance is based upon the attraction of a new business to Westminster and the addition of primary jobs to the City.
- Councillor's Bill No. 18 was approved by City Council on first reading on March 28, 2005.

Expenditure Required: \$ 2,000 (Rebates)

Source of Funds: The business assistance package with McBride Brothers LLC will be funded through revenue received from permit fees, construction use tax, and sales and use tax on furniture, fixtures, and equipment at move-in.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3202**

COUNCILLOR'S BILL NO. **18**

SERIES OF 2005

INTRODUCED BY COUNCILLORS
Dixon - Dittman

**A BILL
FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE
WITH McBRIDE BROTHERS LLC
TO AID IN THEIR RELOCATION TO 7160 IRVING STREET
IN WESTMINSTER, COLORADO**

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, McBride Brothers LLC plans to purchase the building at 7160 Irving Street in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and McBride Brothers LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with McBride Brothers LLC in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April 2005.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Second Reading of Councillor's Bill No. 19 re East Bradburn Rezoning

Prepared By: John Quinn, AICP, Planner II

Recommended City Council Action

Pass Councillor's Bill No. 19 on second reading rezoning the East Bradburn property from O-1 Open District to Planned Unit Development. This recommendation is based on the findings set forth in Section 11-5-3 of the Westminster Municipal Code.

Summary Statement

- The East Bradburn site is comprised of 10.14 acres of land and is located at the southwest corner of 120th Avenue and Lowell Boulevard.
- The project utilizes the traditional mixed use neighborhood principles of development; narrow streets, pedestrian and bicycle orientation, inter-connected streets and block patterns, and a variety of parks oriented to the residents of the neighborhood.
- The East Bradburn project borders the residential portion of the larger Bradburn development that is currently under development to the west.
- The proposed East Bradburn project contains 117 units of single-family, for sale, attached homes in a variety of configurations that blend with, but are distinct in style from the townhomes that have been built in Bradburn.
- This request was approved on first reading by City Council on March 28, 2005.

Expenditure Required: \$0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3203**

COUNCILLOR'S BILL NO. **19**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

HICKS - PRICE

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 33, TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from O-1 Open District to Planning Unit Development zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from O-1 Open District to Planned Unit Development:

A parcel of land located in the northeast quarter of Section 6, Township 2 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado, more particularly described as follows:

Commencing at the northeast corner of said Section 6, whence the north quarter corner thereof bears S89°57'06"W, a distance of 2635.70 feet; thence S00°27'46"E, along the east line of the northeast quarter of said Section 6, a distance of 185.00 feet to a point on the south right-of-way line of West 120th Avenue; thence S89°57'06"W, along said south right-of-way line, a distance of 45.00 feet to the northwest corner of Academy of Charter Schools Subdivision, being the point of beginning; thence along the boundary of said Academy of Charter Schools Subdivision, the following three (3) courses:

1. S00°27'46"E, a distance of 684.76 feet to a point of curve;
2. Along a curve to the right having a delta of 90°24'52", a radius of 35.00 feet and an arc length of 55.23 feet to a point of tangent;
3. S89°57'06"W, along said tangent, a distance of 579.24 feet to a point on the west line of the east half of the east half of the northeast quarter of said Section 6;

Thence N00°25'36"W, along said west line, a distance of 720.02 feet to a point on the south right-of-way line of said West 120th Avenue; thence N89°57'06"E, along said south right-of-way line, a distance of 614.04 feet to the point of beginning. Containing 442,006 square feet or 10.147 acres more or less.

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

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March, 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2005.

ATTEST:

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Item 10 B

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Councillor's Bill No. 21 re Financing for the Construction of One-half of the Interchange at 144th Avenue and Interstate Highway 25 (Certificates of Participation)

Prepared by: Robert Smith, Treasury Manager

Recommended City Council Action:

Approve Councillor's Bill No. 21 for a Lease-Purchase Financing [Certificates of Participation, (COP's)] not to exceed \$18.5 million to construct the eastern half of an interchange at 144th Avenue and I-25.

Summary

At its November 8, 2004 meeting Council approved an IGA with the City of Thornton whose Council approved the IGA on November 9, 2004. This IGA calls for both Cities to cooperate in the construction of an interchange at the intersection of 144th Avenue and Interstate 25 and the sharing of related project costs. Funds for the construction of the interchange will come from bonds WEDA will issue for the western half and COPs the City will issue to finance the eastern half of the interchange. In the IGA Thornton agrees to use the 1/3 share of the sales tax revenue it will receive from Westminster according to the revenue sharing IGA between the two cities also dated November 9, 2004.

- The total cost to construct the interchange is expected to be about \$28 million. The COP's are to be used to finance half of the interchange.
- This will be financed by selling Fire Station 2, the Irving Street Library and three City parks to the Westminster Building Authority and leasing them back as part of the master lease purchase agreement between the City and the Authority.
- The expected source of revenue to pay debt service on the Certificates will be incremental sales tax revenues derived from commercial development in the North Huron Urban Renewal Area (URA). Thornton has agreed to use the 1/3 share of the sales tax revenue generated in the Westminster part of the Interstate 25 Corridor Growth Area to reimburse the City of Westminster for the COP debt service attributable to the costs of building the east half of the interchange.
- Capitalized interest of \$1.54 million will be used to pay approximately two years of COP debt service payments until commercial development generates sufficient tax increment to make the payments.
- Costs of COP issuance will be provided from COP proceeds (insurance, surety, underwriter's discount and other fees).

Expenditure Required: Not to exceed \$18.5 million

Source of Funds: COP Funds

Policy Issue

Should the City proceed with the issuance of COP's to allow the construction of the 144th and I-25 interchange to move forward?

Alternatives

1. Finance the facility using available cash. This alternative is not recommended for the following reason:

- Although the City is in a positive cash flow position, it does not have \$28 million dollars of excess cash flow budgeted for the construction of the interchange. However, the City does have the cash flows to provide for \$1.29 million of COP payments for the 21 year period used to make the payments of principal and interest on the COPs. The life of the interchange will be considerably longer than the 21 year period the COPs will be outstanding. It is equitable and prudent to plan for paying for the project over a long period, as this facility will benefit the taxpayers over a longer period than the 21 year period used in the financing.

2. Use another form of financing for the facility, such as Sales Tax Revenue Bonds. This is not recommended, primarily because revenue bonds usually require coverage of revenues greater than debt service (revenues at 1.25 times the debt service); COPs require coverage of revenue at 1.0 times debt service. The lower coverage ratio requirement frees up cash flow for the City to use for other purposes. Second, this issue is insured and the reserve funds are covered with a surety bond, thus providing the same security as a revenue bond. Third the interest rate attached to the COPs is about the same as a Sales Tax Revenue Bond. In summary, the use of COPs makes the best use of cash flows at the same cost as another type of financing.

3. Do not build the interchange. This option is not recommended. Public access from I-25 is critical to the financial success of the Orchard At Westminster commercial development. It will also ease traffic loads on other arterials due to residential growth that is anticipated in this area for the next 10-20 years.

Background Information

The construction of interchanges on Interstate 25 has been studied by the Cities of Westminster, Thornton and Broomfield for many years. In 2002, the City issued \$15.090 million of Sales Tax Revenue Bonds to finance the construction of an interchange at 136th Avenue and I-25. This was a joint project with the City of Thornton, where the two cities split the cost. The interchange was opened in June 2004.

It is now proposed to construct another interchange on I-25 at 144th Avenue. As agreed to in an IGA approved November 9, 2004 by the Councils for the City of Westminster and the City of Thornton for the Final Design and Construction of the 144th Avenue and Interstate 25 Interchange this again will be a joint project between the two cities. Each city agreed to cooperate in the design and construction of the interchange and to share in the costs.

Funding for the expected construction cost of \$28.0 million will come from two sources. The costs to complete the western half of the interchange will be financed by tax increment financing bonds that the Westminster Economic Development Authority will issue. The costs to construct the eastern half of the interchange will be funded by Certificates of Participation that the Westminster Building Authority will issue on behalf of the City of Westminster.

On November 9, 2004 the City Council of Thornton agreed to an IGA regarding the Interstate 25 Corridor Growth Area. Per this agreement, both Cities will share the sales tax revenue generated in the Corridor as follows: The City in which the sales tax is collected will retain 2/3 of the amount collected and pay to the other city the remaining 1/3 share.

SUBJECT: Councillor's Bill re Financing for Interchange at 144th Ave and I- 25 (COP) Page 3

The City of Thornton agreed to use all or a portion of the 1/3 share of sales tax revenues the City of Westminster would pay it under the revenue sharing IGA to pay for its proportional share of the financing costs Westminster incurs to complete the construction of the eastern half of the interchange. Based on forecasts of the 1/3 share Westminster will pay to Thornton over a 21 year period the revenue shared will be in excess of the debt service on the COPs starting about 2 years after the project begins. Capitalized interest of \$1.54 million will pay debt service during the initial years while commercial development is just starting.

Staff has met with the City's finance team, comprised of Bond Counsel Sherman & Howard, Bond Underwriter Hanifen, Imhoff Inc., and Financial Advisor James Manire. The team considered several properties that could be added to the collateral pool for the Certificates. It was decided that adding the new fire station 2, the new Irving Street Library, and three park properties would provide adequate additional collateral to permit the issuance of the up to \$18.5 million of COPs needed to finance the construction of the interchange.

If the ordinance is approved by City Council, the COPs will be marketed in early to mid May, 2005.

The City's financial advisors and Staff will be on hand at the meeting on April 11th, to answer questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

By Authority

Ordinance No. **3205**
Series of 2005

Councillor's Bill No. **21**
Introduced by Councillor
Dittman- Davia

A BILL

FOR AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN REAL PROPERTY OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FOURTH AMENDMENT TO A PREVIOUSLY EXECUTED AND AMENDED LEASE PURCHASE AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, A WARRANTY DEED, AN OFFICIAL STATEMENT AND RELATED DOCUMENTS; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED DOCUMENTS; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Westminster, Adams and Jefferson Counties, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and

WHEREAS, pursuant to Chapter XI of the Charter, the City is authorized to enter into one or more leases or lease-purchase agreements for land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, pursuant to Section 2.1 of the Charter, the City is authorized to sell and dispose of real and personal property; and

WHEREAS, the City Council of the City (the "City Council") has determined and hereby determines it is in the best interests of the City and its inhabitants that the City sell and convey certain real property owned by the City (the "2005 Leased Property") to The City of Westminster Building Authority (the "Authority"); and

WHEREAS, the City Council has determined and hereby determines it is in the best interests of the City and its inhabitants that the City lease from the Authority the 2005 Leased Property pursuant to a Lease Purchase Agreement dated as of November 15, 1998, as amended by the First Amendment to Lease Purchase Agreement dated as of August 15, 1999, the Second Amendment to Lease Purchase Agreement dated as of February 1, 2000, the Third Amendment to Lease Purchase Agreement dated as of May 1, 2001 and the Fourth Amendment

to Lease Purchase Agreement dated May 1, 2005 (the “Fourth Amendment”) (as so amended, the “Lease”) all by and between the City and the Authority; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its inhabitants that the City use the proceeds from the sale of the 2005 Leased Property to pay the costs of the 2005 Project (as defined in the Lease) and that the City enter into the Fourth Amendment to provide for the leasing by the City from the Authority of the 2005 Leased Property; and

WHEREAS, the City’s obligation under the Lease to pay Base Rentals and Additional Rentals (both as defined in the Lease) shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, the Authority and U.S. Bank National Association, as trustee (the “Trustee”), will enter into a Third Supplement to Mortgage and Indenture of Trust dated as of May 1, 2005, (the “Third Supplement”) which supplements the previously executed and previously supplemented and amended Mortgage and Indenture of Trust dated as of November 15, 1998 and Second Supplement to Mortgage and Indenture of Trust dated as of May 1, 2001 (as so supplemented, the “Indenture”), pursuant to which there will be issued Certificates of Participation, Series 2005, dated as of their date of delivery in the aggregate principal amount of not to exceed \$18,500,000 (the “Certificates”); and

WHEREAS, the Certificates shall evidence assignments of the rights to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, there has been presented to the City Council and are on file at the City offices the following: (i) the proposed form of the Fourth Amendment; (ii) the proposed form of the Continuing Disclosure Certificate to be provided by the City (the “Disclosure Certificate”); (iii) the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates; and (iv) the proposed forms of the special warranty deeds to convey the 2005 Leased Property to the Authority (the “Deed”); and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, no member of the City Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance;

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Short Title. This ordinance shall be known and may be cited by the short title “2005 Interstate 25 and 144th Avenue Financing Ordinance.”

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council or the officers or agents of the City Council or the City relating to the Lease, including the sale and conveyance of the 2005 Leased Property and the leasing of the 2005 Leased Property pursuant to the Fourth Amendment is hereby ratified, approved and confirmed. The designation of the Preliminary Official Statement by the City’s Finance Director as a “nearly final Official Statement” for purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission is hereby ratified, approved and confirmed.

Section 3. Supplemental Public Securities Act. The City Council hereby elects to apply all of the Supplemental Act to the Fourth Amendment and the 2005 Certificates.

Section 4. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the sale of the 2005 Leased Property, the completion of the 2005 Project, and the leasing of the 2005 Leased Property from the Authority under the terms and provisions set forth in the Lease and the Indenture are necessary, convenient and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City and that the fair value of the 2005 Leased Property does not exceed its sales price, and the City Council hereby authorizes and approves the same.

Section 5. Conveyance of 2005 Leased Property. The City Council hereby approves the sale and conveyance to the Authority of the 2005 Leased Property, and the appropriate officers of the City are hereby authorized and directed to execute and deliver such deeds and other instruments as may be necessary to effect said sale and conveyance.

Section 6. Approval of Documents. The Fourth Amendment, the Disclosure Certificate, and the Deed (the “Documents”) in substantially the forms presented to the City Council and on file with the City, are in all respects approved, authorized and confirmed, and the Mayor Pro-Tem of the City is hereby authorized and directed for and on behalf of the City to execute and deliver the Documents in substantially the forms and with substantially the same contents as presented to the City Council.

Section 7. Approval of Official Statement. A final Official Statement, in substantially the form of the Preliminary Official Statement presented to the City Council and on file with the City, is in all respects approved and authorized. The Mayor Pro-Tem is hereby authorized and directed, for and on behalf of the City, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the City, with such changes as may be approved by the City Finance Director. The distribution by Stifel, Nicolaus & Company, Incorporated Hanifen Imhoff Division, Denver, Colorado (the “Purchaser”) of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

Section 8. Parameters for 2005 Certificates. The City Council hereby delegates to the Finance Director of the City the authority to accept the proposal of the Purchaser to purchase the 2005 Certificates as well as the authority to make determinations in relation to the 2005 Certificates subject to the following parameters and restrictions: (a) the aggregate principal amount of the 2005 Certificates shall not exceed \$18,500,000; (b) the maximum total repayment cost of the 2005 Certificates shall not exceed \$35,000,000; (c) the maximum annual repayment cost of the 2005 Certificates shall not exceed \$1,700,000; (d) the 2005 Certificates shall mature no later than December 1, 2030; (e) the 2005 Certificates shall be subject to optional redemption prior to their respective maturities no later than December 1, 2015; (f) the purchase price of the 2005 Certificates shall not be less than 97%; and (g) the maximum net effective interest rate on the 2005 Certificates shall not exceed 5.5%.

Section 9. Authorization to Execute Collateral Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this ordinance and to place the seal of the City on any document authorized and approved by this ordinance. The Mayor Pro-Tem and City Clerk and other appropriate officials or employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance, including but not limited to the execution of the Continuing Disclosure Certificate and such other documents, certificates and affidavits as may be necessary. The appropriate officers of the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance, and are specifically authorized and directed hereby to invest such funds in Permitted Investments as are defined and provided in the Indenture. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 10. No General Obligation Debt. No provision of this ordinance, the Lease, the Indenture, the Certificates or the Preliminary or final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates

shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 11. Reasonableness of Rentals. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase the 2005 Leased Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the 2005 Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the 2005 Leased Property.

Section 12. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the 2005 Certificates. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2005 Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

Section 13. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the City Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the City Council be, and the same hereby are, suspended.

Section 14. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the City during the Lease Term, provisions for the quiet enjoyment of the 2005 Leased Property by the City during the Lease Term and provisions for the conveyance of the 2005 Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

Section 15. Declaration of Emergency. In order to begin the 2005 Project while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Section 16. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in "The Ordinance Book" of the City kept for that purpose, and shall

be authenticated by the signatures of the Mayor Pro-Tem and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on April 11, 2005.

Mayor Pro-Tem

(SEAL)

ATTESTED:

City Clerk

STATE OF COLORADO)
)
 COUNTIES OF ADAMS) SS.
 AND JEFFERSON)
)
 CITY OF WESTMINSTER)

I, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the "City") do hereby certify that:

1. The foregoing pages are a true, correct, and complete copy of an ordinance (the "Ordinance") passed and adopted by the City Council (the "Council") of the City at a regular meeting of the Council held at the City Hall on April 11, 2005.

2. The passage of the Ordinance as an emergency was duly moved and seconded, and the Ordinance was adopted at the meeting of April 11, 2005 by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
David Davia	X			
Chris Dittman	X			
Samantha Dixion	X			
Elmer "Butch" Hicks	X			
Tim Kauffman	X			
Nancy McNally				X
Jo Anne Price	X			

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

4. The Ordinance has been signed by the Mayor Pro-Tem, sealed with the City seal, attested by me as City Clerk and duly recorded in the books of the City; and the same remains of record in the book of records of the City.

5. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance as an emergency.

6. Notice of the meeting of April 11, 2005, in the form, attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The Ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on April 21, 2005. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 11th day of April, 2005.

(SEAL)

City Clerk

EXHIBIT A

(Attach Notice of Meeting)

EXHIBIT B

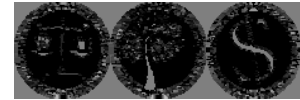
(Attach Affidavit of Publication)



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Resolution No. 17 re Approval of Selected Documents for WEDA Bond Issue

Prepared by: Robert Smith, Treasury Manager

Recommended City Council Action:

Adopt Resolution No. 17 that provides City approval to selected documents for the WEDA Series 2005 Bonds of up to \$70 million, to which the City is a party including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the Letter of Credit Reimbursement Agreement.

Summary

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

- The basis of the resolution is such that if, at any time, the balance in the WEDA Bond Reserve Fund falls below the required amount of \$5,122,000 the City Manager will request that Council budget, appropriate, and transfer to the trustee bank the funds necessary to replenish these bonded reserves. Because the Replenishment Resolution is subject to annual appropriation, it does not constitute a multi-year fiscal obligation, and therefore does not subject the City to TABOR requirements.
- This resolution will assist the Authority in obtaining credit enhancement for its bonds, thus serving to minimize interest costs and improve the marketability of the bonds. Because of the expected revenues WEDA will realize from tax increment, Staff does not anticipate the need for the City to actually transfer funds at any time.
- Staff also had discussions with the credit rating agencies in the fall of 2004 about the impact on the City's credit of issuing a moral obligation pledge for the WEDA Bonds. The agencies have told City officials that the City's credit rating will not be affected.

Cooperation Agreement

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

Letter of Credit Reimbursement Agreement

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

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

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

Alternatives

1. Decline or delay approval of the replenishment resolution. This is not recommended. Although non-binding, this would not be favorably viewed by the letter of credit bank, the bond investors and the marketplace, and would result in the failure of the bond sale.
2. Decline or delay approval of the Cooperation Agreement and the Letter of Credit Reimbursement Agreement. This is not recommended, as it will result in the failure of the bond sale. The bond sale is a condition of closing on the land sale to the developer and therefore the construction of the Orchard At Westminster.

Background Information

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

Staff does not anticipate the need for the City's moral obligation to replenish the reserve fund to be used at any time. The forecasts for the tax increment revenues for the various commercial developments currently are anticipated for the North Huron Urban Renewal Area (URA) project are as follows:

- From May 2005 through May 2007: There will be no significant revenues from development in the Urban Renewal Area, and so capitalized interest will be used to make debt service on the bonds. Other bond proceeds will be set aside to pay the letter of credit bank fees and remarketing agent fees for these two years as well.
- After May 2007, WEDA will need to rely on property and sales tax revenues generated within the URA to meet debt service requirements:
 - From November 2006 through November 2007: Some sales tax increment will be realized as approximately 675,000 square feet of new retail development within the URA should be open as of November 2006. One-third of this revenue will be paid to the City of Thornton under the Interstate 25 Corridor Growth Area IGA signed November 9, 2004. The remainder will be retained to begin to make debt service after capitalized interest is exhausted.
 - From November 2007 forward: Annual net sales tax revenues (after the revenue shared with Thornton) will range between \$5.1 and \$6.8 million at full build out and absorption-leasing (which ranges from 65% to 87% during the 25-year period). All property tax increment will be paid to WEDA and will range between \$1.4 million and \$3.6 million during those same years.
 - Together, these forecast revenues are adequate to meet debt service requirements beginning in 2008.
- Total Net sales tax increment and property tax revenues at build out (2009) are projected to be approximately \$10.4 million. In addition the 144th Avenue General Improvement District was created in 2004 and voters approved a mill levy of 20 mills to be applied to properties in the District (generally defined as the areas within the commercial development at the Orchard At Westminster.) This GID is expected to generate about \$640,000 in property taxes annually.

WEDA will have the ability to change the interest rate mode (term) it will incur on the bonds it issues. Initially the WEDA bonds will be issued on a variable weekly interest rate reset mode.

- The expected annual debt service over the 23 year term of the bonds will be \$4.93 million. This is based on the assumption that the variable interest rate will average 4.0 % over the 23 years and includes all fees for the bank letter of credit and remarketing agent.
- This level of debt service will leave over \$5.0 million in excess sales tax revenues.

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

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

Staff will be available at the City Council meeting of April 11th, to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: Resolution No. 17
2005 Cooperation Agreement

RESOLUTION

RESOLUTION NO. **17**
SERIES OF 2005

INTRODUCED BY COUNCILLORS
Davia - Dixon

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS TAX INCREMENT ADJUSTABLE RATE REVENUE BONDS, SERIES 2005; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE 2005 COOPERATION AGREEMENT AND REIMBURSEMENT AGREEMENT; AND OTHER ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH.

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

WHEREAS, pursuant to Resolution No. 5, adopted on January 26, 2004, the City approved the North Huron Urban Renewal Plan (the "Plan") pursuant to the Colorado Urban Renewal Law; and

WHEREAS, pursuant to an Indenture of Trust dated as of May 1, 2005 (the "Indenture"), the Authority is issuing its Tax Increment Adjustable Rate Revenue Bonds, Series 2005, in the original aggregate principal amount of not to exceed \$70,000,000 (the "2005 Bonds") for the purpose of financing the acquisition, construction and equipping of the project described in the Indenture and the Plan (the "Project"); and

WHEREAS, pursuant to a Cooperation Agreement (the "2005 Cooperation Agreement") between the City and the Authority, the City will agree, subject to conditions specified in the 2005 Cooperation Agreement, to loan funds to the Authority for the Project; and

WHEREAS, there will be created under the Indenture a reserve fund (the "Bond Reserve Fund") which will be funded initially in the amount of the Bond Reserve Requirement (as defined in the Indenture) on the 2005 Bonds, and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the 2005 Bonds and any obligations secured on a parity with the 2005 Bonds and in certain other payments; and

WHEREAS, the Indenture contemplates that if, at any time, the Bond Reserve Fund is not funded at the Bond Reserve Requirement, the Trustee shall notify the City Manager of any deficiency and the City Manager shall request that the City Council advance sufficient funds pursuant to the 2005 Cooperation Agreement to restore the Bond Reserve Fund to the Bond Reserve Requirement immediately thereafter; and

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

WHEREAS, the 2005 Bonds will be supported by an irrevocable, transferable direct pay letter of credit (the "Letter of Credit") issued by DEPFA BANK plc, acting through its New York Branch (the "Bank") pursuant to a Reimbursement Agreement dated as of May 1, 2005, among the Authority, the City and the Bank, as it may be supplemented and amended from time to time (the "Reimbursement Agreement"); and

WHEREAS, forms of the 2005 Cooperation Agreement and Reimbursement Agreement are on file with the City Clerk.

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

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

Section 2. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the 2005 Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenues of the Authority, as provided in the 2005 Cooperation Agreement, on a basis expressly subordinate and junior to that of the 2005 Bonds and any obligations secured under the Indenture, including, without limitation, Bank Bonds (as defined in the Indenture), Reimbursement Obligations (as defined in the Indenture) and all other obligations owed to the Bank under the Reimbursement Agreement.

Section 3. Limitation to 2005 Bonds and Other Obligations Originally Secured by Indenture. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Bond Reserve Fund originally established in connection with the 2005 Bonds and any obligations secured on a parity with the 2005 Bonds, and shall not apply to any other additional obligations issued under the Indenture.

Section 4. Approval and Authorization of the 2005 Cooperation Agreement and Reimbursement Agreement. The forms of the 2005 Cooperation Agreement and Reimbursement Agreement are hereby approved. The City shall enter into and perform its obligations under the 2005 Cooperation Agreement and Reimbursement Agreement, in the form of such documents as are on file with the City Clerk, with only such changes therein as are not inconsistent herewith. The City Manager is hereby authorized and directed to execute the 2005 Cooperation Agreement and Reimbursement Agreement on behalf of the City, and the City Clerk is hereby authorized to attest to the 2005 Cooperation Agreement and Reimbursement Agreement.

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

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

RESOLVED AND PASSED this 11th day of April, 2005.

CITY OF WESTMINSTER, COLORADO

Mayor Pro Tempore

ATTEST:

City Clerk

WITNESS my hand and the seal of the City affixed this 11th day of April, 2005.

City Clerk

(SEAL)

Exhibit A
(Form of Notice of Meeting)

**2005 COOPERATION AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

THIS COOPERATION AGREEMENT (this "Agreement") dated as of May 1, 2005, is made and entered into between THE CITY OF WESTMINSTER (the "City") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the "Authority").

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

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

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

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority North Huron Urban Renewal Plan (the "Plan") and the urban renewal project described therein (the "Project"); and

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

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

WHEREAS, the Authority is issuing its Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) Series 2005, in the original aggregate principal amount of not to exceed \$70,000,000, for the purpose of financing the acquisition, construction and equipping of the Project; and

WHEREAS, the City Council of the City (the "Council") has adopted its Resolution No. 17 declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Bond Reserve Fund to the Bond Reserve Requirement (the "Replenishment Resolution") as defined in the Indenture of Trust dated as of May 1, 2005, between the Authority and U.S. Bank National Association, as trustee (the "Trustee"); and

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

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

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

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

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

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

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

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues for the Project.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues and any Pledged Sales Tax Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Urban Renewal Plan.

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

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

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

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

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

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

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

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

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

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER, COLORADO

BY _____
Chairman

BY _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

BY _____
Authority Attorney

BY _____
City Attorney



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Councillor’s Bill No. 22 re Approval of the Issuance of Bonds through the Colorado Water Resources and Power Development Authority

Prepared by: Robert Smith, Treasury Manager
Byron Jefferson, Revenue Administrator

Recommended City Council Action:

Adopt Councillor's Bill No. 22 as an emergency ordinance allowing the issuance of approximately \$16,000,000 in Water and Wastewater Enterprise Subordinate Water and Wastewater Revenue Bonds issued through the Colorado Water Resources and Power Development Authority in a pooled financing with other municipalities in the State of Colorado, and authorize the Mayor, City Clerk and Interim Finance Director to sign necessary documents on behalf of the Water and Wastewater Enterprise.

Summary Statement

The Big Dry Creek Wastewater Treatment Facility (BDCWWTF) must be expanded to accommodate growth in the Big Dry Creek service area of the City and the resulting increased wastewater flow. In addition, some of the older treatment processes and equipment need to be replaced in order to comply with effluent standards. The expansion will include the Biological Nutrient Removal process that will allow the City to be in compliance with anticipated regulatory regulations of the U.S. Environmental Protection Agency (EPA).

The current estimated total project cost of the Big Dry Creek Wastewater Treatment Facility upgrade and expansion is \$44,713,500 based on an engineering design performed by Camp, Dresser & McKee, Inc. that is 90% complete. Staff proposes that the project be funded with a mix of \$28,713,500 cash and \$16,000,000 in debt issued through the Colorado Water Resources and Power Development Authority.

Council previously has been briefed on the need to upgrade and expand Big Dry Creek Wastewater Treatment Facility. The last briefing was in January 2005. Prior to that in January 2004 staff briefed Council and a public meeting was held to provide for public comment on plans to expand the capacity of the facility.

The debt financing for the project will be done through the Colorado Water Resources and Power Development Authority (CWRPDA). The Authority has approved the credit of the City of Westminster Water and Wastewater Enterprise Fund and this project for participation in the Colorado Water Resources and Power Development Authority Water Pollution Control Revolving Fund, 2005 Series A. Through this program, the City of Westminster enters into a loan agreement with the Authority, shares in the issuance costs with other participating projects, and potentially receives a rebate of 20% of the annual interest payments. Each participant will have their own respective debt service schedules and will share in the costs of issuance of the bonds the CWRPDA issues. With these savings, the effective interest rate of this loan is reduced to 4%, an amount significantly below current market levels of 4.5%.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the City desire to partially finance the required expansion of the Big Dry Creek Wastewater Treatment facility by issuing approximately \$16,000,000 of bonds issued through the Colorado Water Resources and Power Development Authority?

Alternatives

1. Delay the construction for the expansion of the Big Dry Creek Waste Treatment Plant. This is not recommended because the City is compelled to increase the capacity of the plant to comply with the State issued permit for the plant. Delaying the expansion of the facility would likely result in the imposition of a moratorium on issuing new building permits in the City.
2. Have the Water Wastewater Utility Enterprise issue bonds directly. This alternative is not recommended because doing so would result in higher costs of issuance and ongoing debt service expense. The credit rating on bonds the CWRPDA issues are AAA rated vs. the AA rating for the Water Wastewater Utility Fund bonds. This means that the interest rate on bonds issued directly by the enterprise would be higher than those issued by the Authority.

Background Information

The Big Dry Creek Wastewater Treatment Facility (BDCWWTF) was originally constructed in 1974 with a capacity of 2.0 million gallons per day (MGD), and has been expanded several times since then, most significantly in 1982 and 1995, to its current capacity of 7.5 MGD average daily flow. Most of the original structures and equipment are still in use today and show signs of wear and deterioration. The BDCWWTF serves the northern half of the City, representing approximately 60% of the wastewater flow from the entire City.

The state permit for the discharge from the BDCWWTF requires that once the flow into the facility reaches 80% of the facility's maximum monthly flow capacity (9.2 MGD), the design process must begin for the expansion of the facility (the maximum monthly flow of 9.2 MGD is greater than the average daily flow of 7.5 MGD, reflecting larger peak flows in certain months). This level of flow, or 7.4 MGD, was exceeded in 2001 and triggered the need to complete the preliminary design work in 2002. The permit also requires that construction be started prior to the flows reaching 95% of the permitted capacity, or 8.7 MGD. This flow is anticipated to be reached in 2005. The Wastewater Master Plan concluded that the build-out capacity for the facility would need to be 11.9 MGD maximum monthly flow. This final design phase will allow the facility to be expanded to treat this capacity by 2007.

The preliminary design phase, which was completed in early 2003, included a thorough evaluation of: the build-out capacity facility flow requirements, all existing structures and processes at the facility, odor control options, a security assessment, improved automation methods, biosolids processing and handling options, all related permit coordination and a recommendation of the most effective waste treatment method that should be followed in the final design phase.

The final design process began in August 2003 and has focused on reviewing and confirming the recommendations made during the preliminary design phase. Several additional alternatives were evaluated and a more detailed analysis of the recommended improvements was completed. Site access improvements were addressed as they relate to the Huron Street widening project that will eliminate all existing access driveways into the plant, and additional odor assessments were completed that form the basis for the design of the proposed odor control facilities. Another significant component of the project is the replacement of the gas chlorination system with an ultraviolet disinfection system, eliminating the hazard of a chlorine gas leak and improving the safety of the facility. A similar project to eliminate the hazard of chlorine gas was completed in 2003 at the Semper Water Treatment Facility.

During the final design process, the Colorado Department of Public Health and Environment has indicated its intention to modify the stream standards for Big Dry Creek, thereby impacting the City's discharge permit requirements beginning in 2007. City Staff and the design consultants have evaluated the overall impact of these more stringent discharge requirements, and recommend that additional biological nutrient removal processes be designed and constructed at this time. This advanced level of treatment will not only prepare the facility for more stringent discharge permit requirements, but will also improve the quality of the water supply to the reclaimed water system.

The Water and Wastewater Utility enterprise has obtained debt financing from the CWRPDA on three previous occasions. These were: In 1997, \$13.246 million to finance the construction of the reclaimed system including the treatment plant, storage capacity and pipeline; in 1998 \$4.085 million to complete the reclaimed water system; and in 2000 \$14.998 million to finance the construction of the Northwest Water Treatment Plant.

As in the past the Water and Wastewater Utility Enterprise will insure its portion of the bonds through AMBAC Indemnity Corporation. With the insured issue, the authority will hold a subordinate lien on revenues of the Enterprise. Thus, the loan from the CWRPDA is subordinate to the currently outstanding 2001 Water and Wastewater Refunding Revenue Bonds and the Series 2002 Variable Rate Demand Water and Wastewater Revenue Bonds, as well as future issues meeting stipulated coverage requirements.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3206**
SERIES OF 2005

COUNCILLOR'S ENTERPRISE BILL NO. **22**
INTRODUCED BY COUNCILLORS
DITTMAN - PRICE

A BILL

FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF A CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, SUBORDINATE WATER AND WASTEWATER REVENUE BOND, SERIES 2005.

THE CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE ORDAINS:

Section 1. Definitions and Construction.

A. Definitions. In this Ordinance the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

(1) Additional Parity Bonds: any Parity Securities issued after the issuance of the Bond.

(2) Additional Superior Bonds: any Superior Securities issued after the issuance of the Bond.

(3) Average Annual Debt Service Requirements: the aggregate of all Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues for all Fiscal Years beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable, divided by the whole number of such years.

(4) Bond: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 2005.

(5) Bond Insurer: The issuer of any municipal bond insurance policy to secure the payment of principal of and interest on the Bond as approved and authorized by the Enterprise in the Sale Certificate, if any.

(6) Bond Insurance Policy: the financial guaranty insurance policy issued by the Bond Insurer to secure the payment of principal of and interest on the Bond.

(7) Charter: the home rule Charter of the City as amended.

(8) City: the City of Westminster, Colorado.

(9) Combined Average Annual Debt Service Requirements: the sum of the Average Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made.

(10) Combined Maximum Annual Debt Service Requirements: the Maximum Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made, treated as a single issue.

(11) Commercial Bank: a state or national bank or trust company in good standing located in or incorporated under the laws of any state of the United States of America which is

subject to examination by federal or state authorities, which is a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System and which has capital and surplus of \$75,000,000 or more or which is otherwise acceptable to the Bond Insurer.

(12) Commitment: the commitment to issue the Bond Insurance Policy submitted by the Bond Insurer and approved by the Enterprise pursuant to the Sale Certificate.

(13) Construction Fund: the offsetting revenue and expense accounts within the Water and Wastewater Utility Fund designated by the City as the “2005 Bond Projects,” created and referred to in Section 5A hereof.

(14) Consulting Engineer: an independent consulting engineer or engineering firm or corporation having skill, knowledge and experience in analyzing the operations of municipal water and wastewater systems.

(15) Cost of the Project: all or any part of the cost of acquisition, construction or installation of all or any part of the Project, including, without limitation, all or any property, rights, easements, privileges, agreements, and franchises deemed necessary or useful and convenient therefor or in connection therewith, interest or discount on the Bond, costs of issuance of the Bond, engineering and inspection costs, legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses prior to and during such acquisition, construction and installation, and all such other expenses as may be necessary or incidental to the acquisition, construction and installation and financing of the Project or any part thereof and the placing of the same in operation, provision of reserves for operation, maintenance, or replacement expenses or for payment or security of principal of or interest on the Bond, and also reimbursements to the Enterprise or the City of any moneys theretofore expended or to the federal government of any moneys theretofore expended for or in connection with the Project.

(16) Council: the governing body of the Enterprise.

(17) Debt Service Requirements: the principal of, interest on, and any premium due in connection with the redemption of the Bond or any other Securities payable from the Pledged Revenues.

(18) Enterprise: The City of Westminster, Colorado, Water and Wastewater Utility Enterprise.

(19) Enterprise Ordinance: Ordinance No. 2264, Series of 1994, of the City, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

(20) Event of Default: one of the events described in Section 10A hereof.

(21) Federal Securities: bills, certificates of indebtedness, notes, or bonds which are direct obligations of the United States of America or, if the Bond Insurer agrees in writing, are obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

(22) Fiscal Year: the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

(23) Income: all income from rates, fees, tolls, and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or

indirect connection with, or the use of, or any commodity from the System, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, and all income or other gain, if any, from any investment of Pledged Revenues and of the proceeds of Securities payable from Pledged Revenues (except income or other gain from any investment of moneys held in an escrow fund for the defeasance of Securities payable from the Pledged Revenues or any other similar fund) to the extent not required to be rebated to the federal government.

(24) Independent Auditor: any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Enterprise or the City, who (a) is, in fact, independent and not under the domination of the City or the Enterprise, (b) does not have any substantial interest, direct or indirect, in any of the affairs of the Enterprise or the City, and (c) is not connected with the Enterprise or the City as a member, officer or employee, but who may be regularly retained to make annual or similar audits of any books or records of the Enterprise or the City.

(25) Interest Payment Date: a date designated by ordinance for the payment of interest on the Bond or any other Securities.

(26) Loan Agreement: the Loan Agreement, dated as of May 1, 2005, between the Purchaser and the Enterprise.

(27) Maturity Date: a date designated in the Sale Certificate for the payment of principal on the Bond or any other Securities.

(28) Maximum Annual Debt Service Requirements: the maximum aggregate Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues in any Fiscal Year beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable.

(29) Operation and Maintenance Expenses: such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System as may be determined by the City, including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

(a) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;

(b) Fidelity bond and insurance premiums appertaining to public officials or the System;

(c) The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow bank appertaining to any Securities payable from the Pledged Revenues;

(d) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;

(e) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;

(f) Ordinary and current rentals of equipment or other property;

(g) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System, the cost of water purchased for delivery through the System, and the cost of materials and supplies used for current operation of the System;

(h) The costs incurred in the billing and collection of all or any part of the Pledged Revenues;

(i) Any costs of utility services furnished to the System by the City or otherwise.

“Operation and Maintenance Expenses” does not include:

(a) Any allowance for depreciation;

(b) Any costs of reconstruction, improvement, extension, or betterment;

(c) Any accumulation of reserves for capital replacements;

(d) Any reserves for operation, maintenance, or repair of the System;

(e) Any allowance for the redemption of any bonds or other Securities payable from the Pledged Revenues or the payment of any interest thereon;

(f) Any liabilities incurred in the acquisition of any Water Facilities or Wastewater Facilities;

(g) Any other ground of legal liability not based on contract.

(30) Operation and Maintenance Fund: the expense accounts within the Water and Wastewater Utility Fund used by the City for the payment of Operation and Maintenance Expenses referred to in Section 5C hereof.

(31) Ordinance: this Ordinance No. 3206 Series of 2005, of the Enterprise.

(32) Outstanding: as of any particular date, the Bond or any other Securities payable from the Pledged Revenues which have been authorized, executed and delivered except the following:

(a) Any Bond or other such Security cancelled by the Enterprise, by the Paying Agent or otherwise on behalf of the Enterprise on or before such date, except any Bond described in the last paragraph of Section 9 hereof;

(b) Any Bond or other such Security held by or on behalf of the Enterprise or the City;

(c) Any Bond or other such Security for the payment or the redemption of which moneys or Federal Securities sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all of the Debt Service Requirements of such Bond or other such Security to the Maturity Date or specified Redemption Date thereof shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose; and

(d) Any lost, destroyed, or wrongfully taken Bond or other such Security in lieu of or in substitution for which another Bond or other such Security shall have been executed and delivered.

(33) Owner: the holder of any bearer instrument or registered owner of any registered instrument.

(34) Parity Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “1997 Revenue Bond Debt Service Account,” the “1998 Revenue Bond Debt Service Account,” the “2000 Revenue Bond Debt Service Account,” the “2005 Revenue Bond Debt Service Account,” and other similar accounts hereafter established for Additional Parity Bonds or other Parity Securities created and referred to in Section 5F hereof.

(35) Parity Securities: the Prior Parity Bonds and any other bonds, warrants, notes, securities, leases or other contracts evidencing borrowings and payable from the Pledged Revenues equally or on a parity with the Bond.

(36) Paying Agent: the Treasurer of the Enterprise, or her successors.

(37) Permitted Investments: any legal investments of the Enterprise.

(38) Person: any individual, firm, partnership, corporation, company, association, joint stock association or body politic or any trustee, receiver, assignee or similar representative thereof.

(39) Pledged Revenues: all Income remaining after the deduction of Operation and Maintenance Expenses.

(40) Prior Parity Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1997, dated May 1, 1997, in the principal amount of \$13,246,525, the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1998, dated April 1, 1998, in the principal amount of \$4,085,697, and the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 2000, dated April 15, 2000, in the principal amount of \$14,998,357.36.

(41) Prior Superior Bond Ordinance: Ordinance No. 8E, Series of 2001 and Ordinance No. 9E, Series of 2002 of the Enterprise.

(42) Prior Superior Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Refunding Bonds, Series 2001, dated November 1, 2001, originally issued in the aggregate principal amount of \$20,990,000, and the City of Westminster, Colorado, Water and Wastewater Utility Enterprise Variable Rate Demand Water and Wastewater Enterprise Revenue Bonds, Series 2002, dated September 27, 2002 and originally issued in the aggregate principal amount of \$7,490,000.

(43) Project: those Water Facilities or Wastewater Facilities for the acquisition, construction and installation of which the Bond is issued.

(44) Purchaser: Colorado Water Resources and Power Development Authority, or its successors.

(45) Redemption Date: the date fixed for the redemption prior to maturity of the Bond or any other Securities payable from the Pledged Revenues in any notice of prior redemption given by or on behalf of the Enterprise as specified in the Sale Certificate.

(46) Registrar: the Treasurer of the Enterprise, or her successors.

(47) Regular Record Date: the fifteenth day of the calendar month next preceding an Interest Payment Date for the Bond.

(48) Sale Certificate: the certificate executed by the President or the Treasurer of the Enterprise dated on or before the date of delivery of the Bond, setting forth (i) the interest rates on the Bond; (ii) the existence and amount of any capitalized interest; (iii) the dates on which principal and interest will be paid and the first interest payment date; (iv) the price at which the Bond will be sold; (v) the aggregate principal amount of the Bond and denomination of the Bond; (vi) the conditions on which and the price at which the Bond may be called for prior redemption; (vii) the amount of principal of the Bond maturing on each date; and (viii) whether the Bond shall be secured by a municipal bond insurance policy, subject to the parameters and restrictions contained in this Ordinance.

(49) Security or Securities: any bond issued by the Enterprise or any other evidence of the advancement of money to the Enterprise or the City.

(50) Special Record Date: the date fixed by the Paying Agent for the determination of ownership of the Bond for the purpose of paying interest not paid when due or interest accruing after maturity.

(51) State: the State of Colorado.

(52) Subordinate Bonds or Subordinate Securities: bonds or Securities payable from the Pledged Revenues having a lien thereon subordinate or junior to the lien thereon of the Bond.

(53) Superior Bonds or Superior Securities: the Prior Superior Bonds and any other bonds or Securities payable from the Pledged Revenues having a lien thereon superior or senior to the lien thereon of the Bond.

(54) Superior Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “2001 Revenue Bond Principal and Interest Fund,” the “2002 Revenue Bond Principal and Interest Fund,” and other similar funds or accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5D hereof.

(55) Superior Bonds Reserve Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “2001 Revenue Bond Reserve Fund,” the “2002 Revenue Bond Reserve Fund,” and other similar funds or accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5E hereof.

(56) Superior Bonds Reserve Fund Requirement: the least of ten percent (10%) of the proceeds, one hundred twenty-five percent (125%) of the Combined Average Annual Debt Service Requirements or one hundred percent (100%) of the Combined Maximum Annual Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged, whether in cash or as otherwise provided in Section 5E hereof.

(57) Supplemental Act: the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

(58) System: the Water Facilities and the Wastewater Facilities of the City owned and operated by the City as a single utility system.

(59) Transfer Agent: the Treasurer of the Enterprise, or her successors.

(60) Trust Bank: a Commercial Bank which is authorized to exercise and is exercising trust powers.

(61) Wastewater Facilities: any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

(62) Water and Wastewater Utility Fund: the self-balancing group of accounts heretofore created by the City as an enterprise fund to record all financial activity of the Enterprise referred to in Section 5B hereof.

(63) Water Facilities: water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

B. Construction. This Ordinance, except where the context by clear implication herein otherwise requires, shall be construed as follows:

(1) Words in the singular include the plural, and words in the plural include the singular.

(2) Words in the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender refer to any gender.

(3) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Ordinance so numbered or otherwise so designated.

(4) The titles and headlines applied to articles, sections and subsections of this Ordinance are inserted only as a matter of convenience and ease in reference and in no way define or limit the scope or intent of any provisions of this Ordinance.

(5) Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the

terms and provisions of this Ordinance, the Enterprise or its agents shall consider the effect on the Owner of the Bond as if there were no Bond Insurance Policy.

Section 2. Recitals.

A. Enterprise. The City has heretofore established the Enterprise and by the Enterprise Ordinance has authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

B. Authority. Pursuant to art. X, § 20 and art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(d) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bond without voter approval in advance.

C. Prior Superior and Parity Bonds. The Enterprise has previously issued the Prior Superior Bonds secured by a lien upon the Pledged Revenues senior or superior to the lien thereon of the Bond. The Enterprise has previously issued the Prior Parity Bonds secured by a lien upon the Pledged Revenues on a parity with the Bond. Other Securities previously issued by the City payable from the revenues of the System contain no specific pledge of such revenues and no restrictions on future pledges of such revenues.

Section 3. The Bond.

A. Authorization. The Bond, payable as to all Debt Service Requirements solely out of Pledged Revenues, is hereby authorized to be issued, the proceeds of the Bond to be used solely to pay the Cost of the Project.

Section 11-57-204 of the Supplemental Act provides that a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Council hereby elects to apply all of the Supplemental Act to the Bond. The Bond is issued under the authority of this Ordinance and the Supplemental Act and shall so recite as provided in Section 3(B)(6) hereof. Pursuant to Section 11-57-210, C.R.S., such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

B. Bond Details.

(1) Generally. The Bond shall be issuable in fully registered form and shall initially be registered in the name of the Purchaser. The Bond shall be issued so that a single Bond evidences the obligation of the Enterprise to pay all principal and interest due as set forth herein.

The Bond shall be dated as of May 1, 2005, shall mature, bear interest and be subject to redemption as provided in the Loan Agreement and Sale Certificate, subject to the following parameters:

(a) Interest Rate. The interest rate on the Loan shall not exceed 4.95%.

(b) Principal Amount. The aggregate principal amount of the Loan shall not exceed \$20,000,000.

(c) Maturity Schedule. The final maturity of the Loan shall not be later than December 31, 2025.

Such determinations shall be evidenced by the Sale Certificate to be signed by the President or the Treasurer and dated and delivered as of the Closing Date, which shall not be more than 60 days from the date of adoption of this Ordinance.

The Debt Service Requirements of the Bond shall be payable in lawful money of the United States of America to the Purchaser by the Paying Agent. The principal and the final

installment of interest shall be payable to the Purchaser upon presentation and surrender thereof at maturity or upon prior redemption, by check or draft mailed to the Purchaser at the address appearing on the registration books of the Enterprise maintained by the Registrar or by wire transfer to such bank or other depository as the Purchaser shall designate in writing to the Paying Agent. Except as hereinbefore and hereinafter provided, the interest shall be payable to the Purchaser determined as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Regular Record Date and prior to such Interest Payment Date, by check or draft or wire transfer directed to the Purchaser as aforesaid. Any interest not paid when due and any interest accruing after maturity shall be payable to the Purchaser determined as of the close of business on the Special Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Special Record Date and prior to the date fixed by the Paying Agent for the payment of such interest, by check or draft or wire transfer directed to the Purchaser as aforesaid. Notice of the Special Record Date and of the date fixed for the payment of such interest shall be given by sending a copy thereof by certified or registered first-class, postage prepaid mail, at least fifteen (15) days prior to the Special Record Date, to the Purchaser determined as of the close of business on the day preceding such mailing at the address appearing on the registration books of the Enterprise. Any premium shall be payable to the Purchaser upon presentation and surrender thereof upon prior redemption, by check or draft or wire transfer directed to the Purchaser as aforesaid. If the date for making or giving any payment, determination or notice described herein is a Saturday, Sunday, legal holiday or any other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed, such payment, determination or notice shall be made or given on the next succeeding day which is not a Saturday, Sunday, legal holiday or other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed.

(2) Execution and Authentication. The Bond shall be executed by and on behalf of the Enterprise with the manual signature of the President of the Enterprise, shall be attested with the manual signature of the Secretary of the Enterprise and shall be countersigned with the manual signature of the Treasurer of the Enterprise. Should any officer whose manual signature appears on the Bond cease to be such officer before delivery of the Bond to the Purchaser, such manual signature shall nevertheless be valid and sufficient for all purposes.

(3) Registration and Transfer. Upon their execution and prior to its delivery, the Bond shall be registered for the purpose of payment of principal and interest by the Registrar. The Bond shall be registered in the name of the Purchaser. To the extent that a typewritten Bond, rather than a printed Bond, is to be delivered, such modifications to the form of Bond as may be necessary or desirable in such case are hereby authorized and approved. There shall be no substantive change to the terms and conditions set forth in the form of Bond, except as otherwise authorized by this Ordinance or any amendment hereto.

The Bond shall be transferable only upon the registration books of the Enterprise by the Transfer Agent at the request of the Purchaser or its duly authorized attorney-in-fact or legal representative. The Registrar or Transfer Agent shall accept the Bond for registration or transfer only if the Owner is to be an individual, a corporation, a partnership, or a trust. The Bond may be transferred upon surrender thereof together with a written instrument of transfer duly executed by the Owner or his, her or its duly authorized attorney-in-fact or legal representative with guaranty of signature satisfactory to the Transfer Agent, containing written instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and the beneficiaries of the trust. The Transfer Agent shall not be required to transfer ownership of the Bond during the fifteen (15) days prior to the first mailing of any notice of redemption or to transfer ownership of the Bond on or after the date of such mailing. Transfers shall be made without charge, except that the Transfer Agent may require payment of a sum sufficient to defray any tax or other governmental charge that may hereafter be imposed in connection with any

transfer of the Bond. No transfer of the Bond shall be effective until entered on the registration books of the Enterprise. In the case of every transfer, the Registrar shall authenticate and the Transfer Agent shall deliver to the new Owner a new Bond of the same aggregate principal amount, maturing in the same year, and bearing interest at the same per annum interest rate as the Bond surrendered. Such Bond shall be dated as of its date of execution. A new Bond delivered upon any transfer shall be a valid obligation of the Enterprise, evidencing the same obligation as the Bond surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered. The Enterprise may deem and treat the Person in whose name the Bond is last registered upon the books of the Enterprise as the absolute Owner thereof for the purpose of receiving payment of the principal of, interest on, and any premium due in connection with the redemption of such Bond and for all other purposes, and all such payments so made to such Person or upon his, her or its order shall be valid and effective to satisfy and discharge the liability of the Enterprise upon the Bond to the extent of the sum or sums so paid, and the Enterprise shall not be affected by any notice to the contrary.

(4) Resignation or Removal of Agents. If, after giving 30 days' prior written notice to the Enterprise, the Paying Agent, Registrar or Transfer Agent shall resign as such, or if the Enterprise shall determine to remove such Paying Agent, Registrar or Transfer Agent, the Enterprise may, upon notice mailed to the Purchaser at the address last shown on the registration books of the Enterprise, accept the resignation of the Paying Agent, Registrar or Transfer Agent or remove the Paying Agent, Registrar or Transfer Agent and appoint a successor paying agent, registrar or transfer agent. No resignation or removal of the Paying Agent, Registrar or Transfer Agent shall take effect until a successor has been appointed; provided, that if no successor is appointed by the end of 90 days, the Paying Agent, Registrar or Transfer Agent may petition a court of competent jurisdiction to appoint a successor. It shall not be required that the same institution serve as paying agent, registrar and transfer agent hereunder, but the Enterprise shall have the right to have the same institution serve as paying agent, registrar and transfer agent hereunder.

(5) Replacement of Bond. If the Bond shall have been lost, destroyed or wrongfully taken, the Enterprise shall provide for the replacement thereof upon the Purchaser's furnishing to the Enterprise: (a) proof of ownership, (b) proof of loss, destruction or theft, (c) a surety bond in the amount of all principal and interest remaining unpaid on the Bond, and (d) payment of the cost of preparing and issuing the new Bond.

(6) Recitals in Bond. The Bond shall recite in substance that the Bond is a special and limited obligation of the Enterprise payable solely out of and secured by an irrevocable pledge of and second lien (but not necessarily exclusive second lien) upon the Pledged Revenues, that the Bond does not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation, that the Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and that the full faith and credit of the City is not pledged for the payment of the principal of or interest on the Bond. Each Bond shall further recite that it is issued under the authority of the State Constitution, the Supplemental Act, the Charter, the Enterprise Ordinance, and this Ordinance. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

(7) Form of Bond. The Bond shall be in substantially the form set forth in the Loan Agreement:

C. Special Obligation. All of the Debt Service Requirements of the Bond shall be payable solely out of the Pledged Revenues. The Purchaser may not look to the general fund or any other fund of the City

for the payment of the Debt Service Requirements thereof, except the special funds pledged therefor. The Bond shall not constitute a debt or indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation, and the Bond shall not be considered or held to be a general obligation of the City but shall constitute a special and limited obligation of the Enterprise. The Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and the full faith and credit of the City is not pledged for payment of the Bond.

Section 4. Sale of Bond.

A. Purchaser's Proposal. The Purchaser has offered to purchase the Bond at a price approved by the President or Treasurer of the Enterprise set forth in the Sale Certificate.

B. Award of Contract. The contract for the purchase of the Bond is hereby awarded to the Purchaser at the price specified in the Purchaser's offer and upon the terms set forth in the Sale Certificate subject to the parameters set forth in this Ordinance.

C. Delivery. After the Bond has been duly executed, authenticated and registered as provided herein, the Treasurer of the Enterprise shall cause the Bond to be delivered to the Purchaser upon receipt of the agreed purchase price.

Section 5. Disposition of Bond Proceeds and Income; Funds Adopted or Created by Ordinance; Security for Bond. The proceeds of the Bond and the Income shall be deposited by the Enterprise in the funds described in this Section 5, to be accounted for in the manner and priority set forth in this Section 5.

Neither the Purchaser nor any subsequent Owner of any Bond shall be in any manner responsible for the application or disposal by the Enterprise or the City or by any of their officers, agents and employees of the moneys derived from the sale of the Bond or of any other moneys designated in this Section 5.

The Pledged Revenues and all moneys and securities paid or to be paid to or held or to be held in any fund hereunder are hereby pledged to secure the payment of the Debt Service Requirements of the Bond and any other Securities payable therefrom. This pledge shall be valid and binding from and after the date of the first delivery of the Bond, and the moneys, as received and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Enterprise or the City (except as herein otherwise expressly provided), and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Enterprise or the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

A. Construction Fund. There is hereby created the 2005 Bond Projects account within the Construction Fund, into which the Enterprise shall deposit, upon receipt from the Purchaser, the proceeds of the Bond after making the deposit required by Section 5F of this Ordinance.

The proceeds of the Bond so deposited in the Construction Fund, except as herein otherwise expressly provided, shall be used and paid out from time to time solely for the purpose of paying the Cost of the Project and are pledged therefor. Any such proceeds remaining in the Construction Fund after completion of the Project shall be deposited in the Parity Bonds Principal and Interest Fund and used for the purposes of the Parity Bonds Principal and Interest Fund or shall be used to the extent feasible to call and redeem the Bond in advance of its Maturity Date. The City shall transfer any proceeds of the Bond deposited in the Construction Fund, without further order, to the Parity Bonds Principal and Interest Fund, and the Enterprise shall use the same to pay the Debt Service Requirements of the Bond as the same become due whenever and to the extent moneys in the Parity Bonds Principal and Interest Fund or moneys otherwise available therefor are insufficient for that purpose, unless such proceeds shall be needed to pay obligations accrued and to accrue under any contracts then existing

and pertaining to the Project. Any moneys so used shall be restored to the Construction Fund from the first Pledged Revenues thereafter received and not needed to pay the Debt Service Requirements of the Bond.

B. Water and Wastewater Utility Fund. Except as otherwise provided herein, the entire Income, upon receipt thereof from time to time, shall be deposited immediately in the Water and Wastewater Utility Fund. Operation and Maintenance Expenses shall be paid as provided in Section 5C hereof. The Pledged Revenues on deposit in the Water and Wastewater Utility Fund shall be applied in the following order of priority:

(1) First, to the Superior Bonds Principal and Interest Fund in the manner set forth in Section 5D hereof;

(2) Second, to the Superior Bonds Reserve Fund in the manner set forth in Section 5E hereof;

(3) Third, to the Parity Bonds Principal and Interest Fund in the manner set forth in Section 5F hereof;

(4) Fourth, to the payment of the Debt Service Requirements of Subordinate Bonds or other Subordinate Securities in accordance with Section 5G hereof;

(5) Fifth, to be used in accordance with Section 5H hereof.

C. Operation and Maintenance Fund. As a first charge on the Water and Wastewater Utility Fund there shall be paid from the Operation and Maintenance Fund the Operation and Maintenance Expenses of the System as they become due and payable.

D. Superior Bonds Principal and Interest Fund. There shall be deposited in the Superior Bonds Principal and Interest Fund from the Pledged Revenues on or before the last day of each month, the amounts required by the Prior Superior Bond Ordinance.

The moneys deposited in the Superior Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds and any other Superior Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance.

E. Superior Bonds Reserve Fund. Subject to the payments required by Section 5D hereof, there shall be deposited in the Superior Bonds Reserve Fund from the Pledged Revenues moneys sufficient to accumulate in and maintain the Superior Bonds Reserve Fund at an amount equal to the Superior Bonds Reserve Fund Requirement. Said amount shall be maintained as a continuing reserve for the payment of the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged. In the event that the amount on deposit in the Superior Bonds Reserve Fund falls below the Superior Bonds Reserve Fund Requirement, there shall be deposited in the Superior Bonds Reserve Fund such Pledged Revenues as may be needed to accumulate or reaccumulate the amount therein so that at all times the amount in the Superior Bonds Reserve Fund equals the Superior Bonds Reserve Fund Requirement. The moneys in the Superior Bonds Reserve Fund shall be set aside, accumulated, and, if necessary, reaccumulated as provided herein, from time to time, and maintained as a continuing reserve to be used only to prevent deficiencies in the Superior Bonds Principal and Interest Fund resulting from failure to deposit therein sums sufficient to pay such Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged as the same become due.

If at any time there shall not be deposited for any reason in the Superior Bonds Principal and Interest Fund the full amount above stipulated, then there shall be deposited in the Superior Bonds Principal and Interest Fund at such time from the Superior Bonds Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. The money so used shall be replaced to the

Superior Bonds Reserve Fund from the first Pledged Revenues thereafter received and not required to be otherwise applied by Section 5D hereof.

If at any time there shall not be deposited for any reason in the Superior Bonds Reserve Fund the full amount of the Superior Bonds Reserve Fund Requirement from the Pledged Revenues, the difference between the amount deposited and the Superior Bonds Reserve Fund Requirement shall in a like manner be deposited therein from the first Pledged Revenues thereafter received and not required to be applied otherwise by Section 5D hereof in twelve (12) equal monthly installments.

Nothing in this Ordinance shall be construed as limiting the right of the Enterprise to substitute for the cash deposit required to be maintained hereunder a letter of credit, surety bond, insurance policy, agreement guaranteeing payment, or other undertaking by a financial institution to ensure that cash in the amount otherwise required to be maintained hereunder will be available to the Enterprise as needed, provided that any such substitution shall be submitted to Fitch Investors Service, Inc., Moody's Investors Service, and Standard & Poor's Corporation and shall not cause the then-current ratings of the Prior Superior Bonds to be adversely affected.

The Superior Bonds Reserve Fund shall be replenished in the following priority: first, principal and interest on any funding instrument as described above shall be paid from first available Pledged Revenues on a pro rata basis; second, after all such amounts are paid in full, amounts necessary to fund the Superior Bonds Reserve Fund in an amount equal to the Superior Bonds Reserve Fund Requirement, after taking into account the amounts available under any funding instruments as described above, shall be deposited from next available Pledged Revenues.

F. Parity Bonds Principal and Interest Fund. There shall be deposited in the Parity Bonds Principal and Interest Fund, forthwith upon receipt of the proceeds of the Bond, interest accrued thereon from its date to the date of delivery thereof to the Purchaser, to apply to the payment of interest first due on the Bond.

There shall also be deposited in the Parity Bonds Principal and Interest Fund from the Pledged Revenues the following amounts (with a credit for the amount of any accrued interest deposited in the Parity Bonds Principal and Interest Fund and not theretofore credited):

(1) Interest Payments. One-sixth (1/6) of the aggregate amount of the next interest due on the Bond on the next Interest Payment Date on or before the next succeeding December 1 plus any other amounts due for interest on the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding.

(2) Principal Payments. One-sixth (1/6) of the aggregate amount of the next principal due on the Bond on the next Maturity Date on or before the next succeeding December 1 plus any other amounts due for principal of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding.

Such interest and principal shall be promptly paid when due.

The moneys deposited in the Parity Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance.

G. Payment of Subordinate Securities. Subject to the payments required by Sections 5D, 5E and 5F hereof, any remaining Pledged Revenues may be used for the payment of Debt Service Requirements of Subordinate Securities payable from the Pledged Revenues and authorized to be issued in accordance with this Ordinance, including reasonable reserves for such Subordinate Securities; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be

subordinate to the lien and pledge of the Bond, any Additional Parity Bonds and any other Parity Securities as herein provided.

H. Use of Remaining Revenues. Subject to the payments required or permitted by Sections 5D through 5G hereof, any remaining Pledged Revenues may be used after the expiration of thirty (30) days from the payment of any principal payments required hereby for any one or any combination of lawful purposes.

I. Termination of Deposits. No payment need be made into the Parity Bonds Principal and Interest Fund if the amount of cash and Permitted Investments in the Parity Bonds Principal and Interest Fund is at least equal to the remaining Debt Service Requirements of the Bond, any Outstanding Additional Parity Bonds and Outstanding Parity Securities to their respective Maturity Dates or to any Redemption Dates on which the Enterprise shall have exercised or shall have obligated itself to exercise its option to redeem, prior to their respective Maturity Dates, the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding and thereafter maturing (provided that, solely for the purpose of this Section 5I, there shall be deemed to be a credit to the Parity Bonds Principal and Interest Fund moneys, any cash or Permitted Investments accounted for in any other fund and restricted solely for the purpose of paying the Debt Service Requirements of the Bond, any Additional Parity Bonds or any other Parity Securities), in which case cash or Permitted Investments in the Parity Bonds Principal and Interest Fund in an amount, except for any known interest or other gain to accrue from any investment or deposit of moneys pursuant to Section 6B hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment, at least equal to such Debt Service Requirements, shall be used together with any such gain from such investments and deposits solely to pay such Debt Service Requirements as the same become due.

J. Budget and Appropriation of Sums. The sums required to make the payments specified in this Section 5 are hereby appropriated for said purposes. Said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed in each year respectively while the Bond, either as to principal or interest, is Outstanding and unpaid.

Section 6. General Administration of Funds.

A. Places and Times of Deposits. Each of the special funds described in Section 5 hereof shall be maintained by the City as trust funds solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such funds pertaining to the Income. Such funds shall be continuously secured to the fullest extent required by the ordinances of the City and, to the extent applicable, the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes of such funds. Each periodic payment shall be deposited in the proper fund not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

B. Investment of Funds. Any moneys in any fund described in Section 5 hereof may be invested, reinvested or deposited only in Permitted Investments. Permitted Investments in any fund shall be deemed at all times to be a part of the applicable fund; provided that, with the exception of the Construction Fund, the interest accruing on such investments and any profit realized therefrom shall be applied, and any loss resulting from such investments shall be charged, to the Water and Wastewater Utility Fund. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given fund whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such fund.

C. No Liability for Losses Incurred in Performing Terms of Ordinance. Neither the Enterprise nor the City nor any officer thereof shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

D. Character of Funds. The moneys in any fund herein authorized shall consist of lawful money of the United States of America or Permitted Investments or both such money and Permitted Investments. Moneys deposited in a demand or time deposit account in a Commercial Bank or other depository, appropriately secured according to the ordinances of the City and, to the extent applicable, the laws of the State, shall be deemed lawful money of the United States of America.

E. Accelerated Payments Optional. Nothing contained herein prevents the accumulation in any fund herein designated of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided therefor, but no payment shall be so accelerated if such acceleration shall cause a default in the payment of any obligation of the Enterprise pertaining to the Income.

Section 7. Priorities; Liens; Issuance of Additional Bonds.

A. Liens on Pledged Revenues; Equality of the Bond, Additional Parity Bonds and Other Parity Securities. Except as expressly provided in this Ordinance with respect to Superior Bonds, Parity Securities and Subordinate Securities, the Pledged Revenues shall be and hereby are irrevocably pledged and set aside to pay the Debt Service Requirements of the Bond.

The Bond constitutes an irrevocable and second lien (but not necessarily an exclusive second lien) upon the Pledged Revenues.

The Bond, any Additional Parity Bonds and any other Parity Securities authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bond, any Additional Parity Bonds and any other Parity Securities, regardless of the fact that they may be actually issued and delivered at different times.

B. Issuance of Additional Parity Bonds. Nothing herein, subject to the limitations stated in Section 7F hereof, prevents the issuance by the Enterprise or the City of Additional Parity Bonds payable from the Pledged Revenues and constituting a lien on the Pledged Revenues on a parity with the lien thereon of the Bond; but before any such Additional Parity Bonds are authorized or actually issued, the following conditions shall be satisfied:

(1) Absence of Default. At the time of the adoption of the supplemental ordinance or other instrument authorizing the issuance of the Additional Parity Bonds as provided in Section 7F hereof, the Enterprise shall not be in default in making any payments required by Section 5 hereof, and there shall not have occurred and be continuing any Event of Default.

(2) Historic Revenues Tests. Except as hereinafter provided in the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, the Pledged Revenues for the last complete Fiscal Year prior to the issuance of the proposed Additional Parity Bonds, as certified by a Consulting Engineer or Independent Auditor, must have been equal to at least one hundred ten percent (110%) of the Combined Maximum Annual Debt Service Requirements of the Bond then Outstanding, any Additional Parity Bonds then Outstanding, any other Parity Securities then Outstanding and the Additional Parity Bonds proposed to be issued. If any adjustment in water or wastewater rates, fees, tolls or charges or tap fees, or any combination thereof, is made by the City during such Fiscal Year, the Consulting Engineer or Independent Auditor shall adjust the calculation of the Pledged Revenues to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such Fiscal Year. For purposes of this Section 7B(2), when computing the Maximum Annual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the

computation will bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Internal Revenue Code of 1986, as amended, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer, if any. In the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, compliance with this Section 7B(2) shall not be required so long as the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding after the issuance of such Additional Parity Bonds on each Interest Payment Date does not exceed the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding prior to the issuance of such Additional Parity Bonds on such Interest Payment Dates.

C. Certification of Historic Revenues. Where certifications of historic revenues are required by this Ordinance, the specified and required written certifications of the Consulting Engineer or Independent Auditor that revenues are sufficient to pay the required amounts shall be conclusively presumed to be accurate in determining the right of the Enterprise or the City to authorize, issue, sell and deliver Additional Parity Bonds or other Parity Securities.

D. Superior Securities. Nothing herein prevents the Enterprise or the City from issuing Superior Bonds or Superior Securities for any lawful purpose, subject to the requirements of the ordinance authorizing the issuance of the Prior Superior Bonds.

E. Subordinate Securities. Nothing herein, except the limitations stated in Section 7F hereof, prevents the Enterprise or the City from issuing Subordinate Securities for any lawful purpose.

F. Supplemental Ordinances. Additional Parity Bonds, Superior Bonds or Subordinate Securities shall be issued only after authorization thereof by ordinance, supplemental ordinance or other instrument in substantially the same form as this Ordinance, stating the purpose or purposes of the issuance of such additional Securities, directing the application of the proceeds thereof to such purpose or purposes, directing the execution thereof, and fixing and determining the date, series designation, principal amount, maturity or maturities, maximum rate or rates of interest, and prior redemption privileges with respect thereto, and providing for payments to and from the Water and Wastewater Utility Fund in accordance with this Ordinance. All additional Securities shall bear such date, shall be payable as to principal on December 1 and as to interest on June 1 and December 1 and shall be subject to redemption prior to maturity on such terms and conditions, as may be provided, and shall bear interest at such rate or rates as may be fixed by ordinance, instrument or other document. Nothing herein shall be construed to prohibit the issuance of additional Securities payable from the Pledged Revenues, the principal of which is payable more frequently than annually or the interest on which is payable more frequently than semiannually.

Section 8. Covenants. The Enterprise hereby particularly covenants and agrees with the Purchaser and makes provisions which shall be a part of the contract with the Purchaser, which covenants and provisions shall be kept by the Enterprise or the City continuously until the Bond has been fully paid and discharged:

A. Rate Maintenance. The City shall prescribe, revise, and collect water and wastewater rates, fees, tolls, and charges and tap fees or any combination thereof, which shall produce Income sufficient, together with any other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund, to make the payments and accumulations required by this Ordinance and which shall produce Pledged Revenues in each Fiscal Year sufficient, together with all other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund after payment of Operation and Maintenance Expenses, to pay an amount at least equal to one hundred ten percent (110%) of the actual Debt Service Requirements of the Outstanding Bond and any Outstanding or proposed Additional Parity Bonds or other Outstanding Parity Securities plus any amounts required to meet then existing deficiencies pertaining to any fund relating to the Pledged Revenues or any Securities payable therefrom. For purposes of this Section 8A, when computing the actual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the actual rate applicable during said period. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer, if any.

In the event that such rates, fees, tolls, and charges and tap fees at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the City shall increase its rates, fees, tolls, and charges and tap fees to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

B. Collection of Charges. The City shall cause all water and wastewater rates, fees, tolls, and charges and tap fees to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance and any other ordinance or instrument supplemental thereto. The rates, fees, tolls, and charges and tap fees due shall be collected in any lawful manner.

C. Competent Management. The City shall employ experienced and competent management personnel for each component of the System. If the Enterprise shall fail to pay the Debt Service Requirements of the Bond promptly as the same become due, or if the Enterprise or the City shall fail to keep any of the covenants herein contained, and if such default shall continue for a period of sixty (60) days, or if the Pledged Revenues in any Fiscal Year, together with other legally available moneys deposited in the Water and Wastewater Utility Fund, shall fail to equal at least the amount of the Debt Service Requirements of the Bond and other obligations payable from the Pledged Revenues due in the same Fiscal Year, the City shall retain a firm of competent management Persons skilled in the operation of water and wastewater facilities to assist in the management of the System so long as such default continues or the said revenues, proceeds and income are less than the amount hereinabove designated.

D. Performance of Duties. The City or the Enterprise, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Income and the System required by the Constitution and laws of the State and the ordinances, resolutions and contracts of the Enterprise or the City, including, without limitation, the proper segregation of the proceeds of the Bond and the Income and their application from time to time to the respective funds provided therefor.

E. Costs of Bond and of Performance. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Bond, payment of the Debt Service Requirements thereof or the performance of or compliance with any covenant or agreement contained in this Ordinance shall be paid exclusively (but only from the appropriate special fund in the manner authorized herein) from the proceeds of the Bond, from the Pledged Revenues, or from other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general fund of the City.

F. Contractual Obligations. The Enterprise or the City shall perform all contractual obligations undertaken by them under any other agreements relating to the Bond, the Income or the System.

G. Further Assurances. At any and all times the Enterprise or the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged, or intended so to be, or which the Enterprise or the City may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Ordinance. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged hereunder and all the rights of the Purchaser and every subsequent Owner of the Bond against all claims and demands of all Persons whomsoever.

H. Conditions Precedent. Upon the date of issuance of the Bond, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter, the Enterprise Ordinance, and this Ordinance to exist, to have happened, and to have been performed precedent to or in the issuance of the Bond shall exist, have happened and have been performed, and the Bond, together with all other obligations of the Enterprise or the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America or the Constitution or laws of the State, the Charter or the Enterprise Ordinance.

I. Efficient Operation and Maintenance. The City shall at all times operate the System properly and in a sound and economical manner. The City shall maintain, preserve and keep the System properly or cause the same so to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the maintenance of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the repair, maintenance and operation of the System shall be fair and reasonable.

J. Records and Accounts. The City shall keep proper books of record and account showing complete and correct entries of all transactions relating to the funds referred to herein.

K. Rules, Regulations and Other Details. The City, acting by and through its officers, shall establish and enforce reasonable rules and regulations governing the construction, operation, care, repair, maintenance, management, control, use, commodities, and services of the System. The City or the Enterprise shall observe and perform all of the terms and conditions contained in this Ordinance and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the System or the City.

L. Payment of Governmental Charges. The Enterprise shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any portion of the Income, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System, or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Enterprise shall not create or suffer to be created any lien or charge upon the System, or any part thereof, or upon the Income, except the pledge and lien created by this Ordinance for the payment of the Debt Service Requirements due in connection with the Bond and the pledge and lien for the Prior Superior Bonds and Prior Subordinate Bonds and except as herein otherwise permitted. The Enterprise shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within ninety (90) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Income, but nothing herein requires the Enterprise to pay or to cause to be discharged or to make provision for any such tax,

assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

M. Protection of Security. The Enterprise and the City and their officers, agents and employees shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Bond and any other Securities payable from the Pledged Revenues according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of the Bond or other Security payable from Pledged Revenues might be prejudicially and materially impaired or diminished.

N. Accumulation of Interest Claims. In order to prevent any accumulation of claims for interest after maturity, the Enterprise shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Bond or any other Securities payable from the Pledged Revenues; and the Enterprise shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of the Bond and all such securities the payment of which has not been extended.

O. Prompt Payment of Bond. The Enterprise shall promptly pay the Debt Service Requirements of the Bond on the dates and in the manner specified herein and in the Bond according to the true intent and meaning hereof.

P. Use of Funds. The funds described herein shall be used solely and only for the purposes described herein, subject to Section 9 hereof.

Q. Additional Securities. Neither the Enterprise nor the City shall hereafter issue any bonds or Securities relating to the System and payable from the Pledged Revenues, other than the Bond, without compliance with the requirements with respect to the issuance of Additional Superior Bonds, Additional Parity Bonds or Subordinate Bonds set forth herein to the extent applicable.

R. Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Pledged Revenues.

S. Disposal of System Prohibited. Subject to Section 8T hereof, except for the use of the System and the sale of commodities or services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until the Bond has been paid in full, as to all Debt Service Requirements thereof, or unless provision has been made therefor, or until the Bond has otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized. Subject to Section 8T hereof, the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the System.

T. Disposal of Property. No part of the System shall be sold, leased, mortgaged, pledged, encumbered or otherwise disposed of or otherwise alienated, until the Bond has been paid in full, or unless provision has been made therefor, or until the Bond has otherwise been redeemed; provided, however, that the City may sell, exchange or lease at any time and from time to time any property or facilities constituting part of the System and not needed or useful in the construction, reconstruction or operation thereof; but any proceeds of any such sale or exchange received and not used to replace such property so sold or exchanged and any proceeds of any such lease received shall be deposited in the Water and Wastewater Utility Fund as Income.

U. Fidelity Bonds or Insurance. Each official or other person having custody of any Pledged Revenues or responsible for their handling shall be fully bonded or insured at all times, which bond or insurance

shall be conditioned upon the proper application of said moneys. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

V. Loss from Condemnation. If any part of the System is taken by the exercise of a power of eminent domain, the amount of any award received by the City as a result of such taking shall be expended upon the improvement of the System or shall be applied to the redemption of the Outstanding Bond and any other Outstanding Securities payable from the Pledged Revenues in accordance with the provisions hereof and of any other ordinance authorizing the issuance of any such Securities at maturity or upon prior redemption if the authorizing ordinances authorize the prior redemption of such Securities.

W. Inspection of Records and System. The Purchaser, any subsequent Owner of the Bond or the Owner of any other Securities payable from the Pledged Revenues, any duly authorized agent or agents of the Purchaser or such Owner shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, concerning the Bond, the System or the Income, to make copies of such records, accounts and data at their own expense, and to inspect the System and properties comprising the same.

X. Audits Required. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the Enterprise to be made forthwith by an Independent Auditor and order an audit report for each fund pertaining to the Income. The City shall furnish a copy of each such audit report and any other annual report or financial statement of the Enterprise to the Bond Insurer, if any, as soon as practicable after the preparation thereof. The Bond Insurer, if any, shall have the right to direct an accounting at the expense of the Enterprise, and the failure of the Enterprise to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period shall be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of the Purchaser or any subsequent Owner of the Bond.

Y. Insurance and Reconstruction. The City shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the City as is customarily maintained with respect to water and wastewater facilities of like character against loss of or damage to the System and against public and other liability to the extent at least reasonably necessary to protect the interest of the City and of the Owner of the Bond or any other Securities payable from the Net Pledged Revenues, except as herein otherwise provided. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, commence and diligently proceed with the repair or replacement of the damaged or destroyed property so as to restore the same to use. The proceeds of any insurance appertaining to the System shall be payable to the City and (except for proceeds of use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement, and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Water and Wastewater Utility Fund as Income. If the costs of such repair and replacement of the damaged or destroyed property exceed the proceeds of such property insurance available for payment of the same, moneys in the Water and Wastewater Utility Fund shall be used to the extent necessary for such purpose. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

Section 9. Defeasance. When all Debt Service Requirements of the Bond have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged, and the Bond shall no longer be deemed to be Outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment of the Bond when the Enterprise has, with the consent of the Purchaser, placed in escrow or in trust with a Trust Bank moneys or Federal Securities in an amount sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all Debt Service Requirements of the Bond, as the same become due at their Maturity Date or upon any Redemption Dates as of which the Enterprise shall have exercised or shall have obligated itself to exercise its option to call the Bond for prior redemption. The Federal Securities shall be non-callable and shall become due prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule

established and agreed upon between the Enterprise and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the Owner thereof to assure such availability as so needed to meet such schedule. Nothing herein shall be construed to prohibit a partial defeasance of the Bond in accordance with the provisions of this Section 9.

Notwithstanding anything herein to the contrary, in the event that the principal or interest due on the Bond shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bond shall remain Outstanding for all purposes, shall not be defeased or otherwise satisfied and shall not be considered paid by the Enterprise, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Enterprise to the Owner of the Bond shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owner.

Section 10. Default Provisions and Remedies of Bond Owner.

A. Events of Default and Remedies. The Events of Default by the Enterprise or the City and the remedies of the Purchaser shall be as set forth in the Loan Agreement.

B. Warranty Upon Issuance of Bond. The Bond, when duly executed and registered for the purposes provided for in this Ordinance, shall constitute a warranty by and on behalf of the Enterprise for the benefit of each and every future Owner of the Bond that the Bond has been issued for a valuable consideration in full conformity with law.

C. Rights of Bond Insurer. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owner of the Bond under this Ordinance.

Section 11. Amendment of Ordinance.

A. Amendment of Ordinance Not Requiring Consent of Bond Owner. The Enterprise may, without the consent of, or (except as otherwise provided herein) notice to, the Owner of the Bond, adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) To cure or correct any formal defect, ambiguity or inconsistent provision contained in this Ordinance;

(2) To appoint successors to the Paying Agent, Registrar or Transfer Agent as provided in Section 3B(6) hereof;

(3) To designate a trustee for the Owners of the Bond, to transfer custody and control of the Income to such trustee, and to provide for the rights and obligations of such trustee;

(4) To add to the covenants and agreements of the Enterprise or the City or the limitations and restrictions on the Enterprise or the City set forth herein;

(5) To pledge additional revenues, properties or collateral to the payment of the Bond;

(6) To cause this Ordinance to comply with the Trust Indenture Act of 1939, as amended from time to time; or

(7) To effect any such other changes hereto which do not in the opinion of nationally recognized bond counsel materially adversely affect the interests of the Owners of the Bond. Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the terms and

provisions of this Ordinance, the existence and effects on the Owner of the Bond of the Bond Insurance Policy shall be disregarded.

B. Amendment of Ordinance Requiring Consent of Bond Owner. Exclusive of the amendatory ordinances covered by Section 11A hereof, this Ordinance may be amended or modified by ordinances or other instruments duly adopted by the Enterprise, without receipt by it of any additional consideration, but with the written consent of the Purchaser or any subsequent Owner of the Bond (except as would adversely affect the rights of the Owners of any other Securities payable from the Pledged Revenues).

C. Notation on Bond. Any Bond delivered after the effective date of any action taken as provided in Section 11B hereof or Outstanding at the effective date of such action, may bear a notation thereon by endorsement or otherwise in form approved by the Council as to such action; and if any Bond so executed and delivered after such date does not bear such notation, then upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of its Bond for such purpose at the principal office of the Enterprise, suitable notation shall be made on such Bond by the Secretary of the Enterprise as to any such action. If the Council so determines, a new Bond so modified as in the opinion of the Council to conform to such action shall be prepared, executed and delivered; and upon demand of the Owner of the Bond, shall be exchanged without cost to such Owner.

D. Consent of Bond Insurer. Any provision of this Ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer.

Unless otherwise provided in this Section 11, the consent of the Bond Insurer shall be required in addition to the consent of the Bond Owner, when required, for the following purposes: execution and delivery of any supplemental ordinance or any amendment, supplement, change or modification to the Loan Agreement, removal of the Paying Agent, Registrar or Transfer Agent and selection and appointment of any successor paying agent, registrar or transfer agent and initiation or approval of any other action which requires consent of Bond Owners.

Any reorganization or liquidation plan with respect to the Enterprise must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of the Owner of the Bond absent a default by the Bond Insurer under the Bond Insurance Policy.

Section 12. Miscellaneous.

A. Character of Agreement. None of the covenants, agreements, representations, or warranties contained herein or in the Bond shall ever impose or shall be construed as imposing any liability, obligation, or charge against the City or against the credit of the City payable out of the general fund or any other fund of the City (except the special funds pledged therefor).

Pursuant to the Enterprise Ordinance the Enterprise is authorized to make covenants on behalf of the City and to bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in future years. Notwithstanding anything in this Ordinance to the contrary, no such covenant of the Enterprise on behalf of the City that would constitute such a direct or indirect debt or other financial obligation of the City may be enforced against the City.

B. No Pledge of Property. The payment of the Bond is not secured by an encumbrance, mortgage or other pledge of property of the City except for the Pledged Revenues. No property of the City, subject to such exception with respect to the Pledged Revenues, pledged for the payment of the Bond, shall be liable to be forfeited or taken in payment of the Bond.

C. Statute of Limitations. No action or suit based upon the Bond or other obligation of the Enterprise or the City shall be commenced after it is barred by any statute of limitations pertaining thereto. Any trust or fiduciary relationship between the Enterprise and the Owner of the Bond or the obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the Maturity Date or other due date thereof unless the Bond is presented for payment or demand for payment of such other obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit, the collection of which has been barred, shall revert to the Water and Wastewater Utility Fund, unless the Council shall otherwise provide by ordinance. Nothing herein prevents the payment of the Bond or other obligation after an action or suit for its collection has been barred if the Council deems it in the best interests of the Enterprise or the public so to do and orders such payment to be made.

D. Delegated Duties. The officers of the Enterprise are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law, including, without limitation:

(1) Preparation of Bond. The preparation of a Bond in a principal amount equal to that of the Bond, otherwise in substantially the same form and bearing the same terms;

(2) Execution, Registration and Delivery of Bond. The execution and registration of the Bond and the delivery of the Bond to the Purchaser pursuant to the provisions of this Ordinance;

(3) Information. The assembly and dissemination of financial and other information concerning the Enterprise, the City and the Bond;

(4) Bond Insurance. The President or the Treasurer are hereby independently authorized to approve and execute a Commitment for the purchase of municipal bond insurance, and execute any documents or agreements related to the same.

(5) Documents and Closing Certificates. The execution of the Commitment, the Sale Certificate, the Loan Agreement and such certificates as may be reasonably required by the Purchaser, relating, inter alia, to:

(a) The signing of the Bond;

(b) The tenure and identity of the officials of the Enterprise;

(c) If in accordance with fact, the absence of litigation, pending or threatened, affecting the validity of the Bond; and

(d) The delivery of the Bond and the receipt of the Bond purchase price.

E. Successors. Whenever herein the Enterprise or the City is named or is referred to, such provision shall be deemed to include any successors of the Enterprise or the City, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions for the benefit of the Enterprise or the City contained herein shall bind and inure to the benefit of any officer, board, district, commission, authority, agency, instrumentality or other Person or Persons to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Enterprise or the City or of its respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

F. Rights and Immunities. Except as herein otherwise expressly provided, nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon or to give or grant to any Person, other than the Enterprise and the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and the

Owner of the Bond, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the Enterprise or the City shall be for the sole and exclusive benefit of the Enterprise or the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and any Owner of the Bond.

No recourse shall be had for the payment of the Debt Service Requirements of the Bond or for any claim based thereon or otherwise upon this Ordinance authorizing their issuance or any other ordinance or instrument pertaining thereto, against any individual member of the Council, or any officer or other agent of the Enterprise past, present or future, either directly or indirectly through the Enterprise, or otherwise, whether by virtue of any constitution, statute or rule of law or by the enforcement of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bond and as a part of the consideration of its issuance specially waived and released.

G. Bond Insurer as Third-Party Beneficiary. To the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance, the Bond Insurer is hereby explicitly recognized as being a thirty-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

H. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bond, as received by or otherwise credited to the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bond and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Enterprise irrespective of whether such persons have notice of such liens.

I. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bond. Such recourse shall not be available either directly or indirectly through the Council or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

J. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

K. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bond, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Bond.

L. Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the Enterprise and after the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Owner of the Bond; and this Ordinance, subject to the provisions of Sections 9 and 11 hereof, shall be and shall remain irrepealable until the Bond, as to all Debt Service Requirements, shall be fully paid, cancelled or discharged.

M. Ratification. All action not inconsistent with the provisions of this Ordinance heretofore taken by the Enterprise or its officers, and otherwise by the Enterprise directed toward the issuance of the Bond is hereby ratified, approved and confirmed.

N. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

O. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

P. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

Q. Emergency. Due to the immediate need by the City and the Enterprise for proceeds of the Bond in order to acquire, construct and install the Project, an emergency exists which requires the immediate passage of this Ordinance as an emergency measure, and this Ordinance is immediately necessary for the preservation of the public peace, health or safety. This Ordinance shall therefore be exempt from referendum.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY MEASURE this 11th day of April, 2005.

CITY OF WESTMINSTER, COLORADO, WATER AND
WASTEWATER ENTERPRISE

By: _____
Mayor

Attest:

Secretary

STATE OF COLORADO)
)
 COUNTIES OF ADAMS) SS.
 AND JEFFERSON)
)
 CITY OF WESTMINSTER)

I, the duly appointed, qualified and acting Secretary of the City of Westminster, Colorado Water and Wastewater Utility Enterprise (the "Enterprise") do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the governing body (the "Council") of the Enterprise at a regular meeting of the Council held at the City Hall on April 11, 2005.

2. The Ordinance has been signed by the President, attested by me as Secretary and duly recorded in the books of the Enterprise; and that the same remains of record in the book of records of the Enterprise.

3. The passage of the Ordinance as an emergency was duly moved and seconded, and the Ordinance was approved by vote of a ___ of ___ of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
David Davia	X			
Chris Dittman	X			
Samantha Dixion	X			
Elmer "Butch" Hicks	X			
Tim Kauffman	X			
Nancy McNally	X			
Jo Anne Price	X			

4. That notice of the meeting of April 11, 2005, in the form attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

5. That the ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on April 21, 2005. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of April, 2005.

 Secretary

EXHIBIT A

(Attach Notice of Meeting)

EXHIBIT B

(Attach Affidavit of Publication)



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
April 11, 2005



SUBJECT: Second Reading of Councillor's Bill No. 20 re Approval of City Council Allowance

Prepared By: Barbara Opie, Assistant to the City Manager

Recommended City Council Action:

Pass Councillor's Bill No. 20 on second reading that provides City Council a monthly allowance in the amount of \$200/month for Councillors and the Mayor Pro Tem and \$250/month for the Mayor to cover cell phone, internet service, fax line and car expenses (i.e., local commuting costs), effective November 14, 2005. The monthly allowance will include an automatic adjustment every two years in concert with the adoption of the two-year budget and tied to the Denver-Boulder Consumer Price Index.

Summary Statement:

- In following up from the March 21, 2005, Study Session discussion concerning the proposed monthly allowance for City Council, Staff is recommending that City Council take a comprehensive approach and implement a monthly allowance system that addresses the cell phone and internet service as well as incorporates fax line and car usage. Per Council direction, Staff is proposing a different monthly allowance level for the Mayor as noted in the recommendation above.
- A monthly allowance system is very beneficial in that it will significantly simplify administrative work for both Staff and City Council.
- This Councillor's Bill was passed on first reading on March 28, 2005.

Expenditure Required: \$2,272

Source of Funds: General Fund, City Council Budget and 2004 Carryover Funds for 2005

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3204**

COUNCILLOR'S BILL NO. **20**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

PRICE - HICKS

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE
CONCERNING SALARIES FOR ELECTIVE OFFICERS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title I, Chapter 7, W.M.C., is hereby AMENDED to read as follows:

1-7-1: ELECTIVE OFFICERS: The salaries of the City's elective officers shall be as follows:

Mayor	\$1,000 per month
Mayor Pro Tem, elected by Council	\$ 900 per month
Councillors, other than Mayor or Mayor Pro Tem	\$ 800 per month

THE CITY'S ELECTIVE OFFICERS SHALL RECEIVE AN ADDITIONAL MONTHLY ALLOWANCE FOR EXPENSES RELATED TO THE PERFORMANCE OF THEIR RESPECTIVE DUTIES. COMMENCING JANUARY 1, 2007, THE ALLOWANCE SHALL BE ADJUSTED, AND BIENNIALLY THEREAFTER EACH JANUARY 1, BY THE THEN CURRENT DENVER/BOULDER CONSUMER PRICE INDEX, ROUNDED TO THE NEAREST WHOLE DOLLAR. THIS ALLOWANCE SHALL BE IN LIEU OF ANY REIMBURSEMENT TO WHICH THE MAYOR, MAYOR PRO TEM OR COUNCILLOR MAY OTHERWISE BE ENTITLED TO FOR INTERNET SERVICE, FAX COMMUNICATIONS, CELL PHONE USAGE, AND LOCAL COMMUTING COSTS, INCLUDING MILEAGE FOR ATTENDANCE AT MEETINGS AND CONFERENCES LOCATED WITHIN THE DENVER METROPOLITAN AREA AS DEFINED BY THE COUNTIES INCLUDED WITHIN THE DENVER REGIONAL COUNCIL OF GOVERNMENTS (DRCOG).

THE ALLOWANCES SHALL BE AS FOLLOWS:

MAYOR	\$250 PER MONTH
MAYOR PRO TEM AND COUNCILLORS	\$200 PER MONTH

In addition, the City shall contribute to the City deferred compensation accounts of each such officer an amount equal to the officer's City deferred compensation contributions. The combined contributions from the City and the elective officer shall be subject to all applicable I.R.S. regulations, but in no event shall such combined contributions from the City and the elective officer exceed 25% of the officer's total City salary.

Section 2. This ordinance shall take effect on November 14, 2005.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2005.

ATTEST:

City Clerk

Mayor

Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, April 11, 2005. Mayor McNally, Councillors Davia, Dittman, Dixon, Hicks, Kauffman, and Price were present at roll call.

The minutes of the March 28, 2005 meeting were approved.

Council proclaimed April 16 to be Arbor Day and Earth Day and May 14 to be Community Pride Day.

Council approved the following: sale of City property at West 120th Ave. and Lowell Blvd. to Kinglet, LLC; acquisition of open space at 9300 Wadsworth Parkway; acquisition of open space and future option to purchase at West 99th Ave and Wadsworth Blvd.; Memorandum of Understanding re Colorado Task Force –One; and a \$5 million transfer to WEDA

The following Councillors' Bills were adopted on second reading:.

A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH THE ROZEK COMPANY TO AID IN THEIR RELOCATION TO 7981 WEST 103TH AVENUE IN CHURCH RANCH BUSINESS CENTER IN WESTMINSTER, COLORADO

A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH McBRIDE BROTHERS LLC TO AID IN THEIR RELOCATION TO 7160 IRVING STREET IN WESTMINSTER, COLORADO

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 33, TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING SALARIES FOR ELECTIVE OFFICERS

The following Councillors' Bills were adopted as emergencies:

A BILL FOR AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN REAL PROPERTY OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FOURTH AMENDMENT TO A PREVIOUSLY EXECUTED AND AMENDED LEASE PURCHASE AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, A WARRANTY DEED, AN OFFICIAL STATEMENT AND RELATED DOCUMENTS; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED DOCUMENTS; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY

A BILL FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF A CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, SUBORDINATE WATER AND WASTEWATER REVENUE BOND, SERIES 2005

Council adopted Resolution No.17 re approval of selected documents for WEDA Bond Issue.

At 7:54 p.m. the meeting was adjourned.

By order of the Westminster City Council
Linda Yeager, MMC, City Clerk
Published in the Westminster Window on April 21, 2005

BY AUTHORITY

ORDINANCE NO. **3201**
SERIES OF 2005

COUNCILLOR'S BILL NO. **17**
INTRODUCED BY COUNCILLORS
KAUFFMAN - DIXION

A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH THE ROZEK COMPANY TO AID IN THEIR RELOCATION TO 7981 WEST 103TH AVENUE IN CHURCH RANCH BUSINESS CENTER IN WESTMINSTER, COLORADO

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, the Rozek Company plans to purchase the building at 7981 West 103th Avenue in Church Ranch Business Center, in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and the Rozek Company is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

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

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April 2005.

BY AUTHORITY

ORDINANCE NO. **3202**
SERIES OF 2005

COUNCILLOR'S BILL NO. **18**
INTRODUCED BY COUNCILLORS
Dixon - Dittman

A BILL FOR AN ORDINANCE AUTHORIZING A BUSINESS ASSISTANCE PACKAGE WITH McBRIDE BROTHERS LLC TO AID IN THEIR RELOCATION TO 7160 IRVING STREET IN WESTMINSTER, COLORADO

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

WHEREAS, it is important for the City of Westminster to remain competitive with other local governments in creating assistance for high quality development to locate in the City; and

WHEREAS, McBride Brothers LLC plans to purchase the building at 7160 Irving Street in Westminster, and

WHEREAS, a proposed Assistance Agreement between the City and McBride Brothers LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Assistance Agreement with McBride Brothers LLC in substantially the same form as the one attached as Exhibit "A", and upon execution of the Agreement to fund and implement said Agreement.

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

Section 3. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April 2005.

BY AUTHORITY

ORDINANCE NO. **3203**
SERIES OF 2005

COUNCILLOR'S BILL NO. **19**
INTRODUCED BY COUNCILLORS
HICKS - PRICE

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 33, TOWNSHIP 1 SOUTH, RANGE 68 WEST, 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from O-1 Open District to Planning Unit Development zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from O-1 Open District to Planned Unit Development:

A parcel of land located in the northeast quarter of Section 6, Township 2 South, Range 68 West of the Sixth Principal Meridian, County of Adams, State of Colorado, more particularly described as follows:

Commencing at the northeast corner of said Section 6, whence the north quarter corner thereof bears S89°57'06"W, a distance of 2635.70 feet; thence S00°27'46"E, along the east line of the northeast quarter of said Section 6, a distance of 185.00 feet to a point on the south right-of-way line of West 120th Avenue; thence S89°57'06"W, along said south right-of-way line, a distance of 45.00 feet to the northwest corner of Academy of Charter Schools Subdivision, being the point of beginning; thence along the boundary of said Academy of Charter Schools Subdivision, the following three (3) courses:

1. S00°27'46"E, a distance of 684.76 feet to a point of curve;
2. Along a curve to the right having a delta of 90°24'52", a radius of 35.00 feet and an arc length of 55.23 feet to a point of tangent;
3. S89°57'06"W, along said tangent, a distance of 579.24 feet to a point on the west line of the east half of the east half of the northeast quarter of said Section 6;

Thence N00°25'36"W, along said west line, a distance of 720.02 feet to a point on the south right-of-way line of said West 120th Avenue; thence N89°57'06"E, along said south right-of-way line, a distance of 614.04 feet to the point of beginning. Containing 442,006 square feet or 10.147 acres more or less.

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

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2005.

BY AUTHORITY

ORDINANCE NO. **3204**
SERIES OF 2005

COUNCILLOR'S BILL NO. **20**
INTRODUCED BY COUNCILLORS
PRICE – HICKS

A BILL FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE CONCERNING SALARIES FOR ELECTIVE OFFICERS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title I, Chapter 7, W.M.C., is hereby AMENDED to read as follows:

1-7-1: ELECTIVE OFFICERS: The salaries of the City's elective officers shall be as follows:

Mayor	\$1,000 per month
Mayor Pro Tem, elected by Council	\$ 900 per month
Councillors, other than Mayor or Mayor Pro Tem	\$ 800 per month

THE CITY'S ELECTIVE OFFICERS SHALL RECEIVE AN ADDITIONAL MONTHLY ALLOWANCE FOR EXPENSES RELATED TO THE PERFORMANCE OF THEIR RESPECTIVE DUTIES. COMMENCING JANUARY 1, 2007, THE ALLOWANCE SHALL BE ADJUSTED, AND BIENNIALLY THEREAFTER EACH JANUARY 1, BY THE THEN CURRENT DENVER/BOULDER CONSUMER PRICE INDEX, ROUNDED TO THE NEAREST WHOLE DOLLAR. THIS ALLOWANCE SHALL BE IN LIEU OF ANY REIMBURSEMENT TO WHICH THE MAYOR, MAYOR PRO TEM OR COUNCILLOR MAY OTHERWISE BE ENTITLED TO FOR INTERNET SERVICE, FAX COMMUNICATIONS, CELL PHONE USAGE, AND LOCAL COMMUTING COSTS, INCLUDING MILEAGE FOR ATTENDANCE AT MEETINGS AND CONFERENCES LOCATED WITHIN THE DENVER METROPOLITAN AREA AS DEFINED BY THE COUNTIES INCLUDED WITHIN THE DENVER REGIONAL COUNCIL OF GOVERNMENTS (DRCOG).

THE ALLOWANCES SHALL BE AS FOLLOWS:

MAYOR	\$250 PER MONTH
MAYOR PRO TEM AND COUNCILLORS	\$200 PER MONTH

In addition, the City shall contribute to the City deferred compensation accounts of each such officer an amount equal to the officer's City deferred compensation contributions. The combined contributions from the City and the elective officer shall be subject to all applicable I.R.S. regulations, but in no event shall such combined contributions from the City and the elective officer exceed 25% of the officer's total City salary.

Section 2. This ordinance shall take effect on November 14, 2005.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of March, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 11th day of April, 2005.

By Authority

Ordinance No. **3205**
Series of 2005

Councillor's Bill No. **21**
Introduced by Councillor

Dittman- Davia

A BILL FOR AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN REAL PROPERTY OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FOURTH AMENDMENT TO A PREVIOUSLY EXECUTED AND AMENDED LEASE PURCHASE AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, A WARRANTY DEED, AN OFFICIAL STATEMENT AND RELATED DOCUMENTS; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED DOCUMENTS; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Westminster, Adams and Jefferson Counties, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and

WHEREAS, pursuant to Chapter XI of the Charter, the City is authorized to enter into one or more leases or lease-purchase agreements for land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, pursuant to Section 2.1 of the Charter, the City is authorized to sell and dispose of real and personal property; and

WHEREAS, the City Council of the City (the "City Council") has determined and hereby determines it is in the best interests of the City and its inhabitants that the City sell and convey certain real property owned by the City (the "2005 Leased Property") to The City of Westminster Building Authority (the "Authority"); and

WHEREAS, the City Council has determined and hereby determines it is in the best interests of the City and its inhabitants that the City lease from the Authority the 2005 Leased Property pursuant to a Lease Purchase Agreement dated as of November 15, 1998, as amended by the First Amendment to Lease Purchase Agreement dated as of August 15, 1999, the Second Amendment to Lease Purchase Agreement dated as of February 1, 2000, the Third Amendment to Lease Purchase Agreement dated as of May 1, 2001 and the Fourth Amendment to Lease Purchase Agreement dated May 1, 2005 (the "Fourth Amendment") (as so amended, the "Lease") all by and between the City and the Authority; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its inhabitants that the City use the proceeds from the sale of the 2005 Leased Property to pay the costs of the 2005 Project (as defined in the Lease) and that the City enter into the Fourth Amendment to provide for the leasing by the City from the Authority of the 2005 Leased Property; and

WHEREAS, the City's obligation under the Lease to pay Base Rentals and Additional Rentals (both as defined in the Lease) shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, the Authority and U.S. Bank National Association, as trustee (the "Trustee"), will enter into a Third Supplement to Mortgage and Indenture of Trust dated as of May 1, 2005, (the "Third Supplement") which supplements the previously executed and previously supplemented and amended Mortgage and Indenture of Trust dated as of November 15, 1998 and Second Supplement to

Mortgage and Indenture of Trust dated as of May 1, 2001 (as so supplemented, the “Indenture”), pursuant to which there will be issued Certificates of Participation, Series 2005, dated as of their date of delivery in the aggregate principal amount of not to exceed \$18,500,000 (the “Certificates”); and

WHEREAS, the Certificates shall evidence assignments of the rights to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, there has been presented to the City Council and are on file at the City offices the following: (i) the proposed form of the Fourth Amendment; (ii) the proposed form of the Continuing Disclosure Certificate to be provided by the City (the “Disclosure Certificate”); (iii) the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates; and (iv) the proposed forms of the special warranty deeds to convey the 2005 Leased Property to the Authority (the “Deed”); and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, no member of the City Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance;

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Short Title. This ordinance shall be known and may be cited by the short title “2005 Interstate 25 and 144th Avenue Financing Ordinance.”

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council or the officers or agents of the City Council or the City relating to the Lease, including the sale and conveyance of the 2005 Leased Property and the leasing of the 2005 Leased Property pursuant to the Fourth Amendment is hereby ratified, approved and confirmed. The designation of the Preliminary Official Statement by the City’s Finance Director as a “nearly final Official Statement” for purposes of Rule 15c2-12 of the U.S. Securities and Exchange Commission is hereby ratified, approved and confirmed.

Section 3. Supplemental Public Securities Act. The City Council hereby elects to apply all of the Supplemental Act to the Fourth Amendment and the 2005 Certificates.

Section 4. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the sale of the 2005 Leased Property, the completion of the 2005 Project, and the leasing of the 2005 Leased Property from the Authority under the terms and provisions set forth in the Lease and the Indenture are necessary, convenient and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City and that the fair value of the 2005 Leased Property does not exceed its sales price, and the City Council hereby authorizes and approves the same.

Section 5. Conveyance of 2005 Leased Property. The City Council hereby approves the sale and conveyance to the Authority of the 2005 Leased Property, and the appropriate officers of the City are hereby authorized and directed to execute and deliver such deeds and other instruments as may be necessary to effect said sale and conveyance.

Section 6. Approval of Documents. The Fourth Amendment, the Disclosure Certificate, and the Deed (the “Documents”) in substantially the forms presented to the City Council and on file with the City, are in all respects approved, authorized and confirmed, and the Mayor Pro-Tem of the City is hereby authorized and directed for and on behalf of the City to execute and deliver the Documents in substantially the forms and with substantially the same contents as presented to the City Council.

Section 7. Approval of Official Statement. A final Official Statement, in substantially the form of the Preliminary Official Statement presented to the City Council and on file with the City, is in all respects approved and authorized. The Mayor Pro-Tem is hereby authorized and directed, for and on behalf of the City, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the City, with such changes as may be approved by the City Finance Director. The distribution by Stifel, Nicolaus & Company, Incorporated Hanifen Imhoff Division, Denver, Colorado (the "Purchaser") of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

Section 8. Parameters for 2005 Certificates. The City Council hereby delegates to the Finance Director of the City the authority to accept the proposal of the Purchaser to purchase the 2005 Certificates as well as the authority to make determinations in relation to the 2005 Certificates subject to the following parameters and restrictions: (a) the aggregate principal amount of the 2005 Certificates shall not exceed \$18,500,000; (b) the maximum total repayment cost of the 2005 Certificates shall not exceed \$35,000,000; (c) the maximum annual repayment cost of the 2005 Certificates shall not exceed \$1,700,000; (d) the 2005 Certificates shall mature no later than December 1, 2030; (e) the 2005 Certificates shall be subject to optional redemption prior to their respective maturities no later than December 1, 2015; (f) the purchase price of the 2005 Certificates shall not be less than 97%; and (g) the maximum net effective interest rate on the 2005 Certificates shall not exceed 5.5%.

Section 9. Authorization to Execute Collateral Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this ordinance and to place the seal of the City on any document authorized and approved by this ordinance. The Mayor Pro-Tem and City Clerk and other appropriate officials or employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance, including but not limited to the execution of the Continuing Disclosure Certificate and such other documents, certificates and affidavits as may be necessary. The appropriate officers of the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance, and are specifically authorized and directed hereby to invest such funds in Permitted Investments as are defined and provided in the Indenture. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 10. No General Obligation Debt. No provision of this ordinance, the Lease, the Indenture, the Certificates or the Preliminary or final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 11. Reasonableness of Rentals. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an

economic compulsion to renew the Lease or to exercise its option to purchase the 2005 Leased Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the 2005 Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the 2005 Leased Property.

Section 12. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the 2005 Certificates. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2005 Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

Section 13. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the City Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the City Council be, and the same hereby are, suspended.

Section 14. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the City during the Lease Term, provisions for the quiet enjoyment of the 2005 Leased Property by the City during the Lease Term and provisions for the conveyance of the 2005 Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

Section 15. Declaration of Emergency. In order to begin the 2005 Project while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Section 16. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in "The Ordinance Book" of the City kept for that purpose, and shall be authenticated by the signatures of the Mayor Pro-Tem and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on
April 11, 2005.

BY AUTHORITY

ORDINANCE NO. **3206**
SERIES OF 2005

COUNCILLOR'S ENTERPRISE BILL NO. **22**
INTRODUCED BY COUNCILLORS
DITTMAN - PRICE

A BILL FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF A CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, SUBORDINATE WATER AND WASTEWATER REVENUE BOND, SERIES 2005.

THE CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE ORDAINS:

Definitions and Construction.

Definitions. In this Ordinance the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Additional Parity Bonds: any Parity Securities issued after the issuance of the Bond.

Additional Superior Bonds: any Superior Securities issued after the issuance of the Bond.

Average Annual Debt Service Requirements: the aggregate of all Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues for all Fiscal Years beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable, divided by the whole number of such years.

Bond: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 2005.

Bond Insurer: The issuer of any municipal bond insurance policy to secure the payment of principal of and interest on the Bond as approved and authorized by the Enterprise in the Sale Certificate, if any.

Bond Insurance Policy: the financial guaranty insurance policy issued by the Bond Insurer to secure the payment of principal of and interest on the Bond.

Charter: the home rule Charter of the City as amended.

City: the City of Westminster, Colorado.

Combined Average Annual Debt Service Requirements: the sum of the Average Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made.

Combined Maximum Annual Debt Service Requirements: the Maximum Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made, treated as a single issue.

Commercial Bank: a state or national bank or trust company in good standing located in or incorporated under the laws of any state of the United States of America which is subject to examination by federal or state authorities, which is a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System and which has capital and surplus of \$75,000,000 or more or which is otherwise acceptable to the Bond Insurer.

Commitment: the commitment to issue the Bond Insurance Policy submitted by the Bond Insurer and approved by the Enterprise pursuant to the Sale Certificate.

Construction Fund: the offsetting revenue and expense accounts within the Water and Wastewater Utility Fund designated by the City as the “2005 Bond Projects,” created and referred to in Section 5A hereof.

Consulting Engineer: an independent consulting engineer or engineering firm or corporation having skill, knowledge and experience in analyzing the operations of municipal water and wastewater systems.

Cost of the Project: all or any part of the cost of acquisition, construction or installation of all or any part of the Project, including, without limitation, all or any property, rights, easements, privileges, agreements, and franchises deemed necessary or useful and convenient therefor or in connection therewith, interest or discount on the Bond, costs of issuance of the Bond, engineering and inspection costs, legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses prior to and during such acquisition, construction and installation, and all such other expenses as may be necessary or incidental to the acquisition, construction and installation and financing of the Project or any part thereof and the placing of the same in operation, provision of reserves for operation, maintenance, or replacement expenses or for payment or security of principal of or interest on the Bond, and also reimbursements to the Enterprise or the City of any moneys theretofore expended or to the federal government of any moneys theretofore expended for or in connection with the Project.

Council: the governing body of the Enterprise.

Debt Service Requirements: the principal of, interest on, and any premium due in connection with the redemption of the Bond or any other Securities payable from the Pledged Revenues.

Enterprise: The City of Westminster, Colorado, Water and Wastewater Utility Enterprise.

Enterprise Ordinance: Ordinance No. 2264, Series of 1994, of the City, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

Event of Default: one of the events described in Section 10A hereof.

Federal Securities: bills, certificates of indebtedness, notes, or bonds which are direct obligations of the United States of America or, if the Bond Insurer agrees in writing, are obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

Fiscal Year: the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

Income: all income from rates, fees, tolls, and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from the System, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, and all income or other gain, if any, from any investment of Pledged Revenues and of the proceeds of Securities payable from Pledged Revenues (except income or other gain from any investment of moneys held in an escrow fund for

the defeasance of Securities payable from the Pledged Revenues or any other similar fund) to the extent not required to be rebated to the federal government.

Independent Auditor: any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Enterprise or the City, who (a) is, in fact, independent and not under the domination of the City or the Enterprise, (b) does not have any substantial interest, direct or indirect, in any of the affairs of the Enterprise or the City, and (c) is not connected with the Enterprise or the City as a member, officer or employee, but who may be regularly retained to make annual or similar audits of any books or records of the Enterprise or the City.

Interest Payment Date: a date designated by ordinance for the payment of interest on the Bond or any other Securities.

Loan Agreement: the Loan Agreement, dated as of May 1, 2005, between the Purchaser and the Enterprise.

Maturity Date: a date designated in the Sale Certificate for the payment of principal on the Bond or any other Securities.

Maximum Annual Debt Service Requirements: the maximum aggregate Debt Service Requirements (excluding any redemption premiums) due on the Bond or any other Securities payable from the Pledged Revenues in any Fiscal Year beginning with the Fiscal Year in which Debt Service Requirements of the Bond or such Securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable.

Operation and Maintenance Expenses: such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System as may be determined by the City, including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;

Fidelity bond and insurance premiums appertaining to public officials or the System;

The reasonable charges of any paying agent, registrar, transfer agent, depository or escrow bank appertaining to any Securities payable from the Pledged Revenues;

Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;

Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;

Ordinary and current rentals of equipment or other property;

Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System, the cost of water purchased for delivery through the System, and the cost of materials and supplies used for current operation of the System;

The costs incurred in the billing and collection of all or any part of the Pledged Revenues;

Any costs of utility services furnished to the System by the City or otherwise.

“Operation and Maintenance Expenses” does not include:

Any allowance for depreciation;

Any costs of reconstruction, improvement, extension, or betterment;

Any accumulation of reserves for capital replacements;

Any reserves for operation, maintenance, or repair of the System;

Any allowance for the redemption of any bonds or other Securities payable from the Pledged Revenues or the payment of any interest thereon;

Any liabilities incurred in the acquisition of any Water Facilities or Wastewater Facilities;

Any other ground of legal liability not based on contract.

Operation and Maintenance Fund: the expense accounts within the Water and Wastewater Utility Fund used by the City for the payment of Operation and Maintenance Expenses referred to in Section 5C hereof.

Ordinance: this Ordinance No. 3206 Series of 2005, of the Enterprise.

Outstanding: as of any particular date, the Bond or any other Securities payable from the Pledged Revenues which have been authorized, executed and delivered except the following:

Any Bond or other such Security cancelled by the Enterprise, by the Paying Agent or otherwise on behalf of the Enterprise on or before such date, except any Bond described in the last paragraph of Section 9 hereof;

Any Bond or other such Security held by or on behalf of the Enterprise or the City;

Any Bond or other such Security for the payment or the redemption of which moneys or Federal Securities sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all of the Debt Service Requirements of such Bond or other such Security to the Maturity Date or specified Redemption Date thereof shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose; and

Any lost, destroyed, or wrongfully taken Bond or other such Security in lieu of or in substitution for which another Bond or other such Security shall have been executed and delivered.

Owner: the holder of any bearer instrument or registered owner of any registered instrument.

Parity Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “1997 Revenue Bond Debt Service Account,” the “1998 Revenue Bond Debt Service Account,” the “2000 Revenue Bond Debt Service Account,” the “2005 Revenue Bond Debt Service Account,” and other similar accounts hereafter established for Additional Parity Bonds or other Parity Securities created and referred to in Section 5F hereof.

Parity Securities: the Prior Parity Bonds and any other bonds, warrants, notes, securities, leases or other contracts evidencing borrowings and payable from the Pledged Revenues equally or on a parity with the Bond.

Paying Agent: the Treasurer of the Enterprise, or her successors.

Permitted Investments: any legal investments of the Enterprise.

Person: any individual, firm, partnership, corporation, company, association, joint stock association or body politic or any trustee, receiver, assignee or similar representative thereof.

Pledged Revenues: all Income remaining after the deduction of Operation and Maintenance Expenses.

Prior Parity Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1997, dated May 1, 1997, in the principal amount of \$13,246,525, the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 1998, dated April 1, 1998, in the principal amount of \$4,085,697, and the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Subordinate Water and Wastewater Revenue Bond, Series 2000, dated April 15, 2000, in the principal amount of \$14,998,357.36.

Prior Superior Bond Ordinance: Ordinance No. 8E, Series of 2001 and Ordinance No. 9E, Series of 2002 of the Enterprise.

Prior Superior Bonds: the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Refunding Bonds, Series 2001, dated November 1, 2001, originally issued in the aggregate principal amount of \$20,990,000, and the City of Westminster, Colorado, Water and Wastewater Utility Enterprise Variable Rate Demand Water and Wastewater Enterprise Revenue Bonds, Series 2002, dated September 27, 2002 and originally issued in the aggregate principal amount of \$7,490,000.

Project: those Water Facilities or Wastewater Facilities for the acquisition, construction and installation of which the Bond is issued.

Purchaser: Colorado Water Resources and Power Development Authority, or its successors.

Redemption Date: the date fixed for the redemption prior to maturity of the Bond or any other Securities payable from the Pledged Revenues in any notice of prior redemption given by or on behalf of the Enterprise as specified in the Sale Certificate.

Registrar: the Treasurer of the Enterprise, or her successors.

Regular Record Date: the fifteenth day of the calendar month next preceding an Interest Payment Date for the Bond.

Sale Certificate: the certificate executed by the President or the Treasurer of the Enterprise dated on or before the date of delivery of the Bond, setting forth (i) the interest rates on the Bond; (ii) the existence and amount of any capitalized interest; (iii) the dates on which principal and interest will be paid and the first interest payment date; (iv) the price at which the Bond will be sold; (v) the aggregate principal amount of the Bond and denomination of the Bond; (vi) the conditions on which and the price at which the Bond may be called for prior redemption; (vii) the amount of principal of the Bond maturing on each date; and (viii) whether the Bond shall be secured by a municipal bond insurance policy, subject to the parameters and restrictions contained in this Ordinance.

Security or Securities: any bond issued by the Enterprise or any other evidence of the advancement of money to the Enterprise or the City.

Special Record Date: the date fixed by the Paying Agent for the determination of ownership of the Bond for the purpose of paying interest not paid when due or interest accruing after maturity.

State: the State of Colorado.

Subordinate Bonds or Subordinate Securities: bonds or Securities payable from the Pledged Revenues having a lien thereon subordinate or junior to the lien thereon of the Bond.

Superior Bonds or Superior Securities: the Prior Superior Bonds and any other bonds or Securities payable from the Pledged Revenues having a lien thereon superior or senior to the lien thereon of the Bond.

Superior Bonds Principal and Interest Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “2001 Revenue Bond Principal and Interest Fund,” the “2002 Revenue Bond Principal and Interest Fund,” and other similar funds or accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5D hereof.

Superior Bonds Reserve Fund: the special accounts within the Water and Wastewater Utility Fund designated by the City as the “2001 Revenue Bond Reserve Fund,” the “2002 Revenue Bond Reserve Fund,” and other similar funds or accounts hereafter established for Additional Superior Bonds or other Superior Securities referred to in Section 5E hereof.

Superior Bonds Reserve Fund Requirement: the least of ten percent (10%) of the proceeds, one hundred twenty-five percent (125%) of the Combined Average Annual Debt Service Requirements or one hundred percent (100%) of the Combined Maximum Annual Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged, whether in cash or as otherwise provided in Section 5E hereof.

Supplemental Act: the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

System: the Water Facilities and the Wastewater Facilities of the City owned and operated by the City as a single utility system.

Transfer Agent: the Treasurer of the Enterprise, or her successors.

Trust Bank: a Commercial Bank which is authorized to exercise and is exercising trust powers.

Wastewater Facilities: any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

Water and Wastewater Utility Fund: the self-balancing group of accounts heretofore created by the City as an enterprise fund to record all financial activity of the Enterprise referred to in Section 5B hereof.

Water Facilities: water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

Construction. This Ordinance, except where the context by clear implication herein otherwise requires, shall be construed as follows:

Words in the singular include the plural, and words in the plural include the singular.

Words in the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender refer to any gender.

Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Ordinance so numbered or otherwise so designated.

The titles and headlines applied to articles, sections and subsections of this Ordinance are inserted only as a matter of convenience and ease in reference and in no way define or limit the scope or intent of any provisions of this Ordinance.

Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the Enterprise or its agents shall consider the effect on the Owner of the Bond as if there were no Bond Insurance Policy.

Recitals.

Enterprise. The City has heretofore established the Enterprise and by the Enterprise Ordinance has authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

Authority. Pursuant to art. X, § 20 and art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(d) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bond without voter approval in advance.

Prior Superior and Parity Bonds. The Enterprise has previously issued the Prior Superior Bonds secured by a lien upon the Pledged Revenues senior or superior to the lien thereon of the Bond. The Enterprise has previously issued the Prior Parity Bonds secured by a lien upon the Pledged Revenues on a parity with the Bond. Other Securities previously issued by the City payable from the revenues of the System contain no specific pledge of such revenues and no restrictions on future pledges of such revenues.

The Bond.

Authorization. The Bond, payable as to all Debt Service Requirements solely out of Pledged Revenues, is hereby authorized to be issued, the proceeds of the Bond to be used solely to pay the Cost of the Project.

Section 11-57-204 of the Supplemental Act provides that a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Council hereby elects to apply all of the Supplemental Act to the Bond. The Bond is issued under the authority of this Ordinance and the Supplemental Act and shall so recite as provided in Section 3(B)(6) hereof. Pursuant to Section 11-57-210, C.R.S., such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Bond Details.

Generally. The Bond shall be issuable in fully registered form and shall initially be registered in the name of the Purchaser. The Bond shall be issued so that a single Bond evidences the obligation of the Enterprise to pay all principal and interest due as set forth herein.

The Bond shall be dated as of May 1, 2005, shall mature, bear interest and be subject to redemption as provided in the Loan Agreement and Sale Certificate, subject to the following parameters:

Interest Rate. The interest rate on the Loan shall not exceed 4.95%.

Principal Amount. The aggregate principal amount of the Loan shall not exceed \$20,000,000.

Maturity Schedule. The final maturity of the Loan shall not be later than December 31, 2025.

Such determinations shall be evidenced by the Sale Certificate to be signed by the President or the Treasurer and dated and delivered as of the Closing Date, which shall not be more than 60 days from the date of adoption of this Ordinance.

The Debt Service Requirements of the Bond shall be payable in lawful money of the United States of America to the Purchaser by the Paying Agent. The principal and the final installment of interest shall be payable to the Purchaser upon presentation and surrender thereof at maturity or upon prior redemption, by check or draft mailed to the Purchaser at the address appearing on the registration books of the Enterprise maintained by the Registrar or by wire transfer to such bank or other depository as the Purchaser shall designate in writing to the Paying Agent. Except as hereinbefore and hereinafter provided, the interest shall be payable to the Purchaser determined as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Regular Record Date and prior to such Interest Payment Date, by check or draft or wire transfer directed to the Purchaser as aforesaid. Any interest not paid when due and any interest accruing after maturity shall be payable to the Purchaser determined as of the close of business on the Special Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Special Record Date and prior to the date fixed by the Paying Agent for the payment of such interest, by check or draft or wire transfer directed to the Purchaser as aforesaid. Notice of the Special Record Date and of the date fixed for the payment of such interest shall be given by sending a copy thereof by certified or registered first-class, postage prepaid mail, at least fifteen (15) days prior to the Special Record Date, to the Purchaser determined as of the close of business on the day preceding such mailing at the address appearing on the registration books of the Enterprise. Any premium shall be payable to the Purchaser upon presentation and surrender thereof upon prior redemption, by check or draft or wire transfer directed to the Purchaser as aforesaid. If the date for making or giving any payment, determination or notice described herein is a Saturday, Sunday, legal holiday or any other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed, such payment, determination or notice shall be made or given on the next succeeding day which is not a Saturday, Sunday, legal holiday or other day on which the office of the Paying Agent or Registrar is authorized or required by law to remain closed.

Execution and Authentication. The Bond shall be executed by and on behalf of the Enterprise with the manual signature of the President of the Enterprise, shall be attested with the manual signature of the Secretary of the Enterprise and shall be countersigned with the manual signature of the Treasurer of the Enterprise. Should any

officer whose manual signature appears on the Bond cease to be such officer before delivery of the Bond to the Purchaser, such manual signature shall nevertheless be valid and sufficient for all purposes.

Registration and Transfer. Upon their execution and prior to its delivery, the Bond shall be registered for the purpose of payment of principal and interest by the Registrar. The Bond shall be registered in the name of the Purchaser. To the extent that a typewritten Bond, rather than a printed Bond, is to be delivered, such modifications to the form of Bond as may be necessary or desirable in such case are hereby authorized and approved. There shall be no substantive change to the terms and conditions set forth in the form of Bond, except as otherwise authorized by this Ordinance or any amendment hereto.

The Bond shall be transferable only upon the registration books of the Enterprise by the Transfer Agent at the request of the Purchaser or its duly authorized attorney-in-fact or legal representative. The Registrar or Transfer Agent shall accept the Bond for registration or transfer only if the Owner is to be an individual, a corporation, a partnership, or a trust. The Bond may be transferred upon surrender thereof together with a written instrument of transfer duly executed by the Owner or his, her or its duly authorized attorney-in-fact or legal representative with guaranty of signature satisfactory to the Transfer Agent, containing written instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and the beneficiaries of the trust. The Transfer Agent shall not be required to transfer ownership of the Bond during the fifteen (15) days prior to the first mailing of any notice of redemption or to transfer ownership of the Bond on or after the date of such mailing. Transfers shall be made without charge, except that the Transfer Agent may require payment of a sum sufficient to defray any tax or other governmental charge that may hereafter be imposed in connection with any transfer of the Bond. No transfer of the Bond shall be effective until entered on the registration books of the Enterprise. In the case of every transfer, the Registrar shall authenticate and the Transfer Agent shall deliver to the new Owner a new Bond of the same aggregate principal amount, maturing in the same year, and bearing interest at the same per annum interest rate as the Bond surrendered. Such Bond shall be dated as of its date of execution. A new Bond delivered upon any transfer shall be a valid obligation of the Enterprise, evidencing the same obligation as the Bond surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered. The Enterprise may deem and treat the Person in whose name the Bond is last registered upon the books of the Enterprise as the absolute Owner thereof for the purpose of receiving payment of the principal of, interest on, and any premium due in connection with the redemption of such Bond and for all other purposes, and all such payments so made to such Person or upon his, her or its order shall be valid and effective to satisfy and discharge the liability of the Enterprise upon the Bond to the extent of the sum or sums so paid, and the Enterprise shall not be affected by any notice to the contrary.

Resignation or Removal of Agents. If, after giving 30 days' prior written notice to the Enterprise, the Paying Agent, Registrar or Transfer Agent shall resign as such, or if the Enterprise shall determine to remove such Paying Agent, Registrar or Transfer Agent, the Enterprise may, upon notice mailed to the Purchaser at the address last shown on the registration books of the Enterprise, accept the resignation of the Paying Agent, Registrar or Transfer Agent or remove the Paying Agent, Registrar or Transfer Agent and appoint a successor paying agent, registrar or transfer agent. No resignation or removal of the Paying Agent, Registrar or Transfer Agent shall take effect until a successor has been appointed; provided, that if no successor is appointed by the end of 90 days, the Paying Agent, Registrar or Transfer Agent may petition a court of competent jurisdiction to appoint a successor. It shall not be required that the same institution serve as paying agent, registrar and transfer agent hereunder, but the Enterprise shall have the right to have the same institution serve as paying agent, registrar and transfer agent hereunder.

Replacement of Bond. If the Bond shall have been lost, destroyed or wrongfully taken, the Enterprise shall provide for the replacement thereof upon the Purchaser's furnishing to the Enterprise: (a) proof of ownership, (b) proof of loss, destruction or

theft, (c) a surety bond in the amount of all principal and interest remaining unpaid on the Bond, and (d) payment of the cost of preparing and issuing the new Bond.

Recitals in Bond. The Bond shall recite in substance that the Bond is a special and limited obligation of the Enterprise payable solely out of and secured by an irrevocable pledge of and second lien (but not necessarily exclusive second lien) upon the Pledged Revenues, that the Bond does not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation, that the Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and that the full faith and credit of the City is not pledged for the payment of the principal of or interest on the Bond. Each Bond shall further recite that it is issued under the authority of the State Constitution, the Supplemental Act, the Charter, the Enterprise Ordinance, and this Ordinance. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Form of Bond. The Bond shall be in substantially the form set forth in the Loan Agreement:

Special Obligation. All of the Debt Service Requirements of the Bond shall be payable solely out of the Pledged Revenues. The Purchaser may not look to the general fund or any other fund of the City for the payment of the Debt Service Requirements thereof, except the special funds pledged therefor. The Bond shall not constitute a debt or indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation, and the Bond shall not be considered or held to be a general obligation of the City but shall constitute a special and limited obligation of the Enterprise. The Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City except the Pledged Revenues, and the full faith and credit of the City is not pledged for payment of the Bond.

Sale of Bond.

Purchaser's Proposal. The Purchaser has offered to purchase the Bond at a price approved by the President or Treasurer of the Enterprise set forth in the Sale Certificate.

Award of Contract. The contract for the purchase of the Bond is hereby awarded to the Purchaser at the price specified in the Purchaser's offer and upon the terms set forth in the Sale Certificate subject to the parameters set forth in this Ordinance.

Delivery. After the Bond has been duly executed, authenticated and registered as provided herein, the Treasurer of the Enterprise shall cause the Bond to be delivered to the Purchaser upon receipt of the agreed purchase price.

Disposition of Bond Proceeds and Income; Funds Adopted or Created by Ordinance; Security for Bond. The proceeds of the Bond and the Income shall be deposited by the Enterprise in the funds described in this Section 5, to be accounted for in the manner and priority set forth in this Section 5.

Neither the Purchaser nor any subsequent Owner of any Bond shall be in any manner responsible for the application or disposal by the Enterprise or the City or by any of their officers, agents and employees of the moneys derived from the sale of the Bond or of any other moneys designated in this Section 5.

The Pledged Revenues and all moneys and securities paid or to be paid to or held or to be held in any fund hereunder are hereby pledged to secure the payment of the Debt Service Requirements of the Bond and any other Securities payable therefrom. This pledge shall be valid and binding from and after the date of the first delivery of the Bond, and the moneys, as received and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Enterprise or the City (except as

herein otherwise expressly provided), and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Enterprise or the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

Construction Fund. There is hereby created the 2005 Bond Projects account within the Construction Fund, into which the Enterprise shall deposit, upon receipt from the Purchaser, the proceeds of the Bond after making the deposit required by Section 5F of this Ordinance.

The proceeds of the Bond so deposited in the Construction Fund, except as herein otherwise expressly provided, shall be used and paid out from time to time solely for the purpose of paying the Cost of the Project and are pledged therefor. Any such proceeds remaining in the Construction Fund after completion of the Project shall be deposited in the Parity Bonds Principal and Interest Fund and used for the purposes of the Parity Bonds Principal and Interest Fund or shall be used to the extent feasible to call and redeem the Bond in advance of its Maturity Date. The City shall transfer any proceeds of the Bond deposited in the Construction Fund, without further order, to the Parity Bonds Principal and Interest Fund, and the Enterprise shall use the same to pay the Debt Service Requirements of the Bond as the same become due whenever and to the extent moneys in the Parity Bonds Principal and Interest Fund or moneys otherwise available therefor are insufficient for that purpose, unless such proceeds shall be needed to pay obligations accrued and to accrue under any contracts then existing and pertaining to the Project. Any moneys so used shall be restored to the Construction Fund from the first Pledged Revenues thereafter received and not needed to pay the Debt Service Requirements of the Bond.

Water and Wastewater Utility Fund. Except as otherwise provided herein, the entire Income, upon receipt thereof from time to time, shall be deposited immediately in the Water and Wastewater Utility Fund. Operation and Maintenance Expenses shall be paid as provided in Section 5C hereof. The Pledged Revenues on deposit in the Water and Wastewater Utility Fund shall be applied in the following order of priority:

First, to the Superior Bonds Principal and Interest Fund in the manner set forth in Section 5D hereof;

Second, to the Superior Bonds Reserve Fund in the manner set forth in Section 5E hereof;

Third, to the Parity Bonds Principal and Interest Fund in the manner set forth in Section 5F hereof;

Fourth, to the payment of the Debt Service Requirements of Subordinate Bonds or other Subordinate Securities in accordance with Section 5G hereof;

Fifth, to be used in accordance with Section 5H hereof.

Operation and Maintenance Fund. As a first charge on the Water and Wastewater Utility Fund there shall be paid from the Operation and Maintenance Fund the Operation and Maintenance Expenses of the System as they become due and payable.

Superior Bonds Principal and Interest Fund. There shall be deposited in the Superior Bonds Principal and Interest Fund from the Pledged Revenues on or before the last day of each month, the amounts required by the Prior Superior Bond Ordinance.

The moneys deposited in the Superior Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds and any other Superior Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance.

Superior Bonds Reserve Fund. Subject to the payments required by Section 5D hereof, there shall be deposited in the Superior Bonds Reserve Fund from the Pledged Revenues moneys sufficient to accumulate in and maintain the Superior Bonds Reserve Fund at an amount equal to the Superior Bonds Reserve Fund Requirement. Said amount shall be maintained as a continuing reserve for

the payment of the Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged. In the event that the amount on deposit in the Superior Bonds Reserve Fund falls below the Superior Bonds Reserve Fund Requirement, there shall be deposited in the Superior Bonds Reserve Fund such Pledged Revenues as may be needed to accumulate or reaccumulate the amount therein so that at all times the amount in the Superior Bonds Reserve Fund equals the Superior Bonds Reserve Fund Requirement. The moneys in the Superior Bonds Reserve Fund shall be set aside, accumulated, and, if necessary, reaccumulated as provided herein, from time to time, and maintained as a continuing reserve to be used only to prevent deficiencies in the Superior Bonds Principal and Interest Fund resulting from failure to deposit therein sums sufficient to pay such Debt Service Requirements of the Prior Superior Bonds, any Additional Superior Bonds or other Superior Securities to which the Superior Bonds Reserve Fund is pledged as the same become due.

If at any time there shall not be deposited for any reason in the Superior Bonds Principal and Interest Fund the full amount above stipulated, then there shall be deposited in the Superior Bonds Principal and Interest Fund at such time from the Superior Bonds Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. The money so used shall be replaced to the Superior Bonds Reserve Fund from the first Pledged Revenues thereafter received and not required to be otherwise applied by Section 5D hereof.

If at any time there shall not be deposited for any reason in the Superior Bonds Reserve Fund the full amount of the Superior Bonds Reserve Fund Requirement from the Pledged Revenues, the difference between the amount deposited and the Superior Bonds Reserve Fund Requirement shall in a like manner be deposited therein from the first Pledged Revenues thereafter received and not required to be applied otherwise by Section 5D hereof in twelve (12) equal monthly installments.

Nothing in this Ordinance shall be construed as limiting the right of the Enterprise to substitute for the cash deposit required to be maintained hereunder a letter of credit, surety bond, insurance policy, agreement guaranteeing payment, or other undertaking by a financial institution to ensure that cash in the amount otherwise required to be maintained hereunder will be available to the Enterprise as needed, provided that any such substitution shall be submitted to Fitch Investors Service, Inc., Moody's Investors Service, and Standard & Poor's Corporation and shall not cause the then-current ratings of the Prior Superior Bonds to be adversely affected.

The Superior Bonds Reserve Fund shall be replenished in the following priority: first, principal and interest on any funding instrument as described above shall be paid from first available Pledged Revenues on a pro rata basis; second, after all such amounts are paid in full, amounts necessary to fund the Superior Bonds Reserve Fund in an amount equal to the Superior Bonds Reserve Fund Requirement, after taking into account the amounts available under any funding instruments as described above, shall be deposited from next available Pledged Revenues.

Parity Bonds Principal and Interest Fund. There shall be deposited in the Parity Bonds Principal and Interest Fund, forthwith upon receipt of the proceeds of the Bond, interest accrued thereon from its date to the date of delivery thereof to the Purchaser, to apply to the payment of interest first due on the Bond.

There shall also be deposited in the Parity Bonds Principal and Interest Fund from the Pledged Revenues the following amounts (with a credit for the amount of any accrued interest deposited in the Parity Bonds Principal and Interest Fund and not theretofore credited):

Interest Payments. One-sixth (1/6) of the aggregate amount of the next interest due on the Bond on the next Interest Payment Date on or before the next succeeding December 1 plus any other amounts due for interest on the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding.

Principal Payments. One-sixth (1/6) of the aggregate amount of the next principal due on the Bond on the next Maturity Date on or before the next succeeding December 1 plus any other amounts due for principal of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding.

Such interest and principal shall be promptly paid when due.

The moneys deposited in the Parity Bonds Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding, as such Debt Service Requirements become due, except as otherwise provided in this Ordinance.

Payment of Subordinate Securities. Subject to the payments required by Sections 5D, 5E and 5F hereof, any remaining Pledged Revenues may be used for the payment of Debt Service Requirements of Subordinate Securities payable from the Pledged Revenues and authorized to be issued in accordance with this Ordinance, including reasonable reserves for such Subordinate Securities; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be subordinate to the lien and pledge of the Bond, any Additional Parity Bonds and any other Parity Securities as herein provided.

Use of Remaining Revenues. Subject to the payments required or permitted by Sections 5D through 5G hereof, any remaining Pledged Revenues may be used after the expiration of thirty (30) days from the payment of any principal payments required hereby for any one or any combination of lawful purposes.

Termination of Deposits. No payment need be made into the Parity Bonds Principal and Interest Fund if the amount of cash and Permitted Investments in the Parity Bonds Principal and Interest Fund is at least equal to the remaining Debt Service Requirements of the Bond, any Outstanding Additional Parity Bonds and Outstanding Parity Securities to their respective Maturity Dates or to any Redemption Dates on which the Enterprise shall have exercised or shall have obligated itself to exercise its option to redeem, prior to their respective Maturity Dates, the Bond, any Additional Parity Bonds and any other Parity Securities then Outstanding and thereafter maturing (provided that, solely for the purpose of this Section 5I, there shall be deemed to be a credit to the Parity Bonds Principal and Interest Fund moneys, any cash or Permitted Investments accounted for in any other fund and restricted solely for the purpose of paying the Debt Service Requirements of the Bond, any Additional Parity Bonds or any other Parity Securities), in which case cash or Permitted Investments in the Parity Bonds Principal and Interest Fund in an amount, except for any known interest or other gain to accrue from any investment or deposit of moneys pursuant to Section 6B hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment, at least equal to such Debt Service Requirements, shall be used together with any such gain from such investments and deposits solely to pay such Debt Service Requirements as the same become due.

Budget and Appropriation of Sums. The sums required to make the payments specified in this Section 5 are hereby appropriated for said purposes. Said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed in each year respectively while the Bond, either as to principal or interest, is Outstanding and unpaid.

General Administration of Funds.

Places and Times of Deposits. Each of the special funds described in Section 5 hereof shall be maintained by the City as trust funds solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such funds pertaining to the Income. Such funds shall be continuously secured to the fullest extent required by the ordinances of the City and, to the extent applicable, the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes of such funds. Each periodic payment shall be deposited in the proper fund not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.

Investment of Funds. Any moneys in any fund described in Section 5 hereof may be invested, reinvested or deposited only in Permitted Investments. Permitted Investments in any fund shall be deemed at all times to be a part of the applicable fund; provided that, with the exception of the Construction Fund, the interest accruing on such investments and any profit realized therefrom shall be

applied, and any loss resulting from such investments shall be charged, to the Water and Wastewater Utility Fund. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given fund whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such fund.

No Liability for Losses Incurred in Performing Terms of Ordinance. Neither the Enterprise nor the City nor any officer thereof shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

Character of Funds. The moneys in any fund herein authorized shall consist of lawful money of the United States of America or Permitted Investments or both such money and Permitted Investments. Moneys deposited in a demand or time deposit account in a Commercial Bank or other depository, appropriately secured according to the ordinances of the City and, to the extent applicable, the laws of the State, shall be deemed lawful money of the United States of America.

Accelerated Payments Optional. Nothing contained herein prevents the accumulation in any fund herein designated of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided therefor, but no payment shall be so accelerated if such acceleration shall cause a default in the payment of any obligation of the Enterprise pertaining to the Income.

Priorities; Liens; Issuance of Additional Bonds.

Liens on Pledged Revenues; Equality of the Bond, Additional Parity Bonds and Other Parity Securities. Except as expressly provided in this Ordinance with respect to Superior Bonds, Parity Securities and Subordinate Securities, the Pledged Revenues shall be and hereby are irrevocably pledged and set aside to pay the Debt Service Requirements of the Bond.

The Bond constitutes an irrevocable and second lien (but not necessarily an exclusive second lien) upon the Pledged Revenues.

The Bond, any Additional Parity Bonds and any other Parity Securities authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bond, any Additional Parity Bonds and any other Parity Securities, regardless of the fact that they may be actually issued and delivered at different times.

Issuance of Additional Parity Bonds. Nothing herein, subject to the limitations stated in Section 7F hereof, prevents the issuance by the Enterprise or the City of Additional Parity Bonds payable from the Pledged Revenues and constituting a lien on the Pledged Revenues on a parity with the lien thereon of the Bond; but before any such Additional Parity Bonds are authorized or actually issued, the following conditions shall be satisfied:

Absence of Default. At the time of the adoption of the supplemental ordinance or other instrument authorizing the issuance of the Additional Parity Bonds as provided in Section 7F hereof, the Enterprise shall not be in default in making any payments required by Section 5 hereof, and there shall not have occurred and be continuing any Event of Default.

Historic Revenues Tests. Except as hereinafter provided in the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, the Pledged Revenues for the last complete Fiscal Year prior to the issuance of the proposed Additional Parity Bonds, as certified by a Consulting Engineer or Independent Auditor, must have been equal to at least one hundred ten percent (110%) of the Combined Maximum Annual Debt Service Requirements of the Bond then Outstanding, any Additional Parity Bonds then Outstanding, any other Parity Securities then Outstanding and the Additional Parity Bonds proposed to be issued. If any adjustment in water or wastewater rates, fees, tolls or charges or tap fees, or any combination thereof, is made by the City during such Fiscal

Year, the Consulting Engineer or Independent Auditor shall adjust the calculation of the Pledged Revenues to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such Fiscal Year. For purposes of this Section 7B(2), when computing the Maximum Annual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Internal Revenue Code of 1986, as amended, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer, if any. In the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Securities then Outstanding, compliance with this Section 7B(2) shall not be required so long as the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding after the issuance of such Additional Parity Bonds on each Interest Payment Date does not exceed the Debt Service Requirements payable on the Bond and all other Parity Securities Outstanding prior to the issuance of such Additional Parity Bonds on such Interest Payment Dates.

Certification of Historic Revenues. Where certifications of historic revenues are required by this Ordinance, the specified and required written certifications of the Consulting Engineer or Independent Auditor that revenues are sufficient to pay the required amounts shall be conclusively presumed to be accurate in determining the right of the Enterprise or the City to authorize, issue, sell and deliver Additional Parity Bonds or other Parity Securities.

Superior Securities. Nothing herein prevents the Enterprise or the City from issuing Superior Bonds or Superior Securities for any lawful purpose, subject to the requirements of the ordinance authorizing the issuance of the Prior Superior Bonds.

Subordinate Securities. Nothing herein, except the limitations stated in Section 7F hereof, prevents the Enterprise or the City from issuing Subordinate Securities for any lawful purpose.

Supplemental Ordinances. Additional Parity Bonds, Superior Bonds or Subordinate Securities shall be issued only after authorization thereof by ordinance, supplemental ordinance or other instrument in substantially the same form as this Ordinance, stating the purpose or purposes of the issuance of such additional Securities, directing the application of the proceeds thereof to such purpose or purposes, directing the execution thereof, and fixing and determining the date, series designation, principal amount, maturity or maturities, maximum rate or rates of interest, and prior redemption privileges with respect thereto, and providing for payments to and from the Water and Wastewater Utility Fund in accordance with this Ordinance. All additional Securities shall bear such date, shall be payable as to principal on December 1 and as to interest on June 1 and December 1 and shall be subject to redemption prior to maturity on such terms and conditions, as may be provided, and shall bear interest at such rate or rates as may be fixed by ordinance, instrument or other document. Nothing herein shall be construed to prohibit the issuance of additional Securities payable from the Pledged Revenues, the principal of which is payable more frequently than annually or the interest on which is payable more frequently than semiannually.

Covenants. The Enterprise hereby particularly covenants and agrees with the Purchaser and makes provisions which shall be a part of the contract with the Purchaser, which covenants and provisions shall be kept by the Enterprise or the City continuously until the Bond has been fully paid and discharged:

Rate Maintenance. The City shall prescribe, revise, and collect water and wastewater rates, fees, tolls, and charges and tap fees or any combination thereof, which shall produce Income sufficient, together with any other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund, to make the payments and accumulations required by this Ordinance and which shall produce Pledged Revenues in each Fiscal Year sufficient, together with all other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund after payment of Operation and Maintenance Expenses, to pay an amount at least equal to one hundred ten percent (110%) of the actual Debt Service Requirements of the Outstanding Bond and any Outstanding or proposed Additional Parity Bonds or other Outstanding Parity Securities plus any amounts required to meet then existing deficiencies pertaining to any fund relating to the Pledged Revenues or any Securities payable therefrom. For purposes of this Section 8A, when computing the actual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the actual rate applicable during said period. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty has been approved in writing by the Bond Insurer, if any.

In the event that such rates, fees, tolls, and charges and tap fees at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the City shall increase its rates, fees, tolls, and charges and tap fees to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

Collection of Charges. The City shall cause all water and wastewater rates, fees, tolls, and charges and tap fees to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance and any other ordinance or instrument supplemental thereto. The rates, fees, tolls, and charges and tap fees due shall be collected in any lawful manner.

Competent Management. The City shall employ experienced and competent management personnel for each component of the System. If the Enterprise shall fail to pay the Debt Service Requirements of the Bond promptly as the same become due, or if the Enterprise or the City shall fail to keep any of the covenants herein contained, and if such default shall continue for a period of sixty (60) days, or if the Pledged Revenues in any Fiscal Year, together with other legally available moneys deposited in the Water and Wastewater Utility Fund, shall fail to equal at least the amount of the Debt Service Requirements of the Bond and other obligations payable from the Pledged Revenues due in the same Fiscal Year, the City shall retain a firm of competent management Persons skilled in the operation of water and wastewater facilities to assist in the management of the System so long as such default continues or the said revenues, proceeds and income are less than the amount hereinabove designated.

Performance of Duties. The City or the Enterprise, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Income and the System required by the Constitution and laws of the State and the ordinances, resolutions and contracts of the Enterprise or the City, including, without limitation, the proper segregation of the proceeds of the Bond and the Income and their application from time to time to the respective funds provided therefor.

Costs of Bond and of Performance. Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Bond, payment of the Debt Service

Requirements thereof or the performance of or compliance with any covenant or agreement contained in this Ordinance shall be paid exclusively (but only from the appropriate special fund in the manner authorized herein) from the proceeds of the Bond, from the Pledged Revenues, or from other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general fund of the City.

Contractual Obligations. The Enterprise or the City shall perform all contractual obligations undertaken by them under any other agreements relating to the Bond, the Income or the System.

Further Assurances. At any and all times the Enterprise or the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged, or intended so to be, or which the Enterprise or the City may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Ordinance. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged hereunder and all the rights of the Purchaser and every subsequent Owner of the Bond against all claims and demands of all Persons whomsoever.

Conditions Precedent. Upon the date of issuance of the Bond, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter, the Enterprise Ordinance, and this Ordinance to exist, to have happened, and to have been performed precedent to or in the issuance of the Bond shall exist, have happened and have been performed, and the Bond, together with all other obligations of the Enterprise or the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America or the Constitution or laws of the State, the Charter or the Enterprise Ordinance.

Efficient Operation and Maintenance. The City shall at all times operate the System properly and in a sound and economical manner. The City shall maintain, preserve and keep the System properly or cause the same so to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the maintenance of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the repair, maintenance and operation of the System shall be fair and reasonable.

Records and Accounts. The City shall keep proper books of record and account showing complete and correct entries of all transactions relating to the funds referred to herein.

Rules, Regulations and Other Details. The City, acting by and through its officers, shall establish and enforce reasonable rules and regulations governing the construction, operation, care, repair, maintenance, management, control, use, commodities, and services of the System. The City or the Enterprise shall observe and perform all of the terms and conditions contained in this Ordinance and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the System or the City.

Payment of Governmental Charges. The Enterprise shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any portion of the Income, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System, or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Enterprise shall not create or suffer to be created any lien or charge upon the System, or any part thereof, or upon the Income, except the pledge and lien created by this Ordinance for the payment of the Debt Service Requirements due in connection with the Bond and the pledge and lien for the Prior Superior Bonds and Prior Subordinate Bonds and except as herein otherwise permitted. The Enterprise shall pay or cause to be discharged or

shall make adequate provision to satisfy and to discharge, within ninety (90) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System, or any part thereof, or the Income, but nothing herein requires the Enterprise to pay or to cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Protection of Security. The Enterprise and the City and their officers, agents and employees shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Bond and any other Securities payable from the Pledged Revenues according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of the Bond or other Security payable from Pledged Revenues might be prejudicially and materially impaired or diminished.

Accumulation of Interest Claims. In order to prevent any accumulation of claims for interest after maturity, the Enterprise shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Bond or any other Securities payable from the Pledged Revenues; and the Enterprise shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of the Bond and all such securities the payment of which has not been extended.

Prompt Payment of Bond. The Enterprise shall promptly pay the Debt Service Requirements of the Bond on the dates and in the manner specified herein and in the Bond according to the true intent and meaning hereof.

Use of Funds. The funds described herein shall be used solely and only for the purposes described herein, subject to Section 9 hereof.

Additional Securities. Neither the Enterprise nor the City shall hereafter issue any bonds or Securities relating to the System and payable from the Pledged Revenues, other than the Bond, without compliance with the requirements with respect to the issuance of Additional Superior Bonds, Additional Parity Bonds or Subordinate Bonds set forth herein to the extent applicable.

Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Pledged Revenues.

Disposal of System Prohibited. Subject to Section 8T hereof, except for the use of the System and the sale of commodities or services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until the Bond has been paid in full, as to all Debt Service Requirements thereof, or unless provision has been made therefor, or until the Bond has otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized. Subject to Section 8T hereof, the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the System.

Disposal of Property. No part of the System shall be sold, leased, mortgaged, pledged, encumbered or otherwise disposed of or otherwise alienated, until the Bond has been paid in full, or unless provision has been made therefor, or until the Bond has otherwise been redeemed; provided, however, that the City may sell, exchange or lease at any time and from time to time any property or facilities constituting part of the System and not needed or useful in the construction, reconstruction or operation thereof; but any proceeds of any such sale or exchange received and not used to replace such property so sold or exchanged and any proceeds of any such lease received shall be deposited in the Water and Wastewater Utility Fund as Income.

Fidelity Bonds or Insurance. Each official or other person having custody of any Pledged Revenues or responsible for their handling shall be fully bonded or insured at all times, which bond or insurance shall be conditioned upon the proper application of said moneys. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

Loss from Condemnation. If any part of the System is taken by the exercise of a power of eminent domain, the amount of any award received by the City as a result of such taking shall be expended upon the improvement of the System or shall be applied to the redemption of the Outstanding Bond and any other Outstanding Securities payable from the Pledged Revenues in accordance with the provisions hereof and of any other ordinance authorizing the issuance of any such Securities at maturity or upon prior redemption if the authorizing ordinances authorize the prior redemption of such Securities.

Inspection of Records and System. The Purchaser, any subsequent Owner of the Bond or the Owner of any other Securities payable from the Pledged Revenues, any duly authorized agent or agents of the Purchaser or such Owner shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, concerning the Bond, the System or the Income, to make copies of such records, accounts and data at their own expense, and to inspect the System and properties comprising the same.

Audits Required. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the Enterprise to be made forthwith by an Independent Auditor and order an audit report for each fund pertaining to the Income. The City shall furnish a copy of each such audit report and any other annual report or financial statement of the Enterprise to the Bond Insurer, if any, as soon as practicable after the preparation thereof. The Bond Insurer, if any, shall have the right to direct an accounting at the expense of the Enterprise, and the failure of the Enterprise to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period shall be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of the Purchaser or any subsequent Owner of the Bond.

Insurance and Reconstruction. The City shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the City as is customarily maintained with respect to water and wastewater facilities of like character against loss of or damage to the System and against public and other liability to the extent at least reasonably necessary to protect the interest of the City and of the Owner of the Bond or any other Securities payable from the Net Pledged Revenues, except as herein otherwise provided. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, commence and diligently proceed with the repair or replacement of the damaged or destroyed property so as to restore the same to use. The proceeds of any insurance appertaining to the System shall be payable to the City and (except for proceeds of use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement, and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Water and Wastewater Utility Fund as Income. If the costs of such repair and replacement of the damaged or destroyed property exceed the proceeds of such property insurance available for payment of the same, moneys in the Water and Wastewater Utility Fund shall be used to the extent necessary for such purpose. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

Defeasance. When all Debt Service Requirements of the Bond have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged, and the Bond shall no longer be deemed to be Outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment of the Bond when the Enterprise has, with the consent of the Purchaser, placed in escrow or in trust with a Trust Bank moneys or Federal Securities in an amount sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all Debt Service Requirements of the Bond, as the same become due at their Maturity Date or upon any Redemption Dates as of which the Enterprise shall have exercised or

shall have obligated itself to exercise its option to call the Bond for prior redemption. The Federal Securities shall be non-callable and shall become due prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Enterprise and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the Owner thereof to assure such availability as so needed to meet such schedule. Nothing herein shall be construed to prohibit a partial defeasance of the Bond in accordance with the provisions of this Section 9.

Notwithstanding anything herein to the contrary, in the event that the principal or interest due on the Bond shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bond shall remain Outstanding for all purposes, shall not be defeased or otherwise satisfied and shall not be considered paid by the Enterprise, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the Enterprise to the Owner of the Bond shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owner.

Default Provisions and Remedies of Bond Owner.

Events of Default and Remedies. The Events of Default by the Enterprise or the City and the remedies of the Purchaser shall be as set forth in the Loan Agreement.

Warranty Upon Issuance of Bond. The Bond, when duly executed and registered for the purposes provided for in this Ordinance, shall constitute a warranty by and on behalf of the Enterprise for the benefit of each and every future Owner of the Bond that the Bond has been issued for a valuable consideration in full conformity with law.

Rights of Bond Insurer. Anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owner of the Bond under this Ordinance.

Amendment of Ordinance.

Amendment of Ordinance Not Requiring Consent of Bond Owner. The Enterprise may, without the consent of, or (except as otherwise provided herein) notice to, the Owner of the Bond, adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

To cure or correct any formal defect, ambiguity or inconsistent provision contained in this Ordinance;

To appoint successors to the Paying Agent, Registrar or Transfer Agent as provided in Section 3B(6) hereof;

To designate a trustee for the Owners of the Bond, to transfer custody and control of the Income to such trustee, and to provide for the rights and obligations of such trustee;

To add to the covenants and agreements of the Enterprise or the City or the limitations and restrictions on the Enterprise or the City set forth herein;

To pledge additional revenues, properties or collateral to the payment of the Bond;

To cause this Ordinance to comply with the Trust Indenture Act of 1939, as amended from time to time; or

To effect any such other changes hereto which do not in the opinion of nationally recognized bond counsel materially adversely affect the interests of the Owners of the

Bond. Notwithstanding any other provision of this Ordinance, in determining whether the rights of the Owner of the Bond will be adversely affected by any action taken pursuant to the terms and provisions of this Ordinance, the existence and effects on the Owner of the Bond of the Bond Insurance Policy shall be disregarded.

Amendment of Ordinance Requiring Consent of Bond Owner. Exclusive of the amendatory ordinances covered by Section 11A hereof, this Ordinance may be amended or modified by ordinances or other instruments duly adopted by the Enterprise, without receipt by it of any additional consideration, but with the written consent of the Purchaser or any subsequent Owner of the Bond (except as would adversely affect the rights of the Owners of any other Securities payable from the Pledged Revenues).

Notation on Bond. Any Bond delivered after the effective date of any action taken as provided in Section 11B hereof or Outstanding at the effective date of such action, may bear a notation thereon by endorsement or otherwise in form approved by the Council as to such action; and if any Bond so executed and delivered after such date does not bear such notation, then upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of its Bond for such purpose at the principal office of the Enterprise, suitable notation shall be made on such Bond by the Secretary of the Enterprise as to any such action. If the Council so determines, a new Bond so modified as in the opinion of the Council to conform to such action shall be prepared, executed and delivered; and upon demand of the Owner of the Bond, shall be exchanged without cost to such Owner.

Consent of Bond Insurer. Any provision of this Ordinance expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer.

Unless otherwise provided in this Section 11, the consent of the Bond Insurer shall be required in addition to the consent of the Bond Owner, when required, for the following purposes: execution and delivery of any supplemental ordinance or any amendment, supplement, change or modification to the Loan Agreement, removal of the Paying Agent, Registrar or Transfer Agent and selection and appointment of any successor paying agent, registrar or transfer agent and initiation or approval of any other action which requires consent of Bond Owners.

Any reorganization or liquidation plan with respect to the Enterprise must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of the Owner of the Bond absent a default by the Bond Insurer under the Bond Insurance Policy.

Miscellaneous.

Character of Agreement. None of the covenants, agreements, representations, or warranties contained herein or in the Bond shall ever impose or shall be construed as imposing any liability, obligation, or charge against the City or against the credit of the City payable out of the general fund or any other fund of the City (except the special funds pledged therefor).

Pursuant to the Enterprise Ordinance the Enterprise is authorized to make covenants on behalf of the City and to bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in future years. Notwithstanding anything in this Ordinance to the contrary, no such covenant of the Enterprise on behalf of the City that would constitute such a direct or indirect debt or other financial obligation of the City may be enforced against the City.

No Pledge of Property. The payment of the Bond is not secured by an encumbrance, mortgage or other pledge of property of the City except for the Pledged Revenues. No property of the City, subject to such exception with respect to the Pledged Revenues, pledged for the payment of the Bond, shall be liable to be forfeited or taken in payment of the Bond.

Statute of Limitations. No action or suit based upon the Bond or other obligation of the Enterprise or the City shall be commenced after it is barred by any statute of limitations pertaining thereto. Any trust or fiduciary relationship between the Enterprise and the Owner of the Bond or the obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the Maturity Date or other due date thereof unless the Bond is presented for payment or demand for payment of such other obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit, the collection of which has been barred, shall revert to the Water and Wastewater Utility Fund, unless the Council shall otherwise provide by ordinance. Nothing herein prevents the payment of the Bond or other obligation after an action or suit for its collection has been barred if the Council deems it in the best interests of the Enterprise or the public so to do and orders such payment to be made.

Delegated Duties. The officers of the Enterprise are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law, including, without limitation:

Preparation of Bond. The preparation of a Bond in a principal amount equal to that of the Bond, otherwise in substantially the same form and bearing the same terms;

Execution, Registration and Delivery of Bond. The execution and registration of the Bond and the delivery of the Bond to the Purchaser pursuant to the provisions of this Ordinance;

Information. The assembly and dissemination of financial and other information concerning the Enterprise, the City and the Bond;

Bond Insurance. The President or the Treasurer are hereby independently authorized to approve and execute a Commitment for the purchase of municipal bond insurance, and execute any documents or agreements related to the same.

Documents and Closing Certificates. The execution of the Commitment, the Sale Certificate, the Loan Agreement and such certificates as may be reasonably required by the Purchaser, relating, inter alia, to:

The signing of the Bond;

The tenure and identity of the officials of the Enterprise;

If in accordance with fact, the absence of litigation, pending or threatened, affecting the validity of the Bond; and

The delivery of the Bond and the receipt of the Bond purchase price.

Successors. Whenever herein the Enterprise or the City is named or is referred to, such provision shall be deemed to include any successors of the Enterprise or the City, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions for the benefit of the Enterprise or the City contained herein shall bind and inure to the benefit of any officer, board, district, commission, authority, agency, instrumentality or other Person or Persons to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Enterprise or the City or of its respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

Rights and Immunities. Except as herein otherwise expressly provided, nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon or to give or grant to any Person, other than the Enterprise and the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and the Owner of the Bond, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this

Ordinance contained by and on behalf of the Enterprise or the City shall be for the sole and exclusive benefit of the Enterprise or the City, the Bond Insurer, the Paying Agent, Registrar and Transfer Agent and any Owner of the Bond.

No recourse shall be had for the payment of the Debt Service Requirements of the Bond or for any claim based thereon or otherwise upon this Ordinance authorizing their issuance or any other ordinance or instrument pertaining thereto, against any individual member of the Council, or any officer or other agent of the Enterprise past, present or future, either directly or indirectly through the Enterprise, or otherwise, whether by virtue of any constitution, statute or rule of law or by the enforcement of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bond and as a part of the consideration of its issuance specially waived and released.

Bond Insurer as Third-Party Beneficiary. To the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance, the Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bond, as received by or otherwise credited to the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bond and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Enterprise irrespective of whether such persons have notice of such liens.

No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bond. Such recourse shall not be available either directly or indirectly through the Council or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bond, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Bond.

Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the Enterprise and after the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Owner of the Bond; and this Ordinance, subject to the provisions of Sections 9 and 11 hereof, shall be and shall remain irrepealable until the Bond, as to all Debt Service Requirements, shall be fully paid, cancelled or discharged.

Ratification. All action not inconsistent with the provisions of this Ordinance heretofore taken by the Enterprise or its officers, and otherwise by the Enterprise directed toward the issuance of the Bond is hereby ratified, approved and confirmed.

Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent

are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

Emergency. Due to the immediate need by the City and the Enterprise for proceeds of the Bond in order to acquire, construct and install the Project, an emergency exists which requires the immediate passage of this Ordinance as an emergency measure, and this Ordinance is immediately necessary for the preservation of the public peace, health or safety. This Ordinance shall therefore be exempt from referendum.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY MEASURE this
11th day of April, 2005.