



WESTMINSTER
C O L O R A D O

AGENDA

SPECIAL CITY COUNCIL MEETING

MONDAY, AUGUST 30, 1999 AT 7:45 P.M.

1. Pledge of Allegiance

2. Roll Call

3. Purpose of Special Council Meeting

A. Councillor's Bill No. 53 re authorizing the sale and conveyance of certain real property of the City and the buildings thereon and authorizing the execution of an amended Lease Purchase Agreement between the City and the City of Westminster Building Authority to finance certain capital facilities and other improvements and for the transaction of such other business incidental to the foregoing as may come before said meeting.

B. Councillor's Bill No. 54 re Revised Marriott Hotel Business Assistance Package

4. Adjournment

August 25, 1999

To All Members of City Council:

A special meeting of the City Council has been set for Monday, August 30, 1999 at 7:45 P.M. at City Hall for the following purposes:

Councillor's Bill No. 53 authorizing the sale and conveyance of certain real property of the City and the buildings thereon and authorizing the execution of an amended Lease Purchase Agreement between the City and the City of Westminster Building Authority to finance certain capital facilities and other improvements and for the transaction of such other business incidental to the foregoing as may come before said meeting.

And

Councillor's Bill No. 54 re Revised Marriott Hotel Business Assistance Package

Sincerely,

Michele Kelley, CMC
City Clerk

August 25, 1999

Michele Kelley, City Clerk
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Michele:

Please call a special meeting of the City Council for Monday, August 30, 1999 at 7:45P.M. to be held at City Hall for the following purposes:

Councillor's Bill No. 53 authorizing the sale and conveyance of certain real property of the City and the buildings thereon and authorizing the execution of an amended Lease Purchase Agreement between the City and the City of Westminster Building Authority to finance certain capital facilities and other improvements and for the transaction of such other business incidental to the foregoing as may come before said meeting.

And

Councillor's Bill No. 54 re Revised Marriott Hotel Business Assistance Package

Sincerely,

Nancy M. Heil, Mayor

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON MONDAY, AUGUST 30, 1999 AT 7:45 P.M.

PLEDGE OF ALLEGIANCE:

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

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro Tem Merkel and Councillors Allen, Atchison, Hicks and Smith. Also present were William Christopher, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk. Absent was Councillor Dixon.

PURPOSE OF SPECIAL MEETING:

Mayor Heil stated the purpose of the special meeting was to consider a Councillor's Bill authorizing the sale and conveyance of certain real property of the City and the buildings thereon and authorizing the execution of an amended Lease Purchase Agreement between the City and the City of Westminster Building Authority to finance certain capital facilities and other improvements and for the transaction of such other business incidental to the foregoing as may come before said meeting; and a Councillor's Bill amending the Marriott Hotel Business Assistance Package.

ORDINANCE NO 2702 – SALE OF CERTIFICATES OF PARTICIPATION:

A motion was made by Allen and seconded by Smith to adopt Councillor's Bill No. 53 as an emergency ordinance approving the sale of \$19.72 million Certificates of Participation for the Westminster Mall Improvements and the Westminster Boulevard Flyover Construction Project, and direct the Mayor and City Clerk to sign necessary documents on behalf of the City. Director of Finance Mary Ann Parrot was present to address Council. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 54 – MARRIOTT HOTEL REVISED ASSISTANCE AGREEMENT:

A motion was made by Hicks and seconded by Atchison to pass Councillor's Bill No. 54 on first reading amending the existing business agreement with the Church Ranch Hotel Group to include a business assistance package for the construction of a 140-160 room Marriott Spring Hill Suites Hotel. John Carpenter, Director of Community Development, was present to address Council. Upon roll call vote, the motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 8:10 P.M.

ATTEST:

Mayor

City Clerk



WESTMINSTER COLORADO

Agenda Memorandum

Date: Monday, August 30, 1999

Subject: Actions re Financing for Westminster Mall Improvements and Westminster Blvd Construction (Certificates of Participation)

Prepared by: Mary Ann Parrot, Finance Director

Introduction

City Council approval is requested for Lease-Purchase Financing (Certificates of Participation (COP's)) for \$19.72 million for the following projects:

- \$7.5 million for renovations at Westminster Mall, as per City Council approval of the agreement between the City of Westminster and the Westminster Mall Company,
- \$12.1 million for the construction of Westminster Boulevard Flyover, crossing U.S. 36 at approximately 98th to 100th Avenues, to alleviate congestion in and around 92nd Avenue and Sheridan Boulevard, thus providing an additional northern access point to the Westminster Mall at Harlan Street.
- Costs of issuance to be provided from COP proceeds.

Funds for lease payments and the servicing of the payments due are included in the recommended Year 2000 budget and in the preliminary Year 2001 budget. Funds for lease payments in subsequent years will be recommended for City Council approval in the relevant budgets submitted for Council approval in future years.

Summary

In March 1999, after consideration of various financing options, City Council directed Staff to proceed with using lease-purchase financing for the City's portion of the improvements needed to the Westminster Mall, along with related road improvements. The primary reason for City Council approval was to expedite construction. Two underlying concerns included the avoidance of high levels of cost inflation in land acquisition and construction and the minimizing of competition presented by the FlatIrons Mall in Broomfield, scheduled for opening in early 2001.

City Council agreed with the Staff recommendation to use City Hall as collateral for the lease-purchase financing, as the prudent matching of the nature and useful life of the asset with the importance of the needed improvements and their respective expected useful lives.

In addition, Staff explored the use of the City's recovery policy, to recapture some of the cost of the flyover project from appropriate property owners and developers who will benefit from the increased land values resulting from the flyover once it is completed. Staff intends to administer this recovery once construction is completed.

Staff Recommendation

Adopt Councillor's Bill No. 53 as an emergency ordinance, approving the sale of \$19.72 million Certificates of Participation for the Westminster Mall Improvements and the Westminster Boulevard Flyover Construction Project, and direct the Mayor and City Clerk to sign necessary documents on behalf of the City.

Background Information

Early in 1999, Staff and the City's finance team met to consider financing alternatives for the Westminster Mall improvements and the flyover construction extending Harlan Street to the north, over U.S. 36, to relieve congestion and provide direct access to the Mall from the northern sectors of the City.

The City had included the Mall improvements in its 1999 Capital Improvement Program as a bonded project, realizing the useful life of the improvements would stretch over many years, thus matching the term of the financing.

The City had also included the Westminster Boulevard Flyover construction in its 1999 Capital Improvement Program as a bonded project for two key reasons:

- The need to provide relief to the traffic congestion around the Westminster Mall, particularly at the intersection of 92nd Avenue and Sheridan Boulevard and the need to improve access into and out of the Westminster Mall. In turn, this surface transportation project would create an "alternative" route to and from the Westminster Mall, as well as provide relief to Sheridan Boulevard. This traffic improvement will help keep the Mall competitive in the future. Construction on this project needs to move forward in the very near term.
- Interest rates are at historic lows, land values and construction costs are expected to escalate over the next few years, and the wiser choice is to finance and construct the improvements sooner, rather than later, as the risk of increasing costs is real.

Staff met with the City's finance team, comprised of Bond Counsel Sherman & Howard, Bond Underwriter Hanifen, Imhoff Inc., and Financial Advisor James Manire. They discussed a total of six different types of financing available to the City, as well as various combinations of the financing methods. Staff recommended the use of Certificates of Participation for several reasons, primary among them the need for expediting the construction to avoid increases in costs due to inflation and the competition afforded at the FlatIrons Crossing, due to open in early 2001.

During discussions with the finance team, Staff discussed at length the use of Special Improvement District designation and the City's policy on recovery of costs, to offset the cost of the project. Once financing is in place, the City can pursue the use of a special district to aid in cost recovery of the project costs. The property owners and developers will derive specific benefits from land appreciation when the project is completed. In addition, the City's policy of collecting recoveries from the developers can further enhance the costs recaptured.

Other financing options discussed and discarded included: Limited Use Sales Tax Bonds, General Obligation bonds, Special Improvement District Bonds, Urban Renewal (WEDA) Bonds, and HUTF (Highway Users Transportation Funding) Revenue Bonds. These alternative options were discounted for some or all of the following reasons: existing laws and bond covenants, delays anticipated in securing property owner approvals, complexity and creditworthiness of the bond issue, and/or costs.

Staff and members of the City's finance team will be available at the August 30 Special City Council Meeting to answer questions City Councilors may have.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

ACKNOWLEDGMENT OF NOTICE AND
CONSENT TO SPECIAL MEETING

We, the undersigned members of the City Council of The City of Westminster, Colorado, do hereby acknowledge receipt of the foregoing notice of the special meeting, and we hereby waive any and all irregularities, if any, in such notice and in the manner of service thereof upon us and consent and agree to the holding of such special meeting at the time and place specified in said notice and to the transaction of any and all business which may come before such meeting.

City Council Members
The City of Westminster, Colorado

By Authority

Ordinance No. 2702

Councillor's Bill No. 53

Series of 1999

Introduced by Councillors

A BILL

FOR AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN REAL PROPERTY OF THE CITY AND BUILDINGS LOCATED THEREON; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT, A WARRANTY DEED, AND AN OFFICIAL STATEMENT; IRREVOCABLY PLEDGING A PORTION OF THE PROCEEDS OF THE SALE OF SUCH PROPERTY TO CERTAIN PAYMENTS WHICH THE CITY IS OBLIGATED TO MAKE; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED TRANSACTION; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

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

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

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

WHEREAS, the City Council of the City (the "City Council") has determined and hereby determines it is in the best interests of the City and its inhabitants that the City sell and convey certain real property of the City and the buildings located thereon, generally City Hall (collectively, the "1999 Leased Property") to The City of Westminster Building Authority (the "Authority") and then lease the 1999 Leased Property back from the Authority pursuant to a Lease Purchase Agreement dated as of November 15, 1998, as amended by the First Amendment to Lease Purchase Agreement dated as of August 15, 1999 (the "First Amendment") (as so amended, the "Lease") both by and between the City and the Authority; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its inhabitants that the City and the Authority enter into the First Amendment to provide for the leasing by the City from the Authority of the 1999 Leased Property and the use of the proceeds from the conveyance of the 1999 Leased Property to the Authority to pay the costs of various capital improvements; and

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

WHEREAS, the Authority and U.S. Bank National Association, as Trustee (the "Trustee"), will enter into a First Supplement to Mortgage and Indenture of Trust dated as of August 15, 1999 (the "First Supplement") which supplements the previously executed Mortgage and Indenture of Trust dated as of November 15, 1998 (together, the "Indenture"), pursuant to which there will be issued Certificates of Participation, Series 1999 (the "Certificates"); and

WHEREAS, neither the Lease nor the issuance of the Certificates shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, there have been presented to the City Council at this meeting: (i) the proposed form of the First Amendment, (ii) the proposed form of the Continuing Disclosure Certificate to be provided by the City; (iii) the Preliminary Official Statement dated August 12, 1999 (the "Preliminary Official Statement") relating to the Certificates; and (iv) the proposed form of the warranty deed to convey the 1999 Leased Property to the Authority; and

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Short Title. This Ordinance shall be known and may be cited by the short title "1999 Capital Facilities Financing Ordinance."

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

Section 3. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition, construction, renovation and equipping of the 1999 Project and the conveyance and lease-back of the 1999 Leased Property under the terms and provisions set forth in the Lease and the Indenture is necessary, convenient and in furtherance of the City's purposes and is in the best interests of the inhabitants of the City and that the fair value of the 1999 Leased Property does not exceed its sales price, and the City Council hereby authorizes and approves the same.

Section 4. Conveyance of 1999 Leased Property. The City Council hereby approves the sale and conveyance to the Authority of the real property and buildings located thereon, generally known as City Hall and known herein as the "1999 Leased Property" and the appropriate officers of the City are hereby authorized to execute and deliver such deeds and other instruments as may be necessary to effect said sale and conveyance.

Section 5. Approval of First Amendment. The First Amendment in substantially the form presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor of the City is authorized and directed to execute and deliver the First Amendment in substantially the form and with substantially the same contents as presented to this meeting of the City Council, for and on behalf of the City.

Section 6. Approval of Official Statement. A final Official Statement, in substantially the form of the Preliminary Official Statement presented to this meeting of the City Council, is in all respects approved and authorized. The Mayor is hereby authorized and directed for and on behalf of the City to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement presented to this meeting of the City Council, with such changes as may be approved by the Finance Director. The distribution by Hanifen, Imhoff Inc., Denver, Colorado of the Preliminary Official Statement and the final Official Statement to all interested persons is hereby ratified, approved and authorized.

Section 7. Authorization to Execute Collateral Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this ordinance. The Mayor and City Clerk and other appropriate officials or employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance, including but not limited to the execution of the Letter of Representations, the Continuing Disclosure Certificate and such other certificates and affidavits as may be reasonably required by Hanifen, Imhoff Inc., Denver, Colorado. The appropriate officers of the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 8. No General Obligation Debt. No provision of this ordinance, the Lease, the Indenture, the Preliminary Official Statement or the final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall not have any obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. Each Certificate shall evidence an assignment of a proportionate interest in the right to receive revenues under the Lease.

The Certificates shall not constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year, and shall not constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. The issuance of the Certificates shall not directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 9. Reasonableness of Rentals. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase the 1999 Leased Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the 1999 Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the 1999 Leased Property.

Section 10. Irrevocable Pledge. For the purposes of Article X, Section 20 of the Colorado Constitution, the City hereby irrevocably pledges \$7,500,000 of the proceeds of the sale of the 1999 Leased Property to pay all amounts due with respect to the Assistance Agreement for the Remodeling of the Westminster Mall in the City of Westminster, dated August 9, 1999, between the City and Westminster Mall Company.

Section 11. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any other such bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the City Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the City Council be, and the same hereby are, suspended.

Section 12. Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance, the intent being that the same are severable.

Section 13. Declaration of Emergency. In order to complete the conveyance of the 1999 Leased Property while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is immediately necessary for the preservation of the public peace, health, safety and financial well-being of the City. This ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

Section 14. Effective Date, Recording and Authentication. This ordinance shall be in full force and effect immediately upon enactment following final passage. This ordinance shall be recorded in "The Ordinance Book" of the City kept for that purpose, and shall be authenticated by the signatures of the Mayor and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on August 30, 1999.

Mayor

(SEAL)

ATTESTED:

City Clerk

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

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

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council (the "Council") of the City at a special meeting of the Council held at the City Hall on August 30, 1999.

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

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

Those Voting Yes:	<u>Councillor Fred Allen</u>
	<u>Councillor Herb Atchison</u>
	<u>Mayor Nancy M. Heil</u>
	<u>Councillor Butch Hicks</u>
	<u>Mayor Pro Tem Ann Merkel</u>
	<u>Councillor Suzanne Smith</u>
Those Voting No:	<u>None</u>
Those Abstaining:	<u>None</u>
Those Absent:	<u>Councillor Sam Dixon</u>

4. That notice of the meeting of August 30, 1999, in the form, attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

5. That the ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on September 2, 1999. The affidavit of publication is attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this 2nd day of September, 1999.

(SEAL)

City Clerk

EXHIBIT A

(Attach Notice of Meeting)

EXHIBIT B

(Attach Affidavit of Publication)



WESTMINSTER COLORADO

Agenda Memorandum

Date: August 30, 1999

Subject: Councillor's Bill No. 54 re Revised Business Assistance Agreement with Marriott Hotel

Prepared by: Bill Christopher, City Manager

Introduction

City Council action is requested to approve a revised business assistance agreement with the Church Ranch Hotel Company to support the addition of a Spring Hill Suites Hotel on the Church Ranch site.

Summary

City Council action is requested on the Councillor's Bill which would approve the amended business assistance agreement with the Church Ranch Hotel group. Specifically, the amended agreement calls for adding an additional hotel component with financial assistance from the City. The Church Ranch Hotel group is proposing the addition of a 140-160 room Marriott Spring Hill Suites Hotel to be constructed adjacent to the planned full service Marriott Hotel at Church Ranch (see attached map).

The Spring Hill Suites Hotel is estimated to cost approximately \$14.7 million. The recommended business assistance package is \$3.275 million to be paid quarterly over five years from sales tax and accommodation tax revenues generated from the Spring Hill Suites Hotel along with waiver of one time costs associated with the construction of the hotel. The timing on the full service hotel would remain the same which provides for construction to start no sooner than one year after the Westin Hotel has been operating.

Staff Recommendation

Pass Councillor's Bill No. 54 on first reading amending the existing business assistance agreement with the Church Ranch Hotel Group to include a business assistance package for the construction of a 140-160 room Marriott Spring Hill Suites Hotel.

Background

Subsequent to the decision to have the Marriott Hotel group wait to build a full-service, 250-room hotel at Church Ranch until one full year after the Westin Hotel has been in operation, the same development group has submitted a revised approach and request to maintain the commitment with the Marriott Hotel chain to protect the Church Ranch site and not allow a competitor franchisee to secure the full-service Marriott Hotel for a site in Broomfield. The White Lodging and Church Ranch Hotel Company (Charlie McKay, Bruce Etkin, and Gregg Bradbury) have proposed an interim step that they represent will maintain the Marriott Hotel chain's commitment to the Church Ranch site for the construction of the 250-room, full-service hotel starting no sooner than the Spring of 2001.

Their request is to construct and operate a 140-160-room Spring Hill Suites Hotel adjacent to the future full-service hotel site at Church Ranch (see attached map). As part of their approach, they have requested from the City a Business Assistance Agreement. Staff subsequently worked with Greg Hartman with HVS, hotel consultant, which the City used previously in crafting the Westin Hotel deal. In Mr. Hartman's opinion, the Spring Hill product would not be in direct competition with the full-service Westin Hotel and would not be of the same market niche as the Westin Hotel.

White Lodging and the Church Ranch Hotel group have represented that the room rate for the Suites Hotel would be in the \$80-90 range. This same group has represented to City Staff that without a Business Assistance Package, they would be unable to go forward with the Suites Hotel and thus lose the opportunity to build the full-service Marriott Hotel, which would then likely go to a competitor franchisee in Broomfield.

The Church Ranch Hotel group has requested a Business Assistance Package using revenue generated from the Spring Hill Suites Hotel totaling \$3,275,000 using a present value approach. Quarterly payments over five-years would be made with either the full amount of \$3,275,000 being paid or the expiration of 60 quarterly installments being realized, whichever ever comes first. The City would have no further obligation after meeting this provision. This assistance package is separate and apart from the previous Business Assistance Package that City Council approved for the full-service Marriott Hotel in September, 1998. The single reason the suites hotel assistance package is being recommended is to protect the full service Marriott hotel opportunity.

The key provisions of the attached agreement are as follows:

- The Church Ranch Hotel Company is obligated to build the Spring Hill Suites Hotel by no later than December 31, 2001.
- The Suites Hotel will consist of 140-160 rooms with no restaurant and no conference space.
- The caliber of the Suites Hotel shall be the highest quality, which Marriott uses for the Spring Hill Suites Hotel product line.
- The exterior of this hotel will be compatible with the full-service Marriott Hotel and will be spelled out accordingly in the Official Development Plan, which the City is required to approve.
- In the event that the full-service hotel has not commenced construction before March 1, 2004, the Church Ranch Hotel Company that is obligated to build the Suites Hotel shall reimburse the City a portion of the funds, which the City paid to them in conjunction with the Suites Hotel. The dollar amount of the reimbursement shall be determined at the time of the Official Development Plan for the Spring Hill Suites Hotel.
- The Church Ranch Hotel Company II (Suites Hotel) agrees to remit to the City the City's Accommodation Tax at the then current rate, as well as adding a separate two percent Conference Center Fee to the hotel's room rate. The additional two percent fee shall be collected only for the duration of the Business Assistance Agreement.
- The Utility Tap Fees for the Church Ranch Hotel Company II development is specified in the agreement the same as for the full-service Marriott Hotel.
- Other than the Utility Tap Fees, the City shall waive during the construction period all one-time fees and assessments normally charged by the City as a condition to building permit issuance, i.e. plan review fees, building permit fees, building use taxes.
- The City reserves the right to impose other fees, assessments or charges levied against the Suites Hotel if said fees, assessments, charges or the like are imposed against all like businesses in the City of Westminster.
- The Business Assistance Package quarterly payments will consist of the Accommodations Tax, two percent Conference Center Fee, and City Sales Tax.
- The City's Sale and Use Tax for parks, open space and trail shall be exempt from the rebate payment to the Suites Hotel.
- The only substitute hotel product for the Marriott Spring Hill Suites Hotel would be exclusively determined by the City and must be a Marriott Hotel product equal to or better than a Spring Hill Suites Hotel.

From Staff's assessment of the full-service Marriott Hotel situation, it is clear that the Marriott parent company intends to have a full-service hotel in the US 36 corridor. We know that there is the opportunity and desire by a different franchisee to build a full-service Marriott in Broomfield, close to the Interlocken development. It is Staff's assessment that it is better to move forward with the Marriott suites hotel package at Church Ranch, which is Westminster's best assurance that the full-service hotel will be built in Westminster as opposed to a location outside Westminster.

The other alternative for City Council to evaluate would be to decline the Business Assistance Agreement on the Spring Hill product. This would prevent the Suites Hotel from going forward at Church Ranch and most likely would produce the result of the full-service Marriott Hotel locating elsewhere.

It is Staff's belief that by supporting the 390-410 hotel rooms under the Marriott flag, coupled with the 369 rooms at the Westin Hotel, that a significant nucleus will be created to support the Promenade Conference Center.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **54**

SERIES OF 1999

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH CHURCH RANCH HOTEL GROUP PERTAINING TO ADDING A MARRIOTT SPRING HILL SUITES HOTEL

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

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

WHEREAS, the Church Ranch Hotel Company Group (I and II) has indicated an interest in building a Marriott Spring Hill Suites Hotel at Church Ranch; and

WHEREAS, Church Ranch Hotel Company II would build a 140-160 suites hotel at an estimated cost of \$14.7 million; and

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

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

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 30th day of August, 1999.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of September, 1999.

ATTEST:

Mayor

City Clerk

**AGREEMENT BETWEEN THE CITY OF WESTMINSTER
AND CHURCH RANCH HOTEL COMPANY I LLC AND CHURCH RANCH HOTEL
COMPANY II LLC
FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION
OF A HOTEL AND A SUITES HOTEL**

This Agreement is made and entered into this 13th day of September, 1999, by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality (“City”), CHURCH RANCH HOTEL COMPANY I LLC, a Colorado limited liability company (“CRHC”), and CHURCH RANCH HOTEL COMPANY II LLC, a Colorado limited liability company (“CRHC II”).

WHEREAS, City is a Colorado home-rule municipality with all the authority granted to home-rule municipalities pursuant to Colorado Constitution Article XX, section 6, and its City Charter adopted pursuant thereto;

WHEREAS, CRHC is a Colorado limited liability company with whom City has previously entered into a September 28, 1998 Agreement for the cooperative development and construction of a 240 to 260 room, first-class, hotel expandable to 350 room and an approximately 10,000 square foot conference center in Church Ranch Corporate Center (“Project I”) to be located south and east of Church Ranch Boulevard, and east of 103rd Avenue, as shown in Exhibit A;

WHEREAS, CRHC II is a Colorado limited liability company with whom City has previously discussed a cooperative development and construction of a 150 to 160 room suites hotel in Church Ranch Corporate Center (“Project II”) to be located south and east of Church Ranch Boulevard, and east of 103rd Avenue, as shown in Exhibit A;

WHEREAS, Project I and Project II will be referred to collectively as “Projects”;

WHEREAS, City, CRHC and CRHC II now wish to formalize their agreement concerning the development, construction, and financing of these Projects; and

WHEREAS, it is also the intent of the parties to set forth City’s financial participation in these Projects, as well as the respective obligations of City, CRHC and CRHC II in connection with the development and construction of the Projects.

NOW, THEREFORE, in consideration of the above premises and the promises and covenants set forth below, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City, CRHC and CRHC II agree as set forth below:

I. DEVELOPER’S OBLIGATIONS

1.1 CRHC shall develop and cause to be constructed, equipped, and furnished a first-class, full-service, 240 to 260-room hotel with expansion capability of another 100 rooms (“Hotel”) in the general location identified on the site location plan attached to this Agreement as Exhibit A and incorporated herein by this reference. The final size of the Hotel will be determined during the Official Development Plan (“ODP”) process. The final location of the Hotel and the site plan will be determined between CRHC and City as part of the ODP for the Hotel, subject to final City Council approval. The City and CRHC agree that the hotel franchisor shall be the Marriott, or an alternate full service, first-class hotel as described in Exhibit B.

1.1.1 CRHC II shall develop and cause to be constructed, equipped and furnished a first-class, 150 to 160 room suites hotel (“Suites Hotel”) in the general location identified on the site location plan attached to this Agreement as Exhibit A and incorporated herein by this reference. The final size of the Suites Hotel will be determined during the Official Development Plan (“ODP”) process. The final location of the Suites Hotel and the site plan will be determined between CRHC II and City as part of the ODP for the Suites Hotel, subject to final City Council approval. The City and CRHC II agree that the hotel franchisor shall be the Spring Hill Marriott, or if Marriott declines to approve the Spring Hill Suites Hotel, a different Marriott hotel product equal to or better than a Spring Hill Suites Hotel may be substituted as determined exclusively by the City.

1.1.2 City, CRHC, and CRHC II shall work together on the siting of the Hotel and Suites Hotel in a manner consistent with maintaining the continuity of the area. The Hotel and an attached conference center (“Conference Center”) not to exceed approximately 10,000 square feet to be constructed by CRHC shall be built as a fully integrated facility, and the Hotel and Conference Center shall be owned by CRHC. The Hotel may include an attached restaurant or a restaurant in a separate building as specified in the ODP and as mutually agreed upon by City and CRHC. The Suites Hotel shall be constructed by CRHC II, shall be built as a fully integrated facility and shall be owned by CRHC II.

1.2 The Hotel shall be operated, managed, and maintained in a manner consistent with how first-class, full-service hotels and first-class conference facilities are operated, managed, and maintained. CRHC and CRHC II are responsible for all capital improvements, repairs and maintenance for the Projects. The initial operations manager of the Projects shall be White Lodging Service Corporation.

1.3 As part of the management and operation of the Projects, CRHC and CRHC II shall remit to City, City’s accommodations tax at the then current rate, as well as a separate Conference Center Fee in an amount equal to two percent (2%) of the Hotel’s and Suites Hotel’s room rate charged to and collected from its guests by the hotel franchisee. The Conference Center Fee shall be collected only for the duration of the Business Assistance Rebate contained in Section 2.6 below.

1.4 CRHC and CRHC II shall, at their expense, as provided in this Agreement, obtain all entitlements necessary for the development and construction of the Projects, subject to the terms contained elsewhere herein.

1.5 The responsibility for paying all property taxes, other taxes, annual fees, and fees and taxes levied by the state, county, or other taxing authority for the Projects shall be the exclusive responsibility of CRHC and CRHC II or the successors or transferees thereof.

1.6 CRHC and CRHC II shall be responsible for providing, at their expense, all normal site improvements and utilities, including water, sewer, electric, gas, telephone, cable TV, optic and/or data transmission lines, and the parking areas and landscaping for the Projects.

1.7 CRHC and CRHC II will be responsible for paying the customary domestic water and sanitary sewer tap fees (“Tap Fees”) for the Projects up to an amount not to exceed \$270,000 for a 4-inch tap for the Hotel . Any Tap Fees for the Projects in excess of \$270,000 shall be the responsibility of City exclusive of any tap fee charge for connecting to the City’s reclaimed water line. Tap Fees for the full-service hotel shall be charged based on the 1998 City fee schedule, a copy of which is attached as Exhibit C. If a restaurant is built in a separate building and/or needs additional tap, such cost will be borne by CRHC. CHRC II shall pay full water and sewer tap fees for the Suites Hotel based on the tap fee schedule in effect at the time the fees are due for payment.

1.8 CRHC will design the Hotel and Conference Center building interior and exterior based on a first-class full-service hotel, consistent with how other first-class, full-service hotels and conference centers are designed and constructed in the City of Westminster.

1.8.1 CRHC II will design the Suites Hotel building exterior based on the same quality of materials as the full service Hotel. The interior quality of design and materials shall be based on Marriott Hotel’s current interior design/materials requirements and specifications for a Spring Hill product.

1.8.2 An approved Official Development Plan by the City will meet the requirements under this Agreement for design and materials.

1.9 CRHC agrees that it will not begin construction of the Hotel and Conference Center until twelve (12) months after the opening of the Westin Hotel in the Westminster Promenade development. City, in its sole discretion, may allow construction at an earlier date. However, CRHC shall be entitled to begin construction on March 1, 2001 regardless of the opening of said Westin Hotel.

1.9.1 CRHC II may begin construction of the Suites Hotel as soon as the ODP is approved by City and the building permit has been issued.

1.10 The ODP’s for the Hotel and Suites Hotel will be processed through the City at the same time and each will be conditional upon the approval of the other ODP.

II. CITY OBLIGATIONS

2.1 For and in consideration of CRHC’s development, construction, furnishing, and equipping of the Project I, City shall convey to CRHC a portion of the site for the Project I (“Project Site”) as legally described and shown on Exhibit A (“City Parcel”). The conveyance shall be in fee simple, with marketable and insured title free and clear of any liens or encumbrances. City shall pay the assessment for the 104th Avenue Special Improvement District with respect to the City Parcel only. CRHC shall be responsible for paying any other property taxes due on the City Parcel. City shall provide an ALTA title insurance policy.

2.1.1 The Project Site is anticipated to consist of such acreage as is mutually determined to be necessary by City and CRHC, with the City Parcel of approximately five (5) acres less right-of-way, to be provided from City-owned land within the Church Ranch Home Place Planned Unit Development. The precise configuration and size of the Project I Site shall be determined in conjunction with the adoption of the ODP for the Projects.

2.1.2 The conveyance of the City Parcel by City to CRHC shall occur by general warranty deed within thirty (30) days after approval of a mutually acceptable ODP for both the Hotel and the Suites Hotel.

2.1.3 CRHC shall arrange for the acquisition of the remainder of the Project Site other than the City Parcel (“CRHC Parcel”) from its current owner, Church Ranch Land Co. LLC. The conveyance of the City Parcel to CRHC shall be contingent upon the prior or simultaneous conveyance of the CRHC Parcel and the Project II site as defined below to CRHC and CRHC II respectively. By execution of this Agreement and being bound by the provisions of this Section 2.1.3, Church Ranch Land Co. LLC (CRLC) agrees to set aside and leave undeveloped such additional property adjacent to the City Parcel as shall be necessary, as determined pursuant to the approved ODP, for the build-out of the full 350 room Hotel and Conference Center including parking, landscaping, and similar infrastructure. Said additional, adjacent property shall be defined in the ODP and Church Ranch Land Co. LLC agrees to transfer said adjacent property to CRHC at such time as CRHC determines to construct the improvements as defined in the ODP.

2.1.4 The deed for the City Parcel shall contain a Possibility of Reverter subject to exercise upon fifteen (15) days prior notice to CRHC in the event CRHC fails to commence construction of the Hotel, on or before March 1, 2004. The deed for the CRHC Parcel transferred from CRLC may also include a possibility of Reverter in substantially the same form as that contained in the deed for the City parcel.

2.1.5 CRHC II shall arrange for the acquisition of the site for the Suites Hotel (“Project II Site”) from its current owner, CRLC. By execution of this Agreement and being bound by the provisions of this Section 2.1.5, CRLC agrees to set aside and leave undeveloped such property as shall be necessary for the development of the Suites Hotel, including parking, landscaping and similar infrastructure. The Project II Site shall be defined in the ODP and CRLC agrees to transfer the Project II Site to CRHC II at such time as CRHC II determines to construct the improvements as defined in the ODP.

2.2 CRHC and CRHC II shall design and build at their expense the onsite improvements required for the Projects. City staff will review and approve the onsite improvements in an expedient manner, as mutually agreed, consistent with normal city policy, procedures, and practices. These improvements shall include, but not be limited to, all onsite walkway improvements for the Projects, including, without limitation, sidewalks, circulation roads, the Projects parking lot paving and lighting, curb cuts, landscaping, stormwater facilities (including retention/detention), and water, sewer, natural gas, electric and telephone utilities for servicing the Projects including public common areas and the Hotel and Conference Center and Suites Hotel.

2.3 CRHC and CRHC II shall also be responsible, at their cost, for constructing, or causing to be constructed, all reasonably necessary off-site improvements for the Projects, pursuant to normal City code requirements and policies.

2.4 City staff shall assist CRHC and CRHC II in obtaining all approvals and entitlements necessary for the construction of the Projects consistent with normal City standard practices, policies, and procedures.

2.5 Other than the Tap Fees for the Projects as specified in Section 2.5.1, City shall waive during the construction period of the Hotels for CRHC and CRHC II, or their assigns, any and all one-time fees and assessments normally charged by City as a condition to building permit issuance for the Projects, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees, and building material use taxes and the like. Any third party construction or other plan review and approval fees shall be split by City and CRHC or CRHC II with each paying one-half thereof.

2.5.1 City agrees to be responsible for the cost, if any, of any tap fees in excess of \$270,000 for a 4-inch tap for Project I as set forth in Section 1.7.

2.5.2 City agrees that no other fee, assessment, or charge shall be levied against the Projects other than as set forth in this Agreement. However, nothing in this Agreement shall be construed as prohibiting City from assessing, levying or increasing any fees, charges or taxes against the Hotel or Conference Center or Suite Hotel to the extent such fees, charges or taxes are assessed and paid by all like businesses in the City of Westminster.

2.5.3 Nothing in this Section 2.5 shall be construed as exempting CRHC or CRHC II from the responsibility to pay normal annual taxes such as property tax, business license, and federal, state and county fees and taxes.

2.6 For and in consideration of CRHC's and CRHC II's construction, furnishing, and equipping of the Projects, and the overall economic and financial benefits to the community at large as a result of locating such facilities within the City of Westminster, City shall provide CRHC and CRHC II a "Business Assistance Rebate."

2.6.1 The Business Assistance Rebate shall be paid by City to CRHC or CRHC II in quarterly installments equal to the sum of (a) those revenues attributable to City's accommodations tax from the Hotel operation and the Suites Hotel operation for the preceding quarter, plus (b) those revenues attributable to the two percent (2%) Conference Center Fee for the previous quarter, plus (c) those revenues attributable to City's Sales and Use Tax at the then current rate generated by the Projects (including food and beverage taxes) for the previous quarter exclusive of City's Sales and Use Tax for parks, open space and trails.

2.6.2 At such time as the aggregate amount of the quarterly rebates equal \$9,800,000 present value for Project I and equals \$3,275,000 present value for Project II, as of the date of the issuance of the final Certificate of Occupancy for the Hotel or Suite Hotel, using a discount rate of eight percent (8%) per annum, or upon City's rebate of sixty (60) quarterly installments for each Project, whichever occurs first, the quarterly payments shall cease. The first quarterly installment rebate shall be made within fifteen (15) days after the last day of the first quarter the Hotel and Conference Center or Suites Hotel respectively open for business. In the event the first rebate is prorated, the last payment shall include the additional days not included in the first rebate to provide sixty (60) full quarterly installments. The rebates shall be calculated and paid separately for the Hotel and Conference Center and for the Suites Hotel.

2.6.3 City's obligations pursuant to this Section 2.6 shall be subject to annual appropriation consistent with the requirements of Colorado Constitutional Amendment X, Section 20, provided, however, that the City agrees to exercise its best efforts and utmost good faith in making funds available to meet its obligation under Section 2.6.

2.6.4 City warrants and represents that no other person or entity has any right, title or claim against the specific rebate items included in the Business Assistance Rebate other than sales and use tax bond covenants.

2.6.5 Subordination. For the purpose of protecting the City's bonding capacity and credit worthiness, it should be known that the City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, 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 sales and use tax revenues of the City. This, section however does not refer to or include revenue generated by this project from Accommodation Tax or the Conference Center Tax.

2.6.6 This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code.

III. FURTHER AGREEMENTS AND COMMITMENTS

3.1 City, CRHC, and CRHC II agree to exercise utmost good faith in negotiating and completing such additional or further agreements that may be required to accomplish the ultimate goal of the parties of realizing the construction and commencement of the operation of the Projects contemplated by this Agreement. City, CRHC, and CRHC II hereby assume the mutual duty of "agreeing to agree" on such further agreements or actions that may be necessary to realize their overriding objective in executing this Agreement. Any omission or ambiguity in this Agreement shall not be considered cause for non-performance of the parties of this Agreement.

3.2 Without in any way limiting the foregoing, City, CRHC, and CRHC II specifically agree to cooperate in resolving the following matters to the extent necessary:

3.2.1 Providing information and assistance as reasonably required by CRHC's and CRHC II's lender, to the extent such assistance does not result in added costs or obligations for City-or release CRHC and CRHC II from obligations in this Agreement.

3.2.2 Negotiating and entering into an agreement to permit and facilitate the use of recreational facilities owned or operated by City, by guests of the Projects, on the same basis and at the same standard rates as other comparable hotel users, including reservation of tee times at all City golf courses. Said agreement shall be negotiated and entered into within 120 days after approval of both ODP's.

3.3 The original design of Project I shall provide for future expansion capabilities up to an additional 100 Hotel rooms.

3.4 Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be construed as creating a joint venture or partnership relationship between City, CRHC, and CRHC II and the liabilities and responsibilities of the parties shall be the independent liabilities and responsibilities of the party charged with such liability or responsibility.

3.5 City will undertake a Phase I environmental assessment of the City Parcel within sixty (60) days of the approval of this Agreement. The delivery of a favorable Phase I report to CRHC shall be condition precedent to the rights, obligations, and duties of CRHC, CRHC II and City under this Agreement.

3.6 Any notice required hereunder shall be sent certified mail, return receipt requested, with faxed copies to any current address given by one party to the other or at:

City:
City of Westminster
Attn: City Manager
4800 West 92nd Avenue
Westminster, Colorado 80030
Fax: (303) 430-1809

CRHC II:
Church Ranch Hotel Company II LLC
Attn: Managing Member
10050 Wadsworth Boulevard
Westminster, Colorado 80021
Fax: (303) 469-4293

CRHC:
Church Ranch Hotel Company I LLC
Attn: Managing Member
10050 Wadsworth Blvd.
Westminster, Colorado 80021
Fax: (303) 469-4293

3.7 City Manager is authorized, consistent with City Charter and Ordinances, to enter into any further agreements, give all consents, enter into estoppel letters, amendments or the like, and do all things necessary hereunder that are consistent with this Agreement.

3.8 City staff, CRHC and CRHC II shall work together for adequate and appropriate signage for the Projects, including signage typical for comparable first-class hotel projects in the City as allowed under City Code.

3.9 The execution of this Agreement by CRHC, CRHC II and City as indicated in the signatory blocks below constitutes a representation by the respective parties that the Agreement has been duly authorized and approved by the City Council of the City of Westminster on behalf of City, and by CRHC and CRHC II in accordance with and under the authority of CRHC's and CRHC II's limited liability company agreement and state law.

3.10 Except as provided otherwise in this Agreement, anywhere in this Agreement it provides that it is the responsibility of CRHC OR CRHC II, it shall be at the sole cost and expense of CRHC OR CRHC II, and anywhere in this Agreement it provides that it is the responsibility of City, it shall be at the sole cost and expense of City.

3.11 This Agreement is severable and assignable to another legal entity subject to City's reasonable consent which will not be withheld as long as evidence satisfactory to the City in its reasonable discretion is provided which demonstrates that the successor entity has the financial wherewithal, experience, and expertise to carry out the Projects and the obligations under this agreement. However, any assignment or transfer of this Agreement other than as defined herein shall require City's approval, which shall not be unreasonably withheld. The rights and obligations hereunder shall inure to the benefit and detriment of any transferees, assigns or beneficiaries.

3.12 Except as otherwise provided in this Agreement, the City agrees that this Agreement is not cancelable by the City.

3.13 This Assistance Agreement shall terminate and become void and of no force or effect upon the City if CRHC fails to commence construction of Project I on or before March 1, 2004; or, CRHC has not completed construction and initiated operations of the Hotel and Conference Center by March 31, 2006; or, in the event CRHC at any time prior to completing the Projects makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of CRHC of all or a substantial part of its assets; or, a petition of relief is filed by CRHC under federal bankruptcy, insolvency, or similar laws; or, a petition in a proceeding under any bankruptcy, insolvency, or similar laws is filed against CRHC and not dismissed within thirty (30) days. Furthermore, this assistance agreement shall terminate and become void and of no force or effect upon the City if CRHC II fails to commence construction of Project II on or before December 31, 2001.

3.14 In the event CRHC ceases business operations of the Hotel and Conference Center within three (3) years after the new operations commence, for a period of three months or longer except in the case of force majeure, then in such event, CRHC shall pay to the City the total amount of fees and taxes which were due and payable by CRHC to the City, but were rebated or waived by the City, as well as reimburse the City for all funds provided to CRHC pursuant to the Agreement. The same refund provisions shall apply to CRHC II on Project II.

3.15 In the event that Project I has not commenced construction before March 1, 2004, CRHC II shall reimburse the City a portion of the funds which the City paid to CRHC II in conjunction with Project II. The City and CRHC II will determine the exact amount of the reimbursement at the time the Official Development Plan for the Spring Hill Suites Hotel is approved by the City. It is acknowledged that the City is requiring CRHC II to use upgrades in the construction of the Suites Hotel which will be calculated when determining the amount to be reimbursed by CRHC II to the City.

IV. REMEDIES

4.1 In the event of a dispute concerning this Agreement, the parties agree to first attempt to negotiate a resolution of their differences. In the event of an inability to resolve their difference through negotiation, the parties agree to retain the services of a qualified professional mediator acceptable to all parties and to enter into mediation in good faith in an attempt to resolve the dispute.

4.2 In the event the parties are unable to agree upon the meaning or interpretation of any term or condition of this Agreement, the parties agree that a court of competent jurisdiction may declare the rights, duties, and obligations of the parties in a declaratory judgment action and that such court may further impose upon the parties any fair and reasonable provision the court may deem appropriate to accomplish the overall objective of this parties as set forth in this Agreement. Further, in the event of such a declaratory judgment action, it is the intent of the parties that the court may receive parol evidence for the purpose of deciding such rights, obligations, and duties of the parties in the event of an ambiguity.

4.3 The parties hereby waive and agree not to seek any damages from the other in connection with the enforcement of this Agreement if specific performance provides an adequate remedy. The parties may setoff any amounts due the other for any undisputed amounts. An arbitrator or court may grant setoff as an available remedy hereunder. The rights, obligations, and duties of the parties may be enforced through the declaratory action referred to in Section 4.2 above, or by way of specific performance. The parties recognize that time is of the essence, and accordingly the parties shall seek any expedited proceedings to which they may be entitled. However, if any party is required to bring an action to enforce or have its rights declared under this Agreement, the prevailing party in such litigation shall be entitled to the recovery of its reasonable costs and attorney's fees. CRHC and CRHC II have the ability to withdraw if City commitments are not satisfied as agreed in this Agreement.

4.4 CRHC'S, CRHC II'S, and City's obligations under this Agreement shall be deemed covenants running with the land, and shall be binding upon and enforceable against the transferees, successors, assigns, and purchasers of any item contained herein. For the purposes of creating constructive notice of this provision of this Agreement, this Agreement or a memorandum thereof shall be recorded in the real estate records of the Jefferson County Clerk and Recorder's Office.

4.5 The Agreement replaces and supersedes all previous agreements and understandings and sets forth the agreement of the parties. There are no representations or warranties other than as contained herein. The documents to be entered into between the parties in the future shall become part and incorporated into this Agreement.

4.6 The September 28, 1998 Agreement between City and CRHC shall be deemed replaced by this Agreement upon the execution hereof by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF WESTMINSTER

CHURCH RANCH HOTEL COMPANY I LLC

By: _____
William Christopher
City Manager

By: _____
Title: Member
Address: 10050 Wadsworth Boulevard
Westminster, Colorado 80021

ATTEST:

ATTEST:

Michele Kelley
City Clerk

Title _____

CHURCH RANCH HOTEL COMPANY II LLC

By: _____

Title: Member

Address: 10050 Wadsworth Boulevard
Westminster, Colorado 80021

ATTEST:

Title _____

The undersigned accepts and agrees to be bound by the provisions of Section 2.1.3 and 2.1.5 hereof only.

CHURCH RANCH LAND COMPANY LLC

By: _____

Title: Member

Address: 10050 Wadsworth Boulevard
Westminster, Colorado 80021

ATTEST:

Title _____

EXHIBIT LIST

Exhibit A: Site Plan

Exhibit B: Acceptable Franchisors of Hotel and Suite Hotel

Exhibit C: 1998 City Fee Schedule

EXHIBIT B

Acceptable Hotel Franchisors

Marriott is the currently approved hotel franchise for the proposed Projects. In the event that it becomes necessary for CRHC to select an alternate full-service hotel for the Projects, the following full-service hotels could be built as part of this Agreement if they are determined by HVS or alternate similar caliber consultant at the time the alternate franchisor is selected by CRHC and submitted to City to be a first-class, full-service hotel:

Marriott

Hilton

Wyndham

Sheraton

Crowne Plaza

Hyatt

Acceptable Suite Hotel Franchisors

Marriott Spring Hill is the currently approved Suite Hotel franchise for the proposed Project II. In the event that it becomes necessary for CRHC II to select an alternate suite hotel for this project, a different Marriott hotel product equal to or better than a Spring Hill Suites Hotel may be substituted as determined exclusively the City.

Summary of Proceedings

Summary of Proceedings of the Special City Council meeting held Monday, August 30, 1999.

Present at roll call were Mayor Heil, Mayor Pro Tem Merkel and Councillors Allen, Atchison, Hicks and Smith. Absent was Councillor Dixon.

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

A BILL FOR AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN REAL PROPERTY OF THE CITY AND BUILDINGS LOCATED THEREON; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT, A WARRANTY DEED, AND AN OFFICIAL STATEMENT; IRREVOCABLY PLEDGING A PORTION OF THE PROCEEDS OF THE SALE OF SUCH PROPERTY TO CERTAIN PAYMENTS WHICH THE CITY IS OBLIGATED TO MAKE; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED TRANSACTION; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY. Purpose: Financing for Westminster Mall Improvements and Westminster Boulevard Construction.

The following Councillor's Bill was introduced and passed on first reading:

A BILL FOR AN ORDINANCE AUTHORIZING AN ASSISTANCE AGREEMENT WITH CHURCH RANCH HOTEL GROUP PERTAINING TO ADDING A MARRIOTT SPRING HILL SUITES HOTEL. Purpose: Revise agreement with the Church Ranch Hotel Company.

At 8:10 P.M. the meeting was adjourned.

By order of the Westminster City Council
Michele Kelley, CMC, City Clerk
Published in the Westminster Window September 2, 1999.