



WESTMINSTER  
COLORADO

June 23, 2003  
7:00 P.M.

## 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 5) 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. Presentations
  - A. Proclamation re Kyle Sleeth
  - B. Recognition of Human Services Board Member Jerry Hersey
5. Citizen Communication (5 minutes or less)
6. Report of City Officials
  - A. City Manager's Report
7. City Council Comments

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. May Financial Report
  - B. 2002 Comprehensive Annual Financial Report
  - C. Special Real Estate Legal Counsel
  - D. Construction of Buildings over the Sedimentation Basins at the Semper Water Treatment Facility
  - E. Councillor's Bill No. 30 re 112<sup>th</sup> & Federal Intersection Project (Dittman-Atchison)
  - F. Councillor's Bill No. 31 re 2003 CDBG Fund Appropriation (Dittman-McNally)
  - G. Councillor's Bill No. 32 re Carroll Butts Park & Big Dry Creek Trails (Hicks-Dittman)
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Public Hearing re Rezoning, PDP and ODP for the Fuller and Sons Subdivision
  - B. Councillor's Bill No. 33 re rezoning of the Fuller and Sons property
  - C. Preliminary and Official Development Plan within the Fuller and Sons Planned Unit Development
  - D. Undergrounding requirements within the Fuller and Sons Planned Unit Development
  - E. Resolution No. 22 re Land Exchange with Beau and Allen, LLC
  - F. Mandalay Town Center Redevelopment Agreement
  - G. Councillor's Bill No. 34 re Supplemental Appropriation for Faversham Park
  - H. Resolution No. 23 re Westminster Housing Authority Participation in CIRSA
  - I. Councillor's Bill No. 35 re Appropriation of 2002 Carryover Funds Into 2003
11. Old Business and Passage of Ordinances on Second Reading
  - A. Councillor's Bill No. 29 re Church Ranch Hotel Co II LLC Agreement (Kauffman-McNally)
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
  - A. Citizen Communication – Richard Peddie re Drainage Issue
  - B. City Council
  - C. Executive Session
    1. Negotiation on property acquisition pre meeting
13. Adjournment

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

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

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, JUNE 23, 2003 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Mayor Moss led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL

Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman and McNally were present at roll call. J. Brent McFall, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk, were also present. Absent none.

CONSIDERATION OF MINUTES

Councillor Dittman moved, seconded by Councillor McNally to approve the minutes of the meeting of June 9, 2003 with no corrections or additions. The motion carried unanimously.

PRESENTATIONS

Mayor Moss recognized Kyle Sleeth for being drafted by the Detroit Tigers as the third overall pick in the Major League Baseball first year player draft, and Councillor Dittman presented a proclamation to Kyle Sleeth.

Mayor Moss presented a certificate of appreciation to Jerry Hersey in recognition of his service on the Human Services Board.

CITY MANAGER COMMENTS

Brent McFall, City Manager, commented on Kyle Sleeth being the 3<sup>rd</sup> selection overall in amateur baseball. He also requested that an item be added to the agenda, item 10J, an Amendment to the IGA with WEDA to advance funds for land acquisition for Mandalay Gardens project acted on by City Council at the June 9, 2003 meeting.

CITY COUNCIL COMMENTS

Councillor Dixon commented on the CML Conference in Pueblo she attended with Butch Hicks and Nancy McNally.

Mayor Moss commented on the Fishing Clinic at City Park.

Councillor Hicks commented on the positive comments received at the CML conference in reference to shopping in Westminster and the Promenade.

Councillor McNally thanked the city for allowing Staff to participate in CML.

CONSENT AGENDA

The following items were considered as part of the consent agenda: May Financial Report, 2002 Comprehensive Annual Financial Report, Special Real Estate Legal Counsel with Barbara Banks not to exceed \$40,000; Construction of Buildings over the Sedimentation Basins at the Semper Water Treatment Facility with J.C. Brooks & Co. for \$435,235; CB No. 30 re 112<sup>th</sup> & Federal Intersection Project; CB No. 31 re 2003 CDBG Fund Appropriation; and CB No. 32 re Carroll Butts Park & Big Dry Creek Trails.

The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

Councillor McNally moved, seconded by Councillor Hicks to adopt the consent agenda items as presented. The motion carried unanimously.

PUBLIC HEARING RE NORTHEAST CORNER OF 80<sup>TH</sup> AVENUE AND SHERIDAN BLVD:

At 7:26 P.M. the public hearing was opened for the Fuller and Sons Subdivision, located at the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard. Dave Shinneman, Planning Director, entered the following information into the record: a copy of the Agenda Memorandum, and other related items. Mark Brazee, of Pahl-Pahl-Pahl Architects and Dave Fuller, owner of the property addressed Council and spoke in favor of this application. No one spoke in opposition. The public hearing was declared closed at 7:58 P.M.

COUNCILLOR'S BILL NO. 33 RE REZONING OF FULLER AND SONS PROPERTY

Councillor Dittman moved, seconded by Dixon to adopt Councillor's Bill 33 on first reading rezoning the Fuller and Sons property located at the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard from C1, Commercial District, to Planned Unit Development to allow C1 uses and a muffler shop. This recommendation is based upon the findings set forth in Section 11-5-3 of the Westminster Municipal Code. Upon roll call vote, the motion carried unanimously.

PDP/ODP WITHIN THE FULLER AND SONS PLANNED UNIT DEVELOPMENT

Councillor Dittman moved, seconded by Dixon to approve the Fuller and Sons Preliminary and Official Development Plan (PDP/ODP) within the Fuller and Sons Planned Unit Development, located at the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard. This recommendation is based on the findings set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code. The motion carried unanimously.

WAIVE UNDERGROUNDING REQUIREMENTS WITHIN FULLER AND SONS PUD

Councillor Dittman moved, seconded by Kauffman to waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the north property boundary based on the findings set forth in Section 11-6-3(E). A friendly amendment was made by Mayor Pro-Tem Atchison to add that the City reserves the right to create a Special Improvement District if the need arises in the future so that all property owners could participate in undergrounding utilities. The amendment was accepted by the maker and second. The motion carried unanimously as amended.

RESOLUTION NO. 22 RE LAND EXCHANGE WITH BEAU AND ALLEN LLC

Mayor Pro-Tem Atchison moved, seconded by Hicks to adopted Resolution No. 22 authorizing the transfer of \$100,000 from the Economic Development Division Contractual Services Account to the City's General Fund Contingency account. Upon roll call vote, the motion carried unanimously.

MANDALAY TOWN CENTER REDEVELOPMENT AGREEMENT

Mayor Pro-Tem Atchison moved, seconded by Hicks to authorize the Mayor to execute a Redevelopment Agreement with RED Development Company, in substantially the same form as the June 23<sup>rd</sup> attachment, concerning the Mandalay Town Center Project, and authorize the City Manager to approve such further modifications to this agreement prior to its execution by the Mayor to the extent such modifications do not result in additional monetary obligations on the part of the City. Alan Miller, Special Projects Director, addressed Council. The motion carried unanimously.

COUNCILLOR'S BILL NO. 34 RE SUPPLEMENTAL APPROPRIATION FOR FAVERSHAM PARK

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 34 on first reading appropriation \$74,775 from the Colorado Division of Wildlife for Faversham Park Improvements into the General Capital Improvement Fund, increasing the total project to \$355,775. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 23 AUTHORIZING WHA PARTICIPATION IN CIRSA

Councillor Hicks moved, seconded by McNally to adopt Resolution No. 23 authorizing Westminster Housing Authority participation in the Colorado Intergovernmental Risk Sharing Agency (CIRSA). Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 35 RE APPROPRIATION OF FY2002 CARRYOVER FUNDS INTO FY2003

Councillor Kauffman moved, seconded by McNally to pass Councillor's Bill No. 35 on first reading appropriating FY 2002 carryover funds into the FY2003 budgets of the General, Fleet, General Capital Improvement, General Reserve, General Capital Outlay Replacement, Utility, and Open Space Funds. Upon roll call vote, the motion carried unanimously.

AMENDMENT TO IGA WITH WEDA

Mayor Pro-Tem Atchison moved, seconded by Dixon to authorize the Mayor to execute an Intergovernmental Agreement with the Westminster Economic Development Authority (WEDA) to advance \$11,500,000 through the use of short term cash in the General Capital Improvements Fund for the purchase of 20 parcels of land to further the Mandalay Gardens Town Center project, contingent on receipt by the City not later than the close of business on June 25, 2003, of an executed Letter of Intent between Target and RED Development Company for the construction of a Target Super Store at the Mandalay Gardens Town Center. These funds shall be repaid to the City no later than December 31, 2003. The motion carried unanimously.

SECOND READING CB NO. 29 RE AMENDMENT TO CHURCH RANCH HOTEL CO BAP

Councillor Dittman moved, seconded by Atchison to pass Councillor's Bill No. 29 on second reading authorizing the City Manager to execute the amendment to the business assistance package (BAP) between the City of Westminster and Church Ranch Hotel Company I, LLC (CRHC I) and Church Ranch Hotel Company II LLC (CRHC II). Upon roll call vote, the motion carried with Mayor Moss abstaining and a dissenting vote from Atchison.

CITIZEN COMMUNICATION – RICHARD PEDDIE RE DRAINAGE ISSUE

Richard Peddie, Attorney, Bill Taggart, Water Engineer, and Kathy McGuire, 1624 W 128<sup>th</sup> Avenue, addressed Council regarding the property located at 1624 West 128<sup>th</sup> Avenue.

Kathy Dawson, 1677 Dexter St, President of Prairie Dog Action, Jan & David Culverson, and Gloria & Chuck Davis, 11750 Fenton St, addressed Council regarding the prairie dog colony at Windsor Park, asking for a 2-3 month moratorium so they can try to relocate the prairie dogs.

ADJOURNMENT:

The meeting was adjourned at 8:57 P.M.

ATTEST:

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

\_\_\_\_\_  
Mayor



## Agenda Item 4 A

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003

**SUBJECT:** Proclamation re Kyle Sleeth

**Prepared By** Michele Kelley, City Clerk

**Recommended City Council Action:**

Present a Proclamation to Kyle Sleeth.

**Summary Statement:**

The purpose of this Proclamation is to recognize Kyle Sleeth, a Westminster resident for being selected by the Detroit Tigers with the third overall pick in the Major League Baseball first-year player draft. Kyle is a 2000 graduate of Northglenn High School and a right-handed pitcher.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Proclamation re Kyle Sleeth

Page 2

**Policy Issue:**

No policy issues identified.

**Alternatives:**

None Identified.

**Background Information:**

Recently, the Major League Baseball draft was held and Kyle Sleeth, a Westminster resident was the third pick in the first round going to the Detroit Tigers.

Kyle has been attending Wake Forest and will leave school to join the Detroit Tigers minor league system soon.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

WHEREAS, Kyle Sleeth is currently a Westminster resident, who attended Northglenn High School, graduating in 2000; and

WHEREAS, Kyle Sleeth attended college at Wake Forest, with 31 wins and 6 losses his first year and a 3.47 earned run average and 271 strikeouts in 293 games in his three years with the Demon Deacons; and

WHEREAS, Kyle Sleeth also had a 14-0 record in the spring of 2002 at Wake Forest; and

WHEREAS, Kyle Sleeth was selected to Team USA last summer, becoming the first pitcher in Team USA history to throw two complete shutouts in the same summer; and

WHEREAS; Kyle Sleeth has tied the NCAA record for consecutive winning decisions with 26. He ended this spring at 7-3 with a 2.81 ERA and 102 strikeouts in 96 innings.

NOW, THEREFORE, I, Ed Moss, Mayor of the City of Westminster, on behalf of the entire City Council and Staff hereby recognize Kyle Sleeth for his baseball accomplishments in the past, and wish him well in his future endeavors with Major League Baseball.

Signed this 23<sup>rd</sup> day of June, 2003.

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Ed Moss, Mayor





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Recognition of Service Human Services Board Member Jerry Hersey

**Prepared By:** James Mabry, Human Services Board Staff Liaison

**Recommended City Council Action**

Present a Certificate of Recognition to Jerry Hersey in recognition of his dedicated service on the Human Services Board.

**Summary Statement**

- The City Council is requested to present a Certificate of Recognition to Jerry Hersey for service on the Human Services Board.
- Mr. Hersey recently resigned his position on the Human Services Board.
- Mr. Hersey served on the Board from December 2001 until February 2003.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

None identified.

**Alternative**

None identified.

**Background Information**

Jerry Hersey was appointed to the Human Services Board on December 10, 2001. Mr. Hersey served as a contributing member of the Human Services Board in reviewing grant applications and making funding recommendations to City Council.

Mr. Hersey resigned on May 2003 from the Human Services Board due to health problems.

Respectfully submitted,

J. Brent McFall  
City Manager



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
June 23, 2003



**SUBJECT:** Financial Report for May 2003

**Prepared By:** Mary Ann Parrot, Finance Director

**Recommended City Council Action**

Accept the Financial Report for May as presented.

**Summary Statement**

City Council is requested to review and accept the attached monthly financial statement and monthly revenue report. The Shopping Center Report is also attached to this monthly financial report; this reflects April sales and use tax receipts received in May. A summary of key points of the shopping center report is as follows and shows mixed results from April to May: overall returns have improved slightly, while the Westminster Mall is down.

MONTH	April-03	May-03	YTD	April-03	May-03
Top 25 Ctrs			Top 25 Ctrs		
S&U Tx	-9%	-7%	S&U Tx	-7%	-7%
STX Returns Only	-10%	-8%	STX Returns Only	-8%	-8%
Westminster Mall	-7%	-20%	Westminster Mall	-10%	-11%

Key features of the monthly financial report for May are as follows:

- At the end of May, five months of 12 months of the year have passed. This is 41.7% of the year.
- The Sales and Use Tax Fund revenues are currently \$1,148,217 under pro-rated budget for the year. The May figures reflect the sales in April, tax receipts received in May. Sales tax returns are down for May 2003 compared to May 2002 by 4.0% for the month and 2.6% year-to-date, or \$443,390 below May year-to-date 2002. The reasons for this continued negative trend are the recessionary economy aggravated by the war in Iraq and the March blizzard in Colorado. This includes Vendor Fee income of \$280,280.
- For the entire Sales and Use Tax Fund (Sale and Use Tax Returns and Audits), the fund is 2.6% below last year on a year-to-date basis. If this trend continues, the fund will be under budget by approximately \$2.75 to \$3.0 million. Staff presented and City Council concurred in a series of actions to address this shortfall and Staff will keep City Council apprised.
- The General Fund revenue is currently 102% of pro-rated budget for five months, the same as in last month's report assisted by positive variances in property tax collections and licenses and permits.

## **Policy Issues**

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.

## **Alternatives**

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

## **Background Information**

This section is broken down into a discussion of highlights of each fund presented.

For revenues, a positive indicator is a pro-rated budget percentage at or above 100%. For expenditures, a positive indicator is a pro-rated budget percentage that is below 100%.

### 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 such as City Manager, City Attorney, Finance, and General Services.

At the end of May, the General Fund is in the following position regarding both revenues and expenditures:

- Revenues over pro-rated budget (102% of budget) by \$474,327. This reflects the full budgeted transfer of funds from the Sales and Use Tax fund to the General Fund, which Staff is projecting will come in under budget.
- Expenditures under pro-rated budget (78% of pro-rated budget) by \$6.1 million. This is due to several factors: expenditures do not flow evenly during the year, 38 positions are still frozen and the salary savings are included in these numbers and lastly, the unspent contingency funds are reflected in Central Charges.

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

These funds are the repositories for the 3.25% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the Capital Projects 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. At the end of May, the position of these funds is as follows:

- Sales & Use Tax Fund revenues are under pro-rated budget (94.6% of pro-rated budget) by \$1,148,217.
- Sales & Use Tax Fund expenditures are even with pro-rated budget because of the transfers to the General Fund, Debt Service Fund and General Capital Improvement Fund.
- Open Space Sales & Use Tax Fund revenues are slightly over pro-rated budget (100.5% of pro-rated budget) by \$8,408, due primarily to receipt of Great Outdoors grant revenues in the month of May for a Big Dry Creek acquisition.
- Open Space Sales & Use Tax Fund expenditures are under pro-rated budget (94% of pro-rated budget) by \$120,545, due primarily to uneven expenditures for land acquisitions, which do not flow evenly each month.

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. At the end of May, the Enterprise is in a positive position.

- Combined Water & Wastewater revenues are over pro-rated budget (103% of budget) by \$324,222:
  - Water revenues over pro-rated budget (102% of pro-rated budget) by \$173,003, due primarily to a tap fee income variance of \$1,058,495. This offsets a negative variance in interest income due to GASB31 reporting and decreased water sales due to water restrictions in place through May 30. Note that income from rates and charges is under pro-rated budget due to conservation practiced by citizens during the month. The interest income is negative due to year-end adjustments from 2002 that carry over into 2003.
  - Wastewater revenues over pro-rated budget (104% of pro-rated budget) by \$151,219.
  - Storm Water Drainage revenues over pro-rated budget (102% of pro-rated budget) by \$7,842.
- Combined Water & Wastewater expenses are under pro-rated budget (68% of budget) by \$3.4 million due primarily to under-spending in capital at this time of year:
  - Water expenses under pro-rated budget (72% of pro-rated budget) by \$2.0 million.
  - Wastewater expenses under pro-rated budget (58% of pro-rated budget) by \$1.4 million.
  - Storm Water Drainage expenses under pro-rated budget (60% of pro-rated budget) by \$39,243.

Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City's two municipal golf courses. Starting last month, the report for the Golf Courses showed an adjustment for the impact of the 1997 Sales Tax Bonds. The 1997 Sales Tax Bonds are not a legal obligation of the Legacy Golf Course. The Legacy Ridge statement reflects Operating Income and Net Income. The difference is that Operating Income does not reflect debt service while Net Income does reflect debt service. By showing the debt service separately, this will indicate the operating performance of the golf courses as a whole. This is highlighted in the footnotes:

- Combined Enterprise operating income - actual, year to date, without the impact of debt service for Legacy - is a deficit of \$136,548, an improvement from last month's operating deficit of \$306,577.
- Combined Enterprise net income - actual, year to date, with the impact of debt service for Legacy - is a deficit of \$273,664, an improvement from last month's net deficit of \$416,270.
- Legacy – Revenues are under pro-rated budget (93% of pro-rated budget) by \$36,837.
- Legacy – Expenses are under pro-rated budget (86% of pro-rated expenses) by \$81,246.
- Heritage – Revenues are under pro-rated budget (87% of pro-rated budget) by \$63,462.
- Heritage – Expenses are over pro-rated budget (132% of pro-rated budget) by \$131,708, due mostly to equipment lease payments due in April.

Staff will attend the June 23rd City Council Meeting to address any questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

**City of Westminster  
Financial Report  
For the Five Months Ending May 31, 2003**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget Pro-rated	% Pro-Rated Budget
<b>Golf Courses Combined</b>						
<b>Revenues</b>						
Charges for Services	3,720,676	1,010,230	(1)	912,167	(98,063)	90%
Interest Income	0	0		(1,786)	(1,786)	
Miscellaneous	0	0		0	0	
Refunds	0	0		0	0	
<b>Total Revenues</b>	<u>3,720,676</u>	<u>1,010,230</u>		<u>910,381</u>	<u>(99,849)</u>	90%
<b>Expenses</b>						
Central Charges	158,150	65,896		111,062	45,166	169%
Recreation Facilities	2,733,408	930,571	(2)	935,867	5,296	101%
<b>Total Expenses</b>	<u>2,891,558</u>	<u>996,467</u>		<u>1,046,929</u>	<u>50,462</u>	105%
Operating Income (Loss)	829,118	13,763		(136,548)	(150,311)	
Debt Service Expense	829,117	137,116	(3),(4)	137,116	0	100%
<b>Revenues Over(Under) Expenditure</b>	<u>1</u>	<u>(123,353)</u>		<u>(273,664)</u>	<u>(150,311)</u>	

- (1) Revenues pro-rated based on a 6 yr history of revenues per month. Based on this history, Charges for Services are projected at 29.6% for Legacy and 25% for Heritage for May. During May, the revenue budget was corrected between Legacy and Heritage to match each respective course's expenditures. Legacy's revenues were decreased by \$195,605 and Heritage's revenues were increased by \$195,605. The combined budget for the courses did not change.
- (2) Expenses projected at 5/12 per month or 41.67%.
- (3) Debt service payments due in Year 2003 are \$429,079. Net of a \$100,000 subsidy, for Legacy, debt service will be \$339,079. Debt service for Heritage is \$500,038 for the year.  
For Legacy, 1/12 of the debt services is transferred to the Debt Service Fund each month. This transfer is reflected in both Budget figures above. For Heritage, the debt service is payable in June and December and will be reflected in the pro-rated budget at that time. This presentation should give the reader a clearer picture of the results of operations.
- (4) Because the 1997A Sales and Use Tax Revenue Bonds are not a legal liability of the Golf Course Fund, the principal and interest that was recorded in Legacy Ridge was removed and recorded in the General Long Term Debt Account Group. However, Legacy is making monthly transfers to the Debt Service fund as noted above to assist in the payment of principal and interest. In order for the reader to get



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
June 23, 2003



**SUBJECT:** 2002 Comprehensive Annual Financial Report

**Prepared by:** Tammy Hitchens, Accounting Manager

**Recommended City Council Action:**

Accept the 2002 Comprehensive Annual Financial Report (CAFR).

**Summary Statement**

In June 1999, the Governmental Accounting Standards Board (GASB) approved “Basic Financial Statements and Management’s Discussion and Analysis for State and Local Governments” (Statement #34). This Statement provides for the most significant change in financial reporting in over twenty years. Staff along with Jack Schroeder and Neil Schilling of Clifton Gunderson LLP, the City’s independent auditors, presented the 2002 CAFR to City Council at the Study Session on June 2.

The CAFR has changed significantly from previous years. The major changes include:

- Addition of Management’s Discussion and Analysis (MD&A) of the financial report
- Addition of entity-wide statements for the City as a whole in addition to the fund financial statements
- A focus on the “major” funds of the City
- A focus on the “net assets” of the City rather than “equity”
- A focus on the “net cost” of a function or activity
- Elimination of individual fund statements, although all individual funds are shown in the CAFR
- Elimination of the “continuing bond disclosure” document that will be issued under separate cover
- Inclusion of capital assets, including infrastructure, and long-term debt in the governmental activities column of the entity-wide statements
- Elimination of inter-fund activity on the entity-wide statements
- Restriction of net assets only if restricted by law or outside contract

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The City has received an unqualified opinion from Clifton Gunderson LLP. This means the CAFR represents fairly the financial position of the City. There also is no management letter to be delivered by Clifton Gunderson to the City Manager; this is a positive occurrence, as it means that nothing in the audit rose to the level that it should be brought to City Council’s attention.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Section 9.10 of the City Charter requires that an independent audit be made at least annually in accordance with generally accepted accounting principles as they pertain to governments for all funds reported in the comprehensive annual financial report. Such audit shall be made by Certified Public Accountants, experienced in municipal accounting. This audit was performed by Clifton Gunderson, LLP, Certified Public Accountants. Will City Council accept the report as presented?

**Alternative**

Require staff to make changes to the report. Minor changes could be made to the report without affecting the audit opinion. Major changes may cause the report to not be in compliance with generally accepted accounting principles as they pertain to governments and could result in a change of the auditor's opinion.

**Background Information**

Every year Finance staff prepares a CAFR. An independent auditor spends about 4 weeks each year determining if the CAFR represents fairly the financial position of the City. This year the CAFR presented significant new challenges as the Governmental Accounting Standards Board's Statement 34 was required to be implemented. The Staff primarily responsible for implementing these changes were Accountants Vicki Adams, Cherie Sanchez, and Sam Trevino; Internal Auditor Karen Creager; Accounting Technician Nancy Hankins and Benefits Specialist Kim McDaniel. Without their dedicated efforts, this report would not have happened in a timely manner.

A significant change included the addition of infrastructure assets to the City's books. The Finance staff would like to acknowledge the efforts of the Public Works and Community Development staff who provided the information needed to add the infrastructure. In particular, thanks to Dave Loseman, Steve Baumann, Greg Olson, Mike Normandin, Ray Porter and Pat Kunze.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003

**SUBJECT:** Special Real Estate Legal Counsel

**Prepared By:** Martin R. McCullough, City Attorney  
Steve Smithers, Assistant City Manager

**Recommended City Council Action:**

Authorize the City Manager to enter into an agreement with Ms. Barbara Banks for special legal counsel services in an amount not to exceed \$40,000 for work related to the Center Point/Catellus buy-back agreement, the South Westminster Revitalization Program and general real estate legal advice.

**Summary Statement**

- Staff is recommending that the City Council authorize the City Manager to execute a legal services agreement with Ms. Barbara Banks, of Banks and Imatani, for assistance on non-routine real estate law issues that arise from time to time in the course of negotiating and preparing more complex agreements relative to such projects as the Center Point/Catellus buy-back agreements, the South Westminster Revitalization Program, and further real estate transactions related to future retail proposals.
- When negotiating some of the more complex agreements involving private owners and their lenders, it can be very important to have someone with the appropriate knowledge to respond to representation that something is either required by or objectionable to the owner's lender or is not commercially "reasonable." In addition, some of the increasingly complex and time-sensitive transactions in which the City is finding itself lately often require more than one attorney to handle the project.
- City Council has previously found merit in approving special legal counsel to assist the City Attorney's Office as needed, rather than expanding staff.
- There are several projects on the immediate horizon that will benefit from such assistance, including Mandalay Gardens, further retail development within the Promenade, and various North I-25 economic development efforts.
- Funds for this expense are available in the General Fund, Central Charges Professional Services account.

**Expenditure Required:** Not to exceed \$40,000

**Source of Funds:** 2003 General Fund - Central Charges Budget

**Policy Issue(s)**

Whether to retain special legal counsel to assist in the negotiating and drafting of various agreements involving non-routine real estate law issues.

**Alternative(s)**

City Council could elect not to retain this type of special legal counsel assistance or seek such assistance from another source.

**Background Information**

Ms. Banks is an experienced attorney specializing in real estate law. Ms. Banks is a current member and past chairperson of the Real Estate Section of the Colorado Bar Association. She has written and presented papers on a wide variety of complex real estate issues, including such matters as lender law and “mortgageable ground leases.”

Ms. Banks has previously assisted the City in the negotiations attendant to the Butterfly Pavilion Lease, and was instrumental in completing the joint development agreement, the “condominiumizing agreement” and the conference center lease for the Westin Hotel project. Under the proposed agreement, Ms. Banks is willing to continue her current discounted rate to the City of \$200 per hour. Her regular rate is \$230 per hour.

The City Charter requires City Council approval of all outside legal counsel agreements. City Council previously approved a similar arrangement for specialized legal consulting with Mr. Dee Wisor of Sherman & Howard for public finance and tax law issues. Often, only relatively brief consultations are required, and these type of arrangements afford the opportunity to obtain the necessary advice without holding up progress on the negotiations and structuring of the overall transaction.

Respectfully submitted,

J. Brent McFall  
City Manager

## **CONTRACT FOR LEGAL SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of June, 2003, by and between BANKS & IMATANI, PC (the "Firm") and the CITY OF WESTMINSTER (the "City").

### **RECITALS**

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

### **AGREEMENT**

1. The Firm shall furnish special legal services as needed for work related to the Center Point/Catellus buy-back agreement, the South Westminster Revitalization Program and general real estate legal advice.

2. Barbara Banks shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for the Services at the hourly rate not to exceed \$200.00 per hour.

5. This Contract may be terminated by the City with or without cause.

6. The Westminster City Council authorized this contract on June 23, 2003.

7. Payments for legal services pursuant to this Contract shall not exceed \$40,000.00 without further written authorization by the City.

### **BANKS AND IMATANI, PC**

By \_\_\_\_\_  
Barbara Banks

### **CITY OF WESTMINSTER**

By \_\_\_\_\_  
Brent McFall, City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**Subject:** Construction of Buildings over the Sedimentation Basins at the Semper Water Treatment Facility

**Prepared by:** Kent W. Brugler, Senior Engineer

**Recommended City Council Action**

Authorize the City Manager to execute a contract with J.C. Brooks & Co. for a sum not to exceed \$378,465 plus a project contingency of \$37,847 (10%) to be maintained in a separate account for the construction of two metal building cover structures over the existing south sedimentation basins at the Semper Water Treatment Facility.

**Summary Statement**

- The two south sedimentation basin structures are currently uncovered causing operational difficulties in the winter and exposing the basins to potential security threats.
- Bids were received last year for aluminum structures to cover the basins, but they were rejected due to the cost being higher than budgeted.
- In order to keep within budget, RG Consulting Engineers, Inc. was retained to re-design the covers to reduce cost. Community Development reviewed the new design and approved the use of engineered metal building cover structures with architectural enhancements.
- Competitive Bids were received from six construction firms for the construction of the buildings and related work, and the low bidder was J.C. Brooks & Co. RG Engineers, Inc. evaluated their bid proposal and recommended that the City award the bid to them.
- City Council is requested to authorize the City Manager to enter into an agreement with J. C. Brooks & Co. for the construction of the basin covers.
- Currently, \$1,805,600 is available in the CIP budget for process optimization and facility enhancements at the Semper Water Treatment Facility. This project will encumber \$378,465 of that amount, with a 10% contingency that will be set aside in a separate account. The total project cost is \$416,312, leaving \$1,389,288 for additional improvements including optimization of the flocculation/sedimentation process, upgrade of filters and rehabilitation of older piping and process areas.

**Expenditure Required:** \$435,235

**Source of Funds:** Utility Fund Capital Improvement Budget  
Contingency Funds of \$37,847 will be set aside in a separate account

## **Policy Issue**

Should the City construct building cover structures over the south sedimentation basins at the Semper Water Treatment Facility in order to improve operations and security?

## **Alternatives**

The City could choose to not enter into an agreement with J. C. Brooks & Co. and choose to not construct the basin covers; however, this would not improve the operational difficulties or enhance the water quality security of the basins. The City could choose to award the contract to the next higher bidder, but this would add unnecessary cost to the project.

## **Background Information**

As part of the water treatment process at the Semper Water Treatment Facility, chemically treated raw water flows through eight sedimentation basins, four on the north side of the plant and four on the south side, where the heavier particles settle out. These basins contain plastic tube settler modules that help to remove the particles in the water and a vacuum sludge removal system on the basin floor to remove the settled particles from the basins. The four basins on the north side of the plant were constructed as open tanks in 1969 (1 and 2) and 1973 (3 and 4), and all four basins were covered with two buildings in the mid 1970's. The sedimentation basins on the south side of the plant were constructed as open tanks during expansions in 1985 (5 and 6) and 1998 (7 and 8).

During the winter months when water demand is reduced, typically half of the plant is taken out of service and major maintenance can be performed. However, the south basins have been required to remain in service during the winter due to the damage that can occur to the exposed tube settler equipment from ice and snow accumulation. Also, these basins are located near the south perimeter fence less than 10 feet from a public street, exposing them and the treated water supply to vandalism or other security threats. Consequently, major maintenance has been postponed on the basins since they must be kept in service year round, and they are continually exposed to the possibility of contamination or other vandalism. The recently completed Vulnerability Assessment for the Water Supply System concurred with the recommendation to install covers over the basins to improve the safety and security of the facility.

Several alternatives were considered for covering these basins, including flat woven, fiberglass or metallic covers, aluminum structures, engineered metal buildings or conventional brick/steel buildings. The flat covers were ruled out due to the operational problems they presented, and conventional brick and steel buildings were not able to be supported by the existing basins' structural system. Aluminum structures were chosen at first, due to their low maintenance costs, but bids were received that greatly exceeded the engineer's estimate and the project budget and were rejected. An engineered metal building system was then considered and an acceptable design was developed after working with Community Development Staff. Color schemes were developed and architectural features were included to enhance the appearance of the buildings and to make them blend in with the other buildings on the site. RG Consulting Engineers, Inc. was retained to complete an aesthetically pleasing design package and to solicit bids for the construction of the work. They evaluated the bids, checked the references for J.C. Brooks & Co. and made a recommendation to the City for the award of the contract.

The City of Westminster received bids from the following bidders for the construction of the basin covers:

<u>Bidder</u>	<u>Construction Cost</u>
J.C. Brooks & Co.	\$378,465
Bassett & Associates	\$409,000
Thissen Construction	\$424,845
PV Consulting	\$449,900
Paramount Construction	\$453,655
Denny Construction	\$484,150

The City of Westminster received an engineering construction cost estimate for this project from the design firm RG Consulting Engineers, Inc. in the amount of \$352,250. The total project cost will be \$416,312, including a 10% contingency of \$37,847. Contingency funds will be held in a separate Utilities fund account.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Second Reading of Councillor’s Bill No. 30 re 112<sup>th</sup> Avenue and Federal Boulevard Intersection

**Prepared By:** David R. Downing, City Engineer

**Recommended City Council Action**

Pass Councillor’s Bill No. 30 on second reading, which does the following: Appropriates \$588,202 to the 112<sup>th</sup> Avenue and Federal Boulevard Northeast Intersection project account; authorizes the transfer of \$392,141 from the Sheridan Boulevard, 113<sup>th</sup> Avenue to 118<sup>th</sup> Avenue Project account; authorizes the transfer of \$19,247 from the 92<sup>nd</sup> Avenue/ US 36 On/Off Ramps project; authorizes a payment of \$31,429 from the Reclaimed Customer Connection Account 2003 Utility Fund CIP; with all of the above resulting in a project budget in the amount of \$1,031,019,

**Summary Statement**

- Within the past several months, private development activity has commenced on the properties located at the northeast and the southeast corners of the intersection of 112<sup>th</sup> Avenue and Federal Boulevard. In accordance with the City Code, the developers of properties located adjacent to arterial streets are responsible for the necessary widening of those roadways.
- Since Federal Boulevard is a US Highway (US 287), these developers were required to gain approval of their street construction plans from the Colorado Department of Transportation (CDOT). CDOT officials, sensing potential conflicts with two contractors working in the same intersection at virtually the same time, demanded that all of the work on the 112<sup>th</sup> Avenue and Federal Boulevard intersection be consolidated into a single project. City Staff, who would also like to perform the necessary widening adjacent to the property at the southwest and southeast corner of the intersection at this time, concurs with this approach.
- Construction plans prepared by consultants to the various developers were combined into one bid package, and the project was publicly bid. Seven bids were received and opened, and the lowest bidder was DeFalco Lee Construction Company with a bid of \$855,091.
- Most of the funding for this project will be provided by the developers, either immediately or through future recovery agreements. However, it will be necessary for the City to “front” a substantial portion of the cost as well as pay for certain reclaimed water main, traffic signal and related expenses.
- This Councillor’s Bill was passed on first reading on June 9, 2003.

**Expenditure Required:** \$ 1,031,019

**Source of Funds:** Developer contributions, Utility Fund and General Capital Improvement Fund

Respectfully submitted,

J. Brent McFall  
City Manager

BY AUTHORITY

ORDINANCE NO. **3032**

COUNCILOR'S BILL NO. **30**

SERIES OF 2003

INTRODUCED BY COUNCILLORS  
**Dittman - Atchison**

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$588,202 which, when added to the fund balance as of the City Council action on June 9, 2003 will equal \$10,086,202. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of developer contributions received by the City.

Section 2. The \$588,202 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
<b>REVENUES</b>			
Cash-in-Lieu Future Capital Projects 7500.40210.0751	\$0	<u>\$588,202</u>	\$588,202
Total Change to Revenues		<u>\$588,202</u>	
<b>EXPENSES</b>			
112 <sup>th</sup> Avenue/Federal Blvd NE Intersection Proj 80175030019.80400.8888	\$50,000	\$999,590	\$1,049,590
Sheridan 113 <sup>th</sup> -118 <sup>th</sup> 80175030061.80400.8888	\$4,080,000	(\$392,141)	\$3,687,859
92 <sup>nd</sup> /US 36 On/Off Ramps 80175030056.80400.8888	\$4,621,973	<u>(\$19,247)</u>	\$4,602,726
Total Change to Expenditures		<u>\$588,202</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. 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 9<sup>th</sup> day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.

ATTEST:

\_\_\_\_\_  
Mayor

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





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council  
June 23, 2003



**SUBJECT:** Second Reading of Councillor's Bill No. 31 re 2003 Community Development Block Grant (CDBG) Fund Appropriation

**Prepared By:** Robin Byrnes, Community Development Programs Coordinator

**Recommended City Council Action**

Pass Councillor's Bill No. 31 on second reading for the 2003 CDBG Appropriation Ordinance in the amount of \$696,000.

**Summary Statement**

- City Council action is requested to pass on second reading the attached Councillor's Bill appropriating 2003 Community Development Block Grant (CDBG) funds in the amount of \$696,000, awarded by the U.S. Department of Housing and Urban Development (HUD).
- The 2003 CDBG allocation of \$696,000 was awarded to the 2003 CDBG projects, per City Council approval on November 11, 2002.
- In 2003, the City was allocated \$696,000 from HUD, an increase of \$4,000 from the 2002 CDBG final allocation of \$692,000.
- HUD approved the City's 2003 CDBG Action Plan on May 8, 2003. The 2003 Action Plan is a required submission by HUD that outlines the City's local goals and priorities in regards to the use of the 2003 CDBG allocation and also outlines the 2003 CDBG projects.
- This Councillor's Bill was passed on first reading on June 9, 2003

**Expenditure Required:** \$696,000

**Source of Funds:** 2003 Community Development Block Grant Allocation

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **31**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. This is the initial appropriation for 2003 for the CDBG Fund. The appropriation of \$696,000 is the amount approved by the US Department of Housing and Urban Development (HUD) for the City for 2003.

Section 2. The \$696,000 increase in the CDBG Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Block Grant – CDBG 7600.40610.0025	\$0	<u>\$696,000</u>	\$696,000
Total Change to Revenues		<u>\$696,000</u>	
EXPENSES			
Salaries 76030350.60200.0000	\$0	\$99,779	\$99,779
CDBG – 03 Block Grant 80376030318.80400.8888	\$0	<u>\$596,221</u>	\$596,221
Total Change to Expenditures		<u>\$696,000</u>	

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 9th day of June, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of June, 2003.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Second Reading of Councillor’s Bill No. 32 re Carroll Butts Park Renovation and Big Dry Creek Trails Supplemental Appropriation

**Prepared By:** Julie M. Meenan Eck, Landscape Architect

**Recommended City Council Action:**

Pass Councillor’s Bill No.32 on second reading authorizing a supplemental appropriation in the amount of \$500,000 reflecting the City’s receipt of an Adams County Open Space Grant for Carroll Butts Park renovations in the amount of \$250,000 and reflecting the City’s receipt of an Adams County Open Space Grant for construction of new trails located at Big Dry Creek and I-25 in the amount of \$250,000.

**Summary Statement:**

- In January, 2003, Staff received City Council’s approval to submit a proposal for an Adams County Open Space Grant for improvements to the existing Carroll Butts Park pond area and the proposed trail connection at Big Dry Creek and Quail Creek.
- The City was notified in May, 2003 that it was successful in receiving these Open Space Grants in the total amount of \$500,000.
- The Parks, Recreation and Libraries Department has appropriate matching funds in the 2003 Capital Improvement Program for Carroll Butts Park and the Community Development Department, through the open space fund, has met the matching funds requirement for the Big Dry Creek Trail Extension.
- Hyland Hills has partnered with the City on the Carroll Butts Park Adams County Open Space Grant.
- City Council approved this Councillor’s Bill on first reading on June 9<sup>th</sup>, 2003.

**Expenditure Required:** \$250,000 Joint Venture Grant for Carroll Butts Park  
\$250,000 Joint Venture Grant for Big Dry Creek Trail

**Source of Funds:** Adams County Open Space Grant

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **32**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$500,000 which, when added to the fund balance as of the City Council action on June 9, 2003 will equal \$9,498,000. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of two Adams County Open Space grants.

Section 2. The \$500,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
<b>REVENUES</b>			
OS Grant Adco 7501.40630.0010	\$0	<u>\$500,000</u>	\$500,000
Total Change to Revenues		<u>\$500,000</u>	
<b>EXPENSES</b>			
HH Ice Arena/Carol Butts 80175050032.80400.8888	\$450,000	\$250,000	\$700,000
Trails Development 80175050135.80400.8888	\$402,400	<u>\$250,000</u>	\$652,400
Total Change to Expenditures		<u>\$500,000</u>	

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

Section 4. This ordinance shall take effect upon its passage after the second reading. 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 9<sup>th</sup> day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.

ATTEST:

\_\_\_\_\_  
Ed Moss, Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Public Hearing and Action on the Rezoning, Preliminary and Official Development Plan for the Fuller and Sons Subdivision

**Prepared By:** Daniel E. Osborn, Planner II

**Recommended City Council Action**

1. Hold a public hearing.
2. Pass Councillor's Bill No. 33 on first reading rezoning of the Fuller and Sons property from C1, Commercial District, to Planned Unit Development to allow C1 uses and a muffler shop. This recommendation is based upon the findings set forth in Section 11-5-3 of the Westminster Municipal Code.
3. Approve the Fuller and Sons Preliminary and Official Development Plan (PDP/ODP) within the Fuller and Sons Planned Unit Development. This recommendation is based in the findings set forth in Section 11-5-14 and 11-5-15 of the Westminster Municipal Code.
4. Waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the west property boundary based in the findings set forth in Section 11-6-3(E).

**Summary Statement**

City Council is requested to hold a public hearing and consider the application of Dave Fuller to:

- Rezone the 0.316-acre property from C1, Commercial District, to Planned Unit Development for C1 uses and a muffler shop. The property is currently an abandoned gas station located on the northeast corner at 80<sup>th</sup> Avenue and Sheridan Boulevard.
- Approve the combined PDP/ODP for Fuller and Sons to allow a muffler shop. Staff believes that the proposed PDP/ODP will enhance an existing blighted building. The applicant is proposing to make a number of upgrades to the building and landscaping on the property.
- Waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the property.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

### **Planning Commission Recommendation**

This request was heard by the Planning Commission on June 10, 2003. The Planning Commission voted unanimously (7-0) to:

1. Approve the rezoning of the Fuller and Sons property from C1, Commercial District, to Planned Unit Development for C1 uses and a muffler shop.
2. Approve the Fuller and Sons combined PDP/ODP within the Fuller and Sons Planned Unit Development.
3. Waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the property boundary of the Fuller and Sons site.

### **Policy Issues**

1. Should the City approve the rezoning of the Fuller and Sons property from C1, Commercial District, to Planned Unit Development for C1 uses and a muffler shop?
2. Should the City approve the Fuller and Sons combined PDP/ODP within the Fuller and Sons Planned Unit Development?
3. Should the City waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the property boundary of the Fuller and Sons site?

### **Alternatives**

1. Deny the rezoning based upon a determination that the findings set forth in Section 11-5-3 of the Westminster Municipal Code have not been met.
2. Deny the Fuller and Sons combined PDP/ODP based upon a determination that the findings set forth in Section 11-5-14 of the Westminster Municipal Code have not been met.
3. Deny the request to waive the City Code requirement to underground existing overhead electric and communication lines adjacent to the property boundary of the Fuller and Sons property, based upon a determination that the findings set forth in Section 11-6-3(E) have not been met.

### **Background Information**

This project proposes to rehabilitate an existing abandoned gas station located on the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard. The gas station is currently an eye sore on a key entry corridor into the City of Westminster. The applicant proposes to rehabilitate the existing building and add landscaping around the perimeter of the property. The property is currently designated for retail/commercial use per the Comprehensive Land Use Plan (CLUP). City Staff supports the resulting plan proposed by the combined PDP/ODP as it enhances the image of this corner and results in retaining an existing business.

There are existing overhead electric and communication lines located along the north property boundary of the proposed Fuller and Sons Subdivision. City Code requires these existing overhead utilities be placed underground. This requirement would result in the developer of the Fuller and Sons project to underground the service for only a very short distance at great expense (estimated by Engineering at \$15,000.00). The applicant is requesting a waiver of the requirement to underground these existing overhead utilities. The applicant has indicated that the cost to underground any portion of these existing overhead utility lines will make the project infeasible. Staff believes a waiver of this Code requirement for the lines along the boundary, based upon hardship to the applicant, is warranted.

#### Applicant/Property Owner

Dave Fuller  
Mighty Muffler  
7198 Federal Boulevard  
Westminster, CO 80030

Surrounding Land Use and Comprehensive Land Use Plan Designations

North: Adams County Animal Hospital. CLUP: Retail/Commercial

South: Flower-Rama. CLUP: Retail/Commercial

East: A rental supply company. CLUP: Retail/Commercial

West: City of Arvada.

Site Plan Information

The 0.316-acre parcel is located on the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard. The property has an existing, abandoned, gas station that has fallen into disrepair. The applicant has worked with City staff to upgrade the property to enhance the image on this corner.

The building will be repainted in compliance with the City's Commercial Design standards. The existing canopy will have split face block and stucco pillars. The canopy will be painted to match the building. Signage will be in conformance with the City Code. A raised, eight foot wide, landscape planter will be added along the west and south property lines to upgrade the look from the street.

A plastic split rail fence with block pillars will be added on the east property line to define the end of the property and stop cut-thru traffic from the adjacent property.

Traffic and Transportation

This proposed development would be served by right-in/right-out access points off 80<sup>th</sup> Avenue and Sheridan Boulevard.

Service Commitment Category

N/A

Referral Agency Responses

No referral responses were received.

Public Comments

Informational packets were sent to the appropriate recipients and no negative responses were received.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **33**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND CHANGING THE ZONING CLASSIFICATION OF A CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 30, TOWNSHIP 2 SOUTH, RANGE 68 WEST, COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds;

- a. That an application for the zoning of the property described below from City of Westminster C-1 to City of Westminster PUD zoning has been submitted to the City for its approval pursuant to Westminster Municipal Code Section 11-5-2.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 5 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code, Section 11-5-3.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein from City of Westminster C-1 to City of Westminster PUD. A parcel of land located in Section 30, Township 2 South, Range 68 West, County of Adams, State of Colorado, more particularly described as follows:

Commencing at the southwest corner of said Section 30; thence along the south line of said Section N89°27'23"E a distance of 165.00 feet; thence leaving said Section line N00°04'04"W a distance of 53.00 feet to a point on the northerly right-of-way line of West 80<sup>th</sup> Avenue as described in Book 3317, Pages 810, said point being the True Point of Beginning; thence along said right-of-way line S89°27'23"W a distance of 80.70 feet to a point of curvature; thence continuing along said right-of-way line 53.69 feet along the arc of a curve to the right having a central angle of 90°28'33", a radius of 34.00 feet and a chord which bears N45°18'21"W a distance of 48.28 feet to a point of tangency, said point being on the easterly right-of-way line of north Sheridan Boulevard as described in Book 3317, Page 813; thence along said right-of-way line N00°04'04"W a distance of 87.72 feet; thence departing said easterly right-of-way line N89°27'23"E a distance of 115.00 feet; thence S00°04'04"E a distance of 122.00 feet to True Point of Beginning. Said parcel contains 13,778 square feet or 0.316 acres more or less.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14<sup>th</sup> day of July, 2003.

ATTEST

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

\_\_\_\_\_  
Mayor

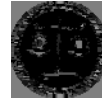




**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Resolution No. 22 re Land Exchange with Beau and Allen, LLC

**Prepared By:** Becky Johnson, Economic Development Program Coordinator

**Recommended City Council Action:**

Adopt Resolution No. 22 authorizing the transfer of \$100,000 from the Economic Development Division Contractual Service Account to the City's General Fund Contingency account.

**Summary Statement:**

- On February 24, 2003 Council authorized the City Manager to execute a Land Exchange Agreement and development cost reimbursement agreement with Beau and Allen, LLC, execute the necessary closing documents required for the land exchange, and authorized the expenditure of funds from the General Fund Contingency Account to cover the City's closing and reimbursement costs. The proposed exchange included a 4.55 acre parcel at 7453 West 105<sup>th</sup> Avenue owned by Beau and Allen, LLC, proposed for the BAM animal hospital in Mandalay Gardens, which was to be exchanged for the City owned property at Church Ranch Boulevard and Zepher Street.
- On March 17, 2003, \$100,000 was transferred by resolution from the General Fund Contingency to the Economic Development Division Contractual Service Account to pay for the land transaction costs.
- On May 12, 2003, the land owner requested that the City purchase the property as a part of the Mandalay Garden acquisition, rather than proceed ahead with the land exchange.
- As a result, the \$100,000 is no longer needed and now needs to be transferred from the Economic Development Division Contractual Service Account back to the General Fund Contingency Account.

**Expenditure Required:** \$0

**Source of Funds:** Economic Development Division Contractual Service Account

**Policy Issues**

Should Council adopt the attached resolution to transfer funds back to the General Fund Contingency?

**Alternatives**

An alternative would be to not adopt the attached resolution authorizing the transfer of the Economic Development Contractual Service Account. These funds would remain in the Economic Development Contractual Services account. Since the land exchange did not go through, there would be an excess of \$100,000 in the Economic Development Contractual Services account.

**Background Information**

On February 24, 2003, Council authorized the City Manager to execute a Land Exchange Agreement and development cost reimbursement agreement with Beau and Allen, LLC, to execute the necessary closing documents required for the land exchange, and authorized the expenditure of funds from the General Fund Contingency Account to cover the City's closing and reimbursement costs.

On March 17, 2003, \$100,000 was transferred by resolution from the General Fund Contingency to the Economic Development Division Contractual Service Account to pay for the land transaction costs.

On May 12, 2003, the Beau and Allen decided not to pursue the land exchange. Rather, they requested that the City purchase their property. Staff agreed to the purchase, as part of the Mandalay Garden acquisition efforts, which will be funded by Westminster Economic Development Authority (WEDA). As a result, the \$100,000 is no longer needed to fund the land transfer.

The adoption of the attached resolution is required to transfer funds from the Economic Development Contractual Services Account back to the General Fund Contingency Account.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **22**

INTRODUCED BY COUNCILLORS

SERIES OF 2003

WHEREAS, On May 12, 2003, Beau and Allen decided to not pursue the a Land Exchange Agreement and development cost reimbursement agreement with the City; and

WHEREAS, City Staff has negotiated a preliminary contract for purchase of a 4.55 acre parcel at 7453 West 105<sup>th</sup> Avenue in Mandalay Gardens, owned by Beau & Allen; and

WHEREAS, the \$100,000 moved from the General Fund Contingency Account to the Economic Development Contractual Services account for the purposes of the land exchange is no longer needed;

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

\$100,000 be transferred from the Economic Development Contractual Service Account back to General Fund Contingency.

Passed and adopted this 23rd day of June 2003.

ATTEST:

\_\_\_\_\_  
Mayor

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



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

City Council Meeting  
June 23, 2003



**SUBJECT:** Mandalay Town Center Redevelopment Agreement

**Prepared by:** Alan Miller, Special Projects Director

**Recommended City Council Action:**

Authorize the Mayor to execute a redevelopment agreement that commits the City to participate in the redevelopment agreement by providing a “moral obligation” pledge to replenish the WEDA bond reserve if it is drawn down and to provide other assistance to the redevelopment.

**Summary Statement:**

- The City Staff and RED Development Company have concluded negotiations regarding a redevelopment agreement for the Mandalay Town Center Project that encompasses approximately 65 acres and that involves the City acquiring 23 parcels and then selling most of that acquired property to RED Development for the redevelopment project.
- Acquisition by WEDA of all the parcels will be completed by approximately August 15<sup>th</sup>. Through the Redevelopment Agreement, WEDA will then sell an initial holding of approximately 18 acres to RED Development for acquisition by Target and building of Phase I of the redevelopment project. WEDA will then sell the remaining acres to RED Development by mid-November 2003 for Phase II of the redevelopment project.
- RED Development is to commence overlot grading and site preparation on August 15<sup>th</sup> and to turn over a Target building pad for the Target Store by November 1, 2003.
- The Target Real Estate and Capital Committee is expected to authorize a new Target Store at the Mandalay Town Center Project Meeting on June 25<sup>th</sup>. Target’s Senior Management Committee is expected to approve the project at their August 12<sup>th</sup> meeting.

In order to make the Mandalay Town Center project economically viable WEDA is committing in this agreement to sell up to \$32M in bonds before September 1<sup>st</sup> to fund a variety of site improvements and to provide a land subsidy. The City’s role in the financing is to provide the moral obligation pledge to replenish the bond reserve if it is drawn down. This moral obligation pledge is subject to annual appropriation by the City Council and does not obligate City Council to replenish.

RED Development Company intends to commence construction on the second phase of the Mandalay Town Center project in November of this year, assuming leasing goals can be met. RED Development Company is also committed to build the Mandalay Town Center project under the City’s preliminary and official development plan process and in compliance with the site plan attached, and in substantial compliance with the site plan attached to the redevelopment agreement. The total project cost is expected to be approximately \$70 M of which RED will finance approximately \$40M.

According to the Coley Forrest Feasibility Study performed for the Mandalay Town Center project, WEDA will receive approximately \$4M a year in revenue as a result of this redevelopment of which \$2.3 M will be needed for debt service and the remaining \$1.7M will be available to WEDA after a reasonable seasoning period to use for either additional purposes or to forward to the City as additional revenue.

The project is also estimated to provide over \$600,000 in one-time revenue from building permit fees and building use tax.

The redevelopment agreement also contemplates formation of a business improvement district or general improvement district with a mill levy of up to 35 mils that will provide additional revenues to WEDA in an estimated amount of \$430,000 per year. These revenues will be used to offset the estimated second phase improvements of \$5.2 M plus issuance and carrying costs. The second phase improvements include an underpass under US 36 connecting the Mandalay Town Center Project with the Promenade in the amount of \$3.2 M, as well as \$2M to relocate a gas station from the entry of the Mandalay Town Center project to a nearby location.

The agreement also contemplates WEDA receiving revenue from RED Development Company if assumptions used in determining the project rate of investment are exceeded. This allows WEDA to participate in the upside potential of this project.

**Expenditure Required:** No expenditures on City ledgers. Up to \$32 million in a WEDA bond issue for Phase I improvements and, if leasing goals are achieved, an additional \$5.2 million plus costs of issuance in Phase II for improvements.

**Source of Funds:** WEDA Bond proceeds

### **Policy Issues**

Should City Council enter into an agreement with WEDA and RED Development Company for the redevelopment of approximately 65 acres of land in the Mandalay Gardens area and issue \$32 M in WEDA bonds for Phase I and \$5.2 M for Phase 2?

### **Alternative**

Do not enter into a redevelopment agreement with RED Development Company and do not proceed with the project.

This is not recommended for the following reasons:

1. If the project does not proceed at this time it is likely that the Target store will not develop. Target provides the main financial resources for the success of the redevelopment project.
2. RED Development Company was selected after a competitive RFP process and they have been determined to be a highly qualified redevelopment company capable of achieving the project.
3. If the project does not proceed at this time, it is highly likely that the City will lose the opportunity to redevelop this project as envisioned by the previously prepared sketch plan and anticipated site plan for this project.

### **Background Information**

The Mandalay Town Center Redevelopment project has been underway for more than a year. The project is at a critical stage of moving forward to agreement with the RED Development Company and for maintaining a schedule anticipated to allow for a Super Target Store to open in November of 2004. Actions to date include:

- On December 16, 2002 the City and WEDA approved an annexation and Preliminary Development Agreement with Westfield Development, Inc.
- On December 23, 2002 the City Council approved the annexation of the Mandalay Gardens area to Westminster.
- On March 17, 2003 the City Council approved an Urban Renewal Plan for Mandalay Gardens under the Colorado Urban Renewal law.

- On March 24, 2003 the City Council approved an IGA with WEDA to advance funds to purchase the Sup-Cal property in compliance with the terms of the purchase and sale agreement with Super Properties LLC.
- On April 14, 2003 the WEDA Board of Directors approved the selection of CDC-RED as the preferred developer for Mandalay Gardens.
- On April 14, 2003 the WEDA Board of Directors also approved the advanced funding of up to \$1.0M to reimburse Westfield Development Corporation for work on the project on behalf of WEDA in compliance with the annexation and preliminary development agreement.
- On June 2, 2003 City Council approved an IGA with WEDA to advance funds of \$750,000 to purchase the Mortensen parcel within the Mandalay Gardens area.
- On June 2, 2003 the WEDA Board of Directors approved an IGA with the City of Westminster agreeing to repay the City \$750,000 in funds advanced to WEDA for the purchase of the Mortenson property.
- On June 9, 2003 the City of Westminster entered into an IGA with WEDA to advance funds in the amount of \$11.5 M through the use of short term cash from the General Capital Improvement Fund for the purchase of 20 parcels of land to further the Mandalay Gardens Town Center project.
- On June 9, 2003 WEDA approved an IGA with the City of Westminster to repay the advanced funds of \$11.5 M for the purchase of 20 parcels of land to further the Mandalay Gardens Town Center project.

The current proposed timelines are as follows:

<u>Event</u>	<u>Date</u>
Approval of the Redevelopment Agreement by WEDA and the City	June 23
Target CPR approval of Mandalay Town Center Super Target store	June 25
Closing on properties in the Mandalay Gardens area	June 30 to August 15
Residents' period of time to vacate properties	The month of July
Final Target Senior Management approval of project	August 12
Sale and closing of WEDA Bonds	Mid August
Clearing of property and overlot grading	Commencing August 15th
RED Development and Target Store closing on land	September 1, 2003
Target store construction commencing	November 1, 2003
RED Development closing on remaining Mandalay Town Center Redevelopment project	November 2003
Commencing construction of phase 2 Mandalay Gardens Town Center project	November 2003
Opening Target store	November 2004

Staff and other members of the project teams will attend the June 23 City Council meeting to answer questions.

Respectfully submitted,

J. Brent McFall  
City Manager

**REDEVELOPMENT AGREEMENT**

**FOR THE MANDALAY TOWN CENTER REDEVELOPMENT PROJECT**

By and Between

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY,**

**THE CITY OF WESTMINSTER,**

and

**WESTMINSTER DEVELOPMENT COMPANY, LLC**

**Dated as of June 23, 2003**

**TABLE OF CONTENTS**

	<b>Page</b>
Section 1	DEFINITIONS AND GENERAL PROVISIONS..... 2
Section 1.1	Internal References ..... 2
Section 1.2	Definitions..... 2
Section 1.3	Exhibits ..... 10
Section 1.4	Covenants..... 10
Section 2	DESCRIPTION OF THE MANDALAY TOWN CENTER..... 10
Section 2.1	Engagement and Compensation..... 10
Section 2.2	Description of the Redevelopment..... 10
Section 2.3	Construction of Improvements ..... 11
Section 2.4	Development Terms..... 11
Section 2.5	Vested Property Rights ..... 11
Section 2.6	Amendment of PDP and Approved ODP(s) ..... 11
Section 2.7	Schedule of Key Dates..... 12
Section 3	AUTHORITY’S ACQUISITION OF THE REDEVELOPMENT SITE..... 13
Section 3.1	Authority’s Acquisition Efforts ..... 13
Section 3.2	Eminent Domain ..... 13
Section 3.3	Disclaimer ..... 13
Section 3.4	Inspection ..... 13
Section 3.5	Grant of License..... 14
Section 4	PUBLIC FINANCING ..... 14
Section 4.1	Public Financing Plan ..... 14
Section 4.2	Resolution Authorizing Issuance of the Authority’s Bonds ..... 14
Section 4.3	Pledge of Incremental Property and Sales Tax Revenues ..... 14
Section 4.4	Sale of Authority’s Bonds..... 15
Section 4.5	Authority’s Payment to Developer for Certain Public Improvements ..... 16
Section 4.6	Authority Participation in Higher Than Expected Rate of Return..... 16
Section 5	SPECIFIC CITY OBLIGATIONS ..... 17
Section 5.1	Mandalay Town Center Business Improvement District..... 17
Section 5.2	Bond Requirements..... 18



**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	Section 5.3 Covenant Regarding Off-Site Road Obligations .....	18
	Section 5.4 Processing of Land Use Approvals and Building Permits.....	18
Section 6	DEVELOPER’S PURCHASE OF REDEVELOPMENT SITE.....	19
	Section 6.1 Assemblage .....	19
	Section 6.2 Agreement to Purchase .....	19
	Section 6.3 Payment of Purchase Price.....	19
	Section 6.4 Closing Conditions .....	19
	Section 6.5 Developer’s Option to Extend Closing or to Terminate .....	20
	Section 6.6 Conveyance; Condition of Title.....	20
	Section 6.7 Closing .....	21
	Section 6.8 Early Closing on Target Site.....	21
Section 7	DEVELOPER’S FINANCING.....	21
	Section 7.1 Developer’s Financing .....	21
	Section 7.2 Holder Not Obligated to Construct.....	22
	Section 7.3 Copy of Notice of Default to Holder .....	22
	Section 7.4 Holder’s Option to Cure Defaults .....	22
	Section 7.5 Rights of Lenders and Interested Parties .....	22
Section 8	REPRESENTATIONS AND WARRANTIES.....	23
	Section 8.1 Developer’s Representations and Warranties .....	23
	Section 8.2 Authority’s Representations and Warranties .....	23
	Section 8.3 City’s Representations and Warranties.....	24
Section 9	GENERAL COVENANTS.....	25
	Section 9.1 General Insurance Provisions .....	25
	Section 9.2 Redevelopment Site Insurance.....	25
	Section 9.3 Signage.....	26
	Section 9.4 Assistance to Developer.....	26
	Section 9.5 Relocation .....	26
	Section 9.6 Anti-Discrimination Employment .....	26
	Section 9.7 Construction of the Mandalay Town Center.....	26

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 9.8 Covenant Regarding Economic Incentives .....	27
Section 9.9 Inclusion of Additional Property Within the Redevelopment Site .....	27
Section 9.10 Vacation and Dedication of Rights of Way and Public Improvements .....	27
Section 10 INDEMNITY AND RESPONSIBILITY .....	28
Section 10.1 Developer’s Indemnification .....	28
Section 10.2 Authority’s Responsibility .....	28
Section 10.3 City’s Responsibility.....	28
Section 11 RESTRICTIONS ON ASSIGNMENT AND TRANSFER.....	28
Section 11.1 Representations as to Redevelopment .....	28
Section 11.2 Limitation on Assignment.....	28
Section 12 EVENTS OF DEFAULT; REMEDIES.....	30
Section 12.1 Events of Default by Developer.....	30
Section 12.2 Events of Default by the Authority or the City.....	30
Section 12.3 Remedies.....	31
Section 12.4 Notice of Defaults; Opportunity to Cure Such Defaults.....	31
Section 12.5 Delay .....	31
Section 13 TERMINATION.....	32
Section 13.1 Developer’s Option to Terminate .....	32
Section 13.2 Authority’s Option to Terminate .....	32
Section 13.3 Action to Terminate .....	32
Section 13.4 Effect of Termination.....	32
Section 13.5 Scheduled Termination .....	34
Section 14 MISCELLANEOUS .....	34
Section 14.1 Amendment of Agreement.....	34
Section 14.2 No Implied Waiver .....	34
Section 14.3 Notices .....	35
Section 14.4 Waiver.....	35
Section 14.5 Attorneys’ Fees .....	35
Section 14.6 Conflicts of Interest.....	35

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 14.7 Titles of Sections.....	35
Section 14.8 Authority and City Not a Partner; Developer Not Authority’s or City’s Agent .....	35
Section 14.9 Applicable Law .....	35
Section 14.10 Binding Effect.....	36
Section 14.11 Further Assurances.....	36
Section 14.12 Time of Essence .....	36
Section 14.13 Severability .....	36
Section 14.14 Good Faith; Consent or Approval.....	36
Section 14.15 Counterparts .....	36
Section 14.16 Non-Liability of Authority Officials and Employees .....	36
Section 14.17 Incorporation of Exhibits .....	37
Section 14.18 Jointly Drafted; Rules of Construction .....	37
Exhibit A LEGAL DESCRIPTION OF THE REDEVELOPMENT SITE.....	1
Exhibit B REDEVELOPMENT PLAN NARRATIVE .....	1
Exhibit C SITE PLAN .....	1
Exhibit D SCHEDULE OF PUBLIC FINANCING FOR PUBLIC IMPROVEMENTS AND SITE WORK .....	1
Exhibit E SCHEDULE OF PRE-APPROVED ALTERNATE USERS.....	1

## REDEVELOPMENT AGREEMENT

### FOR THE MANDALAY TOWN CENTER REDEVELOPMENT PROJECT

THIS REDEVELOPMENT AGREEMENT FOR THE MANDALAY TOWN CENTER REDEVELOPMENT PROJECT, dated as of June 23, 2003, and any amendments hereto made in accordance herewith (as from time to time amended and supplemented in accordance herewith, this “**Agreement**”), is made by and between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (together with any successors thereto, the “**Authority**”), THE CITY OF WESTMINSTER, a home rule municipal corporation organized under Article XX of the Constitution of the State of Colorado and the Charter of the City (together with any successors thereto, the “**City**”), and WESTMINSTER DEVELOPMENT COMPANY, LLC, a Missouri limited liability company (together with any successors and/or assigns, “**Developer**”).

#### Recitals

Capitalized terms used in these Recitals have the meanings set forth in Section 1.2 of this Agreement. This Agreement is made with respect to the following facts:

A. The Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Act. On March 17, 2003, the City Council approved the Plan. Among other things, the Plan authorizes the Authority to acquire (by Eminent Domain Proceedings, if necessary), and to redevelop the Redevelopment Site.

B. The Authority’s Board of Directors, by Resolution No. 43, Series of 2003, declared its intent to acquire and redevelop certain real property that includes the Redevelopment Site. Redevelopment of the Redevelopment Site is necessary to alleviate those conditions of blight found in the Mandalay Gardens Area Blight Survey. Pursuant to the Act and the Plan, the Authority has the power of eminent domain to acquire and convey to Developer unencumbered title to the Redevelopment Site.

C. Pursuant to a duly authorized and published request for proposal, the Authority has received and evaluated proposals based upon financial feasibility, compliance with the goals and requirements of the Plan, the experience and capabilities of the proponents, and compatibility with the surrounding neighborhood. The Authority has selected Developer’s proposal as the proposal which best serves the City’s goals and objectives. Developer has the experience, expertise and financial resources to construct and operate the Improvements.

D. Developer has agreed to use commercially reasonable efforts to redevelop the Redevelopment Site as the Mandalay Town Center in accordance with the terms and conditions of this Agreement. In order to proceed with the Mandalay Town Center, Developer must acquire unencumbered title to the Redevelopment Site. Developer wishes to acquire unencumbered title to the Redevelopment Site and, provided the Authority first obtains unencumbered title to the

Redevelopment Site, the Authority is willing to sell and convey unencumbered title to the Redevelopment Site to Developer upon the terms and conditions set forth in this Agreement.

E. Development of the Mandalay Town Center will occur in several phases, and will require the Developer to make substantial, up-front investments in the Improvements, including, without limitation, road and street improvements, storm drainage facilities, potable water and sanitary sewer lines, and certain other municipal facilities as described in the Redevelopment Plan. Developer has undertaken its obligations under this Agreement in reliance on the City's and the Authority's commitments under the Public Financing Plan, and in reliance on being able to pursue and complete full build out of the Mandalay Town Center as provided in the Redevelopment Plan as market conditions permit. These investments can be supported only if Developer receives assurance that development of the Mandalay Town Center will be allowed to proceed to ultimate completion as provided in the Redevelopment Plan.

### **Agreement**

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

#### **SECTION 1 DEFINITIONS AND GENERAL PROVISIONS.**

**Section 1.1** Internal References. Unless otherwise stated, references in this Agreement to Sections, subsections, or Exhibits are to this Agreement.

**Section 1.2** Definitions. As used in this Agreement, the following terms will have the following meanings:

“**Act**” means the Colorado Urban Renewal Law, constituting sections 31-25-101, *et seq.*, C.R.S.

“**Affiliate**” means any entity of which RED is the managing member or managing partner.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement. References to Sections and Exhibits are to this Agreement unless otherwise qualified.

“**Alternate User**” means an alternate user or users for the Target Site under the circumstances, terms, and conditions described in Section 4.4(a)(ii), including but not limited to one of the pre-approved alternate users included in the schedule attached as Exhibit E hereto.

“**Approved Uses**” means those land use entitlements, improvements and uses thereof which are approved under the PDP and the ODP, as amended in accordance with the terms and conditions of this Agreement and the Municipal Code, including but not limited to (i) the entitlement to construct and develop in accordance with the terms and conditions of the Redevelopment Plan up to a maximum of approximately 837,000 square feet of mixed use retail, commercial, office, hotel, restaurant, service, recreation, and entertainment uses.

“**Assemblage**” means the Authority’s acquisition of all Property Interests, whether by contract or pursuant to Eminent Domain Proceeding, so that the Authority is in a position to convey the Redevelopment Site to Developer on the Closing Date.

“**Authority**” has the meaning set forth in the first paragraph of this Agreement.

“**Authority’s Bonds**” means, collectively, the Series 2003-A Bonds and the Series 2003-B Bonds.

“**BID**” means the business improvement district to be formed by the City in accordance with the Business Improvement District Act, sections 31-25-1201, *et seq.*, C.R.S., and the Municipal Code for the purpose of levying and collecting taxes and appropriating revenues for expenditures in accordance with Section 5.1.

“**Bond Requirements**” means principal, redemption or purchase price, premium, if any, interest, reserves and other amounts required to be paid from time to time pursuant to the Public Financing Documents with respect to the Bonds. Bond Requirements may include, by way of example and without limitation, amounts required to be paid or retained by the Bond Trustee from time to time for purposes of satisfying any principal and interest payments, coverage ratio requirements, debt service reserve requirements, and redemption reserve requirements.

“**Bond Trustee**” means the trustee or trustees for the holders of the Bonds appointed pursuant the Public Financing Documents.

“**Bonds**” means any of the bonds to be issued from time to time by the Authority or by the BID pursuant to the Public Financing Plan.

“**City**” has the meaning set forth in the first paragraph of this Agreement.

“**City Council**” means the city council for the City of Westminster.

“**Closing**” means the events described in Section 6.7.

“**Closing Adjustments**” has the meaning set forth in Section 6.3.

“**Closing Conditions**” has the meaning set forth in Section 6.4.

“**Closing Date**” means November 14, 2003, or such earlier date as Developer designates in writing delivered the Authority not less than five (5) business days prior to the designated closing date, or such later date to which Developer and the Authority may agree in writing, or as extended pursuant to Section 6.5.

“**Commencement of Construction**” means, with respect to any phase of the Mandalay Town Center or portion thereof, Developer’s commencement of physical construction of the Improvements to be constructed by Developer in such phase of the Mandalay Town Center or portion thereof with the intention to continue the work until such Improvements are completed.

“**Committed Revenues**” means the aggregate amount of all Incremental Property Taxes and all Incremental Sales Taxes that from time to time is either (i) required pursuant to the Public Financing Documents to be Pledged to, and held by, the Bond Trustee for payment of the Bond Requirements; or (ii) required pursuant to this Agreement to be Pledged.

“**Completion of Construction**” means, with respect to each phase of the Mandalay Town Center or portion thereof, the completion of all or substantially all of the Improvements to be constructed or performed in such phase of the Mandalay Town Center or portion thereof in accordance with this Agreement.

“**County**” means the County of Jefferson, State of Colorado.

“**DHC**” means the Dayton Hudson Corporation.

“**Default**” means any event which with the giving of notice or the lapse of time, or both, would constitute a default under Section 12.1 or Section 12.2.

“**Developer**” has the meaning set forth in the first paragraph of this Agreement.

“**Developer’s Financing**” means the financing described in Section 7.1, any refinancing thereof from time to time, and any other financing obtained by Developer from time to time to finance the construction of Improvements.

“**Direct Reimbursements**” means any direct payments made to Developer, to DHC, or an Alternate User, pursuant to the Pledge of Incremental Property Taxes and Incremental Sales Taxes made in accordance with the terms and conditions of this Agreement, as more particularly described in Section 4.

“**District Court**” means the District Court in and for the County.

“**Effective Date**” means June 23, 2003, which is the effective date of this Agreement.

“**Eminent Domain Costs**” mean all costs and expenses incurred by the Authority in prosecuting an Eminent Domain Proceeding, including attorneys’ fees, appraisal costs, witness fees, court fees and charges, deposition costs, travel costs, reimbursable respondent costs, assessable prejudgment and post-judgment interest incurred during the Eminent Domain Proceeding, any amounts required to be deposited with the District Court, costs and expenses of any appeal or retrial of the Eminent Domain Proceeding and Relocation Costs, if any, incurred by the Authority.

“**Eminent Domain Proceeding**” means one or more eminent domain actions to acquire all or any portion of the Redevelopment Site pursuant to sections 38-1-101 *et seq.*, C.R.S., and/or sections 38-7-101 *et seq.*, C.R.S.

“**Environmental Laws**” means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9602, *et seq.*, the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.

§ 9601(20)(D), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act Amendments of 1977, 33 U.S.C. §§ 1251, *et seq.*, the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. §§ 651, *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §§ 300f, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.*, and any and all federal, state and local rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any Pollutants, as may from time to time be in effect.

“**Fiscal Year**” means the City’s fiscal year, which currently begins on January 1 of each year and ends on December 31 of the same year.

“**Hard Costs**” means costs and expenses actually paid or incurred by Developer for labor, materials or equipment, including but not limited to environmental remediation on the Redevelopment Site; demolishing and removing existing improvements on or about the Redevelopment Site; excavating, grading, landscaping, constructing and installing Public Improvements, including providing reports, testing or inspecting in connection therewith; and similar costs and expenses as contemplated by this Agreement and the Redevelopment Plan. By way of example, Hard Costs will include, without limitation, (i) the gross cost of any general or special construction contract for the demolition of existing improvements or construction of Public Improvements which is reduced to writing, and the additional charges for change orders, discharge of mechanic’s liens, and other similar extras contemplated by or resulting from such contract; and (ii) any utility tap or other hook-up fees actually incurred by Developer and not otherwise waived by the City; provided that any costs or expenses included in the computation of Soft Costs will not be included in Hard Costs.

“**Holder**” means the owner of a Mortgage.

“**Improvements**” means all of the improvements that Developer intends to construct or cause to be constructed under this Agreement, as generally described in the Redevelopment Plan, including demolition of existing improvements located on the parcels of real estate comprising the Redevelopment Site.

“**Incremental Property Taxes**” means, for each Fiscal Year or portion thereof during the period of time specified in the Public Financing Documents, the portion of the Property Taxes derived from the Redevelopment Site that is in excess of the Property Tax Base Amount, less an administrative fee retained by the Authority equal to one percent of such excess.

“**Incremental Sales Taxes**” means, for each Fiscal Year or portion thereof during the period of time specified in the Public Financing Documents, the portion of the Sales Taxes derived from the Redevelopment Site that is in excess of the Sales Tax Base Amount, less an administrative fee retained by the Authority equal to one percent of such excess.

“**Mandalay Town Center**” means Developer’s proposed redevelopment of the Redevelopment Site in accordance with the Redevelopment Plan by, *inter alia*, demolishing existing improvements, constructing or causing the construction of the Public Improvements



(including, without limitation, public streets, sidewalks, utilities and parking facilities, a storm water management system, and parks and open space), and constructing or causing the construction of the Improvements (including, without limitation, new mixed-use retail, commercial office, hotel, restaurant, service, recreation and entertainment uses), all as more fully described in the Redevelopment Plan.

“**Mortgage**” means any mortgage or deed of trust conveying an interest in the Redevelopment Site for the purpose of securing a debt or other obligation.

“**Municipal Code**” means, collectively, the Westminster Municipal Code and the City’s home rule Charter, as in effect from time to time.

“**Net Bond Proceeds**” means, with respect to any issuance of Bonds, the gross proceeds from such issuance less the costs of such issuance and less the amount of any required reserves or capitalized interest.

“**Notice Address**” means the address for notice set forth below, as amended from time to time:

Authority: Westminster Economic Development Authority  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80030  
Attention: Manager

Developer: Westminster Development Company, LLC  
c/o RED of Westminster LLC  
4717 Central  
Kansas City, MO 64112  
Attention: Dan Lowe

“**ODP**” means one or more official development plan(s) (individually or collectively) for the Mandalay Town Center to be approved by the City, as amended in accordance with the Municipal Code and the terms and conditions of this Agreement, which, together with the PDP, will establish the development parcels, land use entitlements for the uses, density and intensity of development, building footprints and elevations, design standards, and other development terms and conditions for the Mandalay Town Center.

“**Outside Date**” means December 31, 2008, subject to extension pursuant to Section 6.5.

“**Owner**” or “**Owners**” mean the individuals and entities who own the fee interest or any lesser estate in any parcel of the real property comprising the Redevelopment Site.

“**Pad Sites**” means those free standing retail, commercial office, restaurant and hotel sites within the Redevelopment Site as generally depicted in the Site Plan, and which Developer intends to develop as part of Phase II.

“**PDP**” means the Preliminary Development Plan Mandalay Town Center approved by the City on February 24, 2003, and recorded in the County’s real property records on April 28,

2003, at Reception No. F1736074, in Book No. 120 at Page Nos. 46-50, as amended in accordance with the Municipal Code and the terms and conditions of this Agreement.

**“Permitted Exceptions”** has the meaning set forth in Section 6.5.

**“Phase I”** means the first phase of the Mandalay Town Center, which will consist of Completion of Construction of (a) the Site Work; and (b) the Super Target.

**“Phase II”** means Completion of Construction (which may occur in several sub-phases) of all Improvements that are not included in Phase I.

**“Plan”** the urban renewal plan, designated as the Mandalay Gardens Urban Renewal Plan and duly adopted by City Council, pursuant to which the Authority is authorized to pursue urban renewal projects under the Act, as from time to time amended in accordance with the Act.

**“Pledge”** means any assignment, conveyance, pledge, remittance or other transfer as may be customary and necessary or appropriate to make any tax or other revenue source fully available for payment of the Bond Requirements and/or the Direct Reimbursements in accordance with the terms and conditions of this Agreement or the Public Financing Documents.

**“Property Interests”** mean any ownership interest in the Redevelopment Site, including, without limitation, fee simple title, leaseholds, and other interests or estates.

**“Property Taxes”** means the real and personal property taxes produced by the levy at the rate fixed each year by the governing bodies of the various taxing jurisdictions within or overlapping the Redevelopment Site.

**“Property Tax Base Amount”** means the amount derived from the levy of Property Taxes on the total valuation assessment of all taxable property within the Redevelopment Site in the calendar year 2003 as certified by the County Assessor.

**“Public Financing”** means, with respect to the Authority or the BID, as applicable, the sale of bonds or any other acquisition of funds effected to finance any improvements or services that the Authority and/or the BID may provide pursuant to their respective statutory authority including, without limitation, the any costs of completing the Assemblage, any Eminent Domain Costs, any Relocation Costs, the design and construction costs of certain of the Public Improvements, the design and construction of certain other public improvements and facilities, and (with respect to the BID only) the provision of services pursuant to section 31-25-1212(1)(f), C.R.S., all as described in or contemplated by this Agreement.

**“Public Financing Documents”** means any documents executed or delivered in connection with the closing of any Public Financing.

**“Public Financing Plan”** means the Schedule of Public Financing for Public Improvements and Site Work attached as Exhibit D hereto, as the same may be supplemented or modified from time to time with the approval of Developer, the Authority and/or the City, as applicable.

**“Public Improvements”** means, with respect to any phase of the Mandalay Town Center, those Improvements that Developer will construct and then convey to the City or another governmental or quasi-governmental entity created under the laws of the State of Colorado, as generally described in the Redevelopment Plan, and that comprise improvements the costs of which may lawfully be paid for by the Authority or the BID, as applicable, including, without limitation, public streets, sidewalks, utilities and parking facilities, storm water management facilities and open space and associated land acquisition, demolition and remediation.

**“Purchase Price”** means Seven Million, Four Hundred Seventy-Five Thousand, Four Hundred and Eight Dollars (\$7,475,408), which is the fair value of the Redevelopment Site, taking into account Developer’s agreement to undertake the obligations set forth in this Agreement, as determined by the Authority in accordance with the Act.

**“RED”** means RED of Westminster LLC, a Missouri limited liability company, which will be the managing member of Developer.

**“Redevelopment Plan”** means, collectively (i) this Agreement, (ii) the Site Plan; (iii) Developer’s narrative for the redevelopment of the Redevelopment Site attached hereto as Exhibit B; (iv) the PDP; and (v) the ODP.

**“Redevelopment Site”** means, collectively, the parcels of real property commonly referred to as Mandalay Gardens, the legal descriptions of which are set forth in Exhibit A of this Agreement (together with any additional property that may from time to time be added to the site by amendment of the Plan); provided, however, that the legal description set forth at Exhibit A may be modified to reflect new parcel designations established in connection with approval of the ODPs.

**“Relocation Costs”** means all costs related to the relocation of existing businesses and residents in the Redevelopment Site in accordance with the Authority’s relocation policy for the Mandalay Town Center.

**“Sales Tax Base Amount”** means the amount derived from the levy of Sales Taxes within the Redevelopment Site in the calendar year 2003, as certified by the City Manager.

**“Sales Taxes”** means the City’s tax on retail sales occurring within the Redevelopment Site at the rate and upon the terms and conditions set forth in the Municipal Code.

**“Series 2003-A Bonds”** means the Authority’s initial Bond issue, which will occur contemporaneously with development of Phase I, as described in this Agreement, and will be in an amount sufficient to yield Net Bond Proceeds of not less than Twenty Four Million, Seven Hundred Thousand Dollars (\$24,700,000).

**“Series 2003-B Bonds”** means the Authority’s second Bond issue, which will occur contemporaneously with development of Phase II, as described in this Agreement, and which will be in an amount sufficient to yield Net Bond Proceeds of not less than Five Million Two Hundred Thousand Dollars (\$5,200,000).

“**Site Plan**” means the conceptual site plan attached hereto as Exhibit C, which is intended to illustrate the general pattern of development contemplated for the Mandalay Town Center. When the City has approved the ODPs for Phase I and Phase II and, with respect to each such approval, the applicable legal challenge periods (if any) have passed without a legal challenge having been successfully asserted, each of the approved ODPs (as modified from time to time with the approval of Developer and the City) will supercede the Site Plan for purposes of this Agreement with respect to the portion of the Redevelopment Site covered by the ODP.

“**Site Work**” means the site preparation work within the Redevelopment Site that is necessary to enable the construction and operation of the Super Target or an equivalent facility for an Alternate User, which consists of, without limitation, (a) the demolition of all existing structures and designated utilities within the Redevelopment Site; and (b) the construction and dedication to the City of Reed Street, as shown on the Site Plan, from Church Ranch Boulevard north to the eastern boundary of the Redevelopment Site; (c) rough grading and environmental work, if applicable; and (d) any other site preparation work designated by DHC or an Alternate User, as applicable.

“**Soft Costs**” means the costs paid or incurred by Developer with respect to any matter for which Hard Costs, Relocation Costs, or costs of completing the Assemblage may be paid or incurred, including but not limited to reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; direct salary and overhead expenses; development, administration and overhead charges; permit charges; commissions, interest charges, loan fees, development fees and other amounts payable to the Authority or the City pursuant to this Agreement or the Municipal Code; provided that any costs or expenses included in the computation of Hard Costs, Relocation Costs, or costs of completing the Assemblage will not be included in Soft Costs.

“**Super Target**” means the 150,000 square foot (more or less) retail facility to be constructed and operated on the Target Site by DHC or, alternatively, an equivalent retail facility constructed and operated on the Target Site by an Alternate User.

“**Target LOI**” means the letter of intent between DHC and Developer, pursuant to which DHC has agreed to purchase the Target Site and to construct and operate the Super Target, subject to receiving final approval from its capital committee, and subject to other terms and conditions set forth in the letter of intent.

“**Target Site**” means the development site designated on the PDP as P.A.1, the legal description of which will be established in connection with approval of the Phase I ODP.

“**Title**” means fee simple title to and possession of the Redevelopment Site, free and clear of all liens, defects, encumbrances and other matters of record, except the Permitted Exceptions.

“**Title Commitment**” has the meaning set forth in Section 6.6.

“**Title Company**” has the meaning set forth in Section 6.6.

“**Title Policy**” means an ALTA Extended Coverage Owner’s title insurance policy issued by the Title Company with all preprinted exceptions deleted, dated as of Closing and reflecting

Developer as fee owner of the Redevelopment Site, insuring Title in Developer in an amount equal to the sum of the Purchase Price (before credits and adjustments) plus the amount of Developer's construction loans as described in Section 7.1.

**Section 1.3** Exhibits.

<u>Exhibit A</u>	Legal Description of the Redevelopment Site
<u>Exhibit B</u>	Redevelopment Plan Narrative
<u>Exhibit C</u>	Site Plan
<u>Exhibit D</u>	Schedule of Public Financing for Public Improvements and Site Work
<u>Exhibit E</u>	Schedule of Pre-Approved Alternate Users

**Section 1.4** Covenants. The provisions of this Agreement constitute covenants or servitudes which touch, attach to and run with the land comprising the Redevelopment Site. The burdens and benefits of this Agreement will bind and inure to the benefit of the Redevelopment Site and of all estates and interests in the Redevelopment Site and all successors in interest to the parties to this Agreement, except as otherwise provided in Section 14.1 below.

**SECTION 2** **DESCRIPTION OF THE MANDALAY TOWN CENTER.**

**Section 2.1** Engagement and Compensation. The Authority hereby selects and designates Developer as the redeveloper of the Mandalay Town Center, and engages Developer to perform on the Authority's behalf certain redevelopment services with respect to the Mandalay Town Center, including the construction of specified Public Improvements on behalf and at the expense of the Authority, as described in Section 4.5 of this Agreement. All payments to be made hereunder by the Authority, the City, or the BID to or for the benefit of Developer will be considered as compensation of the performance for such redevelopment services. A summary of the specified Public Improvements and the amount of the Authority's financial obligation with respect thereto is set forth in the schedule attached as Exhibit D of this Agreement. The amounts set forth for each of the categories of work described in Exhibit D are estimates of the Hard Costs and Soft Costs for that category. Provided that the Authority's total obligation for Public Improvement costs is limited to paying the Soft Costs and the Hard Costs for the Public Improvements identified in Exhibit D and will not exceed Fourteen Million, Nine Hundred Thousand Dollars (\$14,900,000), the statement of estimated costs for each category of work described in Exhibit D will not be construed as precluding the application of excess funds from any other categories of work if the actual costs for any category exceed the estimated amount. The Authority will only be obligated for the actual Soft Costs and Hard Costs for the Public Improvements in Exhibit D.

**Section 2.2** Description of the Redevelopment. The Mandalay Town Center will consist of the redevelopment of the Redevelopment Site in accordance with the Redevelopment Plan. Subject to satisfaction of the Closing Conditions, Developer will purchase and the Authority will sell the Redevelopment Site. After the Authority completes the Assemblage, Developer will employ commercially reasonable efforts to redevelop the Redevelopment Site by constructing or causing to be constructed the Improvements in accordance with the

Redevelopment Plan, and in accordance with applicable laws and regulations (including, without limitation, the Municipal Code and the Environmental Laws).

**Section 2.3** Construction of Improvements. As of the date of this Agreement, Developer intends that Commencement of Construction for the Site Work will occur during the second half of 2003, and that Completion of Construction of Phase I will occur by December 31, 2004. Developer intends to commence and complete Phase I and Phase II as market conditions dictate, and that Phase II may be developed as a single phase or in sub-phases. Developer intends that Commencement of Construction of Phase II will occur within approximately 120 days after the Closing Date, as evidenced by application for a building permit to construct a building within Phase II. Understanding that the actual timing of the redevelopment will depend upon a number of factors, Developer will use commercially reasonable efforts to cause Completion of Construction of the Mandalay Town Center by the Outside Date, subject to (i) the Closing having occurred on or before November 14, 2003; and (ii) the City having issued all necessary permits, licenses and similar items required for Commencement of Construction of the Site Work by no later than August 15, 2003, and of the Super Target by no later than January 1, 2004; (iii) sale of the Series 2003-A Bonds by no later than August 31, 2003; and (iv) sale of the Series 2003-B Bonds by no later than November 14, 2003. For purposes of this Section 2.3, the phrase "Completion of Construction of the Mandalay Town Center" means that Developer will have substantially completed construction and have been issued certificates of occupancy (either temporary or permanent) for Phase I and at least 65% of the gross leaseable area within Phase II of the Mandalay Town Center, including at least 65% of the portion to be constructed abutting Town Center Drive (but excluding the gross leaseable area to be constructed on the Target Site and the Pad Sites and the hotel). Development of the Mandalay Town Center will be substantially consistent with the design principles and objectives described in the Redevelopment Plan Narrative attached as Exhibit B to this Agreement and depicted at a conceptual level in the Site Plan.

**Section 2.4** Development Terms. The PDP and the ODP will govern and control with respect to the Approved Uses for the Redevelopment Site. In connection with its approval of this Agreement, the City will promptly act on the ODP for Phase I. As market conditions dictate, Developer intends in good faith to submit in the future one or more applications for approval of the ODP(s) for Phase II. When Developer submits one or more subsequent applications for approval of the ODP(s) for Phase II, the City will promptly process and take final action on the application(s) in accordance with the Municipal Code and the terms and conditions of this Agreement.

**Section 2.5** Vested Property Rights. Pursuant to the procedures set forth in section 11-5-18 of the Municipal Code, Developer and the Authority will reasonably cooperate in submitting to the City the requisite applications to obtain approval of vested property rights for a period of five (5) years to develop the Mandalay Town Center in accordance with the Approved Uses. The City will promptly process and take final action on the application for vested property rights.

**Section 2.6** Amendment of PDP and Approved ODP(s). If the Developer desires to modify the PDP or any ODP after it is approved, Developer will obtain the approval of the City for the modifications pursuant to Title IX of the Municipal Code, provided that any

modifications will not result in a direct decrease in the revenues to be generated from Sales Taxes.

**Section 2.7** Schedule of Key Dates. Subject to the terms and conditions of this Agreement, target dates for timely achieving milestones necessary to accomplish the Assemblage, the Public Financing, the Closing, and Commencement of Construction of Phase I are:

(a) June 23, 2003:

(i) Final action by the Authority and the City to approve execution of this Agreement; and

(ii) Final action by the City approving the Phase I ODP.

(b) June 24, 2003: To the extent not previously filed, the Authority's filing in District Court of the petition(s) commencing Eminent Domain Proceedings for any Property Interests with respect to which the Authority and the relevant Owner have failed to execute a binding contract for voluntary conveyance to the Authority.

(c) June 25, 2003: DHC's "CPR meeting" occurs and results in the authorization to execute a binding contract, subject only to capital committee approval and other conditions not inconsistent with the terms and conditions of this Agreement, to purchase the Target Site and to cause the potential Completion of Construction and opening of the Super Target by not later than December 31, 2004.

(d) August 12, 2003: DHC's capital committee meets and approves the contract described in Section 2.7(c).

(e) August 15, 2003:

(i) Pursuant to Section 3.1(a), the Authority will complete the Assemblage (except for the portion of the Redevelopment Site known as the Bryan Property, with respect to which the Authority will acquire unencumbered fee title and deliver possession to Developer by not later than November 14, 2003); and

(ii) The Authority will complete relocation of any Owners who have not previously surrendered possession (except with respect to the Bryan Property as discussed above); and

(iii) The City has issued all permits and approvals necessary for Developer to commence the Site Work.

(f) August 18, 2003: Pursuant to Section 4.2, the Authority will hold a meeting at which the Authority will adopt a resolution authorizing the issuance of the Authority's Bonds, subject to satisfaction of the conditions precedent set forth in this Agreement and any additional conditions precedent set forth in the applicable Public Financing Documents.

(g) August 20, 2003: Pursuant to Section 4.4, the Authority will issue the Series 2003-A Bonds.

(h) November 4, 2003: Electors of the district approve formation of the BID.

(i) November 14, 2003:

(i) The Closing occurs; and

(ii) Developer closes on the sale of the Target Site to DHC (unless accomplished earlier pursuant to Section 6.8).

### **SECTION 3 AUTHORITY'S ACQUISITION OF THE REDEVELOPMENT SITE.**

#### **Section 3.1 Authority's Acquisition Efforts.**

(a) The Authority has made good faith efforts to acquire each Owner's Property Interests in the real property comprising the Redevelopment Site. The Authority will continue to make good faith efforts to complete the Assemblage on or before August 15, 2003 (except for the portion of the Redevelopment Site known as the Bryan Property, with respect to which the Authority will acquire unencumbered fee title and deliver possession to Developer by not later than November 14, 2003).

(b) Nothing in this Agreement will be construed as prohibiting or infringing upon the Authority's ability to exercise its lawful power of eminent domain with respect to any property including, without limitation, the parcels of real property comprising the Redevelopment Site.

**Section 3.2 Eminent Domain.** If, and at such time as the Authority determines that any portion of the real property comprising the Redevelopment Site cannot be acquired voluntarily, the Authority will commence an Eminent Domain Proceeding in the District Court and will prosecute the proceeding to completion using all good faith efforts. The Authority will use good faith efforts to commence any such Eminent Domain Proceedings by not later than June 24, 2003, and to obtain an order vesting title to the subject real property in the Authority by not later than August 15, 2003 (except for the portion of the Redevelopment Site known as the Bryan Property, with respect to which the Authority will acquire unencumbered fee title and deliver possession to Developer by not later than November 14, 2003).

**Section 3.3 Disclaimer.** The Authority makes no representation or warranty that it will prevail in any Eminent Domain Proceeding; provided, however, that nothing in this Section will negate the Authority's obligation to use of all good faith efforts to prevail in any Eminent Domain Proceeding. Notwithstanding any other provision of this Agreement, Developer will not be liable to the Authority for any costs, expenses, judgments or damages arising from any Eminent Domain Proceeding or act of the Authority beyond the contractual rights under this Agreement.

**Section 3.4 Inspection.** The Authority will use its best efforts (including obtaining court orders therefor) to cause the Owners to provide Developer with access to the entire



Redevelopment Site by not later than June 24, 2003, for the purpose of inspecting, conducting any due diligence, tests, surveys, environmental or other studies or analysis, or collecting any data, samples, specimens or information as Developer deems necessary, in its sole discretion; provided that such due diligence is conducted so as not to damage the property and in material compliance with the terms and conditions of any purchase and sale agreements or other written agreements between the Authority and the Owner(s) which the Authority has given copies of to Developer.

**Section 3.5** Grant of License. The Authority hereby grants Developer (together with its contractors, sub-contractors, and other design and/or construction professionals), at no cost to Developer, a license to enter upon, and to occupy any portion of the real property comprising the Redevelopment Site for the purpose of accomplishing timely Commencement of Construction of the Site Work, including but not limited to performing any inspections, tests, grading, construction and other activities reasonably necessary for Commencement of Construction, effective as of the time that the Authority obtains title and/or any possessory interest thereto, whereupon Developer and its agents may enter upon the Redevelopment Site to conduct due diligence and to commence redevelopment activities.

#### **SECTION 4 PUBLIC FINANCING.**

**Section 4.1** Public Financing Plan. Redevelopment of the Mandalay Town Center will require the design and construction of the Public Improvements. The costs of designing and constructing the Public Improvements will be financed generally in accordance with the Public Financing Plan.

**Section 4.2** Resolution Authorizing Issuance of the Authority's Bonds. Provided DHC has held its "CPR meeting" and executed the contract referred to in Section 2.7(c), the Authority will conduct a meeting on August 18, 2003, at which it will adopt a resolution authorizing issuance of the Authority's Bonds pursuant to section 31-25-109(8) of the Act, and subject to satisfaction of the conditions precedent set forth in this Agreement. The authorizing resolution will constitute the Authority's binding commitment to issue the Authority's Bonds subject to the terms and conditions of Section 4.3 and any additional terms and conditions set forth in the applicable Public Financing Documents. The resolution will state that the authority to issue the Authority's Bonds will not expire or be terminable without Developer's written consent prior to the Outside Date.

**Section 4.3** Pledge of Incremental Property and Sales Tax Revenues. Pursuant to Section 31-25-107(9)(b) of the Act, the Authority hereby Pledges so much of the Incremental Property Taxes and Incremental Sales Taxes as is necessary to accomplish repayment of the Authority's Bonds in accordance with the terms and conditions of the Public Financing Documents. Additionally, for so long as the Authority has not issued the Authority's Bonds and Developer has not exercised its right to terminate this Agreement pursuant to Section 13.1, the Authority hereby Pledges sufficient Incremental Property Taxes and Incremental Sales Taxes as may be necessary to fund Direct Reimbursements to Developer of any sums due and payable under the terms and conditions of this Agreement, which Pledge will remain senior to any obligation of the Authority other than with respect to any interim financing the Authority may obtain for completing the Assemblage. Once the Authority has issued the Authority's Bonds, the

foregoing Pledge will become subordinate to the terms and conditions of the Public Financing Documents relating to the Authority's Bonds, and any sums then due and payable to Developer under the terms and conditions of this Agreement will be paid to Developer from the Net Bond Proceeds from the Authority's Bonds.

**Section 4.4** Sale of Authority's Bonds.

(a) The Authority will use commercially reasonable efforts to sell the Series 2003-A Bonds on or before August 20, 2003, subject to satisfaction of the following conditions precedent:

(i) DHC's capital committee has authorized and caused the execution of a binding agreement of purchase and sale as contemplated in Section 2.7(d), subject only to conditions reasonably consistent with the terms and conditions of this Agreement, pursuant to which:

(1) Developer is committed to sell the Target Site, and DHC is committed to purchase the Target Site, with closing to occur by not later than December 31, 2003;

(2) DHC is committed to completing construction and opening a fully stocked Super Target by not later than December 31, 2004.

(ii) Notwithstanding the foregoing, nothing herein will be construed as requiring Developer to complete negotiations with DHC, and the resolution authorizing issuance of the Authority's Bonds will provide that Developer will have until the Outside Date within which to find an Alternate User if the conditions precedent set forth in Section 4.4(a)(i) are not timely satisfied or if DHC defaults in its obligation to construct and open the Super Target by December 31, 2004. Under the foregoing circumstances, Developer will be deemed to have satisfied the conditions precedent to issuance of the Series 2003-A Bonds and the Authority will promptly issue the Series 2003-A Bonds if, on or before the Outside Date, an Alternate User has executed a binding agreement to construct and open a fully stocked retail store on the Target Site which will:

(1) Generate an average of \$1,680,000 per Fiscal Year of Incremental Sales Taxes over its first five (5) full years of operation; and

(2) Be open to the public on or before the second anniversary of the Outside Date.

(b) The Authority will use commercially reasonable efforts to sell the Series 2003-B Bonds on or before November 14, 2003, subject to satisfaction of the following condition precedent:

(i) Developer has obtained signed letters of intent or leases from retailers that are projected to generate an average of \$500,000 per Fiscal Year of Incremental Sales Taxes from development within Phase II of the Mandalay Town Center; and

(ii) Any additional terms and conditions set forth in the Public Financing Documents as conditions precedent to issuance of the Series 2003-B Bonds have been satisfied.

**Section 4.5** Authority's Payment to Developer for Certain Public Improvements. Commencing on the Effective Date and continuing until Developer has accomplished Completion of Construction of, and has received payment in full for, all Public Improvements with respect to which the Authority is obligated to pay Developer pursuant to this Agreement, Developer will submit to the Authority on a monthly basis a written statement of Hard Costs and Soft Costs incurred in the preceding month, together with a construction management fee equal to five percent (5%) of the aggregate amount of Hard Costs and Soft Costs. The statement will be accompanied by copies of supporting documentation, and will be subject to audit by the Authority upon written request. Within thirty (30) days after Developer delivers a statement pursuant to this Section 4.5, the Authority will remit payment in full of all amounts which it does not, in good faith, contest. If the Authority in good faith contests all or any part of a monthly statement, it will provide written notice to Developer that it contests the charges, and it may withhold payment for a period of up to thirty (30) days during which it may audit Developer's records with respect to such contested charges and during which Developer and the Authority will work in good faith to resolve. If Developer and the Authority are not able to resolve any such contested charges within the thirty (30) day period, then either party may take any further action allowed under this agreement.

**Section 4.6** Authority Participation in Higher Than Expected Rate of Return. The purpose of affording public assistance is to accomplish the stated public purposes of this Agreement and not to subsidize an otherwise economically viable development project. While the Authority has determined that the Redevelopment Plan might not be undertaken but for the issuance of the Authority's Bonds, the parties recognize that the ongoing profitability of the Mandalay Town Center to Developer is based upon projections that may or may not be fulfilled, and that Developer will have no liability whatsoever as to a failure to occur of any of the projected results. However, in order to ensure that the Authority does not subsidize an unreasonable level of earnings for Developer, and provided that the Authority's Bonds are fully issued and sold, and provided further that the Authority is not otherwise in default of this Agreement beyond any applicable grace and cure periods, the parties agree that a reasonable level of earnings for Developer for developing the Mandalay Town Center (excluding profits derived from sale of all or any part of the Redevelopment Site, including outparcels) is the Annual Return (as defined below). Therefore, beginning upon the "Completion of Construction of the Mandalay Town Center" as defined in Section 2.3 if, as of the last day of such year and each calendar year, the Net Cash Flow (as defined below) exceeds the Annual Return (as hereinafter defined), the Authority Share (as hereinafter defined) of such excess will be paid to the Authority on or before May 1 of each ensuing year. Developer will submit annually a complete written financial statement to the Authority in the format generally used and required by the lender for Developer's Financing showing in reasonable detail the calculation of actual earnings from the Mandalay Town Center and Developer's Net Cash Flow. The annual statements will be regarded as proprietary and confidential, subject to the provisions of the Open Records Act, Section 24-72-101 *et seq.*, C.R.S. The annual statements will include all income attributable to all Improvements in the Redevelopment Site and will include any expenses for the operation of the Redevelopment Site that are attributable thereto. All such statements will be

certified to by Developer's chief financial officer and will be accompanied by the payment required under this section. Developer will provide such statements within ninety (90) days after the end of each calendar year following the "Completion of Construction of the Mandalay Town Center" as defined in Section 2.3. The Authority may cause an audit of Developer's statements and calculations referred to herein by the Authority's staff or an independent firm or consultant, and if, as a result of any such audit, Developer actually owes the Authority more money than has been remitted by Developer as heretofore described, then Developer will immediately remit to the Authority the deficiency, and if the deficiency is in excess of five percent (5%) of the Net Cash Flow for said period, Developer will be responsible for the cost of said audit. For purposes of this section, the following terms will have the meaning set forth below:

(a) Annual Return: A cumulative (from the first date of investment) annual return upon Developer's Private Investment of thirteen percent (13.0%) after taxes.

(b) Authority Share: The percentage, calculated as of the last day of each calendar year during which the provisions of this Section are applicable, which will be twenty two and one half percent (22.5%) of any excess in Net Cash Flow after the Annual Return.

(c) Net Cash Flow: The net operating income after debt service from the Mandalay Town Center, determined in accordance with generally accepted accounting principles consistently applied (except as otherwise specified herein), for each calendar year during which the provisions of this Section are applicable. Sales of all or any part of the Redevelopment Site, including outparcels, and the proceeds of any mortgages and any unused insurance proceeds or condemnation awards, will not be considered in determining the Net Cash Flow.

(d) Developer's Private Investment: The total cost invested by Developer, including any investment made by Developer prior to the date of this Agreement, and incurred by Developer in the construction and development of the Redevelopment Site and any additional capital contributions made by Developer. The total costs will be determined in accordance with generally accepted accounting principles consistently applied for the period beginning with the calendar year 2003 (if any) and ending upon "Completion of Construction of the Mandalay Town Center" as defined in Section 2.3.

(e) Termination of Contingent Payments: From and after the consummation of any sale or conveyance (not including leases) to any unaffiliated third party of any portion of the Redevelopment Site, the Authority's participation pursuant to this Section will end as to the part so sold or conveyed. In all events the Authority's participation pursuant to this Section will end at the end of the fifth year after "Completion of Construction of the Mandalay Town Center" as defined in Section 2.3.

## **SECTION 5      SPECIFIC CITY OBLIGATIONS.**

**Section 5.1** Mandalay Town Center Business Improvement District. The City will use its best efforts to form the BID, and Developer hereby consents to and approves formation of the BID in accordance with the terms and conditions of this Section 5, subject to the following terms and conditions:

(a) Developer, the Authority, and the City will cooperate to take all requisite steps for placing on the ballot for November, 2003, a ballot question for approval by the electors of the district of (i) the BID's mill levy; and (ii) any voter approval that is required by Section 20, article X of the Colorado constitution for the BID to levy, collect, and expend the funds contemplated, and to otherwise perform the obligations created, by this Section 5.

(b) Unless subsequently increased pursuant to an election of the electors of the district in accordance with applicable Colorado law, the maximum mill levy on real and personal property within the Redevelopment Site will be 35 mills.

(c) All funds generated by the BID's mill levy and/or any Net Bond Proceeds generated from Bonds issued by the BID (to the extent that the City subsequently approves the issuance of any Bonds) will be used to finance the construction of any improvements and/or to the performance of any services allowed under part 12, article 25, title 31, C.R.S., including direct payments to Developer for the fair value (not to exceed Developer's actual cost) of any Public Improvements or services constructed or provided by Developer that are eligible for BID funding.

(d) The City will enter into an intergovernmental agreement with the BID pursuant to which, *inter alia*, the City will irrevocably commit, subject to annual appropriation, to include within the City's budget for each Fiscal Year during the term of the intergovernmental agreement a line item for the appropriation of any revenues Pledged to the BID, including any such revenues required to be Pledged in connection with Bonds issued by the BID.

**Section 5.2** Bond Requirements. The City manager will include within the City's budget for each Fiscal Year during which the Authority has outstanding Bond Requirements with respect to the Authority's Bonds a line item for the appropriation of sufficient general revenue funds of the City to meet any obligations of the City with respect the Public Financing Documents, including but not limited to the City's obligation to replenish any reserve required to be maintained for the repayment of principal and interest on the Authority's Bonds. The foregoing obligation will be subject to annual appropriation, and will be subordinate to the terms of any applicable Public Financing Documents executed subsequent to the Effective Date.

**Section 5.3** Covenant Regarding Off-Site Road Obligations. The City will not include the Redevelopment Site within any improvement district for the purpose of financing improvements to off-site roads, including without limitation any special improvement district for constructing improvements to Wadsworth Boulevard in the vicinity of the Redevelopment Site.

**Section 5.4** Processing of Land Use Approvals and Building Permits. The City will, to the extent possible under the Municipal Code, prioritize and promptly process applications for land use approvals and building permits relating to development of the Mandalay Town Center. The City acknowledges that the Phase I ODP will establish heightened design criteria compared to the design criteria for typical Super Target store, that will increase construction costs over the costs for a typical Super Target store by up to \$1,800,000. If it is determined that the heightened design criteria will increase the costs by more than \$1,800,000, the City will, upon receiving a complete application therefore, promptly process an administrative amendment to the Phase I

ODP to revise the design criteria so as to keep the cost of the upgrades within the foregoing budget.

## **SECTION 6 DEVELOPER'S PURCHASE OF REDEVELOPMENT SITE**

**Section 6.1** Assemblage. The Authority will exercise commercially reasonable efforts to complete the Assemblage on or before August 15, 2003, subject to the terms and conditions of Section 3.

**Section 6.2** Agreement to Purchase. Subject to satisfaction of the Closing Conditions, the Authority agrees to sell and Developer agrees to purchase the Redevelopment Site on the Closing Date on the terms and conditions of this Agreement.

**Section 6.3** Payment of Purchase Price. The Purchase Price will be payable at Closing in immediately available funds, subject to the following adjustments to be made at Closing (the "**Closing Adjustments**"):

(a) The Title Company will allocate closing costs and fees in accordance with written instructions from the Authority and Developer.

**Section 6.4** Closing Conditions. The Authority and Developer will be obligated to Close only upon satisfaction or written waiver by the benefited party of the following conditions (the "**Closing Conditions**") on or before the Closing Date:

(a) Developer's obligation to Close is expressly conditioned on the City's having granted final, non-appealable approval of the ODP for Phase I on or before the Closing Date. If the City has not approved the Phase I ODP by June 30, 2003, then Developer will have the right to terminate this Agreement at any time thereafter, by delivering to the City and to the Authority its written notice of termination, in which case the provisions of Section 13.4(a) will apply .

(b) Developer's obligation to Close is expressly conditioned on the Authority having timely sold the Authority's Bonds.

(c) Developer's obligation to Close is expressly conditioned on the Authority having completed the Assemblage and being in a position to convey Title to Developer, and the Title Company having issued the Title Policy or its unconditional commitment to issue the Title Policy, in either case in the form of the then current Title Commitment.

(d) Developer's obligation to Close is expressly conditioned on DHC's capital committee having approved and caused the execution a contract to purchase the Target Site and to construct and upgrade the Super Target as contemplated in the Target LOI, subject only to satisfaction of conditions that are materially consistent with the terms and conditions of this Agreement.

(e) Developer's obligation to Close is expressly conditioned on Developer, in its reasonable discretion, having determined that no condition of any portion of the Redevelopment Site is unsatisfactory to Developer.

(f) Developer's obligation to Close is expressly conditioned on Developer, in its reasonable discretion, having determined that no changes in zoning or other land use and building provisions directly or indirectly affecting the Redevelopment Site (including, without limitation, any local or statewide moratorium or other restriction on construction or issuance of water or sewer taps) have occurred or are pending that would materially diminish Developer's ability to timely develop the Redevelopment Site in accordance with the Redevelopment Plan.

(g) Developer's obligation to Close is expressly conditioned on Developer, in its reasonable discretion, having determined that it has obtained financing in amounts sufficient, together with the Authority's payment of its share of the Public Improvements costs, to acquire the Redevelopment Site, construct the Phase I Public Improvements, perform the Site Work, and otherwise perform its obligations under this Agreement.

(h) Developer's obligation to Close is expressly conditioned on Developer, in its reasonable discretion, having determined that it has obtained letters of intent from retailers for at least 65% of the gross leaseable square footage within Phase II of the Mandalay Town Center (excluding the hotel site).

**Section 6.5** Developer's Option to Extend Closing or to Terminate. If the Closing Conditions are not satisfied on or before November 30, 2003, then Developer may, at its option, either (i) terminate this Agreement by giving written notice of such termination to the City and the Authority within 10 business days; or (ii) extend the Closing Date to not later than November 14, 2004 (in which case the Outside Date and any other dates for performance of obligations under this Agreement will be similarly extended). The Authority's obligation to pay Developer for the portion of any Public Improvements with respect that Commencement of Construction has occurred prior to termination will survive any termination pursuant to this Section 6.5.

**Section 6.6** Conveyance; Condition of Title. The Authority will provide to Developer a current ALTA owner's title insurance commitment ("**Title Commitment**") for the Redevelopment Site issued by Chicago Title of Colorado, Inc., 1875 Lawrence Street, Suite 1200, Denver, CO 80201 (or any other title company that the parties mutually select and designate in writing) ("**Title Company**"), together with clear and legible copies of all documents referred to therein and a current certificate of taxes and assessments due for the Redevelopment Site issued by the treasurer or assessor of the County within 30 days following the Effective Date. The Title Commitment will be in an amount equal to the sum of the Purchase Price (excluding credits) plus the amount of the construction loan referred to in Section 7.1, and will commit the Title Company to issue its standard Owners Title Policy subject only to (i) current, non-delinquent general real property taxes, (ii) the Plan, (iii) this Agreement (collectively the "**Permitted Exceptions**"); and (iv) satisfaction of such conditions as may be reasonably acceptable to Developer and which the Authority unconditionally agrees to satisfy on or prior to the date of Closing. If Developer notifies the Authority of any objections to the Title Commitment on or before 30 days after the Authority's delivery of the Title Commitment(s) or any amendments thereto, the Authority will use commercially reasonable efforts to cure such objections within 30 days of receiving Developer's notice. If the Authority fails to cure the objections within the time set forth in the preceding sentence, Developer will have the right terminate this Agreement by notice to the Authority given in accordance with Section 13.3, without breach or default hereunder. Additionally, at any time prior to Closing, Developer will

have the right to waive any objection to the Title Commitment of which it has previously notified the Authority. At Closing, the Authority will convey Title to Developer pursuant to a statutory form special warranty deed.

**Section 6.7** Closing. If the Closing Conditions are satisfied, and if no Default has then occurred and is continuing, Closing of the acquisition by Developer from the Authority of the Redevelopment Site will take place at the Title Company on the Closing Date. At Closing, the following will occur, each being a condition precedent to the others and all being considered as occurring simultaneously:

(a) The Authority will deliver to Developer a special warranty deed, executed and acknowledged as required by law, conveying Title to Developer.

(b) Developer will pay the Purchase Price less the Closing Adjustments.

(c) The parties will execute settlement sheets and such other agreements and documents (with customary prorations in accordance with local practice for commercial property transactions) as may be required to implement and to carry out the intent of this Agreement.

(d) The Title Company will record the deed in the real property records of the County. Developer will pay for the costs of such recording, including the documentary fee.

(e) The Title Company will issue the Title Policy to Developer, or unconditionally commit to so issue the Title Policy promptly following Closing (the Authority will pay the portion of the premium attributable to the Purchase Price, and Developer will pay the portion of the premium attributable to Developer's construction financing).

**Section 6.8** Early Closing on Target Site. If DHC determines that it will close on acquisition of the Target Site from Developer before the Closing Date for the balance of the Redevelopment Site, then the Authority and Developer will in good faith cooperate to accomplish Closing on the Target Site on the date DHC wishes to close on its acquisition of the Target Site. The portion of the Purchase Price payable by Developer to the Authority at the Closing for the Target Site will be calculated on a per square foot basis pursuant to the following formula:  $[(\text{total gross square footage of Target Site} \div \text{total gross square footage of Redevelopment Site}) \times \text{Purchase Price} = \text{portion of Purchase Price payable at Closing for Target Site}]$ . The Title Policy for the Target Site will insure title to the Target Site in the amount of the portion of the Purchase Price attributable to the Target Site.

## **SECTION 7 DEVELOPER'S FINANCING.**

**Section 7.1** Developer's Financing. Thirty (30) days prior to the scheduled Closing Date, Developer will deliver to the Authority for the Authority's review a copy of a loan term sheet(s) from a lender of Developer's choice for the construction financing necessary to complete the Phase I Public Improvements in order to enable the Authority to confirm that: (i) the prospective lender has sufficient financial capacity to provide the committed funds; and (ii) the proceeds of Developer's Financing will be reasonably sufficient to fund the design and construction of all Phase I Public Improvements when added to the Authority's payments to Developer pursuant to Section 4.5, reasonably anticipated proceeds from Developer's sale of Pad



Sites, and Developer's equity investment. If Developer obtains separate construction financing for the Phase II Public Improvements, Developer will deliver a copy of the loan term sheet(s) to the Authority for the Authority's review as set forth above not later than thirty (30) days prior to Commencement of Construction of the Phase II Public Improvements.

**Section 7.2** Holder Not Obligated to Construct. Notwithstanding the provisions of this Agreement, a Holder (including a Holder or other person or entity who obtains title to all or part of the Redevelopment Site as a result of foreclosure proceedings, or deed in lieu thereof, and including any other party who thereafter obtains title to all or any part of the Redevelopment Site from or through the Holder or other person or entity) will not be obligated by this Agreement to construct or complete the Improvements, or any of them, or to guarantee the construction or completion of the Improvements. A Holder and any other persons specified above and their successors in interest may, at their option, construct the Improvements required under this Agreement in accordance with Section 7.4.

**Section 7.3** Copy of Notice of Default to Holder. If the Authority delivers to Developer a demand or notice of any claimed Default by Developer under this Agreement, the Authority will at the same time transmit a copy of the demand or notice to each Holder at the last address of the Holder shown in the Authority's records. All notices under this Section 7.3 will be given in accordance with the provisions of Section 14.3.

**Section 7.4** Holder's Option to Cure Defaults. Any Holder will have the right, at its option, to cure or remedy or to commence to cure or remedy, any claimed Default (to the extent that it relates to the part of the Redevelopment Site covered by its Mortgage) within thirty (30) days after the period for cure set forth in Section 12.4 after receipt of the notice required by Section 9.2 (or so long as cure has been commenced within such period, for so long as the Holder is diligently and continuously prosecuting such cure), and to add the cost thereof to the indebtedness secured by the Mortgage; provided, however, that the Holder undertakes the cure or remedy in accordance with the terms and provisions of this Section 7.4. Nothing contained in this Agreement will be deemed to permit or authorize a Holder to undertake or continue the construction of the Improvements, except to the extent the Holder reasonably deems the same necessary to conserve or protect the Improvements or construction already made, without first having expressly assumed Developer's obligations with respect to the portion of the Redevelopment Site and Improvements which Holder elects to construct by written agreement reasonably satisfactory to the Authority. In that event, the Holder must agree to complete the portion of the Improvements which the Holder has elected to construct, in the manner provided in this Agreement, and submit evidence satisfactory to the Authority that it has the qualifications and financial responsibility necessary to perform such obligations.

**Section 7.5** Rights of Lenders and Interested Parties. Financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, and purchasers or developers of portions of the Redevelopment Site. The City and the Authority will recognize the rights of such interested parties and will otherwise permit such interested parties to assume all of the rights and obligations of Developer under this Agreement. The City and the Authority will, at any time upon reasonable request by Developer, provide to any interested party an estoppel certificate or other document evidencing that this Agreement is

in full force and effect. Upon request by an interested party, the City and the Authority will enter into a separate assumption or similar agreement with such interested party, consistent with the provisions of this Section 7.5.

## **SECTION 8 REPRESENTATIONS AND WARRANTIES.**

**Section 8.1** Developer's Representations and Warranties. Developer represents and warrants that:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Missouri, is or will be registered to conduct business in the State of Colorado, is not in violation of any provisions of its organizational or operating agreements or the laws of the State of Colorado, has power and legal right to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action.

(b) The consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of Developer or constitute a default or result in the breach of any term or provision of any contract or agreement to which Developer is a party or by which it is bound.

(c) Developer will cooperate with the Authority and the City, at the Authority's and/or the City's expense, with respect to any litigation brought by a third party concerning the Plan, the Mandalay Town Center, the Redevelopment Site, the Improvements, or this Agreement.

(d) There is no litigation, proceeding or investigation contesting the power or authority of Developer or its officers with respect to the Mandalay Town Center, this Agreement, Developer's Financing, or the Improvements, and Developer is unaware of any such litigation, proceeding, or investigation that has been threatened.

**Section 8.2** Authority's Representations and Warranties. The Authority represents and warrants that:

(a) The Authority is an urban renewal authority duly organized and validly existing under the laws of the State of Colorado.

(b) The Authority has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder, including compliance with the publication requirements of Section 31-25-106(2) of the Act.

(c) The Authority will cooperate with the Developer and the City, at the Authority's and/or the City's expense, with respect to any litigation brought by a third party concerning the Plan, the Mandalay Town Center, the Redevelopment Site, the Improvements, or this Agreement.

(d) There is no litigation, proceeding or investigation contesting the power or authority of the Authority or its officials to enter into or consummate the transactions

contemplated by this Agreement, and the Authority is unaware of any such litigation, proceeding or investigation that has been threatened.

(e) Except as disclosed in the phase I environmental report that the Authority has provided to Developer or as otherwise disclosed in writing, the Authority has no knowledge of any condition of the Redevelopment Site that would constitute a violation of or require remedial action pursuant to any of the Environmental Laws.

(f) To the extent necessary to timely complete the Assemblage in accordance with the terms and conditions of this Agreement, the Authority will obtain such interim financing as may be necessary to conduct real estate closings with certain of the Owners prior to Net Bond Proceeds being available from the sale of the Series 2003-A Bonds.

(g) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Authority or to the Authority's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Authority is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Authority.

**Section 8.3** City's Representations and Warranties. The City represents and warrants that:

(a) The City is a home rule municipal corporation duly organized and validly existing under the State of Colorado;

(b) The City has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder, and to authorize the Authority to carry out its obligations under this Agreement, including compliance with the requirements of Sections 31-25-105(1)(e) and 31-25-107 of the Act;

(c) The City will cooperate with the Authority and the Developer, at the City's and/or the Developer's expense, with respect to any litigation brought by a third party concerning the Plan, the Mandalay Town Center, the Redevelopment Site, the Improvements, or this Agreement.

(d) There is no litigation, proceeding or investigation contesting the power or authority of the City or its officials to enter into or consummate the transactions contemplated by this Agreement, and the City is unaware of any such litigation, proceeding or investigation that has been threatened; and

(e) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City, the City Code or the City's Charter, or (ii) result in the breach of any of the terms or provisions or

constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected.

## **SECTION 9 GENERAL COVENANTS.**

### **Section 9.1 General Insurance Provisions.**

(a) From the date the license granted in Section 3.5 becomes effective until Completion of Construction, Developer will provide the Authority with certificates of insurance as follows:

(i) The property insurance described in Section 9.2;

(ii) Commercial general liability insurance with X, C & U exclusions deleted (including completed operations, operations of subcontractors, blanket contractual liability insurance, owned, non-owned and hired motor vehicle liability, personal injury liability) with combined single limits against bodily injury and property damage of not less than \$1,000,000 and with excess umbrella coverage raising the total coverage to not less than \$5,000,000; and

(iii) Worker's compensation insurance, with statutory coverage.

(b) Developer will provide certified copies of all policies of insurance required under this Section 9.1, to the Authority upon request. For the property insurance required to be carried by Developer under Section 9.2, Developer will require its insurer(s) to provide the Authority and its commissioners, directors, officers, employees and agents with waivers of subrogation. Developer will not obtain any property insurance that prohibits the insured from waiving subrogation. The Authority agrees to seek waivers of subrogation for the benefit of Developer as to any property insurance it carries from time to time.

(c) Insurance coverage specified herein constitutes the minimum requirements, and said requirements will in no way lessen or limit the liability of Developer under the terms of this Agreement. Developer will procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that, in its judgment, may be necessary for its proper protection in the completion of the Improvements.

### **Section 9.2 Redevelopment Site Insurance.**

(a) From the date the license granted in Section 3.5 becomes effective until Completion of Construction, Developer will purchase and maintain in the name of Developer for the benefit of Developer and the Authority and all prime contractors, subcontractors and suppliers, the following insurance upon the Improvements to the full insurable value thereof:

(i) With respect to all Improvements under construction, from the Commencement of Construction until the Completion of Construction, "Builder's Special Form 100% Completed Value Non-Reporting" or "Course of Construction" insurance; and

(ii) With respect to all new Improvements constructed pursuant to this Agreement, from the Completion of Construction, special form risk property insurance.

(b) Redevelopment Site coverage will include the Improvements themselves, all materials and supplies of any nature included in the Improvements, and with respect to builder's risk coverage, all materials and supplies of any nature whatsoever to be used in completion of the Improvements, whether any or all of the foregoing are located at the site, in transit, or while temporarily stored off-site. The coverage will be for "special perils" and, subject to reasonable commercial availability, will include coverage for losses caused by fire; collapse; faulty workmanship, except the cost of correcting faulty workmanship (builder's risk only); flood insurance if applicable; glass breakage; and freezing.

**Section 9.3** Signage. As soon as reasonably practicable, and until Completion of Construction of the Improvements, Developer will display signage at the Mandalay Town Center provided by the Authority, connected to the primary signage of Developer, visible to the general public, stating that the Mandalay Town Center is being constructed "with the financial assistance of the Westminster Economic Development Authority and in cooperation with the City of Westminster."

**Section 9.4** Assistance to Developer. The Authority agrees to reasonably cooperate with Developer and to provide Developer with reasonable assistance with respect to (i) securing the City's commitment of its moral obligation to perform any City obligations under the Public Financing Plan that are subject to the City's limitations under article X, section 20 of the Colorado constitution, (ii) application for building permits from the City, and any permits or approvals required from any governmental agency, whenever reasonably requested to do so; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes, (iii) obtaining the City's approval of Developer's application for the Phase II ODP(s), and (iv) securing any construction and permanent financing that Developer may reasonably require in connection with the performance of its obligations under this Agreement.

**Section 9.5** Relocation. Except as otherwise approved by Developer, on or prior to August 15, 2003, the Authority will complete the relocation of all current occupants of the property comprising the Redevelopment Site at the Authority's cost and expense, and in accordance with the Authority's relocation plan.

**Section 9.6** Anti-Discrimination Employment. In any activities undertaken under this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, handicap, ancestry or national origin.

**Section 9.7** Construction of the Mandalay Town Center. Construction of the Mandalay Town Center, and the contemplated uses and occupancies thereof, will comply with all applicable federal, state and City laws, rules and regulations, including, but not limited to, building, zoning, and other applicable land use codes, subject to modifications approved by the City pursuant to the planning, subdivision, zoning, environmental and other developmental ordinances and regulations.

**Section 9.8** Covenant Regarding Economic Incentives . Developer is undertaking the obligations under this Agreement in reliance on the City and the Authority agreeing that it would contravene the public purpose of this Agreement if either the City or the Authority were to engage in any activities that would undermine Developer's ability to attract desirable tenants and users to the Mandalay Town Center. Therefore, during the period commencing on the Effective Date and terminating on the Outside Date, to the extent permitted by law, the City and the Authority will in good faith (i) refer to Developer all inquiries from potential retailers, restaurant operators, hotel operators, and similar prospective users; (ii) will not offer to such potential users any form of economic incentive or subsidy to locate within an area of the City other than the Mandalay Town Center unless the same incentive or subsidy is available to the user for locating within the Mandalay Town Center; and (iii) not offer to developers of other projects subsidies or incentives that are substantially more favorable than the incentives and subsidies detailed in this Agreement.

**Section 9.9** Inclusion of Additional Property Within the Redevelopment Site. The Authority and the City acknowledge that the existing gasoline station located at the intersection of Church Ranch Boulevard and the existing Reed Street alignment is not currently included with the Redevelopment Site, but that implementation of the Redevelopment Plan will require relocation of the gasoline station in order to realign Reed Street in accordance with the requirements of the Redevelopment Plan. The cost of reconfiguration or relocation of the gas station (currently anticipated to be approximately Two Million Dollars (\$2,000,000)) will be funded from Net Bond Proceeds realized from sale of the Series 2003-B Bonds. If Developer in good faith gives the Authority written notice that its efforts to reach a voluntary agreement with the owner of the gasoline station parcel have been unsuccessful, the Authority will promptly commence and prosecute an Eminent Domain Proceeding to acquire the gasoline station site or so much thereof as Developer has designated as necessary for acquisition and inclusion within the Redevelopment Site. The Authority and the City will promptly process and take final action on any required amendments to the PDP and/or the ODPs, and otherwise to amend the Redevelopment Plan, to the extent necessary to incorporate the gasoline station site into the Mandalay Town Center. To the extent that Developer identifies a site in the vicinity of the Redevelopment Site to which the gas station will be relocated, the City and the Authority will reasonably cooperate with Developer's efforts to acquire the site and, to the extent necessary, secure annexation of the site to the City and zoning of the site that will allow operation of the gas station as a use by right. Developer may, at Developer's election, provide interim private financing for reconfiguration or relocation of the gas station, subject to reimbursement of Developer's actual Hard Costs and Soft Costs from the Authority from the Net Bond Proceeds realized from sale of the Series 2003-B Bonds.

**Section 9.10** Vacation and Dedication of Rights of Way and Public Improvements. After the Authority completes the Assemblage, Developer will designate in writing any street rights of way determined to be necessary or desirable in order to implement the Redevelopment Plan, and the City will promptly commence and diligently pursue to completion the vacation of the existing street rights of way within the Redevelopment Site in accordance with the procedures set forth in the Municipal Code. After Developer completes construction of any discrete segment of the re-configured public street system or any discrete Public Improvement within the Redevelopment Site, Developer will dedicate and the City will accept the rights of way, related street improvements, and/or other Public Improvement in accordance with the

applicable Municipal Code and ODP provisions. With respect to those Public Improvements for which the Authority is financially responsible under the terms and conditions of this Agreement, Developer will have no obligation to dedicate the Public Improvements unless and until Developer has been paid in full for the Hard Costs, Soft Costs, and construction management fees as provided for in this Agreement.

## **SECTION 10 INDEMNITY AND RESPONSIBILITY.**

**Section 10.1 Developer's Indemnification.** Developer will indemnify and defend the Authority and its officers and employees against all claims or suits for and damages to property and injuries to persons, including accidental death, to the extent caused by Developer's negligence in performing activities under this Agreement, whether such activities are undertaken by Developer or anyone employed by Developer.

**Section 10.2 Authority's Responsibility.** The Authority will be responsible for, and to the extent permitted by law will reimburse Developer for all costs and expenses incurred by Developer as a result of, all claims or suits for and damages to property and injuries to persons, including accidental death, to the extent caused by the Authority's negligence in performing activities under this Agreement, whether such activities are undertaken by the Authority or anyone directly or indirectly employed or under contract to the Authority.

**Section 10.3 City's Responsibility.** The City will be responsible for, and to the extent permitted by law will reimburse Developer for all costs and expenses incurred by Developer as a result of, all claims or suits for and damages to property and injuries to persons, including accidental death, to the extent caused by the City's negligence in performing activities under this Agreement, whether such activities are undertaken by the City or anyone directly or indirectly employed or under contract to the City.

## **SECTION 11 RESTRICTIONS ON ASSIGNMENT AND TRANSFER.**

**Section 11.1 Representations as to Redevelopment.** Developer's purchase of the Redevelopment Site and its undertakings under this Agreement are for the purpose of redevelopment of the Redevelopment Site and not for land holding or speculation. Developer acknowledges that:

(a) The redevelopment of the Redevelopment Site is important to the general welfare of the Authority and the City, and is consistent with the Plan;

(b) The Authority intends to make available substantial financing and other aids to make the redevelopment possible; and

(c) It is because of the qualifications and identity of Developer that the Authority is entering into this Agreement with Developer, and is willing to accept and rely on the obligations of Developer for the faithful performance of all of its undertakings and covenants under this Agreement.

**Section 11.2 Limitation on Assignment.** Except as otherwise provided in this Section 11.2, prior to Completion of Construction of Phase I, Developer will not assign its rights

or delegate its duties and obligations under this Agreement without the prior written consent of the Authority, not to be unreasonably withheld, delayed or conditioned. For purposes of this Section 11.2, it will be presumptively unreasonable for the Authority to withhold its consent to Developer conveying the Redevelopment Site, and assigning its rights and delegating its obligations under this Agreement, to a shopping center developer who, individually or when combined with a property management entity, demonstrates to the reasonable satisfaction of the Authority, the following: (i) a net worth using generally accepted accounting practices of in excess of \$10,000,000; (ii) management of in excess of 1,000,000 square feet of Class A retail shopping center properties; and (iii) an interest in the long term viability of the land use and the Redevelopment Plan as a whole. Any purported assignment without consent of the Authority will be null and void. As a condition to the Authority granting consent, an assignee will expressly assume in writing the obligations of Developer hereunder. For purposes of this Section 11.2, any sale, transfer, assignment, pledge or hypothecation of an interest in Developer (other than to an Affiliate of Developer) that results in a change in management control of Developer will constitute an assignment of this Agreement. Notwithstanding the foregoing:

(a) Following Completion of Construction of 75,000 square feet of retail space within Phase II that is occupied by tenants whose business operations generate Sales Taxes, Developer may freely convey the Redevelopment Site, assign its rights, and delegate its duties and obligations under this Agreement without the Authority's consent.

(b) Developer may at any time without the Authority's consent convey the Redevelopment Site, assign its rights, and delegate its duties and obligations under this Agreement to an Affiliate.

(c) Developer may at any time without the Authority's consent convey the Redevelopment Site, assign its rights, and delegate its duties and obligations under this Agreement to any entity in which either Mike Ebert or Dan Lowe (or any entity controlled by Mike Ebert or Dan Lowe) has an interest, provided that the management of the entity is provided by either Mike Ebert or Dan Lowe, or by an entity which they together or individually control.

(d) For so long as RED continues to be the managing member or managing partner of Developer or any successor entity to Developer, no sale, transfer, assignment, pledge or hypothecation of an interest in Developer will be construed as resulting in a change of control or construed as constituting an assignment of this Agreement that requires the Authority's consent.

(e) No consent will be required under this Section 11.2 for any pledge or assignment of this Agreement as collateral security for Developer's Financing.

(f) No consent will be required under this Section 11.2 for any sale or lease of a Pad Site for the construction thereon of Improvements to be used by the purchaser of the Pad Site or its affiliate or borrower (such as the sale, lease, or transfer of a retail building site for the construction and operation thereon of an Approve Use), including, but not limited to the sale of the Target Site as contemplated in this Agreement.



## **SECTION 12    EVENTS OF DEFAULT; REMEDIES.**

**Section 12.1** Events of Default by Developer. Subject to the provisions of Section 12.4 and Section 12.5, a Default by Developer under this Agreement will mean one or more of the following events:

(a) Developer abandons construction of the Improvements for any phase of the Mandalay Town Center once begun; provided, however, that the absence of construction between phases of the Mandalay Town Center will not constitute a Default by Developer (for purposes of this subparagraph, the cessation of construction activities for any phase of the Mandalay Town Center for 120 consecutive days prior to substantial completion thereof, subject to extension pursuant to Section 12.5, will be deemed an abandonment); or

(b) Developer fails to pay promptly any uncontested cost or expense required to be paid by Developer to a person or entity, including the Authority, under the terms of this Agreement; or

(c) Developer transfers or assigns its interest in this Agreement or any interest in Developer is transferred or assigned, without the consent of the Authority if required by the terms of this Agreement; or

(d) On or before the later of (i) the Outside Date, or (ii) the fifth (5<sup>th</sup>) anniversary of the Closing Date for the entire Redevelopment Site, Developer has not constructed the retail space generally along the Main Street corridor as shown on the Site Plan, and/or that space is not occupied by tenants whose business operations generate Sales Taxes; provided, however, that:

(i) Once the foregoing condition has been satisfied, a subsequent drop in occupancy will not be construed as a Default;

(ii) If Developer has consistently exercised commercially reasonable efforts to meet the target occupancy level, Developer will be deemed to be in Default only to the extent that the Bond Requirements are not being met for a period of twenty-four (24) months without recourse to any reserves held by the Bond Trustee;

(iii) The Authority's remedy for a Default under this Section 12.1(d) will be limited to termination of this Agreement pursuant to the terms and conditions of Section 13.2 and Section 13.4.

(e) Developer fails to observe or perform any covenant, obligation or agreement of Developer provided in this Agreement.

**Section 12.2** Events of Default by the Authority or the City. Subject to the provisions of Section 12.4 and Section 12.5, a Default by the Authority or the City under this Agreement will mean one or more of the following events:

(a) the Authority or the City fails to make any payments due from the Authority, but only to the extent that the Authority or the City, as applicable, has funds in its

possession that are determined by the Authority or the City, as applicable, to be legally available to make such payments; or

(b) the Authority or the City fails to observe or perform any covenant, obligation or agreement of the Authority or the City as applicable provided in this Agreement.

**Section 12.3 Remedies.**

(a) If any Default by the Authority or the City occurs and is continuing hereunder, Developer may (i) seek damages at law for actual out-of-pocket expenses, but not consequential damages, lost profits or punitive damages; (ii) seek enforcement of the Authority's or the City's obligations hereunder by any equitable remedies, such as specific performance or injunction; or (iii) elect to terminate this Agreement in accordance with Section 13.1.

(b) If any Default by Developer occurs and is continuing hereunder, the Authority or the City, as applicable, may (i) seek any available remedy at law (other than termination of this Agreement); (ii) seek enforcement of Developer's obligations hereunder by any equitable remedies, such as specific performance or injunction; or (iii) elect to terminate this Agreement in accordance with Section 13.2; provided, however, in no event may the Authority terminate its obligations with respect to any Public Financing the closing of which has then occurred, including obligations with respect to such Public Financing under any Public Financing Documents.

**Section 12.4 Notice of Defaults; Opportunity to Cure Such Defaults.** Anything hereunder to the contrary notwithstanding, no event referred to under Section 12.1 or Section 12.2 hereof will constitute a Default until actual notice of such Default is given in accordance with Section 14.3 to the party claimed to be in Default by any other party hereto and the party claimed to be in Default has had 30 days after receipt of such notice to correct such claimed Default or cause such claimed Default to be corrected, and has not corrected the claimed Default or caused the claimed Default to be corrected within such 30-day period; provided, however, if the Default is of such a nature that it cannot be corrected within such 30-day period, it will not constitute a Default if corrective action is instituted within such 30-day period and diligently pursued until the Default is corrected.

**Section 12.5 Delay.** For the purposes of any of the provisions of this Agreement, neither the Authority nor Developer, as the case may be, nor any successor in interest or permitted assigns, will be considered in breach or default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather condition such as, by way of illustration and not limitation, snow storms which prevent outdoor work from being accomplished, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes, earthquakes, floods, or other events or conditions beyond the reasonable control of the party affected which in fact prevents the party from discharging its respective obligations hereunder; provided that this Section 12.5 will not apply to any party's payment obligations with respect to any Public Financing, or as set forth in any Public Financing Documents.

## **SECTION 13     TERMINATION.**

**Section 13.1** Developer's Option to Terminate. Without limitation upon any other termination right set forth herein, Developer will have the right to terminate this Agreement if:

- (a) DHC's capital committee fails to approve the contract described in Section 2.7(c) on or before August 30, 2003; or
  - (b) the Closing has not occurred on or before November 30, 2003; or
  - (c) the Authority fails to complete the Assemblage by August 15, 2003; or
  - (d) the Authority fails to issue the Series 2003-A Bonds by August 31, 2003;
- or
- (e) a Default by the City or the Authority occurs and is continuing.

**Section 13.2** Authority's Option to Terminate. The Authority will have the right to terminate this Agreement if a Default by Developer occurs and is continuing; provided, however, in no event may the Authority terminate its obligations with respect to any Public Financing the closing of which has then occurred, including obligations with respect to such Public Financing under any Public Financing Documents.

**Section 13.3** Action to Terminate. Notice of termination of this Agreement must be accomplished by written notification delivered to the other parties hereto in accordance with Section 14.3. Termination will be effective on the date specified in such notice.

**Section 13.4** Effect of Termination. If this Agreement is terminated pursuant to Section 13.1 or Section 13.2, then this Agreement will be null and void and of no further effect, and no action, claim or demand may be based on any term or provision of this Agreement; provided, however, that once the closing of any Public Financing has occurred, the parties' obligations under any Public Financing Documents with respect to such Public Financing will survive any termination of this Agreement pursuant to Section 13.1 or Section 13.2, and further provided that:

- (a) If the Authority terminates this Agreement pursuant to Section 13.2, then the Authority will repurchase from Developer all of the Redevelopment Site then owned by Developer, together with any Improvements located thereupon. Before exercising its repurchase right, the Authority will provide Developer a period of not less than one hundred eighty (180) days within which to cure any purported default or to identify a potential buyer that would be reasonably acceptable to the Authority in terms of financial ability and development experience necessary to complete the Mandalay Town Center and within a reasonable time.
- (b) If Developer terminates this Agreement pursuant to Section 13.1(e), then, at Developer's option, the Authority will repurchase from Developer all of the Redevelopment Site then owned by Developer, together with any Improvements located thereupon.
- (c) In the case of a repurchase:

(i) The purchase price will be the greater of:

(1) The then-current fair market value of the portion of the Redevelopment Site then owned by Developer, together with any Improvements located thereupon; or

(2) The amount required to pay off Developer's Financing (unless the lender for Developer's Financing consents to an assumption by the purchaser of the amounts owing under Developer's Financing after payment to the lender of the then-current fair market value as provided in subparagraph (1) above, and full release Developer and any members, officers, employees, or guarantors of Developer from any further obligation with respect to Developer's Financing).

(ii) The Authority will take title subject to any and all liens and encumbrances of record, and Developer will have no obligation to remove or otherwise cure any title matter other than any deed(s) of trust securing Developer's financing.

(iii) The Authority and Developer will engage in good faith negotiations to determine the then-current fair market value of the portion of the Redevelopment Site then owned by Developer, together with any Improvements located thereupon (for purposes of this Section 13.4(c)(iii), "FMV"). FMV means the price at which the relevant portion of the Redevelopment Site and Improvements could be sold by a person who desires, but is not required to sell, and is sought by a person who desires, but who is not required to buy, after due consideration of all the elements reasonably affecting value. If the Authority and Developer have not agreed on the FMV within thirty (30) days after the Authority's notice of default and exhaustion of any Developer right to cure, the Authority and Developer will each select an appraiser and advise each other of the appraiser's name, address and telephone number. The two appraisers will consult with each other and will select a third appraiser within fifteen (15) days of the designation of Authority's appraiser. If the two appraisers cannot agree upon a third appraiser, then either party will have the right to request appointment of the third appraiser by a judge of the District Court of the County, and the non-requesting party will not raise any question as to the judge's full power and jurisdiction to entertain the application and make the appointment. Each person designated to participate in the appraisal will (i) be a real estate professional specializing in retail commercial property sales and leasing, with emphasis (if possible) on projects containing 100,000 square feet of floor area or more, in the Denver metropolitan area, (ii) have at least five (5) years experience as an appraiser, (iii) be a member of the American Institute of Real Estate Appraisers, and (iv) have no material, financial or other business interest in common with a party to this Agreement. The Authority will cause a current title report covering the relevant portion of the Redevelopment Site to be delivered contemporaneously to each appraiser. The appraisers will consider at least the following factors: the existing governmental regulations, including zoning, P.U.D. or land use designation; the condition of the Improvements; the condition of building occupancy; the location of the land and access thereto; and use restrictions and other covenants of record which either limit or enhance the enjoyment of the property, provided, however, no cross access easement will be considered a detriment to the value of the property. Each party's appraiser will submit its appraisal to its client within thirty (30) days following receipt of the title report. The third appraiser will submit

its appraisal in escrow to the Title Company in a sealed envelope within thirty (30) days following receipt of the title report. Developer and the Authority will meet on the last day for the submission of the appraisals (or if such day is not a business day, then on the first business day thereafter) at 11:00 a.m. at the office of the Title Company. Each party will disclose its appraiser's valuation. If 90% of the higher valuation is equal to or less than the lower valuation, then the two valuations will be added together, the total divided by two, and the result will be the FMV. If the purchase price is not determined by the method set forth in the preceding sentence, then the parties will open the envelope received from the third appraiser and disclose his valuation. The third appraiser's valuation and the appraiser's valuation which is closest by dollar amount to the third appraiser's valuation will be added together and the total divided by two, and the result will be the FMV. The determination of the FMV will be final and binding upon the parties, absent fraud or gross error. Developer and the Authority will each bear the fees and expenses of their own appraiser and one-half of the fees and expenses of the third appraiser.

(d) The Authority's obligation to pay Developer for any sums owed pursuant to Section 2.1 will survive any termination of this Agreement.

**Section 13.5 Scheduled Termination.** If not otherwise terminated earlier as provided herein, this Agreement will terminate:

(a) with respect to each phase of the Mandalay Town Center and all of the parties' obligations hereunder in connection with such phase (other than obligations with respect to any Public Financing for such phase that has been closed), upon the Completion of Construction of such phase; and

(b) with respect to all other matters, upon the earlier to occur of (i) repayment of the Bonds; or (ii) the twenty-fifth (25<sup>th</sup>) anniversary of the Effective Date.

## **SECTION 14 MISCELLANEOUS.**

**Section 14.1 Amendment of Agreement.** Except as otherwise set forth in this Agreement, neither this Agreement, nor the PDP, nor the ODP may be amended or terminated except by mutual consent in writing of Developer, and, as applicable, the Authority, and/or the City, following the public notice and public hearing procedures required for approval of the PDP, the ODP, or this Agreement, as applicable. For the purposes of any amendment to the PDP, the ODP, this Agreement, "Developer" will mean only RED Development and those successor owners of the Redevelopment Site, if any, to whom RED Development has specifically granted, in writing, the power to enter into such amendment.

**Section 14.2 No Implied Waiver.** No provision of this Agreement will be construed as an implied waiver by Developer of its right to any payment, reimbursement, tax or fee waiver, or reimbursement to which it is otherwise entitled by law or as an implied waiver or acquiescence in the impairment of any of its substantive or procedural rights under the Local Government Land Use Control Enabling Act of 1974, sections 29-20-104.5 and 29-20-201 through -204, C.R.S., as amended, or as an implied agreement by Developer to be responsible for more than its proportionate share of any regional public infrastructure improvements or to be responsible for

the costs of improvements that are not roughly proportional to the direct impacts of the development of the Mandalay Town Center.

**Section 14.3 Notices.** All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or dispatched by telegram or telecopy (if confirmed promptly telephonically), addressed to the appropriate Notice Address or at such other address or addresses as any party hereto designates in writing to the other party hereto.

**Section 14.4 Waiver.** No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

**Section 14.5 Attorneys' Fees.** In any proceeding brought to enforce the provisions of this Agreement, the court will award the prevailing party (whether by judgment or out of court settlement) therein reasonable attorneys' fees, actual court costs and other expenses incurred.

**Section 14.6 Conflicts of Interest.** The Authority will not allow, and except as disclosed in writing to the Authority, Developer will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: A member of the governing body of the Authority or of the City; an employee of the Authority or of the City who exercises responsibility concerning the Mandalay Town Center, or an individual or firm retained by the City or the Authority who has performed consulting or other professional services in connection with the Mandalay Town Center. The Authority will not allow and Developer will not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

**Section 14.7 Titles of Sections.** Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

**Section 14.8 Authority and City Not a Partner; Developer Not Authority's or City's Agent.** Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither the Authority nor the City will be deemed or construed to be a partner or joint venturer of Developer, Developer will not be the agent of the Authority or the City, and the Authority and the City will not be responsible for any debt or liability of Developer.

**Section 14.9 Applicable Law.** The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement.

**Section 14.10 Binding Effect.** This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns, subject to the limitations on assignment of this Agreement by Developer set forth in Section 11.2.

**Section 14.11 Further Assurances.** The parties hereto agree to execute such documents, and take such action, as will be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

**Section 14.12 Time of Essence.** Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 14.13 Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity will not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**Section 14.14 Good Faith; Consent or Approval.** In performance of this Agreement or in considering any requested extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement; provided, however, that the Authority need not act reasonably in considering a requested extension of time that would extend a time period set forth in this Agreement for the performance of an obligation by Developer by more than three years from the original end of such period as set forth in this Agreement. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed. Developer agrees and acknowledges that in each instance in this Agreement or elsewhere where the Authority is required or has the right to review or give its approval or consent, no such review, approval or consent will imply or be deemed to constitute an opinion by the Authority, nor impose upon the Authority, any responsibility for the design or construction of building elements, including but not limited to the structural integrity or life/safety requirements or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the Environmental Laws. All reviews, approval and consents by the Authority under the terms of this Agreement are for the sole and exclusive benefit of Developer and no other person or party will have the right to rely thereon.

**Section 14.15 Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

**Section 14.16 Non-Liability of Authority Officials and Employees.** No council member, commissioner, board member, official, employee, agent or consultant of the Authority or the City will be personally liable to Developer in the event of a Default by the Authority or for any amount that may become due to Developer under the terms of this Agreement.

**Section 14.17** Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

**Section 14.18** Jointly Drafted; Rules of Construction. The parties hereto agree that this Agreement was jointly drafted, and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.



IN WITNESS WHEREOF, the Authority and the City each have caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials; and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

**WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY**

(SEAL)

Attest:

By: \_\_\_\_\_  
Secretary

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

**CITY OF WESTMINSTER**

Attest:

By: \_\_\_\_\_  
City Clerk

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

**WESTMINSTER DEVELOPMENT  
COMPANY, LLC, a Missouri limited liability  
company**

By: \_\_\_\_\_

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

STATE OF COLORADO )  
 ) ss:  
COUNTY OF ADAMS )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, as Secretary, of Westminster Economic Development Authority, a body corporate.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of Colorado

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_ as \_\_\_\_\_ of WESTMINSTER DEVELOPMENT COMPANY, LLC, a Missouri limited liability company.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Exhibit A**  
**LEGAL DESCRIPTION OF THE REDEVELOPMENT SITE**

**Exhibit B**  
**REDEVELOPMENT PLAN NARRATIVE**

**Redevelopment Objectives**

The Mandalay Town Center is an approximately 65 acre triangular site located in the City of Westminster. It is generally bounded by old Wadsworth Boulevard and the Burlington Northern/Santa Fe Railroad line on the northwest property line, U.S. Highway 36 on the northeast property line, and Church Ranch Boulevard and the Church Ranch Business Center on the southern property line. As of the Effective Date, the Redevelopment Site consists of 22 parcels in separate private ownership.

The Mandalay Town Center is anticipated to include approximately 431,250 square feet of retail space, including a 150,000 square foot Super Target, roughly 125,500 square feet of space for large-format retailers (8,000 square feet and larger), a roughly 60,000 square foot hotel, 5 freestanding restaurants comprising approximately 34,500 square feet, and approximately 68,000 square feet for small-format retailers and service providers. Specific public improvements will include, without limitation, construction of a vehicular underpass at Highway 36 that will connect with the Westminster Promenade development to the east, construction and realignment of Reed Street within the Redevelopment Site, and connecting to the Circle Point Corporate Center development to the northeast via a new vehicular underpass of Highway 36 along the railroad right-of-way alignment, and improvements to Church Ranch Boulevard.

The Redevelopment Plan provides for the demolition of the existing buildings within the Redevelopment Site, the relocation of certain existing occupants, the construction of infrastructure, and the construction of new retail structures and other related site improvements. Development is anticipated to occur over a period of approximately 5 years. The actual construction schedule will depend on a number of factors that cannot be made certain as of the Effective Date.

**Redevelopment Framework**

The Site Plan shows the envisioned Mandalay Town Center at completion. Redevelopment will be organized around a re-established street grid and the creation of a major lifestyle commercial/retail center organized around a Town Center concept. The existing improvements within the Redevelopment Site will be demolished and their materials recycled or removed. The Mandalay Town Center will be undertaken in phases. It is anticipated that the redevelopment program will begin with construction of the Super Target. The actual phasing of development will depend on a number of factors, but it is generally anticipated that development will commence in the southwestern portion of the Redevelopment Site. Subsequent phases will expand to the north and east.

**Redevelopment Program**

The Site Plan provides a general description of the mix and orientation of uses anticipated in the Mandalay Town Center. The redevelopment program will represent a

significant increase in overall density on the site, and will convert the existing residential/agricultural uses into significant commercial and retail square footage that is anticipated to generate significant new sales and property tax revenues for the City.

**Site Plan**

Please see the Site Plan attached as **Exhibit C**.

**Exhibit C**

**SITE PLAN**

**(will be faxed to City Council 6/20/03)**

**Exhibit D**

**SCHEDULE OF PUBLIC FINANCING FOR PUBLIC IMPROVEMENTS  
AND SITE WORK**

**[CONFIDENTIAL]**

**Exhibit E**

**SCHEDULE OF PRE-APPROVED ALTERNATE USERS**

**The list of alternate user or users for the Target Site under the circumstances, terms, and conditions described in Section 4.4(a)(ii), including but not limited to one of the pre-approved alternate users will be finalized and approved by the Developer and the City.**



WADSWORTH BLVD. ROW  
0.443 ACRES

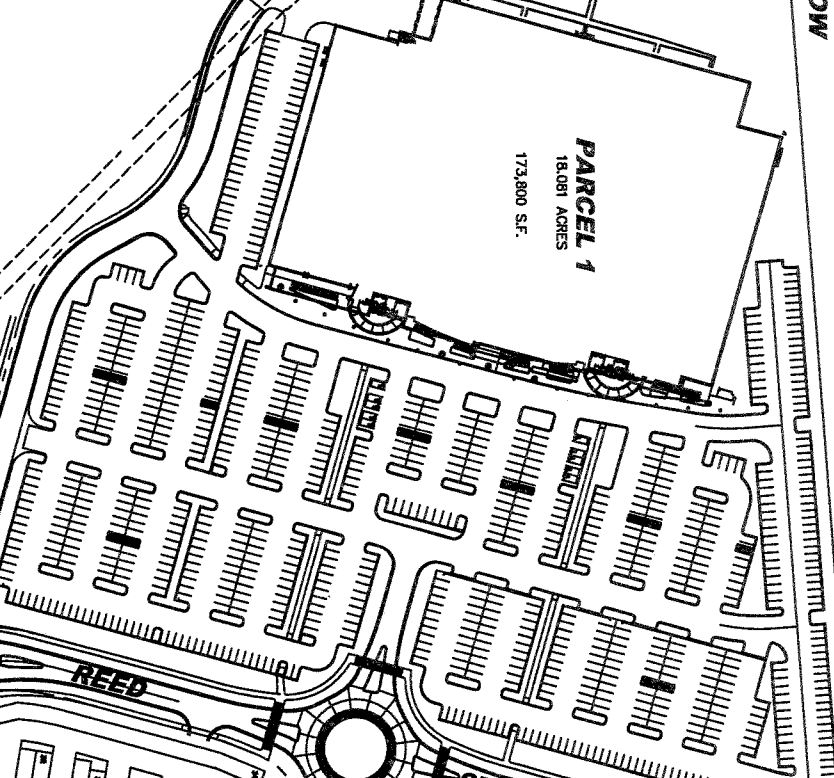
COLORADO & SOUTHERN RAILWAY COMPANY

PARCEL 11  
4.838 ACRES  
106,000 S.F.

PROPOSED R.O.W.  
0.990 ACRES

PARCEL 1  
18.081 ACRES  
173,800 S.F.

O.S. 1

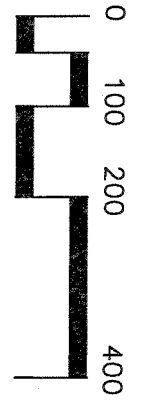


PROPOSED R.O.W.  
0.840 ACRES

U.S. HIGHWAY 36



Mandalay Gardens  
Westminster, CO  
June 19, 2003



TOTAL BUILDING AREA: 189,322 sf  
APPROXIMATE PARKING SHOWN: 1,013 STALLS  
APPROXIMATE RATIO SHOWN: 5.35 CARS/1000 S.F.  
4 Total Pads Shown 10.8 Acres

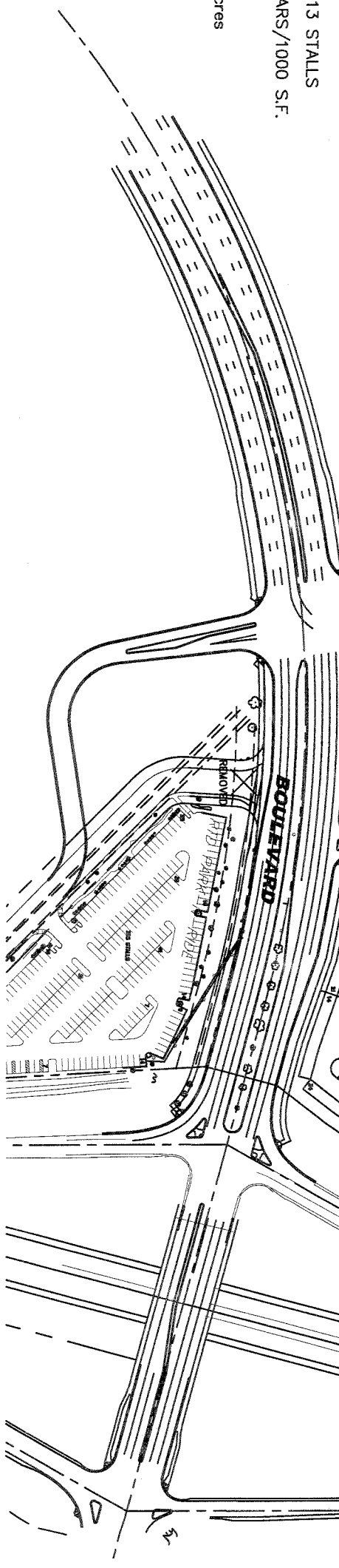


Exhibit D  
 Schedule of Public Financing for Public Improvements and Site Work  
 Proforma Budget as of June 11, 2003

**CONFIDENTIAL**

ITEM	Total Project	Developer	WEDA	Phase II
<b>Hard Project Costs</b>				
Land Price	\$ 15,000,000	\$ 7,475,408	\$ 7,524,592	
Building Costs (Other than Super Target)	\$ 9,812,500	\$ 9,812,500	\$ -	
Tenant Improvements	\$ 9,812,500	\$ 9,812,500	\$ -	
<b>Super Target</b>				
Target Building Upgrades	\$ 1,000,000	\$ 1,000,000	\$ -	
Target Site Upgrades	\$ 1,893,895	\$ -	\$ 1,893,895	
Target Over-Excavation (In Site Demo)	\$ -	\$ -	\$ -	
<b>Site Demo, Environ, Overlot Grading</b>	\$ 2,200,000	\$ -	\$ 2,200,000	
<b>Town Center (Other than Target) Site/Landscape</b>	\$ 6,500,000	\$ -	\$ 6,500,000	
Reed Street Construction	\$ 1,750,000	\$ -	\$ 1,750,000	
Reed St frontage & Underpass Widening	\$ -	\$ -	\$ -	
Extraordinary Site Amenities	\$ 1,500,000	\$ -	\$ 1,500,000	
Water Feature/Site Enhancements	\$ 500,000	\$ -	\$ 500,000	
Water Line Relocation (Utility Fund)	\$ -	\$ -	\$ -	
<b>Contingency</b>	\$ 1,750,000	\$ 1,000,000	\$ 750,000	
Relocate BP/Amoco Gas Station	\$ 2,000,000	\$ -	\$ -	\$ 2,000,000
Underpass - Town Center to Promenade	\$ 3,200,000	\$ -	\$ -	\$ 3,200,000
Church Ranch	\$ 1,700,000	\$ -	\$ 1,700,000	\$ -
Wadsworth Blvd (realignment / RR underpass)	\$ -	\$ -	\$ -	\$ -
	\$ 58,618,895	\$ 29,100,408	\$ 24,318,487	\$ 5,200,000
<b>Soft Project Costs</b>				
Engineering	\$ 1,000,000	\$ 400,000	\$ 600,000	
Architectural	\$ 812,900	\$ 812,900	\$ -	
Legal	\$ 785,000	\$ 785,000	\$ -	
Travel	\$ 250,000	\$ 250,000	\$ -	
Taxes During Construction	\$ 100,000	\$ 100,000	\$ -	
GID and Zoning	\$ 46,020	\$ 46,020	\$ -	
Reimbursables	\$ 392,500	\$ 392,500	\$ -	
General Conditions	\$ 500,000	\$ 500,000	\$ -	
Construction Management	\$ 250,000	\$ 250,000	\$ -	\$ -
	\$ 4,136,420	\$ 3,536,420	\$ 600,000	\$ -
<b>Grand Opening/Marketing</b>	\$ 958,666	\$ 958,666	\$ -	
Development Fee	\$ 1,800,000	\$ 1,800,000	\$ -	
Commission	\$ 2,156,250	\$ 2,156,250	\$ -	
Carry	\$ 1,804,116	\$ 1,804,116	\$ -	
Appraisal	\$ 30,000	\$ 30,000	\$ -	
Closing	\$ 194,063	\$ 194,063	\$ -	
Points	\$ 353,851	\$ 353,851	\$ -	
IRR Structure Fee	\$ 100,000	\$ 100,000	\$ -	\$ -
	\$ 7,396,946	\$ 7,396,946	\$ -	\$ -
<b>TOTAL DEVELOPMENT COST</b>	\$ 70,152,261	\$ 40,033,774	\$ 24,918,487	\$ 5,200,000
		57.1%	35.5%	7.4%

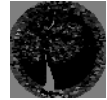
<b>Potential Bond Solution:</b>	<b>Project Costs:</b>	\$ 24,918,487
Hanifen Imhoff, Version 4, 6/12/03	<b>Capitalized Interest</b>	\$ 3,436,186
	<b>Reserve Fund</b>	\$ 2,678,099
	<b>COI, Underwriters Discount, LOC Fee, Other</b>	\$ 442,227
	<b>Annual LOC &amp; Remarketing Fees</b>	\$ -
		- Estimated initially to be \$265,000 /yr
	<b>Total Bond Issuance:</b>	\$ 31,475,000



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Councillor's Bill No. 34 re Supplemental Appropriation for Faversham Park

**Prepared By:** Brad Chronowski, Landscape Architect II

**Recommended City Council Action**

Pass Councillor's Bill No. 34 on first reading, appropriating \$74,775 from the Colorado Division of Wildlife for Faversham Park Improvements into the General Capital Improvement Fund, increasing the total project budget to \$355,775.

**Summary Statement**

- The Colorado Division of Wildlife provides grant money in Colorado to assist municipalities with fishing habitat improvements through the Fishing is Fun Program.
- City of Westminster Resolution No. 30, adopted on May 13, 2002, authorized Staff to pursue a grant from Colorado Division of Wildlife for improvements at Faversham Park located at 6109 W. 73<sup>rd</sup> Avenue.
- The Colorado Division of Wildlife awarded the City of Westminster \$74,775 toward improvements at Faversham Park on January 29, 2003, through the Fishing is Fun Program.
- The Parks, Recreation and Libraries Department has budgeted \$200,000 in 2002 for capital improvements at Faversham Park. The \$200,000 budget for Faversham Park has been designated as matching funds for this joint venture project.
- Also in 2002, a grant from Jefferson County Open Space in the amount of \$81,000 was appropriated to the Faversham Park budget, increasing the project budget from \$200,000 to \$281,000.
- Construction for the improvements will begin in 2003.

**Expenditure Required:** Increase project budget by \$74,775

**Source of Funds:** Fishing is Fun Grant

**Policy Issues**

- Does City Council wish to proceed with increased improvements to Faversham Park?
- Should the City increase the General Capital Improvement Fund budget by \$74,775 by appropriating funds for Faversham Park and accept a grant of equal amount from the Colorado Division of Wildlife?

**Alternative**

- City Council could choose not to accept the grant from the Colorado Division of Wildlife and continue with improvements to Faversham Park with the current budget of \$281,000. Staff recommends, however, that the City take the opportunity to increase the project scope without increasing the City's funding allocations. Utilization of grant money for this project will significantly enhance the Faversham Park project scope.

**Background Information**

The Department of Parks, Recreation and Libraries has utilized Fishing is Fun grants at two sites, the Community College Pond and Waterpointe/Bellio (Hylands Creek). Funds are generally used to improve fish habitat and provide access to ideal fishing areas.

At Faversham Park, the Department of Parks, Recreation and Libraries intends to expand the scope of the project by including the following amenities: additional trails, expanded parking, a large picnic shelter, fishing dock, pond dredging, and pond aeration.

The City received a grant from Jefferson County in the amount of \$81,000 to help fund additional improvements at Faversham Park. With the addition of the Fishing is Fun grant, and the previous appropriation of Jefferson County funds, the budget for Faversham Park will increase to \$355,775 from an original budget of \$200,000.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **34**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$74,775 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$9,089,708. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of a Fishing is Fun Program grant from the Colorado Division of Wildlife.

Section 2. The \$74,775 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
State Grants			
7501.40620.0000	\$0	<u>\$74,775</u>	\$74,775
Total Change to Revenues		<u>\$74,775</u>	
EXPENSES			
Faversham Park			
80275050513.80400.8888	\$281,000	<u>\$74,775</u>	\$355,775
Total Change to Expenditures		<u>\$74,775</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 23<sup>rd</sup> day of June, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of July, 2003.

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Resolution No. 23 Authorizing Westminster Housing Authority Participation in the Colorado Intergovernmental Risk Sharing Agency (“CIRSA”)

**Prepared By:** Robin Byrnes, Community Development Programs Coordinator

**Recommended City Council Action**

Adopt Resolution No. 23 authorizing Westminster Housing Authority participation in the Colorado Intergovernmental Risk Sharing Agency (“CIRSA”),

**Summary Statement**

- The Westminster Housing Authority as an entity does not have insurance coverage at this time.
- The WHA owns two properties located at 7337 Wilson Ct. and 7319 Orchid Ct. that are currently not insured.
- The City of Westminster as a member of the Colorado Intergovernmental Risk Sharing Agency (CIRSA) is required to sponsor the Westminster Housing Authority (WHA) in making application for insurance coverage under the CIRSA insurance program.
- Westminster Commons and Panorama Pointe Community Center have insurance with the WHA named as additionally insured through the managing agencies that oversee these properties.
- The Westminster Housing Authority Board does have directors liability insurance through the CIRSA program due to the Board also being the Westminster City Council.
- The proposed Resolution makes formal sponsorship by the City on behalf of the WHA to the CIRSA insurance program to apply for insurance coverage.
- After the adopted Resolution is returned to CIRSA, formal application can be processed by CIRSA to secure insurance for the WHA.
- No expenditures are required at this time, the WHA will make an application to CIRSA for insurance coverage at which time insurance costs will be established.

**Expenditure Required:** \$5,000 (current estimate)

**Source of Funds:** Westminster Housing Authority

### **Policy Issues**

Is it essential that the WHA obtain insurance in order to mitigate any liability to the WHA as an entity and to the property currently under the entity’s ownership?

### **Alternatives**

The City could choose to not sponsor the WHA as a new member to the CIRSA Insurance program. This is not recommended as the Housing Authority has recently purchased property that will be in a better position if it is insured.

### **Background Information**

The Westminster Housing Authority was formed in 1979 for the sole purpose of securing a loan from the U.S. Department of Housing and Urban Development (HUD) for the construction of Westminster Commons. Westminster Commons as a facility has property and liability insurance through the managing agent, Howard Bishop, with the Westminster Housing Authority additionally named as insured. The same situation exists for the Panorama Pointe Community Senior Center which is owned by the Westminster Housing Authority and managed by Elko properties which has property and liability insurance with the WHA named as additionally insured.

The Westminster Housing Authority Board is currently covered with directors and liability insurance through the CIRSA insurance program given its dual role as City Council.

Due to the increased administrative activity and property ownership of the Westminster Housing Authority, it is strongly recommended that insurance be obtained, providing coverage for property on 7319 Orchid Ct. and 7337 Wilson Ct. owned by the WHA. Insurance is also needed on the WHA as an operating entity.

In order for the WHA to obtain insurance through the CIRSA program a Resolution by City Council sponsoring the WHA’s application for insurance is required. Once the Resolution is passed the application process to CIRSA will be completed by the WHA. Funding for the WHA insurance policies will be paid for out of the proceeds from WHA operating account.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **23**

INTRODUCED BY CITY COUNCIL MEMBER

SERIES OF 2003

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**A RESOLUTION CONSENTING TO PARTICIPATION  
BY THE WESTMINSTER HOUSING AUTHORITY  
IN THE COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY**

WHEREAS, the City of Westminster is a member of the Colorado Intergovernmental Risk Sharing Agency ("CIRSA"), a public entity self-insurance pool providing property/casualty coverage, workers' compensation coverage, or both, to its members; and

WHEREAS, the City of Westminster is a public entity as said term is defined in C.R.S. Section 24-10-103.5; and

WHEREAS, the Westminster Housing Authority has in effect with the City of Westminster an intergovernmental agreement for the provision of one or more functions, services, or facilities lawfully authorized to both the Westminster Housing Authority and the City of Westminster; and

WHEREAS, the Westminster Housing Authority has made application for membership in CIRSA; and

WHEREAS, the City of Westminster desires to consent to the Westminster Housing Authority's participation in CIRSA;

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

Section 1. The City of Westminster hereby consents to participation by the Westminster Housing Authority in CIRSA.

Section 2. A copy of this Resolution shall be forwarded to the Westminster Housing Authority and to CIRSA.

INTRODUCED, READ, and ADOPTED this 23rd day of June 2003.

Westminster City Council

By: \_\_\_\_\_  
Mayor





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

City Council Meeting  
June 23, 2003



**SUBJECT:** Councillor's Bill No. 35 re Appropriation of FY2002 Carryover Funds Into FY2003

**Prepared By:** Barbara Gadecki, Assistant to the City Manager

### **Recommended City Council Action**

Pass Councillor's Bill No. 35 on first reading appropriating FY2002 carryover funds into the FY2003 budgets of the General, Fleet, General Capital Improvement, General Reserve, General Capital Outlay Replacement, Utility, and Open Space Funds.

### **Summary Statement**

- Certain items and services that were budgeted in FY2002, but were not received or provided until FY2003, are being requested for appropriation. The total of these budget items for all funds is \$8,289,226. Further detail on these items is provided in the background section of this memo.
- The City Council annually reviews and appropriates carryover funds from the previous year's budget into the current year budget for the following:
  - those items and services included in the previous year's budget but not received or provided until the current year's budget,
  - budget incentive funds into various departments' budgets based on savings from the prior year, and
  - existing or new capital projects for which funds are needed and carryover funds are available.
- The funding for the items recommended in this memo comes from unexpended 2002 funds in the various funds identified.
- City Council is being asked to consider the first item listed above at this time, i.e., those items and services included in the previous year's budget but not received or provided until the current year's budget. Additionally, City Council is requested to consider a few capital projects that are time sensitive and should be funded prior to August or September review.
- Staff will return to City Council in August or September with the balance of carryover funds to discuss funding existing or new capital projects for which funds are needed and carryover funds are available.
- Staff is again not recommending budget incentive funds into various departments' budgets based on savings from the prior year for 2003 due to the current tight economic times. No incentive funds were appropriated in 2002; however, in 2001, these incentive funds totaled approximately \$435,000 for all funds.

**Expenditure Required:** \$8,289,226

**Source of Funds:** General, Fleet, General Capital Improvement, General Reserve, General Capital Outlay Replacement, Utility, and Open Space Funds

**Policy Issue**

Should the City appropriate carryover funds as set forth in the attached Ordinance?

**Alternatives**

- 1) City Council could decide not to appropriate any of these funds at this time. This is not recommended as many of the carryover requests are for items and services that have already received City Council approval during the FY2002 Budget process as priority expenditures for the City.
- 2) City Council could choose to approve the carryover appropriation, including existing or new capital projects for which funds are needed and carryover funds are available. Staff recommends appropriating carryover funds for the majority of capital improvement projects in August or September, after City Council has had an opportunity to revisit the adopted 2004 Capital Improvement Program (CIP). This allows City Council additional information to review in light of any additional items that may be proposed via the carryover funds, plus allows for additional citizen input via the budget public meeting process.

**Background Information**

City Council action is requested to adopt an ordinance to appropriate FY2002 carryover funds, as described below, into the General, Fleet, General Capital Improvement, General Reserve, General Capital Outlay Replacement, Utility, and Open Space Funds. This appropriation takes place annually once the audit is substantially completed for the prior year.

At this time, City Council action is requested to appropriate carryover funds for items and services that were budgeted in FY2002 but were not received or provided until FY2003. For a second year, Staff is not recommending the appropriation of any budget incentive funds. In prior years, budget incentive funds were provided to departments by an approved formula previously adopted by Council Resolution whereby each department is allowed to retain a certain portion of budget savings calculated by the Finance Department after the completion of the audit. The program was established to promote and reward prudent budget management by City Departments. However, in light of the current tight economic times, Staff believes it more prudent to utilize these carryover funds to fund key capital projects and other operating priorities that would not be funded otherwise.

The balance of the carryover funds will be brought back to be appropriated later this summer for Capital Improvement Program (CIP) projects. Staff is reviewing possible capital projects to determine the best use of carryover funds that would be available after Council action on allocating operating carryover. A few capital projects are being recommended for funding at this time due to the time sensitive nature of these projects, which are noted below.

RE-APPROPRIATION OF ITEMS APPROVED IN 2002

Certain items ordered in 2002 were not received until 2003. In addition, certain services, authorized in 2002, were not fully performed by the end of the year. Under standard accounting procedures, these remaining funds must be re-appropriated in the new year to complete the desired purchase or service. Staff recommends the items described below be re-appropriated in 2003.

**GENERAL FUND:**

Central Charges – Four items totaling \$160,900 as follows:

1. \$18,400 for the strategic planning services contract with Lyle Sumek entered in 2002. The first component of the strategic plan was initiated in 2002 but the fine tuning efforts carried into 2003.
2. \$22,500 for the facilitation services provided by Mark Achen on the Futures Task Force, which is currently evaluating the City's Fire and Police staffing, equipment and facilities' levels and needs. This task force will be providing a report to City Council in July on their research and evaluation.

3. \$100,000 for special projects and studies that may arise during the year per City Council and staff requests. These dollars represent savings in Central Charges 2002 operating budget that are proposed to help offset additional costs associated with economic development activities, special projects and studies, etc., that may arise through the balance of 2003.
4. \$20,000 for legal services for various economic development projects, including but not limited to Barbara Banks' work on the Promenade development agreements, 144<sup>th</sup> Avenue interchange and Mandalay Gardens.

General Services – One item totaling \$31,000 for the completion of the implementation and conversion to the new Municipal Court Records Management project. These funds are for the overtime associated with training, data entry and conversion as well as some miscellaneous supplies and hardcopy backups necessary during the transition.

Finance – Two items totaling \$10,200 as follows:

1. \$1,700 in temporary salaries for the cross training of the new Administrative Secretary. This position works directly for the Finance Director. The temporary salaries amount is for one month of training while the new staff member is brought up to speed in her new position.
2. \$5,000 for agreed-upon procedures performed by Clifton Gunderson (post audit) on cash collections, cash management internal controls and security.
3. \$3,500 for GASB 34 work completed by the auditors in 2003 that was budgeted in 2002.

Community Development – Three items totaling \$108,500 as follows:

1. \$95,000 to complete the update to the Comprehensive Land Use Plan (CLUP) initiated in the late fall of 2002 but not anticipated to be complete until third quarter 2003.
2. \$5,000 to complete the revisions to the existing Landscape Regulations. Due to additional work performed on the Sign Code revisions during 2002, work on the Landscape Regulations did not initiate until November 2002. The Landscape Regulations were initially anticipated to be done by City Staff, however, with the extended drought conditions, professional assistance was necessary to incorporate additional information regarding water-wise landscaping to the Landscape Regulations.
3. \$8,500 for unanticipated studies and projects during 2003. During the year, a variety of projects requiring outside services, mailing, publications, landscape and drought notices, and advertisements for special projects have developed that were not anticipated and therefore not budgeted for in 2003. These savings from 2002 are requested to offset these additional expenses in 2003.

Police Department – Seven items totaling \$108,804 as follows:

1. \$1,804 in grant money awarded in October 2002 from the Local Law Enforcement Block Grant Fund. The original grant award totaled \$42,868 and the department was able to utilize the majority of the grant funds in 2002. This remaining amount of grant funds (\$1,804) will be utilized for the purchase of a portable radio planned for purchase but delayed by the vendor.
2. \$27,000 to complete the purchase of a fifth radio console in the Communications Center in the Public Safety Center. The Police Department always had five consoles in the Communications Center prior to the move into the new building. When the new communication center was assessed, a discussion was held concerning several communication upgrades needed at the same time the move was accomplished and therefore the funds originally planned for the fifth console were utilized for the needed upgrades with the anticipation that any funds left in the project budget would be utilized for the fifth console. It is an integral part of our communication system and enables the Communications Center to have a back-up console. Radio systems components inevitably fail and the need for back-up options is critical. The monies requested are for the purchase and installation of that fifth console.

3. \$30,000 for the department's electricity and gas account. The department projected electricity and gas costs for the new Public Safety Center in 2003 (the building opened in November 2002) but the actual expenses are higher than projected. Staff is requesting that savings from 2002 be utilized to help address this expense.
4. \$13,700 for polygraphs, psychological exams, and physicals for existing and new staff. The Police Department has had a very high number of these expenses due to the transition in staff and the need to conduct these evaluations during the recruitment process as well as a result of several intense police events in 2003. Staff is requesting that savings from 2002 be permitted to help address this expense.
5. \$18,200 for vehicle conversion costs. Some of the standard equipment (e.g., light bars, sirens, laptop consoles, and radio installations) does not fit the new model of police vehicle available through the state bid. The newer vehicles have incurred challenges in transferring this ancillary equipment from the vehicles being replaced and therefore require modifications and/or new purchases of this equipment. Staff is requesting that savings from 2002 be permitted to help address this expense.
6. \$6,100 for rape examinations conducted by Centura Health in 2002 but not billed until spring of 2003. These expenses should have been charged to the 2002 budget but due to the delay in receiving the invoices, the expense will be incurred in 2003.
7. \$12,000 for uniforms for newly hired staff. The Police Department was authorized an additional 4.0 FTE with the 2003 budget, which included funds for their training, equipment and uniforms. However, additional new staff has been hired in the department due to staff turnover and hiring new staff to fill these vacancies. The department did not budget extra funds in anticipation of the number of extra new hires. Therefore, Staff is requesting that savings from 2002 be permitted to help cover the expense of these additional uniforms.

Fire Department – Two items totaling \$53,900 as follows:

1. \$48,000 for the department's overtime salary accounts. The department made reductions to their overtime accounts in preparing the 2003 budget due to projected revenue shortfalls; Staff is requesting that savings from 2002 be permitted to help avoid minimum staffing issues (i.e., two person engine companies) during 2003.
2. \$5,900 for Emergency Medical Dispatch (EMD) implementation and training that was initiated in 2002 but is currently being completed. Associated costs with the new EMD service include computer programming, manual back-up procedure books purchases (including Spanish versions), and additional training for dispatchers.

Parks, Recreation & Libraries – Two items totaling \$5,683 as follows:

1. \$1,000 grant awarded by WalMart and received in late 2002 to the Library Division for the purchase of books, which will be used to purchase books for the 2003 Summer Reading Program.
2. \$4,683 in scholarship funds, received from citizens and recreation program participants, for the Youth Sports Program. These funds are intended to supplement registration fees for individuals needing assistance. These funds will be available for scholarships in 2003.

FLEET FUND:

General Services – One item totaling \$26,500 for the computer software upgrade to the City's Fleet Monitoring System. The current system was installed in January 1991 and uses a BOS (British Operating System) operating system; it will be upgraded to a windows-based system. While the vendor still provides limited support to the original system, fewer and fewer Information Technology technicians are familiar enough with BOS to be able to help maintain the system. IT has concerns about being able to support the existing BOS based system.

**GENERAL CAPITAL OUTLAY REPLACEMENT FUND (GCORF)**

Fire Department – One item totaling \$105,000 for the purchase of a replacement ambulance. The purchase of this vehicle was delayed in 2002 due to the Phased Spending Plan but later released via use of 2001 carryover funds. City Council approved the purchase of the replacement ambulance at the March 17, 2003, City Council meeting, advancing the moneys for the purchase from GCORF with the understanding that GCORF would need to be reimbursed with carryover. These funds are requested to reimburse the GCORF.

Public Works & Utilities – One item totaling \$240,644 for the purchase of two tandem dump trucks and snow plow accessories. City Council authorized the purchase in August 2002 but the equipment was not delivered prior to year-end 2002. When the vehicles were delivered this year, the payment for the equipment was made from the GCORF; this carryover will reimburse the fund.

**GENERAL CAPITAL IMPROVEMENT FUND:**

Central Charges – One item totaling \$33,000 for the City Hall Space Study and design work initiated in 2002. These funds have been utilized for consulting services to evaluate the use of vacated space on the main level of City Hall previously occupied by Fire Administration as well as studying how space utilization in City Hall can be optimized. These funds were originally budgeted in the City's General Fund operating budget. This project had additional funds appropriated in September by City Council from 2001 carryover to create a capital improvement project for actual renovation and improvements and therefore these funds are recommended to be deposited into the capital project budget.

**UTILITY FUND:**

Information Technology – One item totaling \$40,000 for consulting and training for major upgrades to the City's financial management system. Funds were budgeted in 2002 but not completely utilized. These funds pay for contractual services and staff training associated with software and hardware upgrades.

Public Works & Utilities – Five items totaling \$82,000 as follows:

1. \$40,000 for drought public education program, including mass mailings, public service announcements for the City's cable Channel 8, water-saving toilet rebates and water-saving washing machine rebates.
2. \$15,000 to fix operational damage at the Jim Baker Reservoir Outlet Gate that requires the possible replacement of the entire gate structure. This project was not anticipated and has incurred delays due to the drought efforts.
3. \$12,000 to address severe silting problems identified at the Manhart Ditch Headgate and Facilities. The City is a shareholder of the Manhart Ditch Company and therefore responsible for participating in repair expenses.
4. \$12,000 for the installation of a secondary clarifier distribution slide gate at the Big Dry Creek Wastewater Reclamation Facility. The original gate failed in 2002 but the replacement was delivered in December 2002 and was unable to be installed until 2003. These funds are for the private contractor to install the new gate.
5. \$3,000 for the consulting services of Regulatory Management Inc. for the completion of permit amendments necessary to deliver reclaimed water to Lower Church Lake, Mandalay Ditch Company and Allen Ditch.

**OPEN SPACE FUND:**

One item totaling \$1,422,375 to be utilized for the purchase of open space land. The majority of this amount reflects the open space funds that were unspent in 2002 on land purchases that will be required to purchase open space in 2003. Approximately \$157,500 was a cash donation made to the City in December as an offset on the purchase of a portion of the Wadsworth Wetlands. All of these funds will be utilized towards the acquisition of open space land and \$1,000,000 will be set aside for the 2003 payment to Jefferson County for the purchase of the 30 acre Whole Foods property on the north end of Lower Church Lake along U. S. Highway 36.

APPROPRIATION OF NEW ITEMS

Staff recommends utilizing some of the General and Utility Funds' carryover moneys available to help address the uncertain economy. The items listed below are intended to be proactive measures to help minimize the anticipated revenue shortfalls in both the General and Utility Funds in 2003 – due to the economy (General Fund) and lingering drought (Utility Fund) impacts.

**GENERAL FUND:**

Central Charges – One item totaling \$2,000,000 for the creation of Stopgap Funding to help offset the current economic downturn. As discussed with City Council at the Post-City Council meeting on April 28, the 2002 operating budget savings, in addition to some General Fund revenues coming in higher than expected (such as recreation fees, property taxes, ambulance fees, etc.), are available to create a funding source to assist the City during this period of economic uncertainty. Staff recommends the creation of Stopgap Funding for the General Fund by utilizing operating budget savings from 2002 and higher than projected revenues in other revenue categories in 2002 to offset projected revenue shortfalls in 2003 and 2004. Staff typically strongly discourages utilizing such one-time revenues to offset ongoing expenses. However, given the unique nature of the current economy (e.g., the continued economic development interests in the community, steady flow of new housing starts, etc.) and the many economic opportunities continuing to develop, Staff is recommending that City Council make an exception and utilize these one-time revenues for this short-term challenge. Staff is confident that the use of these funds in this one scenario is appropriate, fiscally prudent and helps minimize the impact on residents and businesses. The Stopgap Funding is recommended for implementation in 2003 and projected to be carried forward into 2004. This funding would be utilized only if the other \$2 million in reductions and increased revenues identified by Staff do not offset the shortfall in sales and use tax collections, as discussed with City Council in April. These funds will be placed in a Budget Hold account in Central Charges.

**GENERAL RESERVE FUND:**

One item totaling \$110,720 in interest earnings to be added to the General Reserve Fund. These additional funds reflect higher than originally projected interest earnings for the fund in 2002; Staff recommends appropriating these earnings into the fund to continue the City's conservative financial management in building a healthy reserve fund. The City's General Reserve Fund is intended to act as a source of funds for unanticipated onetime expenditures and for emergencies. These funds are not available for appropriation or expenditure except when unusual events occur. City Council action is required to authorize the use of these funds for the purpose of increasing the General Reserve Fund.

**UTILITY RESERVE FUND:**

One item totaling \$2,000,000 to increase the Utility Reserve Fund for anticipated revenue shortfalls due to the drought. Ironically, during 2002 when the drought was in full effect, water sales remained steady despite restrictions in part due to the City's late implementation of restrictions (the City implemented restrictions in August). However, in 2003, with the additional media attention and prudence Council and Staff utilized in implementing outdoor watering restrictions early, residents and businesses alike have been conserving water. Additionally, the mild spring weather with evening rainstorms has continued to decrease water consumption. Currently, water sales are down approximately 30% through June 8, 2003 when compared to 2002 consumption. If that trend continues, the Utility Fund could incur a revenue shortfall between \$2-3 million. The City's Utility Reserve Fund is intended to set aside a portion of the fund's balance for some future use, such as an emergency or in the event of unusual weather conditions that adversely impact the Utility Fund revenues. These funds are not available for appropriation or expenditure except when qualifying events occur, such as a severe drought or very wet year. City Council action is required to authorize the use of these funds. These funds were established in 1997 to guarantee that emergency reserves are available if needed. This additional funding for the reserve fund is intended to address the immediate potential shortfall in revenues that may be experienced in 2003. If this shortfall is not experienced, Staff will recommend that these funds be utilized for high priority capital improvement projects.

2002 CARRYOVER FOR INCENTIVE BUDGETING

Through Resolution No. 40, Series of 1989, City Council adopted an Incentive Budget Program, whereby a portion of departmental savings realized would be re-appropriated to the applicable departments. The formula for determining the amount of Incentive Budget Funds departments receive is 100% of the first \$5,000 in savings and 25% of any savings above \$5,000. This amount is limited to the amount of excess carryover. Again, for the 2002 carryover funds, Staff is recommending that no Incentive Budget funds be distributed in 2003 in light of the current tight economic times. Staff believes it more prudent to utilize these carryover funds to fund specifically identified items that may or may not be funded otherwise and therefore is not recommending any budget incentive funds be appropriated to departments.

CARRYOVER FOR EXISTING OR NEW CAPITAL PROJECTS

The balance of the carryover funds will be brought back to be appropriated later this summer for Capital Improvement Program (CIP) projects. Staff is reviewing possible capital projects to determine the best use of carryover funds. Staff recommends reviewing the proposed capital improvement projects component of carryover funds at a later date to allow City Council the opportunity to revisit the current Capital Improvement priorities.

However, Staff is recommending that the following new or existing capital projects be appropriated due to the time sensitive nature of these projects. Some of the projects were initiated in the operating budget and now being recommended to continue in the CIP, some are new projects that due to recent economic development opportunities warrant immediate action, and some are existing projects that need additional funding and timing is critical.

GENERAL CAPITAL IMPROVEMENT FUND

1. \$200,000 for miscellaneous costs associated with the Mandalay Gardens redevelopment project. These funds will cover appraisal expenses, design and engineering work, legal counsel and financial consultants.
2. \$200,000 for north Promenade development related expenses. Staff has utilized the services of an outside consultant to assist with the acquisition of land in the northern portion of the Promenade and for ongoing negotiations with a large commercial retail tenant. This retail opportunity requires outside assistance to assure that the details of any deal are handled in a timely fashion. Staff will be bringing this consulting contract to City Council for approval in July. These funds will also be used to assist with preliminary design and engineering work as well as appraisal and environmental assessment work.
3. \$1,000,000 for various engineering and design work related to the 144<sup>th</sup> avenue interchange and surrounding area. While the long term expenses related to this project will most likely be paid for through debt financing, there are many up front costs that will require funding to keep the project on track. Staff believes establishing up front funding is essential to the long term success of this project. Any design, engineering or other work over \$50,000 will be brought back to City Council for your approval.
4. \$350,000 for City Hall HVAC system improvements to enhance HVAC mechanical system at City Hall. The original project budget is \$330,000 but the least expensive option for improvements is projected to cost \$650,000. Approximately \$30,000 has been spent on this project for the study and evaluation of the existing system and to develop the most economically feasible way to make needed improvements to the system. These funds will allow the project to be completed this year.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **35**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL, FLEET, GENERAL CAPITAL IMPROVEMENT, GENERAL RESERVE, GENERAL CAPITAL OUTLAY REPLACEMENT, UTILITY AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Fund initially appropriated by Ordinance No. 2977 in the amount of \$67,576,244 is hereby increased by \$3,057,631 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$70,852,348. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 2. The \$3,057,631 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
<b>REVENUES</b>			
Carryover 1000.40020.0000	\$0	<u>\$3,057,631</u>	\$3,057,631
Total Change to Revenues		<u>\$3,057,631</u>	
<b>EXPENSES</b>			
Central Charges – Prof Svcs 10010900.65100.0000	\$125,580	\$140,900	\$266,480
Central Charges – Prof Svcs Litigation 10010900.65100.0258	15,000	20,000	35,000
Municipal Court – Overtime 10012130.60400.0000	5,700	24,000	29,700
Municipal Court – Supplies 10012130.70200.0000	9,900	7,000	16,900
Finance – Temp Salaries 10015050.60600.0000	0	1,700	1,700
Finance – Prof Services 10015220.65100.0000	38,790	8,500	47,290
Community Development – Prof Svcs 10030360.65100.0000	9,341	100,000	109,341
Community Development – Office Equip 10030360.75200.0000	0	5,000	5,000
Community Development – Printing 10030360.66600.0000	4,700	3,500	8,200
Police Department – Other Equipment 10020500.76000.0000	0	1,804	1,804
Police Department – Office Equipment 10020270.75200.0000	0	27,000	27,000
Police Department – Elec & Gas 10020050.67200.0000	84,000	30,000	114,000
Police Department – Prof Svcs 10020270.65100.0000	9,750	13,700	23,450
Police Department – Supplies 10020500.70200.0000	66,568	18,200	84,768
Police Department – Prof Svcs 10020300.65100.0000	4,500	6,100	10,600
Police Department – Unif & Equip 10020500.61000.0000	84,840	12,000	96,840
Fire Department – Salaries 10025260.60400.0000	118,619	38,504	157,123
Fire Department – Salaries EMS 10025260.60400.0546	39,930	9,496	49,426
Fire Department – Contract Svcs 10025260.67800.0000	4,000	5,900	9,900
PR&L – Library Materials 10050620.71600.0000	307,300	1,000	308,300
PR&L – Special Promotions 10050760.67600.0528	0	4,683	4,683
Central Charges – Budget Hold 10010900.76800.0000	1,542	2,000,000	2,001,542
Transfer to General Capital Outlay Replacement Fund 10010900.79800.0450	0	345,644	345,644
Transfer to General Capital Improvement Fund 10010900.79800.0750	0	<u>233,000</u>	233,000
Total Change to Expenditures		<u>\$3,057,631</u>	



Section 3. The 2003 appropriation for the General Reserve Fund, initially appropriated by Ordinance No. 2977 in the amount of \$7,290,745 is hereby increased by \$110,720 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$7,401,465. The actual amount in the General Reserve Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 4. The \$110,720 increase in the General Reserve Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Carryover 1100.40020.0000	\$7,183,000	<u>\$110,720</u>	\$7,293,720
Total Change to Revenues		<u>\$110,720</u>	
<b>EXPENSES</b>			
Contingency 11010900.79900.0000	\$7,290,745	<u>\$110,720</u>	\$7,401,465
Total Change to Expenditures		<u>\$110,720</u>	

Section 5. The 2003 appropriation for the Fleet Fund, initially appropriated by Ordinance No. 2977 in the amount of \$1,149,638 is hereby increased by \$26,500 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$1,176,138. The actual amount in the Fleet Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 6. The \$26,500 increase in the Fleet Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Carryover 3000.40020.0000	\$0	<u>\$26,500</u>	\$26,500
Total Change to Revenues		<u>\$26,500</u>	
<b>EXPENSES</b>			
Computer Soft/Hard 30012460.75400.0000	\$26,500	<u>\$26,500</u>	\$53,000
Total Change to Expenditures		<u>\$26,500</u>	

Section 7. The 2003 appropriation for the Open Space Fund, initially appropriated by Ordinance No. 2977 in the amount of \$4,486,775 is hereby increased by \$1,422,375 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$5,909,150. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 8. The \$1,422,375 increase in the Open Space Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Carryover 5400.40020.0000	\$0	<u>\$1,422,375</u>	\$1,422,375
Total Change to Revenues		<u>\$1,422,375</u>	
<b>EXPENSES</b>			
Land Purchases 54010900.76600.0000	\$731,382	<u>\$1,422,375</u>	\$2,153,757
Total Change to Expenditures		<u>\$1,422,375</u>	

Section 9. The 2003 appropriation for the General Capital Outlay Replacement Fund, initially appropriated by Ordinance No. 2977 in the amount of \$1,163,431 is hereby increased by \$345,644 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$1,509,075. The actual amount in the General Capital Outlay Replacement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2003 carryover.

Section 10. The \$345,644 increase in the General Capital Outlay Replacement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Transfer from General Fund 4500.45000.0100	\$0	<u>\$345,644</u>	\$345,644
Total Change to Revenues		<u>\$345,644</u>	
<b>EXPENSES</b>			
Vehicles 45010900.75600.0000	\$676,950	<u>\$345,644</u>	\$1,022,594
Total Change to Expenditures		<u>\$345,644</u>	

Section 11. The 2003 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$1,783,000 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$10,706,000. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2003 carryover.

Section 12. The \$1,783,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Carryover 7500.40020.0000	\$0	\$1,550,000	\$1,550,000
Transfer from General Fund 7500.45000.0100	0	<u>233,000</u>	233,000
Total Change to Revenues		<u>\$1,783,000</u>	
<b>EXPENSES</b>			
Promenade/Mandalay Gardens 80175030201.80400.8888	\$150,000	\$400,000	\$550,000
144 <sup>th</sup> Ave Interchange 80375030316.80400.8888	132,600	1,000,000	1,132,600
City Hall Space Allocation 80275012534.80400.8888	250,000	33,000	283,000
City Hall Major Maintenance 80175012023.80400.8888	175,000	<u>350,000</u>	525,000
Total Change to Expenditures		<u>\$1,783,000</u>	

Section 13. The 2003 appropriation for the Utility Fund, initially appropriated by Ordinance No. 2977 in the amount of \$37,814,744 is hereby increased by \$2,122,000 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$39,941,244. The actual amount in the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 14. The \$2,122,000 increase in the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Carryover 2100.40020.0000	\$1,947,500	\$2,015,000	\$3,962,500
Carryover 2000.40020.0000	0	<u>107,000</u>	107,000
Total Change to Revenues		<u>\$2,122,000</u>	

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>EXPENSES</b>			
InformationTechnology – Prof Svcs 20060230.65100.0000	\$35,500	\$40,000	\$75,500
Water Res & Trtmt– Prof Svcs 20035480.65100.0000	221,191	67,000	288,191
Plants – Maint & Repair 21035490.66200.0000	40,000	12,000	52,000
Plant – Prof Svcs – Water Quality 21035490.65100.0943	87,000	3,000	90,000
Transfer to Utility Fund Reserve 21010900.79800.0205	0	<u>2,000,000</u>	2,000,000
Total Change to Expenditures		<u>\$2,122,000</u>	

Section 15. The 2003 appropriation for the Utility Fund Reserve, initially appropriated by Ordinance No. 2977 in the amount of \$6,860,385 is hereby increased by \$2,000,000 which, when added to the fund balance as of the City Council action on June 23, 2003 will equal \$8,860,385. The actual amount in the Utility Fund Reserve on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2002 carryover.

Section 16. The \$2,000,000 increase in the Utility Fund Reserve shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

<b>Description</b>	<b>Current Budget</b>	<b>Increase</b>	<b>Final Budget</b>
<b>REVENUES</b>			
Transfer from Wastewater Fund 2050.45000.0210	\$0	<u>\$2,000,000</u>	\$2,000,000
Total Change to Revenues		<u>\$2,000,000</u>	
<b>EXPENSES</b>			
Contingency 20510900.79900.0000	\$6,860,385	<u>\$2,000,000</u>	\$8,860,385
Total Change to Expenditures		<u>\$2,000,000</u>	

Section 17. – 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 18. This ordinance shall take effect upon its passage after the second reading.

Section 19. 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 23<sup>rd</sup> day of June, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of July, 2003.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003



**SUBJECT:** Second Reading of Councillor’s Bill No. 29 re Amendment to Church Ranch Hotel Company I, LLC and Church Ranch Hotel Company II, LLC Business Assistance Package

**Prepared By:** Becky Johnson, Economic Development Program Coordinator  
Marty McCullough, City Attorney

**Recommended City Council Action**

Pass Councillor’s Bill No. 29 on second reading authorizing the City Manager to execute the amendment to the business assistance package (BAP) between the City of Westminster and Church Ranch Hotel Company I, LLC (CRHC I) and Church Ranch Hotel Company II, LLC (CRHC II).

**Summary Statement**

- City Council action is requested to pass the attached Councillor’s Bill on second reading that authorizes the execution of the amendment to the business assistance agreement with Church Ranch Hotel Company I, LLC and Church Ranch Hotel Company II, LLC.
- This amendment will incorporate changes from previous BAPS.
- The purpose of the amendment is to move the construction commencement and completion deadlines on the full service hotel (identified in the agreement as Project I) for 12 months. The amendment states that CRHC I and II must commence construction before March 1, 2005 and complete construction and initiate operation of the full service (Marriott) hotel and conference center by March 31, 2007.
- In addition, CRHC I and II agrees to pay the City a \$25,000 non-refundable extension fee upon City Council’s approval of this amendment. The fee will be applied to the City’s fees if the hotel is completed and operational by March 31, 2007.
- This Councillor’s Bill was passed on first reading on June 9, 2003.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3035**

COUNCILLOR'S BILL NO. **29**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

**Kauffman-McNally**

A BILL

FOR AN ORDINANCE AUTHORIZING AN AMENDMENT AND RESTATED AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND CHURCH RANCH HOTEL I LLC AND CHURCH RANCH HOTEL COMPANY II LLC FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF A HOTEL AND A SUITES HOTEL

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

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

WHEREAS, the Church Ranch Hotel Company I and II has constructed a Marriott Spring Hill Suites Hotel at Church Ranch; and

WHEREAS, Church Ranch Hotel Company I and II would build a 240 room first class hotel, expanding to 350 rooms, with an approximately 10,000 square foot conference center in Church Ranch Corporate Center ("Hotel"); and

WHEREAS, a proposed Amendment and Restated Agreement between the City and Church Ranch Hotel Company I and II is attached.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No.53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into the Amendment and Restated Agreement between the City of Westminster and Church Ranch Hotel Company I LLC and Church Ranch Hotel Company II LLC, in substantially the same form as the one attached as Exhibit "A," and upon execution of the amended Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9<sup>th</sup> day of June, 2003.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
June 23, 2003

**SUBJECT:** Citizen Communication – Richard Peddie re Drainage Issue

**Prepared By:** Michele Kelley, City Clerk

**Recommended City Council Action**

Listen to the presentation by Richard Byron Peddie, Attorney and Bill Taggart.

**Summary Statement**

Mr. Richard Byron Peddie, Attorney and Bill Taggart a Water Engineer have requested time on Monday night's agenda to address City Council. Concerning accountability for changing floodwater patterns at the McGuire Property, located on 128<sup>th</sup> Avenue just west of Home Farm development.

Mr. Peddie has indicated that their presentation will be longer than 5 minutes and therefore this item has been placed on the agenda accordingly.

**Expenditure Required:** \$0

**Source of Funds:** n/a

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, June 23, 2003. Present at roll call were Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, Kauffman and McNally. Absent none.

The minutes of the June 9, 2003 meetings were approved.

Council recognized Kyle Sleeth for being drafted by the Detroit Tigers, and a Certificate of Recognition was presented to Jerry Hersey for his service on the Human Services Board.

Council approved the following: May Financial Report; 2002 Comprehensive Annual Financial Report; Special Real Estate Legal Counsel with Barbara Banks not to exceed \$40,000; Construction of Buildings over the Sedimentation Basins at the Semper Water Treatment Facility with J.C. Brooks & Co. for \$435,235; PDP/ODP within the Fuller and Sons Planned Unit Development; Waived requirement to underground existing overhead electric and communication lines; Redevelopment Agreement with RED Development concerning the Mandalay Town Center Project, and amended IGA with WEDA to Advance Funds of \$11,500,000 for Land Acquisition for Mandalay Gardens.

At 7:26 P.M. a public hearing was held on the rezoning, PDP and ODP for the northeast corner of 80<sup>th</sup> Avenue and Sheridan Boulevard.

The following Councillor's Bills were passed on first reading:

A BILL FOR AN ORDINANCE AMENDING THE ZONING LAW AND CHANGING THE ZONING CLASSIFICATION OF A CERTAIN DESCRIBED PROPERTY IN A PARCEL OF LAND LOCATED IN SECTION 30, TOWNSHIP 2 SOUTH, RANGE 68 WEST, COUNTY OF ADAMS, STATE OF COLORADO Purpose: rezoning the property for the Fuller and Sons Subdivision

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND Purpose: supplemental appropriation for Faversham Park improvements

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL, FLEET, GENERAL CAPITAL IMPROVEMENT, GENERAL RESERVE, GENERAL CAPITAL OUTLAY REPLACEMENT, UTILITY AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THESE FUNDS Purpose: appropriation 2002 carryover funds into 2003 budgets

The following Councillor's Bills were adopted on second reading:

A BILL FOR AN ORDINANCE AUTHORIZING AN AMENDMENT AND RESTATED AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND CHURCH RANCH HOTEL I LLC AND CHURCH RANCH HOTEL COMPANY II LLC FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF A HOTEL AND A SUITES HOTEL

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND

A BILL FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND

The following Resolutions were adopted:

Resolution No. 22 re Land Exchange with Beau and Allen LLC

Resolution No. 23 re Westminster Housing Authority Participation in CIRSA

At 8:57 P.M. the meeting was adjourned

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on July 3, 2003



SERIES OF 2003

INTRODUCED BY COUNCILLORS  
**Dittman - Atchison**

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$588,202 which, when added to the fund balance as of the City Council action on June 9, 2003 will equal \$10,086,202. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of developer contributions received by the City.

Section 2. The \$588,202 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
<b>REVENUES</b>			
Cash-in-Lieu Future Capital Projects 7500.40210.0751	\$0	<u>\$588,202</u>	\$588,202
Total Change to Revenues		<u>\$588,202</u>	
<b>EXPENSES</b>			
112 <sup>th</sup> Avenue/Federal Blvd NE Intersection Project 80175030019.80400.8888	\$50,000	\$999,590	\$1,049,590
Sheridan 113 <sup>th</sup> -118 <sup>th</sup> 80175030061.80400.8888	\$4,080,000	(\$392,141)	\$3,687,859
92 <sup>nd</sup> /US 36 On/Off Ramps 80175030056.80400.8888	\$4,621,973	<u>(\$19,247)</u>	\$4,602,726
Total Change to Expenditures		<u>\$588,202</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. 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 9<sup>th</sup> day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.

A BILL

FOR AN ORDINANCE INCREASING THE 2003 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. This is the initial appropriation for 2003 for the CDBG Fund. The appropriation of \$696,000 is the amount approved by the US Department of Housing and Urban Development (HUD) for the City for 2003.

Section 2. The \$696,000 increase in the CDBG Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
<b>REVENUES</b>			
Block Grant – CDBG 7600.40610.0025	\$0	<u>\$696,000</u>	\$696,000
Total Change to Revenues		<u>\$696,000</u>	
<b>EXPENSES</b>			
Salaries 76030350.60200.0000	\$0	\$99,779	\$99,779
CDBG – 03 Block Grant 80376030318.80400.8888	\$0	<u>\$596,221</u>	\$596,221
Total Change to Expenditures		<u>\$696,000</u>	

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 9th day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of June, 2003.

**A BILL**

FOR AN ORDINANCE INCREASING THE 2003 BUDGETS OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2003 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2003 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$8,923,000 is hereby increased by \$500,000 which, when added to the fund balance as of the City Council action on June 9, 2003 will equal \$9,498,000. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of two Adams County Open Space grants.

Section 2. The \$500,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
OS Grant Adco 7501.40630.0010	\$0	<u>\$500,000</u>	\$500,000
Total Change to Revenues		<u>\$500,000</u>	
EXPENSES			
HH Ice Arena/Carol Butts 80175050032.80400.8888	\$450,000	\$250,000	\$700,000
Trails Development 80175050135.80400.8888	\$402,400	<u>\$250,000</u>	\$652,400
Total Change to Expenditures		<u>\$500,000</u>	

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

Section 4. This ordinance shall take effect upon its passage after the second reading. 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 9<sup>th</sup> day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.

ORDINANCE NO. **3035**

COUNCILLOR'S BILL NO. **29**

SERIES OF 2003

INTRODUCED BY COUNCILLORS

**Kauffman-McNally**

A BILL

FOR AN ORDINANCE AUTHORIZING AN AMENDMENT AND RESTATED AGREEMENT BETWEEN THE CITY OF WESTMINSTER AND CHURCH RANCH HOTEL I LLC AND CHURCH RANCH HOTEL COMPANY II LLC FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF A HOTEL AND A SUITES HOTEL

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

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

WHEREAS, the Church Ranch Hotel Company I and II has constructed a Marriott Spring Hill Suites Hotel at Church Ranch; and

WHEREAS, Church Ranch Hotel Company I and II would build a 240 room first class hotel, expanding to 350 rooms, with an approximately 10,000 square foot conference center in church Ranch Corporate Center ("Hotel"); and

WHEREAS, a proposed Amendment and Restated Agreement between the City and Church Ranch Hotel Company I and II is attached.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No.53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into the Amendment and Restated Agreement between the City of Westminster and Church Ranch Hotel Company I LLC and Church Ranch Hotel Company II LLC, in substantially the same form as the one attached as Exhibit "A," and upon execution of the amended Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9<sup>th</sup> day of June, 2003. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23<sup>rd</sup> day of June, 2003.