



CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 7) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Consideration of Minutes of Preceding Meetings**
4. **Report of City Officials**
 - A. City Manager's Report
5. **City Council Comments**
6. **Presentations**
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. April 2005 – Financial Report
 - B. Bond Counsel Services Agreement re CWRPDA \$16M Water Revenue Loan
 - C. IGA re Quail Creek Floodplain Study
 - D. Amended Design and Construction IGA re 144th Avenue/Interstate 25 Interchange
 - E. Quarterly Insurance Report: 3rd & 4th Quarters, 2004
 - F. Median Renovation Contract Award
 - G. Foster Property Drainage Agreement
9. **Appointments and Resignations**
 - A. Resolution No. 20 re Appointments to Boards and Commissions
10. **Public Hearings and Other New Business**
 - A. TABLED Councillor's Bill No. 13 re Country Club Village Business Assistance Package
 - B. Public Hearing re Foster Property First Amended PDP – Lowe's
 - C. Foster Property Amended PDP
 - D. Councillor's Bill No. 26 re Vacation of Easements - Lots 9 and 10, Ball Campus Subdivision
 - E. Councillor's Bill No. 27 re Farmers High Line Canal Trail Construction
 - F. Resolution No. 21 Utility Fund Capital Improvement Project Funding Modifications
 - G. Councillor's Bill No. 28 re Certificates of Participation for 144th Avenue/I-25 Interchange
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
13. **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, MAY 23, 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 and Councillors Davia, Dittman, Dixon, Hicks and Price were present at roll call. Mayor Pro Tem Kauffman was absent. Stephen P. Smithers, Acting City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Davia moved, seconded by Dittman, to approve the minutes of the meeting of May 9, 2005. The motion passed unanimously.

CITY MANAGER COMMENTS

Mr. Smithers announced that City Manager J. Brent McFall was attending the International Council of Shopping Centers Conference. Further, he advised that City offices would close on May 30 in observance of Memorial Day.

CITY COUNCIL COMMENTS

Mayor McNally noted that Mayor Pro Tem Kauffman was with Mr. McFall representing the City Council at the aforementioned conference.

Councillors Dixon and Hicks were scheduled to ride on an antique fire truck in Commerce City's Memorial Day Parade.

Mayor McNally and Councillor Dixon reported that a Candidate Forum would be held in Council Chambers on June 9. Those interested in participating in local government and considering running for elected office were encouraged to attend or to send a representative.

CITIZEN COMMUNICATION

Carol Michaels, 5131 West 73rd Avenue, inquired about the City's acceptance of contributions from Wal-Mart. Mr. Smithers answered.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: April 2005 Financial Report; Bond Counsel Services Agreement with Sherman & Howard not to exceed \$10,000 plus \$500 in expenses for loan with Colorado Water Resources and Power Development Authority; IGA with Urban Drainage and /City and County of Broomfield re Quail Creek Floodplain Study; Amended Design and Construction IGA with Thornton re 144th Avenue/Interstate 25 Interchange; Quarterly Insurance Report: 3rd & 4th Quarters, 2004; Median Renovation Contract Award with Arrow Landscape for \$153,546 for Sheridan Blvd from 14th Ave to 112th Ave and 104th Ave between Sheridan and Federal; and Foster Property Drainage Agreement with Armstrong Westminster 136th LLC , and the Estate of Charles E. Foster.

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 Hicks moved, seconded by Dixon, to approve the consent agenda items as presented. The motion carried unanimously.

RESOLUTION NO. 20 RE BOARD AND COMMISSION APPOINTMENTS

Councillor Davia moved, seconded by Councillor Dittman to adopt Resolution No. 20 appointing W. J. Peniston as a regular member and Jill Manaly and Ted Mische as alternate members of the Parks and Recreation Advisory Board and Luke Ricards as a regular member and Terrance Ramirez as an alternate member of the Transportation Commission with all terms of office to expire December 31, 2005. Upon roll call vote, the motion carried unanimously

PUBLIC HEARING RE FOSTER PROPERTY PDP FIRST AMENDMENT LOWE'S

At 7:09 P.M., Mayor McNally opened a public hearing to consider the Foster Property Preliminary Development Plan First Amendment located at the NWC of I-25 and 136th Avenue. Patrick Caldwell of the Planning Division entered copies of the agenda memorandum and other related items as exhibits.

Jack Swanson, 7400 East McDowell Drive in Scottsdale, AZ, presented the applicant's request in detail. Eric "Rick" White, 441 East 136th Avenue in Thornton and a neighboring property owner, feared damage to his property from flooding, as well as health consequences from mosquitoes that would breed in standing water from a drainage improvement the developer proposed. Randal Phelps, 950 17th Street and a Professional Engineer, addressed Mr. White's concerns and presented a soils test and geotechnical study the applicant had commissioned. Beverly Wheeler, 911 West 139th Court, objected to the project for many reasons, such as increased traffic, inadequate handicapped parking, and lawsuits filed against Lowe's by OSHA (Occupational Safety and Health Administration).

David Shinneman of the Planning Division and Mr. McCullough responded to testimony and answered questions from Council. At 8:15 P.M., Mayor McNally closed the hearing.

FOSTER PROPERTY PDP FIRST AMENDMENT LOWE'S

Councillor Hicks moved, seconded by Dixon to approve the Foster Property Preliminary Development Plan (PDP) First Amendment within the Foster Planned Unit Development. This recommendation was based on the findings set forth in Section 11-5-14 of the Westminster Municipal Code. The motion carried unanimously.

COUNCILLOR'S BILL NO. 26 RE VACATION OF EASEMENTS IN BALL CAMPUS SUBDIVISION

Councillor Dittman moved, seconded by Price to pass Councillor's Bill No. 26 on first reading, vacating certain easements on Lots 9 and 10 of the plat for Ball Campus Subdivision recorded at Book No. 57, Page No. 6, and Reception No. 78095994 in the records of Jefferson County. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 27 RE FARMERS HIGH LINE CANAL TRAIL CONSTRUCTION

Councillor Davia moved, seconded by Dixon, to pass Councillor's Bill No. 27 on first reading re-allocating \$63,360 from the Trails Development Capital Improvement Program budget to the Farmers' High Line Trail Capital Improvement Program budget to fund the federally-aided trail construction project and authorizing a supplemental appropriation in the amount of \$230,400 reflecting the City's receipt of a Transportation Equity Act of the 21st Century (TEA-21) enhancement grant, administered by the Colorado Department of Transportation and the Denver Regional Council of Governments. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 21 RE UTILITY FUND CIP FUNDING MODIFICATION

It was moved by Councillor Hicks, seconded by Dixon, to adopt Resolution No. 21 modifying the Utility Fund Capital Improvement Projects as presented at the May 2, 2005 Study Session. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 28 RE COP'S FOR INTERCHANGE AT 144TH AVE AND I-25

It was moved by Councillor Dittman, seconded by Dixon, to pass Councillor's Bill No. 28 as an emergency ordinance appropriating \$17,666,817 in the General Capital Improvement Fund for the 2005 Certificates of Participation (COPs) proceeds. At roll call, the motion passed unanimously.

ADJOURNMENT:

There was no further business to come before Council, and the meeting adjourned at 8:20 P.M.

ATTEST:

Mayor

City Clerk



**WESTMINSTER
COLORADO**

Agenda Memorandum

Agenda Item 8 A

City Council Meeting
May 23, 2005



SUBJECT: Financial Report for April 2005

Prepared By: Tammy Hitchens, Finance Director

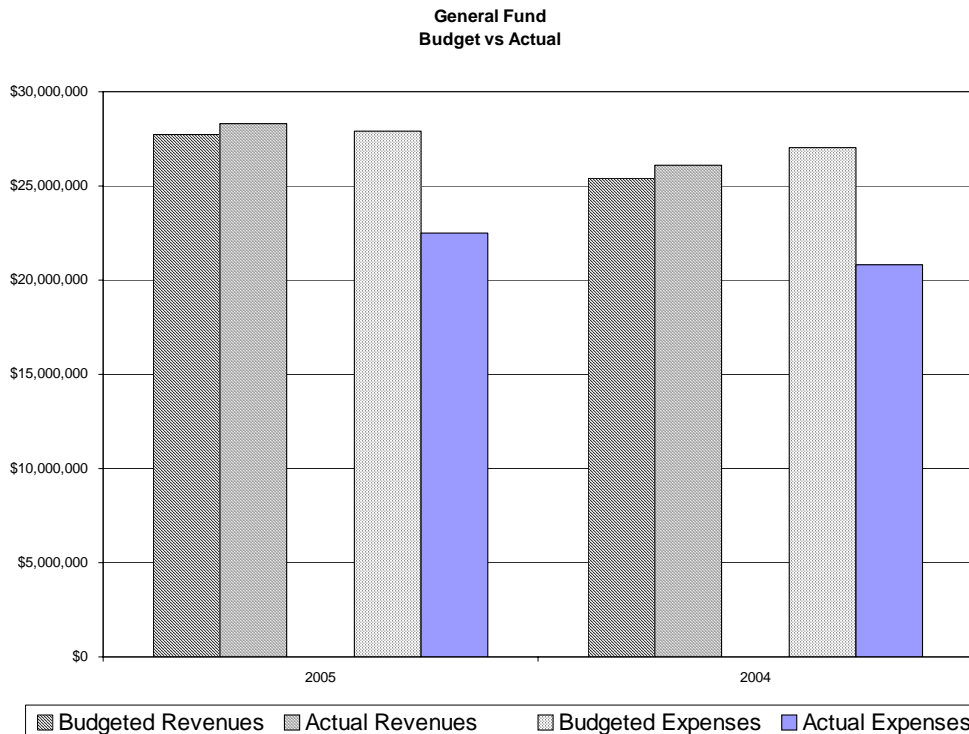
Recommended City Council Action

Accept the Financial Report for April as presented.

Summary Statement

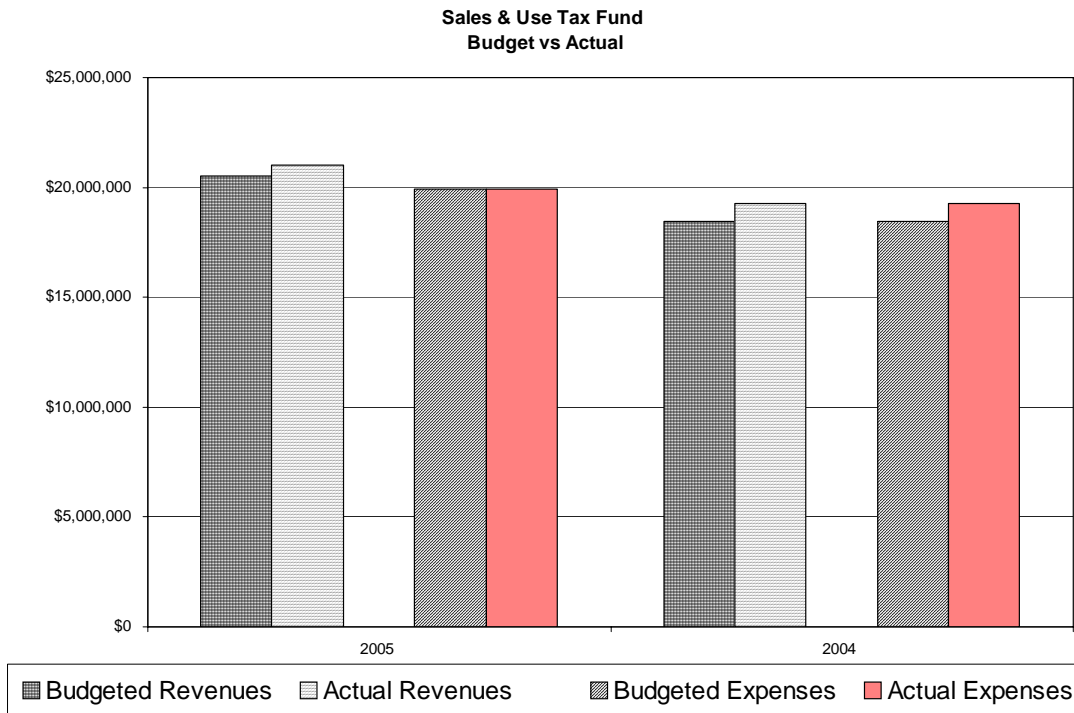
City Council is requested to review and accept the attached monthly financial statement. The Shopping Center Report is also attached. Unless otherwise indicated, “budget” refers to the pro-rated budget. The revenues are pro-rated based on historical averages. Expenses are pro-rated based on 1/12 of the year.

The General Fund revenues exceed expenditures by \$5,850,000. The following graph represents Budget vs. Actual for 2004 – 2005.

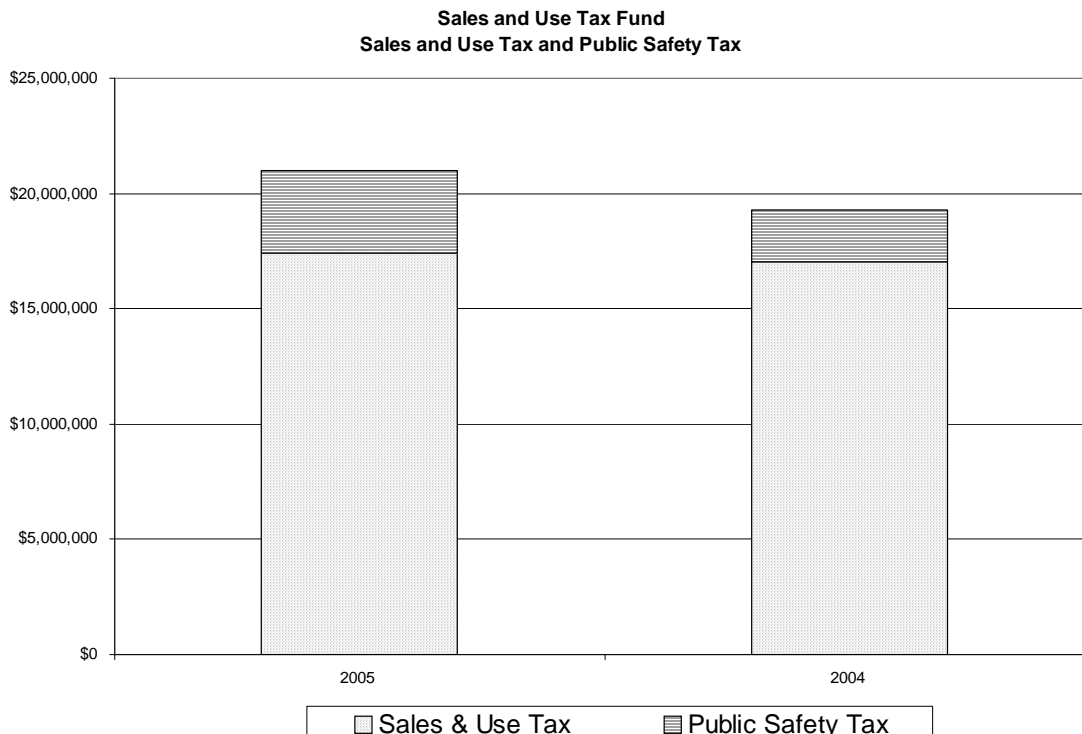


The Sales and Use Tax Fund’s revenues exceed expenditures by \$1,038,000.

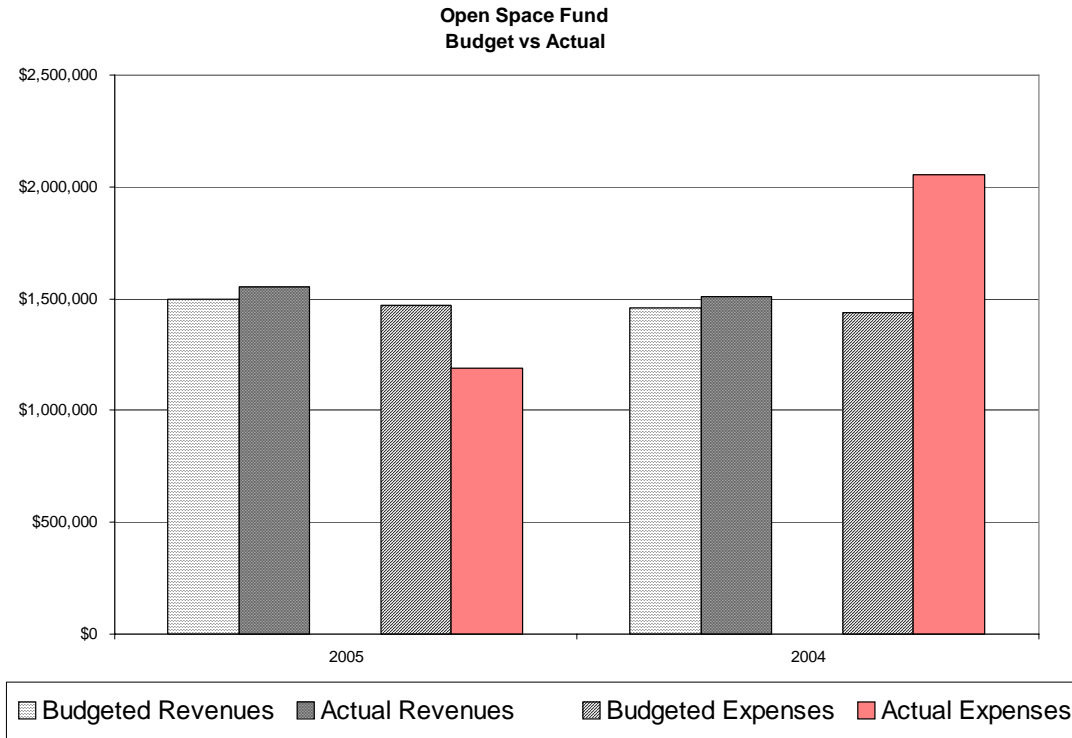
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 9%. It should be noted that there are timing differences and anomalies in this report that overstate the revenue picture.
- The top 50 Sales Taxpayers, who represent about 63% of all collections, were up 1.8%.
- The Westminster Mall is down 6% year to date.



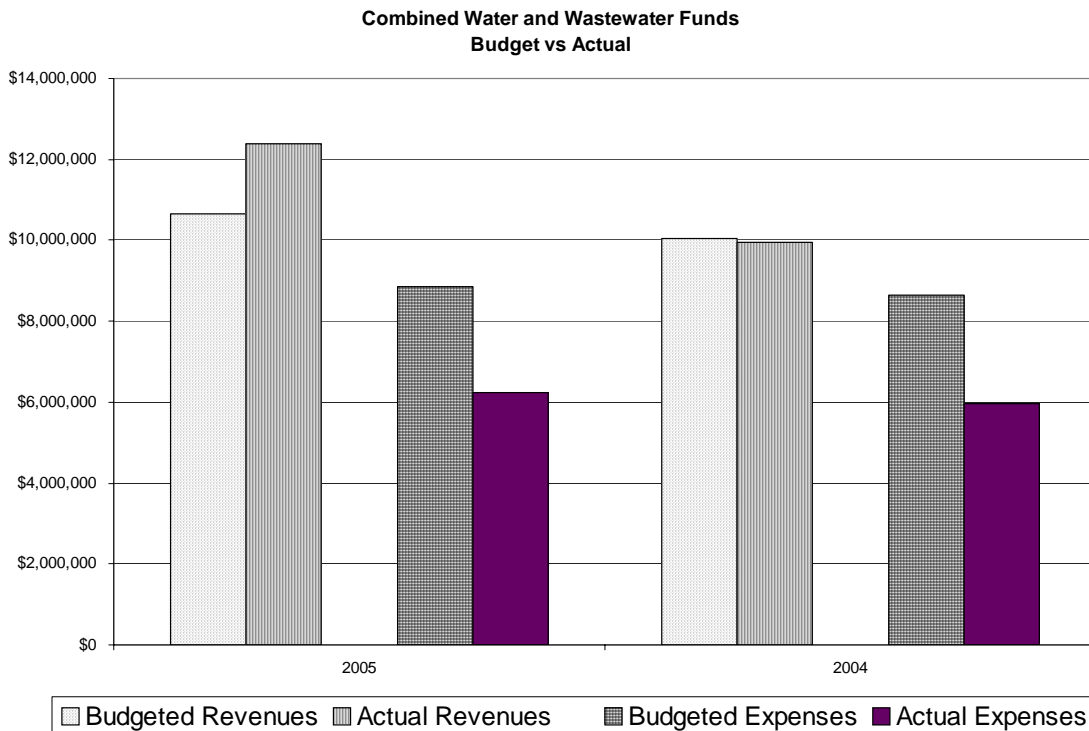
The graph below reflects the contribution of the Public Safety Tax to the overall Sales and Use Tax revenue.



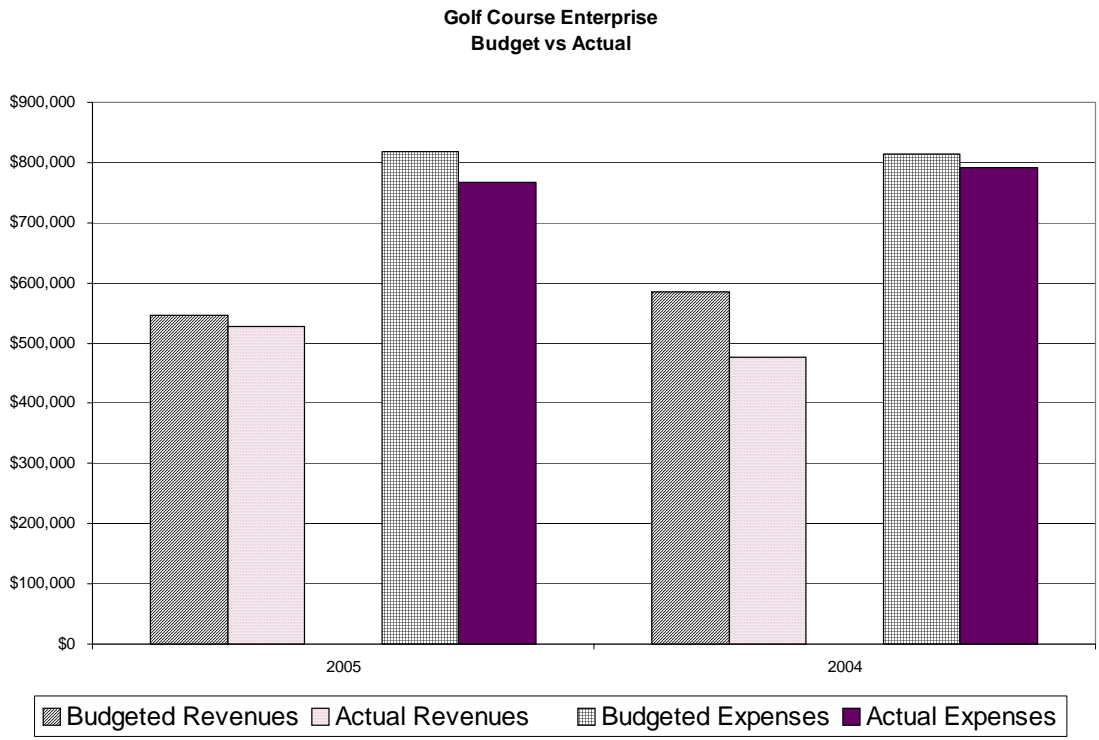
The Open Space Fund's revenues exceed expenditures by \$359,000.



The combined Water & Wastewater Funds' revenues exceed expenses by \$6,145,000. Included in this figure is over \$4.3 million in tap fees.



The combined Golf Course Funds' revenues are under expenditures by \$239,000.



Policy Issue

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

Alternative

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

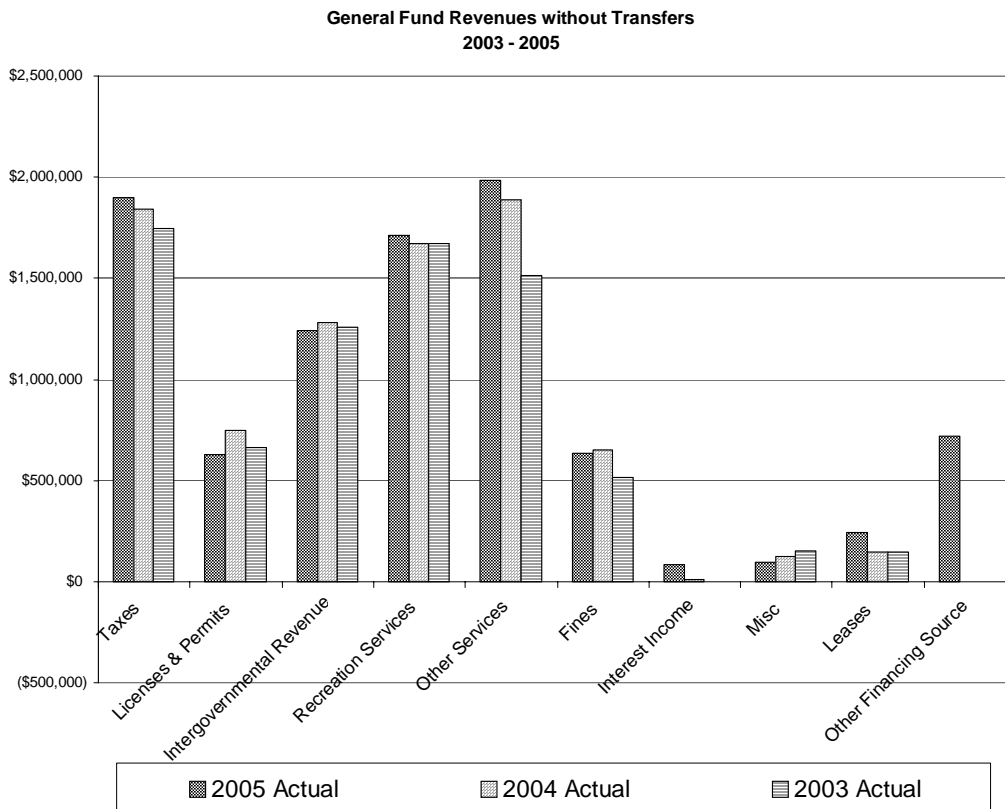
Background Information

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

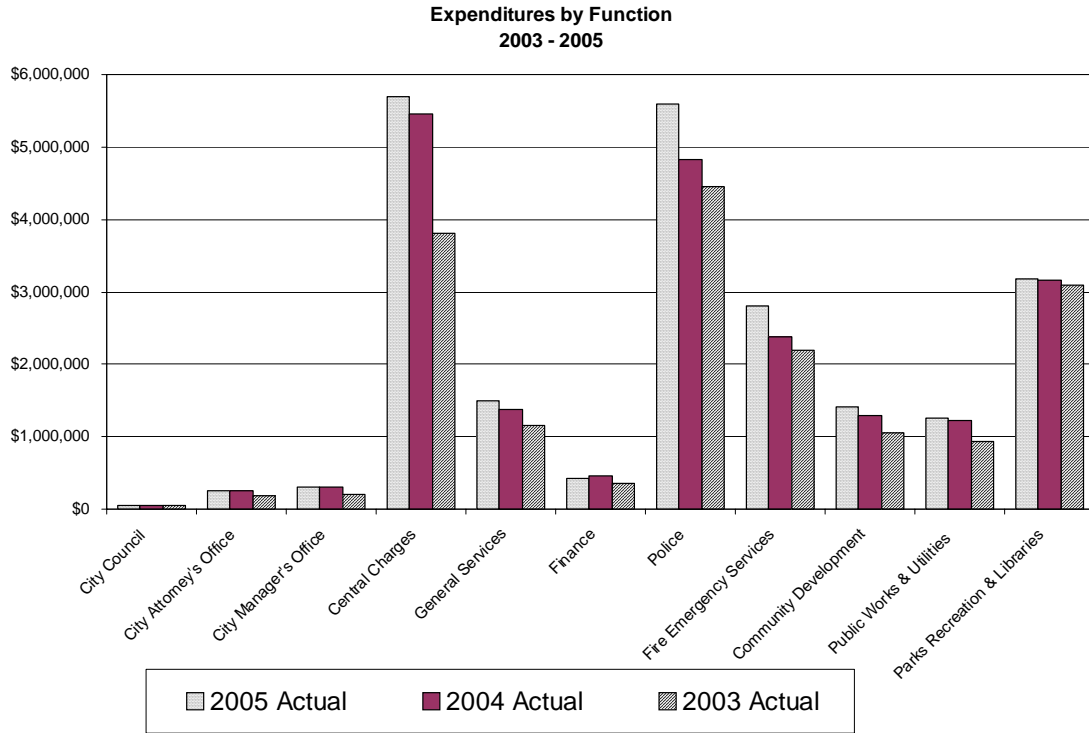
General Fund

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

The following chart represents the trend in actual revenues from 2003 – 2005 year-to-date.



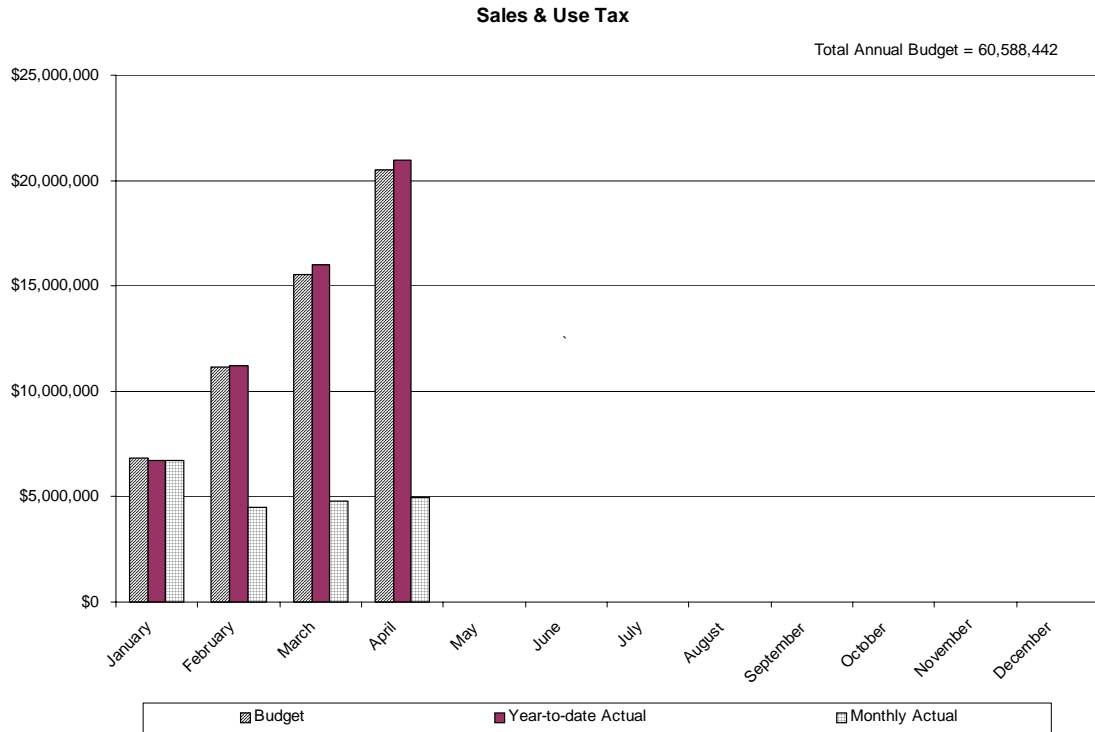
The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2003 –2005.



Sales and Use Tax Funds (Sales & Use Tax Fund and Open Space Sales & Use Tax Fund)

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

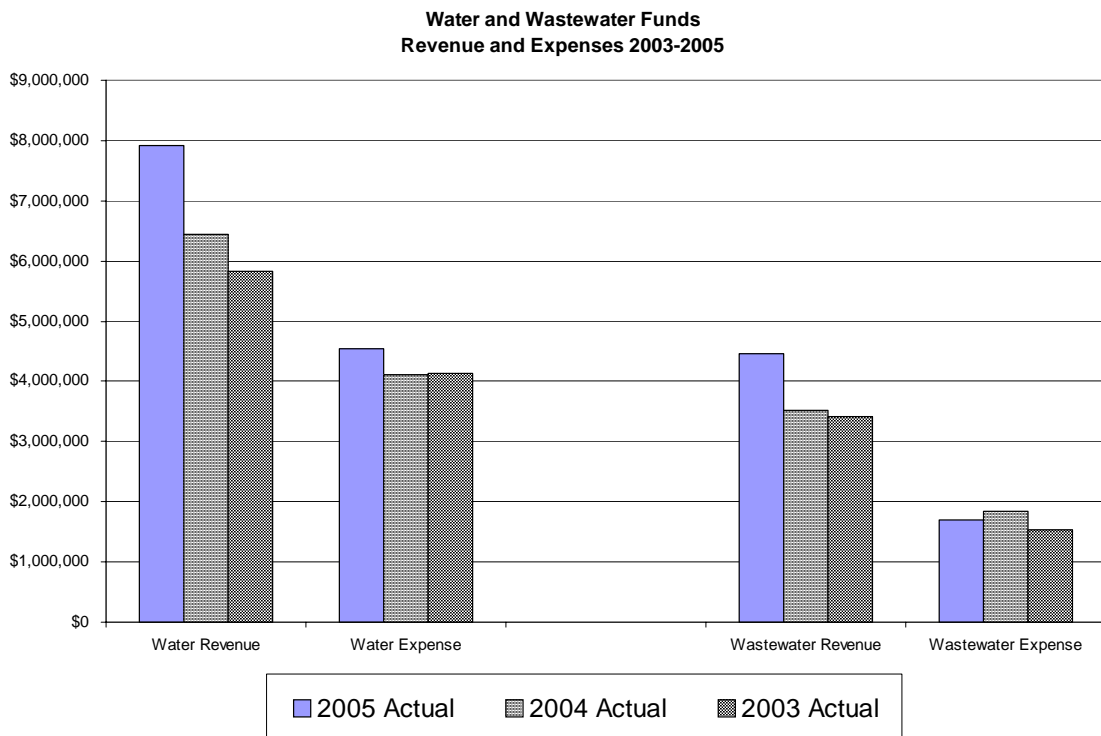
This chart indicates how the City's Sales and Use Tax revenues are being collected on a monthly basis. This chart does not include Open Space Sales & Use Tax.



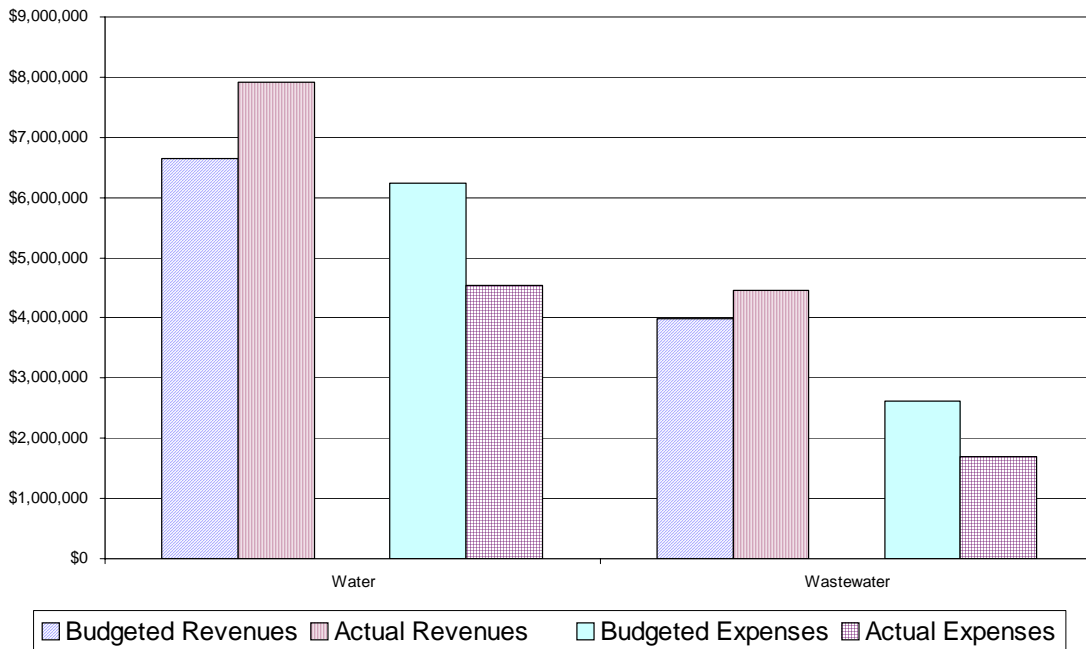
Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

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



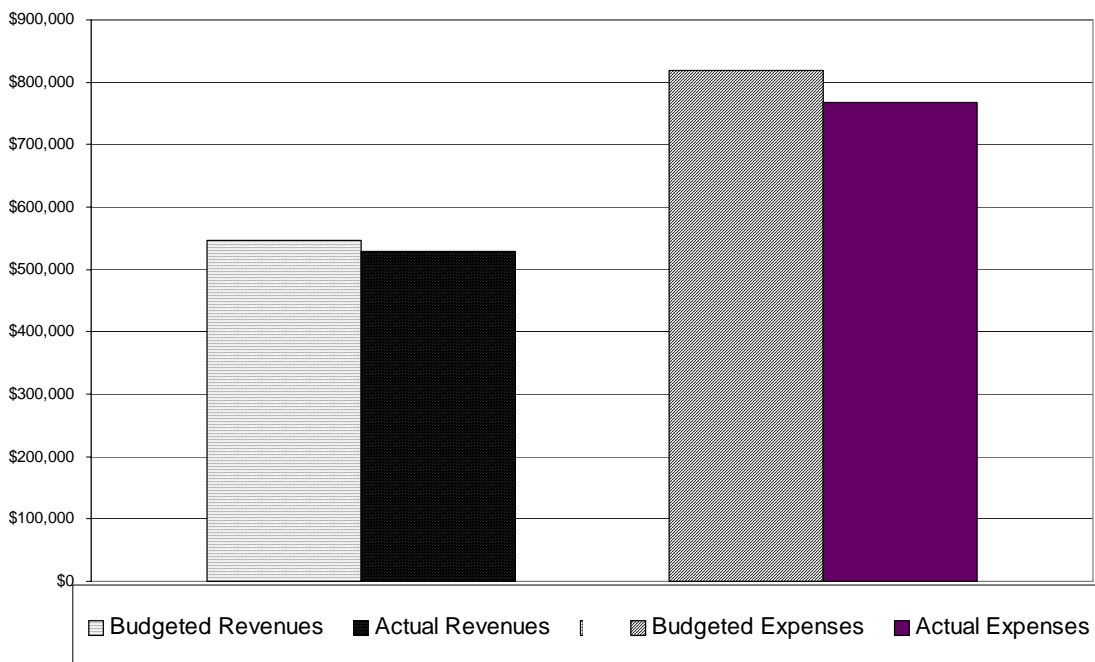
**Water and Wastewater Funds
Budget vs Actual**



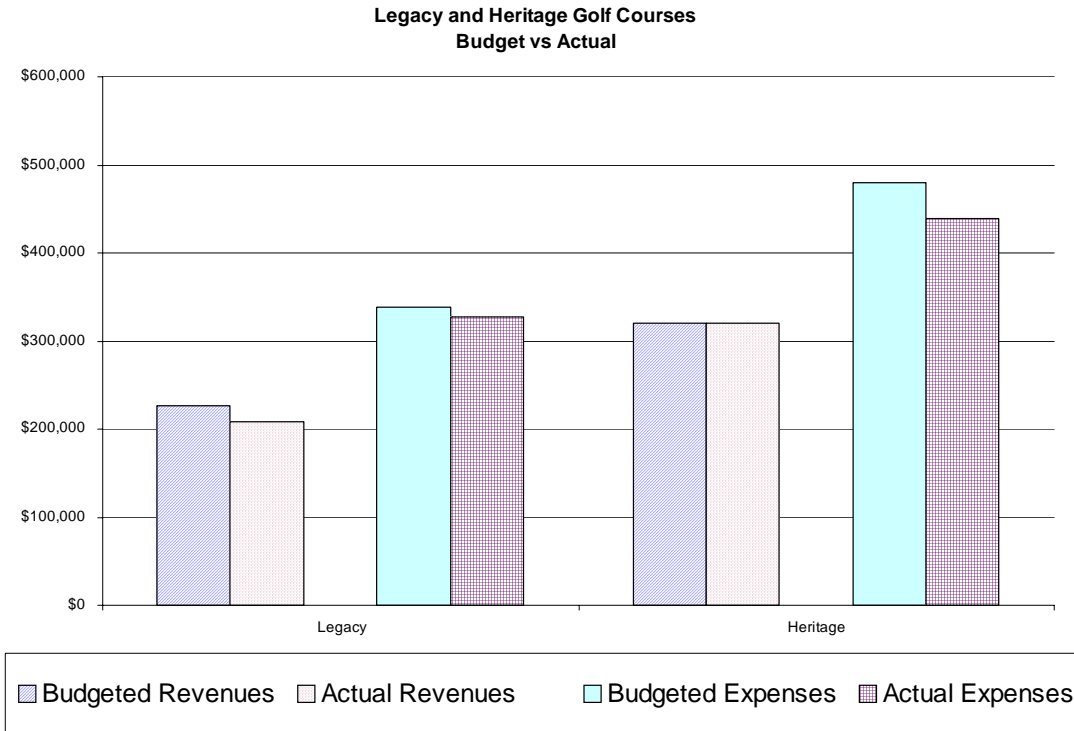
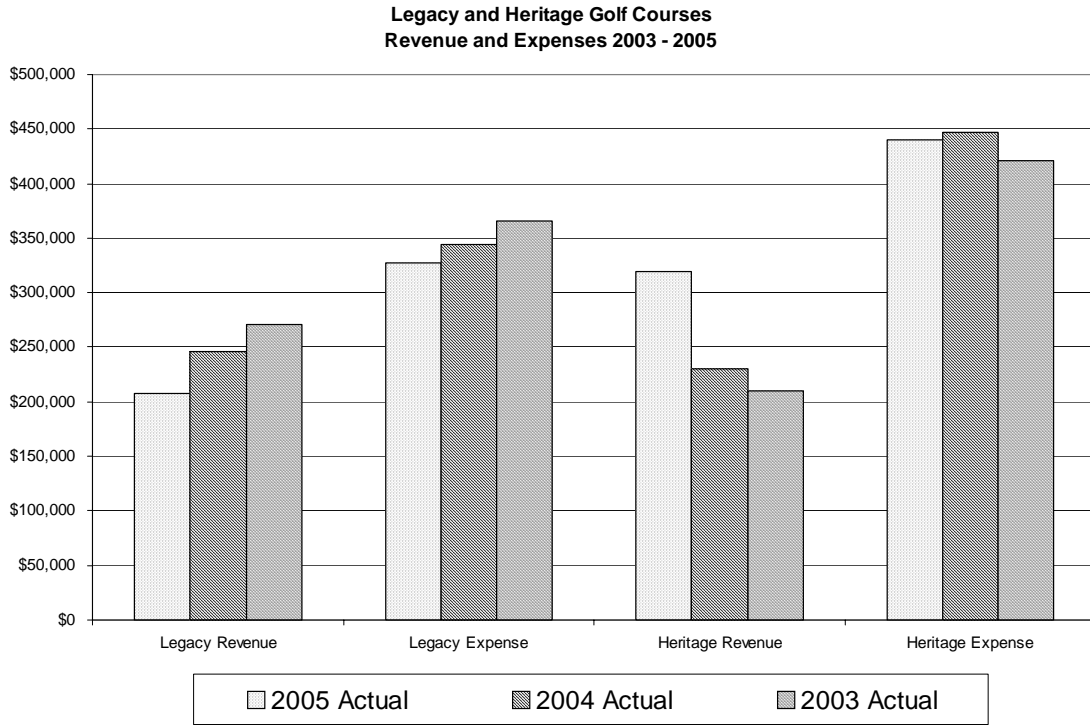
Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City’s two municipal golf courses. The enterprise as a whole is in a positive position, with net income currently \$32,000 over budget for the year. On October 11, 2004, City Council approved a four-point program to provide relief to the golf courses over the coming years.

**Combined Golf Courses
Budget vs Actual**



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



Respectfully submitted,

J. Brent McFall, City Manager
Attachments

**City of Westminster
Financial Report
For the Four Months Ending April 30, 2005**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget Pro-rated	% Pro-Rated Budget
Water and Wastewater Fund-Combined						
Revenues						
License & Permits	70,000	23,333		24,780	1,447	106%
Charges for Services						
Rates and Charges	31,698,593	7,468,405		7,504,034	35,629	100%
Tap Fees	6,900,000	2,537,650		4,309,852	1,772,202	170%
Interest Income	1,450,000	459,100		490,465	31,365	107%
Miscellaneous	460,000	153,333		59,087	(94,246)	39%
Sub-total Water/Wastewater Revenues	<u>40,578,593</u>	<u>10,641,821</u>		<u>12,388,218</u>	<u>1,746,397</u>	<u>116%</u>
Carryover	-	-		-		
Total Revenues	<u>40,578,593</u>	<u>10,641,821</u>		<u>12,388,218</u>	<u>1,746,397</u>	<u>116%</u>
Expenditures						
Central Charges	12,500,281	2,024,754		1,637,459	(387,295)	81%
Finance	552,747	184,249		141,249	(43,000)	77%
Community Development	0	0		1,330	1,330	
Public Works & Utilities	17,459,799	5,819,933		3,763,033	(2,056,900)	65%
Information Technology	2,465,766	821,922		700,250	(121,672)	85%
Total Operating Expenses	<u>32,978,593</u>	<u>8,850,858</u>		<u>6,243,321</u>	<u>(2,607,537)</u>	<u>71%</u>
Revenues Over(Under) Expenses	<u>7,600,000</u>	<u>1,790,963</u>		<u>6,144,897</u>	<u>4,353,934</u>	



WESTMINSTER
COLORADO

Agenda Item 8 B

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Bond Counsel Services for Colorado Water Resources and Power Development Authority Loan for the Big Dry Creek Wastewater Treatment Facility Project

Prepared By: Martin R. McCullough, City Attorney

Recommended City Council Action

Authorize the City Manager to execute an agreement in an amount not to exceed \$10,000, plus \$500 in expenses, with Sherman & Howard, LLC, for bond counsel services in connection with the proposed loan between the City and the Colorado Water Resources and Power Development Authority (CWRPDA) in the par amount of \$16 million for the purpose of partially financing the Big Dry Creek Wastewater Treatment Facility Upgrade and Expansion Project.

Summary Statement

- As with past financings for the Water and Wastewater Utility for the City, Staff has determined it is cost-effective to use the CWRPDA. This is a state-sponsored financing pool that allows multiple jurisdictions to combine their financing needs for water and wastewater projects and go into the market in a pool. The City achieves a significant discount on the interest rate compared to a public offering by the City on a stand-alone basis.
- In connection with this financing, the City will be required to provide an opinion from nationally recognized bond counsel with respect to the authorization and issuance of the loan documents to be executed between the City and the Authority, the enforceability of the loan, and the security for the loan.
- Staff is recommending the retention of Mr. Dee Wisor of the law firm of Sherman & Howard to serve as bond counsel to the City for this financing, at a fee not to exceed \$10,000, plus expenses not to exceed \$500.
- Sherman & Howard was bond and special counsel to the City for the \$16 million loan agreement with CWRPDA in 2000 for the financing of the Semper Water Treatment Plant project.

Expenditure Required: \$10,000, plus expenses not to exceed \$500.

Source of Funds: Water and Wastewater Utility Fund

Policy Issue

Should the City engage special legal counsel for the proposed loan from the Colorado Water Resource and Development Authority for the Big Dry Creek Wastewater Treatment Facility?

Alternative

Do not engage special legal counsel for this financing. This alternative is not recommended because it would disqualify the City from obtaining this loan and the City would have to find a more expensive source of financing for the project, reduce the scope of the project by \$16 million, or eliminate the project.

Background Information

The flows to the Big Dry Creek Wastewater Treatment Facility have reached 80% of the current permitted flow, and the organic loading is approaching the 90% level. City Council has previously authorized a major upgrade and expansion project that will increase the maximum monthly hydraulic capacity of the facility from 9.2 million gallons per day (mgd) to 11.9 mgd. The expansion will result in a facility with treatment capacity for the City through build-out, which is anticipated to occur around 2025. The project also includes the upgrade and replacement of aged equipment that is 20 – 30 years old, the replacement of the chlorine gas disinfection system with an ultraviolet disinfection system, enhancement of the treatment process to include advanced biological nutrient removal, an upgrade to the odor control system, and improvements to the plant-wide operation control system.

The total project cost is estimated to be in the range of \$40 - \$44 million. Various alternatives to the facility improvements were evaluated as part of a comprehensive utility plan and process design report. These include several different processes to accomplish advanced biological nutrient removal, disinfection system alternatives, solids digestion and processing alternatives, and several odor control alternatives. The proceeds from the loan from the CWRPDA in the approximate amount of \$16 million will be combined with funds from the Water and Wastewater Utility Enterprise Fund in the amount of approximately \$28 million to fund this project. The project is estimated to be completed in December of 2007.

As with all public, tax-exempt financings, this financing will require an opinion from a nationally recognized law firm regarding certain tax related matters. Fees for comparable financings over the last several years have ranged from \$10,000 - \$30,000 depending on the size and complexity of the issues. The proposed fees by Sherman & Howard are considered well within the range of fees experienced for similar City financings in the past, as well as in the Denver metro area, and will be included as part of the issuance cost for this financing.

Mr. Dee Wisor of Sherman & Howard has served as the City's bond counsel in the past and has dealt directly with the City's Charter, ordinances, and outstanding bond covenants relative to the City's water and wastewater system based on previous work performed for the City.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Memorandum

City Council Meeting
May 23, 2005



Subject: Intergovernmental Agreement with the Urban Drainage and Flood Control District and the City and County of Broomfield for Quail Creek floodplain study

Prepared by: David W. Loseman, Senior Projects Engineer

Recommended City Council Action:

Authorize the City Manager to execute an intergovernmental agreement with the Urban Drainage and Flood Control District and the City and County of Broomfield relating to the preparation of a Letter of Map Revision for Quail Creek from Plaster Reservoir to Interstate 25.

Summary Statement:

- Several years ago, the City and County of Broomfield constructed improvements to Plaster Reservoir that is located upstream of Zuni Street and north of 136th Avenue on Quail Creek. The improvements increased the flood storage capacity of the reservoir that provides the benefit of “shrinking” the downstream regulatory floodplain within the City and County of Broomfield and Westminster.
- The Urban Drainage and Flood Control District (UDFCD) approached staff with a proposal that requires both Broomfield and Westminster to equally share the estimated \$70,000 cost of modifying the Flood Insurance Rate Map (FIRM) to reflect the change in the floodplain resulting from the Plaster Reservoir improvements. Since citizens in both jurisdictions benefit equally, staff believes that this proposal is reasonable. Westminster’s share will come from the Miscellaneous Storm Drainage Account in the Utility Fund. Broomfield’s share will come from a different project that the UDFCD was going to fund for them but instead will divert this funding to this project.
- Under the IGA, UDFCD will manage the project and will hire ICON Engineering to map and prepare a report for submittal to the Federal Emergency Management Agency (FEMA) for approval of a Letter of Map Revision (LOMR) for Quail Creek from Plaster Reservoir to Interstate 25. Once completed, it is expected that several homes within Westminster will be removed from the regulatory floodplain.

Expenditure Required: \$35,000

Source of Funds: Utility Fund – Miscellaneous Storm Drainage Account

Policy Issue

Should the City enter into an Intergovernmental Agreement with the Urban Drainage and Flood Control District and the City and County of Broomfield to analyze and modify the Quail Creek floodplain from Plaster Reservoir to Interstate 25?

Alternative

Council could choose not to execute this intergovernmental agreement at this time. Staff does not recommend this because this study and revision to the floodplain will provide equal benefit to citizens in both jurisdictions.

Background Information

In 1985 the City adopted the regulatory floodplain for Quail Creek which showed a significant amount of floodplain in existing Quail Crossing Subdivision. The tributary area upstream of 136th Avenue and Quail Crossing Subdivision was mostly undeveloped land until about 4 years ago when property in Broomfield and in the Quail Creek tributary area began to develop. As part of this development, Broomfield and the Urban Drainage and Flood Control District (UDFCD) planned improvements to Plaster Reservoir with the intent of not only regulating increased flows from development but to lessen flows downstream to prevent any increased flooding of existing structures. The actual construction of the improvements to Plaster Reservoir were recently completed by Broomfield and UDFCD. It is now necessary to map and study the beneficial effects of these improvements so the Federal Emergency Management Agency will recognize the modifications in the Quail Creek floodplain.

The UDFCD recently approached staff with a proposal to complete the floodplain modification study for a total fee not to exceed \$70,000. It is proposed that this fee be shared equally between Broomfield and Westminster, or up to \$35,000 each. Staff believes that this is a reasonable proposal given the equal benefits to citizens in both jurisdictions. Under the proposed IGA, UDFCD will manage this effort and intends to hire ICON Engineering to study this two and a half miles of Quail Creek. ICON is an experienced drainage design firm and their proposed fees are judged to be competitive for the scope of the analysis.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**AGREEMENT REGARDING
LETTER OF MAP REVISION FOR QUAIL CREEK,
CITY AND COUNTY OF BROOMFIELD AND CITY OF WESTMINSTER**

Agreement No. 05-04.11

THIS AGREEMENT, made this _____ day of _____, 2005, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT"), CITY AND COUNTY OF BROOMFIELD (hereinafter called "BROOMFIELD") and CITY OF WESTMINSTER (hereinafter called "WESTMINSTER") and collectively known as "PARTIES";

WITNESSETH:

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

WHEREAS, PARTIES participated in a joint planning study titled "Broomfield and Vicinity, Outfall Systems Planning Report" by Greenhorne and O'Mara, Inc., dated December, 1985 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to complete a Letter of Map Revision (LOMR) in which flood control improvements along Quail Creek (hereinafter called "PROJECT") were included; and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 87, Series of 2004) for drainage and flood control facilities in which PROJECT was included in the 2005 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2005 subsequent to public hearing (Resolution No. 77, Series of 2004) that includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 32, Series of 2005); and

WHEREAS, the City Council of Broomfield, the City Council of Westminster and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

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

1. SCOPE OF AGREEMENT

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

2. SCOPE OF PROJECT

LOMR PROJECT shall include the preparation of documentation for the Quail Creek Floodplain LOMR for submittal to the Federal Emergency Management Agency (FEMA), specifically, the LOMR extends from Plaster Reservoir to the confluence with Big Dry Creek, as shown on Exhibit A.

3. PUBLIC NECESSITY

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

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. LOMR;
2. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$70,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. LOMR	\$60,000
2. Contingency	10,000
Grand Total	\$70,000

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

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

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	50%	\$35,000
BROOMFIELD	0%	-0-
WESTMINSTER	50%	\$35,000
TOTAL	100%	\$70,000

5. MANAGEMENT OF FINANCES

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

Payment of each party's full share (BROOMFIELD - \$-0-; WESTMINSTER - \$35,000;

DISTRICT - \$35,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to WESTMINSTER of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 10).

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

6. LOMR

The contracting officers for PARTIES, as defined under Paragraph 10 of this Agreement, shall select an engineer mutually agreeable to all PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the LOMR subject to approval of the contracting officer for BROOMFIELD and WESTMINSTER. Payment for the LOMR shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above. LOMR services shall consist of, but not be limited to, the following:

- A. Preparation of mapping;
- B. Hydrologic and Hydraulic analysis;
- C. Preparation of LOMR forms and attachments.

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

7. FLOODPLAIN REGULATION

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

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

8. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate two years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 7. FLOODPLAIN REGULATION, which shall run in perpetuity.

9. LIABILITY

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

10. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for BROOMFIELD shall be the City Manager, One Descombes Drive, Broomfield, Colorado 80020.
- B. The contracting officer for WESTMINSTER shall be the City Manager, 4800 West 92nd Avenue, Westminster, Colorado 80030.
- C. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- D. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- E. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT, BROOMFIELD or WESTMINSTER. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

11. AMENDMENTS

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

12. SEVERABILITY

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

13. APPLICABLE LAWS

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

14. ASSIGNABILITY

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

15. BINDING EFFECT

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

16. ENFORCEABILITY

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

17. TERMINATION OF AGREEMENT

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

18. PUBLIC RELATIONS

It shall be at BROOMFIELD and WESTMINSTER's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected design engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist BROOMFIELD and WESTMINSTER as needed and appropriate.

19. NO DISCRIMINATION IN EMPLOYMENT

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

20. APPROPRIATIONS

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

21. NO THIRD PARTY BENEFICIARIES

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

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

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By: _____

ATTEST:

Title: Executive Director

Date: _____

CITY AND COUNTY OF BROOMFIELD

(SEAL)

By: _____

ATTEST:

Title: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

CITY OF WESTMINSTER

(SEAL)

By: _____

ATTEST:

Title: _____

Date: _____

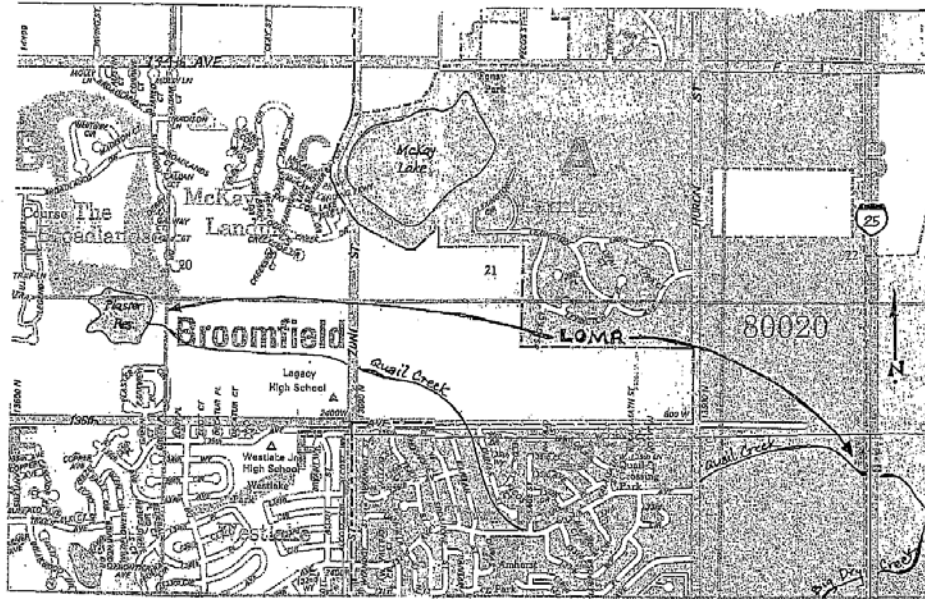
APPROVED AS TO FORM:

City Attorney

AGREEMENT REGARDING
LETTER OF MAP REVISION FOR QUAIL CREEK,
CITY AND COUNTY OF BROOMFIELD AND CITY OF WESTMINSTER

Agreement No. 05-04.11

Exhibit A





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: 144th Avenue/Interstate 25 Interchange Amended Design and Construction Intergovernmental Agreement with the City of Thornton

Prepared By: David W. Loseman, Senior Projects Engineer

Recommended City Council Action

Authorize the Mayor to sign an amended Design and Construction Intergovernmental Agreement (IGA) between the Cities of Thornton and Westminster to share costs and cooperate on the design and construction of the proposed interchange at 144th Avenue and Interstate 25.

Summary Statement

- The Cities of Thornton and Westminster have a strong interest in the planning and development of the I-25 Corridor and have shared the costs of the 136th Avenue Interchange, completed in July 2004.
- The Project Level Feasibility Study for the 144th Avenue Interchange was approved by the Colorado Department of Transportation in November 2003. The project recently cleared a significant hurdle with the approval of the Finding of No Significant Impact, a determination required by the Federal Highway Administration.
- The proposed amendment revises procedures for selecting and hiring a Project Manager for construction of the project. The change allows Westminster to select the project manager using Westminster's process and defines Thornton's role in developing the scope of services for this work. All other terms and conditions of the original IGA will remain in full force and effect and the terms have been reviewed and approved by the City Attorney.
- This revised IGA will supersede the one previously authorized by City Council on November 11, 2004.
- Thornton is scheduled to take action on this second amended IGA's during their City Council meeting on May 24, 2005.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City of Westminster continue in its efforts to construct a new interchange at 144th Avenue and Interstate 25 and further to formalize that commitment in an amended Design and Construction Intergovernmental Agreement with the City of Thornton?

Alternative

Do not authorize the execution of the amended Design and Construction Intergovernmental Agreement. This is not recommended because the proposed revisions are of significant benefit to the City in managing the construction of the interchange, a responsibility that is primarily Westminster's under the terms of the IGA.

Background Information

Staff from the Cities of Thornton and Westminster began joint planning of the 144th Avenue interchange with I-25 several years ago. Both cities are equally interested in advancing the approvals and progress of a new 144th Avenue Interchange and confirming its place on the Denver Regional Council of Government's Regional Transportation Plan. The required Systems Level Feasibility Study for the 144th Avenue interchange was completed in 2001. The Project Level Feasibility Study was completed and approved in November 2003, confirming a diamond interchange design as the preferred alternative for 144th Avenue and I-25. The Colorado Department of Transportation and the Federal Highway Administration approved moving ahead on the 144th Interchange project when they signed the "Finding of No Significant" (FONSI) on April 15, 2005. The next step is to complete design and right-of-way acquisitions, and begin construction of the interchange.

Planning for construction includes the selection of a consulting engineer to perform Project Management activities during construction. The proposed amendment of the current IGA with Thornton is needed to define each City's role in the selection of the project manager. More specifically, this amendment gives Westminster the authority to select a consultant using the City's procedures, and defines Thornton's role in reviewing the selection, and in subsequent oversight of the project. This is the only change to the terms of the IGA that City Council approved in November of 2004, and this amendment will replace the previous agreement.

With Council's approval of the attached amended IGA, staff will begin the process of hiring a project manager for construction, which will begin during the fall of 2005.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Amended Design and Construction Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF THORNTON
AND THE CITY OF WESTMINSTER FOR THE DESIGN AND CONSTRUCTION OF
THE 144TH AVENUE AND INTERSTATE 25 INTERCHANGE**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2004, by and between the CITY OF THORNTON, a Home rule municipal corporation ("Thornton", and the CITY OF WESTMINSTER, a home rule municipal corporation ("Westminster") (or collectively referred to as the "City or Cities, Party or Parties").

WITNESSETH:

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the growth of residential and commercial development along I-25 is a matter of local concern to the Cities and such concern affects the health, safety and welfare of the citizens of each of the Cities; and

WHEREAS, the Cities, along with the City of Broomfield, entered into an Intergovernmental Agreement dated June 18, 1997, to jointly fund the North I-25 Corridor Study, Phase 1, that evaluated each of the Cities needs, the possible locations for future I-25 interchanges and recommended, among other things, an interchange at 144th Avenue; and

WHEREAS, the Cities are parties to that certain "Interstate 25 Corridor Growth Area Intergovernmental Agreement," dated _____, 2004, (the "Revenue Sharing JGA", which provides, among other things, for the sharing of sales tax revenues within the I-25 Corridor between 132nd Avenue to the south, 150th Avenue to the north, Huron Street to the west and Washington Street to the east; and

WHEREAS, Thornton has entered into an agreement with Washington Group International, Inc. successor in interest to MK Centennial to perform Feasibility Studies and Environmental Assessment for the 144th Interchange ("Planning Studies");

WHEREAS, Westminster, in furtherance of its North Huron Urban Renewal Plan, desires to lead the construction activities for the 144th Avenue Interchange to promote the development of this area;

WHEREAS, the Cities desire to enter into an agreement for the design, construction and financing of the 144th Avenue Interchange ("the Project") in accordance with the provisions contained herein.

NOW, THEREFORE, in consideration of the promises and conditions contained herein the Cities hereto agree as follows:

I. ADMINISTRATION

A. Preliminary Requirements

Within ten (10) days of the execution of this Agreement, Thornton shall submit the Planning Studies to CDOT for approval.

B. Design Engineer

Westminster has selected Felsburg, Holt & Ullevig ("FHU") to be the Design Engineer for the Project as more particularly described in Paragraph I(C). At the time that the Project design is complete and both Parties concur with the completed design, the Parties shall exchange letters with each other to that effect in accordance with the notice provisions provided in Section IV herein.

C. Project Design and Scope

1. The Project scope ("Scope") shall include the 144th Interchange at I-25 as well as street, stormwater drainage, landscaping and traffic signalization improvements to 144th Avenue west to Huron Street and east to Washington Street. The Scope shall be prepared in compliance with the City of Thornton Standards and Specifications for those improvements located in Thornton, and the City of Westminster Standards and Specifications for those improvements located in Westminster.

2. The Scope shall include legal descriptions of the right-of-way acquisition requirements for the Project consistent with the approved design.

3. Westminster shall administer the Design Contract awarded to FHU. The completed design shall be similar to and compatible with the design of the 136th Avenue bridge over I-25.

D. Right-of-Way

Westminster and Thornton shall cooperate in the acquisition of the necessary property interests as defined in the Project Design final approved right-of-way plans. Westminster shall be responsible for the initial costs associated therewith subject to repayment by Thornton as described in Paragraph 11. Thornton may, if necessary, assist Westminster in the acquisition of the right-of-way needed for the Project within Thornton. Any acquisition costs that exceed the fair market value of the right-of-way, as determined by Westminster's independent MAI appraisal, shall be borne exclusively by Westminster. Westminster shall dedicate any right-of-way acquired by Westminster within Thornton to Thornton at the time of substantial completion of the Project.

E. Permits and other Approvals

The Parties hereto shall cooperate with each other and with the selected construction contractor in connection with any necessary municipal, state, federal or other permitting associated with the Project. All permits and approvals as required by state and federal authorities such as but not limited to the 404 Permit, the FONSI and the NPDES shall be acquired as necessary in accordance with the Contract Documents.

F. Project Management-Construction Services

1. Westminster shall engage a project management firm ("PM") to assist with administering and overseeing the construction of the Project. The Parties shall jointly develop a scope of services and agreement for the PM and shall jointly select the PM and Westminster shall advertise for a PM through its normal request for proposal process. The Parties shall equally bear the costs associated with the PM, with Thornton's share to be repaid pursuant to Paragraph 11.

2. Thornton and Westminster shall each designate a City Representative who shall oversee the Project on behalf of each City. Each City Representative shall remain current on all events impacting the Project and shall respond to all issues such that the Project is not adversely impacted.

G. Construction

It is the intent of the parties to complete the construction of the Project following the completion of the final design for the Project and the attainment of all necessary CDOT and other governmental approvals.

1. Project Completion

Neither Party shall have the right to stop or significantly delay construction, or to take any action that would cause construction to be stopped or significantly delayed, without the written consent of the other Party.

2. Contract Documents

Upon completion of the design, Thornton and Westminster shall approve the contract bid documents for the construction portion of the Project. The plans and specifications in the contract bid documents for the portion of the Project located in the Colorado Department of Transportation right-of-way and improvements shall be prepared in compliance with Federal Highway Administration ("FHWA") requirements and to the extent required shall be prepared to comply with Colorado Department of Transportation ("CDOT") regulations. The Cities acknowledge that within the Project there are areas under the jurisdiction of each of the Cities. The Cities agree that the portion of the Project located outside of the CDOT right of way and located within its jurisdiction shall be designed and constructed in accordance with that City's standards and specifications. The contract documents will include a bid schedule for each of the three categories: work to be completed in Thornton; work to be completed in Westminster; and work to be completed in the CDOT right-of-way in order to enable the Parties to determine which entity is responsible for the costs associated with the contractor's pay requests. Upon finalization of the contract documents, Westminster shall advertise the Project for construction bids. Upon receipt of the bids, the Parties shall jointly select the construction contractor based on the lowest responsible bidder. Westminster shall award, execute and administer the contract for construction in cooperation with Thornton.

3. Invoices

The contract documents shall require the contractor to invoice Westminster for work completed in both jurisdictions

4. Change Orders

The City Representatives shall meet on a weekly basis to review all Project change orders. The Cities agree that each City has sole discretion to challenge or dispute any change order that solely affects work in that portion of the Project located inside of that Party's jurisdiction unless such dispute delays the Project work. In that case, the City Representatives shall use their best efforts to resolve the disputed change order. In the event the City Representatives are unable to resolve the disputed change order, the issue will be resolved in accordance with the dispute resolution provisions provided in Paragraph V herein.

II. PROJECT FUNDING

A. The Parties shall equally share all Project costs located within the CDOT right-of-way. Each Party shall be responsible for the costs associated with right-of-way acquisition and construction within its jurisdiction in connection with the Project except as specifically provided herein. Both Parties acknowledge that each Party has the sole discretion to expand the Project work and associated budget for work that is to be performed solely within that Party's jurisdiction except that Thornton may not increase the cost of their portion of the Project above \$15,000,000 unless they pay for such increases directly to the contractor.

B. Thornton shall be responsible to pay no more than the actual cost of the Project, plus an amount for normal and customary financing costs calculated by Thornton, the total amount of which is estimated in Exhibit A, attached hereto and incorporated herein by reference. Immediately following the completion of construction of the Project, Westminster shall provide Thornton an accounting of the actual construction costs, and the parties agree that the Finance Directors of the cities shall amend Exhibit A as necessary to calculate Thornton's actual payment amount which shall be based upon the actual construction costs, normal and customary financing costs (as determined by Thornton), and the actual net effective interest rate at which Westminster's debt was issued, which recalculated amount shall thereafter be deemed "Thornton's Total Project Cost," limited by the conditions in Paragraph II(C) below.

C. Actual construction costs referenced in Paragraph II (B) shall not include any bonus payment to the general contractor for early completion or payment of overtime costs for weekend, holiday, or night work that would result in an early completion of the Project. Such extra expense shall not be charged to Thornton or included in Thornton's Total Project Cost. Thornton shall not be obligated to meet any payment obligation under this Agreement other than from Thornton's 1/3 share of the sales tax revenue generated within Westminster's portion of the revenue-sharing corridor along I-25 as provided for in the Revenue Sharing IGA. Thornton shall pay an amount up to the amount stated in Exhibit A if Westminster has paid at least that amount to Thornton under the Revenue Sharing IGA. In the event there are insufficient sales tax revenues generated from Thornton's 1/3 share of the sales tax revenue as provided for in the Revenue Sharing IGA to pay Thornton's Annual Payment Amount pursuant to Exhibit A, Thornton shall have no obligation to provide funds to make up any difference. Additionally, Thornton shall have the ability to prepay the remaining principal amount of Thornton's Total Project Costs at any time from any source of funds. The pay-off amount would be equal to only the amount of unpaid principal at the time of prepayment as illustrated in Exhibit A. If prepayment is made by Thornton, no further interest payments shall be due and Thornton shall have no further payment obligations under Paragraph II.

D. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation with respect to either Party. All financial obligations of the Parties under this Agreement are subject to annual appropriation. Notwithstanding the foregoing, however, the Parties covenant and agree that they will use their utmost good faith and best efforts to annually appropriate the funds necessary to meet their financial obligations under this Agreement. In the event either Party fails to appropriate the funds necessary to meet its obligations under this Agreement, the Parties agree that they shall negotiate in good faith a supplemental agreement, the purpose of which shall be to make whole the unpaid Party as a result of such non-appropriation.

III. TERM

Paragraph I of this Agreement shall terminate upon the expiration of the warranties associated with the Contract Documents. The remainder of the Agreement shall terminate the earlier to occur of the following: a) full payment of Thornton's Total Project Cost or prepayment as stated in Paragraph II; or b) February 1, 2026.

IV. NOTICE

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party or Cities. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Thornton
City Manager
9500 Civic Center Drive
Thornton, CO 80229

City of Westminster
City Manager
4800 West 92nd Avenue
Westminster, CO 80031-6399

V. DISPUTE RESOLUTION

In the event of any disagreement associated with the Project and prior to the commencement of any formal proceedings, the Parties shall continue performance as set forth in this Agreement and the City Representatives in good faith shall attempt to resolve the dispute. In the event the City Representatives are unable to reach agreement and one of the City Representatives concludes that a good faith amicable resolution through continued negotiation of the matter at issue does not appear likely, such City Representative shall notify the other Party in writing.

In the event the Cities reach such an impasse relating to a decision or issue that threatens to significantly delay or stop construction of the Project, the Parties agree to retain, within five (5) business days following such notice, a mutually acceptable Independent Decision maker to make an interim decision and/or determination that will allow construction of the Project to proceed according to the Project's schedule. The Parties agree to share equally the fees of the Independent Decision maker.

While each City agrees to abide by said interim decision until the Project has been substantially completed, it shall do so under a complete reservation of its rights and without prejudice to any claims it may have against the other Party or others.

VI. LITIGATION

Each Party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

VII. INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the Cities and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Cities. This Agreement supersedes and replaces any prior agreement between the Parties concerning the design and construction of the 144th Avenue Interchange Project.

VII. TERMINATION OF AGREEMENT

This Agreement may be terminated by written agreement signed by both Cities, or by Westminster, in the event Westminster is unable to secure the COP financing necessary for this Project on or before September 1, 2006, or pursuant to Paragraph II (D).

IX. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

X. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

XI. WAIVER

A waiver by any Party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

XII. PARAGRAPH CAPTIONS

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

XIII. GOVERNMENTAL IMMUNITY

The Cities acknowledge that each Party, their officers and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Cities here have executed this Agreement to be effective as of the date first above written.

CITY OF THORNTON, COLORADO

Jack Ethredge, City Manager

ATTEST:

Nancy A. Vincent, City Clerk

APPROVED AS TO FORM:

Margaret Emerich, City Attorney

CITY OF WESTMINSTER, COLORADO

Nancy McNally, Mayor

ATTEST:

Linda Yeager, City Clerk

APPROVED AS TO FORM:

Martin McCullough, City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Quarterly Insurance Reports: 3rd & 4th Quarters, 2004

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action:

Accept the Quarterly Insurance Reports for 3rd and 4th Quarters, 2004.

Summary Statement:

- The attached report provides detailed information on each claim including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Management Officer acting as the City Manager's designee has the authority to settle claims of less than \$30,000. However, under our contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjuster and settlement of claims proceed with the concurrence of both CIRSA and the Risk Management Officer. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.
- Staff apologizes for the lateness of this report. Due to the problems with the current Access database, the data in this report had to be manually verified claim by claim. The Information Technology Department is currently working on converting the database to a more reliable program format that should make this process smoother in the future.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the second half of 2004 is provided on the attached spreadsheet.

For the second half of 2004, Staff has noted the following summary information:

- Only six of the 38 claims reported in the second half of 2004 remain open at this time.
- Total claims for each quarter and year-to-date breakdown by department as follows:

Department	3rd Qtr 2004			4th Qtr 2004			YTD
	Total Claims	Open	Closed	Total Claims	Open	Closed	Total
CAO	0	0	0	1	1	0	2
CD	1	0	1	0	0	0	2
Fire	0	0	0	0	0	0	3
Police	6	4	2	6	0	6	17
PR&L	5	0	5	0	0	0	8
PWU - Streets	6	0	6	1	0	1	11
PWU - Utilities	3	1	2	9	0	9	17
TOTAL	21	5	16	17	1	16	60

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Claim	Date	Dept	Claimant	Address	Description	Reserves	Payments	Status	Notes
2004-308	07-Jul-04	PWU	Tami McGaughey	9405 W 104th Ct, Westminster CO 80021	Claimant's sewer line was hit during repair of water main break causing sewage backup into claimant's basement	\$2,329.00	\$2,329.00	Closed	
2004-322	09-Jul-04	PD	Josiah Thomas & Family	2885 W 128th Ave Lot 1448, Broomfield CO 80234	Josiah Thomas, a juvenile, along with his mother and four siblings claim assault, battery, emotional distress, malicious prosecution, false arrest, and false imprisonment following Josiah's arrest at the Promenade for disorderly conduct, resisting arrest, and obstructing a police officer.	\$5,200.00	\$737.50	Open	CIRSA investigating. Money spent to date is for legal fees.
2004-428	09-Jul-04	PD	Ethan Abbott	6700 W. 44th Ave., Wheat ridge CO 80033	Claimant alleges he was unlawfully detained, subjected to harassment and suffered property damage due to the actions of Westminster police officers responding to suicidal party.	\$100.00	\$0.00	Open	CIRSA investigating
2004-583	13-Jul-04	PD	Ashton Valdez-Moore	Parent - Theresa Moore, 1540 E 98th Ave, Thornton CO 80229	Claimant alleges she suffered injuries and damages in an accident resulting from a police pursuit by a Westminster police officer	\$5,100.00	\$1,151.36	Open	CIRSA investigating. Money spent to date is for legal fees
2004-309	15-Jul-04	PRL	Paul Porter	13344 Umatilla St, Westminster CO 80234	Employee operating a weed eater scattered rocks and debris into traffic causing damage to claimant's vehicle	\$197.21	\$197.21	Closed	
2004-343	23-Jul-04	PWU	Bonnie Hames	2522 W 104th Circle, Westminster CO	Claimant alleges the City is responsible for flooding damage to her property after torrential rain storm of July 23, 2004	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-343	23-Jul-04	PWU	David Kunz	2520 W 104th Circle, Westminster CO	Claimant alleges the City is responsible for flooding damage to his property after torrential rain storm of July 23, 2004	\$1,092.80	\$1,092.80	Closed	Claim denied based on Colorado Governmental Immunity Act. Payment for professional appraiser to investigate damage to all three properties.
2004-343	23-Jul-04	PWU	Larisa & Jeff Zhectukhina	2552 West 104th Circle, Westminster CO 80234	Claimant alleges the City is responsible for flooding damage to their property after torrential rain storm of July 23, 2004	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
Claim	Date	Dept	Claimant	Address	Description	Reserves	Payments	Status	Notes

2004-346	23-Jul-04	PD	Kevin Krueger	6433 Utica Street, Arvada CO 80003	Claimant's vehicle was rear-ended by patrol car driven by Westminster officer	\$4,951.80	\$4,951.80	Closed	
2004-348	23-Jul-04	PRL	Maria Brownell	PO Box 351149 Westminster CO 80035	Claimant alleges the City is responsible for drainage problems allowing rain water and snow melt to flow down her yard and adjoining sidewalk causing damage to her rock beds.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-349	23-Jul-04	PWU	Terry & Inge Yochum	10386 Tennyson Court, Westminster CO 80031	Claimant alleges the City is responsible for flooding damage to their property after torrential rain storm of July 23, 2004	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-349	23-Jul-04	PWU	Jon & Sharon Brodhacker	10392 Tennyson Ct., Westminster CO 80031	Claimant alleges the City is responsible for flooding damage to their property after torrential rain storm of July 23, 2004	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-391	02-Aug-04	PRL	Danny Martinez	1061 E. 105th Place, Northglenn CO 80233	Claimant alleges that while changing lanes driving his vehicle, his vehicle was damaged by a fallen tree that was protruding into the street.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-410	11-Aug-04	PWU	Gerald Garcia	10464 Dale Circle, Westminster CO 80234	Sewer backed up into claimant's basement.	\$2,500.00	\$2,500.00	Closed	Claim denied based on Colorado Governmental Immunity Act. Claimant offered City's "good neighbor" policy of up to \$2500 for sewer backup damages
2004-409	16-Aug-04	PRL	Anthony Noce	1660 Clermont Street	Employee operating a weed eater shot a rock up that damaged another employee's personal vehicle while it was parked at work.	\$189.00	\$189.00	Closed	
2004-462	01-Sep-04	PD	Max Ford	7144 Depew Circle, Arvada CO 80003	Claimant alleges police officers damaged his cell phone while investigating a call of a man with a gun.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2005-006	02-Sep-04	PD	Syrita Segarra	c/o Tony Sherman, 9011 Judson St, Westminster CO 80031	Claimant alleges Westminster police officers used excessive force against her and her minor sister resulting in injuries and damages.	\$200.00	\$0.00	Open	CIRSA investigating
Claim	Date	Dept	Claimant	Address	Description	Reserves	Payments	Status	Notes

2004-429	06-Sep-04	PRL	Bob Woolsey	4565 Osage, Boulder CO 80303	Claimant alleges there is an undetectable "lip" on the edge of a bridge/bike path within the City that caused him to run into the bridge damaging his bike and injuring him.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-438	09-Sep-04	PWU	Shantell Montoya	4225 Hooker St, Denver CO 80211	Claimant is an employee at a Westminster pawn shop who claims, as she was cleaning the pawn shop parking lot, she fell into an uncovered meter pit. Claimant's employer's workers compensation carrier is subrogating against the City for damages.	\$3,500.00	\$0.00	Open	CIRSA investigating
2004-456	09-Sep-04	PWU	Debra Morack / Haley Rovak	1200 Apollo Drive, Lafayette CO 80026	Claimant alleges driving their vehicle over a pot hole caused serious damage to the tire and wheel.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-523	14-Sep-04	CD	Gisela Henderson	1201 W. Thornton Pkwy. Apt. 270, Thornton CO 80260	Claimant suffered injuries and damages when she was involved in an automobile accident that she alleges was caused by malfunctioning traffic control signal.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-510	06-Oct-04	PD	James Popa	11417 King Way, Westminster CO 80031	Claimant's vehicle was rear-ended by a patrol car driven by a Westminster officer	\$590.70	\$590.70	Closed	
2004-492	14-Oct-04	PWU	Patrick Gonzales	7690 Julian St, Westminster CO	Employee driving City truck backed into claimant's parked vehicle.	\$1,150.74	\$1,150.74	Closed	
2004-503	23-Oct-04	PD	George Donahue	6110 West 92nd Pl, Westminster CO 80031	Claimant ran into police car with emergency lights on, with his personal vehicle. The officer was attempting to move another accident out of traffic	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-515	02-Nov-04	PWU	Christina Maes-Vigil	7671 Julian St, Westminster CO 80031	During a water main break repair, a rock shot out of the hole and hit the rear window of the claimant's vehicle breaking it.	\$408.23	\$408.23	Closed	
2004-555	18-Nov-04	PD	Deborah Besser	9837 Jellison St., Westminster CO 80031	Claimant's vehicle was rear-ended by a patrol car driven by a Westminster officer	\$693.94	\$693.94	Closed	
Claim	Date	Dept	Claimant	Address	Description	Reserves	Payments	Status	Notes

2004-557	20-Nov-04	PWU	Richard Spencer	10140 W. 73rd Pl, Arvada CO 80005	Sewer backed up damaging four units in an apartment building owned by claimant	\$8,137.20	\$8,137.20	Closed	Claim denied based on Colorado Governmental Immunity Act. Claimant offered City's "good neighbor" policy of up to \$2500 (per unit X four units) for sewer backup damages
2004-557	20-Nov-04	PWU	Noemi Guerra-Granados	4160 W. 74th Ave #1, Westminster CO 80031	Sewer backed up damaging four units in an apartment building and personal property owned by claimant	\$858.40	\$858.40	Closed	Claim denied based on Colorado Governmental Immunity Act. Claimant offered City's "good neighbor" policy of up to \$2500 for sewer backup damages
2004-557	20-Nov-04	PWU	Corrine Vasquez	4160 W. 74th Ave. #2, Westminster CO 80031	Sewer backed up damaging four units in an apartment building and personal property owned by claimant	\$1,004.40	\$1,004.40	Closed	Claim denied based on Colorado Governmental Immunity Act. Claimant offered City's "good neighbor" policy of up to \$2500 for sewer backup damages
2004-580	03-Dec-04	PD	Craig Hamilton	6094 W. 41st Ave., Denver CO	Claimant's vehicle was rear-ended by a patrol car driven by a Westminster officer	\$756.69	\$756.69	Closed	
2004-575	06-Dec-04	PD	Dee & Jayne Baumgartner	5081 W. 98th Place Westminster CO 80031	Police officer deployed stop sticks in an attempt to stop another vehicle and inappropriately deployed them in front of the claimant's vehicle causing damage to three tires.	\$794.05	\$794.05	Closed	
2004-590	15-Dec-04	PWU	Brian Sanchez	5620 W 80th Pl #58, Arvada CO 80003	Claimant alleges a large clump of dirt came out of the back of a City dump truck while driving down the road and cracked the windshield of his vehicle.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-595	17-Dec-04	PD	Ben Colussy	7122 E. Hinsdale Pl., Centennial CO 80112	Police officer appropriately deployed stop sticks in an attempt to stop another vehicle and claimant drove his vehicle over the stop sticks damaging a tire	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
2004-608	28-Dec-04	PWU	Ed Manzanares	7620 Irving St, Westminster CO	Claimant's vehicle was illegally parked when it was damaged by an employee operating a backhoe at a Utility construction site.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act.
					TOTAL	\$39,754.16	\$27,543.02		

Claim	Date	Dept	Claimant	Address	Description	Reserves	Payments	Status	Notes
CLAIMS SUBMITTED IN 2nd HALF OF YEAR WITH OCCURRENCE DATES PRIOR TO SECOND HALF OF 2004									
2004-559	3/15/2004	CAO	Neva Kent	PO Box 350394, Westminster CO 80035	Claimant alleges that she incurred damages after purchasing a condominium at the Holly Park project -as a result of unpaid real estate taxes and title and construction defects.	\$100.00	\$0.00	Open	CIRSA investigating
2004-490	4/24/2004	PWU	Tony & Vicki Rouco	10232 King Court, Westminster CO	Claimant alleges on-going sewer back-ups are due to the fact their house was never hooked up to the main city sewer line.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and claimant referred to home builder
2004-605	6/4/2004	PWU	Softball Country / Larry Gentry / Marty Flaum	2101W. 64th Ave., Westminster CO	City contractor caused sewage backup into Little Dry Creek, which Softball Country irrigates their fields from. The back up caused the business to be shut down by the Colorado Health Department and Tri-County Health Dept.	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and claimant referred to contractor
2004-512	6/27/2004	PWU	Amanda Maddox	117 S. St. Louis Ave., Loveland CO 80537	Claimant hydroplaned and lost control of her vehicle while driving southbound on I-25 at approximately 120th. She alleges the accident was caused by standing water that has been an ongoing problem in this area and that the City had a responsibility to notify CDOT and harass them until they fixed the problem	\$0.00	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and claimant referred to CDOT
					SUBTOTAL	\$100.00	\$0.00		
					GRAND TOTAL	\$39,854.16	\$27,543.02		



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Median Rehabilitation Contract Award

Prepared By: Kathy Piper, Landscape Architect II

Recommended City Council Action

Authorize the City Manager to execute a contract with Arrow J Landscape and Design, Inc. in the amount of \$153,546 for median rehabilitation on Sheridan Boulevard, between 104th and 112th Avenues, and 104th Avenue, between Sheridan Boulevard east to Federal Boulevard, and authorize a \$15,400 contingency amount.

Summary Statement

- The Parks, Recreation and Libraries Department has identified several existing landscaped medians in the City that are in need of rehabilitation.
- All median landscape renovations will use drought-tolerant plant materials and irrigation technology that will utilize City water effectively and efficiently.
- Rehabilitation of these areas will require approximately 25,000 square feet of demolition, landscape, irrigation, and mulch work to be performed.
- Bids were solicited from three reputable landscape construction companies, with two companies providing bids. The low bid, based on cost per square foot, for this phase is Arrow J Landscape, Inc.
- Arrow J Landscape Inc. has successfully completed both new construction and rehabilitation landscape projects for the City in the past, most recently the Hidden Lake gateway sign and the median rehabilitation performed in 2003.
- A total of \$325,000 has been designated in the Community Enhancement Capital Improvement Project Fund for median rehabilitation in 2005.
- Construction will begin in the summer of 2005.

Expenditure Required: \$168,496

Source of Funds: General Capital Improvement Fund
Community Enhancement Project Account

Policy Issue

Should the City continue to pursue contracting out the median rehabilitation in areas of the City that have begun to show signs of decline?

Alternative

City Council could choose not to authorize the median rehabilitation bid and leave the medians in their current condition until a later date. Staff recommends pursuing renovation of the medians to help with ongoing irrigation and plant maintenance problems. Renovation will allow Staff to address outdated irrigation systems, drought needs, plant material and improve the overall image of medians.

Background Information

The City of Westminster’s landscaped median development has increased over the past ten years as various street beautification projects have been completed. The newest medians completed are at 104th Avenue, between Sheridan Boulevard and US 36, and a section of median on 120th Avenue adjacent to Bradburn Village. While new construction and street improvements have added medians in the City, the older medians (some date back to the early 1980s) have suffered from plant dieback, traffic accidents, accumulation of salts/sand, irrigation system failures, and three years of drought.

The rehabilitation program will take into consideration each median in the City based on past plant performance, drought tolerance and visibility in the City. Renovation will include new or renovated irrigation systems, plant materials, mulch and concrete repairs. Most trees within the medians will remain if they are in good health or will be replaced with another tree species. All shrub replacements will be low-growing junipers, ornamental shrubs and/or perennials. Over the years, Staff has documented the survivability of numerous plant materials (trees, shrubs, groundcovers, perennials) and these will be selected based on the hardiest species for each renovation area.

Currently, the Capital Improvement Program has \$325,000 dedicated for median rehabilitation. It is Staff’s intent to complete as many median rehabilitations as possible with the available funds. The last set of medians that were renovated included:

- Yates Street, 92nd Avenue to the RTD Park and Ride
- US 36 at the Sheridan Boulevard intersection
- 92nd Avenue medians in front of City Hall
- Sheridan Boulevard, from 92nd Avenue to 104th Avenue

This year’s priorities include:

- Sheridan Avenue, between 104th and 112th Avenues
- 104th Avenue, between Sheridan Boulevard and Federal Boulevard

A competitive bid was sent out to three landscape construction companies for median rehabilitation and bids were received as follows:

Arrow J Landscape Inc.	\$6.16 per square foot - 24,910 square feet
T2 Construction	Did not bid
TruGreen Landcare	\$6.36 per square foot - 22,850 square feet

Respectfully submitted,

J. Brent McFall, City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Foster Property Drainage Agreement

Prepared By: Becky Hogan, Economic Development Program Coordinator

Recommended City Council Action

- Authorize the City Manager to execute the Foster Drainage Agreement, in substantially the same form as the attached agreement, with Armstrong Westminster 136th LLC. (Armstrong), Cindy Elizabeth Wood, and E. Suzanne Mowery, the (Foster Family) personal representative of the Estate of Charles E. Foster and the City of Westminster.

Summary Statement

- The Foster Family property is located on the northeast corner of 136th Avenue and I-25 and is affected by storm water sheet flow flooding. The long term and complicated drainage issues could stymie future development of properties along the I-25 corridor if not resolved.
- The long term solution will involve intergovernmental cooperation between the Cities of Westminster and Thornton and could cost approximately \$8 to \$10 million to build a defined drainage channel between Huron Street and Big Dry Creek with underpasses at I-25 and Washington Street in Thornton.
- Westminster and Thornton have not reached agreement, at this time, on a long term solution to the drainage issues existing along the I-25 corridor.
- This Drainage Agreement outlines financial contributions from the Foster Family and Armstrong toward these future drainage improvements.
- Armstrong will pay to the City \$500,000 at the closing of the land sale, to be used for future drainage improvements and is not refundable.
- The Foster Family will pay to the City \$554,429 at closing of the land sale, to be used for drainage improvements.
- The Foster Family also agrees to convey land for a drainage area and drainage channel at no cost to the City.
- The City agrees to own and maintain these drainage facilities if the property owners approve the creation of a general improvement district in November 2005 along with a mill levy sufficient to pay the cost to maintain the facilities.
- If the drainage improvements are not constructed prior to May 26, 2015, the City must repay the \$554,429 to the Foster Family plus compounded interest of 6% per annum. The Armstrong payment is not refundable.
- Armstrong and the Foster Family are set to close on the sale of the land no later than May 26, 2005.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City enter into a drainage agreement with the Foster Family and Armstrong that provides funding for a long term drainage solution for the north I-25 area? Is the City willing to commit to repayment of approximately \$554,429 at an interest rate of 6% per annum, if the drainage improvements are not completed by May 26, 2015?

Alternative

Do not enter into the drainage agreement with the Foster Family and Armstrong. However, failure to execute this agreement will result in the lack of funding for future drainage improvements along the I-25 corridor and will hinder development along the I-25 corridor, or commit the City to cover a larger portion of the costs.

Background Information

Flood plain mitigation and other drainage issues are significant along the I-25 corridor. Because of the way I-25 was constructed, sheet flow flooding occurs in this area. However there is no defined channel or culvert under I-25 to convey the water to Big Dry Creek. As a result, I-25 acts as a damn to flood upstream properties. The long-term drainage improvements will involve cooperation between the cities of Westminster and Thornton and could cost from \$8 to \$10 million to complete. In an effort to receive funding for future drainage improvements, staff worked with the Foster Family and Armstrong to have them contribute toward the long-term drainage improvements as it relates to the development of the Foster property.

This agreement outlines the Foster Family contribution, as well as Armstrong's contribution, toward this drainage solution. The agreement contains the following:

- The Foster Family releases any claim to additional compensation for right-of-way along Huron Street associated with the Phase I Huron Street improvement project.
- The Foster Family agrees to convey land for drainage areas, at no cost to the City.
- The Foster Family agrees to contribute approximately \$554,429, at closing to the City. However, in the event that the drainage improvements are not constructed prior to May 26, 2015, the City shall repay the Foster Family \$554,429 plus interest at a rate of 6% per annum compounded from May 26, 2005.
- Armstrong agrees to commit \$500,000 at the closing of the land to the City, for the future drainage improvements. This amount is not refundable.
- If the property owners approve the creation of a General Improvement District at the election in November with a sufficient mill levy, the City agrees to accept ownership and maintain the drainage facilities and storm water retention pond being built by Armstrong to accommodate the Lowe's project and other future development on the Foster property.

These funds are necessary for drainage improvements along the I-25 corridor. The most reasonable time to receive funds from the property owners is at the time of land sale. This agreement authorizes the City Manager to begin collecting funds from Armstrong and the Foster Family for future drainage improvements.

Respectfully submitted,

J. Brent McFall
City Manager

FOSTER PROPERTY DRAINAGE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2005, by and between the CITY OF WESTMINSTER, COLORADO, a municipal corporation, the address of which is 4800 West 92nd Avenue, Westminster, CO 80031 (“the City”); ARMSTRONG WESTMINSTER 136TH LLC, a Colorado limited liability company, the address of which is 2100 Wharton Street, #700, Pittsburgh, PA 15203 (“Armstrong”), CINDEE ELIZABETH WOOD, whose address is 1890 Llano Circle, Colorado Springs, CO 80926 (“Wood”), and E. SUZANNE MOWERY, individually and as Personal Representative of the Estate of Charles E. Foster, Deceased, whose address is 30611 County Road 89, Crook, CO 80726 (“Mowery”). Mowery and Wood are hereinafter referred to collectively as “the Fosters.”

DEFINITIONS

When used in this Agreement and capitalized, the following terms shall have the meanings set forth below:

A. “Detention/Retention Pond” shall mean a storm water drainage detention/retention pond to be constructed on the easterly most 200 feet of the Remaining Property as shown in its currently anticipated location and general configuration on Exhibit A attached hereto and incorporated herein by reference, with the precise location, design, and other specifications for the Pond to be as set forth in the ODP and drainage studies prepared attendant to approval of the ODP and plat.

B. “Drainage Area” shall mean the easterly most 200 feet of the Remaining Property, together with that portion of the Remaining Property necessary or required for the Drainage Channel as shown on Exhibit A attached hereto and incorporated herein by reference, with the precise location of this Area to be as set forth in the ODP.

C. “Drainage Channel” shall mean a channel to be constructed from east to west across the Remaining Property from the east side of Orchard Parkway west to I-25 and north to the north boundary of the Foster Property as shown on Exhibit A attached hereto and incorporated herein by reference, with the precise location of this Channel to be as set forth in the ODP.

D. “Drainage Improvements” shall mean the Detention/Retention Pond and the Drainage Channel.

E. “Drainageway Payment” shall mean a payment to be made to the City by Fosters at the time of the closing of the sale of the Southeast Corner in an amount equal to \$554,429 (\$27,611, multiplied by 20.08 acres included within the Southeast Corner).

F. “Final Plans” shall mean final engineering drawings, plans and specifications approved by the City and the City of Thornton for the construction and installation of the McKay Lake Drainage way.

G. “Foster Property” shall mean all of the real property owned by Charles E. Foster at the time of his death located north of 136th Avenue between Huron Street and I-25 consisting of approximately 131 acres.

H. “Future Drainage Channel Extension” means the potential future extension of the Drainage Channel between Huron Street and Orchard Drive as shown on Exhibit A.

I. “GID” shall mean a general improvement district to be formed by the City that shall include all of the Foster Property. The purpose of the GID shall be to maintain, repair and, if necessary improve the Drainage Area, as well as any additions to the Drainage Area, including but not limited to the Future Drainage Channel Extension.

J. “Huron Street Assessment” shall mean any and all assessments which could be made by the City against the Foster Property for the widening and improvement of Huron Street including, but not limited to, the assessments referred to in paragraph 4 of the Memorandum.

K. “McKay Lake Drainageway” shall mean the Outfall System Master Plan Improvements proposed to be constructed by the City from Huron Street across property owned by 144 Interstate Partners, LLC and the Fonay Family Limited Partnership, Ltd. to a point on the west side of I-25 north of the northeast corner of the Foster Property, under I-25 through Thornton, under Washington Street, to the Big Dry Creek as shown on Exhibit A attached hereto and incorporated herein by reference.

L. “McKay Lake Assessments” shall mean any and all assessments which could be made by the City against the Foster Property for construction of the McKay Lake Dam Improvements and/or the McKay Lake Drainageway including, but not limited to, the assessments referred to in paragraphs 1 and 5 of the Memorandum.

M. “Memorandum” shall mean the Memorandum dated January 18, 2005, from Melanie Walter to Dave Downing, a copy of which is attached hereto as Exhibit B.

N. “ODP” means the “Foster Property Official Development Plan – Lowe’s as approved by the City on May 10, 2005.

O. “Remaining Property” shall mean all of the Foster Property north of the future Foster Avenue and north of Lots 1, 2, 3, and 4 as shown on the Foster Property First Amended PDP.

P. “South Parcel” shall mean and refer to all of the real property titled in the names of Wood and/or Mowery located south of 136th Avenue between Huron Street and I-25 as described on the First Amended Interchange Business Center Preliminary Development Plan.

Q. “Southeast Corner” shall mean approximately 20.08 acres of the Foster Property shown as Lots 1, 2, 3, and 4 on the Foster Property Official Development Plan.

R. “Southwest Corner” shall mean approximately 20.4 acres of the Foster Property bounded on the north by the future Foster Avenue, on the south by 136th Avenue, on the east by the proposed Orchard Parkway, and on the west by Huron Street, all as shown on the Foster Property First Amended PDP.

S. “Water and Sewer Assessments” shall mean the assessments for the North Huron Utilities Water Main (City Project W87-1) and Sanitary Sewer Outfall (City Project WW87-1) referred to in paragraphs 2 and 3 of the Memorandum.

AGREEMENT

The Parties agree as follows:

1. Right-of-Way Compensation. Fosters hereby release any claim that they may have to additional compensation for that portion of the Foster Property and South Parcel acquired by the City for the widening of Huron Street, both north and south of 136th Avenue.

2. Conveyance of Drainage Area. Following the formation of the GID, and upon completion of the construction of the Drainage Improvements and acceptance of the Drainage Improvements by the City, Fosters shall convey the Drainage Area to the GID free and clear of monetary liens and encumbrances that interfere its the intended use.

3. GID. The City shall act expeditiously in considering a petition for the creation of a GID to fund the operation, maintenance, and capital repair and replacement of the Drainage Improvements, the Drainage Area and, if constructed, the Future Drainage Channel Extension. To the extent any of the Parties to this Agreement have the right to vote in an election to authorize the imposition of a tax by the GID at a rate sufficient to generate the income reasonably estimated to be necessary to pay the cost of maintaining, repairing and, if necessary, improving the Drainage Area, they shall vote in favor of such tax. The petitioners shall demonstrate the financial feasibility of the proposed GID to the reasonable satisfaction of the City based on the scope of the GID's proposed maintenance responsibilities.

4. Construction Easement. Fosters shall grant to Armstrong a temporary construction easement over, across and upon that portion of the Remaining Property reasonably necessary for construction of the Drainage Improvements.

5. Removal of Dirt. Subject to the City's approval of grading plans for the Remaining Property, and Federal Emergency Management Agency (FEMA) approval of a Conditional Letter of Map Revision, Armstrong shall be entitled to remove as much dirt from the Drainage Area as is not required for the construction of the Drainage Channel and/or the Detention/Retention Pond, and as may be necessary to raise the Southeast Corner out of the flood plain. To the extent Armstrong is not able to obtain sufficient dirt from the Drainage Area to raise all of the Southeast Corner out of the flood plain, Armstrong shall obtain such dirt from other sources. To the extent dirt removed from the Drainage Area is not required to raise the Southeast Corner out of the flood plain, such dirt shall be used to raise the Remaining Property out of the flood plain.

6. Drainage Improvements. The Drainage Improvements shall be designed and certified by a professional engineer licensed by the State of Colorado for the benefit of the Foster Property in conformance with the City's drainage design criteria, including incorporation of best management practices for water quality. The facilities shall have sufficient capacity to both (1) retain all storm water from the Southeast Corner and Southwest Corner as well as the storm water that may flow into and over the Foster Property from the north and west as determined by the City for the 100-year storm event; (2) detain all storm water from the Southeast Corner, the Southwest Corner, the Remaining Property as well as storm water that may flow into and over the Foster Property from the north and west as determined by the City for the 100-year storm event. Modifications necessary to convert the pond from a retention to a detention facility shall be at the cost of the owner of the Remaining Property. The Drainage Channel and Detention/Retention pond shall be designed with sufficient capacity such that no developer of any portion of the Foster Property shall be required to detain storm water reasonably anticipated to result from the development of such property "onsite," once the McKay Lake outfall improvements, including a culvert under I-25, are built. Until the McKay Lake outfall improvements are built, no development can occur on the Remaining Property unless a new or expanded pond is created to retain the 100-year storm event for the land proposed for development for the Remaining Property. Armstrong shall construct and install the drainage improvements including, but not limited to, applying dirt from the drainage area first to the southeast corner and then to the remaining property to remove such properties from the flood plain.

7. Armstrong Payment. At the time of the closing of the sale of the Southeast Corner, Armstrong shall pay to the City \$500,000.

8. Drainageway Payment. At the time of the closing of the sale of the Southeast Corner, Fosters shall pay to the City an amount equal to the Drainageway Payment. If construction of the McKay Lake Drainageway is not commenced by the City on or before May 26, 2015, then on May 27, 2015, the City shall pay to Fosters an amount equal to the Drainageway Payment plus interest on the Drainageway Payment at the rate of 6% per annum compounded annually from May 26, 2005 until such amount is repaid by the City to Fosters. The Drainageway Payment shall be held by the City in a separate interest bearing account until May 26, 2015 to be specifically designated for the sole purposes of using it for the McKay Lake Drainage construction or returning it plus interest to Fosters in the event the City fails to commence construction of the McKay Lake Drainageway prior to May 26, 2015. Construction of the McKay Lake Drainageway shall be deemed to have been “commenced” only if the City and/or its contractors have completed and approved the Final Plans and have made actual, physical changes to the surface of the property upon which the McKay Lake Drainageway is to be constructed east of Huron Street consistent with and pursuant to the Final Plans. “Commencement of construction” shall not include planning, design, preparation of the Final Plans, approval processing, right-of-way acquisition, surveying or staking.

9. Huron Street Assessment. The Huron Street Assessment shall be made against the Foster Property and the South Parcel on a lineal frontage foot basis and not a per acre basis and paid pursuant to applicable City regulations. No portion of the Huron Street Assessment shall be made against the Southeast Corner.

10. Water and Sewer Assessment. The Water and Sewer Assessments shall be made against the Foster Property and the South Parcel on a per acre basis and paid pursuant to applicable City regulations.

11. McKay Lake Assessment. No McKay Lake Assessment shall be made against any of the Foster Property or the South Parcel now or at any time in the future, except as expressly provided in this Agreement.

12. Amendment. This Agreement may be amended only by an instrument signed by all of the Parties. It may not be amended or modified by course of conduct or by an oral understanding or agreement among any of the Parties.

13. Applicable Law. This Agreement shall be governed by, and its terms construed in accordance with, the laws of the state of Colorado.

14. Assignment. Armstrong shall have the right to assign or transfer all or any of its interests, rights or obligations under this Agreement to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity with the prior written consent of the City and Fosters. Fosters and the City hereby consent and agree to assignment of its rights and obligations under this Agreement by Armstrong to Lowe’s HIW Inc. Upon written assumption of Armstrong’s obligations under this Agreement by an assignee, Armstrong shall be relieved of any further obligation or liability with respect to the performance of any of the duties or obligations of Armstrong arising after the date such duties and obligations are assumed by the assignee.

15. Execution and Counterparts. This Agreement may be executed in any number of counterpart copies. Facsimile signatures shall be accepted the same as originals.

16. Notice. Any notice required or desired to be given by one or more of the Parties to any other Party or Parties shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed given when personally delivered; if mailed, three (3) delivery days after deposit in the United States mail, postage prepaid; if sent by telephone facsimile, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; or if sent by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses and facsimile numbers for the mailing, transmitting, or delivering of notices shall be as follows:

If to City:	City of Westminster Attn: City Manager 4800 West 92 nd Avenue Westminster, CO 80031 Fax: (303) 430-1809
With a copy to:	City of Westminster ATTN: City Attorney 4800 West 92 nd Avenue Westminster, CO 80031 Fax: _____
If to Armstrong:	Armstrong Westminster 136 th LLC Attn: Gregg Baldwin, Robert Gustine, & Robert Frisch 2100 Wharton Street, #700 Pittsburgh, PA 15203 Fax: (412) 381-1123
With a copy to:	Thomas J. Ragonetti Otten, Johnson, Robinson, Neff & Ragonetti, P.C. 950 17 th Street, 16 th Floor Denver, CO 80202 Fax: (303) 825-6525
If to Fosters:	E. Suzanne Mowery 30611 County Road 89 Crook, CO 80726 Cindee Elizabeth Wood 1890 Llano Circle Colorado Springs, CO 80926
With a copy to:	James A. Martell Liley, Rogers & Martell, LLC 300 S. Howes Street Fort Collins, CO 80521 Fax: (970) 221-4242

Notice of a change of address or facsimile number of a Party shall be given in the same manner as all other notices as hereinabove provided.

17. Contracting by Electronic Means. The Parties do not agree to contract by electronic means except for facsimile signatures on this Agreement and notices given by facsimile transmission.

18. Further Assurances. The Parties shall execute such documents or instruments and take such action as may be necessary or reasonably required to carry out the terms and provisions of this Agreement.
19. Good Faith. The Parties shall act reasonably and in good faith and shall not act arbitrarily or capriciously in the performance of their obligations under this Agreement. Any consent or approval required to be given pursuant to the terms of this Agreement shall not be unreasonably withheld, conditioned, delayed, or denied.
20. Incorporation of Exhibits. All exhibits referred to in this Agreement are incorporated into and made a part of this Agreement as if fully set forth herein.
21. Multi-fiscal Year Obligations. The City shall have no financial obligations under this Agreement except for return of the Drainageway Payment, with interest, from the separate account specifically established to hold the Drainageway Payment as provided in Section 8 of this Agreement. Any obligations of the City under this Agreement shall not constitute the creation of an indebtedness or authorize borrowing of money by the City within the meaning of any constitutional or statutory limitation or provision. Any obligations of the City to make payments, if any, under this Agreement shall be from year to year only and shall not constitute a mandatory payment obligation of the City in any fiscal year beyond the present fiscal year. This Agreement shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year in which this Agreement shall be in effect. The City Manager (or any other officer or employee of the City at the time charged with the responsibility of formulating budget proposals) is hereby directed to include in the budget proposals submitted to the City Council, in each year during the term of this Agreement, amounts sufficient to meet any and all financial obligations of the City under this Agreement; it being the intent and agreement of the Parties, however, that the decision as to whether to appropriate such amounts shall be in the sole discretion of the City Council.
22. Third Party Beneficiaries. No rights created in favor of any Party shall be construed as benefiting any person or entity that is not a party to this Agreement.
23. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision shall be fully severable and this Agreement shall be construed and enforced, and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Agreement.
24. Titles of and References to Sections. The titles of sections of this Agreement are inserted for convenience of reference only and shall not be considered in construing or interpreting any section of this Agreement.
25. Public Purpose. The City finds and determines that the execution of this Agreement is in the best interest of the public health, safety and general welfare of the City and that it will serve the public purpose of providing significant economic benefit to the City.
26. No Partnership. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other joint enterprise between or among any of the Parties.
27. Waiver of Breach. No waiver of any one or more of the terms of this Agreement shall constitute a waiver of any other term and no failure to enforce any of the terms or provisions of this Agreement shall be construed as a waiver of such terms or provisions.
28. Interpretation. The terms and provisions of this Agreement have been negotiated among the Parties and shall not be construed in favor of or against the Party primarily responsible for the drafting of this Agreement.
29. Delegation of Authority. Nothing contained in this Agreement is intended to, or shall be construed to, constitute or require an unlawful delegation of authority by the City, or an unlawful restraint on the legislative discretion of future City Councils.

30. Nonliability of Officials and Employees. No member of the City Council, or any official, employee, agent or consultant of the City shall be personally liable for the performance of any of the terms or provisions of this Agreement, nor shall any such person be liable in the event of a breach or default by the City.

31. Conflict of Interest. No Party shall allow or knowingly permit any of the following persons to have any interest, direct or indirect, in this Agreement:

- (a) A member of the City Council;
- (b) An employee of the City; or
- (c) An individual or firm retained by the City that has performed consulting or other professional services for the City.

No Party shall willingly permit any of the above-described persons to participate in any decision relating to this Agreement that affects his, her or its financial interest or the financial interest of any person with whom or in which he, she, or it is directly or indirectly interested.

32. Indemnification. Armstrong shall defend, indemnify, assume all responsibility for, and hold harmless all Parties, members of the City Council, employees and agents of the Parties from all claims or suits for any damages to property or injury to persons, including accidental death, and for the costs of litigation and reasonable attorney's fees of all such Parties and persons that may be caused by any of Armstrong's construction activities, whether such activities are undertaken by Armstrong and/or any of its affiliates, or any person or entity directly or indirectly employed by, or under contract with Armstrong, provided however, that the provisions of this section shall not apply to loss, damage or claims attributable solely to the negligent or intentional acts or omissions of the Party or person to be indemnified.

33. Time is of the Essence. Time is of the essence of each and every term, covenant, condition and provision of this Agreement.

34. Time Period. In the event any time period expires on a Saturday, Sunday or legal holiday of the State of Colorado, the date of performance shall be the next day that is not a Saturday, Sunday or legal holiday of the State of Colorado.

35. Jurisdiction and Venue. The Parties stipulate and agree that in the event of any dispute arising out of this Agreement, the Colorado state courts shall have exclusive jurisdiction over such dispute and venue shall be proper in Adams County. All Parties hereby submit themselves to jurisdiction of the State District Court, County of Adams, State of Colorado.

36. Attorneys' Fees. In any proceeding brought to construe, interpret or enforce any of the terms or provisions of this Agreement, the Court shall award to the Party that substantially prevails in such litigation reasonable attorney's fees, actual court costs and other expenses incurred in such litigation.

37. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, personal representatives, successors and assigns.

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

ATTEST:

CITY OF WESTMINSTER,
a municipal corporation

By: _____
City Clerk

By: _____
_____, City Manager

ARMSTRONG DEVELOPMENT-OHIO, INC.

By: _____
Name: _____
Title: _____

CINDEE ELIZABETH WOOD

E. SUZANNE MOWERY, Individually

E. SUZANNE MOWERY
Personal Representative of the Estate of
Charles E. Foster, Deceased

EXHIBIT A

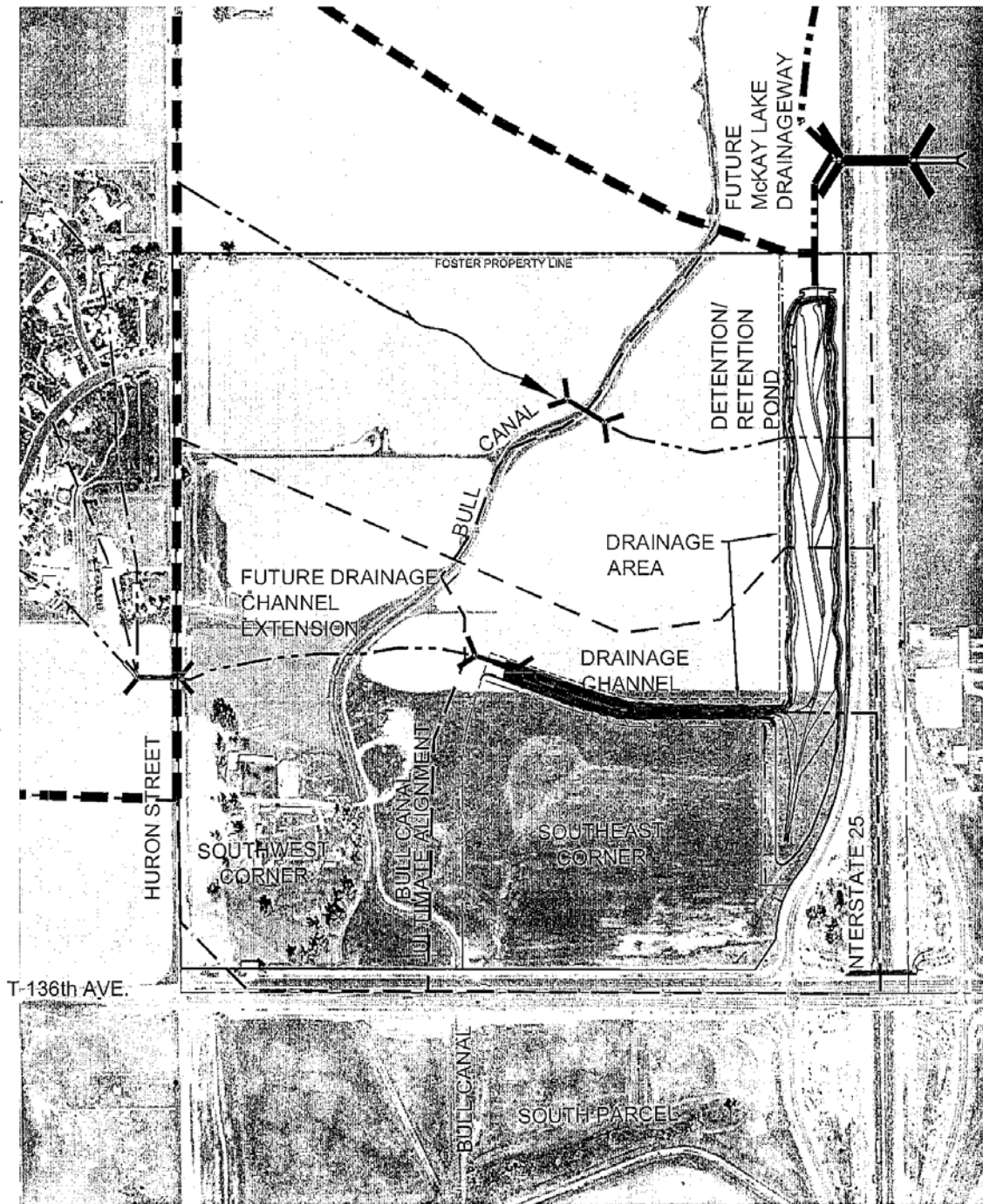




EXHIBIT B

MEMORANDUM

TO: Dave Downing, City Engineer
FROM: Melanie Walter, Senior Civil Engineer
DATE: January 18, 2005
RE: City of Westminster Recoveries/Cash-in-Lieu Affecting Foster Property

Area 1: Alberta property (73 acres)

Area 2: Fonay property (73 acres)

Area 3: Foster property (131 acres)

1. McKay Lake dam improvements: (assessed to areas 1, 2, and 3)

- Total recoverable cost due back to the City of Westminster = \$461,000
- Total due back to private developer of Huntington Trails = \$491,000
- Total to be recovered = \$952,000
- Downstream property affected by improvements = 277 acres
- Cost recovery per acre for City portion = $\$952,000/277 = \$3,437/acre$

2. Sanitary Sewer Outfall – City Project WW87-1: (assessed to areas 1, 2, and 3)

- $\$261.90/acre + \$130.95/acre \text{ interest} = \$392.85/acre$

3. North Huron Utilities Water Main – City Project W87-1: (assessed to areas 1, 2, and 3)

- $\$19.82/LF + \$9.91/LF \text{ interest} = \$29.73/LF \text{ frontage along Huron}$
- Length of Foster/Fonay/Alberta along Huron = 5,260 LF along Huron
- Total assessment = $\$29.73/LF \times 5,260 \text{ LF} = \$156,380$
- Assessment per acre = $\$156,380/277 = \$565/acre$

4. Huron Street Improvements from 128th to 140th: (assessed area 3)

- Cost per lineal foot (full width) = \$1,488 → 1/3 cost assessed to east side = \$496/LF along Huron
- Area 3 lineal foot of frontage along Huron (based on PDP) = 2614.79 LF
- Total assessment = $2614.79 \times \$496 = \$1,296,936$
- Assessment per acre = $\$1,296,936/131 = \$9,900/acre$

5. McKay Lake Drainageway (Outfall Systems Master Plan Improvements from Huron to Big Dry Creek):

- $\$27,611/acre$ (based on previous estimates supplied to developer)



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



Subject: Resolution No. 20 re Appointments to Boards and Commissions

Prepared by: Linda Yeager, City Clerk

Recommended City Council Action:

Adopt Resolution No. 20 making appointments to the Parks and Recreation Advisory Board and Transportation Commission.

Summary Statement:

- City Council action is requested to appoint the current alternate members on the Parks and Recreation Advisory Board and the Transportation Commission to fill the unexpired terms of regular members who resigned recently.
- In addition, the appointment of new alternate members to the referenced Boards is requested.
- The terms of these specific appointments will expire on December 31, 2005.
- If Council approves the recommended appointments, the Boards and Commissions pool of eligible applicants will be reduced to 11 individuals.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council want to fill vacancies on the Boards and Commissions at this time?

Alternative

None identified

Background Information

The resignations of Alberto Garcia and Ron Mayoral from the Parks and Recreation Advisory Board and of Glenda Salter from the Transportation Commission were received recently by staff liaisons to each Board. Mr. Garcia advised that his circumstances had changed since his appointment, Mr. Mayoral moved from Westminster, and scheduling conflicts prevented Ms. Salter from continued participation.

In accordance with established procedure, if the attached resolution is adopted, those individuals currently serving as alternate members on both of these Boards will be appointed as regular members and other eligible residents will be appointed to the alternate positions they had filled.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **20**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

CITY OF WESTMINSTER BOARD AND COMMISSION NEW APPOINTMENTS

WHEREAS, It is important to have each City Board or Commission working with its full complement of authorized appointees to carry out the business of the City of Westminster.

WHEREAS, The City Council has received the resignations of Alberto Garcia and Ronald Mayoral from the Parks and Recreation Advisory Board and of Glenda Salter from the Transportation Commission and does hereby accept all resignations; and

WHEREAS, Eligible citizens of Westminster who previously expressed interest in serving on one or more of the City's Boards and Commissions have been contacted and have voiced specific interest in being appointed to alternate positions on the aforementioned Board or Commission to fill the unexpired terms of alternates to be named to regular membership.

NOW THEREFORE, be it resolved that the City Council of the City of Westminster does hereby make the following appointments.

Section 1. The appointment of current alternate members identified below to regular membership on the specified Board or Commission with terms of office to expire December 31, 2005.

BOARD/COMMISSION	NAMES
Parks & Recreation Advisory Board	W. J. Peniston
Transportation Commission	Luke Ricards

Section 2. The appointment of eligible citizens to fill current vacancies of alternate members on the Board or Commission listed below, terms of office to expire December 31, 2005

BOARD/COMMISSION	NAMES
Parks and Recreation Advisory Board	Jill Manaly
Parks and Recreation Advisory Board	Ted Mische
Transportation Commission	Terrance Ramierz

Passed and adopted this 23rd day of May, 2005.

Mayor

ATTEST:

City Clerk



Agenda Item 10 B&C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Public Hearing and Action on the Foster Property Preliminary Development Plan
First Amendment – Lowe's

Prepared By: Patrick Caldwell, Planner II

Recommended City Council Action:

1. Hold a public hearing.
2. Approve the Foster Property Preliminary Development Plan (PDP) First Amendment within the Foster Planned Unit Development. This recommendation is based on the findings set forth in Section 11-5-14 of the Westminster Municipal Code.

Summary Statement:

- This project is in the North I-25 Corridor. One of the top priorities of the 2005 City Council Strategic Plan is to encourage economic development in the vicinity of the 136th Avenue Interchange.
- The proposed amendment to the Foster Property PDP shows the land use in more detail. The access locations, general lot sizes, street locations and widths, drainage ways and retention/detention areas are designated for the southeast part of the PDP. The remainder of the PDP may be amended at a future date when specific development is proposed there.
- The Lowe's home improvement store is proposed on a 14+ acre parcel in the eastern half of the site. The 138,134 square foot Lowe's proposal complies with the City's design and code requirements with one exception. Based on a study of parking demand at other Lowe's stores, Staff has agreed that the parking requirements for the Lowe's store may be reduced from the required 691 parking spaces to 578 parking spaces.
- Three pad sites are proposed at the western part of the site with frontage on Orchard Parkway. The pads total approximately 6 acres. Future ODP's will be reviewed and approved prior to any development proposed on the pads. The architectural style of the buildings and the landscape theme will be consistent with the quality and style of the Lowe's proposal.
- A 15+ acre parcel has been designated for drainage and for a retention/detention pond. This parcel is at the north and east side of the ODP. The landscaping of this pond will be reviewed on a future ODP amendment.
- The ODP was approved by the Planning Commission on May 10, 2005 subject to approval of the PDP by the City Council. ODP information has been included in this Agenda Memorandum for information only.

Expenditure Required: \$ 0

Source of Funds: N/A

Planning Commission Recommendation

The Planning Commission reviewed the proposals on May 10, 2005, and voted (7-0) to recommend the City Council approve an amendment to the Foster Property PDP. The Commission voted (6-1) to approve an Official Development Plan (ODP) on the Foster Property conditional upon City Council’s review of the PDP and contingent upon City staff’s review and approval of the drainage report for the offsite retention pond, including staff approval of the surface area and volume needed for the pond. Commissioner McConnell voted against the ODP because he thought there were too many unanswered questions. Two people asked questions and voiced concerns with the development. All questions were answered at the meeting.

Policy Issue

1. Should the City Council approve the Foster Property PDP First Amendment within the Foster Property Planned Unit Development?

Alternative

1. Deny the Foster Property PDP First Amendment within the Foster Property Planned Unit Development.

Background Information

The PDP covers a 135+ acre parcel bounded by Huron Street at the west, I-25 at the east, 136th Avenue at the south and a vacant agricultural parcel in unincorporated Adams County at the north. The PDP amendment shows right-of-way locations, access locations, lot layout and drainage areas on a portion of the PDP.

The ODP covers a 37+ acre parcel with a Lowe’s home improvement store as the major tenant on 14+ acres. Right-of-way for the proposed new north to south collector street known as Orchard Parkway is being dedicated at the western side of the ODP. Orchard Parkway will provide the main access to the Lowe’s site. Three pad sites are proposed on the western area of the site. A 15+ acre retention/detention pond is proposed along the north and east area of the site. This pond may also retain runoff from the vacant parcel at the southwest corner of the Foster Property PDP and eventually serve as a detention pond for the entire Foster parcel once the McKay Lake outfall project under I-25 is completed.

Applicant/Property Owner

Applicant:
Lowe’s HIW, Inc.
1530 Faraday Avenue
Carlsbad, California 92008

Property Owner:
E. Suzanne Mawery
30611 County Road
Crook, Colorado 80726

Surrounding Land Use and Comprehensive Land Use Plan Designations

Development name	Zoning	CLUP designation	Current Use
North and west of the ODP (Not subdivided; remainder Foster Property PDP)	PUD	District Center	Agricultural
North of the Foster Property PDP and Tract B in the ODP (unincorporated Adams County; known as the Fonay parcel)	NA	NA	Agricultural
West of the Foster Property PDP across Huron Street (City of Broomfield)	NA	NA	Agricultural
South of 136 th Avenue (Not subdivided; Interchange Business Park PDP)	PUD	District Center	Agricultural
East of I-25 (City of Thornton)	NA	NA	I-25 right of way

Site Plan Information

- Access and Circulation (for vehicles and pedestrians): The primary vehicular access to the site is from Orchard Parkway at the midway intersection location on Orchard Parkway. The northerly access is designed as a secondary access to the site. Internal vehicular circulation is clear with the direct east to west and north to south drive lanes defined by landscaped islands to separate them from the parking fields. Internal pedestrian circulation is good with sidewalks on the perimeter streets that connect to the two larger east to west landscaped sidewalks.
- Site Design: The three pad sites are at the west side of the ODP adjacent to Orchard Parkway. The Lowe’s site is at the east side of the ODP with the back of the proposed building facing I-25. Landscaping and screen walls will buffer the view of the loading and truck activity at the rear of the building. A large retention/detention pond provides additional separation at the east side from I-25. A 100 ft. wide drainage way defines the north edge of the ODP. At the southwest corner of the site at the intersection of 136th Avenue and Orchard Parkway there is a small tract, labeled as Tract A, that is designated as the location for public art. The landscaping and art choice will be shown on a future ODP amendment. The tract and associated landscaping and art are intended to be similar to the other corners at this intersection.
- Landscaping Design: The landscaping proposed for the ODP meets the City’s Landscape Design Guidelines. Plants with low water demand have been specified for some areas of the site. The irrigation system has been designed for the planting scheme. Along 136th Avenue the trees have been shown as offset and the species have low water needs and are hardy for the harsh conditions adjacent to the arterial street. The offset design is consistent with a scheme shown in the I-25 Corridor Study and will be matched along the remainder of 136th Avenue between Huron Street and I-25 for future development.
- Public Land Dedication/School Land Dedication: Public land dedication and school land dedications are not required for non-residential development.
- Parks/Trails: Parks are not proposed for this ODP. A trail at the east side of the ODP parallel to I-25 is consistent with the City’s Parks and Trails Master Plan. The 10 ft. wide concrete trail will be within a 25 ft. wide public access easement. A future connection across the 100 ft. wide channel of the Southwest Tributary at the north side of the site will be made by others. At the south the trail will connect to the existing trail underpass under 136th Avenue.
- Architecture/Building Materials: The primary building material is brick with darker courses at the base and lighter brick courses at the top of the building. Cut stone pilasters are spaced at regular locations along the façade. A fluted stucco cornice and cap enhances the top of the base elements. At the entrances to the building stone pillars frame the gables. The gable roof elements are covered in a standing seam metal roof that is painted in the Lowe’s corporate blue color.
- Signage: Building signage is consistent with the City Sign Code. The proposed wall signs are individual letters that are internally lit. Wall signs are proposed at the west (front) facing Orchard Parkway, at the east facing I-25, at the south facing 136th Avenue and none are proposed at the north. The monument sign just east of Tract A and facing 136th Avenue is 25 ft. high with the stone and brick to match the Lowe’s building materials. Space for six tenants will be available on each side of the monument sign.

Traffic and Transportation

The ODP has frontage on I-25 and on 136th Avenue. There are no proposed changes to these existing rights-of-way. Orchard Parkway is proposed at the west side of the Lowe’s site. As development occurs to the north it is anticipated that Orchard Parkway will continue north as a spine road for development between I-25 and Huron Street north to 144th Avenue. Orchard Parkway is proposed to continue to the south of 136th Avenue as development occurs to the south. Orchard Parkway is located approximately halfway between Huron Street and I-25 so that turn lanes with adequate stacking distance, appropriate signalization and coordination with the future alignment of the relocated Bull Canal can be accommodated safely. The Lowe’s site will take its access entirely from Orchard Parkway. The northerly access is primarily a service access and may be signalized when development occurs to the west and north of the Lowe’s site. The midway access to the Lowe’s site is anticipated to be the primary access. Left turn lanes are shown on the site plan. A signal will be installed when warranted.

Service Commitment Category

The Service Commitment Category is Category C for non-residential developments.

Referral Agency Responses

- Reclaimed Water: There is a reclaimed water line to be built by the City in the vicinity of Orchard Parkway and 136th Avenue. Lowe’s intends to extend the line and to irrigate the landscaping on the entire ODP with reclaimed water.
- City Parks and Trails Master Plan: Per the Master Plan, Lowe’s has agreed to construct a 10 ft. wide concrete trail within a 25 ft. wide public access easement along the east side of their site. This is shown on the ODP. When property to the north of the Lowe’s site is developed the trail will continue across the area designated as the Southwest Tributary on Tract B. At the time that the interchange for 136th and I-25 was constructed a pedestrian underpass under 136th Avenue was installed. The trail will connect to the underpass and will continue to the south side of 136th Avenue when development occurs there.
- City Environmental Services: The City’s Environmental Services Division has reviewed the Phase 1 Environmental Assessment provided by Lowe’s representatives and has accepted the findings. There are no items of concern.
- Colorado Department of Transportation: Lowe’s is adjacent to I-25, a State controlled access highway, but no right-of-way changes are proposed. In addition, the proposed off ramp design and design of 136th Avenue are not proposed to change with the development of the Lowe’s site.

Public Comments

A neighborhood meeting was held on March 24, 2005. Six nearby property owners attended the meeting. Five of the property owners are residents of Westminster and their questions and issues were addressed at the meeting by representatives of the developer. One property owner in Thornton on the east side of I-25 had concerns with the retention pond and perceived interference with existing piped water flows to his property. In subsequent research, City staff believes that the water of concern to the Thornton property owner originates on a parcel to the north of the 135 acre Foster Property PDP. That parcel to the north is owned by the Fonay family and is in unincorporated Adams County. A map that accompanied a 1973 water court decree for the water right appears to show a very small area (estimated to be less than 2 acres) at the far northeast corner of the Foster Property PDP encumbered as a tributary area for the water seepage. To address this concern, the retention pond shown on the Foster Property ODP-Lowe’s has been adjusted to not affect this two acre area. The northern edge of the retention/detention pond has been shifted a reasonable amount to the south and the pond has been widened and expanded to the west to accommodate the reduced area of the pond at the north.

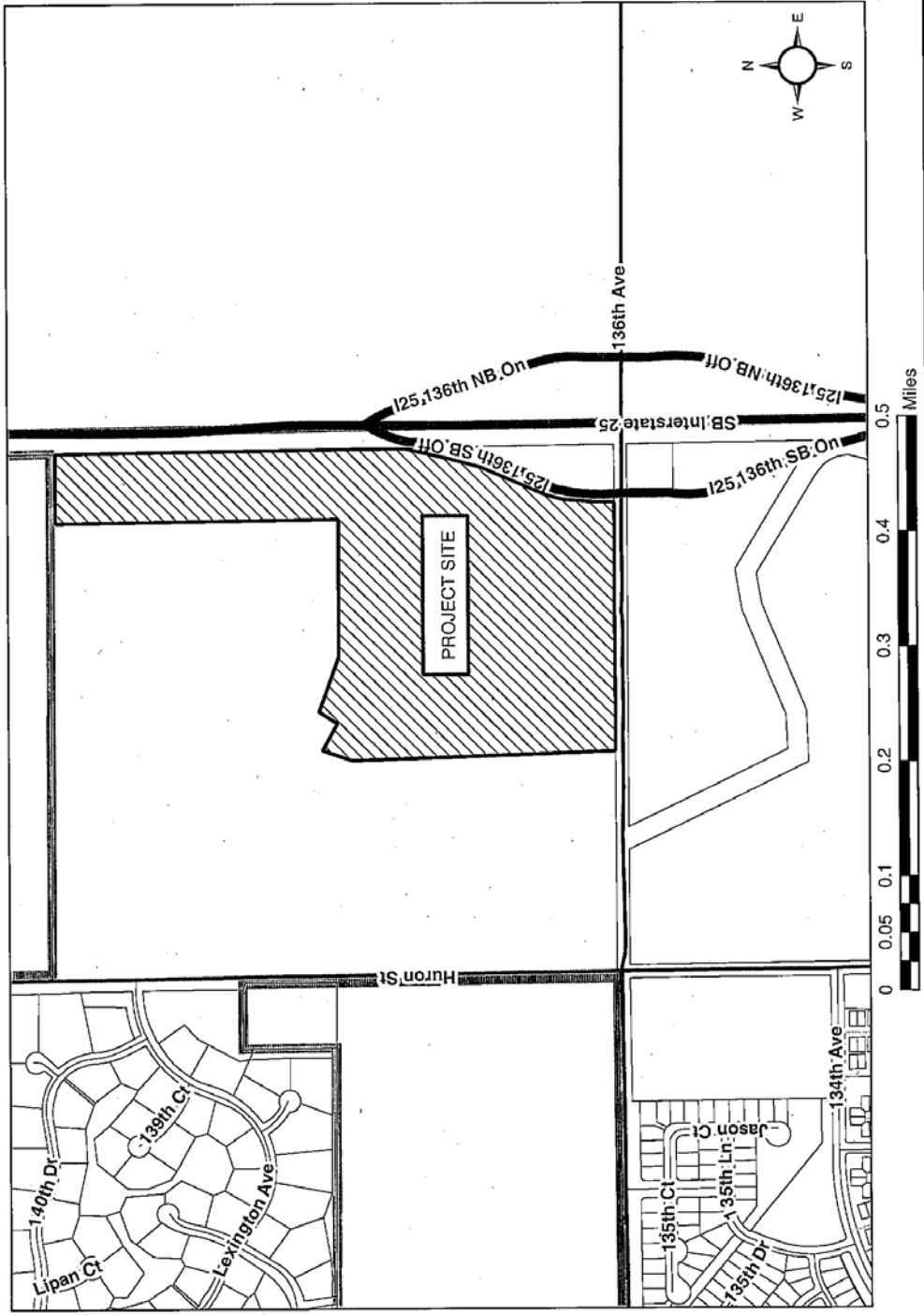
No letters or phone calls of support or opposition regarding the Lowe’s proposal were received by Staff.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment
- Vicinity Map

Foster Property ODP Amendment for Lowe's





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Councillor's Bill No. 26 re Vacation of Easements within Lots 9 and 10 of the Ball Campus Subdivision

Prepared By: Melanie Walter, Senior Civil Engineer

Recommended City Council Action

Pass Councillor's Bill No. 26 on first reading, vacating certain easements on Lots 9 and 10 of the plat for Ball Campus Subdivision recorded at Book No. 57, Page No. 6, Reception No. 78095994 in the records of Jefferson County.

Summary Statement

- An 80-foot wide drainage easement and a 16-foot wide utility easement were granted to the City for public use by the final plat for Ball Campus Subdivision on October 18, 1978.
- Because a building expansion on Lot 9 is being planned, and since there are no existing or future utilities or public drainage facilities planned in these easements, the property owner is requesting the vacation of these easements. Minor on-site drainage needs will be met by creation of a smaller private drainage easement.
- A Councilor's Bill authorizing the vacation, and including the legal description of both easements, is attached to this agenda memorandum for action by City Council.

Expenditure Required: \$ 0

Source of Funds: N/A

SUBJECT: Councillor's Bill re Vacation of Easements within the Ball Campus Subdivision Page 2

Policy Issue

Shall the City Council vacate the subject easements, which by City Code must be vacated by an ordinance of the City Council?

Alternative

Do not vacate the easements. This alternative is not recommended because the subject easements are not needed by the City or outside agencies.

Background Information

In 1978, Ball Campus Subdivision was platted north of and adjacent to Walnut Creek. The plat included dedication of an 80-foot drainage easement along the west edge of the subdivision, apparently in anticipation of the need for a major drainage facility to outfall into Walnut Creek. Since no facility of this nature has been or is being planned, the extent of the easement is excessive. Any on-site and anticipated off-site drainage can be handled in a smaller facility and Ball is proposing a 20-foot wide private drainage easement to take the place of the original easement. Staff has reviewed the situation and finds the proposal to be acceptable.

The plat for Ball Campus also included a 16-foot wide utility easement between Lots 9 and 10, granted to the City for public use for utilities. The applicant is requesting the lot line and the corresponding easement be vacated to allow expansion of the current building on Lot 9. Staff has determined there are no utilities within the easement nor are any planned for this area in the future.

City Code requires that easements be vacated by ordinance, and a Councilor's Bill with the legal descriptions of the two easements is attached for that purpose.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE VACATING AN 80-FOOT DRAINAGE EASEMENT AND A 16-FOOT UTILITY EASEMENT WITHIN LOTS 9 AND 10 OF THE BALL CAMPUS SUBDIVISION

WHEREAS, certain easements were dedicated on the final plat for Ball Campus Subdivision, Book No. 57, Page No. 6, and Reception No.78095994 in the County of Jefferson; and

WHEREAS, the 16-foot utility easement between Lots 9 and 10 contains no utility facilities nor is it necessary for future drainage or utility purposes; and

WHEREAS, the 80-foot drainage easement on the west side of Lots 9 and 10 contains no utility facilities nor is it necessary for future public drainage or utility purposes in the future; and

WHEREAS, the property owner will provide a 20-foot wide drainage easement to satisfy local drainage needs and replace the 80 foot wide easement.

NOW THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

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

Section 2. Legal Description of Utility and Drainage Easements: See attached legal description, exhibit A.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of May, 2005. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 13th day of June, 2005.

ATTEST:

Mayor

City Clerk

EXHIBIT A
BALL CAMPUS SUBDIVISION, LOTS 9 AND 10

DRAINAGE AND UTILITY EASEMENT VACATION

VACATION OF A PORTION OF A 80 FOOT WIDE DRAINAGE EASEMENT WITHIN LOTS 9 AND 10 AS SHOWN ON THE BALL CAMPUS SUBDIVISION FINAL PLAT RECORDED BY RECEPTION NUMBER 78095994, ALL BEING LOCATED IN THE NORTHWEST ONE QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF SAID 80 FOOT WIDE DRAINAGE AND UTILITY EASEMENT LOCATED ALONG THE WESTERLY LINE OF LOTS 9 AND 10 WITHIN SAID BALL CAMPUS SUBDIVISION. SAID VACATED PORTION OF DRAINAGE AND UTILITY EASEMENT CONTAINS 2.10 ACRES (91,481 SQUARE FEET) MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE CITY OF WESTMINSTER HORIZONTAL CONTROL NETWORK BEARING OF N00°15'42"W ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M. AND BEING MONUMENTED BY A 2" PIPE WITH A 2 ½" CAP LS NO. 2149 AT THE WEST QUARTER CORNER OF SECTION 10 AND A 2" PIPE WITH A 2 ½" CAP IN MOUND OF STONES LS NO. 2149 AT THE NORTHWEST CORNER OF SECTION 10.

UTILITY EASEMENT VACATION

VACATION OF A PORTION OF A 16 FOOT WIDE UTILITY EASEMENT AS SHOWN ON THE BALL CAMPUS SUBDIVISION FINAL PLAT RECORDED BY RECEPTION NUMBER 78095994, ALL BEING LOCATED IN THE NORTHWEST ONE QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WESTMINSTER, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF SAID 16 FOOT WIDE UTILITY EASEMENT, BEING 8 FOOT IN WIDTH ON EACH SIDE OF THE COMMON LOT LINE BETWEEN LOTS 9 AND 10 WITHIN SAID BALL CAMPUS SUBDIVISION. SAID VACATED PORTION OF UTILITY EASEMENT CONTAINS 0.175 ACRES (7,604 SQUARE FEET) MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE CITY OF WESTMINSTER HORIZONTAL CONTROL NETWORK BEARING OF N00°15'42"W ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M. AND BEING MONUMENTED BY A 2" PIPE WITH A 2 ½" CAP LS NO. 2149 AT THE WEST QUARTER CORNER OF SECTION 10 AND A 2" PIPE WITH A 2 ½" CAP IN MOUND OF STONES LS NO. 2149 AT THE NORTHWEST CORNER OF SECTION 10.

PREPARED BY TOD BUNKER
FOR AND ON BEHALF OF
MARTIN/MARTIN, INC.
12499 WEST COLFAX AVENUE
LAKEWOOD, COLORADO 80215
OCTOBER 18, 2004

**BALL CAMPUS
DRAINAGE AND UTILITY EASEMENT VACATION**
SHEET 3 OF 3

NW COR., SEC. 10 T2S, R69W,
6TH P.M. FND. 2" POST W/ALUM.
CAP LS #2149



NOTE: THIS EXHIBIT DOES NOT
REPRESENT A MONUMENTED
SURVEY. IT IS INTENDED ONLY
TO DEPICT THE ATTACHED
DESCRIPTION.

LOT 10,
BALL CAMPUS
SUBDIVISION

EXISTING UTILITY
EASEMENT
(REC. NO. 78095994)

VACATED UTILITY &
DRAINAGE EASEMENT
PARCEL
2.100 AC.

N38°56'03"W 16.00'

WEST 108TH CIRCLE

EXISTING PSGO
EASEMENT
(REC. NO. 78095994)

552°13'57"W 476.01'
N52°13'57"E 486.53'

VACATED UTILITY
EASEMENT PARCEL
0.177 AC.

LOT 9,
BALL CAMPUS
SUBDIVISION
(REC. NO. 78095994)

LOT 8,
BALL CAMPUS
SUBDIVISION
(REC. NO. 78095994)

BASIS OF BEARINGS:
BEARINGS ARE BASED ON AN ASSUMED
BEARING OF N00°15'42"E ALONG THE
WEST LINE OF THE NORTHWEST QUARTER
OF SECTION 10.

OCTOBER 14, 2004

MARTIN / MARTIN
CONSULTING ENGINEERS

12499 WEST COLFAX AVE.
P.O. BOX 151500
LAKEWOOD, CO 80216
303.431.0100
FAX 303.431.4028

N00°15'42"E
1114.20'

WEST LINE NW 1/4 SEC. 10, T2S, R69W, 6TH P.M. (94-85 OF BEARING)

N00°15'42"E 1150.20'

S00°15'42"W 1136.82'

N00°15'42"E 431.25'

N00°15'42"E
1310.74'

W 1/4 COR., SEC. 10 T2S, R69W, 6TH P.M.
FND. 2" PIPE W/2-1/2" CAP LS #2149

EXISTING UTILITY
& IRRIGATION EASEMENT
(REC. NO. 78095994)

PROJECT: BALL CAMPUS SUBDIVISION, SEC. 10, T2S, R69W, 6TH P.M. DATE: OCT 14, 2004



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Councillor’s Bill No. 27 re Farmers’ High Line Canal Trail Construction

Prepared By: Brad Chronowski, Landscape Architect II

Recommended City Council Action:

Pass Councillor’s Bill No. 27 on first reading re-allocating \$63,360 from the Trails Development Capital Improvement Program budget to the Farmers’ High Line Trail Capital Improvement Program budget to fund the federally-aided trail construction project and authorizing a supplemental appropriation in the amount of \$230,400 reflecting the City’s receipt of a Transportation Equity Act of the 21st Century (TEA-21) enhancement grant, administered by the Colorado Department of Transportation and the Denver Regional Council of Governments.

Summary Statement:

- This project is a critical link in completing the Farmers’ High Line Trail master plan. The section to be constructed is located between 91st Avenue and Wadsworth Parkway and 92nd Avenue and Pierce Street.
- On August 14, 2000, City Council approved a supplemental appropriation of \$98,000 to fund engineering design costs associated with this project.
- On August 14, 2000, City Council authorized the City Manager to enter into a contract with the Colorado Department of Transportation (CDOT) to obligate and administer Transportation Equity Act of the 21st Century (TEA-21) funding for design of the Farmers’ High Line Canal Trail connection. (see attached map)
- The City is currently contracted with Wilson & Company, consulting engineers, to provide design, right-of-way and grant administration services for the trail project.
- The project budget, including design, is \$410,500.
- The City’s responsibility is \$82,100, which equals 20 percent of the total project cost.
- Funds are available in the Trails Development budget to cover the City’s local agency grant funding match.
- The City has been reimbursed for 80 percent of the design expensed incurred to date.

Expenditure Required: \$293,760

Source of Funds: General Capital Improvement Funds
Farmers High Line Canal Trail Project

Policy Issue

Should the City continue with construction of the Farmers' High Line Canal Trail construction project?

Alternative

City Council could choose not to continue with the construction phase of this federal aid trail project. This alternative would place the City in default of its contract with CDOT, thereby increasing the City's financial liability in committed design costs from \$24,500 to \$122,500. Due to the funding obligation calendar set forth by the Denver Regional Council of Governments (DRCOG), no other logical alternatives exist that would favor the City.

Background Information

The initial TEA-21 grant was accepted by DRCOG in 1999 and included two pedestrian bridges and trail extensions. This original project scope involved the Burlington Northern Santa Fe Railroad (BNSF) and the Farmers' High Line Canal. The City's liability would have been \$409,000. In recent months, Staff initiated several alternatives to further reduce the City's financial obligation and accomplish the same goal of connecting a major gap in the Farmers' High Line Canal Trail in the vicinity between 92nd Avenue and Pierce Street and 91st Avenue and Wadsworth Parkway. The alternative of upgrading the existing detached sidewalk that parallels 92nd Avenue on the north side to regional trail guidelines was accepted by DRCOG and CDOT. This alternative will not require easements from the railroad or canal, resulting in a substantial time and money savings.

This alternative was further developed by City Staff and the consulting engineers. Currently, the City is in the process of acquiring a small tract of right-of-way and proceeding with the proper clearances that will allow the City to move forward with trail construction.

DRCOG has established a deadline of September 30, 2005, for the City to bid the construction work. The City's current status and pace will allow the City to meet that deadline.

If approved by City Council, the required 20% matching funds from the Local Agency (City of Westminster) will be transferred from the Trails Development Project Account. The following table represents the funding source designation:

	City of Westminster	TEA-21 (CDOT)	Total
Design	\$24,500	\$ 98,000	\$122,500
Construction	\$57,600	\$230,400	\$288,000
Total	\$82,100	\$328,400	\$410,500

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Vicinity Map

STE M356-013

Farmers Highline Canal Trail

PCN 12478



No Scale

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2005

COUNCILOR'S BILL NO. **27**
INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2005 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM
THE 2005 ESTIMATED REVENUES IN THE FUND.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$230,400 which, when added to the fund balance as of the City Council action on May 23, 2005 will equal \$8,068,650. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of a TEA-21 grant from the Colorado Department of Transportation.

Section 2. The \$230,400 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Fed T-21	7500.40610.0019	\$0	<u>\$230,400</u>	\$230,400
Total Change to Revenues			<u>\$230,400</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Trails Development	80175050167.80400.8888	\$512,425	\$(63,360)	\$449,065
Farmer's Hi Line Trail	80575050406.80400.8888	118,000	<u>293,760</u>	411,760
Total Change to Expenses			<u>\$230,400</u>	

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
AND PUBLISHED this 23rd day of May, 2005.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 13th day of June, 2005.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Resolution No. 21 Utility Fund Capital Improvement Project Funding Modifications

Prepared By: Abel Moreno, Capital Projects and Budget Manager
Jim Arndt, P.E., Director of Public Works and Utilities

Recommended City Council Action

Adopt Resolution No. 21 modifying the Utility Fund Capital Improvement Projects as presented at the May 2, 2005 Study Session.

Summary Statement

- The Department of Public Works and Utilities presented the proposed Utility Fund Capital Improvement Projects modifications at the May 2, 2005 Study Session.
- City Council directed Staff to return to the May 23 City Council meeting for formal Council action on the Department's modified Utility Fund CIP.
- Proposed modifications will result in an increase in the water and wastewater project reserve accounts. Staff will be conducting further review of the CIP budget and reserve funds and will be bringing back additional recommendations to City Council at a later date.
- The attached document is a full listing of all Utility Fund Capital Improvement Projects, which is color coded to aid City Council's review. Items highlighted in yellow reflect an increase in funds due to a change in scope of the project and/or the estimated cost of the project changed due to the current construction climate. Items highlighted in blue reflect budget reductions due to not being a priority project at this time as indicated in the 2002 Water and Wastewater Master Plans, a reduction in the scope of work occurred due to information received in the 2002 Water and Wastewater Master Plans, or the project is completed and can be closed out. No changes are recommended for projects not color coded.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City move forward with the re-prioritization of Utility Fund Capital Improvement Projects funding modifications as presented at the May 2, 2005 Study Session?

Alternative

Do not modify the Department's Utility Fund CIP and continue with the current adopted CIP. This could result in construction of infrastructure that is not of the highest relative priority, a lack of understanding of the true condition of the infrastructure and the strategy to fund needed improvements that have changed in scope may not be adequately funded to complete priority projects properly.

Background Information

In the past six months, Public Works and Utilities has reviewed goals surrounding both capital improvement projects and infrastructure contributed by development. The City has done a good job in balancing utility infrastructure needs with the overall City goals/needs with the available funding. Looking ahead, it is the Department's job to clearly understand and articulate those infrastructure needs and priorities in order that they may be appropriately considered and future utility needs can be met.

As a result of the review, the following criteria were identified to help guide the Department in establishing needs and priorities:

- Develop criteria for operations that would establish minimum infrastructure needs to provide a consistent high level service throughout the City, and as well as meet regulatory mandates.
- Provide redundancy of service in critical areas, replace aging infrastructure, and ensure adequate fire flow and water storage.
- Monitor Department CIP projects in the areas of schedule, budget, and status on an individual project basis.
- Provide organizational structure and reallocate staff resources to emphasize consistency of project delivery, and establish a Division manager to oversee and coordinate the CIP.

As part of the strategy to address the guidelines above, staff has modified the projects and the process of project delivery to complete the Utility Fund CIP. Equally important, further study of system capabilities will assist in understanding the priorities and financial implication of providing sound infrastructure well into the future.

Attached is a listing of all previously approved (and funded) Utility CIP projects. The "Current Authorized Budget" column refers to the budget approved with the adoption of the CIP, subsequent Council modification to a project budget and/or projects that have been capitalized or expensed reducing the original adopted budget. The column "Recommended Revised Budget" refers to the staff recommended change to the project budget. Recommended changes result from: revisiting project need and scope; having updated engineering or construction information on a project; or, deleting a project until additional system information becomes available.

Adoption of the "Revised Recommended Budget" will change the overall funding requirements for the Utility Fund ("Capital Projects" and "Other") to \$61,686,058. This figure matches the total amounts included on the color-coded attachment, which includes all Utility capital projects. The amount included on the attached resolution, \$50,625,287, reflects only those projects' budgets that are changing with tonight's Council action, and therefore excludes all projects with no budget adjustments. The balance of funds remaining as a result of project modifications would be "parked" in a reserve fund as a source of funds for future Utility Fund CIP priorities as identified in the updated Comprehensive Water and Sewer Plans. Staff will be bringing back additional recommendations to City Council on the utilization of this reserve fund.

The attached document is a full listing of all Utility Fund Capital Improvement Projects, which is color coded to aid City Council's review. Items highlighted in yellow reflect an increase in funds due to a change in scope of the project and/or the estimated cost of the project changed due to the current construction climate. Items highlighted in blue reflect budget reductions due to not being a priority project at this time as indicated in the 2002 Water and Wastewater Master Plans, a reduction in the scope of work occurred due to information received in the 2002 Water and Wastewater Master Plans, or that the project is completed and can be closed out. No changes are recommended for projects not color coded.

The attached document identifies a total of 71 Utility Fund Capital Improvement Projects. Of these 71, nine projects are proposed to increase their budget (highlighted in yellow) now that revised engineering estimates have been received. Also, 40 of these projects' budgets are proposed to be reduced or closed, of which 32 are proposed to be completely closed.

Successful completion of these modifications will be measured by meeting established project timelines (engineering contract completion, bid date, Council acceptance of construction contracts, completion of work etc.) and budget. Engineering and construction contracts should be coming to the Council for approval over the next 12 months.

These modifications will bring the Department's Utility Fund CIP priorities and funding needs up-to-date. Staff will monitor progress on the goals and bring back additional recommendations for modifications to the Utility Fund Capital Improvement Program in the first quarter of 2006.

The attached resolution is the formal action for City Council to take to modify the Utility Fund capital projects' budgets in the City's financial records. It reflects the recommended changes included in the color-coded attachment reviewed with City Council at the May 2 Study Session.

Staff will be present at the May 23 City Council Meeting to answer any questions the City Council may have about specific projects that have been altered from the previously adopted CIP.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **21**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

WHEREAS, City Council directed the Department of Public Works and Utilities after the May 2, 2005 Study Session to modify the Utility Fund Capital Improvement Projects as was presented

WHEREAS, the Department of Public Works and Utilities is modifying its Utility Fund Capital Improvement Projects in order to complete projects in a more timely fashion, close out projects that are no longer a priority and to place the excess funds into the water and wastewater capital project reserve until the Department completes its study to determine current and longer term project priorities.

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

That the following modifications be made to the Utility Fund Capital Improvement Projects to the appropriate water and wastewater capital project reserve accounts noted below:

ACCOUNT NUMBER	DESCRIPTION	CURRENT BUDGET	NET CHANGE (+/-)	REVISED BUDGET
80120035039	Water Purchases	\$1,580,798	(\$1,362,048)	\$218,750
80120035040	Pierce Street Waterline	\$80,000	(\$77,700)	\$2,300
80120035052	MSC Gasoline Recovery System	\$29,521	(\$8,490)	\$21,031
80120035053	North Park Pump Station	\$714,755	(\$714,755)	\$0
80120035055	Water/Wastewater Master Plan	\$150,000	(\$75,187)	\$74,813
80120035074	Standley Lake Renovation	\$610,208	(\$610,206)	\$0
80220035525	Standley Lake Renovation Joint	\$216,068	(\$203,197)	\$12,873
80120035078	Gravel Lake Storage	\$7,958,922	(\$5,523,076)	\$2,435,846
80120035079	Semper WTF Optimization/Renovation	\$3,355,823	(\$3,343,322)	\$12,501
80120035081	Standley Lake Water Quality	\$1,098,648	(\$1,098,648)	\$0
80120035095	Water Reclamation	\$1,638,082	(\$1,438,774)	\$199,308
80120035097	Reclaimed User Connections	\$906,339	(\$400,000)	\$506,339
80120035098	Silo Pump Station Upgrade	\$1,164,457	(\$664,457)	\$500,000
80120035100	Waterline - Federal Blvd: 92nd-96th	\$343,000	(\$343,000)	\$0
80120035101	Waterline - Lowell: 88th-92nd	\$128,000	(\$128,000)	\$0
80120035104	Waterline - 92nd Ave/Wadsworth	\$328,517	(\$328,517)	\$0
80120035108	Waterline Maintenance/Replacements/ Additions	\$469,997	(\$306,352)	\$163,645
80120035109	Semper Rehabilitation	\$61,532	(\$61,532)	\$0
80120035117	PW/U Capital Project Management/Inspection	\$266,183	(\$81,557)	\$184,626
80120035140	Raw Water Pipeline	\$135,515	(\$135,514)	\$1
80120035156	Emergency Generators	\$350,000	(\$350,000)	\$0
80120035159	Raw Water System Maintenance	\$581,713	(\$569,029)	\$12,684
80120035162	Raw Waterline Sliplining	\$380,000	(\$380,000)	\$0
80120035163	England Pipeline/Trtd Tran (consolidate into one account)	\$1,500,000	\$380,000	\$1,880,000
80120035164	PCCP Pipe/Semper to 92nd	\$191,830	(\$191,829)	\$1
80120035165	Waterline - Gregory Hill	\$108,530	(\$108,530)	\$0
80120035181	Water Project Reserve	\$1,886,793	\$2,544,294	\$4,431,087
80120035202	Capital Depreciation	\$496,777	(\$496,777)	\$0
80121035041	LDC Interceptor Sewer	\$1,650,000	(\$1,070,772)	\$579,228
80121035044	Big Dry Creek Wastewater Treatment Facility Exp/Ren	\$14,808,261	\$12,523,159	\$27,331,420
80121035184	Wastewater Project Reserve	\$324,325	\$1,878,283	\$2,202,608
80220035076	Northwest Water Treatment Facility	\$681,842	(\$649,606)	\$32,236
80220035520	Signal Reservoir Spillway Enlargement	\$180,000	(\$155,000)	\$25,000

80220035521	76th Wtr Main Sheridan-Railroad	\$333,000	\$2,122,000	\$2,455,000
80220035522	80th Wtr Main-Sher-Gregory Hill (consolidate into one account titled 75th-78th-Stuart WL)	\$1,122,000	(\$1,122,000)	\$0
80220035527	Treated Water System Major Maintenance and Repair	\$626,000	(\$297,350)	\$328,650
80221035519	Major Repairs Wastewater System	\$47,851	(\$47,251)	\$600
80321035306	Big Dry Creek Interceptor Sewer I&I Improvements	\$675,000	(\$340,260)	\$334,740
80321035307	Sewer Line Under Wadsworth at 93 rd Ave.	\$100,000	(\$100,000)	\$0
80420035611	Northwest Water Storage Tank	\$1,000,000	(\$1,000,000)	\$0
80421035609	Old Wadsworth from 98th to 100th Avenues SL	\$320,000	(\$320,000)	\$0
80520035408	NW Water System Storage	\$500,000	(\$500,000)	\$0
80520035410	Master Plan Water Main Maintenance	\$150,000	(\$150,000)	\$0
80520035411	Misc. Waterline Maintenance	\$250,000	(\$250,000)	\$0
80520035412	North Huron Transmission Main	\$700,000	\$1,200,000	\$1,900,000
80520035413	Northgate Main Extensions	\$225,000	(\$150,000)	\$75,000
80520035416	Wtr Storage Tank Major Repair	\$200,000	(\$200,000)	\$0
To be created	Reclaimed Line: RWTF - 132nd (Water)	\$0	\$340,000	\$340,000
To be created	Reclaimed Line: Bull Canal - 132nd - 136 th (Water)	\$0	\$700,000	\$700,000
To be created	Semper WTF Sedimentation Basin Improvements (Water)	\$0	\$2,500,000	\$2,500,000
To be created	88th/Zuni Lift Station (Wastewater)	\$0	\$250,000	\$250,000
To be created	115th/Wolff Water and Reclaimed Lines (Water)	\$0	\$100,000	\$100,000
To be created	Water Master Plan and Modeling (Water)	\$0	\$500,000	\$500,000
To be created	Wastewater Master Plan and Modeling (Wastewater)	\$0	\$200,000	\$200,000
To be created	Biosolids Program (Wastewater)	\$0	\$115,000	\$115,000
	UTILITY FUND TOTAL	\$50,625,287	(\$0)	\$50,625,287

Passed and adopted this 23rd day of May, 2005.

ATTEST:

Mayor

City Clerk

**Department of Public Works and Utilities
CIP Management Worksheet**

UTILITY FUND - Capital Projects

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
1	Standley Lake Stormwater Interceptor - The Standley Lake Cities recommendation for protecting Standley Lake is to intercept the stormwater using the Church Ditch and bypass the water around Standley Lake. Project participation costs would be shared by the Cities, Arvada, developers and/or others.	\$ 765,000	\$ 765,000	\$ -
2	Pierce Street Waterline - the repair/replacement of the water line running south of the Semper WTF to 88th Avenue.	\$ 80,000	\$ 2,300	\$ (77,700)
3	MSC Gasoline Recovery System	\$ 29,521	\$ 21,031	\$ (8,490)
4	North Park Pump Station - for the upgrade or replacement of booster pump station services North Park subdivision.	\$ 714,755	\$ -	\$ (714,755)
5	Standley Lake Renovation - for a new spillway, new outlet tunnels and valve house and additional stability berms. Costs for the renovation project will be split by the three Standley Lake cities and are estimated at \$41 million, with \$4.4 million for the Design/ROW.	\$ 826,276	\$ 12,873	\$ (813,403)
6	Gravel Lake Storage - to meet the City's build out raw water demand, the City is pursuing construction of reservoirs from reclaimed gravel mines along the South Platte River near Wattenberg in Weld County.	\$ 7,958,922	\$ 2,435,846	\$ (5,523,076)
7	Semper WTF Optimization/Renovation - enabling the Semper WTF to be renovated, safety improvements made and treatment processes upgraded to continue to meet the increasing drinking water regulatory requirements.	\$ 3,355,823	\$ 12,501	\$ (3,343,322)
8	Shaw Heights - the remaining funds contributed from Shaw Heights Water District; not available for other purposes. Remaining funds to be used to abandon a well and its facility at Rutgers and Shaw.	\$ 111,165	\$ 111,165	\$ -
9	Water Reclamation - for the construction of the reclaimed water plant and pipeline system. - Reclaimed Waterline - 132nd-136th	\$ 1,638,082	\$ 199,308	\$ (1,438,774)
10	Reclaimed User Connections - the addition of connection lines and service vaults to the existing Reclaimed Water Distribution System that will aid in expanding the current commercial user base.	\$ 906,339	\$ 506,339	\$ (400,000)
11	Silo Pump Station Upgrade - for a study and upgrades to the Silo Pump Station including evaluating the water pressure zone changes to increase pressure for new areas that may be served by the upgraded pump station.	\$ 1,164,457	\$ 500,000	\$ (664,457)

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
12	Waterline - Federal Blvd: 92nd-96th	\$ 343,000	\$ -	\$ (343,000)
13	Waterline - Lowell: 88th-92nd	\$ 128,000	\$ -	\$ (128,000)
14	Waterline - 92nd Ave/Wadsworth	\$ 328,517	\$ -	\$ (328,517)
15	Waterline Maintenance/Replacements/ Additions - for miscellaneous watermain projects identified in Master Plan or through operational experience. - Waterline - Federal Blvd/116th Ave. Connection	\$ 469,997	\$ 163,645	\$ (306,352)
16	Semper Rehabilitation - the correction of construction failures at the Semper Water Treatment Facility and for related litigation expenses.	\$ 61,532	\$ -	\$ (61,532)
17	PW/U Capital Project Management/Inspection - to fund capital projects management assistance for Public Works and Utilities projects	\$ 266,183	\$ 184,626	\$ (81,557)
18	Raw Water Pipeline - for the construction of a raw water pipeline from Standley Lake to the Northwest Water Treatment Facility.	\$ 135,515	\$ 1	\$ (135,514)
19	Semper Clearwell - for the legal expenses related to the original clearwell construction.	\$ 482,381	\$ 482,381	\$ -
20	Emergency Generators	\$ 350,000	\$ -	\$ (350,000)
21	Raw Water System Maintenance - The earthen canal structures have areas requiring capacity restoration and/or lining. Maintenance may include canal bank cleaning and lining, additional flow capacity studies, water surface profiling, erosion protection and delivery structure renovation.	\$ 581,713	\$ 12,684	\$ (569,029)
22	England Pipeline/Treated Transmission Line - for replacing the existing raw water England Plant supply line to a treated water line to deliver water from the Semper WTF to the south portion of the City. Combine Raw Waterline Sliplining account with this account to complete the project.	\$ 1,880,000	\$ 1,880,000	\$ -

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
23	PCCP Pipe/Semper to 92nd - the repair and replacement of pipe in Pierce Street from Semper WTF to 92nd and to add valve to allow alternate system supply options from the Semper WTF.	\$ 191,830	\$ 1	\$ (191,829)
24	Waterline - Gregory Hill	\$ 108,530	\$ -	\$ (108,530)
25	Utility Site Landscaping Improvements - to finalize or improve landscape at Utilities Operations facilities. 2005 funds will be utilized to landscape the Countryside Water Storage facility and on Pierce Street just south of the Allen Ditch.	\$ 310,941	\$ 310,941	\$ -
26	Big Dry Creek Wastewater Treatment Facility Expansion - for the expansion and upgrade of the existing treatment facility to meet future needs as mandated by the CDPHE, to replace aging equipment, to improve odor control and to improve the operating and maintenance efficiency of the facility.	\$ 14,808,261	\$ 27,331,420	\$ 12,523,159
27	Fiber Optic Cable	\$ 2,183	\$ 2,183	\$ -
28	Strasburg Irrigation System Improvements - for the installation of additional irrigation system components at the Strasburg Natural Resource Farm.	\$ 154,620	\$ 154,620	\$ -
29	Northwest Water Treatment Facility - for the construction of a 15 million gallon per day plant that includes a 2 million gallon storage reservoir.	\$ 681,842	\$ 32,236	\$ (649,606)
30	Signal Reservoir Spillway Enlargement - The Colorado State Engineer has notified the City that the Signal Reservoir No. 1 spillway is inadequate and needs to be enlarged. Signal has an approximate capacity of 234 af. Enlarging the spillway is costly for the continued use of the reservoir with little benefit to Westminster.	\$ 180,000	\$ 25,000	\$ (155,000)
31	75th-78th-Stuart Street Watermain - a combined project that formerly included the 76th Avenue 20" watermain and the 80th Avenue 20" watermain. After further engineering analysis it was determined that a new alignment should be considered to meet fire flows in the southern part of the City.	\$ 1,455,000	\$ 2,455,000	\$ 1,000,000
32	Waterline - 104th Ave: Old Wads-Pierce - to construct 2,200 lf of new 24"PVC pipe in 104th Ave from Old Wads to Pierce.	\$ 127,568	\$ 127,568	\$ -
33	Treated Water System Major Maintenance and Repair - are to maintain and repair the City's existing water system and include replacement of obsolete mechanical and electrical systems at pump stations and upgrades to the SCADA system.	\$ 626,000	\$ 328,650	\$ (297,350)

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
34	Gregory Hill Tanks - for structural repairs to Gregory Hills west tank. Tank has buckled structural plates on east side of tank. Other operational & sanitary deficiencies to be remedied concurrent with structural repairs.	\$ 467,984	\$ 467,984	\$ -
35	Major Repairs Wastewater System - for various large wastewater system replacements and repairs. - 88th and Zuni Lift Station	\$ 47,851	\$ 600	\$ (47,251)
36	Northeast Water Storage Tank - for the construction of a new "hydropillar" style storage tank at 114th Avenue and Cherokee. The project includes piping to hook up existing lines and added costs for electrical and Supervisory Control and Data Acquisitions (SCADA) controls.	\$ 3,000,000	\$ 3,000,000	\$ -
37	Sewer Line Under Wadsworth at 93rd Ave - for constructing a larger diameter replacement wastewater line for the Kings Mill area west of Wadsworth Parkway.	\$ 100,000	\$ -	\$ (100,000)
38	Northwest Water Storage Tank - to construct a new 2 million gallon water storage tank.	\$ 1,000,000	\$ -	\$ (1,000,000)
39	Pressure Reducing Valve - the installation of two pressure-reducing valves on the treated water system to regulate operating pressure. The first valve will be placed at 104th and Lowell Court and the second at 80th and Irving Street.	\$ 454,065	\$ 454,065	\$ -
40	Old Wadsworth from 98th to 100th Avenues Sewer Line - to replace the sanitary sewer line on Old Wadsworth from 98th to 100th Avenues.	\$ 320,000	\$ -	\$ (320,000)
41	NW Water System Storage - to build capital reserve funding for the construction of additional water system storage within the City's current distribution system. The storage will be in a place that is most advantageous to the City based on future development patterns.	\$ 500,000	\$ -	\$ (500,000)
42	Master Plan Water Main Maintenance - the 2002 master plan calls for approximately \$60 million of transmission main projects phased over future years. This account will provide funding for projects identified in the master plan.	\$ 150,000	\$ -	\$ (150,000)
43	Misc. Waterline Maintenance - for projects that may include replacements for maintenance reasons, extensions to accommodate development projects, City participation in oversizing developer projects, or other water line needs that are not identified specifically within the master plan.	\$ 250,000	\$ -	\$ (250,000)
44	North Huron Transmission Main - to interconnect the North Huron development corridor between 136th and 148th Avenues. These transmission mains are necessary to support the infrastructure for commercial development in this area.	\$ 700,000	\$ 1,900,000	\$ 1,200,000

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
45	Wtr Storage Tank Major Repair - for major water storage tank repair and maintenance activities located at the City's 11 major water storage facilities. Repairs will include structural, tank painting, and seismic upgrades.	\$ 200,000	\$ -	\$ (200,000)
46	128th & Pecos Diversion - for the construction of approximately 250 lf of 30-inch sanitary sewer near 128th Ave and Pecos Street. The sanitary sewer diversion will reroute the original BDC interceptor to the newer, larger BDC parallel interceptor and remove the flow from the original interceptor.	\$ 175,000	\$ 175,000	\$ -
47	Local Sewer Line Replacement - for the repair or replacement of deteriorated local sanitary lines by trenchless technology or conventional replacement methods.	\$ 200,000	\$ 200,000	\$ -
48	Reclaimed Line: Huron Street - Reclaimed Plant - 132nd - this project is currently in progress and being funded by the Water Reclamation account. This project is being proposed to be separated out for accounting purposes.	\$ -	\$ 340,000	\$ 340,000
49	Reclaimed Line: Bull Canal - 132nd - 136th - this project is currently in progress and being funded by the Water Reclamation account. This project is being proposed to be separated out for accounting purposes.	\$ -	\$ 700,000	\$ 700,000
50	Semper WTF Sedimentation Basin Improvements - for the repair and replacement of the tube settlers at the Semper WTF. Plate settlers will replace the current tube settler technology. This project is in the RFP process and being funded out of the Semper Optimization account.	\$ -	\$ 2,500,000	\$ 2,500,000
51	88th/Zuni Lift Station - This improvement is currently in design and is proposed to be funded from reserve.	\$ -	\$ 250,000	\$ 250,000
52	115th/Wolff Water and Reclaimed Lines - This improvement is currently in design as part of the extension of Wolff Street between 115th and 116th Avenues and is proposed to be funded from reserves. The water line is to loop the system and provide redundancy, while the reclaimed line is for the future park.	\$ -	\$ 100,000	\$ 100,000
UTILITY FUND - CAPITAL - TOTAL		\$ 48,788,853	\$ 48,144,968	\$ (643,885)

UTILITY FUND - Studies or Other

ITEM NO.	PROJECT TITLE/DESCRIPTION	AUTHORIZED BUDGET	REVISED ESTIMATED BUDGET	NET CHANGE (+/-)
1	Reclaimed Master Plan	\$ -	\$ -	\$ -
2	Water Purchases - to actively pursue irrigation company water shares to accommodate growth projections and to protect its interest in Standley Lake. The City will actively pursue the purchase available direct water supply and other ditch rights for augmentation and exchange purposes.	\$ 1,580,798	\$ 218,750	\$ (1,362,048)

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
3	Water/Wastewater Master Plan - for the updating of the Water and Wastewater Facilities Master Plan.	\$ 150,000	\$ 74,813	\$ (75,187)
4	Standley Lake Water Quality - to fund ongoing study and evaluation of the quality of the water supply in Standley Lake.	\$ 1,098,648	\$ -	\$ (1,098,648)
5	Water Project Reserve	\$ 1,886,793	\$ 4,431,087	\$ 2,544,294
6	Environmental Grant - for conducting a study of the Big Dry Creek Basin to assist in maintaining the environmental stability of the area.	\$ 27,821	\$ 27,821	\$ -
7	Capital Depreciation	\$ 496,777	\$ -	\$ (496,777)
8	LDC Interceptor Sewer - to study and carryout improvements to the Little Dry Creek Sewer System.	\$ 1,650,000	\$ 579,228	\$ (1,070,772)
9	Wastewater Project Reserve	\$ 324,325	\$ 2,202,608	\$ 1,878,283
10	Maintenance Management Computer System - for the purchase and implementation of a computerized maintenance management system utilizing the latest technology for asset and resource management, improved customer service and better management of all maintenance tasks.	\$ 550,000	\$ 550,000	\$ -
11	Utility Fund Fiscal Model - for the upgrade of the Utility Fund long-term financial plan.	\$ 138,000	\$ 138,000	\$ -
12	Strasburg Natural Resource Farm (SNRF) Property Purchase - for the purchase of additional parcel of land adjacent to the SNRF for the application of City biosolids.	\$ 346,670	\$ 346,670	\$ -
13	Big Dry Creek Interceptor Sewer I&I Improvements - to reduce infiltrations and inflow into the Big Dry Creek sewer basin. It is intended to reduce the number of customer sewer backups in the event of a severe rain. This project will require a mix of sewer replacement, sewer rehabilitation and source reduction.	\$ 675,000	\$ 334,740	\$ (340,260)

**Department of Public Works and Utilities
CIP Management Worksheet**

ITEM NO.	PROJECT TITLE/DESCRIPTION	CURRENT AUTHORIZED BUDGET	RECOMMENDED REVISED BUDGET	NET CHANGE (+/-)
14	Reclaimed Water Treatment Plant Expansion - to study northern City service options and finalize service alternatives.	\$ 50,000	\$ 50,000	\$ -
15	Thornton Water Replacement - to replace the annual volume of water supply lost due to the reduction of the treated water contract negotiated with Thornton in 2004. This will include the purchase of additional water rights, expanding the reclaimed water system and water conservation efforts.	\$ 3,097,373	\$ 3,097,373	\$ -
16	Northgate Main Extensions - to support the anticipated Northgate Redevelopment project. This main will provide a redundant feed into the project area and help increase fire flow available to the site from the City's water distribution system.	\$ 225,000	\$ 75,000	\$ (150,000)
17	Water Meter Transponder Replacement - to begin replacing customer water meters that are at the end or near the end of their useful life. Meters of selected ages and in selected meter routes will be replaced in a programmed of replacing meters as they approach the end of their useful life.	\$ 500,000	\$ 500,000	\$ -
18	Special Assessments MWRD Capital - to pay for tap fees charged by the Metro District for taps sold in the LDC basin.	\$ 100,000	\$ 100,000	\$ -
19	Water Master Plan and Modeling	\$ -	\$ 500,000	\$ 500,000
20	Wastewater Master Plan and Modeling	\$ -	\$ 200,000	\$ 200,000
21	Biosolids Program	\$ -	\$ 115,000	\$ 115,000
UTILITY FUND - STUDIES OR OTHER - TOTAL		\$ 12,897,205	\$ 13,541,090	\$ 643,885
UTILITY FUND TOTAL		\$ 61,686,058	\$ 61,686,058	\$ (0)

Decrease in requested funds

Increase in requested funds

No Change



Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
May 23, 2005



SUBJECT: Councillor's Bill No. 28 re Certificates of Participation for Interchange at 144th Avenue and I-25

Prepared By: Robert Smith, Treasury Manager

Recommended City Council Action:

Pass Councillor's Bill No. 28 as an emergency ordinance appropriating \$17,666,817 in the General Capital Improvement Fund for the 2005 Certificates of Participation (COPs) proceeds.

Summary Statement:

- On November 8, 2004 Council approved an IGA with the City of Thornton to cooperate in the construction of an interchange at the intersection of 144th Avenue and Interstate 25 and the sharing of related project costs.
- On April 11, 2005, City Council authorized the issuance of up to \$18.5 million in lease-purchase financing (COP's) to construct the eastern half of the interchange at 144th Avenue and I-25
- On May 12, 2005, the COP's were issued.
- The COP's proceeds need to be appropriated in the General Capital Improvement Fund.

Expenditure Required: \$17,666,817

Source of Funds: Proceeds from the issuance of COP's

Policy Issue

Does City Council support amending the appropriations for the 2005 budget of the General Capital Improvement Fund?

Alternative

The alternative would be to not amend the 2005 budget appropriations for the General Capital Improvement Funds. Staff does not recommend this alternative as the City's books would not properly reflect the receipt of these proceeds.

Background Information

On November 8, 2004 Council approved an IGA with the City of Thornton. The 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 has issued to finance the western half and COP's the City has issued to finance the eastern half of the interchange. The total cost to construct the interchange is expected to be about \$28 million. Capitalized interest of \$1.46 million will be used to pay approximately two years of COP debt service payments until commercial development generates sufficient tax increment to make the debt payments. Under the IGA, Thornton agrees to use the 1/3 share of the sales tax revenue it will receive Westminster according to the revenue sharing IGA between the two cities to pay for its share of the COP debt service.

In order to properly reflect the receipt of the COP proceeds, the 2005 budget of the General Capital Improvement Fund needs to be amended.

This action is being taken as an emergency ordinance. Because of the necessity to close the financing for the 144th Ave Interchange and Retail projects on May 13, 2005 pursuant to the Final Development Agreement for this project with the developer, Forest City, and because certain costs were not provided for in the sizing of this financing and were deferred until after closing, a forthwith appropriation of funds for these expenses is necessary to proceed with the projects in a expeditious manner.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Supplemental Appropriation Ordinance

BY AUTHORITY

ORDINANCE NO. **3210**

COUNCILOR'S BILL NO. **28**

SERIES OF 2005

INTRODUCED BY COUNCILLORS

A BILL

FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$17,666,817 which, when added to the fund balance as of the City Council action on May 23, 2005 will equal \$25,735,467. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. The appropriation is due to the receipt of 2005 Certificates of Participation proceeds.

Section 2. The \$17,666,817 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Source	7500.46010.0000	\$0	<u>\$17,666,817</u>	\$17,666,817
Total Change to Revenues			<u>\$17,666,817</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
COPs 144 th Interchange	80568030713.80400.8888	\$0	<u>\$17,666,817</u>	\$17,666,817
Total Change to Expenses			<u>\$17,666,817</u>	

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

Section 4. This ordinance shall take effect upon its passage after the first reading. Because of the necessity to close the financing for the 144th Ave Interchange and Retail projects on May 13, 2005 pursuant to the Final Development Agreement for this project with the developer, Forest City, and because certain costs were not provided for in the sizing of this financing and were deferred until after closing, a forthwith appropriation of funds for these expenses is necessary and an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on May 23, 2005, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

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

INTRODUCED, PASSED, ADOPTED AS AN EMERGENCY ORDINANCE on the 23rd day of May, 2005.

Mayor

ATTEST:

City Clerk

Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, May 23, 2005. Mayor McNally, Councillors Davia, Dittman, Dixion, Hicks, and Price were present at roll call. Mayor Pro Tem Kauffman was absent.

The minutes of the May 9, 2005 meeting were approved.

Council approved the following: April 2005 financial report; Bond Counsel Services Agreement re CWRPDA \$16M Water Revenue Loan; IGA re Quail Creek Floodplain Study; Amended Design and Construction IGA re 144th Avenue/Interstate 25 Interchange; Insurance Report for 3rd & 4th Quarters of 2004; Median Renovation Contract Award; Foster Property Drainage Agreement and the Foster Property Amended PDP.

The following Councillors' Bills were adopted on first reading:

A BILL FOR AN ORDINANCE VACATING AN 80-FOOT DRAINAGE EASEMENT AND A 16-FOOT UTILITY EASEMENT WITHIN LOTS 9 AND 10 OF THE BALL CAMPUS SUBDIVISION. Purpose: vacate easements not needed based on proposed development.

A BILL FOR AN ORDINANCE AMENDING THE 2005 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND Purpose: funding of Farmers' High Line Canal Trail Construction between 91st Ave. and Wadsworth Pkwy and 92nd Ave and Pierce St.

A public hearing was held re the Foster Property First Amended PDP – Lowe's.

Council adopted Resolution No. 20 approving appointments to Boards and Commissions and Resolution No. 21 re Utility Fund Capital Improvement Project funding modifications.

The following Councillor's Bill was adopted as an emergency:

A BILL FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND. Purpose: appropriating proceeds from the issuance of COPs for 144th Ave and I-25 Interchange.

At 8:20 p.m. the meeting was adjourned.

By order of the Westminster City Council
Linda Yeager, MMC, City Clerk
Published in the Westminster Window on June 2, 2005

BY AUTHORITY

ORDINANCE NO. **3210**
 SERIES OF 2005

COUNCILOR'S BILL NO. **28**
 INTRODUCED BY COUNCILLORS
DITTMAN- DIXION

A BILL FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND.

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Section 4. This ordinance shall take effect upon its passage after the first reading. Because of the necessity to close the financing for the 144th Ave Interchange and Retail projects on May 13, 2005 pursuant to the Final Development Agreement for this project with the developer, Forest City, and because certain costs were not provided for in the sizing of this financing and were deferred until after closing, a forthwith appropriation of funds for these expenses is necessary and an emergency is declared to exist, and this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety. Wherefore, this ordinance shall be in full force and effect upon adoption of this ordinance on May 23, 2005, by an affirmative vote of six of the members of the Council if six or seven members of the Council are present at the meeting at which this ordinance is presented, or by an affirmative vote of four of the members of the Council if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

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

INTRODUCED, PASSED, ADOPTED AS AN EMERGENCY ORDINANCE on the 23rd day of May, 2005.