



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Employee Appreciation Week Proclamation
7. Citizen Communication (5 minutes or less)

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

8. Consent Agenda
 - A. Financial Report for July 2009
 - B. Quarterly Insurance Claim Reports: January – June 2009
 - C. Water System Pump Purchases
 - D. 2009 Large Water Meter Retrofit Purchases
 - E. 2009 Pavement Rehabilitation Project - Change Order No. 3
 - F. 2009 Wastewater Collection System – Point Repairs
 - G. Harris Park Irrigation Company Share Distribution Agreement
 - H. Utilities System Materials Purchases
 - I. Memorandum of Understanding with State of Colorado for Public School Construction Inspections
 - J. IGA with the UDFCD for the Airport Creek Drainage Improvement Project
 - K. Municipal Court Roof Replacement
 - L. Second Reading of Councillor's Bill No. 23 re FY 2008 Carryover Appropriation into FY 2009
 - M. Second Reading of Councillor's Bill No. 24 re 2009 Community Development Block Grant Fund Appropriation

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Public Hearing on Funding for the Reclaimed Water Treatment Facility Expansion
- B. Reclaimed Water Treatment Facility Expansion Funding
- C. Reclaimed Water Influent Storage Tank and Pump Station Design/Build Contract
- D. Councillor's Bill No. 25 re Budget Transfer from the Utility Capital Project Reserve
- E. Councillor's Bill No. 26 re Police Department Supplemental Appropriation – CATPA Grant
- F. Automated License Plate Reader Technology Equipment Purchase
- G. Councillor's Bill No. 27 re 2009 2nd Quarter Budget Supplemental Appropriation
- H. Resolution No. 38 re First Amendment to the Mandalay Gardens Urban Renewal Plan
- I. Resolution No. 39 re Documents for Refunding of the 2006 Bond Issued for the Mandalay Gardens URA
- J. Resolution No. 40 re Reimbursement for Water/Wastewater Utility Capital Projects Expenses
- K. Resolution No. 41 re 2009 Private Activity Bond Allocation to the Westminster Housing Authority

11. Old Business and Passage of Ordinances on Second Reading

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

A. City Council

13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

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

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, AUGUST 10, 2009 AT 7:02 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Kaiser, to approve the minutes of the regular meeting of July 27, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. Smithers reported that the City Manager was on vacation and that the 19th annual Westminster Faire would be on August 15 at City Park. There would be entertainment on two stages, lots of good food, and activities for all ages. The Holy Cow 5K Stampede and a pancake breakfast would precede the opening of the faire. So long as the weather cooperated, Saturday promised to be a fun-filled day at City Park and everyone was invited.

CITY COUNCIL COMMENTS

Councillor Major reported that the Relay for Life was on August 7 at City Park. The event had been a tremendous success with many cancer survivors participating, including his mother and Mayor McNally's grandson. It was heartwarming to not only participate, but also to observe so many others involved in the event. Mayor McNally added that 52 teams had participated, making Westminster's one of the most successful relays in the metro area.

Mayor McNally reported that through the "We're All Ears" program, Council had met with citizens at each of the summer concerts series. She thanked the City employees who had volunteered to serve popcorn at each event so Council members were free to visit with citizens. August 28 would be the last movie under the stars of this summer. Mayor McNally also reported having participated in the Adams County Fair over the weekend. She and her partner had won the municipal competition and had taken two other ribbons in the overall competition, the first fair ribbons for her young partner.

CONSENT AGENDA

It was moved by Mayor Pro Tem Dittman, seconded by Councillor Major, to removed Item 8C from the consent agenda for separate consideration due to a potential conflict of interest on the part of Councillor Kaiser. The motion carried.

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute, in substantially the same form as distributed with the agenda packet, a contract with Piper Jaffray for underwriting services for a one-year period with the option to renew for an additional four years; authorize the City Manager to execute an amended intergovernmental agreement with the Urban Drainage and Flood Control District and the City and County of Broomfield relating to the design and construction of Phase 2 of the City Park Channel along the south side of 120th Avenue from a point approximately 500 feet downstream of Lowell Boulevard to Big Dry Creek, authorizing the contribution by the City of an additional \$150,000 for the design and construction of phase 2 of this project as contemplated by the original agreement executed in 2006; based on the City Manager's report and recommendation, find that the public interest would best be served by

authorizing the City Manager to execute a professional services agreement with HDR Engineering, Inc. for providing design and construction phase services for the reclaimed water valves, meter vaults and irrigation services improvements project in an amount not to exceed \$428,732, and authorize the transfer of \$499,869 from three reclaimed water capital accounts into the reclaimed system improvement account; authorize the City Manager to execute intergovernmental agreements with Adams County and with Jefferson County for November 3, 2009 coordinated election services, including expenses currently projected at \$105,000; final passage of Councillor's Bill No. 20 annexing the Teeples property open space; final passage of Councillor's Bill No. 21 amending the Comprehensive Land Use Plan for the Teeples property open space; and final passage of Councillor's Bill No. 22 to rezone the Teeples property open space to Open District.

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

CONTRACT AMENDMENT FOR MEDIAN, ROW & BLUEGRASS MAINTENANCE

It was moved by Mayor Pro Tem Dittman, and seconded by Councillor Lindsey, to authorize the City Manager to amend the existing City contract with Shultz Industries for median maintenance, right-of-way spraying and mowing, and bluegrass maintenance to add \$108,000 of work for irrigation and related repairs as required in the specifications of the contract and authorize the expenditure of \$42,000 in available funds from the General Capital Improvement Fund, North Huron Medians Project, to Schultz Industries for the replacement of dead plant material on the Huron Street medians. The motion passed by a 6:1 margin with Councillor Kaiser abstaining due to a potential conflict of interest.

RESOLUTION NO. 37 ESTABLISHING GENERAL FUND STABILIZATION RESERVE

Councillor Winter moved, seconded by Dittman, to adopt Resolution No. 37 establishing a policy regarding a new General Fund Stabilization Reserve Fund. On roll call vote, the motion passed unanimously.

COUNCILLOR'S BILL NO. 23 APPROPRIATING FY2008 CARRYOVER FUNDS TO FY2009 BUDGETS

Councillor Winter moved to pass Councillor's Bill No. 23 on first reading to appropriate FY2008 carryover funds into the FY2009 budgets of the General, General Reserve, General Fund Stabilization Reserve, Fleet, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Golf Course, Sales & Use Tax, General Capital Outlay Replacement and Debt Service Funds. The Mayor Pro Tem seconded the motion and it carried unanimously on roll call vote.

COUNCILLOR'S BILL NO. 24 APPROPRIATING COMMUNITY DEVELOPMENT BLOCK GRANT

It was moved by Councillor Lindsey, seconded by Councillor Major, to pass Councillor's Bill No. 24 on first reading to appropriate a \$559,370 Community Development Block Grant received from the US Department of Housing and Urban Development. The motion passed unanimously on roll call vote.

CONTRACT AND EXPENDITURES FOR LOWELL BOULEVARD STREETScape IMPROVEMENTS

It was moved by Councillor Briggs and seconded by Mayor Pro Tem Dittman to authorize the City Manager to execute a contract with New Design Construction Company in the amount of \$767,306 for the construction of the Lowell Boulevard Streetscape Improvements from 77th Avenue to US 36; to authorize the expenditure of up to \$120,000 for construction engineering services; to authorize the expenditure of up to \$120,000 for street lighting installations; to authorize a project contingency of \$80,000; and to authorize the transfer of \$350,400 from the New Development Participation Capital Improvement Project account to the Lowell Boulevard Corridor Enhancement account. The motion carried with all Council members voting affirmatively.

ADJOURNMENT

It was moved by Councillor Kaiser, seconded by Major, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:18 p.m.

ATTEST:

City Clerk

Mayor



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Proclamation re Employee Appreciation Week

Prepared By: Lisa Chrisman, Human Resources Administrator

Recommended City Council Action

Mayor McNally proclaim September 7 through September 11, 2009 as City of Westminster Employee Appreciation Week in recognition of the contributions of City employees to the overall success of the City organization and the quality of life of Westminster citizens.

Summary Statement

- The Mayor and City Council are being requested to proclaim September 7 through September 11, 2009 as City Employee Appreciation Week.
- For many years, the City of Westminster and its citizens have benefited from the hard work and commitment of City employees.
- The purpose of the proposed proclamation is to recognize 995 full and part-time benefited employees, and the more than 647 seasonal and non-benefited employees who comprise the City of Westminster's workforce.
- On September 9, the 20th annual employee appreciation breakfast will be prepared by the City Manager, Assistant City Manager, City Attorney, Presiding Municipal Court Judge, and City Department Heads.
- Members of the City's Employee Advisory Committee and the Employee Recognition Action Team, who represent employees from all City departments, have been invited to attend Monday evening's meeting to accept the proclamation on behalf of all City employees.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

The ability of the City of Westminster organization to provide quality municipal services is in no small part due to the commitment, dedication, talent, expertise and knowledge of the City's employee workforce. Currently there are 995 full-time and part-time regular employees working in Information Technology, Police, Fire, Public Works and Utilities, Finance, General Services, Parks, Recreation and Libraries and Community Development Departments, and the City Attorney's and City Manager's Offices. Overall, there are roughly 1,642 employees, including seasonal and non-benefited employees, on the City's payroll. In no small part due to the efforts of these individuals, Westminster is in the forefront of providing high quality facilities and services to its residents. Very positive citizen feedback in biennial surveys and the many national and regional awards the City has received attest to the caliber of the City's workforce.

The attached Proclamation summarizes the contributions of City employees and recognizes their efforts by proclaiming September 7 through September 11, 2009 as City of Westminster Employee Appreciation Week.

One of the highlights of the week will be the Employee Appreciation Breakfast at City Park Recreation Center. It will mark the 20th year in a row that the City Manager, Assistant City Manager, City Attorney, Presiding Municipal Court Judge, and Department Heads have arrived at 5:00 a.m. to prepare a full breakfast with pancakes, hash browns, eggs, fruit, ham and orange juice for employees at the start of their workday. Employees will stop by anytime between 6:00 a.m. and 8:30 a.m. to partake in the breakfast and comradery prior to the start of their normal workday, or in some cases after working through the night on a late shift.

In addition, the Employee Recognition Action Team has created an electronic thank you note that will be available to send to City employees during the week. This special thank you note helps employees remember to thank their coworkers for their teamwork and inspiration throughout the year. ERAT has planned other activities and events throughout Employee Appreciation Week including an all-employee picnic lunch.

Several of the members of the City's Employee Advisory Committee and the Employee Recognition Action Team will be present Monday evening to accept this proclamation from the City Council on behalf of all City employees.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

WHEREAS, Westminster citizens have given the City very high service ratings in each of the past citizen surveys attesting to the high quality of services provided by Westminster employees; and

WHEREAS, Westminster employees are in large part responsible for the City's national and regional reputation for quality, progressive municipal government; and

WHEREAS, the 995 full-time and part-time benefited employees and over 647 seasonal and non-benefited employees have contributed significantly to the quality of life of Westminster citizens; and

WHEREAS, these employees who are employed in the City Attorney's Office, City Manager's Office, Community Development, Finance, Fire, General Services, Information Technology, Parks, Recreation, and Libraries, Police, and Public Works and Utilities Departments, comprise a workforce that is unquestionably one of the City's most valuable resources; and

WHEREAS, on September 9, 2009 the City Manager, Assistant City Manager, City Attorney, Presiding Judge, and all City Department Heads will be preparing an Employee Appreciation Breakfast in recognition of all City employees at City Park Recreation Center; and

WHEREAS, the week of September 7, 2009 will include several other activities designed to express appreciation to City Employees.

NOW, THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council do hereby proclaim September 7 through September 11, 2009 as

**CITY OF WESTMINSTER
EMPLOYEE APPRECIATION WEEK**

Signed this 24th of August, 2009.

Nancy McNally, Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



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

Recommended City Council Action

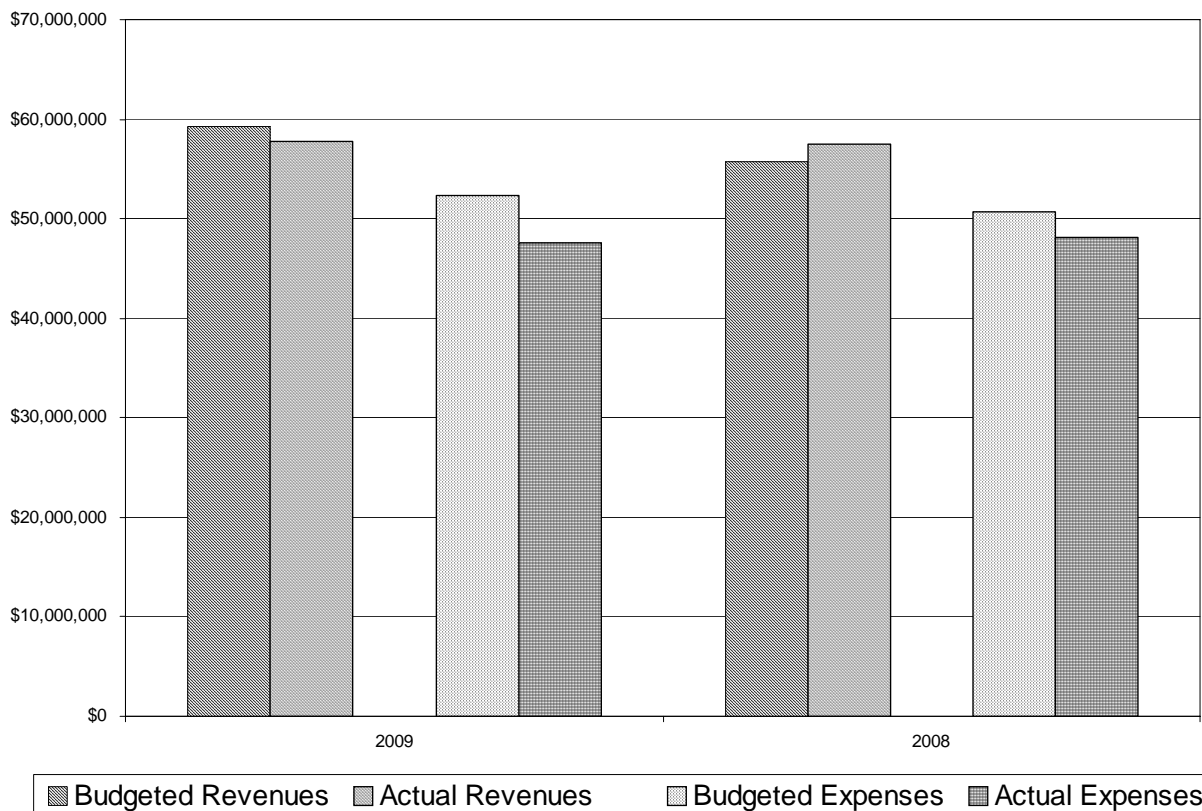
Accept the Financial Report for July as presented.

Summary Statement

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

The General Fund revenues and carryover exceed expenditures by \$10,183,127. The following graph represents Budget vs. Actual for 2008 – 2009. There is currently \$1,013,635 in budgeted funding that has been put on hold from spending. As transfers from the Sales Tax Fund are reduced as part of the overall economic downturn management plan, revenues in the General Fund will decline.

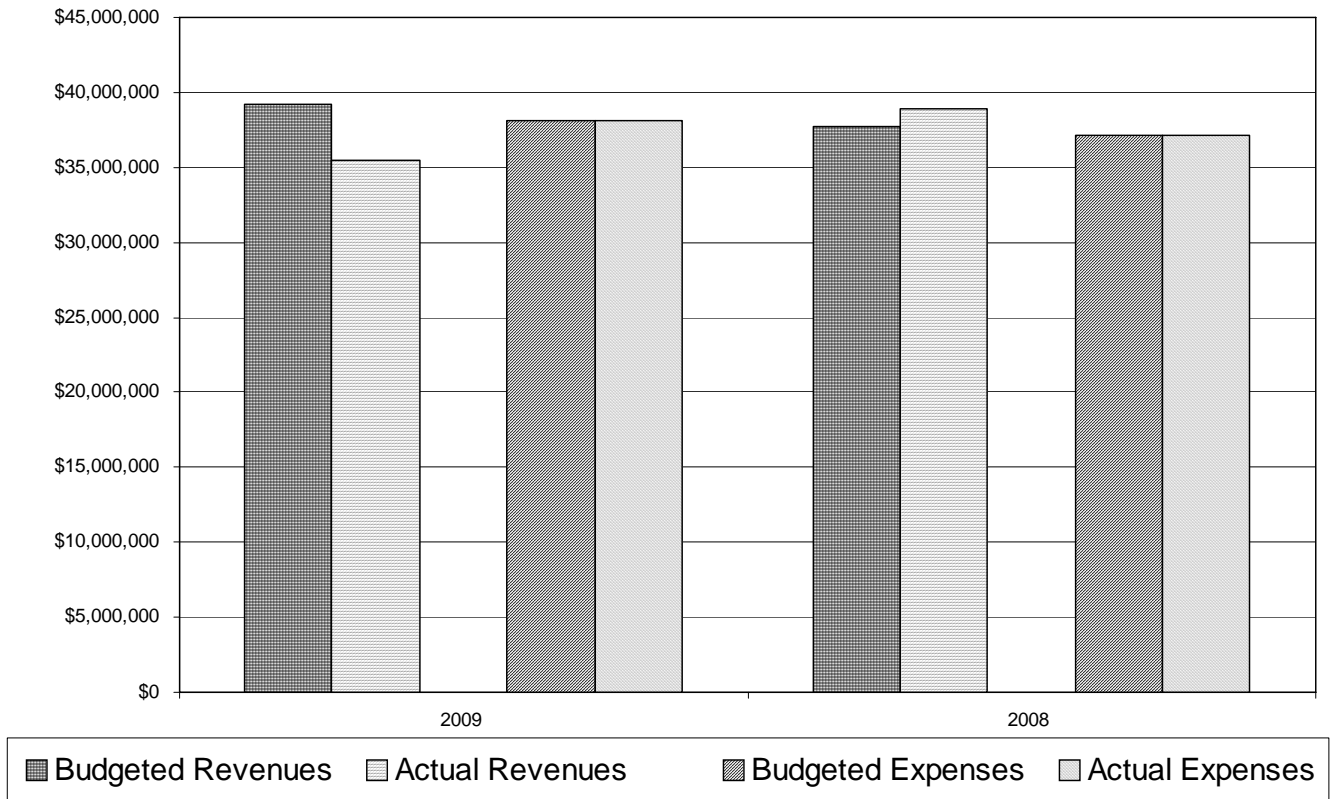
**General Fund
Budget vs Actual**



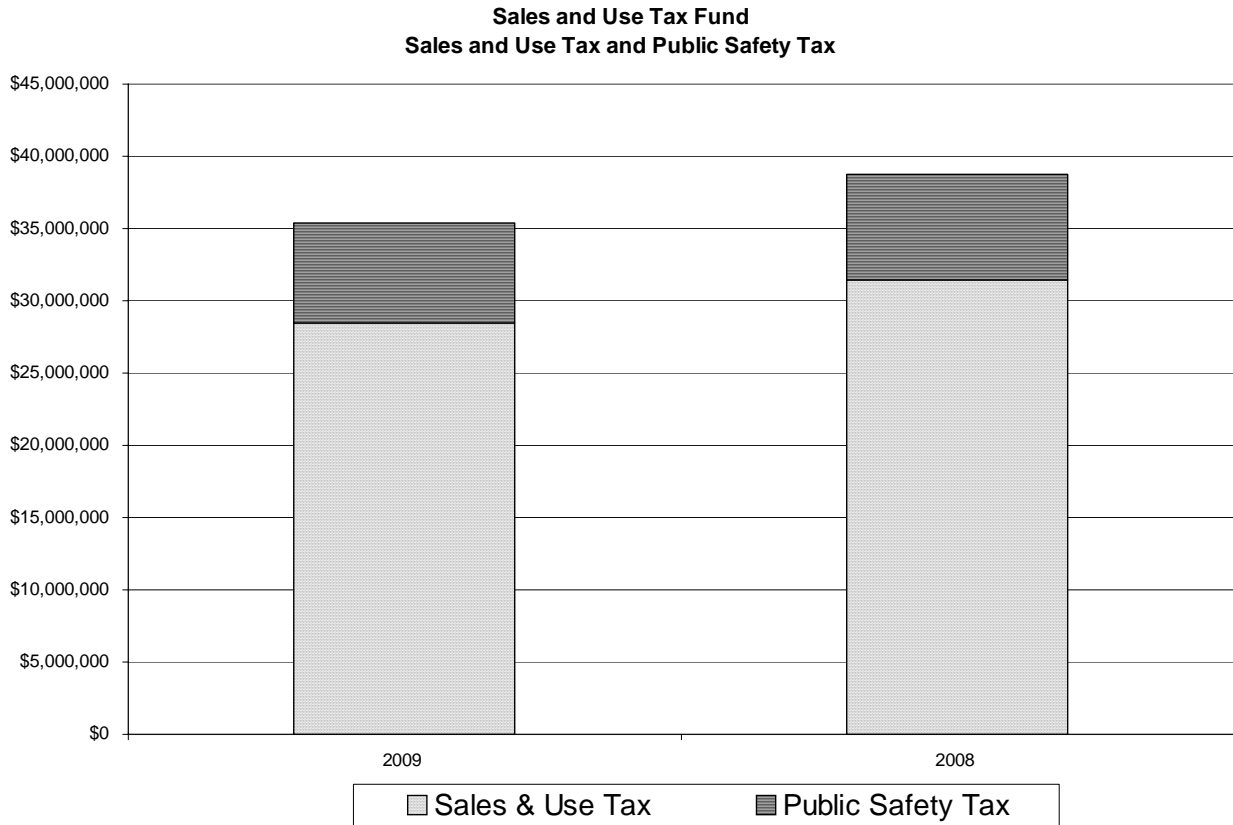
The Sales and Use Tax Fund revenues and carryover are less than expenditures by \$2,703,260.

- On a year-to-date cash basis, sales and use tax returns are down 6.4% from 2008.
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are up 0.7% from the prior year. This includes Urban Renewal Area money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 5.1%.
- The top 50 sales taxpayers, who represent about 62% of all collections, were down 2.8% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 26.0% on a year-to-date basis.
- Building Use Tax is down 67.1% year-to-date from 2008.

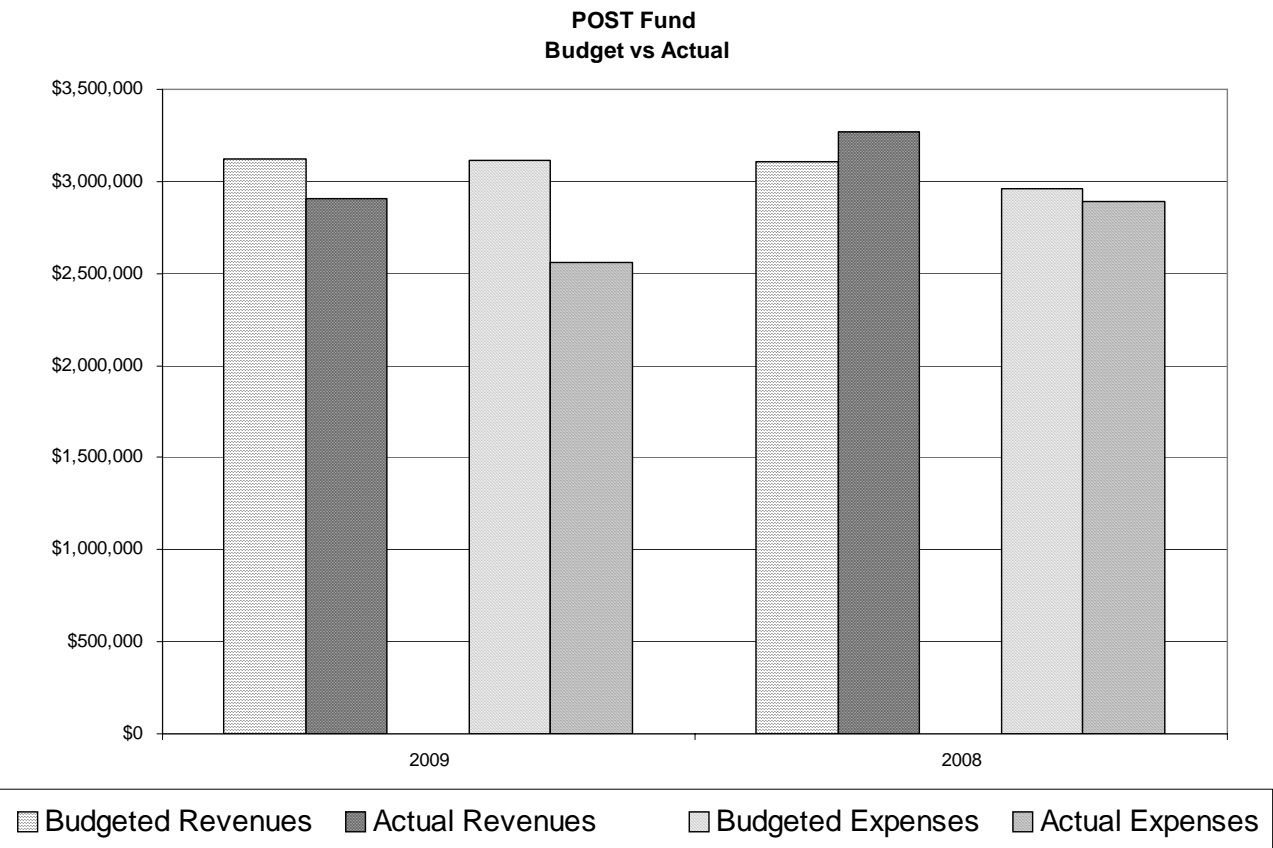
**Sales & Use Tax Fund
Budget vs Actual**



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

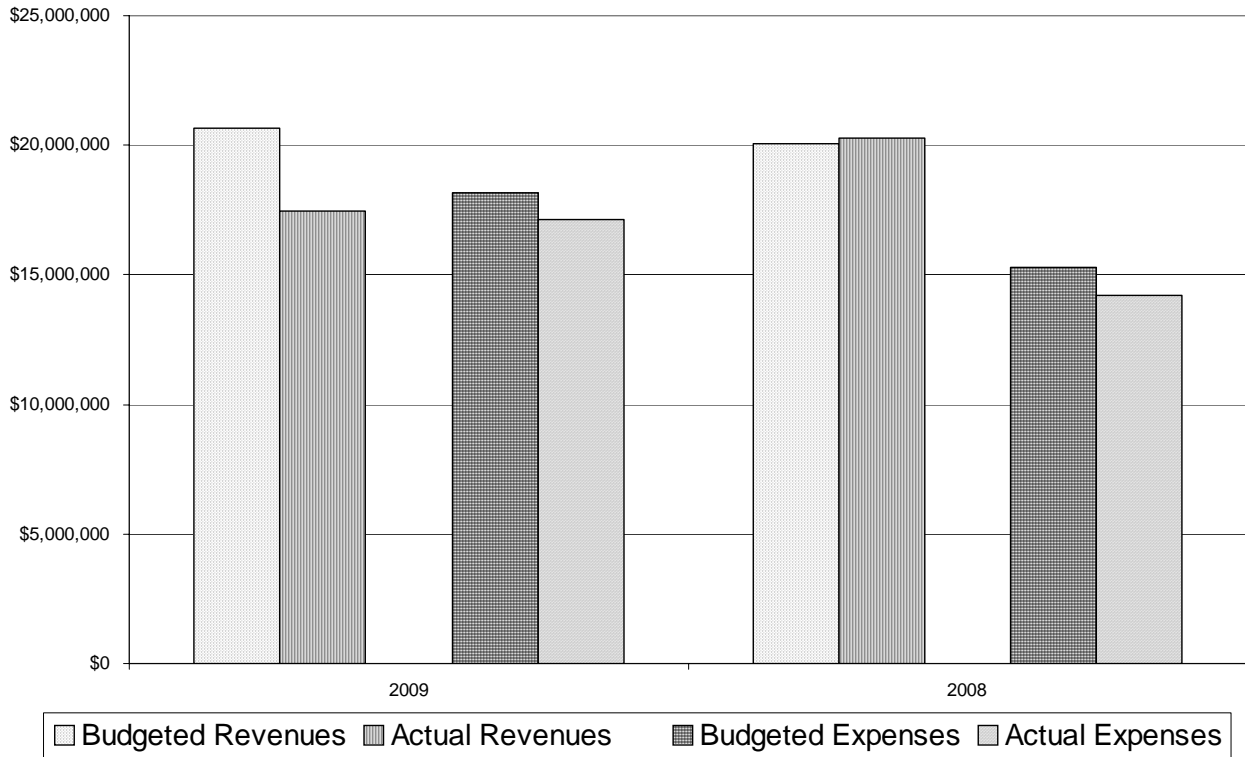


The Parks Open Space and Trails Fund revenues exceed expenditures by \$349,506.



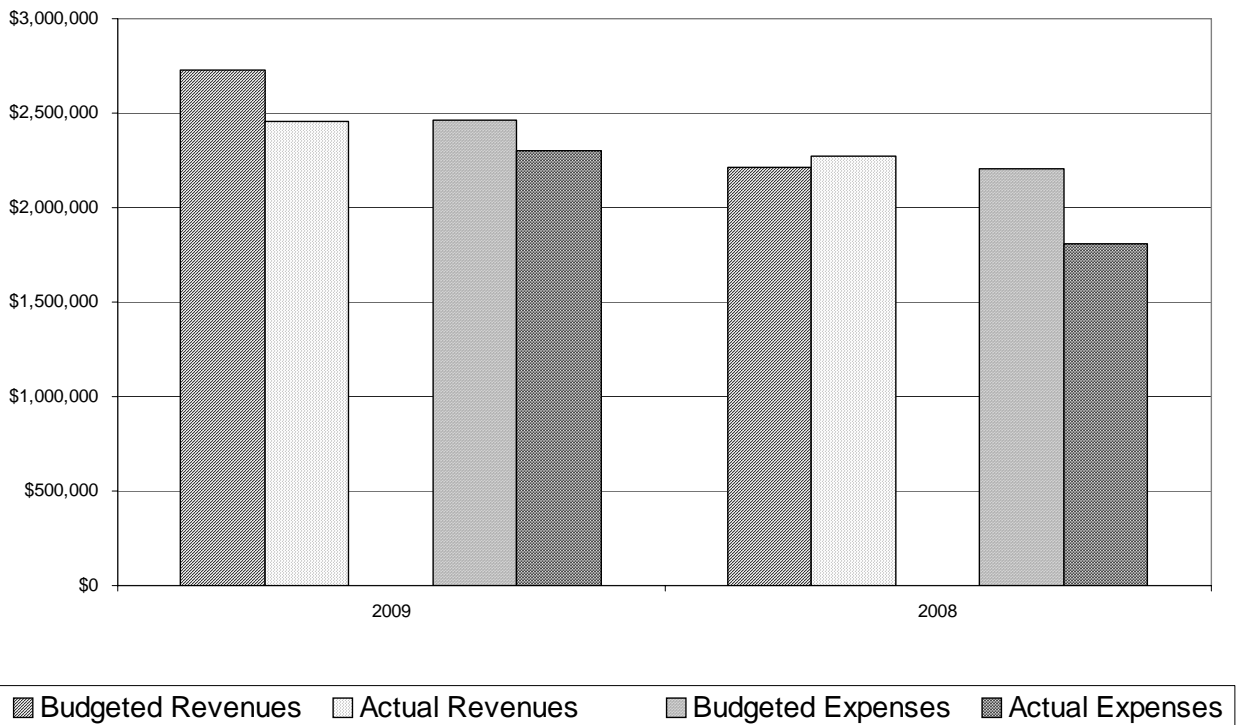
The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$10,659,964. \$24,283,469 is budgeted for capital projects and reserves.

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



The combined Golf Course Fund revenues exceed expenses by \$157,994.

**Golf Course Enterprise
Budget vs Actual**



Policy Issue

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

Alternative

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

Background Information

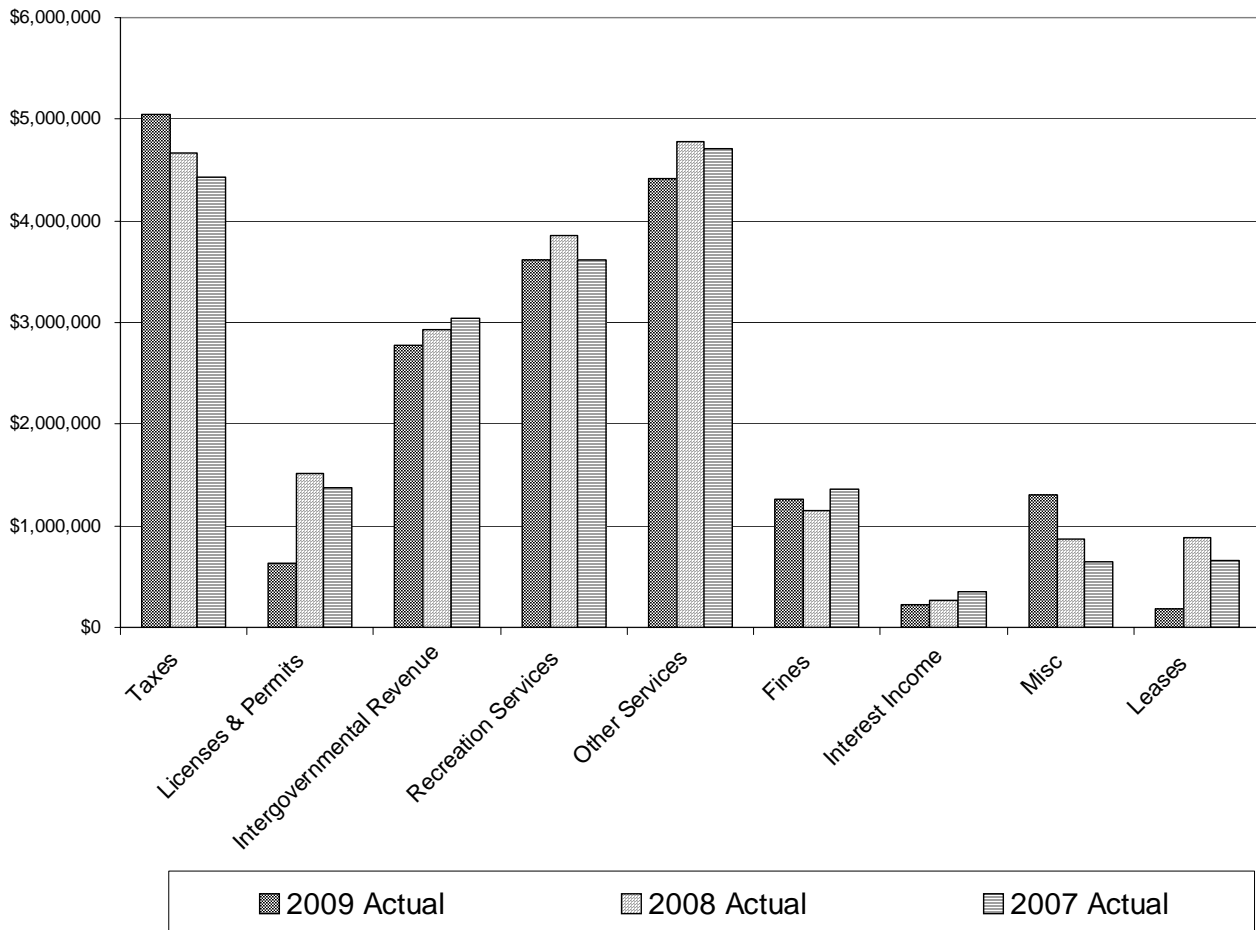
This section includes a discussion of highlights of each fund presented.

General Fund

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

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

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

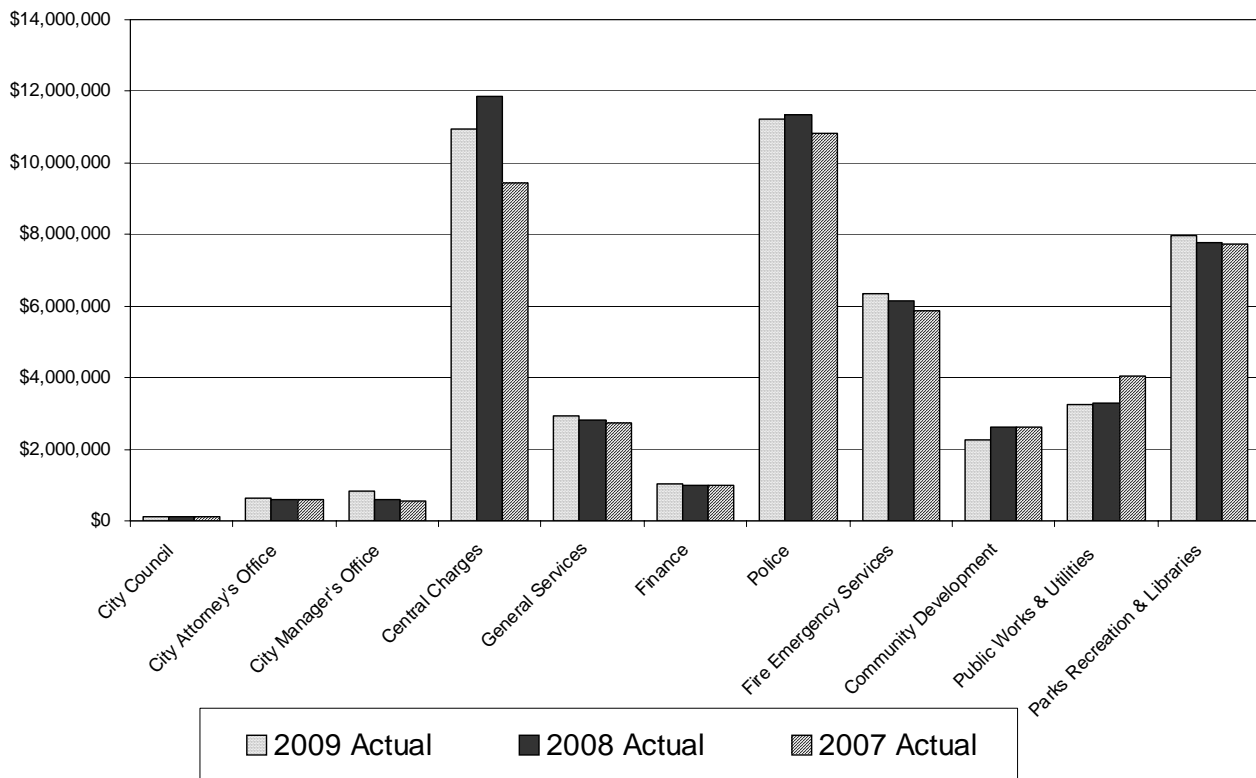


Significant variances in General Fund revenue categories are explained as follows:

- Increase in Taxes reflects Accommodations Tax previously recorded in the General Capital Improvement Fund, now recorded in the General Fund.
- Decrease in License and Permit revenue reflects commercial and residential building permit activity, primarily in Adams County.
- Decrease in Intergovernmental Revenue is primarily attributable to Highway Users Tax and grant revenue.
- Decrease in Recreation Services revenue is largely due to activity at the City Park Recreation Center.
- Decrease in Other Services revenue reflects in large part Xcel franchise fees.
- Increase in Miscellaneous revenue reflects reimbursements received from Thornton relating to the 144th Avenue bridge construction IGA.
- Decrease in Lease revenue is due mostly to the Conference Center and Pavillion leases which were terminated in 2008.

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

**Expenditures by Function, less Other Financing Uses
2007- 2009**



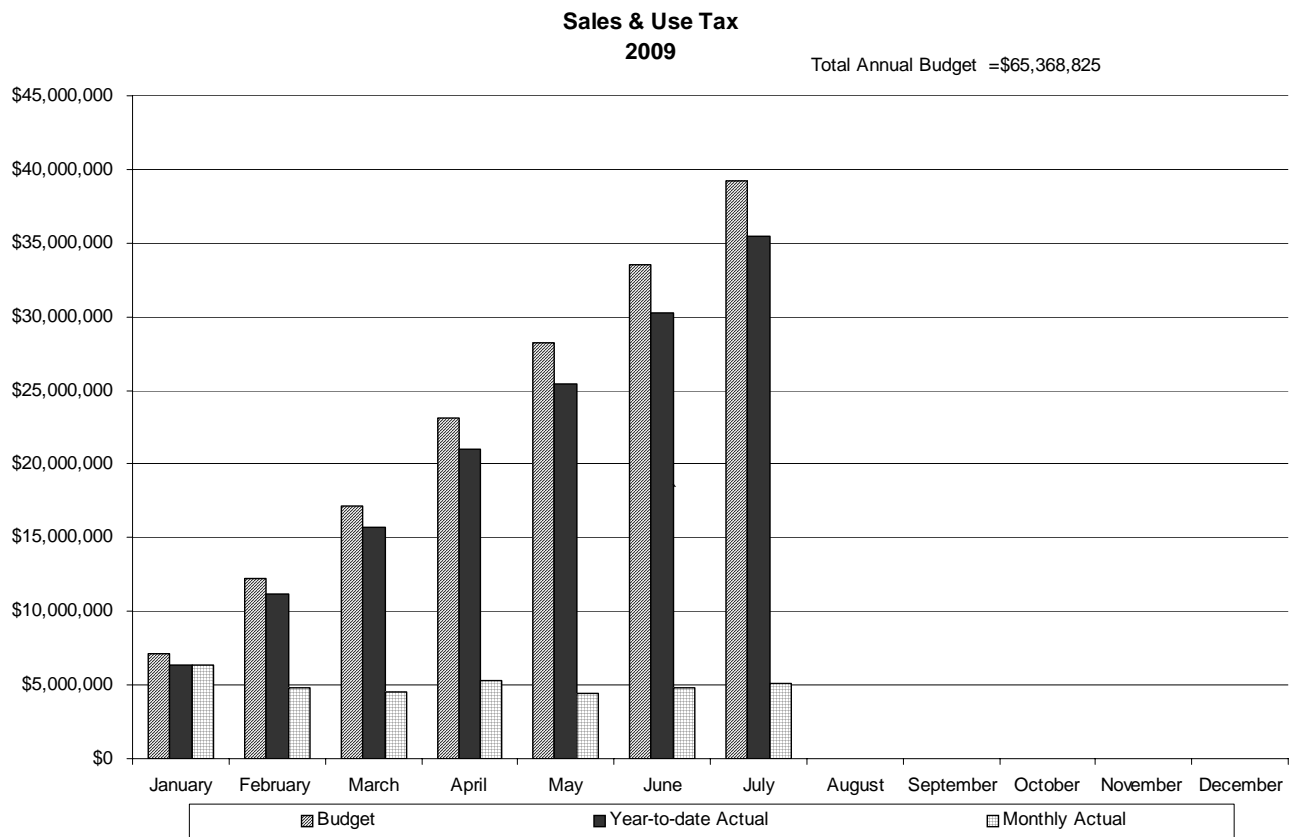
Significant variances in General Fund departmental expenditure categories are explained as follows:

- Decrease in Central Charges is primarily due to a decrease in budgeted transfers.
- Increase in City Manager's Office is due to the transfer of Economic Development from Community Development to the City Manager's Office

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

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

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

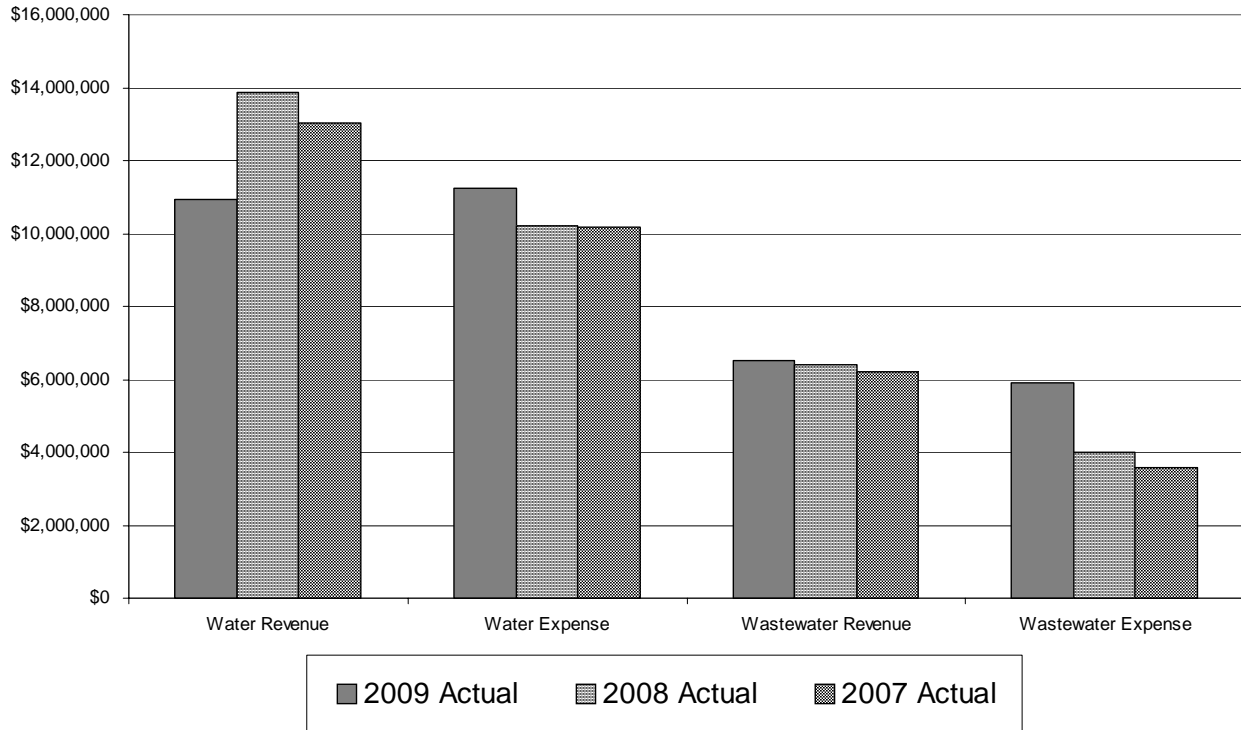


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

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

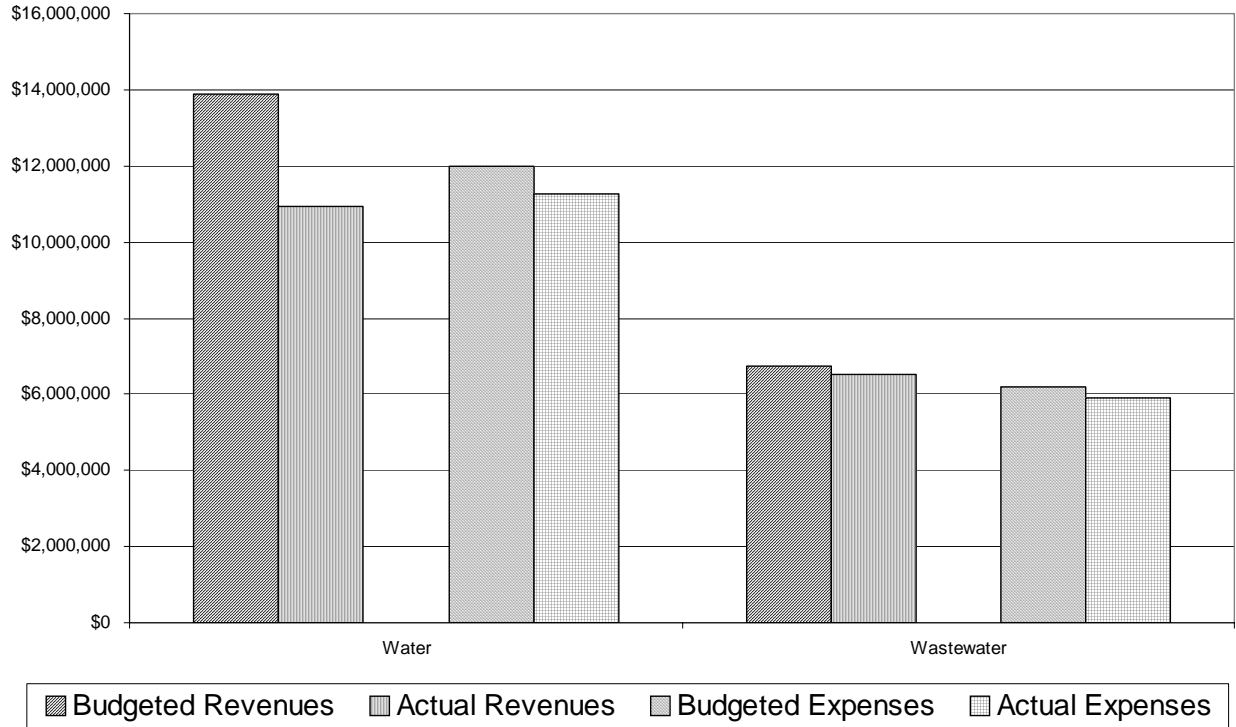
**Water and Wastewater Funds
Operating Revenue and Expenses 2007-2009**



Fluctuation in Water revenue between years reflects the effect of weather variations on demand. The Water expenditure increase in 2009 is the effect of costs related to employee benefits, energy payments, contract services charges and Zebra Mussel control efforts.

Expenses in the Wastewater Fund reflect a \$1.9M payment to Metro Wastewater Reclamation District to bring wastewater treatment in-house as approved by Council in March.

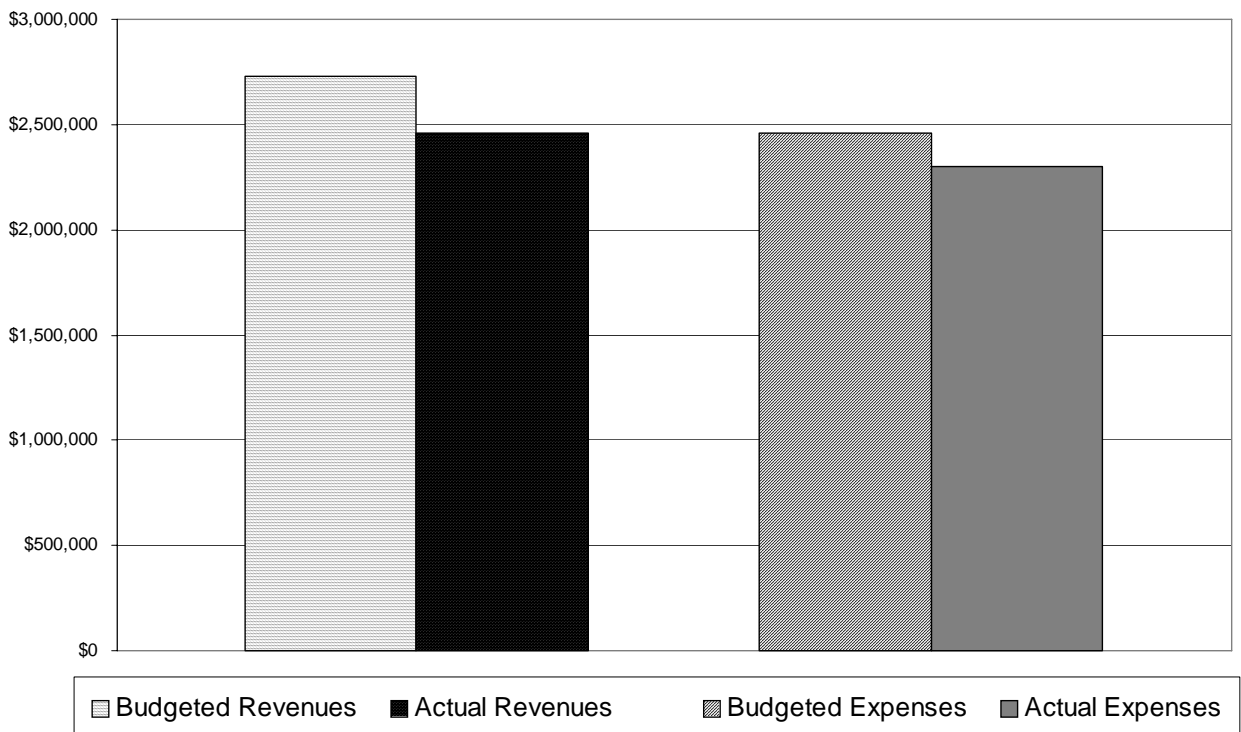
**Water and Wastewater Funds
2009 Operating Budget vs Actual**



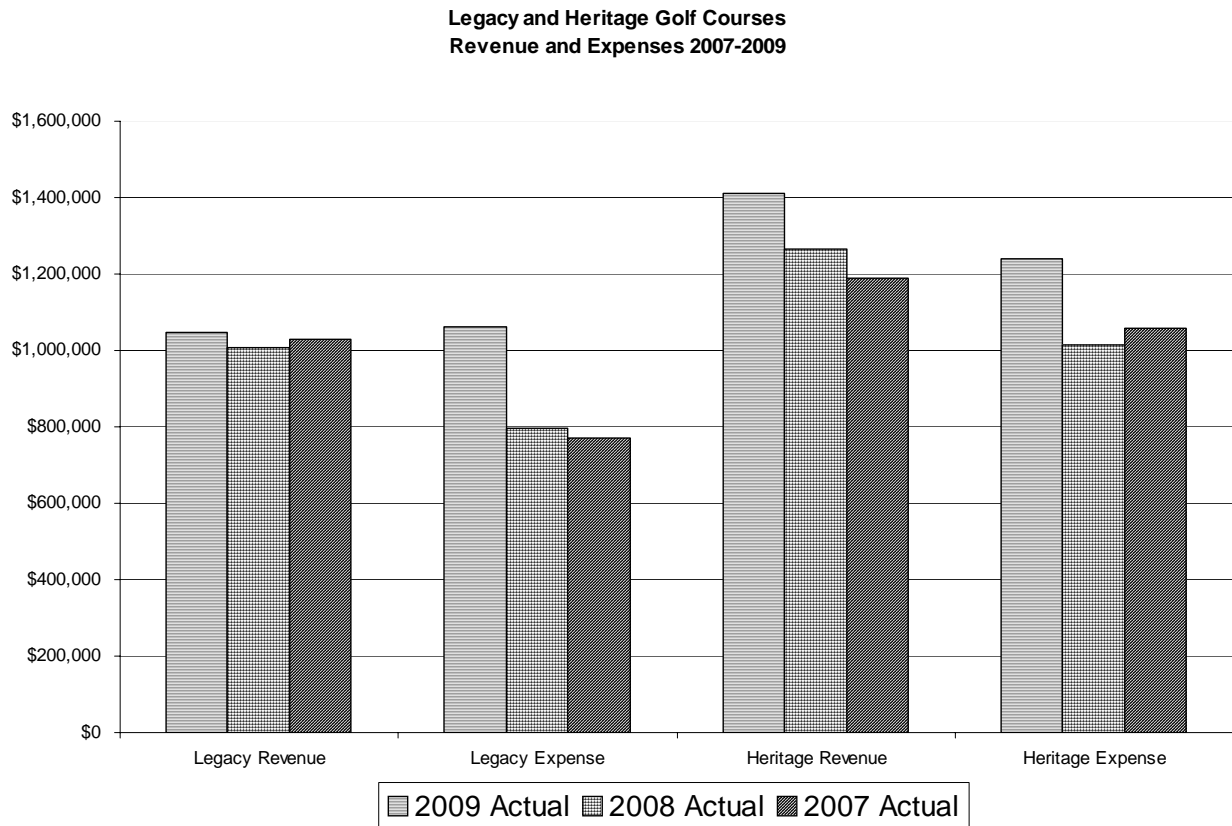
Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

**Combined Golf Courses
2009 Budget vs Actual**

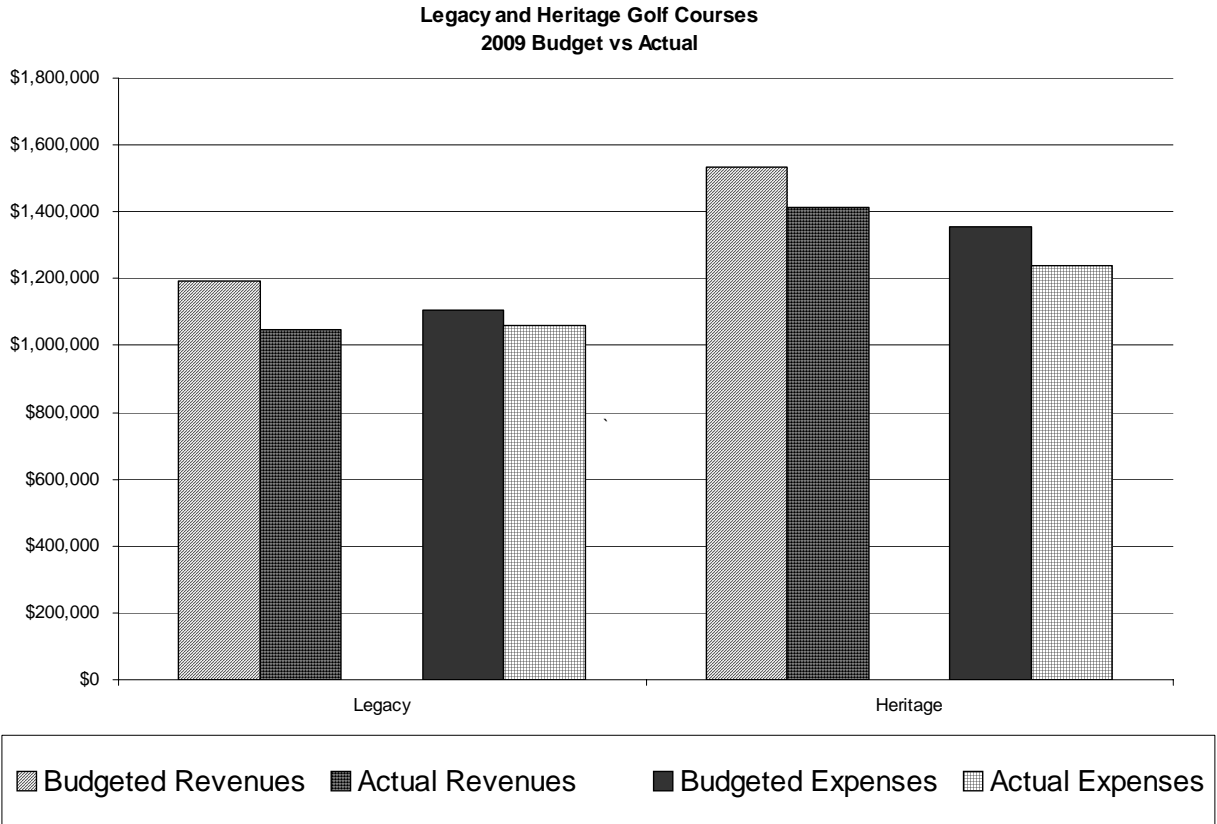


The following graphs represent the information for each of the golf courses.



Allocation of \$112,182 in carryover from Legacy to Heritage, a transfer that Heritage receives to help pay outstanding bonds and lease financing of a new golf cart fleet impacts this revenue representation. Elimination of these items would indicate a decrease in operating revenues from 2008 of \$128,200 at Legacy and \$85,790 at Heritage.

Legacy and Heritage expenses reflect the lease purchase of golf cart equipment totaling \$439,745.



Respectfully submitted,

J. Brent McFall
City Manager

Attachments

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues and Carryover						
Taxes	6,089,541	5,279,803		5,048,472	-231,331	95.6%
Licenses & Permits	1,597,600	910,995		637,613	-273,382	70.0%
Intergovernmental Revenue	5,039,622	3,002,071		2,780,230	-221,841	92.6%
Charges for Services						
Recreation Services	5,910,792	3,695,174		3,615,762	-79,412	97.9%
Other Services	9,236,959	5,217,251		4,410,703	-806,548	84.5%
Fines	2,211,050	1,298,919		1,263,947	-34,972	97.3%
Interest Income	515,000	271,898		222,130	-49,768	81.7%
Misc	1,698,745	1,187,227		1,302,555	115,328	109.7%
Leases	295,925	172,623		180,291	7,668	104.4%
Interfund Transfers	62,330,989	36,370,222	(1)	36,386,608	16,386	100.0%
Other Financing Sources	584,990	584,990		584,990	0	100.0%
Sub-total Revenues	<u>95,511,213</u>	<u>57,991,173</u>		<u>56,433,301</u>	<u>-1,557,872</u>	<u>97.3%</u>
Carryover	1,300,524	1,300,524		1,300,524	0	100.0%
Revenues and Carryover	<u>96,811,737</u>	<u>59,291,697</u>		<u>57,733,825</u>	<u>-1,557,872</u>	<u>97.4%</u>
Expenditures						
City Council	213,244	116,314		113,611	-2,703	97.7%
City Attorney's Office	1,174,835	673,967		634,636	-39,331	94.2%
City Manager's Office	1,625,634	913,937		837,655	-76,282	91.7%
Central Charges	24,413,530	11,716,354		10,948,230	-768,124	93.4%
General Services	5,927,432	3,300,830		2,940,144	-360,686	89.1%
Finance	1,984,987	1,135,406		1,035,463	-99,943	91.2%
Police	21,263,639	12,158,407		11,216,304	-942,103	92.3%
Fire Emergency Services	11,916,716	6,784,490		6,341,184	-443,306	93.5%
Community Development	4,353,877	2,497,667		2,275,324	-222,343	91.1%
Public Works & Utilities	7,710,392	3,877,407		3,235,325	-642,082	83.4%
Parks, Recreation & Libraries	16,227,451	9,093,723		7,972,822	-1,120,901	87.7%
Total Expenditures	<u>96,811,737</u>	<u>52,268,502</u>		<u>47,550,698</u>	<u>-4,717,804</u>	<u>91.0%</u>
Revenues and Carryover						
Over(Under) Expenditures	<u>0</u>	<u>7,023,195</u>		<u>10,183,127</u>	<u>3,159,932</u>	

(1) The Interfund Transfers variance reflects an unbudgeted payment from the 144th Avenue GID

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues and Carryover						
Sales Tax						
Sales Tax Returns	42,096,853	25,723,277		23,787,243	-1,936,034	92.5%
Sales Tx Audit Revenues	697,800	455,380		256,756	-198,624	56.4%
S-T Rev. STX	<u>42,794,653</u>	<u>26,178,657</u>		<u>24,043,999</u>	<u>-2,134,658</u>	<u>91.8%</u>
Use Tax						
Use Tax Returns	9,037,161	4,989,039		3,556,698	-1,432,341	71.3%
Use Tax Audit Revenues	777,018	506,616		904,190	397,574	178.5%
S-T Rev. UTX	<u>9,814,179</u>	<u>5,495,654</u>		<u>4,460,888</u>	<u>-1,034,767</u>	<u>81.2%</u>
Total STX and UTX	<u><u>52,608,832</u></u>	<u><u>31,674,311</u></u>		<u><u>28,504,887</u></u>	<u><u>-3,169,425</u></u>	<u><u>90.0%</u></u>
Public Safety Tax						
PST Tax Returns	12,401,153	7,340,974		6,626,726	-714,248	90.3%
PST Audit Revenues	128,840	70,587		232,101	161,514	328.8%
Total Rev. PST	<u>12,529,993</u>	<u>7,411,561</u>		<u>6,858,827</u>	<u>-552,734</u>	<u>92.5%</u>
Total Interest Income	230,000	134,167		64,841	-69,326	48.3%
Total Revenues and Carryover	<u>65,368,825</u>	<u>39,220,039</u>		<u>35,428,555</u>	<u>-3,791,485</u>	<u>90.3%</u>
Expenditures						
Central Charges	<u>65,368,825</u>	<u>38,131,815</u>		<u>38,131,815</u>	<u>0</u>	<u>100.0%</u>
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>1,088,224</u>		<u>-2,703,260</u>	<u>-3,791,485</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues and Carryover						
Sales & Use Tax	5,228,386	3,078,277		2,857,067	-221,210	92.8%
Interest Income	31,000	18,083		37,444	19,361	207.1%
Miscellaneous	88,832	25,888		11,266	-14,622	43.5%
Interfund Transfers	180,000	0		0	0	N/A
Sub-total Revenues	<u>5,528,218</u>	<u>3,122,248</u>		<u>2,905,777</u>	<u>-216,471</u>	<u>93.1%</u>
Carryover	0	0		0	0	N/A
Total Revenues and Carryover	<u>5,528,218</u>	<u>3,122,248</u>		<u>2,905,777</u>	<u>-216,471</u>	<u>93.1%</u>
Expenditures						
Central Charges	5,187,989	2,912,962		2,423,139	-489,823	83.2%
Park Services	340,229	197,957		133,132	-64,825	67.3%
	<u>5,528,218</u>	<u>3,110,919</u>		<u>2,556,271</u>	<u>-554,648</u>	<u>82.2%</u>
Over(Under) Expenditures	<u>0</u>	<u>11,329</u>		<u>349,506</u>	<u>338,177</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Fund-Combined						
Operating Revenues						
License & Permits	75,000	43,750		55,440	11,690	126.7%
Intergovernmental Revenue	21,965	5,872		5,872	0	100.0%
Rates and Charges	38,724,370	20,345,105		17,273,066	(3,072,039)	84.9%
Miscellaneous	435,000	253,750		115,235	(138,515)	45.4%
Total Operating Revenues	<u>39,256,335</u>	<u>20,648,477</u>		<u>17,449,613</u>	<u>(3,198,864)</u>	<u>84.5%</u>
Operating Expenses						
Central Charges	5,880,390	3,430,228		3,399,111	(31,117)	99.1%
Finance	671,815	374,201		363,555	(10,646)	97.2%
Public Works & Utilities	22,421,266	12,716,739		11,853,320	(863,419)	93.2%
Parks, Recreation & Libraries	157,226	91,715		48,978	(42,737)	53.4%
Information Technology	2,808,228	1,578,224		1,474,257	(103,967)	93.4%
Total Operating Expenses	<u>31,938,925</u>	<u>18,191,107</u>		<u>17,139,221</u>	<u>(1,051,886)</u>	<u>94.2%</u>
Operating Income (Loss)	<u>7,317,410</u>	<u>2,457,370</u>		<u>310,392</u>	<u>(2,146,978)</u>	
Other Revenue and Expenses						
Tap Fees	7,020,000	4,078,628		1,975,391	(2,103,237)	48.4%
Interest Income	1,600,000	933,333		700,674	(232,659)	75.1%
Interfund Transfers	14,394,824	9,794,210		9,794,210	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	254,654	254,654		254,654	0	100.0%
Debt Service	(6,303,419)	(2,388,097)		(2,388,097)	0	100.0%
Total Other Revenue (Expenses)	<u>16,966,059</u>	<u>12,672,728</u>		<u>10,349,572</u>	<u>(2,323,156)</u>	<u>81.7%</u>
Increase (Decrease) in Net Assets	<u>24,283,469</u>	<u>15,130,098</u>	(1)	<u>10,659,964</u>	<u>(4,470,134)</u>	

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

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	75,000	43,750		55,440	11,690	126.7%
Intergovernmental Revenue	21,965	5,872		5,872	0	100.0%
Rates and Charges	27,006,370	13,593,053		10,752,220	(2,840,833)	79.1%
Miscellaneous	425,000	247,917		111,875	(136,042)	45.1%
Total Operating Revenues	<u>27,528,335</u>	<u>13,890,592</u>		<u>10,925,407</u>	<u>(2,965,185)</u>	<u>78.7%</u>
Operating Expenses						
Central Charges	4,142,873	2,416,676		2,400,588	(16,088)	99.3%
Finance	671,815	374,201		363,555	(10,646)	97.2%
Public Works & Utilities	13,839,429	7,545,612		6,965,278	(580,334)	92.3%
Parks, Recreation & Libraries	157,226	91,715		48,978	(42,737)	53.4%
Information Technology	2,808,228	1,578,224		1,474,257	(103,967)	93.4%
Total Operating Expenses	<u>21,619,571</u>	<u>12,006,428</u>		<u>11,252,656</u>	<u>(753,772)</u>	<u>93.7%</u>
Operating Income (Loss)	<u>5,908,764</u>	<u>1,884,164</u>		<u>(327,249)</u>	<u>(2,211,413)</u>	
Other Revenue and Expenses						
Tap Fees	5,739,000	3,315,479		1,618,609	(1,696,870)	48.8%
Interest Income	900,000	525,000		524,242	(758)	99.9%
Interfund Transfers	10,859,076	6,913,211		6,913,211	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	254,654	254,654		254,654	0	100.0%
Debt Service	(4,798,025)	(1,782,519)		(1,782,519)	0	100.0%
Total Other Revenues (Expenses)	<u>12,954,705</u>	<u>9,225,825</u>		<u>7,540,937</u>	<u>(1,684,888)</u>	<u>81.7%</u>
Increase (Decrease) in Net Assets	<u>18,863,469</u>	<u>11,109,989</u>	(1)	<u>7,213,688</u>	<u>(3,896,301)</u>	

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

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	11,718,000	6,752,052		6,520,846	(231,206)	96.6%
Miscellaneous	10,000	5,833		3,360	(2,473)	57.6%
Total Operating Revenues	<u>11,728,000</u>	<u>6,757,885</u>		<u>6,524,206</u>	<u>(233,679)</u>	<u>96.5%</u>
Operating Expenses						
Central Charges	1,737,517	1,013,552		998,523	(15,029)	98.5%
Public Works & Utilities	8,581,837	5,171,127		4,888,042	(283,085)	94.5%
Total Operating Expenses	<u>10,319,354</u>	<u>6,184,679</u>		<u>5,886,565</u>	<u>(298,114)</u>	<u>95.2%</u>
Operating Income (Loss)	<u>1,408,646</u>	<u>573,206</u>		<u>637,641</u>	<u>64,435</u>	
Other Revenue and Expenses						
Tap Fees	1,281,000	763,149		356,782	(406,367)	46.8%
Interest Income	700,000	408,333		176,432	(231,901)	43.2%
Interfund Transfers	3,535,748	2,880,999		2,880,999	0	100.0%
Debt Service	(1,505,394)	(605,578)		(605,578)	0	100.0%
Total Other Revenues (Expenses)	<u>4,011,354</u>	<u>3,446,903</u>		<u>2,808,635</u>	<u>(638,268)</u>	<u>81.5%</u>
Increase (Decrease) in Net Assets	<u>5,420,000</u>	<u>4,020,109</u>	(1)	<u>3,446,276</u>	<u>(573,833)</u>	

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

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues and Carryover						
Charges for Services	1,900,000	1,108,333		1,165,417	57,084	105.2%
Interest Income	0	0		46,627	46,627	N/A
Miscellaneous	0	0		955	955	N/A
Total Revenues and Carryover	<u>1,900,000</u>	<u>1,108,333</u>		<u>1,212,999</u>	<u>104,666</u>	<u>109.4%</u>
Expenses						
General Services	92,000	35,420		29,782	(5,638)	84.1%
Community Development	140,000	83,580		50,629	(32,951)	60.6%
Park Services	200,000	116,667		44,191	(72,476)	37.9%
Public Works & Utilities	396,000	169,884		164,898	(4,986)	97.1%
Total Expenses	<u>828,000</u>	<u>405,551</u>		<u>289,500</u>	<u>(116,051)</u>	<u>71.4%</u>
Increase (Decrease) in Net Assets	<u>1,072,000</u>	<u>702,782</u>	(1)	<u>923,499</u>	<u>220,717</u>	

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

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Revenues						
Carryover	0	0		0	0	N/A
Charges for Services	3,336,142	2,017,951		1,733,599	(284,352)	85.9%
Interest Income	0	0		12,699	12,699	N/A
Interfund Transfers	467,272	272,575		272,575	0	100.0%
Other Financing Sources	439,745	439,745		439,745	0	100.0%
Total Revenues	<u>4,243,159</u>	<u>2,730,271</u>		<u>2,458,618</u>	<u>(271,653)</u>	<u>90.1%</u>
Expenses						
Central Charges	197,920	113,803		120,578	6,775	106.0%
Recreation Facilities	3,545,674	2,208,485		2,042,763	(165,722)	92.5%
Total Expenses	<u>3,743,594</u>	<u>2,322,288</u>		<u>2,163,341</u>	<u>(158,947)</u>	<u>93.2%</u>
Operating Income (Loss)	499,565	407,983		295,277	(112,706)	
Debt Service Expense	499,565	137,283		137,283	0	100.0%
Increase (Decrease) in Net Assets	<u>0</u>	<u>270,700</u>		<u>157,994</u>	<u>(112,706)</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Pro rated Budget	% Budget
Legacy Ridge Fund						
Revenues						
Carryover	(192,312)	(112,182)		(112,182)	0	100.0%
Charges for Services	1,782,013	1,087,028		926,723	(160,305)	85.3%
Interest Income	0	0		12,699	12,699	N/A
Other Financing Sources	219,873	219,873		219,873	0	100.0%
Total Revenues	<u>1,809,574</u>	<u>1,194,719</u>		<u>1,047,113</u>	<u>(147,606)</u>	<u>87.6%</u>
Expenses						
Central Charges	98,780	56,897		64,264	7,367	112.9%
Recreation Facilities	1,710,794	1,047,006		997,202	(49,804)	95.2%
Total Expenses	<u>1,809,574</u>	<u>1,103,903</u>		<u>1,061,466</u>	<u>(42,437)</u>	<u>96.2%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>90,816</u>		<u>(14,353)</u>	<u>(105,169)</u>	

**City of Westminster
Financial Report
For Seven Months Ending July 31, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Carryover	192,312	112,182		112,182	0	100.0%
Charges for Services	1,554,129	930,923		806,876	(124,047)	86.7%
Interfund Transfers	467,272	272,575		272,575	0	100.0%
Other Financing Sources	219,872	219,872		219,872	0	100.0%
Total Revenues	2,433,585	1,535,552		1,411,505	(124,047)	91.9%
Expenses						
Central Charges	99,140	56,906		56,314	(592)	99.0%
Recreation Facilities	1,834,880	1,161,479		1,045,561	(115,918)	90.0%
Sub-Total Expenses	1,934,020	1,218,385		1,101,875	(116,510)	90.4%
Operating Income	499,565	317,167		309,630	(7,537)	
Debt Service Expense	499,565	137,283		137,283	0	100.0%
Increase (Decrease) in Net Assets	0	179,884		172,347	(7,537)	

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

Center Location Major Tenant	/----- Current Month -----/			/----- Last Year -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	348,336	1,599	349,935	362,556	459	363,015	-4	248	-4
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	317,080	18,240	335,320	266,131	36,473	302,604	19	-50	11
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	315,017	1,276	316,293	368,689	1,670	370,359	-15	-24	-15
SHOPS AT WALNUT CREEK 104TH & REED TARGET	247,663	4,115	251,778	233,898	915	234,812	6	350	7
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	226,850	606	227,456	228,130	1,367	229,497	-1	-56	-1
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	194,003	6,639	200,642	174,641	3,153	177,794	11	111	13
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	177,752	374	178,126	177,557	1,365	178,921	0	-73	0
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	172,221	902	173,123	192,251	1,073	193,324	-10	-16	-10
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	172,171	881	173,052	262,430	6,793	269,222	-34	-87	-36
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	114,712	14,058	128,770	117,821	14,905	132,725	-3	-6	-3
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	116,887	1,129	118,016	127,370	3,124	130,494	-8	-64	-10
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	96,861	542	97,403	105,066	606	105,672	-8	-11	-8
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	95,385	156	95,541	123,005	1,186	124,191	-22	-87	-23
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	88,645	49	88,695	83,347	70	83,417	6	-29	6
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	66,490	246	66,736	69,095	710	69,804	-4	-65	-4

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

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	60,160	284	60,443	59,624	289	59,913	1	-2	1
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	6,165	42,892	49,058	5,171	25,470	30,641	19	68	60
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	44,001	324	44,325	53,912	1,301	55,213	-18	-75	-20
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	42,903	109	43,012	50,767	126	50,893	-15	-14	-15
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	38,635	390	39,025	42,057	522	42,578	-8	-25	-8
WILLOW RUN 128TH & ZUNI SAFEWAY	36,094	216	36,310	47,567	104	47,671	-24	107	-24
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	35,285	0	35,285	0	0	0	*****	*****	*****
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	29,744	176	29,920	25,921	260	26,181	15	-32	14
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	28,770	552	29,321	33,669	1,733	35,402	-15	-68	-17
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	27,998	527	28,526	31,966	264	32,230	-12	100	-11
	<u>3,099,829</u>	<u>96,282</u>	<u>3,196,111</u>	<u>3,242,640</u>	<u>103,936</u>	<u>3,346,576</u>	<u>-4</u>	<u>-7</u>	<u>-5</u>

CITY OF WESTMINSTE
GENERAL RECEIPTS BY CENTER
MONTH and YEAR-TO-DATE JULY 2009

Center Location Major Tenant	/----- YTD 2009 -----/			/----- YTD 2008 -----/			/--- %Change ---/		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	2,479,343	48,491	2,527,835	2,874,466	15,214	2,889,680	-14	219	-13
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,049,659	109,652	2,159,311	1,355,636	204,185	1,559,821	51	-46	38
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,641,044	17,136	1,658,180	1,493,564	79,735	1,573,298	10	-79	5
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	1,593,242	7,957	1,601,199	2,121,942	49,462	2,171,404	-25	-84	-26
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,508,646	9,290	1,517,935	1,489,626	4,488	1,494,114	1	107	2
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,507,530	21,259	1,528,790	1,538,290	11,167	1,549,458	-2	90	-1
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,257,288	6,113	1,263,401	337,723	4,718	342,441	272	30	269
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,237,579	11,407	1,248,986	1,496,302	17,066	1,513,369	-17	-33	-17
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,204,692	15,018	1,219,710	1,336,760	15,007	1,351,767	-10	0	-10
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,055,864	13,190	1,069,053	871,920	23,946	895,866	21	-45	19
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	844,075	105,554	949,629	936,571	224,772	1,161,342	-10	-53	-18
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	778,880	3,665	782,545	791,334	4,417	795,751	-2	-17	-2
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	629,579	2,714	632,293	738,301	4,299	742,600	-15	-37	-15
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	517,418	1,501	518,919	512,589	5,985	518,574	1	-75	0
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	466,504	5,914	472,418	458,535	2,302	460,836	2	157	3

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

Center Location Major Tenant	YTD 2009			YTD 2008			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	413,261	1,959	415,220	432,275	2,326	434,601	-4	-16	-4
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	339,616	2,868	342,484	386,433	25,780	412,213	-12	-89	-17
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	326,018	3,396	329,414	365,482	1,531	367,013	-11	122	-10
WILLOW RUN 128TH & ZUNI SAFEWAY	305,993	2,269	308,262	331,061	2,611	333,672	-8	-13	-8
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	289,990	1,832	291,822	298,588	7,335	305,924	-3	-75	-5
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	176,287	24,750	201,037	0	0	0	*****	*****	*****
BOULEVARD SHOPS 94TH & WADSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	166,443	1,743	168,186	175,690	884	176,574	-5	97	-5
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	165,917	3,239	169,156	204,739	3,896	208,635	-19	-17	-19
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	165,492	47,246	212,739	173,195	20,489	193,684	-4	131	10
MISSION COMMONS W SIDE WADSWORTH 88-90TH BIG 5 SPORTS	162,676	800	163,476	145,354	2,029	147,384	12	-61	11
	21,283,037	468,963	21,752,000	20,866,378	733,642	21,600,020	2	-36	1



Agenda Item 8 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Quarterly Insurance Claim Reports: January - June 2009

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the First and Second Quarter 2009 Insurance Claim Reports.

Summary Statement

- The attached report provides detailed information on each claim including the City's claim number, date of loss, claimant's name and address, a summary of the claim, and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office on litigated claims to make sure that the interests of both the City and the citizen are addressed in each instance. The listing of the claims in this report is provided in accordance with Westminster Municipal Code 1-30-3.
- In accordance with Code provisions, the Risk Management Officer, acting as the City Manager's designee, has the authority to settle claims of less than \$30,000. However, under the City's contract with the Colorado Intergovernmental Risk Sharing Agency (CIRSA), CIRSA acts as the City's claims adjustor and settlement of claims proceed with the concurrence of both CIRSA and the Risk Management Officer. The City retains the authority to reject any settlement recommended by CIRSA, but does so at the risk of waiving its insurance coverage for such claims.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

Information on the status of each claim received during the 1st and 2nd quarters of 2009 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the first and second quarters of 2009, Staff has noted the following summary information:

- Twenty-one of the 33 claims reported through the first half of 2009 are closed at this time.
- Total claims for the quarters and year-to-date breakdown by department as follows:

	1st & 2nd Qtr 2009			YTD
Department	Total Claims	Open	Closed	Total
CD	4	0	4	4
Police	10	8	2	10
PR&L	6	0	6	6
PWU - Streets	4	1	3	4
PWU - Utilities	9	3	6	9
TOTAL	33	12	21	33

The Risk Management program addresses Council’s Strategic Plan goals of Financially Sustainable City Government and Safe and Secure Community by working to mitigate the cost of claims to the City and maintaining a loss control program to keep our City streets and facilities safe for the general public.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**Quarterly Insurance Report
January - June 2009**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-009	1/8/2009	PD	Marianne Poissant	13921 W 74th Way, Westminster CO 80005	Claimant alleges damage to her vehicle when it stalled in traffic and a Westminster Police Officer pushed the vehicle out of traffic with his patrol car.	\$125.48	Closed	
2009-013	1/8/2009	CD	Todd Benshoof	12161 Bannock St. Unit D, Westminster CO 80234	Claimant alleges he was injured when he tripped and fell due to a plank missing on a footbridge over a pond near 121st and Delaware Street.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. The bridge was installed by the local HOA.
2009-020	1/22/2009	PWU - Util	Alex Williams	9143 Meade St., Westminster CO 80031	Claimant alleges he was injured when he stepped into a meter pit located in his front yard that was not secured.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-045	2/24/2009	PWU - Util	Edward and Elisabeth Wirick	4550 51st St., Greeley CO 80634	Claimants allege damage to their rental property in Westminster due to negligence of the City in turning the water to the property off and then back on.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Claimant was referred to the City's Utility Billing office for possible credit for a water leak.
2009-076	3/27/2009	PWU - Util	Stephanie Seiler	4261 W 118th Pl., Westminster CO 80031	Claimant alleges damage to her vehicle due to excessive snow being pushed near the vehicle when it was parked.	\$0.00	Closed	Claim denied based on the investigation found no evidence of negligence on the part of the City.
2009-089	4/4/2009	PRL	Debbie Pacheco	1950 W 56th Ave., Denver CO 80221	Claimant alleges she was injured when she slipped and fell coming down the ramp out of the hot tub area at City Park Recreation Center	\$0.00	Closed	Claim denied based on the investigation found no evidence of negligence on the part of the City.
2009-104	4/17/2009	PWU - Streets	Rodney Walters	9300 Meade St., Westminster CO 80031	Claimant's vehicle was damaged when a Street's employee driving a City snowplow, pushed snow into the claimant's lane of traffic damaging the front end of his car.	\$1,100.56	Closed	
2009-111	4/23/2009	PRL	Ryan Taylor	4544 W 65th Ave., Arvada CO 80003	Parks employee, driving city truck, backed into claimant's vehicle.	\$4,255.84	Closed	
2009-116	4/30/2009	PRL	Scott Dubravac	10716 Bryant Ct., Westminster CO 80234	Claimant's vehicle was hit by a rock thrown up by a riding mower being driven by a Parks employee	\$638.75	Closed	

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-137	5/9/2009	PRL	Dian Downen	7239 W 74th Ave., Arvada CO 80003	City has been put on notice of a claim received by Constitution State Services as claims administrator for American Multi-Cinema Inc., regarding a claimant who alleges she was injured when she tripped on uneven pavers outside of the AMC theaters at the Promenade.	\$0.00	Closed	Claim denied based on the investigation found no evidence of negligence on the part of the City. Claimant was referred back to AMC Theatres as they are responsible for the maintenance of the area where the claimant allegedly fell.
2009-131	5/18/2009	PWU - Util	Krista Welter	7520 Newton St., Westminster CO 80030	Claimant alleges she was injured while mowing her lawn when she stepped on a meter pit lid that came off.	\$0.00	Closed	Claim denied based on the investigation found no evidence of negligence on the part of the City. Claimant was referred back to her landlord who had been doing work in the meter pit two weeks prior to the incident.
2009-135	5/21/2009	PRL	Christina Flint	12605 Zuni St. Apt 105, Broomfield CO 80020	Claimant's vehicle windshield was hit by a rock thrown up by a riding mower being driven by a Parks employee	\$190.14	Closed	
2009-138	5/23/2009	PD	Danielle Cheney	9140 W 88th Cr., Westminster CO 80021	Claimant alleges Westminster police officers damaged the front door to her residence when they knocked on the door with their flashlights.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-141	5/24/2009	PWU - Util	Robert & Carol Scrimo	10447 Nelson St., Westminster CO 80021	Claimants' basement was damaged from a sewer backup caused by a blockage in the City's main line. Blockage was caused by a root ball and pipe liner pushed out from an unknown private line.	\$0.00	Open	Claim denied due to no negligence on the part of the City, however, claimant will be paid under the City's "good neighbor" settlement program.
2009-141	5/24/2009	PWU - Util	Chris Kreutzer	10448 Nelson St., Westminster CO 80021	Claimant's basement was damaged from a sewer backup caused by a blockage in the City's main line. Blockage was caused by a root ball and pipe liner pushed out from an unknown private line.	\$0.00	Open	Claim denied due to no negligence on the part of the City, however, claimant will be paid under the City's "good neighbor" settlement program.
2009-153	5/29/2009	PD	Gavin Cantrall	4442 E 107th Cr., Thornton CO 80233	Claimant alleges damages and injuries from an automobile accident involving a Westminster police officer.	\$0.00	Open	CIRSA Investigating
2009-167	6/21/2009	PRL	David Peters	2151 Dailey Ln., Superior CO 80027	Claimant's vehicle window was hit by a rock thrown up by a riding mower being driven by a Parks employee	\$344.52	Closed	

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-175	6/21/2009	PWU - Util	Janelle Gonzales	c/o Darrell S. Elliott, P.C., 1600 Pennsylvania St., Denver CO 80203	Claimant alleges that she suffered injuries and damages when she fell into an uncovered manhole behind Bova's Italian Restaurant in Westminster.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-174	6/25/2009	PWU - Streets	Nicholas Charles Garcia	5330 W 80th Ave., Apt. F103, Arvada CO 80003	Claimant alleges lost income when the BlackJack Pizza where he works was shut down for the day due to a power outage caused by the driver of a City dump truck.	\$0.00	Open	CIRSA Investigating
CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATES PRIOR TO 1ST QUARTER 2009:								
2009-128	11/22/2006	PWU - Util	Darren Weidenhamer	7268 Osceola St., Westminster CO 80030	Claimant alleges recent damage to his sprinkler system was caused by work the City performed on the nearby meter line back in 2006.	\$0.00	Open	CIRSA Investigating
2009-173	2/29/2008	PD	Brian Olds	6834 S University PMB #176, Centennial CO 80121	Claimant served multiple individuals and entities, including a Westminster police officer, with a Summons and Complaint alleging "his right to travel upon the public way and the right to his property used for that purpose" has been denied and he has suffered injury as a result.	\$0.00	Open	CIRSA Investigating
2009-059	9/4/2008	PD	Marat & Enely Kudlis	8680 E Alameda Ave. Apt 1629, Denver CO 80247	Claimants allege that the City was negligent when it arrested and failed to deport or detain Francis Hernandez in 2004 resulting in Mr. Hernandez causing the death of Marten Kudlis in 2008.	\$0.00	Open	CIRSA Investigating
2009-059	9/4/2008	PD	Aamer Bukhari	c/o Bachus & Schanker, L.L.C., 1400 16th St. Ste. 450, Denver CO 80202	Claimant alleges that the City was negligent when it arrested and failed to deport or detain Francis Hernandez in 2004 resulting in Mr. Hernandez causing the death of Namir Bukhari in 2008.	\$0.00	Open	CIRSA Investigating
2009-059	9/4/2008	PD	Haley Tepe	9590 E Florida Ave., Aurora CO 80247	Claimant alleges that the City was negligent when it arrested and failed to deport or detain Francis Hernandez in 2004 resulting in Mr. Hernandez causing injury to the claimant in 2008.	\$0.00	Open	CIRSA Investigating

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-059	9/4/2008	PD	Margaret Rains	9959 E Peakview Ave. Apt X103, Englewood CO 80111	Claimant alleges that the City was negligent when it arrested and failed to deport or detain Francis Hernandez in 2004 resulting in Mr. Hernandez causing injury to the claimant in 2008.	\$0.00	Open	CIRSA Investigating
2008-470	10/12/2008	PWU - Streets	Greg Weigel	9860 Westcliff Pkwy, Westminster CO 80021	Claimant alleges he sustained injuries when he tripped and fell on a metal pipe that was extending out in the middle of a sidewalk.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2008-467	10/25/2008	CD	Linda Reynolds	2951 N Princess Cr., Broomfield CO 80020	Claimant alleges damage to her car when she drove into a newly extended curb located on 136th at Tejon.	\$688.94	Closed	Claim denied due to no negligence on the part of the City, however, claimant was paid under the City's "good neighbor" settlement program.
2008-467	10/25/2008	CD	Sandra Shelton	13700 Plaster Cr., Broomfield CO 80023	Claimant alleges damage to her car when she drove into a newly extended curb located on 136th at Tejon.	\$424.71	Closed	Claim denied due to no negligence on the part of the City, however, claimant was paid under the City's "good neighbor" settlement program.
2008-469	12/8/2008	CD	Ewin Bell	5403 W. 76th Ave. Apt. 601, Arvada CO 80003	Claimant alleges he suffered injuries when he was crossing the street at the intersection of 76th and Sheridan and was hit by a car due to a faulty pedestrian walk signal.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2008-447	12/15/2008	PWU - Util	Rob Warnke	9551 Garland Ct., Westminster CO 80021	Utility Division employee replaced a frozen water meter outside the claimant's home and forgot to turn the water back on resulting in damage to the claimant's home.	\$352.50	Closed	
2009-165	12/24/2008	PD	Mark Lee Webber	8563 Dover Ct., Westminster CO 80005	Claimant alleges he suffered injuries and damages due to actions of Westminster police officers when they entered his residence without warrant and tasered him.	\$0.00	Open	CIRSA Investigating
2008-446	12/30/2008	PWU - Streets	Jody Loza	6022 W 113th Ave., Westminster CO 80020	Claimant alleges damages when a portion of a street sign blew off and hit her car.	\$0.00	Closed	Claim denied due to no negligence on the part of the City. Claimant was referred to the City of Broomfield who is believed to own the sign.
2008-450	12/31/2008	PD	Yelena Morrisroe	1133 E. Virginia Denver, CO 80209	Claimant alleges damages to her vehicle from an accident involving a Westminster police officer.	\$0.00	Open	CIRSA Investigating
					TOTAL	\$8,121.44		



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Water System Pump Purchases

Prepared By: Richard A. Clark, P.E., Utilities Operations Manager
Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Upon the report and recommendation of the City Manager, find that the public interest will best be served by authorizing the negotiated purchase from the sole source provider, Lee Mathews Equipment Company of two new 500 gallon per minute water pumps and various utilities system equipment in an amount not to exceed \$80,000.

Summary Statement

- The Utilities Division requests approval to purchase two Aurora pumps, Model 413-BF, 500 gallon per minute pumping capability to replace existing pumps at two water pump stations. These new pumps will provide more efficient and reliable pumping ability, along with reducing power demands and energy costs.
- Funding for the purchase of the two pumps and other utilities equipment is available in the 2009 Utility Fund Capital Improvement Fund.
- Staff is requesting to purchase these pumps from sole source provider, Lee Mathews Equipment Company since these pumps are a specialized replacement item.

Expenditure Required: \$80,000

Source of Funds: Utility Fund - Capital Improvement Projects Budget

Policy Issue

Should the Utilities Division utilize budgeted 2009 Capital Improvement Projects Account funds to purchase two new water pumps and other utility system equipment?

Alternative

An alternative would be to delay the purchase and continue to run existing pumps that may require additional servicing and parts costs, along with inefficient power demands that increase monthly energy bills. This is not recommended as continued use of the current equipment could lead to pumping failures and lost water pressures throughout the water distribution system, resulting in poor water service to our customers.

Background Information

Utilities Staff has determined that the low flow/winter demand water pumps at the Countryside and Silo water pump stations are in need of replacement. Both of these pump stations are located in the western portion of the city, west of Wadsworth Blvd., between 90th Avenue and 100th Avenue. The original low flow/winter demand pumps are unserviceable. Larger pumps are used throughout the balance of the year, resulting in very poor efficiencies during the low demand portions of the year.

Two new Aurora pumps and premium efficiency motors will be purchased from the local sole source vendor, Lee Mathews Equipment Company. Since the Utilities Division utilizes these same Aurora pumps at many pumping stations throughout the City, using the same pumps reduces the City's training and spare parts burden, now and in the future. Putting these pumps back into service will also add some additional capacity to each of the sites.

Staff is requesting authority to purchase the two new water pumps to provide more efficient water pressure to the affected areas. Also, cost savings from more efficient pumping should occur, thus reducing the energy demand and costs to the city. Staff is confident that the pricing provided by Lee Mathews Equipment Company is fair and reasonable.

Lee Mathews Equipment Company is also the vendor for various pumping parts and maintenance services on pumps and equipment used throughout the water distribution system; the City has already spent funds totaling over \$22,000 this year. With the purchase of these two new water pumps at a cost of \$29,826, payments going to a single vendor exceeding the \$50,000 threshold will be realized. Thus Staff is bringing this forward for City Council's review and approval. Additional purchases for the year from Lee Mathews are anticipated to total less than an aggregate \$80,000 for the entire year.

This purchase helps achieve the City Council's Strategic Plan Goal of "Financially Sustainable City Government" by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

Agenda Item 8 D

City Council Meeting
August 24, 2009



SUBJECT: 2009 Large Water Meter Retrofit Purchases

Prepared By: Richard A. Clark, P.E., Utilities Operations Manager
Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Upon the report and recommendation of the City Manager, find that the public interest will best be served by authorizing the negotiated purchase from the sole source provider, National Meter & Automation, Inc. for new water meters, replacement transponders, chambers and disc assemblies, and various associated parts in the amount of \$318,225.

Summary Statement

- The Utilities Division anticipates purchasing new water meters, replacement transponders (various models/sizes) of the new ORION model transponder, chamber and disc assemblies, and various meter parts.
- Funding for the water meter program was approved in the 2009 Utility Fund Capital Improvement Projects and the 2009 Utilities Division Operating Budget accounts.
- Staff is requesting to negotiate the purchase from National Meter & Automation, Inc. due to the Badger TRACE meter system being a proprietary item and only available from Badger Meter Company through the authorized local distributor, National Meter & Automation, Inc.
- Adequate funds were budgeted and are available for these purchases.

Expenditure Required: \$318,224

Source of Funds: Utility Fund - Utilities Division Operating Budget (\$96,051)
Utility Fund - Capital Improvement Projects (\$222,174)

Policy Issue

Should the Utilities Division utilize budgeted 2009 Capital and Operating Account funds to purchase Badger water meters, replacement transponders, chamber and disc assemblies, and various water meter parts?

Alternative

An alternative would be to only purchase a portion of the meters, transponders, and chamber and disc assemblies and delay the purchase of the additional needed replacement transponders and assemblies to next year. This is not recommended as this could lead to delays in installing new meters, transponders and other meter parts, which could lead to problems with the accuracy of meter reading.

Background Information

In 2005, the City of Westminster undertook a series of water meter retrofit programs for the entire City. All existing Badger TRACE water meters were to be replaced or retrofitted with the new ORION transponder as it is more effective and reliable than the TRACE transponder. Badger water meters have long been established as the City's standard water meter. National Meter and Automation, Inc. is the western regional Badger Water Meter sole supplier. The meters and transponders furnished by National Meter & Automation, Inc. meet all required specifications set by the City.

Throughout 2007 and 2008, Utilities meter staff, along with the contractor, replaced approximately 29,000 residential meter systems. Funding for retrofit of the large commercial meters was approved for 2009 and 2010 as part of the CIP program. At this time, staff is requesting the purchase of meters, transponders, and chamber and disc assemblies, and to provide materials for the replacement of inoperable transponders and to complete the retrofitting of meters throughout the system.

Cost information is listed below:

Operating Budget

250	Model 25 meter bodies	\$43.25	\$10,812.50
500	Model 25 Orion Transponder Unit	\$122.25	\$61,125.00
40	Model 120 disk chambers	\$232.88	\$9,315.20
20	Model 170 disk chambers	\$362.25	\$7,245.00
1	Lot of Various Parts Badger overhaul parts for compound & turbine meters	\$7,553.00	\$7,553.00
Total Operations Funding:			\$96,051

CIP Budget

<u>Qty</u>	<u>Item</u>	<u>Transponders only</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
14	3" Model 450	Orion Unit w/ Data Profiling	\$299.25	\$4,189.50
1	4" Model 1000	Orion Unit w/ Data Profiling	\$330.75	\$330.75
14	6" Model 2000	Orion Unit w/ Data Profiling	\$341.25	\$4,777.50
2	8" Model 3500	Orion Unit w/ Data Profiling	\$351.75	\$703.50
1	10" Model 5500	Orion Unit w/ Data Profiling	\$362.25	\$362.25
50	2 to 6-inch Series	Series Compound Orion Unit w/ Data Profiling	\$775.25	\$38,762.50
10	M170 2" disk meter	Meter Body Only	\$590.00	\$5,900.00
1	M200 2" turbine meter	Meter Body Only	\$1,410.19	\$1,410.19
14	M450 3" turbine meter	Meter Body Only	\$1,850.40	\$25,905.60
1	M1000 4" turbine meter	Meter Body Only	\$2,400.00	\$2,400.00
35	3" Series Compound meter	Meter Body Only	\$2,540.50	\$88,917.50
11	4" Series Compound meter	Meter Body Only	\$4,410.50	\$48,515.50
<u>Total CIP Funding:</u>				<u>\$222,174</u>

Staff is requesting authority to purchase the water meters, replacement transponders and disc and chamber assemblies, other related materials on an as-needed basis. Material will be ordered and used as required to provide accurate water meter readings. Inventories are low and this material is needed to keep the day-to-day operations going. These purchases will complete the replacement of the large meters and provide material to replace about 40% of the remaining 1,300 residential meters still using the TRACE system. 2010 CIP funding for the Large Meter Retrofit program will be expended for valves, fittings, strainers, replacement meter pit lids and other non-sole source waterworks items required to complete all of the installations. Staff is confident that this pricing provided by National Meter and Automation, Inc. is fair and reasonable.

This purchase helps achieve the City Council's Strategic Plan Goal of "Financially Sustainable City Government" by contributing to the objective of well-maintained City Infrastructure and Facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: 2009 Pavement Rehabilitation Project - Change Order No. 3

Prepared By: Richard Clark, Utilities Operations Manager

Recommended City Council Action

Authorize the City Manager to execute contract Change Order No. 3 with Asphalt Specialties Company, Inc. in the amount of \$122,500 for water main replacement trench patching.

Summary Statement

- On April 14, 2008 City Council authorized a contract with Asphalt Specialties Company, Inc. for the 2008 Pavement Rehabilitation Project. This contract included a three year renewal provision that has been exercised for 2009.
- Within this paving contract, the Utilities Field Operations Division included \$278,200 for water line replacement trench patching. Funds are budgeted for water main replacement trench patching in the Utilities Division operations budget. Due to additional street patching requirements for water line replacements this year, the original funding that was approved will not be adequate for projects anticipated to be completed in 2009.
- The increase is due to additional area and pavement thicknesses that were required to adequately replace the pavement in the disturbed areas of work that were not initially anticipated. An additional \$122,500 is being requested to cover these unanticipated charges through this Change Order #3.
- Asphalt Specialties Company, Inc. will perform the additional work at original bid prices.
- Funds are available for this expense in the Utilities Operations operating budget.

Expenditure Required: \$122,500

Source of Funds: Utility Fund – 2009 Utilities Field Operations Division Budget

Policy Issue

Should City Council authorize Change Order No. 3 to Asphalt Specialties Company, Inc. for the additional \$122, 500 for water line trench repair work?

Alternative

The alternative is to curtail in-house water main replacement activities until other methods or funds to restore the pavement become available. This alternative is not recommended, as the water main replacement activities are an essential part of the City Council's goal providing well maintained city infrastructure. These replacement activities have resulted in substantial reduction in water main breaks.

Background Information

The Pavement Rehabilitation Project includes water main replacement trench patching at various planned locations throughout the city. The Utilities Field Operations Division budgets for this cost in their operating budget each year.

The water main replacement trench patching was based on an 8-foot width and 5-inch pavement thickness. The original quantity of pavement to be replaced was 15,900 square yards. Due to the level of deterioration of some of the pavement that was encountered, additional trench width and increased pavement thickness will be required in order to restore the impacted streets to an appropriate condition. Once a replacement water line has been installed, the City must restore the pavement to at least the 'fair' condition. The extent of the additional pavement restoration was not apparent until the actual pavement restorations were reviewed and the actual quantities totaled.

The additional funding of \$122,500 will add 7,000 square yards, allowing for patching of the balance of the water line replacement program to be completed at a 10-foot width. Funds for this additional work are available in the 2009 Utilities Operations Budget, in the Construction Crew Utility System Materials sub-account. However, utilizing these funds will result in less water pipe and waterworks parts being purchased this year. The reduction in inventory levels will not significantly impact operations.

The proposed Council action supports City Council's goals and objectives of "Financially Sustainable City Government" by providing well maintained city infrastructure and facilities through road improvements; "Vibrant Neighborhoods and Commercial Areas" by maintaining and improving neighborhood infrastructure and housing.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: 2009 Wastewater Collection System - Point Repairs

Prepared By: Richard A. Clark, Utilities Operations Manager
Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Authorize the City Manager to execute a contract with Levi Contractors, Inc., in the amount of \$86,800 to complete wastewater collection system repairs and authorize a 10% contingency budget of \$8,680.

Summary Statement

- This project includes the open cut excavation of 15 sanitary sewer mains that have been found to have either significant holes, bellies, or cracks/fractures in the pipe, and 5 manhole installations. The contractor will be responsible to remove asphalt, excavate, repair, backfill and replace asphalt on each excavation.
- Formal bids were issued and a bid opening took place on August 4, 2009. Six contractors bid on this project. The lowest responsible bid was submitted by Levi Contractors, Inc. This contractor has been utilized by the City in the past and has provided a satisfactory work product.
- Adequate funds are budgeted for this expenditure in the 2009 Utility Fund Capital Improvement Projects Budget.
- In addition to the contract and contingency amounts, there will also be Street Cut Impact Fees which will cost approximately \$10,934. These funds are transferred between funds and are not part of the construction contract.

Expenditure Required: \$106,414

Source of Funds: Utility Fund – Wastewater Collection System Improvements Project

Policy Issue

Should the City utilize Utilities Division funds to complete the needed sewer line rehabilitation project using an outside contractor for these point repairs as specified in the contract documents?

Alternative

Delay this sanitary sewer line rehabilitation project. This is not recommended as this may lead to additional sewer line failures and damages that may occur due to line collapse.

Background Information

The 2009 Wastewater Collection System Improvement Project includes the open cut excavation of 15 sanitary sewer mains that have been found to have either significant holes, bellies, or cracks/fractures in the pipe, along with 5 new manhole installations. The contractor will be responsible to remove asphalt, excavate, repair, backfill and replace asphalt on each excavation. These point repairs were identified as a priority through the annual wastewater collection system maintenance program that includes the televised inspection and condition rating of sanitary sewer lines throughout the city. The defects in these lines are so severe that trenchless lining alone will not provide a suitable repair. Most of the sewer lines involved in this work will be scheduled for trenchless lining after the repairs have been made.

These “point repairs” include the total length of the sewer pipe up to ten feet in length and up to thirteen feet in depth. The pipe size is six or eight inch diameter pipe. These defects in the sewer line can eventually cause the sewer’s structural support to fail and can cause a total line collapse. The selected sewer lines related to this project were identified as a priority for repair due to the severity of the defect found in relation to the specific section of sewer line. The contractor will commence work in early September, and would complete this project by October 30, 2009.

The project work will take place in a variety of locations throughout the city. Attached is a listing of addresses/locations of the areas to be completed, along with a map that illustrates these locations.

The 2009 Wastewater Collection System Project was advertised for notice and bids were accepted until July 31, 2009. The project bid opening took place on Tuesday, August 4, 2009. The City has utilized the services of Levi Contractors, Inc. in the past and has been satisfied with the quality of their work.

The results of the submitted bids are as follows:

Levi Contractors Inc.	\$86,800
Quick’s Hoe & Landscape Services Inc.	\$94,400
Farner Enterprises, Inc.	\$107,550
Quality Pipe Services Inc.	\$122,820
Duran Excavating, Inc.	\$157,000
R&D Pipeline Construction Inc.	\$302,059

This project helps achieve the City Council’s Strategic Plan Goals of, “Financially Sustainable City Government,” “Safe and Secure Community,” and “Vibrant Neighborhoods and Commercial Areas” by meeting the following objectives of well-maintained City infrastructure and facilities, citizens are safe anywhere in the City and maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall
City Manager
Attachments (location listing, map)

POINT REPAIR WORK SITE LISTING

3481 106th Place

7578 Sheridan Boulevard

120th & Pecos Boulevard

7540 Wilson Court

8020 Knox Court

10470 Countryside Drive

7989 Stuart Place

7880 Zenobia Court

8110 King Street

4013 103rd Avenue

8845 Wagner Street

8714 Princeton Street

9082 Osceola Street

9122 Osceola Street

9220 Utica Street

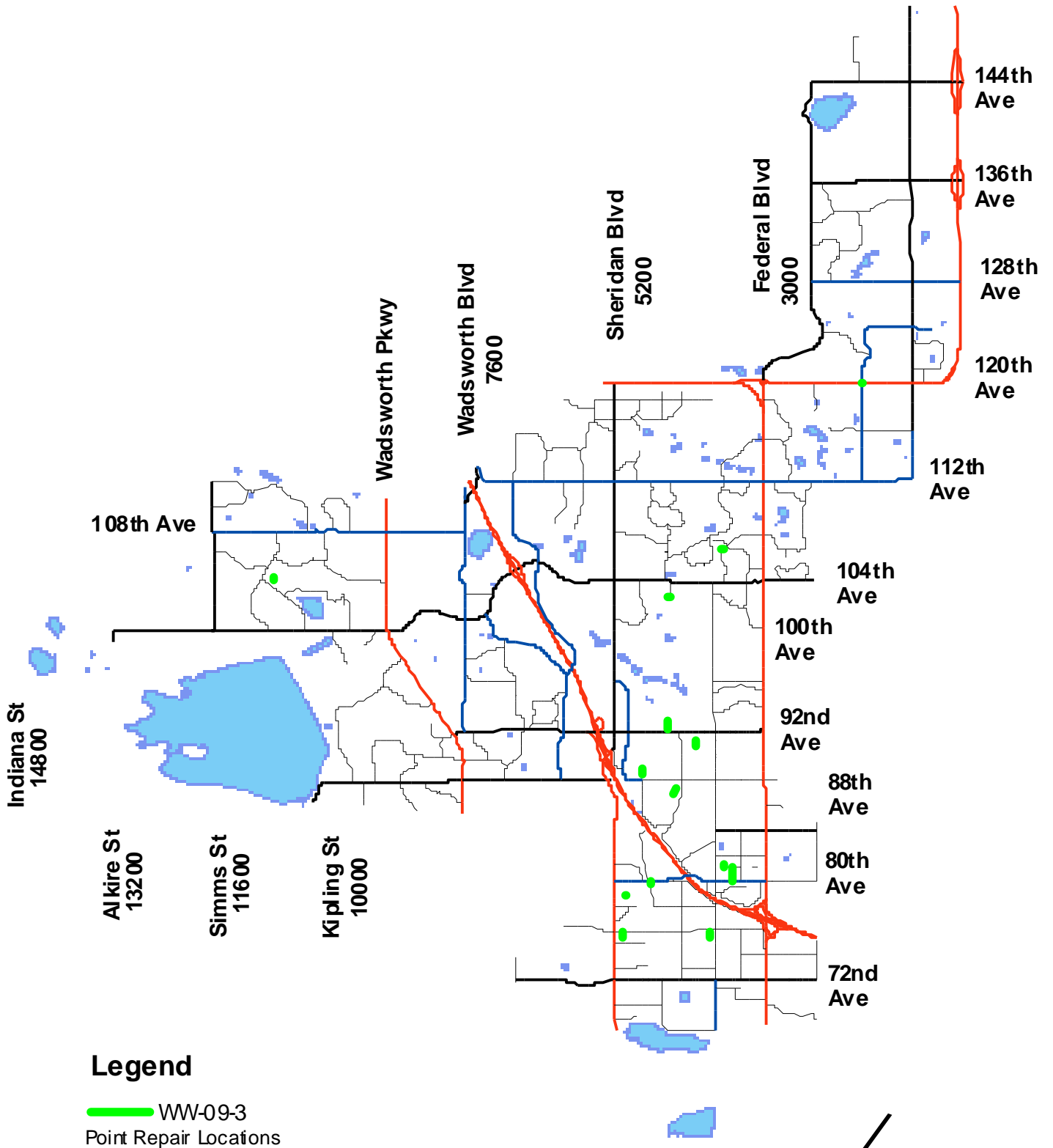
8941 Judson Street

There are three locations that are in the contract that are as yet to be determined.

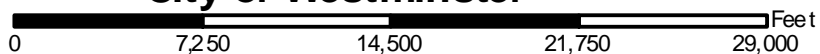
2009 Wastewater Collection System Improvements

Point Repairs

Project No. WW-09-3



City of Westminister





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Harris Park Irrigation Company Share Distribution Agreement

Prepared By: Josh Nims, Water Resources Engineering Coordinator
Mike Happe, Water Resources and Treatment Manager

Recommended City Council Action

Authorize the City Manager to enter into an agreement with Smith Partners, LLC regarding share distribution in the Harris Park Irrigation Company.

Summary Statement

- The Harris Park Irrigation Company (HPIC), a mutual ditch company, holds 14.35 shares of Farmers' High Line Canal and Reservoir Company (FHL) stock. HPIC delivers the FHL water to stockholders for land in Harris Park.
- The City holds 30.55 shares of HPIC stock; landowners in Harris Park hold the remaining active HPIC shares.
- Recently, HPIC amended its bylaws to allow HPIC shares to be exchanged for FHL shares, subject to restrictions to protect remaining HPIC stockholders from excessive ditch loss and operating costs.
- Smith Partners, LLC (Smith Partners), a private developer, currently holds contracts to purchase all of the active HPIC shares except those owned by the City of Westminster (City), and to exchange them for FHL shares.
- City Staff has negotiated an agreement with Smith Partners for exchange of all outstanding HPIC shares (including those of the City) for FHL shares under certain conditions.
- The proposed agreement allows Smith Partners to convey a portion of "their" FHL shares (i.e. FHL shares attributable to HPIC shares Smith Partners is buying) to the City, and to escrow certain funds for a five year period, as an alternative to the restrictions called for in the HPIC bylaws for transfer of HPIC shares outside Harris Park.
- Staff recommends executing the agreement, so that the City can obtain 1.25 FHL shares and protect the City's water supply system, and the remaining HPIC shareholders can consummate their agreements with Smith Partners.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City enter into an agreement with Smith Partners, LLC to distribute the assets of the Harris Park Irrigation Company?

Alternative

City Council could choose not to approve the agreement with Smith Partners, LLC at this time. Staff does not recommend this option because the agreement increases City water supply (1.25 FHL shares) while also providing increased flexibility to the City in the use of its water assets. Also, not executing the agreement might hinder the consummation of Smith Partners' contracts with the private HPIC shareholders, who are Westminster citizens.

Background Information

The Harris Park Irrigation Company (HPIC) maintains and operates a series of ditches and laterals that delivers water attributable to 14.35 shares of Farmers' High Line Canal and Reservoir Company (FHL) owned by HPIC to the HPIC stockholders for use on their land in Harris Park, which is located within the City of Westminster (City). HPIC water is delivered through the Allen Ditch. HPIC was incorporated in 1902 with 860 authorized shares. Issuance of shares was limited to landowners in Harris Park, and use of water was limited to land in Harris Park. At a special stockholders' meeting in December of 2008, a majority of the remaining active shareholders confirmed that the total number of shares issued and outstanding in the Company is 252.66 shares, (including the City's 30.55 shares) and that the remaining 607.34 authorized shares have been forfeited, cancelled, and permanently retired. The HPIC shareholders also amended the HPIC Certificate of Incorporation and Bylaws to allow HPIC shares to be "exchanged" for the FHL shares held by HPIC, and the water to be used outside of Harris Park. These amendments, however, require that a certain volume of the water be left in the Allen Ditch to compensate for ditch losses, and for certain funds to be paid to HPIC, in order to protect HPIC stockholders that continue to use the water in Harris Park.

Smith Partners, LLC (Smith Partners) has entered into purchase contracts with all the HPIC shareholders except the City in order to acquire the remaining 222.11 shares of the HPIC outstanding stock, exchange them for FHL shares, and then to transfer the FHL water for use outside of Harris Park. To consummate the purchase agreements, Smith Partners is required to leave a certain portion (20%) of the FHL shares in the Allen Ditch for so long as any remaining HPIC shareholders take delivery of water from the Allen Ditch. If Smith Partners closes all of its outstanding contracts, then the only remaining HPIC shareholder using water from the Allen Ditch will be the City. Therefore, in order to avoid restricting the use of 20% of the water it is purchasing to the Allen Ditch, Smith Partners has agreed to transfer to the City directly a portion of the FHL shares it would otherwise be required to leave in the Allen Ditch, and the City has agreed to "exchange" its 30.55 HPIC shares for 1.75 FHL shares. Thus, under the agreement, if Smith Partners closes on all 222.11 HPIC shares, then the 14.35 FHL shares held by HPIC will be reissued as 3.00 shares in the name of the City and 11.35 shares in the name of Smith Partners. Smith Partners will then hold no interest in HPIC, which will be owned entirely by the City. In addition, since there may be some uncertainty as to the true number of outstanding HPIC shares in view of the history of the HPIC, Smith Partners will escrow \$75,000 with the City for a period of 5 years, to address any issues that might arise with regard to the transactions.

If Smith Partners does not close on all 222.11 HPIC shares, then the City will not exchange its HPIC shares for FHL shares; and Smith Partners will be required to leave 20% of the HPIC FHL shares in the Allen Ditch, and to provide funds for continued operations of the HPIC, as provided in the HPIC bylaws.

The approval of the agreement with Smith Partners regarding share distribution in the Harris Park Irrigation Company meets Council's goals for a Financially Sustainable City Government Providing Exceptional Services by helping to secure the City's long-term water supply.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Utilities System Materials Purchases

Prepared By: Richard Clark, Utilities Operations Manager
Andy Mead, Utilities Operations Coordinator

Recommended City Council Action

Determine that the public interest will be best served by ratifying and approving Utilities Operations Division cumulative purchases in 2009 with various waterworks supply vendors that may exceed the \$50,000 limit for the year 2009. Authorize cumulative purchases from Dana Kepner Company, HD Waterworks Ltd. and Ferguson Waterworks in the amounts not to exceed \$100,000 for each vendor for 2009.

Summary Statement

- The Westminster Municipal Code requires that all purchases over \$50,000 be brought to City Council. Staff has taken a conservative approach in interpreting this requirement to include transactions where the cumulative total purchases of similar commodities or services from one vendor in a calendar year exceeds \$50,000.
- The Utilities Division has identified three current vendors where the total cumulative expenditures will likely exceed \$50,000 for the year 2009 and need Council authorization to exceed the sole purchase limit of \$50,000.
- Funds were previously appropriated in the 2009 Utilities Operations Division Budget and are available for the needed purchases.

Expenditure Required: \$300,000

Source of Funds: Utility Fund – Utilities Operations Division Operating Budget

Policy Issue

Should Council ratify and approve the cumulative purchase of waterworks materials from various vendors that total over \$50,000 in 2009?

Alternative

Do not approve the expenditures as recommended. While it could be argued that each transaction represents a separate purchase, City Staff believes that a more conservative and prudent approach is to treat the smaller transactions as cumulative larger purchases with the vendors that are subject to Council approval.

Background Information

The Utilities Operations Division utilizes a variety of waterworks material vendors in providing the needed materials for the water and wastewater operations and programs provided by Division personnel. The 2009 Utilities Operating Budgets contain \$525,000 in line items for Utility System Materials. In addition, some purchase of material may be made from CIP accounts in order to expedite receipt of long lead time items. These on-going purchases include routine, competitively bid items, along with emergency purchases needed to address water or wastewater system critical events. Also, some are sole-source purchases since the needed item(s) are only stocked by limited or sole vendors in our area. All purchases will be made in accordance with the City's established purchasing procedures, with appropriate approvals at different levels.

To date, the Utilities Division has identified three waterworks suppliers/vendors that are used on a regular basis and will accumulate up to \$100,000 each in orders during 2009. These vendors are: Dana Kepner Company, HD Waterworks Ltd. and Ferguson Waterworks. At this point in the year, only HD Waterworks Ltd. (\$64,238.85) has exceeded the \$50,000 purchasing threshold. HD Waterworks Ltd. total includes a single competitively bid purchase by the Capital Projects & Budget Division of 4 large valves for \$43,048.00. However, Staff anticipates that it will be purchasing additional materials and supplies from the other vendors in the remainder of the year that will surpass \$50,000 each.

The City's approach to these types of collective purchases from a single vendor is to assure that purchases in excess of \$50,000 are identified in advance and brought to City Council for approval. Additional purchases for the year from Dana Kepner Company, HD Waterworks Ltd. and Ferguson Waterworks are anticipated to total less than an aggregate \$100,000 each for the entire year. Any additional purchase up to this amount will be made in accordance with the City's established purchasing procedures. Any purchase that would exceed this amount will be returned to the City Council for appropriate action.

This approach helps achieve the City Council's Strategic Plan Goals of "Financially Sustainable City Government" and "Vibrant Neighborhoods and Commercial Areas" by meeting the following objectives: well maintained City Infrastructure and facilities; and maintain and improve neighborhood infrastructure.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 8 I

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Memorandum of Understanding for Public School Construction Inspections

Prepared By: Dave Horras, Chief Building Official

Recommended City Council Action

Authorize the City Manager to sign a Memorandum of Understanding for Prequalified Building Departments for Public School Construction with the Colorado Department of Labor and Employment, Division of Oil and Public Safety.

Summary Statement

- The Division of Oil and Public Safety is required by Colorado Revised Statute to conduct building inspections and perform construction plan reviews on public school projects. A recent change to the statutes allows, as one option, the delegation of these required duties, if requested by the school authority, to an appropriate prequalified local government building department.
- The City of Westminster Building Division has been approved as a prequalified building department. This approval was based on the education, training, certification and experience of the individuals on staff.
- By entering into a Memorandum of Understanding (MOU) with the Division of Oil and Safety a school district would have the option to use the City of Westminster for plan review and construction inspections of its projects.
- Under the provisions of the proposed MOU the City can issue building permits and collect reasonable fees for the services provided.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City of Westminster sign a Memorandum of Understanding with the Colorado Department of Labor and Employment, Division of Oil and Public Safety that would allow for a local school district to request plan review, permitting, and inspection services from the City of Westminster Building Division?

Alternative

Do not sign the Memorandum of Understanding with the Colorado Department of Labor and Employment, Division of Oil and Public Safety and leave the plan review and inspection responsibilities with the state authority or a third party contractor.

Background Information

Per Colorado State Statutes, the responsibility for public school construction inspection on new or remodeled school property is assigned to the Colorado Department of Labor and Employment, Division of Oil and Public Safety. Local school districts have always had the option to use local government building departments for inspection services, however, very few school districts have exercised this option. In 1999 the City contacted all three local school districts to see if any of them had interest in using Westminster resources for their inspection services. All three responded that they were happy with the inspection services provided to them under the state program.

School districts have typically been satisfied with the state inspection process, in large part, due to the reduced oversight of the construction process. Unlike the City of Westminster's plan review, permitting, and inspection process, the state process did not require construction plan review and approval, and consisted of very few inspections. This compromised process allowed the districts to construct facilities without much, if any, oversight allowing them to construct facilities more quickly and sometimes without compliance with state mandated code requirements.

The only public school to go through the city's plan review and inspection process in recent history was the Academy of Charter Schools located at 120th Avenue and Lowell Boulevard. Authority was provided to the City to perform plan review and inspection services as part of the agreement between the City and the school for the sale of the City land to the school and was specific to that project only. The City's plan review and inspections of the Academy of Charter Schools revealed many issues that were not identified by the State during the construction process.

This compromised State process was identified in a Performance Audit performed by the State Auditor published in May of 2007. The audit was very critical of the existing State inspection process and recommended numerous changes to the program. In response, the Colorado Revised Statutes was changed in 2008 (HB 08-1027) to address many of the problems identified in the audit. One of the changes made to the Status was a requirement to delegate the state's inspection responsibilities to third-party inspection agencies or a local, pre-approved, building department if available. In addition to the requirement to use third party or a local prequalified building department for inspection purposes, a school authority may, as its own discretion, opt to use a prequalified building department that has completed a MOU with the State for the plan review, permitting inspection and certificate of occupancy process. The City of Westminster Building Division has made application and has been approved by the state to perform public school inspections. Completion of the MOU will allow for a local school district to request plan review, permitting, and inspection services from the City of Westminster Building Division.

SUBJECT: MOU with State for Public School Construction Inspections

Page 3

If a school authority were to request that the City of Westminster Building Division perform construction inspection services for their project, the City would have the option to provide the service. If the City were to decide to provide the requested services, fees would be assessed per the City's adopted fee schedule.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BE. J. RITTER, JR.
Governor

DEBRALEE L. MARKE
Executive Director

MAHESH ATHANAZIANGUL
Division Director



DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Oil and Public Safety

Public School Construction

633 17th Street

Suite 500

Denver, Colorado 80202-3660

(303) 316-6600 Fax (303) 316-6088

Website: <http://7606.dle.state.co.us>

CDE Routing #09-00286

MEMORANDUM OF UNDERSTANDING FOR PREQUALIFIED BUILDING DEPARTMENTS FOR PUBLIC SCHOOL CONSTRUCTION

Pursuant to C.R.S. §§ 22-32-124 and 23-71-122

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this _____ day of _____, 2008, between the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("Division"), 633 17th Street, Suite 500, Denver, Colorado 80202 and the City of Westminster ("PBID"), 4800 West 92nd Avenue, Westminster, CO 80031, collectively referred to as the "Parties."

I. RECITALS

I.1 Background

- A. Colorado Revised Statute ("C.R.S.") §§ 22-32-124 and 23-71-122 requires that all buildings and structures be constructed in conformity with the building and fire codes adopted by the Director of the Division of Oil and Public Safety in the Department of Labor and Employment Division ("Division"). To assure that a building or structure is constructed pursuant to the above, the Division shall conduct the necessary plan reviews and inspections, except at the request of the affected board of education, the state charter school institute, the charter school, or the affected junior college district, the Division may delegate this responsibility to the appropriate prequalified building department of a county, town, city or city and county or to the appropriate fire department, in the location of the building or structure.
- B. After the Division has reviewed the application and determined that the appropriate building department has plan reviewers and inspectors that have the necessary education, training, and experience, the Division may issue and execute a Memorandum Of Understanding ("MOU") between the local jurisdiction and the Division to conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, issue temporary certificates of occupancy, and take enforcement action in relation to the building and fire codes adopted by the Division to ensure that a building or structure has been constructed in conformity with Public School Construction Regulations, 7 Code of Colorado Regulations Titles ("C.C.R.") 1101-7, Article 2, Section 3-2.

I.2 Purpose

The purpose of this MOU is:

- a) For the Division to prequalify the building department to conduct necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, and issue temporary certificates of occupancy to ensure that a building or structure constructed pursuant to §§ 22-32-124 (1) and (1.5) C.R.S. and 23-71-122 (1) (v) (I) through (VII) has been constructed in conformity with the building and fire codes adopted by the director of the Division.
- b) For the prequalified building department (“PBD”) to perform code reviews on building and mechanical plans, issue building permits, perform building inspections and issue certificates of occupancy for school construction projects.
- c) To identify each Parties’ responsibilities for ensuring the construction of safe schools within the State of Colorado through compliance with C.R.S. §§ 22-32-124 and 22-71-122, and promulgated Rules and Regulations;
- d) To formalize the cooperative working relationships between the Parties; and,
- e) To provide procedures for communications, exchange of information and resolution of problems, as necessary, to carry out this MOU and the provisions of promulgated rules and regulations.

2. DEFINITIONS

2.1 “Director” means the Director of the Division of Oil and Public Safety within the Department of Labor and Employment or the Director’s designee.

2.2 Authority Having Jurisdiction (“AHJ”) means a city, county, Colorado political subdivision, or city and county or any other local government entity having authority to regulate building construction within its jurisdictional territory.

2.3 Prequalified Building Department (“PBD”) means an AHJ or an agent thereof that has met the Division’s certification standards for prequalification as a building department to conduct the necessary plan reviews, issue building permits, conduct inspections, issue certificates of occupancy, and issue temporary certificates of occupancy, and has executed this MOU with the Division.

2.4 “Certificate of Occupancy” means an official document issued by the Division or the PBD for a Public School allowing use or occupancy of the building or structure by the school district or by the institute charter school or junior college district.

3. RESPONSIBILITIES

The responsibilities of the Parties are as follows:

3.1 Responsibilities of the Division:

The Division shall:

- a) Adopt nationally recognized codes and standards as promulgated by Rules in 7 CCR 1101-7.
- b) Ensure that the necessary plan reviews, inspections, quality control, and quality assurance checks are performed in compliance with the statutes, Rules, and Regulations of the Division.
- c) Prequalify the building department as having executed an MOU and has met the required certification standards in 7 CCR 1101-7.
- d) Issue and maintain a list of persons the Division has approved as authorized to conduct plan reviews, inspections, and issue certificate of occupancies for public school construction projects. This list of authorized PBD persons is included and incorporated herein by reference as Appendix A of this MOU.
- e) Ensure that copies of the PBD building plans are sent to the appropriate fire department and the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety for review of fire safety issues.
- f) Revoke this “prequalified” status and terminate the terms of the MOU if the PBD fails to comply with this MOU, C.R.S. § § 22-32-124 and 23-71-122, or the rules and regulations of the Division.
- g) Allow the PBD to take enforcement action against a board of education, state charter school institute, charter school or junior college district in relation to the nationally recognized codes and standards adopted in 7 CCR 1101-7.

3.2 Responsibilities of the PBD,

The PBD shall:

- a) Conduct the necessary plan reviews and inspections, issue building permits, perform all necessary inspections including final inspections, and issue certificates of occupancy to assure that a building or structure has been constructed in conformity with the nationally recognized codes and standards adopted in 7 CCR 1101-7. The affected board of education, state charter school institute, charter school or junior college district, at its own discretion may opt to use the PBD that has entered into this MOU with the Division.
- b) Take enforcement action against a board of education, state charter school institute, charter school or junior college district that has violated the nationally recognized codes and standards adopted in 7 CCR 1101-7.
- c) Ensure that the construction project is inspected by a state electrical inspector, per § 12-23-116 C.R.S., notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own

electrical code and inspection authority, any electrical installation in any new construction or remodeling or repair of a public school.

- d) Ensure that the construction project is inspected by a state plumbing inspector, per § 12-58-114.5 C.R.S., notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own plumbing code and inspection authority, any plumbing or gas piping installation in any new construction or remodeling or repair of a public school.
- e) Only use persons within their building department that are listed as authorized by the Division to work on board of education, state charter school institute, charter school or junior college district construction projects. This authorized list of persons is attached as Appendix A.
- f) Cause copies of the building plans to be sent to the certified fire department and the Division of Fire Safety for review of fire safety issues.
- g) Issue the necessary Certificate of Occupancy prior to use of the building or structure by the board of education, state charter school institute, charter school or junior college district, if the building or structure is in conformity with the building and fire codes and standards adopted in 7 C.C.R. 1101-7, and if the affected fire department or the Division of Fire Safety certifies that the building or structure is in compliance with the fire code adopted by the Division in 7 C.C.R. 1101-7.
- h) Issue a Temporary Certificate of Occupancy to allow the board of education, state charter school institute, charter school or junior college district to occupy the buildings and structures, if all inspections are not completed and the building requires immediate occupancy, and if the board of education, state charter school institute, charter school or junior college district has passed the appropriate inspections that indicate there are no life safety issues.
- i) Attest that inspections are complete and all violations are corrected before the board of education, state charter school institute, charter school or junior college district is issued a Certificate of Occupancy. Inspection records shall be retained by the PBD for two years after the Certificate of Occupancy is issued.
- j) Set reasonable fees and may collect these fees to offset actual, reasonable, and necessary cost of plan review and inspection of board of education, state charter school institute, charter school or junior college district construction projects. The board of education, state charter school institute, charter school or junior college district shall be notified of any adjustment of fees a minimum of thirty (30) days prior to the effective date of the change.
- k) In conjunction with the Division set a date for a hearing as soon as practicable before the board of appeals in accordance with section § 22-32-124.5, C.R.S., and the rules adopted by the Division pursuant to § 24-4-105, C.R.S., if the PBD and the board of trustees of a

board of education, state charter school institute, charter school or junior college district disagree on the interpretation of the codes and standards of the Division.

- b) Comply with the written Final Agency decision of the appeals board for the purposes of § 24-4-106, C.R.S.
- m) Have the sole discretion whether to accept a public school construction project submitted to the PBD by the school district for plan reviews, inspections, issuance of building permits and certificates of occupancy, and other duties as set forth in this MOU.

4. ACCESS TO INFORMATION

Each Party shall, to the extent allowed by law, make available to each other, at no cost, information regarding board of education, state charter school institute, charter school or junior college district construction projects within its possession. Requests for information shall not impose an unreasonable resource burden on the other Party.

5. EFFECTIVE DATE AND TERM

This MOU shall be effective upon signature by the Director of the Division and shall be valid for **three (3)** years from the effective date, unless previously modified or terminated in writing by one of the Parties pursuant to the terms of this MOU.

6. TERMINATION

Either party may terminate the MOU upon 30 days written notice; however, if the PBD accepts a public school construction project for review pursuant to this MOU, the PBD may not terminate this MOU until project completion and issuance of a Certificate of Occupancy. If the PBD fails to comply with the terms and conditions of this MOU or the rules and regulations of the Division, the Division may take enforcement action, pursuant to 8-20-104, C.R.S. and terminate this MOU immediately. An amendment may be mutually agreed upon in writing by the parties prior to the termination date of this MOU to allow for project completion and issuance of a Certificate of Occupancy.

7. MODIFICATIONS AND AMENDMENTS.

This MOU is subject to such modifications as may be required by changes in applicable federal or state law, or federal or state implementing rules, regulations, or procedures of that federal or state law. Any such required modification shall be automatically incorporated into, and be made a part of, this MOU as of the effective date of such change as if that change was fully set forth herein. Except as provided above, no modification of this MOU shall be effective unless such modification is agreed to in writing by both parties in an amendment to this MOU that has been previously executed and approved in accordance with applicable law.

8. ADDITIONAL PROVISIONS

8.1 Legal Authority

The Parties warrant that each possesses actual, legal authority to enter into this MOU. The Parties further warrant that each has taken all actions required by its applicable law, procedures, rules, or by-laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MOU and bind that Party to its terms. The person or persons signing this MOU, or any attachments or amendments hereto, also warrant(s) that such person(s) possesses actual, legal authority to execute this MOU, and any attachments or amendments hereto, on behalf of that Party.

8.2 Notice of Pending Litigation

Unless otherwise provided for in this MOU, the PBD shall notify the Division within five (5) working days after being served with a Summons, Complaint, or other pleading in a case which involves any services provided under this MOU and which has been filed in any federal or state court or administrative agency. The PBD shall immediately deliver copies of any such documents in accordance with Notice Procedures in Section 8.5. of this MOU.

8.3 Assignment and Successors

The PBD agrees not to assign rights or delegate duties under this MOU, or subcontract any part of the performance required under the MOU without the express, written consent of the State.

8.4 Adherence to Applicable Laws

At all times during the term, performance, or execution of this MOU, the PBD shall comply with all applicable federal and state laws, regulations, rules, or procedures, as these provisions currently exist or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this MOU.

8.5 Notice Procedure

All notices required or permitted to be given pursuant to this MOU shall be in writing and shall be deemed given when personally served or three (3) days after deposit in the United States Mail, certified mail, return receipt requested, and addressed to the following parties or to such other addressee(s) as may be designated by a notice complying with the foregoing requirements.

APPROVED PDB:

Brent McFall
City Manager
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031
(303) 658-2006

DEPARTMENT OF LABOR AND EMPLOYMENT:

Lisa Eze
Purchasing Director
Colorado Department of Labor and Employment
633 17th Street, 11th Floor
Denver, CO 80202
(303) 318-8054

OPS:
Mahesh Albuquerque
Director
Division of Oil and Public Safety
633 17th Street, Suite 500
Denver, CO 80202-3660
(303) 318-8650

8.6 Entire Understanding

This MOU is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by the Parties.

8.7 Independent Contractor

Neither PBD nor any agent or employee of PBD shall be or shall be deemed to be an agent or employee of the Division.

8.8 Governmental Immunity Act

No term or condition of this MOU shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

8.9 Insurance

If the PBD is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the PBD shall at all times during the term of this MOU maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the Division, the PBD shall show proof of such insurance satisfactory to the Division.

9. APPROVALS

Department of Labor and Employment
Division of Oil and Public Safety

City of Westminster

Mahesh Albuquerque
Director, Division of Oil and Public Safety

Brent McFall
City Manager

Date: _____

Date: _____



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Intergovernmental Agreement with the Urban Drainage and Flood Control District for the Airport Creek Drainage Improvement Project

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Authorize the City Manager to execute an Intergovernmental Agreement (IGA) with the Urban Drainage and Flood Control District (UDFCD) for the construction of drainage improvements on Airport Creek at the confluence of Big Dry Creek.

Summary Statement

- Airport Creek runs through Sheridan Green Subdivision in a generally southeastern direction and intersects Big Dry Creek near the southwest corner of the intersection of Sheridan Boulevard and 110th Avenue. The steep channel slope has caused severe bank erosion resulting in the exposure of a 48-inch raw waterline. Eroded channel banks up to ten feet in height also threaten the City's major, 30" sanitary sewer line in this vicinity.
- In order to protect the existing utilities, improve the stability of Airport Creek and prevent frequent overtopping of the pedestrian trail crossing, the proposed project will relocate the Airport Creek confluence with Big Dry Creek and install grade control structures along the channel.
- The preliminary cost estimate for the Airport Creek channel realignment is estimated at \$700,000. The UDFCD is contributing \$350,000 of the funding to match the City's \$350,000 budgeted amount.
- Under the terms of the IGA, the UDFCD will manage the project, hire a contractor to construct the improvements and provide construction inspection services.
- Adequate funding is budgeted and available for the City's share of this project cost.

Expenditure Required: \$350,000

Source of Funds: Stormwater Utility Fund – Airport Creek Project Account (\$300,000)
Stormwater Utility Fund – Miscellaneous Project Account (\$50,000)

Policy Issue

Should the City enter into an Intergovernmental Agreement with the Urban Drainage and Flood Control District for the construction of drainage improvements for Airport Creek?

Alternative

Council could choose not to execute this Intergovernmental Agreement at this time. Staff does not recommend this alternative because the matching funds from the UDFCD will help to complete this project in a cost effective manner. If Council chooses not to approve this IGA, it would take the City longer to complete the project without UDFCD assistance, thus leaving the existing utilities at risk.

Background Information

This segment of Airport Creek was identified in the City of Westminster's 2007 Storm Drainage Study as the third highest priority needed drainage improvements project in the City due to the high risk to existing utilities and bank instability. Due to site constraints with existing utilities, it was determined that the best long term repair is to realign Airport Creek to tie into Big Dry Creek approximately 575 feet upstream of the existing confluence. The realigned channel will be wider than the existing channel to create a flatter, more stable channel slope.

The existing pedestrian trail crossing near the northeast corner of the Sheridan Green subdivision will also be reconstructed to provide improved drainage capacity to reduce the frequency of inundation. This will be accomplished with a two-foot high, sculpted concrete drop structure upstream and a one-foot high drop downstream of the crossing. Additional grade control structures include a 13-foot high sculpted concrete drop structure at the confluence with Big Dry Creek. The City's existing 30" sanitary sewer line will also be encased in concrete to further protect it in case of future stream degradation or migration of Big Dry Creek.

Since this project will be impacting wetlands and reducing stream length, a U.S. Army Corps of Engineers Section 404 permit was applied for and recently accepted. The design team strategically worked with the Corps of Engineers to minimize the environmental impact. Wetland monitoring will be required for up to five years post project completion. Since this is a UDFCD project, they will facilitate the monitoring reports.

Westminster's share of the funding for this project (\$350,000) is available from the Airport Creek Project funds (\$300,000) and the Miscellaneous Stormwater funds (\$50,000). Since the UDFCD will manage this project and send it out to bid, the actual construction contract will not require City Council authorization. If the low bid received by UDFCD is lower than the engineers estimate, any remaining, unused City funds will be returned to the Miscellaneous Stormwater Account.

The proposed improvements are planned to be accomplished during the winter of 2009-2010.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

AGREEMENT REGARDING
CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
AIRPORT CREEK AT CONFLUENCE WITH BIG DRY CREEK
CITY OF WESTMINSTER

Agreement No. 09-06.14

THIS AGREEMENT, made this 24th day of August, 2009, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

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

WHEREAS, PARTIES participated in a joint planning study titled "Big Dry Creek, (Tanglewood) Adams County and Tributaries" by Muller Engineering Company, Inc., dated January 1989 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with construction of drainage and flood control improvements for Airport Creek at the confluence with Big Dry Creek (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 71, Series of 2008) for drainage and flood control facilities in which PROJECT was included in the 2009 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2009 subsequent to public hearing (Resolution No. 62, Series of 2008) which includes funds for PROJECT; and

WHEREAS, DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 23, Series of 2009); and

WHEREAS, the CITY Commissioners of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

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

1. SCOPE OF AGREEMENT

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

2. SCOPE OF PROJECT

PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment. Specifically, the final design of facilities shall extend from approximately the confluence with Big Dry Creek to approximately 1000 feet upstream, as shown on Exhibit A.

3. PUBLIC NECESSITY

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

4. PROJECT COSTS AND ALLOCATION OF COSTS

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

1. Construction of improvements;
2. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$700,000 without amendment to this Agreement.

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

<u>ITEM</u>	<u>AMOUNT</u>
1. Construction	\$700,000
2. Contingency	-0-
Grand Total	\$700,000

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

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

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	50%	\$350,000
CITY	50%	350,000
TOTAL	100%	\$700,000

5. MANAGEMENT OF FINANCES

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

Payment of each party's full share (CITY - \$350,000; DISTRICT - \$350,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall

provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

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

6. **FINAL DESIGN**

PARTIES have selected an engineer and DISTRICT contracted with such engineer for final design services.

Final design services consisted of, but was not limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

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

7. **OWNERSHIP OF PROPERTY AND LIMITATION OF USE**

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT, with the assistance of CITY, shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT, with assistance and approval of CITY, shall advertise for construction bids; conduct a bid opening; prepare construction contract documents; and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
 4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.
 5. DISTRICT, with approval of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings and send them to CITY for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
 8. DISTRICT, with assistance and written concurrence by CITY, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be

rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

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

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

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10, FLOODPLAIN REGULATION, Paragraph 7, OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9, MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

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

13. CONTRACTING OFFICERS AND NOTICES

A. The contracting officer for CITY shall be the City Manager, 4800 W 92nd Ave., Westminster, Colorado 80031.

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

14. AMENDMENTS

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

15. SEVERABILITY

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

16. APPLICABLE LAWS

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

17. ASSIGNABILITY

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

18. BINDING EFFECT

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

19. ENFORCEABILITY

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

20. TERMINATION OF AGREEMENT

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

21. EMPLOYMENT STATUS

This Agreement shall not change the employment status of any employees of PARTIES. No party shall have the right to control or direct the activities of any employees of another related to this Agreement.

22. PUBLIC RELATIONS

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

23. NO DISCRIMINATION IN EMPLOYMENT

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

24. APPROPRIATIONS

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

25. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that

any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. et seq. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (DEPARTMENT) made in the course of an investigation the DEPARTMENT is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State. Consultant or Contractor acknowledges that the DEPARTMENT may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person

performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

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

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

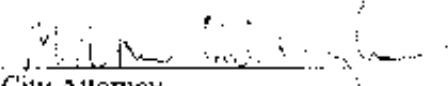
By _____

ATTEST:

Title _____

Date _____

APPROVED AS TO FORM:



City Attorney

AGREEMENT REGARDING
CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
AIRPORT CREEK AT CONFLUENCE WITH BIG DRY CREEK
CITY OF WESTMINSTER

Agreement No. 09-06.14

Exhibit A



AIRPORT CREEK



Project Area

30" Sanitary Sewer

48" Raw Waterline

200 0 200 Feet

1 inch = 200 feet



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Municipal Court Roof Replacement

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with Front Range Roofing Systems, LLC in the amount of \$243,869 for the roof replacement at the City's Municipal Court Complex contingent upon City Council authorization of the 2008 carryover appropriation, and authorize a \$36,580 (15%) contingency amount bringing the total project budget to \$280,450.

Summary Statement

- The existing roof condition at the City's Municipal Court Facility has begun to show signs of major deterioration. The present roof condition has made it necessary for Building Operations and Maintenance to contractually spend over \$6,000 and over 180 Staff hours since November 2008 to a roof that has been identified by both Garland Roofing Asset Management Company and through the Bornengineering Facility Needs Assessment as having outlived its useful life.
- During the months of June and July with the record setting amount of rain experienced, Court Staff has had to cover office equipment, place trash cans throughout the building to catch water leaking, and in addition, the water leaks in the court rooms have caused interruptions to Court proceedings.
- In early August 2009, Garland Roofing assisted Staff with writing roof specifications and holding a pre-bid meeting with five pre-qualified roofing contractors, which required the contractors to examine the existing roof conditions.
- As a result of the competitive bid process Staff is recommending awarding the roof replacement project to Front Range Roofing Systems, LLC. This recommendation is based on Front Range System LLC's submittal of the lowest competitive bid and the company's successful completion of similar roofing projects on other City facilities including their recent installation of a new roof at City Hall.
- Funding for this project is recommended as part of the 2008 carryover appropriation that is included on tonight's City Council's agenda for second reading. This project is contingent upon City Council's approval of the carryover funds.

Expenditure Required: \$280,450

Source of Funds: General Capital Improvement Fund 2008 Carryover – Building Operations and Maintenance Major Maintenance Project

Policy Issue

Should City Council award a contract to Front Range Roofing Systems, LLC for the replacement of the roof at the Municipal Court Facility?

Alternative

Do not proceed with the roof replacement at the Municipal Court. Staff is not recommending this action based on the present condition of the existing roof, the inconvenience to Court Staff and citizens, potential future damages to interior components of the building, and the amount of operational dollars that will be needed to make repairs to a roof that has no useful life.

Background Information

Over the past ten years the Municipal Court roof has experienced water leaks and challenges in keeping the facility water tight. In October 2002, as a result of a competitive bid process 75% of the Court roof was replaced by Allied Roofing Company at a cost of \$44,035. Although 10 years old, the remaining 25% of the roof was in fairly good condition and Staff elected not to replace it at that time. In July 2004, after working with Allied Roofing for nearly two years to correct installation deficiencies that had contributed to a significant number of active leaks, Staff was notified that Allied Roofing had filed for bankruptcy and was going out of business. In July 2004, to prevent further damages caused by the numerous leaks, Staff contracted with Tremco Roofing Company in the amount \$28,500 for immediate repairs to the failing roof system. The actual cost of the repairs was \$18,975 and the remainder of the \$28,500 was to provide a five-year warranty on the work Tremco had completed.

The repairs and ongoing maintenance performed by Tremco Roofing resulted in reducing the amount of active leads significantly for the following three years.

In January 2008, Tremco Roofing sent a letter recommending and offering to replace the entire roof at a thirty percent materials discount stating they could no longer accept the financial burden of the failing roof and the repairs which would be needed for the remainder of their warranty. Tremco Roofing estimated they had spent \$30,000 in service repairs during the first three years of the warranty. Tremco's proposed cost for replacing the entire roof was \$344,305. In September 2008, after choosing not to accept Tremco's offer to replace the court roof, the City received a thirty day notice of Tremco's intent to cancel the remaining warranty under the terms of their contract and to refund the City for the final year of the warranty.

Since the cancellation of Tremco's roofing warranty in November 2008, Building Maintenance Staff has spent over \$6,000 with various roof repair companies to repair approximately thirty existing or active leaks. In addition to the \$6,000 spent on repairs, Building Maintenance Staff has spent 180 hours moving rock (ballast) attempting to locate leaks and make emergency repairs.

A major contribution to the ongoing problems with the roof has been the supports that hold the mechanical screen fencing in place. The purpose of the fencing is to block the sight of the HVAC equipment located on the roof. The fencing has required working around approximately 250 "pitch pans" that protrude into the roof substructure causing many opportunities for potential leaks. Prior to the installation of the new roof, all of these supports will be removed. At some future point, Staff may be requesting Council's approval of the installation of a new type of screening system that will have less of an impact on the integrity of the roof.

In 2006/2007, Bornengineering completed a Citywide facility needs assessment that identified the Court roof as having outlived its useful life and recommended replacing the roof in 2009. In addition to Bornengineering's recommendation to replace the Court roof, Staff uses the services of Garland Roofing Asset Management Company who has also suggested a complete roof replacement.

In April 2009, Staff contacted Garland Roofing Consultants, whom Staff has worked with on 6 other successful roof replacement projects, in an attempt to get estimates for future roof replacement of the Court roof. Estimates received in April 2009 ranged from \$350,000 to \$500,000. In August 2009 with the assistance of Garland Roofing, a request for bids was sent to six pre-qualified roofing contractors. A pre-bid meeting was held on August 11 which included a complete visual observation of the roof. A bid opening was held on August 20th and bids were received from the following five firms:

Bid results are as follows:

Front Range Roofing Systems, LLC	\$243,869
Alpine Roofing Co., Inc.	\$251,250
Colorado Moisture Control, Inc.	\$278,884
D&D Roofing	\$282,626
B&M Roofing	\$307,870

As a result of the competitive bid process, Staff is recommending awarding the Municipal Court roof replacement contract to Front Range Roofing Systems, LLC. This recommendation is based on Front Range Roofing Systems, LLC's submittal of the lowest competitive bid price and their successful completion of similar roof replacement projects for the City.

The roof replacement at the Municipal Court supports the City Council Strategic plan goal of "Financially Sustainable City Government" in the following area:

- Effective cost containment/control measures for living within revenues and budget
- Well maintained City infrastructures and facilities.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Second Reading of Councillor's Bill No. 23 re FY 2008 Carryover Appropriation in FY 2009

Prepared By: Steve Smithers, Assistant City Manager
Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Pass Councillor's Bill No. 23 on second reading, appropriating FY2008 carryover funds into the FY2009 budgets of the General, General Reserve, General Fund Stabilization Reserve, Fleet, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Golf Course, Sales & Use Tax, General Capital Outlay Replacement and Debt Service Funds.

Summary Statement

- 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;
 - new items and services not included in the previous year's budget or funds that were identified as available for these new priorities in late 2007, but the items or services were not received or provided until the current year's budget;
 - existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Total funding of \$6,762,069 to be appropriated for the items included within this memo comes from unrestricted revenues and unexpended 2008 funds in the various amounts identified. An additional \$1,850,252 to remain in fund balance.
- This Councillor's Bill was passed on first reading on August 10, 2009.

Expenditure Required: \$6,762,069 to be appropriated
\$1,850,252 remain in fund balance

Source of Funds: 2008 Carryover from the General, General Reserve, Fleet, General Capital Improvement, Utility, Utility Reserve, Storm Drainage, Sales & Use Tax, General Capital Outlay Replacement and Debt Service Funds

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **23**

SERIES OF 2009

INTRODUCED BY COUNCILLORS
Winter - Dittman

A BILL

FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE GENERAL, WATER, WASTEWATER, STORM DRAINAGE, GENERAL CAPITAL OUTLAY REPLACEMENT, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, CONSERVATION TRUST, AND GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, Fleet, Water, Wastewater, Storm Drainage, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$6,762,069. This appropriation is due to the appropriation of 2008 carryover.

Section 2. The \$6,762,069 increase in the General, Fleet, Water, Wastewater, Storm Drainage, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10A&B dated August 10, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$2,920,978
Fleet Fund	16,590
Water Fund	3,904,079
Wastewater Fund	737,037
Storm Drainage Fund	298,413
General Capital Outlay Replacement Fund	(637,528)
Sales & Use Tax Fund	(3,852,068)
Parks Open Space & Trails Fund	(255,000)
General Capital Improvement	<u>3,629,568</u>
Total	<u>\$6,762,069</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of August, 2009.

ATTEST:

Mayor

City Clerk



Agenda Item 8 M

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Second Reading of Councillor's Bill No. 24 re 2009 Community Development Block Grant Fund Appropriation

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 24 on second reading appropriating 2009 Community Development Block Grant funds in the amount of \$559,370.

Summary Statement

- This Councillor's Bill was passed on first reading on August 10, 2009.
- The 2009 CDBG allocation was designated to fund the 2009 CDBG projects, pursuant to City Council approval on November 24, 2008.

Expenditure Required: \$559,370

Source of Funds: 2009 Community Development Block Grant Funds

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **24**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

Lindsey - Major

A BILL

FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED REVENUES IN THIS FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the CDBG Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$559,370. This appropriation is the amount approved by the U.S. Department of Housing and Urban Development (HUD) for the City for 2009.

Section 2. The \$559,370 increase in the CDBG Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 C, dated August 10, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

CDBG Fund	<u>\$559,370</u>
Total	<u>\$559,370</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 10th day of August, 2009

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 24th day of August, 2009.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Public Hearing and Action on Funding for the Reclaimed Water Treatment Facility Expansion

Prepared By: Christine Anderson Gray, Management Analyst, Public Works and Utilities

Recommended City Council Action

1. Hold a Public Hearing.
2. Authorize Staff to pursue funding for expansion of the Reclaimed Water Treatment Facility through the Colorado Water Resources and Power Development Authority loan program and/or city-issued revenue bonds.

Summary Statement

- The Reclaimed Water Treatment Facility (RWTF) is planned for two phases of construction that are designed to meet the City's current and build-out needs for reclaimed irrigation water.
- Phase 1 will replace the facility's open storage ponds with an enclosed concrete tank. Construction of Phase 1 is anticipated to begin in fall of 2009.
- Phase 2 will expand the facility to meet customer demands that have been added to the system. Design for this phase is being completed, and construction of Phase 2 is anticipated to begin in spring of 2010.
- Council approved debt financing of this project during the 2009-2010 budget process for a total of \$15,575,000.
- Staff intends to finance this project through the most cost-effective manner possible. Funding options include federal stimulus funds and state revolving funds. These funds would be managed by the Colorado Water Resources and Power Development Authority through a state-wide prioritization process.
- The City also intends to pursue funding through other lending agencies if State funding is not obtained.
- As part of the funding application process, a public hearing is required to be held to notify the public about the project.

Expenditure Required: Total project costs are estimated at approximately \$15,575,000

Source of Funds: Utility Fund Capital Improvement Budget
Revolving Loan Funding from the Colorado Water Resources and Power Development Authority
City-issued Revenue Bonds

Policy Issue

Should the City debt finance the cost of the Reclaimed Water Treatment Facility expansion project through federal stimulus funding, the state's revolving fund program or other means such as a revenue bond issue?

Alternative

The City could choose to not pursue funding through federal stimulus funding, a state revolving loan fund program or through a revenue bond issue. Staff does not recommend this alternative as debt financing was approved as the funding source for this project during the 2009-2010 budget process and remains the best viable alternative.

Background Information

The Reclaimed Water Treatment Facility was constructed to treat the city's wastewater effluent for use as a non-potable irrigation supply. Effluent from the Big Dry Creek Wastewater Treatment Facility is currently supplied to the RWTF from open ponds that frequently experience fouling from algae growth, water fowl waste and weeds that in turn, affect the treatment efficiency at the RWTF. During Phase 1 of the expansion project, the ponds will be replaced with a covered storage tank that will eliminate these problems. The tank will also provide a larger storage volume than the current ponds, equalizing the demand on the RWTF and allowing the RWTF to operate at more consistent flow rates. A new pump station will also be constructed to pump water from the tank to the RWTF. The design part of Phase 1 has been completed, and construction is anticipated to begin in September of this year.

During Phase 2 of the project, the RWTF will be expanded to provide a firm capacity of ten million gallons of reclaimed water per day. Currently the facility provides a maximum of six million gallons of reclaimed water per day. This phase will involve identifying facilities required to move water between the RWTF and the open storage reservoir that is planned to be constructed to the north of the Big Dry Creek Wastewater Treatment Facility at a later date. The final design contract for the plant expansion will be presented to City Council later this year, and construction is anticipated to begin in spring of 2010.

City Council approved funding for these projects during the 2009/2010 budget cycle, authorizing \$1,389,000 in 2009 and \$14,186,000 in 2010. City Council also approved the funding to be debt issued. Staff is continuing to evaluate the most cost-effective funding package for this project. There are several debt financing options available:

- One option is Federal American Recovery and Reinvestment Act (ARRA) stimulus funding. As all water and wastewater projects in Colorado are managed by the state's Water Quality Control Commission, Staff submitted this project to the state for federal ARRA "green project" funding consideration earlier in 2009. If selected, a zero percent loan could be offered to the city for up to \$2,000,000. Funding would be managed by the Authority.
- Another funding option is the state's Water Pollution Control Revolving Fund Program. The Authority manages this state program and issues bonds to fund leveraged loans by matching federal funds for wastewater and reclaimed water projects. This project would be submitted in late 2009 for 2010 funding consideration. Loan rates have not been established yet for 2010, but historically rates have been issued at approximately 80% of the market rate.
- A final option is to fund this project through a city-issued Utility Fund revenue bond.

Staff is considering a combination of ARRA federal stimulus funding, Water Pollution Control Revolving Fund Program financing, and/or City issued revenue bonds to pay for this project. The final package will be determined based on the lowest long-term costs presented to the City at the time the funding must be in place.

SUBJECT: Reclaimed Water Treatment Facility Expansion Funding

Page 3

A requirement for receiving funding through the State is a public meeting, at which time project information is available to the public for review and comment. This meeting has been published in the Westminster Window every week since July 16, 2009, meeting the State's requirement of a 30-day notice to the public.

By obtaining the best possible rates through a variety of options, debt financing this project achieves the City's goal of a "Financially Sustainable City Government." This project also helps to secure and develop a long term water supply.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Reclaimed Water Influent Storage Tank and Pump Station Design/Build Contract and Councillor’s Bill No. 25 re Budget Transfer from Utility Capital Project Reserve

Prepared By: Kent W. Brugler, Senior Engineer, Capital Projects and Budget Management

Recommended City Council Action

1. Based on the report and recommendation of the City Manager, find that the public interest will best be served by authorizing the City Manager to execute an agreement with Overland Contracting, Inc. as the sole source for construction of the reclaimed water influent storage tank and pump station in an amount not to exceed \$6,490,196, and authorize a 10% contingency in the amount of \$650,000 for a total expenditure of \$7,140,196.
2. Pass Councillor’s Bill No. 25 on first reading transferring \$7,390,196 from the Utility Capital Project Reserve Fund in accordance with City Council’s adopted budget authorization.

Summary Statement

- Reclaimed water is a valuable source of water supply and its development and use is critical to meeting Westminster’s growing water demands. Recently, City Council approved a new water supply plan, which included expanding the reclaimed water system. In order to achieve this goal, a new covered influent storage tank and pump station are required to adequately and reliably supply current and future reclaimed water demands from the Big Dry Creek Wastewater Treatment Facility to the Reclaimed Water Treatment Facility.
- Overland Contracting, Inc. is the design/build subsidiary of Black & Veatch Holding Company.
- Black & Veatch successfully provided engineering services for the design and construction of the Reclaimed Water Treatment Facility and distribution system improvements in 1998-2000 and recently completed the final design of the storage tank and pump station in June 2009.
- Black & Veatch/Overland Contracting, Inc. solicited competitive cost proposals from several general, mechanical and electrical contractors for the construction of the improvements, and presented a comprehensive Guaranteed Maximum Price design/build proposal to the City in the amount of \$6,490,196.
- City Council approved \$15,575,000 in funding for the design and construction of these projects in the 2009/2010 budget, with the costs to be funded through a debt issue in 2010. The approved 2010 budget for the construction of these improvements is \$14,186,000. Since it was planned to debt finance these improvements in 2010, City Council needs to appropriate the funds for this phase of the construction costs at this time.
- Due to the current favorable construction climate and the desire to start the construction of the storage tank and pump station in 2009 for use during the 2010 reclaimed water season, City Staff recommends that the construction costs be funded in 2009 from the Utility Capital Project Reserve Fund and be reimbursed by the debt funding later in 2010.
- To assist staff with the construction management of this project, the City will also contract with a firm to provide Owner’s Representative services at an estimated cost of \$250,000. This contract will be presented to City Council for award at a later date, but these costs have been included in this \$7,390,196 request for the supplemental appropriation.

Expenditure Required: \$7,390,196
Source of Funds: Utility Fund Capital Reserve Fund
 Utility Fund Capital Improvements
 - Reclaimed Water Treatment Facility Expansion Project

Policy Issue

Should the City proceed with the design/build construction of the influent storage tank and pump station improvements utilizing the Utility Capital Project Reserve Funds, and reimburse these funds with debt funding at a later date?

Alternatives

1. The City could delay the construction of these improvements until the debt funding is secured; however, based on the current favorable construction climate, a delay would likely result in higher construction costs.
2. The City could choose to advertise the project and solicit bids from general contractors. This option would eliminate the benefit of completing the construction of the project utilizing the design/build process and maintaining the single thread of liability between the design and construction entities. Also, bidding the project now would delay the start of construction, likely resulting in higher construction costs. In addition, Staff believes the costs that have been negotiated are reasonable and competitive for the scope of work of this project.

Neither of these alternatives is recommended by Staff.

Background Information

The City has operated a reclaimed water program since 2000. Reclaimed water is a valuable source of water supply, the development of which is critical to meeting Westminster's growing water demands. At build out, it is now anticipated that the reclaimed water system will deliver 3,500 acre-feet of water a year and comprise more than 10% of the City's total water supply. In order to achieve this goal, improvements to the storage and pumping systems that deliver the effluent from the Big Dry Creek Wastewater Treatment Facility to the Reclaimed Water Treatment Facility are required. As reclaimed water demand increases and replaces potable water demand, the City's potable water supply effectively increases as does its ability to meet future potable water demands with new customers.

The Reclaimed Water Treatment Facility (RWTF) expansion has been an important component in reclaimed water system planning since its design in 1998. Black & Veatch designed the facility with an initial capacity of 6 million gallons per day (mgd) and the ability to easily expand its capacity to 10+ mgd as the system grew. The construction of the 2.2 million gallon storage tank and new pump station is the first phase of the improvements required to increase the treatment capacity of the RWTF. The second phase, expansion of the RWTF treatment facility itself, is scheduled to begin in 2010. A 2008 Reclaimed Water System Evaluation recommended expediting construction of the RWTF. In July of 2008, the demand for reclaimed water met the existing capacity of 6 mgd, further signaling the need to expand the capacity of the RWTF.

Effluent from the Big Dry Creek Wastewater Treatment Facility is currently supplied to the RWTF from open ponds that frequently experience fouling from algae growth, water fowl waste and weeds that in turn affect the treatment efficiency at the RWTF. The fouling reduces the filtering capacity of the RWTF and increases the amount of operator time required to operate the facility. The proposed covered influent storage tank would eliminate these problems by preventing sunlight and water fowl from affecting the quality of the stored water. The tank will also provide a larger storage volume than the current ponds, dampening the daily flow variations from the wastewater facility and allowing the RWTF to operate at more consistent flow rates. Since the proposed tank would be much deeper than the existing ponds, a new pump station must be constructed to pump water from the tank to the RWTF. The two pumps in the existing pump station will be modified and relocated to the new pump station.

Earlier this year, Black & Veatch completed the final design of the 2.2 million gallon concrete storage tank, pump station and related improvements. As part of its design services scope of work, Black & Veatch, with assistance from Overland Contracting, Inc., the design/build subsidiary of Black & Veatch Holding Company, solicited competitive cost proposals from several general, mechanical and electrical contractors in order to prepare a comprehensive Guaranteed Maximum Price (GMP) proposal for the construction of the project. Black & Veatch/Overland Contracting, Inc. presented their initial GMP cost proposal to the City in June 2009 in the amount of \$7,214,953. After several weeks of negotiations with City Staff, their revised proposal for completing the work is \$6,490,196. Staff believes this cost is both reasonable and competitive for this work.

This project is well suited to be completed utilizing the design/build delivery method. The construction of the underground concrete tank involves comparatively complex, higher risk work utilizing specialized subcontractors. The tank foundation and piping connections must be specially designed for the clay soil conditions and the high groundwater levels present at this site adjacent to Big Dry Creek. The design/build delivery method maintains a single line of liability from the design through the construction of the project, providing a greater level of risk protection to the City as compared to the more conventional design/bid/build method. Black & Veatch/Overland Contracting, Inc. has successfully provided these services to clients across the country for many years.

City Council approved funding for these projects during the 2009/2010 budget cycle, authorizing \$1,389,000 in 2009 for design and \$14,186,000 in 2010 for construction, and approved the funding to be bonds issued in 2010. In February of 2009, City Council approved a supplemental appropriation for the design funds with the intent to reimburse these funds with a debt issuance in 2010. The final design contract for the next phase of the facility expansion will be presented to City Council later this year, using the remaining 2009 design funds. In order to fund this first phase of construction work in 2009, an ordinance authorizing the supplemental appropriation from the Utility Reserve must be enacted. This funding is also intended to be reimbursed once the debt funding is completed. The balance of the construction funds will be requested to fund the construction contract for the expansion of the RWTF when it is presented to City Council for approval in 2010.

This appropriation will amend Water Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF Utility Reserve	2000.45000.0205	\$10,859,076	\$7,390,196	\$18,249,272
Total Change to Revenues			<u>\$7,390,196</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Reclaimed WTF Expansion	80920035858.80400.8888	\$423,036	\$7,390,196	\$7,813,232
Total Change to Expenses			<u>\$7,390,196</u>	

This appropriation will amend Utility Reserve Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2050.40020.0000	\$13,246,203	\$7,390,196	\$20,636,399
Total Change to Revenues			<u>\$7,390,196</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers to Water	20510900.79800.0200	\$10,859,076	\$7,390,196	\$18,249,272
Total Change to Expenses			<u>\$7,390,196</u>	

The Reclaimed Water Treatment Facility Influent Storage Tank and Pump Station project helps achieve the City Council’s Strategic Plan goals of “Financially Sustainable City Government” by contributing to the objective of well-maintained and operated City facilities; and “Beautiful City” by enhancing the City’s reclaimed water and potable water systems.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **25**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

A BILL

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the Water and Utility Reserve Funds initially appropriated by Ordinance No. 3432 is hereby increased by \$14,780,392. This appropriation is due to the transfer of reserve funds.

Section 2. The \$14,780,392 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 C&D, dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

Water Fund	\$7,390,196
Utility Reserve Fund	\$7,390,196
Total	<u>\$14,780,392</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of September, 2009

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Councillor's Bill No. 26 re Police Department Supplemental Appropriation and Purchase of Equipment

Prepared By: Lee Birk, Chief of Police

Recommended City Council Action

1. Pass Councillor's Bill No. 26 on first reading authorizing a supplemental appropriation in the amount of \$47,604 reflecting the Police Department's receipt of the Colorado Auto Theft Prevention Authority Grant funds.
2. Determine that the public interest will be best served by approving the Police Department's Automated License Plate Reader Technology (ALPR) equipment purchase with ELSAG North America up to a maximum of \$61,425.

Summary Statement

- On May 18, 2009, City Council authorized the Police Department to pursue a 2009 Multi-Jurisdictional Colorado Automobile Theft Prevention Authority Grant (CATPA) and also authorized the Chief of Police to sign a Letter of Participation along with the Chiefs from Arvada and Broomfield Police Departments.
- The department received notification on June 23, 2009 that the grant was approved for the total amount of \$47,604. Due to the grant funds stipulating that the funding is by reimbursement only, the police department is requesting approval to pre-appropriate the grant funds to the appropriate expenditure account.
- All of the participating agencies have agreed to pay for the ALPR equipment expense beyond the grant funding, which is \$13,821 or \$4,607 per agency. The Westminster Police Department, as the Grant Managing Agency (GMA), is handling the equipment purchase of \$61,425.
- ELSAG North America has been selected as the vendor of choice for the ALPR equipment for all three participating agencies. The total expenditure of \$61,425 will exceed the \$50,000 threshold and requires approval by City Council.
- The expenditure of \$61,425 will be paid utilizing the appropriated funds from the CATPA Grant of \$47,604; the City of Arvada and City and County of Broomfield's share of the non-grant expense totaling \$9,214 that has been paid to the City of Westminster; and the Police Department's share of the non-grant expense totaling \$4,607 from the department's General Fund operating budget.

Expenditure Required: \$61,425

Source of Funds: 2009 General Fund - Police Department Operating Budget

Policy Issues

1. Does City Council support amending the appropriations for the 2009 General Fund Police Department Operating Budget?
2. Should the City authorize the expenditure of \$61,425 with ELSAG North America for the purchase of the CATPA Grant Automated License Plate Reader Technology equipment?

Alternatives

1. Council could choose not to appropriate the grant funds. However, this is not recommended because the City and the residents will benefit from these additional grant funds through the anticipated proactive recovery and reduction of automobile theft; enhancement of police officer productivity; allow for timesaving enforcement; and the recognition of patterns and trends associated with automobile theft.
2. Do not approve the expenditure with ELSAG North America. Staff does not recommend this action because all three participating agencies selected ELSAG North America because of the product, price, service and warranty offered for the ALPR's.

Background Information

In 2003, Colorado legislation led to the formation of the Colorado Automobile Theft Prevention Authority to award grants to assist in improving and supporting automobile theft prevention programs, and programs for the enforcement or prosecution of automobile theft crimes through statewide planning and coordination. Motor vehicle theft continues to be one of the categories of serious crime in Colorado, and Colorado continues to be ranked high nationally for automobile theft. Auto theft also continues to be a problem in the Cities of Westminster, Arvada and Broomfield.

On May 18, 2009, City Council adopted Resolution No. 24 authorizing the Police Department to pursue a 2009 CATPA Grant with the Colorado Department of Public Safety for a multi-agency project with the City of Arvada and City and County of Broomfield to purchase Automated License Plate Readers. Council also authorized the Chief of Police to sign the Letter of Participation with both cities. The Westminster Police Department is the designated GMA throughout the grant period, June 22, 2009 through June 30, 2010. As the GMA, the police department will be responsible not only for the purchase of the equipment, but also for providing the quarterly reports and reimbursement of grant funding.

The department requested \$96,975 under the CATPA Grant through the Colorado Department of Public Safety with intent of the funding to be used to purchase a total of three ALPR's and 12 additional mounts, which would mean that each agency would be provided with one ALPR, and four mounts for four additional vehicles. With this request, no match was required.

The department received notification on June 23, 2009 that the grant was approved in the amount of \$47,604. Because of the reduction in grant funding from the original request of \$96,975, the three agencies determined that in order for this project to be effective, each agency would at least have to be provided with one ALPR and the additional mounts would not be necessary. To accomplish this goal, each agency agreed to contribute \$4,607 to the total cost that would be \$61,425. Because each agency will receive an ALPR and is contributing their share of the matching funds, a Release of Asset Statement is being provided upon receipt and installation of the equipment.

Three vendors were contacted for bids on the ALPR equipment. Ultimately, ELSAG North America was selected as the vendor of choice for the ALPR equipment for all three participating agencies. All three agencies agreed that ELSAG provided the best product, price, service and warranty. One vendor's quote was extremely high compared to the other two bids. ELSAG's warranty was preferred over the second vendor's warranty because of the terms of the service agreement.

The CATPA Grant Terms stipulate that the funding for the grant is provided only after the proof of purchase (a copy of the Invoice and a copy of the check to the vendor) from the GMA is provided. Due to the grant funds being under a reimbursement only policy, the police department is requesting approval to pre-appropriate the grant funds to the appropriate expenditure account in the police department's general fund operating budget.

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	1000.40620.0000	\$0	<u>\$47,604</u>	\$47,604
Total Change to Revenues			<u>\$47,604</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Equip-Patrol Svcs	10020500.76000.0349	\$8,100	<u>\$47,604</u>	\$55,704
Total Change to Expenses			<u>\$47,604</u>	

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **26**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE INCREASING THE 2009 BUDGET OF THE GENERAL FUND AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED
REVENUES IN THIS FUND**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General Fund, initially appropriated by Ordinance No. 3432 is hereby increased by \$47,604. This appropriation is due to the receipt of a Colorado Auto Theft Prevention Authority Grant.

Section 2. The \$47,604 increase in the General Fund shall be allocated to City revenue and expense accounts as described in the City Council Agenda Item 10 E&F dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$47,604</u>
Total	<u>\$47,604</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of September, 2009.

ATTEST:

Mayor

City Clerk



Agenda Item 10 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Councillor's Bill No. 27 re 2009 2nd Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 27 on first reading providing for supplemental appropriation of funds to the 2009 budget of the General, Parks Open Space & Trails, and General Capital Improvement Funds.

Summary Statement

- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2009 2nd quarter supplemental appropriation.
- General Fund amendments:
 - \$1,000 Foundation Grant
 - \$5,623 State Grants
 - \$5,630 Program Revenues
 - \$5,865 Reimbursements
 - \$17,300 Code Settlement
 - \$28,282 Federal Grants
- Parks Open Space & Trails Fund amendments:
 - \$142,996 Tap Fee Credits
- General Capital Improvement Fund amendments:
 - (\$4,918) State Grant
 - \$1,050 Reimbursement
 - \$15,000 Cash-in-Lieu
 - \$212,996 Transfers

Expenditure Required: \$430,824

Source of Funds: The funding sources for these expenditures include grants, program fees, reimbursements, transfers, cash-in-lieu, code settlement, and tap fee credits.

Policy Issue

Does City Council support amending the appropriations for the 2009 budget of the General, Parks Open Space & Trails and General Capital Improvement Funds?

Alternative

The alternative would be not to amend the 2009 budget appropriations for the General, Parks Open Space & Trails and General Capital Improvement Funds and utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them in their current budget in anticipation of appropriation of the funds.

Background Information

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

The Police Department received \$20,507 from the North Metro Task Force High Intensity Drug Tracking Area (HIDTA) grant funding. The reimbursement award from the task force is for overtime incurred by the Westminster Police Department's Task Force members working on Federal HIDTA cases. (General Fund)

The Police Department received \$875 from the City of Aurora Metro Gang Task Force for High Intensity Drug Tracking Area (HIDTA) grant funding. The reimbursement award from the task force is for overtime incurred by a Police Department Task Force member while working on Federal HIDTA cases. (General Fund)

The Police Department received \$3,800 for their participation in the May Nationwide "Click It or Ticket" program. This grant is a State sponsored program that reimburses the department for overtime incurred by enforcement officers issuing summonses in a zero tolerance approach to seat-belt and graduated driver's license enforcement. (General Fund)

The Fire Department received \$680 in class registration fees for conducting CPR training classes. The department is requesting appropriation of these funds to the EMS supplies account used to purchase supplies utilized during the classes. (General Fund)

The Fire Department received a \$1,000 Community Grant from the Wal-Mart Foundation. This money was given with the intent it be used for the City's Summer Celebration program at the MAC. These funds are being appropriated to reimburse the special promotions account used to purchase bike helmets, hot dogs, buns, popsicles, etc. for the program. (General Fund)

The Fire Department received reimbursement in the amount of \$5,865 from the State of Colorado Forest Service on behalf of the Wildland Team. The reimbursement award is for fire personnel overtime salaries incurred during Wildland Team assistance to the Olde Stage Fire that occurred in Boulder, Colorado on January 7th and 8th of this year. (General Fund)

The Fire Department received Urban Area Security Initiative (UASI) reimbursement in the amount of \$1,823 for "backfill" costs associated with "Communications Specialist Training" from the City and County of Denver. The department is requesting appropriation of these funds to the overtime account to maintain operations. (General Fund)

The Fire Department received \$6,900 from the State of Colorado towards the Emergency Management Program Grant (EMPG) as a result of reallocation of a year-end balance of funds available at the State level. These funds are being appropriated to the Emergency Management account to be used to continue services with the current contractor doing a "Business Emergency Preparedness Survey." (General Fund)

The Fire Department received payments totaling \$4,950 from area Fire Departments for a "Fire Ground Search" training class that the Westminster Fire Department hosted. The department is requesting appropriation of these funds to the Career Development account to offset the costs associated with hosting this class. (General Fund)

As a requirement of the Westminster Municipal Code, Community Development has entered into a Landscaping and Private Improvements Agreement with Lennar for the guarantee of landscape installation at Legacy Ridge West Filing 6 and 7. The City has received \$17,300 based on negotiations with Lennar for incomplete work. The funds are being appropriated to complete the installation and any necessary Official Developments Plan revisions. (General Fund)

On December 22, 2008, the Westminster Center East URA entered into an intergovernmental cooperation agreement (ICA) with the City providing for reimbursement of incurred costs by the City related to the planning, design, and construction of Westminster Center Park as well as future operating and capital costs incurred after the park is in commission, as long as WEDA has fulfilled all, if any, superior obligations. The City has incurred costs related to the design of Westminster Center Park and there are funds available from WEDA's 2008 carryover in the amount of \$70,000 to reimburse the City. (General Capital Improvement Fund)

The City received \$1,050 for the sale of plans and specifications to a contractor for the McKay Drainage-way project. The funds are requested for appropriation to the McKay Drainage-way project to cover the associated costs. (General Capital Improvement Fund)

On June 8, 2009 Council approved the appropriation of a Federal Grant in the amount of \$25,100 from the Denver Regional Council of Governments for the purchase of Fiber Optic communications equipment and materials on 72nd Avenue from Zuni to Raleigh Street. The purchase was completed for \$4,918 less than the grant award, due to favorable prices, and that amount must be un-appropriated at this time. (General Capital Improvement Fund)

One of the requirements of the approved ODP for the commercial development at Schoenberg Farms was the participation in public art. The required in-lieu payment received for this participation was \$15,000. These funds are being appropriated into the Public Art Participation Account for use on the subject site. (General Capital Improvement Fund)

When the City acquired the Doulos property as open space in 2008, the existing water/wastewater taps were credited back to the City (\$233,539 in the Water Fund and \$42,438 in the Wastewater Fund for a total of \$275,977). Some of the credit \$132,981 was appropriated as part of 2008 carryover appropriation. The remaining amount of \$142,996 is being requested to be transferred from the Parks Open Space & Trails Fund to the General Capital Improvement fund and appropriated to the Park Renovation, Westminster Center Park and Standley Lake Regional Park capital projects for tap fee costs incurred during 2009. (General Capital Improvement Fund and Parks Open Space & Trails Fund)

These appropriations will amend General Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Grants	1000.40650.0057	\$0	\$1,000	\$1,000
Off Duty Fire Services	1000.41340.0013	1,130	680	1,810
General Revenue	1000.43060.0000	315,600	10,815	326,415
Federal Grant	1000.40610.0000	53,520	28,282	81,802
State Grant	1000.40620.0000	0	5,623	53,227
Misc Service Charge	1000.41460.0000	0	<u>17,300</u>	17,300
Total Change to Revenues			<u>\$63,700</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Professional Services	10030360.65100.0000	\$24,403	\$17,300	\$41,703
Supplies EMS	10025260.70200.0546	6,050	680	6,730
Salaries Overtime Inv Svcs	10020300.60400.0344	39,000	21,382	60,382
Salaries Overtime Traffic	10020500.60400.0348	70,000	3,800	73,800
Special Promotions	10025260.67600.0000	11,650	1,000	12,650
Salaries Overtime Fire	10025260.60400.000	243,412	5,880	249,292
Salaries Overtime EMS	10025260.60400.0546	95,550	1,808	97,358
Contract Services EM Grant	10025260.67800.0545	13,956	6,900	20,856
Career Development Fire	10025260.61800.0000	24,962	<u>4,950</u>	29,912
Total Change to Expenses			<u>\$63,700</u>	

These appropriations will amend Parks Open Space & Trails Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Sale of Asset	5400.43040.0000	\$0	<u>\$142,996</u>	\$142,996
Total Change to Revenues			<u>\$142,996</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer to GCIF	54010900.79800.0750	\$598,000	<u>\$142,996</u>	\$740,996
Total Change to Expenses			<u>\$142,996</u>	

These appropriations will amend General Capital Improvement Fund revenue and expense accounts as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from WEDA	7500.45000.0680	\$0	\$70,000	\$70,000
GCIF General Revenue	7500.43060.0000	438,427	1,050	439,477
Carryover CIP	7500.40020.0000	4,918	(4,918)	0
Cash-in-lieu Future CIP	7500.40210.0751	0	15,000	15,000
Transfer from POST	7501.45000.0540	598,000	<u>142,996</u>	740,996
Total Change to Revenues			<u>\$224,128</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
New Art Participation	80575030428.80400.8888	\$0	\$15,000	\$15,000
Westminster Center Park	80875050792.80400.8888	322	87,497	87,819
McKay Drainage-way	80375030313.80400.8888	3,139,006	1,050	3,140,056
Traffic Signal System Impr	80175030143.80400.8888	161,271	(4,918)	156,353
Park Renovation	80975050306.80400.8888	125,447	123,512	248,959
Standley Lake Regional Park	80775050747.80400.8888	111,837	<u>1,987</u>	113,824
Total Change to Expenses			<u>\$224,128</u>	

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **27**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2009 BUDGETS OF THE GENERAL, PARKS OPEN
SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND
AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2009 ESTIMATED
REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2009 appropriation for the General, Parks Open Space & Trails, and General Capital Improvement Funds, initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$430,824. This appropriation is due to the receipt of funds from grants, program fees, reimbursements, transfers, cash-in-lieu, code settlement, and tap fee credits.

Section 2. The \$430,824 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 G dated August 24, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$63,700
Parks Open Space & Trails Fund	142,996
General Capital Improvement Fund	<u>224,128</u>
Total	<u>\$430,824</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24th day of August, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of September, 2009.

ATTEST:

Mayor

City Clerk



Agenda Item 10 H

WESTMINSTER
COLORADO
Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Resolution No. 38 re First Amendment to the Mandalay Gardens Urban Renewal Plan

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended City Council Action

Adopt Resolution No. 38 approving the First Amendment to the Mandalay Gardens Renewal Plan.

Summary

- By approving the attached resolution, Council approves the First Amendment to the Mandalay Gardens Urban Renewal Plan, which modifies the sales tax increment pledge within the urban renewal area boundaries and thereby releases excess sales and use tax increment from the urban renewal area per the terms of the Indenture of Trust and Reimbursement Agreement with U.S. Bank as the Direct Pay Letter of Credit facility.
- Council approved the Urban Renewal Plan on March 17, 2003.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does the City desire to amend the existing Mandalay Gardens Urban Renewal Plan?

Alternative

Decline or delay the approval of the amendment resolution. This is not recommended as it would result in the City not receiving excess sales and use tax increment, which is critical to maintaining General Fund services.

Background Information

On March 17, 2003, Council approved the Mandalay Gardens Urban Renewal Plan (Plan). Subsequent to the approval of the Plan, the Westminster Economic Development Authority (WEDA) issued, in August 2003, \$38,525,000 of taxable variable rate tax increment revenue bonds. The bonds were issued to fund various public infrastructure projects within the Urban Renewal Area (URA) including construction of Town Center Drive, construction of a vehicular and pedestrian underpass at US 36 to connect with the Promenade, construction and realignment of Reed Street, and improvements to Church Ranch Boulevard. The bonds were subsequently refunded into tax exempt variable rate tax increment revenue bonds in March of 2006. Additionally, the Indenture was amended two times with the First Amendment incorporating language for sales and use tax increment to be deposited with the Trustee upon receipt and the Second Amendment changed the sales tax pledge from 3.00% to 1.75% of the sales and use tax increment collected within the URA.

As a means to market the variable rate bonds, the bonds were issued with a direct pay letter of credit (LOC) with DEPFA Bank (DEPFA) with the underlying credit of the bank ensuring payment on the bonds. Due to a downgrade in DEPFA's credit rating to below investment grade, the bonds were converted into "bank bonds." A Staff Report, dated January 12, 2009, was presented to the Council and Board, apprising them of the "bank bond" issue with DEPFA on certain WEDA debt issues. In summary, WEDA's Series 2006 tax exempt variable rate debt issue is backed by a LOC agreement with DEPFA. After remarketing efforts failed to find investors for the bonds due to the credit downgrades by the rating agencies, the bonds converted to "bank bonds" with the exception of \$100,000. This meant that DEPFA was obligated, under the terms of the LOC, to buy the bonds. As a result of this event, Staff worked with the City's underwriter, Stifel Nicolaus, & Company, to find a long-term solution that maintains competitive interest costs and preserves fund balance.

After exploring various options since the January Staff Report, Staff is recommending to refund the existing 2006 bonds. In preparation for the pending refunding, a Request for Proposals (RFP) was sent out to secure a LOC provider. US Bank was the sole respondent. Additional action will be presented to the Council and WEDA Board to approve the bond refunding documents and resolutions.

The First Amendment to the Plan incorporates the terms of the revised Indenture, LOC Agreement, and Reimbursement Resolution for the release of excess sales tax increment revenues, the provision of which will adjust the increment pledge to reflect a "floating" pledge, thereby permitting the City to collect additional sales tax revenues that would have otherwise have been kept and spent only within the urban renewal area. Since the City already adjusted the pledge downward from 3% to 1.75%, the financial benefits of this adjustment may not provide the General Fund with excess sales tax revenues until 2013; however, the ability for the City to receive any excess sales tax revenues is particularly important during difficult economic periods and this flexibility should be beneficial until 2028 when the last bonds outstanding are paid.

Unlike the other WEDA bond refinancings into fixed rates, the Mandalay Gardens refunding will maintain a weekly variable rate interest reset with US Bank being the LOC provider. The budget for interest expense will continue to reflect a 4% estimate; however, it is anticipated that the actual rate will be lower. The reset rate averaged 3.70% on the Mandalay issue just prior to the financial meltdown at the end of September 2008. In comparison, the fixed interest rate of the North Huron loan with Compass Bank is 4.51% and 4.95% for the South Sheridan loan with Vectra Bank.

Staff will be available at the City Council meeting on August 24th to answer City Council's questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

- Resolution with Exhibit A First Amendment to the Mandalay Gardens Urban Renewal Plan

RESOLUTION

RESOLUTION NO. 38

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION CONCERNING THE WESTMINSTER
ECONOMIC DEVELOPMENT AUTHORITY AND
AUTHORIZING THE FIRST AMENDMENT TO
MANDALAY GARDENS URBAN RENEWAL PLAN AND
OTHER ACTIONS IN CONNECTION THEREWITH**

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

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

WHEREAS, Section 31-25-107(7), C.R.S. allows the City Council to modify an urban renewal plan at any time without being subject to the notice and blight finding requirements of Section 31-25-107, C.R.S. provided that such modification will not substantially change the urban renewal plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the City wishes to amend the Original Plan concerning the allocation of sales tax revenues in the form of the First Amendment to Mandalay Gardens Urban Renewal Plan (the "Plan Amendment") that will be an insubstantial modification of the Original Plan; and

WHEREAS, the Plan Amendment is attached hereto as Exhibit A and incorporated herein by this reference.

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

Section 1. Findings Relating to the Plan Amendment. The City Council hereby finds and determines that the modifications to the Original Plan to be made by the Plan Amendment will not substantially change the Original Plan in land area, land use, design, building requirements, timing or procedure, as previously approved, for purposes of Section 31-25-107, Colorado Revised Statutes.

Section 2. Approval and Authorization of the Plan Amendment. The form of the Plan Amendment is hereby approved. Except as amended by Plan Amendment, the Plan shall remain unchanged in all other respects and shall remain in full force and effect.

Section 3. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. Effectiveness. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED on August 24, 2009.

CITY OF WESTMINSTER, COLORADO

Mayor Pro Tem

ATTEST:

APPROVED AS TO LEGAL FORM

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

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

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council (the “Council”) at a regular meeting held on August 24, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 24, 2009, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

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

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

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

6. Notice of the meeting of August 24, 2009, in the form attached hereto as Exhibit B, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed on August [__], 2009.

 City Clerk

(SEAL)

Exhibit A
(Form of First Amendment to Plan)

CITY OF WESTMINSTER

MANDALAY GARDENS URBAN RENEWAL PLAN

ORIGINALLY APPROVED MARCH 17, 2003

FIRST AMENDMENT DATED AUGUST 24, 2009

This First Amendment to Mandalay Gardens Urban Renewal Plan dated as of August 24, 2009, amends the Mandalay Gardens Urban Renewal Plan originally approved and previously amended, and amends and restates Article 5.1 to read as follows:

5.1 Tax Increment Financing. The primary method of financing the projects undertaken in furtherance of this Urban Renewal Plan shall be the use of sales tax and property tax increment financing pursuant to Section 31-25-107(9), C.R.S. which is by this reference incorporated herein as if set forth in its entirety. If there is any conflict between the Urban Renewal Law and this Plan, the provisions of the Urban Renewal Law shall control. All property and sales taxes collected within the Mandalay Gardens Urban Renewal Area (the "Area") shall be divided as follows:

i. That portion of property and sales taxes equal to the amount collected within the boundaries of the Area in the twelve month period ending on the last day of the month prior to the effective date of the approval of this Plan shall be paid into the funds of each such public body as are all other taxes collected by or for such public body.

ii. Except as WEDA may legally provide otherwise under the Urban Renewal Law, the portion of such property taxes in excess of the amounts described in paragraph (a) above shall be allocated to and when collected paid into a special fund (the "Special Fund") to fund WEDA's obligations with respect to any project including payment of the principal of the interest on and any premiums due in connection with the bonds, loans or advances to, or indebtedness incurred by (whether funded, refunded, assumed or otherwise) WEDA for financing or refinancing in whole or in part the urban renewal projects or applicable redevelopment agreements.

iii. Except as WEDA may legally provide otherwise under the Urban Renewal Law, the portion of such sales taxes in excess of the amounts described in paragraph (a) above shall be allocated to and when collected paid as described in this paragraph (c). There shall be paid into the Special Fund the lesser of (i) that portion of the City sales tax at a rate of 3.00%; or (ii) the sales tax rate specified in any loan agreement, bond indenture, bond resolution, or other agreement pursuant to which WEDA borrows money for the project. The balance of the City sales tax above the rate specified in the preceding sentence shall remain in funds of the City.

iv. When such bonds, loans, advances, and indebtedness, if any, including interest thereon and any premiums due in connection therewith have been paid but in no event later than 25 years following the adoption of this Plan for the construction of the projects improvements any excess property and sales tax collections not allocated pursuant to this paragraph or any Cooperation Agreement between WEDA and City or other taxing jurisdiction shall be paid into the funds of said jurisdiction or public body. Unless and until the total property and sales tax collections in the Area exceed the base year property and sales tax collections in the Area as provided in paragraph a above all such property and sales tax collections shall be paid into the funds of the appropriate public body. WEDA reserves the right to enter into Cooperation Agreements with select taxing jurisdictions relative to allocation of incremental tax revenues.

v. The adoption of this Plan shall be deemed an adoption of a provision that taxes if any levied after the effective date of the approval of this Plan upon taxable property in the Area shall be divided among WEDA and various taxing entities for a period of 25 years thereafter or such lesser period as provided in Section 31-25-107(9), C.R.S. or in any Cooperation Agreement between WEDA and a county, school district, the City or a special district.

vi. WEDA and the City may by Cooperation Agreement or other agreement provide for the method by which sales tax increments shall be allocated and paid to WEDA pursuant to the provisions of this Plan and the Urban Renewal Law. Such agreements and similar agreements between WEDA and other public bodies may provide for additional assistance by the City and cooperation between WEDA and the City in support of the projects as may be more fully set forth in the provisions of such Cooperation Agreement or any other agreement.

Exhibit B

(Form of Notice of Meeting)



WESTMINSTER
COLORADO

Agenda Item 10 I

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Resolution No. 39 re Approval of Documents for Refunding of the 2006 Bonds Issued for the Mandalay Gardens Urban Renewal Area

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended City Council Action:

Adopt Resolution No. 39 approving documents for refunding of the WEDA Series 2006 Bonds, to which the City is a party including the Replenishment Resolution, the City Cooperation Agreement with WEDA, and the Letter of Credit Reimbursement Agreement.

Summary

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

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

Cooperation Agreement

In addition, City Council action is requested to approve a Cooperation Agreement between the City and the Authority, which provides for the repayment to the City of funds advanced to and on behalf of the Authority from tax increment, if such revenue is available after other debts are paid. This would permit recovery by the City of any amounts paid by the City to replenish the Reserve Fund held by the bank in connection with the Authority's bonds and is a routine WEDA-City action when WEDA is issuing bonds.

Letter of Credit Reimbursement Agreement

Lastly, City Council action is requested to approve a three-party Letter of Credit Reimbursement Agreement between U.S. Bank, (WEDA's Letter of Credit Bank), WEDA and the City. This is necessary because the City is referenced in this agreement as a party to the replenishment resolution and the bank is desirous of City participation in this agreement. The Letter of Credit Agreement is on file with the City Clerk's Office.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issues

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

Alternatives

1. Decline or delay approval of the Replenishment Resolution. This is not recommended. Although non-binding, this would not be viewed favorably by the bank and would result in the failure of the refinancing.
2. Decline or delay approval of the Cooperation Agreement. This is not recommended, as it will result in the failure of the refinancing.

Background Information

On January 12, 2009, a Staff Report was presented to the Council and WEDA Board, apprising them of the “bank bond” issue with DEPFA Bank (DEPFA) on certain WEDA debt issues. In summary, WEDA’s Series 2006 tax exempt variable rate debt issue is backed by a Letter of Credit (LOC) agreement with DEPFA. After remarketing efforts failed to find investors for the bonds due to credit downgrades, to below investment grade, of DEPFA Bank by the rating agencies as a result of the financial crisis, the bonds converted to “bank bonds,” which means DEPFA was obligated, under the terms of the LOC, to buy the bonds. As a result of this event, Staff worked with the City’s underwriter, Stifel Nicolaus, & Company, to find a long-term solution that reduces interest costs and preserves fund balances compared to the terms of debt service under DEPFA’s LOC agreement.

Since the January Staff Report, a commitment sheet with US Bank was signed as a Direct Pay Letter of Credit (DPLOC) facility for the refunding of the WEDA Series 2006 (Mandalay Gardens Urban Renewal Area) debt issue. The initial term of this LOC agreement is for US Bank to be the credit facility for an initial term of 3 years with an option to renew. With US Bank replacing DEPFA Bank as the DPLOC, an updated Reimbursement Agreement will need to be approved by the City and WEDA in addition to the Reimbursement Resolution and Cooperation Agreement.

The Replenishment Resolution of the City states that if the balance in the WEDA Reserve Fund, maintained at the Bank per the loan agreement, falls below the required Reserve Requirement as defined in the agreement, currently estimated to be \$3,160,000, the City Manager will request that Council budget, appropriate, and transfer to US Bank the funds necessary to replenish these reserves. The Cooperation Agreement states in part that WEDA agrees to repay the City for any such payment the City makes to replenish the Reserve Fund to the Reserve Requirement amount.

The advent of market acceptance of the value of a promise to pay by a local unit of government is a recent phenomenon. Because the City's credit rating is AA/AA-, the word of the City has merit and can and should be used to reduce the costs and improve the credit worthiness of the Authority's (WEDA) borrowings. The moral obligation is a promise to request Council, subject to annual appropriation, to replenish the Reserve Fund balance to the Reserve Requirement stipulated in the loan agreement between WEDA and the Bank. It is non-binding and thus does not constitute a multiple fiscal-year obligation.

Staff does not anticipate the need to ever trigger the City’s moral obligation, as defined in the Reimbursement Resolution, to replenish the Reserve Fund at any time. The forecasts for the tax increment revenues for the various commercial developments within the Mandalay Gardens URA exceed the anticipated debt service requirements.

SUBJECT: Resolution re Refinancing 2006 Series WEDA Bonds - Mandalay Gardens URA Page 3

A benefit of the refunding is the ability of the City to retain excess sales and use tax increment revenues above the 1.25% amount currently retained by the City, which under the terms of the existing bond indenture is not permitted. The ability for the City to retain potential excess sales tax increment revenues is particularly important during the current economic climate, which has the City adjusting revenue projections from the 2009-2010 Budget forecasts downward.

Staff and the Underwriter will be available at the City Council meeting on August 24, 2009 to answer City Councillor questions.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments: 2009 Replenishment Resolution
2009 Cooperation Agreement

RESOLUTION

RESOLUTION NO. 39

INTRODUCED BY COUNCILLORS

SERIES OF 2009

A RESOLUTION CONCERNING THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ITS TAX INCREMENT ADJUSTABLE RATE REVENUE REFUNDING BONDS, SERIES 2009; AUTHORIZING AND DIRECTING ACTIONS BY THE CITY MANAGER WITH RESPECT TO THE PREPARATION OF REQUESTS TO THE CITY COUNCIL FOR APPROPRIATION OF FUNDS FOR THE REPLENISHMENT OF CERTAIN FUNDS PERTAINING THERETO; AUTHORIZING THE 2009 COOPERATION AGREEMENT; AND APPROVING AND RATIFYING OTHER ACTIONS TAKEN BY THE CITY IN CONNECTION THEREWITH.

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

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

WHEREAS, pursuant to an Indenture of Trust (the “Indenture”), the Authority is issuing its Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2009, in the original aggregate principal amount of not to exceed \$36,250,000(the “2009 Bonds”) for the purpose of refunding bonds previously issued by the Authority (the “Refunding Project”); and

WHEREAS, the Authority has previously issued its Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 (the “2003 Bonds”), in the original aggregate principal amount of \$38,525,000 for the purpose of financing the acquisition, construction and equipping of the certain improvements within the Urban Renewal Area that were authorized by the Plan, which 2003 Bonds were refunded by the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project), Series 2006 (the “2006 Bonds” or, together with the 2003 Bonds, the “Prior Bonds”); and

WHEREAS, in connection with the issuance of the Prior Bonds, the Authority and the City entered into a Cooperation Agreement dated as of August 25, 2003, as amended and restated pursuant to the Amended and Restated Cooperation Agreement dated as of March 1, 2006, as amended by the First Amendment to Amended and Restated Cooperation Agreement dated as of October 1, 2007 (as amended, the “Original Cooperation Agreement”), pursuant to which the City agreed, subject to conditions specified in the Original Cooperation Agreement, to loan funds to the Authority for urban renewal purposes; and

WHEREAS, in connection with the issuance of the 2009 Bonds, it is necessary that the City and the Authority execute and deliver a 2009 Cooperation Agreement (the “2009 Cooperation Agreement”), which agreement shall supersede and replace the Original Cooperation Agreement; and

WHEREAS, there will be created under the Indenture a reserve fund (the “Bond Reserve Fund”) that will be funded initially in the amount of the Bond Reserve Requirement (as defined in the Indenture) and is required to be maintained at such amount to be used as a reserve against deficiencies in the payment of principal of or interest on the 2009 Bonds and any obligations secured on a parity with the 2009 Bonds and for certain other payments; and

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

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

WHEREAS, the form of the 2009 Cooperation Agreement is on file with the City Clerk.

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

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

in this Section 1 shall create or constitute a debt, liability or multiple fiscal year financial obligation of the City.

Section 2. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds as contemplated by Section 1 hereof, any amounts actually advanced shall be treated as an obligation under the Cooperation Agreement and shall be repaid by the Authority, with interest thereon, but shall be payable from and secured solely by the Pledged Revenues of the Authority, as provided in the Cooperation Agreement, on a basis expressly subordinate and junior to that of the 2009 Bonds and any obligations secured under the Indenture, including, without limitation, Bank Bonds (as defined in the Indenture), Reimbursement Obligations (as defined in the Indenture) and all other obligations owed to the Bank under the Reimbursement Agreement.

Section 3. Limitation to 2009 Bonds and Other Obligations Originally Secured by Indenture. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the Bond Reserve Fund originally established in connection with the 2009 Bonds and any obligations secured on a parity with the 2009 Bonds, and shall not apply to any other additional obligations issued under the Indenture.

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

Section 5. Ratification. All action not inconsistent with the provisions of this Resolution heretofore taken by the City Council and the officers of the City directed toward effecting the purposes set forth herein are, and the same is hereby ratified, approved and confirmed.

Section 6. General Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 7. Effectiveness. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this August 24, 2009.

CITY OF WESTMINSTER, COLORADO

Mayor Pro Tempore

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
) SS.
 CITY OF WESTMINSTER)

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

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the City Council (the “Council”) at a regular meeting held on August 24, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 24, 2009, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

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

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

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

6. Notice of the meeting of August 24, 2009, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed August 24, 2009.

 City Clerk

(SEAL)

Exhibit A
(Form of Notice of Meeting)

**2009 COOPERATION AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

THIS COOPERATION AGREEMENT (this "Agreement"), dated as of September [___], 2009, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the "City") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the "Authority").

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

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

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

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

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

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

WHEREAS, the Authority has previously issued its Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 (the "2003 Bonds"), in the original aggregate principal amount of \$38,525,000 for the purpose of financing the acquisition, construction and equipping of the Project, which 2003 Bonds were refunded by the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project), Series 2006 (the "2006 Bonds"); and

WHEREAS, the City and the Authority have previously entered into a cooperation agreement dated as of August 25, 2003 (the “2003 Agreement”), which agreement was amended and restated pursuant to the Amended and Restated 2003 Cooperation Agreement entered into as of March 1, 2006, as amended on October 1, 2007 (the “2006 Agreement” or, along with the 2003 Agreement, the “Prior Cooperation Agreements”) in connection with the 2003 Bonds, the 2006 Bonds and the Project; and

WHEREAS, the Authority has determined that it is in the best interest of the Authority, the City and its residents to refund the 2006 Bonds with the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2009; and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 09-___ declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Bond Reserve Requirement (the “Replenishment Resolution”) as defined in the Indenture of Trust dated as of September [___], 2009 (the “Indenture”), between the Authority and U.S. Bank National Association, as trustee (the “Trustee”); and

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

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

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

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

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

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

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

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

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

5. **ALLOCATION OF SALES TAX REVENUE.** The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the revenues derived from the City sales tax at a rate as specified in the Sales Tax Rate Certificate, attached as Exhibit D to the Indenture, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

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

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

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

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

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

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

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

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

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces the Prior Cooperation Agreements. Any amounts owing to the City by the Authority pursuant to the Prior Cooperation Agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment of the Bonds or Additional Bonds.

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER

BY _____
Executive Director

BY _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

BY _____
Authority Attorney

BY _____
City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Resolution No. 40 re Reimbursement for Water/Wastewater Utility Capital Projects Expenses incurred prior to undertaking debt financings in 2010

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

Recommended City Council Action:

Adopt Resolution No. 40 permitting reimbursement to the City’s Water and Wastewater Utility Enterprise of soft and hard costs incurred for capital projects from the proceeds of bond issuance, loans, or other forms of indebtedness that the Utility anticipates undertaking in 2010.

Summary Statement

- The City’s Water/Wastewater Utility expects to obtain approximately \$30 million of debt financing in 2010 to fund various capital projects. Prior to issuing the bonds the Utility would like to begin work on various projects that are anticipated to be funded in whole or in part by the proceeds from the bond issuance, loans or other forms of indebtedness to be accomplished in 2010.
- Federal law permits a municipal government, including its utility enterprise, to approve a resolution that allows it to finance capital projects from existing financial resources and reimburse itself from the bond proceeds of bonds issued in the future. The resolution will permit reimbursement of all hard costs, such as actual materials, construction costs, and land purchases incurred by the Utility up to 60 days prior to the approval of the reimbursement resolution and allocated thereto in writing. Additionally, qualified preliminary expenditures (soft dollar expenses in amounts that do not exceed 20% of the issue price of the bond issue) with respect to a specific project may be reimbursed outside of the 60 day requirement.
- By adopting the attached reimbursement resolution, the utility may be able to take advantage of current low costs for undertaking these types of construction projects.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Should the City Council pass the reimbursement resolution to allow the City to reimburse itself from bond proceeds for costs incurred prior to the debt proceeds being received?

Alternative

Do not pass the reimbursement resolution. This action is not recommended. Time sensitive projects might have to be delayed, or without the reimbursement resolution, the City would not be able to recover costs paid prior to borrowing funds to finance these projects. Federal law requires that a reimbursement resolution be adopted in order for a municipality to pre-pay construction costs and subsequently reimburse itself from financing proceeds once the debt is issued. By passing the resolution, tax compliance laws will be met.

Background Information

In the 2009/2010 Budget Public Works and Utilities Staff identified several water and the wastewater capital projects that would be undertaken in 2009 and 2010. These projects were approved by Council when it adopted the 2009/2010 budget.

Staff has begun engineering and design work on some of these projects, the cost of which has been paid from capital project funds. Through 2008 approximately \$529,000 had been spent on “soft costs.”

The major capital projects that Public Works and Utilities staff have identified to be undertaken in 2009 and 2010 include:

Project Name	Estimated Total 2009 - 2010 Project Cost
Reclaimed Plant Expansion	\$ 8,278,000
Reclaimed Treated Effluent Storage	7,297,000
Southern Zone 1 Transmission Line	4,400,000
Open Cut Water Line Replacements	4,781,000
Water Pressure Zone Enhancements	5,250,000
<u>NWTF Membrane Expansion</u>	<u>3,000,000</u>
Total (Soft Costs and Capital Costs)	\$ 33,006,000

About \$15.6 million of this total was budgeted to be spent in 2009 with the balance to be spent in 2010.

Current market conditions for large construction projects are very competitive. Recent experience by the City for capital projects shows that bids are coming in well below cost estimates from engineering design work. Thus it is advantageous for the water and wastewater utilities to begin work on some of its large capital projects.

Some of these projects were anticipated to be financed by the issuance of debt, completing lease purchase agreements, loans, or other financing options, but not until 2010. Federal law allows a municipality to pass a reimbursement resolution that would permit it to use existing funds to undertake capital projects and to reimburse itself from the proceeds of debt issued in the future. The City most recently used a reimbursement resolution to repay CIP funds for several Parks, Open Space and Trails (POST) projects that were financed by the POST Series 2007D bonds issued December 11, 2007.

Current law mandates the following provisions must be included by a municipality to properly pass a Reimbursement Resolution:

- An announcement and acknowledgement of the municipality's expectation to issue bonds. This will be done by the inclusion of this item in the agenda for the Council's August 24, 2009 meeting.
- An announcement and acknowledgement that the municipality will reimburse itself from bond proceeds for costs pre-funded through other means, in this case by the City through the City's Utility Capital Reserve Fund.

If the Reimbursement Resolution is not approved, the Utility Enterprise will be limited to recovering only soft costs associated with these projects. If the Reimbursement Resolution is passed, design and construction for the various projects can be pursued. Approving the resolution will allow the utility to be reimbursed from future borrowings to recover capital costs incurred from these projects during a 3 year period that starts on the date 60 days prior to when the resolution was adopted. The adoption of the resolution does not impede or complicate the sale of bonds by the utility, or its undertaking other forms of indebtedness which is anticipated to occur sometime in 2010. In fact, it facilitates the issuance of the bonds as it allows Staff to continue to move forward with potential sources of funding without the concern of trying to exactly time the financing with the planning, construction, and purchases.

Qualified preliminary expenditures are defined as architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of the acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment - Resolution

RESOLUTION

RESOLUTION NO. **40**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION OF THE CITY OF WESTMINSTER,
COLORADO, EXPRESSING THE INTENT OF THE CITY
TO BE REIMBURSED FOR CERTAIN EXPENSES
RELATING TO THE CONSTRUCTION OF WATER AND
WASTEWATER IMPROVEMENTS.**

WHEREAS, the City of Westminster, Colorado (the “City”), is a legal and regularly created, established, organized and existing corporation under the provisions of Article XX of the Constitution of the State of Colorado and the Charter; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, the Council has heretofore determined that the municipal water and wastewater system (the “System”) constitutes an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and has heretofore created the City of Westminster, Colorado, Water and Wastewater Enterprise (the “Enterprise”); and

WHEREAS, it is the current intent of the City, acting by and through its Enterprise, to construct certain water and wastewater improvements for the benefit of the City and its residents (the “Project”); and

WHEREAS, the City has determined that it is in the best interest of the City to finance the Project through one of the following options (i) by the issuance of revenue bonds of the Enterprise payable from revenues of the Enterprise; (ii) by the execution and delivery of a lease purchase agreement; or (iii) by any other means legally available to the City; and

WHEREAS, the Council has determined that it is necessary to make capital expenditures to acquire and construct the Project prior to the time that the City arranges for the specific financing of such Project; and

WHEREAS, it is the Council’s reasonable expectation that when such financing occurs, the capital expenditures will be reimbursed with the proceeds of the financing; and

WHEREAS, in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), it is the Council’s desire that this resolution shall constitute the “official intent” of the Council to reimburse such capital expenditures within the meaning of Treasury Regulation §1.150-2.

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

Section 1. All action (not inconsistent with the provisions of this resolution) heretofore taken by the Council and the officers, employees and agents of the City directed toward the Bonds is hereby ratified, approved and confirmed.

Section 2. The City intends to finance approximately \$30,000,000 to pay the costs of the Project, including the reimbursement of certain costs incurred by the City prior to the receipt of any proceeds of a financing, upon terms acceptable to the City, as authorized in an ordinance or resolution to be hereafter adopted and to take all further action that is necessary or desirable in connection therewith.

Section 3. The officers, employees and agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Project and to otherwise carry out the transactions contemplated by the resolution.

Section 4. The officers and employees of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provision of this resolution.

Section 5. The City shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h).

Section 6. This resolution is intended to be a declaration of “official intent” to reimburse expenditures within the meaning of Treasury Regulation §1.150-2

Section 7. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 8. All acts, orders and resolutions of the Council, and parts thereof, inconsistent with this resolution be, and the same hereby are, repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 9. This resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED this August 24, 2009.

CITY OF WESTMINSTER, COLORADO

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)

) SS.

CITY OF WESTMINSTER)

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

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the City Council (the "Council") at a regular meeting held on August 24, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 24, 2009, by an affirmative vote of a majority of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

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

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

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

6. Notice of the meeting of August 24, 2009, in the form attached hereto as Exhibit A, was posted at the Westminster City Hall, 4800 West 92nd Avenue, in the City, not less than twenty-four (24) hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of the City affixed August 24, 2009.

City Clerk

(SEAL)

EXHIBIT A

(Attach Form of Notice of Meeting)



Agenda Item 10 K

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
August 24, 2009



SUBJECT: Resolution No. 41 re 2009 Private Activity Bond Allocation to the Westminster Housing Authority

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended City Council Action

Adopt Resolution No. 41 authorizing the assignment of \$4,843,305 of the City's private activity bond allocation for 2009 to the Westminster Housing Authority for the qualified purposes set forth in the resolution, and authorize the Mayor to execute the necessary documents.

Summary Statement

- The City's 2009 private activity bond (PAB) allocation is \$4,843,305.
- The City's 2009 PAB allocation has not been assigned to any project. The Westminster Housing Authority needs to finance rehabilitation expenses for Westminster Commons, a 130-unit low-income senior housing apartment complex.
- If the City's PAB allocation is not assigned or carried forward by September 15, 2009, it will revert to the State pool.
- The attached Resolution has been reviewed and approved by the City Attorney's Office and is ready for City Council's formal action. This Resolution will assign the allocation to the Westminster Housing Authority. The Authority will also need to take action to accept the assignment and carry it forward.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the City assign the City's 2009 private activity bond allocation to the Westminster Housing Authority or allow the \$4,843,305 allocation to revert back to the State pool?

Alternative

Take no action, and allow the City's allocation to revert to the State pool. This option is not recommended as the Westminster Housing Authority needs the assignment in order to finance rehabilitation work at Westminster Commons.

Background Information

When cities intend to issue tax-exempt bonds to finance certain eligible "private activities" as allowed by the Internal Revenue Code, they can do so only to the extent they have received a PAB allocation from the federal government. Each year, the City of Westminster receives an allocation of private activity bonds to use towards bond financing of certain eligible "private activities" as defined by federal law. The issuance of low-interest, tax-exempt bonds can save developers and the City from the higher costs of commercial financing that can provide a significant savings to the project. Qualified purposes of the bonds include:

- o Qualified single-family mortgage revenue bonds, and mortgage credit certificates;
- o Qualified manufacturing industrial development bonds;
- o Qualified residential rental multifamily housing bonds;
- o Student loans;
- o Certain types of exempt facility bonds; and
- o Qualified redevelopment bonds.

If the PAB allocation is not specifically designated to a specific project by September 15, 2009, federal law allows the allocation to be carried forward and preserved through February 15th of the following year. By February 15, 2009, a specific assignment of the allocation must be made or the City and the State will lose the PAB allocation and it will revert to the State pool. To maintain flexibility and to consider competitive projects, it is important that the City act to either assign or carry forward this allocation.

In recent years, PAB has been allocated by the City Council for both single-family and multi-family residential purposes. The attached resolution authorizes assignment to the Westminster Housing Authority. The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. Staff has been studying various means of financing this reinvestment and private activity bonds will most likely be a part of the financing solution. Staff discussed options for the Westminster Commons earlier this year with City Council during a study session. Therefore, the Authority is in need of this PAB capacity.

The City will be receiving its 2010 allocation in December 2009 and will have the opportunity to assist any new proposed projects in 2010.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **41**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF \$4,843,305 OF THE CITY'S PRIVATE ACTIVITY BOND ALLOCATION FOR 2009 TO THE WESTMINSTER HOUSING AUTHORITY; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$4,843,305 (the "2009 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign it the 2009 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the acquisition, rehabilitation and equipping of a rental housing project to be located in the City (the "Project"); and

WHEREAS, the City desires to assign the 2009 Allocation to the Authority; and

WHEREAS, there has been presented to the City Council (the "Council") the form of an Assignment of Allocation (the "Assignment").

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

The City hereby authorizes the assignment of the 2009 Allocation to the Authority for use solely in connection with the financing of the Project.

The form, terms and provisions of the Assignment hereby are approved and the officers of the City hereby are authorized and directed to execute and deliver the Assignment, with such changes therein as are approved by the officers of the City executing the Assignment. The execution of the Assignment shall be conclusive evidence of the approval by the City of such document in accordance with the terms hereof.

The officers of the City shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignment.

If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

All action not inconsistent with the provisions of this Resolution heretofore taken by the Council and the officers of the City directed toward the assignment of the 2009 Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

This Resolution shall be in full force and effect upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this August 24, 2009.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

ASSIGNMENT OF ALLOCATION

THIS ASSIGNMENT (the "Assignment") dated this ____ day of August, 2009, is between the City of Westminster, Colorado, a home rule municipality (the "Assignor"), and the Westminster Housing Authority, Colorado, a body corporate and politic (the "Assignee").

RECITALS

A. The Assignee intends to finance a project consisting of the acquisition, rehabilitation and equipping of a rental housing project to be located in the City of Westminster, Colorado (the "Project"). The Project will be designed to qualify as a "project" within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the "Act").

B. The Assignee intends to provide for the issuance of its Multi-family Housing Revenue Bonds in the maximum aggregate principal amount of \$4,843,305 (the "Proposed Bonds"), pursuant to the provisions of the Act for the purpose of financing the Project.

C. The Assignee, pursuant to a resolution adopted by the Board of Commissioners of the Assignee on August 24, 2009, declared its intention to take all steps necessary or advisable to effect the issuance of the Proposed Bonds for the financing of the Project.

D. The Assignee has requested that the Assignor assign to the Assignee \$4,843,305 of the Assignor's 2009 allocation under the bond ceiling for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986 (the "Code") as provided for the Assignor as a "designated local issuing authority" under part 17 of article 32 of title 24, Colorado Revised Statutes (the "Allocation Act"), for use in connection with the financing of the Project.

E. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, \$4,843,305 of the Assignor's 2009 allocation from the State Ceiling, which allocation the Assignor has committed and reserved for the Project.

ASSIGNMENT

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee, the Assignor's 2009 allocation from the State Ceiling for private activity bonds in an amount equal to \$4,843,305 for the purpose of issuing the Proposed Bonds to finance the Project. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the "Statewide Balance" as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2009, or (b) Section 24-32-1706(3)(c), C.R.S., applies.
2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.
3. The Assignee hereby:
 - a. accepts the assignment of \$4,843,305 of the Assignor's allocation from the State Ceiling described above; and
 - b. agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such allocation.
4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute the debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF WESTMINSTER, COLORADO, as Assignor

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

WESTMINSTER HOUSING AUTHORITY, as Assignee

Chair

(SEAL)

Attest:

Secretary

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, August 24, 2009
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (July 27, 2009)
- 3. New Business**
 - A. Resolution No. 115 re 2009 Tax Increment Revenue Refunding Bonds – Mandalay Gardens URA
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, JULY 27, 2009 AT 7:34 P.M.

ROLL CALL

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

CONSIDERATION OF MINUTES

Board Member Briggs moved, seconded by Major, to approve the minutes of the meeting of July 13, 2009 with no additions or corrections. The motion carried unanimously.

PUBLIC HEARING ON THE 2ND QUARTER BUDGET AMENDMENT

At 7:35 p.m. the Mayor opened a public hearing to consider the second quarter budget amendment. Staff was present to answer questions, but there were none. The Mayor invited public testimony, and there was none. The hearing was closed at 7:35 p.m.

RESOLUTION NO. 114 AUTHORIZING A SUPPLEMENTAL APPROPRIATION

It was moved by Major, seconded by Dittman, to adopt Resolution No. 114 authorizing a supplemental appropriation to the 2009 budget of the Westminster Economic Development Authority and authorizing the reallocation of previously appropriated bond proceeds and interest earnings. At roll call, the motion passed unanimously.

ADJOURNMENT

There being no other business to come before the Authority, the meeting adjourned at 7:36 p.m.

ATTEST:

Secretary

Chairperson

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
August 24, 2009



SUBJECT: Resolution No. 115 re Approval for up to \$36.250 million in Westminster Economic Development Authority Tax Increment Revenue Refunding Bonds, (Mandalay Gardens Urban Renewal Project), Series 2009 Bond Issue

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended Board Action

Adopt Resolution No. 115 approving the issuance of up to \$36.250 million in Westminster Economic Development Authority Tax Increment Revenue Refunding Bonds, (Mandalay Gardens Urban Renewal Project), Series 2009 as well as approving bond documents including but not limited to the Bond Indenture of Trust; Bond Purchase Agreement; Remarketing Agreement; Reimbursement Agreement; Cooperation Agreement with the City; and Final Official Statement.

Summary Statement

- By approving the attached resolution, WEDA approves the bond refunding and the following contract documents necessary to complete the transaction:
 - a) Bond Indenture of Trust dated August 24, 2009 between the Authority and the Trustee Bank, US Bank National Association.
 - b) Bond Purchase Agreement dated August 24, 2009 between the Authority and the Original Purchaser of the Bonds, Stifel Nicolaus & Company, Inc.
 - c) Remarketing Agreement dated August 24, 2009 between the Authority and Stifel Nicolaus & Company, Inc.
 - d) Reimbursement Agreement dated August 24, 2009 among the Authority, the City, and US Bank National Association as Letter of Credit provider.
 - e) Cooperation Agreement dated August 24, 2009 between the Authority and the City.
 - f) Final Official Statement dated August 24, 2009 for distribution to the purchasers of the bonds.Copies of all of these agreements are on file with the City Clerk's Office.
- In 2006, the Mandalay Gardens URA issued \$38,455,000 in tax-exempt tax increment revenue bonds with an underlying Letter of Credit (LOC) agreement with DEPFA Bank. The bonds converted to Bank Bonds in the fall of 2008 due to a credit downgrade of the Bank, which subsequently led to investors to tender bonds back to the Bank. Council was apprised of this situation that impacted all of Westminster Economic Development Authority's (WEDA) bonds.
- A Request for Proposals (RFP) was released on May 14, 2009 to solicit bids for either a loan or a Direct Pay Letter of Credit agreement. Although U.S. Bank was the sole respondent to the RFP, Staff determined that their response was reasonable relative to costs as well as agreeable to amend the Urban Renewal Plan (URP) to permit a floating tax increment pledge, which allows the City to retain sales tax increment that would have otherwise been kept within the URA.

Expenditure Required: Up to \$36.250 million

Source of Funds: WEDA Tax Increment Revenue Bonds

Policy Issue

Should WEDA refund the Mandalay Gardens URA 2006 Tax Increment Revenue Bonds?

Alternatives

1. Decline or delay approval of the resolution concerning refunding of the 2006 WEDA bonds. This is not recommended. Of the solutions investigated, the proposed action provides a financially prudent longer-term solution and provides WEDA with flexibility not provided under the terms of the existing Indenture and Reimbursement Agreement.
2. Continue to pay on Bank Bonds. This is not recommended. The terms of the Bank Bonds accelerates the repayment of the bonds, which absorbs any excess tax increment revenue that would otherwise be available for use in the General Fund.

Background Information

In 2003, the Mandalay Gardens URA issued \$38,525,000 of taxable tax increment revenue bonds with an underlying LOC agreement with HSF Nordbank to guarantee debt service payment to bond holders. In 2006, the bonds were refunded into tax-exempt bonds and the LOC bank was changed to DEPFA. In the fall of 2008 DEPFA Bank's credit ratings were downgraded, which resulted in investors tendering bonds back to the bank and subsequently resulted in them converting into Bank Bonds. The terms of the Bank Bonds cripple the ability to release excess sales tax increment revenue due to an accelerated repayment schedule per the agreement. A Staff Report was presented to the WEDA Board and the Council dated January 12, 2009 regarding the Bank Bond issue.

The recommendation to refund the 2006 Series WEDA Bonds and obtain a new direct pay LOC provider is deemed beneficial to both WEDA and the City. The refunding results in WEDA benefitting from a long-term financing solution at a projected lower interest rate than currently being paid and converting the bond term length back to its original schedule. The City benefits from a revision in the Urban Renewal Plan providing for the release of excess sales tax increment above debt service, which is currently kept in the URA specifically for costs incurred with the URA.

Staff and the City's financial advisors will be at the August 24, 2009 WEDA meeting to answer WEDA Boards' questions.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments: Bond Resolution
2009 Replenishment Resolution
2009 Cooperation Agreement

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **115**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING, APPROVING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY BY THE AUTHORITY OF TAX INCREMENT ADJUSTABLE RATE REVENUE REFUNDING BONDS (MANDALAY GARDENS URBAN RENEWAL PROJECT) SERIES 2009, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$36,250,000, FOR THE PURPOSE OF REFUNDING OUTSTANDING BONDS.

WHEREAS, the Westminster Economic Development Authority (the “Authority”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes, as amended (the “Act”); and

WHEREAS, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to Section 31-25-109 of the Act, the Authority has the power to issue refunding or other bonds (defined by the Act to mean any bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) from time to time in its discretion for the payment, retirement, renewal or extension of any bonds previously issued by it under the Act; and

WHEREAS, the Authority is authorized to issue bonds without an election; and

WHEREAS, an urban renewal plan, known as the “Mandalay Gardens Urban Renewal Plan” (the “Urban Renewal Plan”), was duly and regularly approved by the City Council of the City for an urban renewal project under the Act (the “Project”); and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, the Authority has previously issued its Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 (the “Series 2003 Bonds”), in the original aggregate principal amount of \$38,525,000 for the purpose of financing the acquisition, construction and equipping of the Project, which 2003 Bonds were refunded by the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project), Series 2006 (the “Series 2006 Bonds” and, together with the Series 2003 Bonds, the “Prior Bonds”); and

WHEREAS, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City that, for the purpose of refunding the Series 2006 Bonds and paying a the costs of the issuing such bonds, the Authority issue its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2009 (the “Series 2009 Bonds”) in the aggregate principal amount of not to exceed \$36,250,000 (the “Refunding Project”); and

WHEREAS, the Series 2009 Bonds will be issued under and pursuant to the Indenture of Trust (the “Indenture”) between the Authority and U.S. Bank National Association, Denver, Colorado, as trustee (the “Trustee”); and

WHEREAS, the Series 2009 Bonds shall be sold and delivered by the Authority to Stifel, Nicolaus & Company, Incorporated, (the “Original Purchaser”), in order to provide funds to refund the Series 2006 Bonds, to fund certain funds and accounts in connection therewith and to pay certain incidental costs incurred in connection with the issuance of the Series 2009 Bonds; and

WHEREAS, the Authority specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Act”) to the Series 2009 Bonds; and

WHEREAS, there are on file with the Secretary of the Board of Commissioners of the Authority (the “Board”): (a) the proposed form of the Indenture; (b) the proposed form of the Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Authority and the Original Purchaser; (c) the proposed form of the Remarketing Agreement (the “Remarketing Agreement”) between the Authority and Stifel, Nicolaus & Company, Incorporated, as the Remarketing Agent; (d) the proposed form of the Reimbursement Agreement (the “Reimbursement Agreement”) among the Authority, the City and U.S. Bank National Association; (e) the proposed form of the 2009 Cooperation Agreement between the Authority and the City (the “Cooperation Agreement”); and (f) the proposed form of the Official Statement (the “Official Statement”), prepared for distribution to the purchasers of the Series 2009 Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO, THAT:

Section 1. All actions (not inconsistent with the provisions of this resolution) heretofore taken by the Board and the officers of the Authority directed toward the Urban Renewal Project, the refunding of the Series 2006 Bonds and the issuance and sale of the Series 2009 Bonds hereby are ratified, approved and confirmed.

Section 2. To provide funds to finance the costs of the Refunding Project, to fund certain funds and accounts in connection therewith and to pay certain incidental costs incurred in connection with the issuance of the Series 2009 Bonds, there are hereby authorized and created an issue of revenue bonds of the Authority designated as its "Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2009" in the aggregate original principal amount of not to exceed \$36,250,000, in accordance with the provisions of the Indenture. The Series 2009 Bonds shall be dated, shall bear interest and shall mature as provided in the Indenture.

The Series 2009 Bonds shall be sold by the Authority to the Original Purchaser in a negotiated private sale at the purchase price set forth in the Bond Purchase Agreement.

Section 3. The forms, terms and provisions of the Indenture, the Remarketing Agreement, the Bond Purchase Agreement, the Reimbursement Agreement, and the Cooperation Agreement (collectively, the "Documents") hereby are authorized and approved, and the Authority shall enter into the Documents in the respective forms as are on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Vice Chairperson of the Board or the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Vice Chairperson of the Board is hereby authorized and directed to execute and deliver the Indenture, the Reimbursement Agreement and the Cooperation Agreement, for and on behalf of the Authority. The Secretary of the Board is hereby authorized and directed to affix the seal of the Authority to, and to attest those Documents requiring the attestation of the Secretary.

Section 4. The furnishing of the information in the Official Statement for the Series 2009 Bonds and the use of the Official Statement by the Original Purchaser in connection with the offering of the Series 2009 Bonds to the public is hereby approved. The Vice Chairperson of the Board is hereby authorized to execute and deliver to the Original Purchaser the Official Statement. The execution of the Official Statement by the Vice Chairperson of the Board shall be conclusive evidence of the approval by the Authority of such document in accordance with the terms hereof.

Section 5. The form, terms and provisions of the Series 2009 Bonds, in the form contained in the Indenture, hereby are approved, with such changes therein as are approved by the Vice Chairperson of the Board; and the manual or facsimile signature of the Vice Chairperson of the Board is hereby authorized and directed to be placed on the Series 2009 Bonds, the seal of the Authority, or a facsimile thereof, is hereby authorized and directed to be affixed to the Series 2009 Bonds, and the Secretary of the Board is hereby authorized and directed to attest the Series 2009 Bonds, in accordance with the Indenture.

Section 6. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act to issue the Series 2009 Bonds, including the paying of incidental issuance expenses, which are hereby authorized to be paid, and the Authority Representative (as defined in the Indenture) is authorized and directed to execute all requisitions to pay issuance expenses, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution, the Documents and the Official Statement, including, without limitation, the execution and delivery of any necessary or

appropriate closing documents to be delivered in connection with the issuance, sale and delivery of the Series 2009 Bonds.

Section 7. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Executive Director of the Authority the authority to accept and sign the Remarketing Agreement, the Bond Purchase Agreement and the Sale Certificate, and the authority to make determinations in relation to the Series 2009 Bonds, subject to the following parameters and restrictions: (a) the aggregate principal amount of the Series 2009 Bonds shall not exceed \$36,250,000; (b) the Series 2009 Bonds shall mature no later than December 1, 2028, and (c) the purchase price of the Series 2009 Bonds shall not be less than 99% of the original principal amount on the Series 2009 Bonds.

Section 8. The Series 2009 Bonds, together with interest payable thereon, are special obligations of the Authority payable solely as provided in the Indenture. The principal of, premium, if any, and interest on the Series 2009 Bonds shall not constitute an indebtedness of the City or the State of Colorado or any political subdivision thereof, and neither the City, the State of Colorado nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the Series 2009 Bonds be payable out of funds or properties other than the Trust Estate, as such term is defined in the Indenture. Neither the Commissioners of the Authority nor any persons executing the Series 2009 Bonds shall be liable personally on the Series 2009 Bonds.

Section 9. After the Series 2009 Bonds are issued, this Resolution shall be and remain irrevocable, and may not be amended except in accordance with the Indenture, until the Series 2009 Bonds and the interest thereon shall have been fully paid, canceled and discharged in accordance with the Indenture.

Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution or part thereof.

Section 12. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this August 24, 2009.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

(SEAL)

Vice Chairperson

Attest:

Secretary

APPROVED AS TO LEGAL FORM:

Attorney for the Westminster Economic
Development Authority

STATE OF COLORADO)
) SS.
 WESTMINSTER ECONOMIC)
 DEVELOPMENT AUTHORITY)

I, Linda Yeager, Secretary of the Westminster Economic Development Authority (the "Authority"), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Commissioners of the Authority (the "Board") at a regular meeting held on August 24, 2009.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of August 24, 2009, by an affirmative vote of a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
Nancy McNally				
Chris Dittman				
Bob Briggs				
Mark L. Kaiser				
Mary Lindsey				
Scott Major				
Faith Winter				

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

4. The Resolution was approved and authenticated by the signature of the Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

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

6. Notice of the meeting of August 24, 2009, in the form attached hereto as Exhibit A was posted in at the Westminster City Hall, 4800 W. 92nd Street, in the City of Westminster, not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Authority affixed this August 24, 2009.

(SEAL)

 Secretary

EXHIBIT A

(Form of Notice of Meeting)

**2009 COOPERATION AGREEMENT
BETWEEN THE CITY OF WESTMINSTER AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

THIS COOPERATION AGREEMENT (this “Agreement”), dated as of September [___], 2009, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the “City”) and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”).

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

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

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

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

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

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

WHEREAS, the Authority has previously issued its Taxable Tax Increment Adjustable Rate Revenue Bonds (Mandalay Gardens Urban Renewal Project) Series 2003 (the “2003 Bonds”), in the original aggregate principal amount of \$38,525,000 for the purpose of financing the acquisition, construction and equipping of the Project, which 2003 Bonds were refunded by the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project), Series 2006 (the “2006 Bonds”); and

WHEREAS, the City and the Authority have previously entered into a cooperation agreement dated as of August 25, 2003 (the “2003 Agreement”), which agreement was amended and restated pursuant to the Amended and Restated 2003 Cooperation Agreement entered into as of March 1, 2006, as amended on October 1, 2007 (the “2006 Agreement” or, along with the 2003 Agreement, the “Prior Cooperation Agreements”) in connection with the 2003 Bonds, the 2006 Bonds and the Project; and

WHEREAS, the Authority has determined that it is in the best interest of the Authority, the City and its residents to refund the 2006 Bonds with the issuance of its Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2009; and

WHEREAS, the City Council of the City (the “Council”) has adopted its Resolution 09-___ declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Bond Reserve Requirement (the “Replenishment Resolution”) as defined in the Indenture of Trust dated as of September [___], 2009 (the “Indenture”), between the Authority and U.S. Bank National Association, as trustee (the “Trustee”); and

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

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

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

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

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

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

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

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

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

5. **ALLOCATION OF SALES TAX REVENUE.** The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the revenues derived from the City sales tax at a rate as specified in the Sales Tax Rate Certificate, attached as Exhibit D to the Indenture, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

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

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

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

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

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

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

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

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

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces the Prior Cooperation Agreements. Any amounts owing to the City by the Authority pursuant to the Prior Cooperation Agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment of the Bonds or Additional Bonds.

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

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER

BY _____
Executive Director

BY _____
City Manager

ATTEST:

ATTEST:

Secretary

City Clerk

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

BY _____
Authority Attorney

BY _____
City Attorney

**WESTMINSTER HOUSING AUTHORITY
WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE
MONDAY, August 24, 2009
7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (February 23, 2009)
- 3. New Business**
 - A. Resolution No. 34 re 2009 Private Activity Bond Allocation from the City of Westminster
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, FEBRUARY 23, 2009 AT 7:49 P.M.

ROLL CALL:

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

MINUTES OF PRECEEDING MEETING:

Member Briggs moved, seconded by Kaiser, to accept the minutes of the meeting of December 22, 2008 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 33 AUTHORIZING 2008 FINAL SUPPLEMENTAL APPROPRIATION

It was moved by Member Major, seconded by Winter, to adopt Resolution No. 33 authorizing a supplemental appropriation of \$8,000 to the 2008 Westminster Housing Authority budget. At roll call, the motion passed unanimously.

ADJOURNMENT:

There being no further business to conduct, the meeting was adjourned at 7:50 p.m.

Chairperson

ATTEST:

Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
August 24, 2009



SUBJECT: Resolution No. 34 re Accepting the Assignment of \$4,843,305 of Private Activity Bond Allocation from the City of Westminster

Prepared By: Vicky Bunsen, Community Development Programs Coordinator

Recommended Board Action

Adopt Resolution No. 34 accepting the assignment from the City of Westminster of \$4,843,305 of private activity bond allocation for 2009 for the qualified purposes set forth in the assignment, and authorize the Chair to execute the necessary documents.

Summary Statement

- The City of Westminster's 2009 private activity bond (PAB) allocation is \$4,843,305. The City has assigned this allocation to the Westminster Housing Authority.
- The Westminster Housing Authority needs to finance rehabilitation expenses for Westminster Commons, a 130-unit low-income senior housing apartment complex. The PAB allocation can be used for this purpose.
- The attached Resolution has been reviewed and approved by the Authority Attorney's Office and is ready for the Board of Commissioners' formal action. This Resolution will accept the PAB allocation from the City.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Should the Authority accept the assignment of the City's 2009 private activity bond?

Alternative

Take no action, and refuse to accept the assignment. This option is not recommended; as the Westminster Housing Authority needs the assignment in order to finance rehabilitation work at Westminster Commons.

Background Information

The Authority owns Westminster Commons, a 130-unit senior housing complex. The Commons is thirty years old and is in need of substantial reinvestment. Staff has been studying various means of financing this reinvestment and private activity bonds will most likely be a part of the financing solution. Therefore, the Authority is in need of this PAB capacity assigned by the City. Upon receipt of the assignment, the Authority will continue to study financing options for rehabilitation of Westminster Commons.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. 34

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

A RESOLUTION

AUTHORIZING THE ACCEPTANCE OF THE ASSIGNMENT OF \$4,843,305 OF THE CITY OF WESTMINSTER'S PRIVATE ACTIVITY BOND ALLOCATION FOR 2009 BY THE AUTHORITY; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Private Activity Bond Ceiling Act, constituting Title 24, Article 32, Part 17, Colorado Revised Statutes (the "Allocation Act"), the City of Westminster, Colorado (the "City") has received a direct allocation of the State of Colorado's Private Activity Bond Ceiling in the amount of \$4,843,305 (the "2009 Allocation"); and

WHEREAS, the Westminster Housing Authority (the "Authority") has requested that the City assign the 2009 Allocation to the Authority pursuant to Section 24-32-1706 of the Allocation Act to be used to issue bonds to finance the acquisition, rehabilitation and equipping of a rental housing project to be located in the City (the "Project"); and

WHEREAS, the Authority desires to accept the assignment of the 2009 Allocation by the City; and

WHEREAS, there has been presented to the Board of Commissioners (the "Board") the form of an Assignment of Allocation (the "Assignment").

NOW, THEREFORE, BE IT RESOLVED BY BOARD OF COMMISSIONERS OF WESTMINSTER HOUSING AUTHORITY:

The Authority hereby accepts the assignment of the 2009 Allocation by the City for use solely in connection with the financing of the Project.

The form, terms and provisions of the Assignment hereby are approved and the officers of the Authority hereby are authorized and directed to execute and deliver the Assignment, with such changes therein as are approved by the officers of the Authority executing the Assignment. The execution of the Assignment shall be conclusive evidence of the approval by the Authority of such document in accordance with the terms hereof.

The officers of the Authority shall take such other steps or actions necessary or reasonably required to carry out the terms and intent of this Resolution and the Assignment, including making a determination to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose pursuant to Section 24-32-1706(3)(c), C.R.S.

If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

All action not inconsistent with the provisions of this Resolution heretofore taken by the Board and the officers of the Authority directed toward the assignment of the 2009 Allocation and the authorization of the Assignment hereby are ratified, approved and confirmed.

This Resolution shall be in full force and effect upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this August 24, 2009.

(SEAL)

Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Attorney for Authority