



WESTMINSTER
COLORADO

September 23, 2002
7:00 P.M.

CITY COUNCIL AGENDA

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

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

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

8. Consent Agenda
 - A. Financial Report for August, 2002
 - B. Award for Construction of 104th and Grove Waterline
 - C. CB No. 45 re Vendors Fees Sales/Admissions/Accommodations Taxes (Atchison-Dittman)
 - D. CB No. 46 re Allocation of 2001 Carryover Revenues (McNally-Hicks)
 - E. CB No. 47 re Appropriation of Grant Funds to 2002 Budget Brownsfield Grant (Dittman-Atchison)
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Intergovernmental Service Agreement with WEDA for reimbursable expenses
 - B. Councillor's Bill No. 09E re W&WW Utility Enterprises Revenue Bonds for \$7,490,000
 - C. Councillor's Bill No. 48 re Title 11 & Title 2 re Accessory Structures and Fences
 - D. Resolution No. 45 re Adams County School District 50 Ballot Issue
 - E. Councillor's Bill No. 49 2002 Local Law Enforcement Block Grant & Bulletproof Vest Partnership
11. Old Business and Passage of Ordinances on Second Reading
 - A. CB No. 43 re Solid Waste Code (Hicks-McNally)
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
 - A. City Council
 - B. Executive Session
 1. Economic Development Report
13. Adjournment

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, SEPTEMBER 23, 2002 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, and McNally were present at roll call. Brent McFall, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk, were also present. Absent Kauffman.

CONSIDERATION OF MINUTES

Councillor Hicks advised Council of an error on the Minutes of September 9th, Page 2 Councillor's Bill No. 42, Councillor Hicks voted No

Mayor Pro-Tem Atchison moved, seconded by Dittman to accept the minutes of the meeting of September 9, 2002 with the correction noted. The motion carried unanimously.

RESOLUTION NO. 45 RE SUPPORT OF ADAMS COUNTY SCHOOL DIST. 50 MILL BALLOT ISSUE

Councillor McNally moved, seconded by Dixon to adopt Resolution No. 45 which formally supports the Adams County School District 50 ballot issue pertaining to a proposed \$5,950,000 increase of the existing mill levy for the purpose of improving student achievement, recruiting and retaining quality staff, and maintaining existing programs. Scott Majors, Adams County School District 50 Board of Directors, and George Straface, Superintendent of Adams County School District 50 addressed Council. Vernon Befort, 8160 Auburn Lane, addressed Council. Upon roll call vote, the motion carried unanimously.

CITIZEN COMMUNICATION

Vernon Befort, 8160 Auburn Lane, addressed Council on the number of persons allowed to reside within a residential dwelling and campers parked in front yards.

Eric Johns, 5763 W 73rd Ave, owner of Laser Storm, 9051 Harlan Street requested City Council change the current hours of operation of 11 AM to 11 PM for Amusement Center licenses on Friday and Saturday nights to midnight and opening hours on weekends to 10 AM.

CITY MANAGER COMMENTS

Brent McFall, City Manager, stated that the proposed 2003/2004 Budget Retreat with City Council will be at the Northwest Water Treatment Plant this next weekend .

COUNCIL COMMENTS

Councillor Hicks commented on the City's participation in the training at Mt. Weather, Virginia and that Staff did a great job.

Councillor McNally stated that she had attended three COG meetings last week and commended staff on doing excellent presentations at each COG meeting.

Mayor Pro-Tem Atchison stated that Jefferson County R-1 School District is having a meeting on their budget for next year at Moore Junior High next Tuesday.

CONSENT AGENDA

The following items were considered as part of the Consent Agenda: Financial Report for August, 2002; Awarded the bid for Construction of 104th and Grove Waterline to Asphalt Specialties for \$424,636; CB No. 45 re Vendors Fees/Sales/Admissions/Accommodations Taxes; CB No. 46 re Allocation of 2001 Carryover Revenues; and CB No. 47 re Appropriation of Grant Funds to 2002 Budget Brownsfield Grant.

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

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

IGA WITH WESTMINSTER HOUSING AUTHORITY FOR REIMBURSABLE EXPENSES

Mayor Pro-Tem Atchison moved, seconded by Dixon to authorize the City Manager to sign an Intergovernmental Service Agreement with the Westminster Housing Authority to provide for reimbursement of services rendered to the WHA by city staff. The motion carried unanimously.

COUNCILLOR'S BILL NO. 09E RE W&WW UTILITY ENTERPRISE REVENUE BONDS

Councillor Dixon moved, seconded by Dittman to pass Councillor's Bill No. 09E as an emergency ordinance, approving the sale of \$7,490,000 million Utility Revenue Bonds and direct the Mayor, Finance Director, and City Clerk to sign the necessary documents on behalf of the City. Councillor McNally asked to abstain from voting due to a conflict, since she works for the Company issuing the Bonds. Upon roll call vote, the motion carried unanimously with Councillor McNally abstaining.

COUNCILLOR'S BILL NO. 48 TITLE 11 & TITLE 2 RE ACCESSORY STRUCTURES AND FENCES

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 48 on first reading making changes to Titles 2 and 11 of the Westminster Municipal Code pertaining to accessory structures, fences and certain clarification. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 49 2002 LAW ENFORCEMENT GRANT/BULLETPROOF VEST

Councillor Hicks moved, seconded by McNally to pass Councillor's Bill No. 49 on first reading appropriating \$42,868 from the Local Law Enforcement Block Grants Program and \$9,610 from the Bulletproof Vest Partnership Program to the Police Department's Patrol Services division budget. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 43 RE SOLID WASTE COLLECTION CODE

Councillor Dittman moved, seconded by Hicks to pass Councillor's Bill No. 43 on second reading, revising the Solid Waste Collection and the powers and duties of the Special Permit and License Board as amended.

Carole Pool, 11420 Quivas St, representing Waste Management addressed Council with concerns about the reporting requirements within the Councillor's Bill and concerns about information being required that may be proprietary information and requested City Council table this item until there is clarification on what will be required within the reports.

Councillor Dixon moved, seconded by McNally, to TABLE this item. The motion carried with dissenting votes from Dittman and Hicks.

The Mayor stated there would not be an Executive Session.

ADJOURNMENT:

The meeting was adjourned at 7:55 P.M.

ATTEST:

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Financial Report for August 2002

Prepared By: Mary Ann Parrot, Finance Director

Recommended City Council Action

Accept the Financial Report for August as presented.

Summary Statement

City Council is requested to review and accept the attached monthly financial statement and monthly revenue report. The Shopping Center Report is also attached to this monthly financial report; this reflects July sales tax receipts received in August.

- Across all shopping centers, total receipts are down 7% over the eight-month period from last year (Sales and Use Taxes). Sales Tax receipts (only) are down 5% year to date from the same period last year.
- The Westminster Mall is down 25% for August and down 14% year to date, compared to last year.
- These figures compare to last month's figures as follows:
 - Shopping center receipts were down 7% year to date and Sales Tax receipts (only) were down 4%; August is down slightly on a year-to-date basis.
 - The mall was down 7% for the month of July and 13% year to date; August is worse, due primarily to a large audit payment in August of 2001. Because August of 2001 was so high, this makes the August of 2002 drop look worse. Adjusting for this payment in 2001, the Mall is showing a decrease of 11.8% for the month of August.

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

- At the end of August, eight of 12 months, or 66.7%, of the year has passed. In many cases, actual revenues do not flow evenly at 8.3% per month. Pro-rated revenues will reflect expected revenue flows based on history. Expenditures are pro-rated at 8.3%, reflecting even flows. The Sales and Use Tax Fund is currently \$3,464,805 under the pro-rated budget for the year. The August figures reflect the sales in July, tax receipts received in August. Returns are down for August 2002 compared to August 2001 by 13.3%, and by 9.6% year to date (for eight months January-August) due to the pressures of the recession in the metropolitan area and unusually large sales tax collections in April and August of 2001. These are worse numbers than in the prior month. The reasons are that the August 2001 receipts were higher due to tax revenues and there was a timing difference on a major payment that was booked in September 2002. Adjusting for these figures means that returns are down for August 2002 compared to the prior year, 11.1% for the month and 9.4% for year to date.
- If the current trend continues for the year, the Sales and Use Tax Fund will be under budget by \$5.0 to \$6.0 million.
- The General Fund currently is at 100% of revenues pro-rated for seven months. This reflects the reduction in the transfer of sales taxes to the General Fund since month-end July of \$833,333 per month. Since June, the funding of the General Fund has gone from 102% of pro-rated budget to 100% of pro-rated budget. However, Property Tax collections, Intergovernmental Revenues, Charges for Other Services and Miscellaneous are all over pro-rated budget and will help to offset the shortfall in sales tax collections to some extent. In March Staff deployed a plan to maintain the integrity of the General Fund through a variety of measures: carrying forward funds from last year, delaying selected capital projects, reducing General Fund expenditures across all departments and, lastly, implementing a hiring freeze for the remainder of this year.

Policy Issues

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

Alternatives

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

Background Information

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

For revenues, a positive indicator is a pro-rated budget percentage at or above 100%. For expenditures, a positive indicator is a pro-rated budget percentage that is below 100%. The term "pro-rated," when used with revenues and expenditures, in this report, refers to the expected revenues collected or expenditures incurred by a certain date in time based on historical trends.

General Fund

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

At the end of August, the General Fund is in the following position regarding both revenues and expenditures, although it is still somewhat early to predict end-of-the-year results:

- Over pro-rated budget in revenues by \$55,916 (100% of pro-rated budget). This reflects the reduced sales tax collections for the past two months of \$833,333. By year-end, the sales tax transfers to the General Fund will be reduced by \$5 million, unless there is a turn about in the economy, which Staff does not expect.
- Under pro-rated budget in expenditures by \$5.6 million (89% of pro-rated budget).

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

This fund reflects the operating results of the City's water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital projects. At the end of August, the Enterprise is in a positive position.

- Combined Water & Wastewater over pro-rated budgeted revenues by a combined \$7.197 million:
 - Water revenues over pro-rated budget by \$6.696 million (140% of pro-rated budget), due primarily to positive variances in rates and charges and interest earnings, a developer paying \$2.3 million for residential tap fees in February, and a reimbursement for Standley Lake spillway construction expenditures in April. The build up of revenues in this fund will finance capital replacement and necessary expansion over the long term, as planned.
 - Wastewater revenues over pro-rated budget by \$501,547 (107% of pro-rated budget), mostly due to collections for the month from monthly customers and tap fees from builders. Again, these reserves will finance capital replacement and expansion over the long term.
 - Stormwater Drainage revenues over pro-rated budget by \$26,460 (105% of pro-rated budget).
- Combined Water & Wastewater under pro-rated budget in expenditures by a combined \$3.757 million. The major reasons for this is that debt service payments due in December have not yet been made or accrued, and utility construction and repairs are seasonal expenditures:
 - Water under pro-rated expenditures budget by \$1.713 million (87% of pro-rated budget).

- Wastewater under pro-rated expenditures budget by \$2.044 million (62% of pro-rated budget).
- Stormwater Drainage under pro-rated expenditures budget by \$130,877 (205 of pro-rated budget).

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

These funds are the repositories for the 3.25% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the Capital Projects Fund and the Debt Service Fund. The Open Space Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, buy open space, and make park improvements on a pay-as-you-go basis. At the end of August, the position of these funds is as follows:

- Sales & Use Tax Fund - Under pro-rated budget in revenues by \$3,464,805 million (90.2% of pro-rated budget). If this continues, the Sales Tax Fund will be under budget for the year by approximately \$5 to \$6 million.
- Sales & Use Tax Fund – Under budgeted expenditures by \$1,666,666 because of the reduced transfers from the Sales & Use Tax Funds. This transfer will continue to reflect an additional reduction of \$833,333 per month, totaling \$5 million in December for the year.
- Open Space & Use Tax Fund - Over pro-rated budget in revenues by \$476,114 (115% of pro-rated budget), for the following reason: interfund transfers from the General Capital Improvement Fund were made as scheduled, according to the December 2001 appropriation of Year 2000 funds from excess Jeffco and Adco Attributable Shares for Open Space and also to recognize interest earnings on bond proceeds.
- Open Space Sales & Use Tax Fund - Under pro-rated budget in expenditures by \$870,020 (83% of pro-rated budget).

Golf Course Funds (Legacy and Heritage- the Golf Course Enterprise)

These funds reflect the operations of the City's two municipal golf courses.

- Legacy - Under pro-rated budget in revenues by \$139,575 (90% of pro-rated budget).
- Legacy - Under pro-rated budget in expenses by \$77,908 (93% of pro-rated budget). This variance is operations only and excludes the impact of the debt service payments that will be due in December.
- Heritage - Under pro-rated budget in revenues by \$269,086 (81% of pro-rated budget).
- Heritage - Over pro-rated budget in expenditures by \$112,584 (111% of pro-rated budget). Again, this excludes the impact of the debt service payments due in December.

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

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachments



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Award for Construction of 104th and Grove Waterline

Prepared By: Diane Phillips, Capital Improvement Coordinator
Richard Clark, Utilities Operations Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with Asphalt Specialties Company to complete the specified work as described in the project documentation; authorize a project budget of \$424,636 with a 10% contingency budget of \$42,463; and charge the appropriate budget account in the Water Fund Capital Improvement Budget.

Summary Statement

- The Treated Water Master Plan predicts that a 20-inch waterline will be needed to provide adequate domestic and fire flow supply to meet the needs in the north area of the City. SA Miro Engineering completed the detailed design of the waterline.
- Development in the north side of the City continues and the first phase of the 20-inch line should be installed this year.
- This project consists of installing 2,735 feet of 20-inch ductile iron water line, four 20-inch butterfly valves and replacing approximately 20,000 square feet of asphalt pavement.
- Formal bids were issued, and a bid opening took place on September 6, 2002. A total of eleven contractors bid on this project.
- Funds were budgeted for this expenditure in the Water Fund Capital Improvement Budget.
- The lowest responsible bid was received from Asphalt Specialties Co.
- City Council is requested to approve the project contract with Asphalt Specialties Co. in the amount of \$424,636.

Expenditure Required: \$424,636

Source of Funds: Water Fund Capital Improvement Budget

Policy Issue

Should the City award a contract to Asphalt Specialties Company to build the 104th and Grove waterline?

Alternative

The City could delay the construction of this waterline but cost would likely increase and reliable water service could be compromised in the City's north central region as development continues.

Background Information

The Treated Water Master Plan indicates that the 20-inch transmission main is needed in the area of 104th and Federal Boulevard to supply flow to the north portion of the City as development occurs. Recent computer modeling has shown that this line should be installed at this time to continue to provide adequate domestic and fire flow supply in the north portion of the City. Succeeding phases of the project will extend the main north along Federal to 120th Avenue and eventually along the Federal/Zuni alignment to 128th Avenue. The total budget for this phase of the project was \$455,000. The design for this project is \$65,745 plus a \$9,000 contingency (therefore, total design will potentially cost \$74,745). When the \$74,745 is subtracted from the project budget of \$455,000, it leaves \$380,255 available in the project account. Funds needed (\$86,844) are available in the Waterline Maintenance/Replacement/Extension Project to cover the balance of this waterline along Grove Street. The Waterline Maintenance/Replacement/Extension project supports miscellaneous watermain projects throughout the city; use of \$86,844 towards the Grove Street route is in line with the intent of the Waterline Project. As such, with award of this contract, \$86,844 will be transferred from the Waterline Project into the Grove Street Waterline Project budget.

Bids for the construction of this line were received on September 6 from eleven construction firms. Their bids are listed below:

Farner Enterprises Inc.	\$596,745
Ricor, Inc.	\$592,059
New Design Construction Co.	\$547,306
Wycon Construction Co.	\$541,460
T. Lowell Construction	\$530,000
Tierra Environmental & Excavating, Inc.	\$519,940
Scott Contracting Inc.	\$508,426
BT Construction Inc.	\$495,798
Tierdael Construction, Inc.	\$475,475
Duran Excavating	\$425,637
Asphalt Specialties Co.	\$424,636
Engineers Estimate	\$592,000

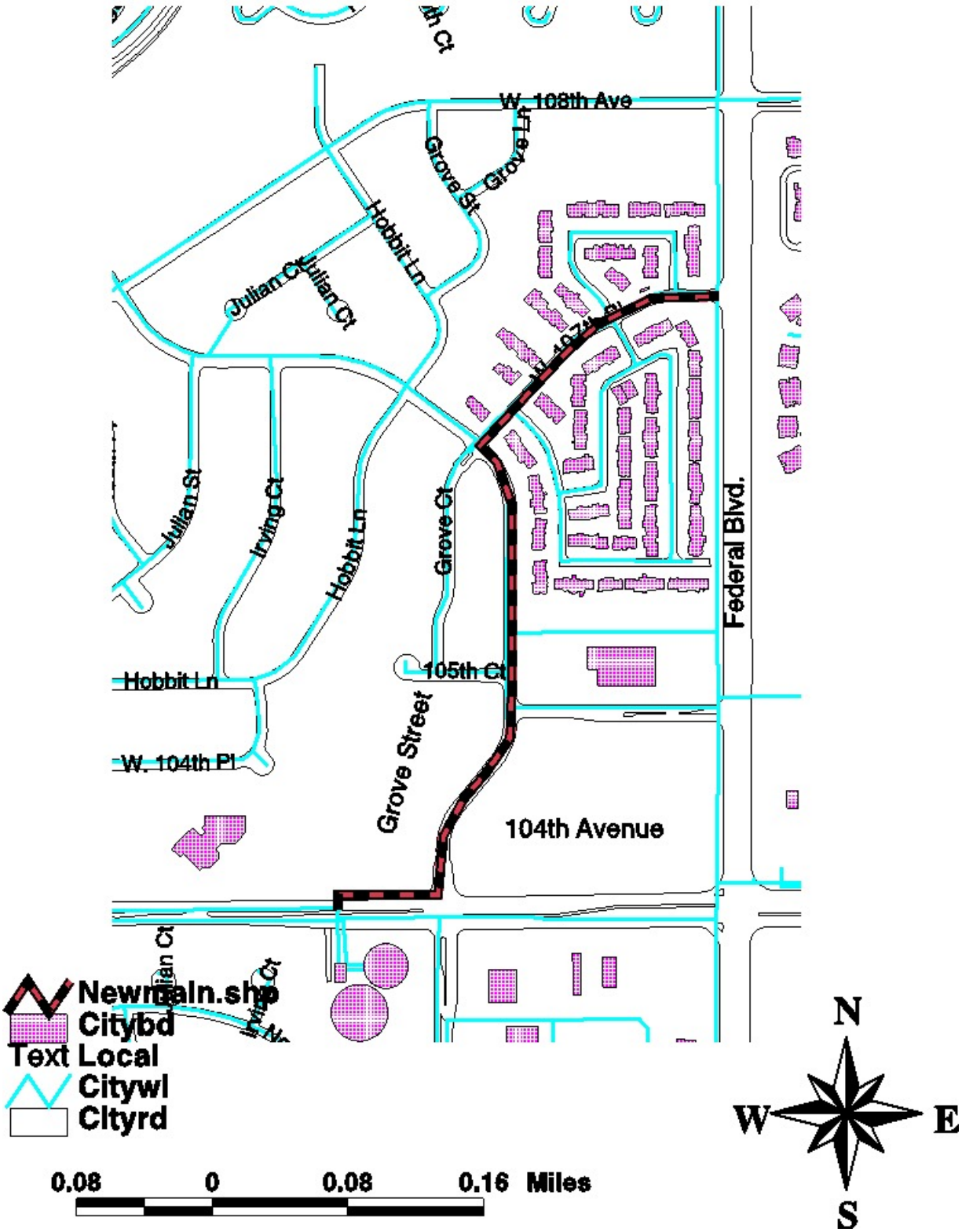
Asphalt Specialties Company provided the lowest priced proposal and they have completed several successful projects for the City.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

104th & Grove Watermain





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Second Reading of Councillor's Bill No. 45 re Vendor's Fee on Sales, Admissions and Accommodations Taxes and Other Housekeeping Changes

Prepared By: Marty McCullough, City Attorney
Barb Dolan, Sales Tax Manager

Recommended City Council Action

Pass Councillor's Bill No. 45 on second reading approving amendments to Title IV of the Westminster Municipal Code pertaining to Sales, Use, Admissions and Accommodations Taxes.

Summary Statement

- The City's vendor's fee rate has been unchanged since 1973. City Council recently directed Staff to bring an action item to adjust the vendor's tax collection fee to include a "cap" on the amount of the fee paid to \$100 per tax return filed. This will affect approximately 325 large businesses.
- The cost savings to the City resulting from the \$100 cap will be approximately \$670,000. These funds would allow the City to address critical public safety staffing needs and will provide some very limited additional revenues in the General Fund.
- Additional housekeeping changes to Title IV are also being recommended, including amendments required to bring the Code into compliance with the new federal "Mobile Telecommunications Sourcing Act."
- City Council will revisit the vendor's fee in September 2003 to determine whether to continue to cap the amount.
- This Councillor's Bill was passed on first reading on September 9, 2002.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **45**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE IV OF THE WESTMINSTER MUNICIPAL CODE CONCERNING TAX ADMINISTRATION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The following Sections of Title IV, Chapter 1 of the Westminster Municipal Code are hereby amended as follows:

4-1-1: WORDS AND PHRASES DEFINED DEFINITIONS: The following words and phrases as used in this Title shall have the following meaning unless specifically defined in another Chapter.

(Q) "**Taxpayer**" FOR THE PURPOSES OF THIS TITLE, means any person obligated to PAY, collect ~~and/or pay~~ OR REMIT tax under the terms of this Title.

(R) "TAX POLICY" MEANS, FOR THE PURPOSES OF COLORADO CONSTITUTION ARTICLE X, SECTION 20, THE PROVISIONS OF THIS TITLE THAT GOVERN THE PERSONS UPON WHOM THE CITY'S TAX IS IMPOSED AND THE TRANSACTIONS TO WHICH THE CITY'S TAX APPLIES, INCLUDING TAX EXEMPTIONS AND TAX DEDUCTIONS, BUT EXCLUDING ANY PROVISIONS CONCERNING FEES, INTEREST CHANGES, OR PENALTIES RELATED TO THE ADMINISTRATION AND ENFORCEMENT OF SAID TAX POLICY.

~~(R)~~ (S) "**Total Tax Liability**" means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

4-1-2: EXEMPTION; BURDEN OF PROOF:

(A) The burden of proving that any retailer is exempt from collecting or ~~paying~~ REMITTING tax shall be on the retailer under such reasonable requirements of proof as the Finance Director may prescribe.

(B) The burden of proving that any consumer is exempt from ~~paying~~ REMITTING the use tax shall be on such consumer under such reasonable requirements of proof as the Finance Director may prescribe.

4-1-3: DEDUCTIONS AND CREDITS:

(B) Credits FROM TAX DUE: ~~From Tax Due: 1. Vendor's fee: A retailer's collection and remittance expense equal to two and one half percent (2 1/2%) of the sum of the tax computed and any excess tax collected may be taken as a credit against tax paid on or before the due date. This paragraph (1) shall not apply to use tax. Such vendor's fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Title.~~

~~2.~~ Amounts previously paid pursuant to a tax levied by a municipality may be credited against the tax due on transactions or items other than construction materials used in a project for which a City building permit is required as follows:

~~(a)~~ 1. When the present owner or user has previously paid a legally imposed sales or use tax on the transaction or item; except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by Section 4-2-3.

(b) 2. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one municipality on the full price of such equipment, the credit shall be the aggregate value of all such taxes paid on such equipment up to the amount of tax due to the City on such equipment.

(C) COLLECTION FEE. FOR EACH REPORTING PERIOD, THE CITY SHALL PAY A RETAILER A COLLECTION AND REMITTANCE FEE EQUAL TO THE LESSER OF \$100 OR TWO AND ONE-HALF PERCENT (2 1/2%) OF THE SUM OF THE TAX COMPUTED AND ANY EXCESS TAX COLLECTED. A RETAILER MAY APPLY THIS FEE AS AN OFFSET AGAINST THE AMOUNT OF TAX DUE TO THE CITY AT THE TIME OF REMITTANCE. SUCH FEE SHALL BE FORFEITED FOR ANY TAX THAT IS NOT REPORTED AND PAID BY THE DUE DATE. FORFEITURE OF THE FEE SHALL BE PRIMA FACIE EVIDENCE THAT THE RETAILER WAS IN VIOLATION OF THIS TITLE. THIS PARAGRAPH SHALL NOT APPLY TO USE TAX.

4-1-4: ACQUISITION, INCEPTION OR CESSATION OF BUSINESS:

(A) Purchase of an Existing Business: 1. Seller's responsibilities: Any person engaged in business in the City who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.

2. Purchaser's responsibilities: (a) Any person who purchases an existing business shall be responsible for determining the total tax liability from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such total tax liability, unless the former owner produces a receipt from the City showing that the total tax liability has been paid or a certificate from the City that there is no total tax liability.
- (b) Any amount so withheld shall be paid to the City within ten (10) days of the date of the sale of the business.
- (c) Any purchaser who fails to withhold such total tax liability or fails to ~~pay~~ REMIT to the City the amount so withheld within the ten (10) day period allowed, shall, as well as the seller, be liable for any unpaid total tax liability.

4-1-5: RETAILER RESPONSIBLE FOR COLLECTION AND PAYMENT OF TAX: Every retailer engaged in business in the City shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the specified rate.

(D) Disputed Tax: When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall ~~pay~~ REMIT such tax. The purchaser may then submit a Claim for Refund to the City within sixty (60) days of the date of purchase. Any such tax refunded by the City will be paid directly to the purchaser.

4-1-7: FILING RETURNS; DUE DATE: (D) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying OR REMITTING tax due.

4-1-8: REPORTING PERIODS:

- (A) Unless otherwise required or approved, taxpayers must file returns and ~~pay~~ REMIT tax as follows:
1. A taxpayer whose monthly tax due is less than ten dollars (\$10) may file returns and ~~pay~~ REMIT tax annually, semi-annually, quarterly or monthly;
 2. A taxpayer whose monthly tax due is less than twenty dollars (\$20) may file returns and ~~pay~~ REMIT tax semi-annually, quarterly or monthly;
 3. A taxpayer whose monthly tax due is less than forty dollars (\$40) may file returns and ~~pay~~ REMIT tax quarterly or monthly; or

4. A taxpayer whose monthly tax due is forty dollars (\$40) or more shall file returns and pay REMIT tax monthly.

(E) The reporting period for a ~~vendor~~ RETAILER selling tangible personal property at a temporary location or special event inside the City who is not required to obtain a license shall end on the day the temporary location closes or special event concludes.

(H) If any taxpayer who has been granted permission to file returns and pay REMIT tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director and immediately following notice of such revocation, the taxpayer shall file returns and pay REMIT tax on a monthly basis as if the alternate method of reporting and paying REMITTING the tax had never been granted.

4-1-10: AUTHORITY OF THE FINANCE DIRECTOR: The administration of this Title is hereby vested in the Finance Director.

~~(I) If the Finance Director determines that a person has registered or caused to be registered a motor vehicle outside the City and that such motor vehicle should have been registered at an address in the City, the Finance Director is authorized to assess a civil penalty of five hundred dollars (\$500) against the person. A written notice of the penalty assessment shall be issued, paid and protested in the same manner as a notice of assessment. The Finance Director may enforce collection of the penalty assessment in the same manner as provided in this Title for the collection of tax due. Assessment and collection of this penalty shall not preclude the collection of any tax due or fee or the imposition of any other civil or criminal penalty provided by law.~~

(J) Notices: Notices required by this Title shall be in writing and delivered in person or sent post paid by first class mail, to the last known address of the taxpayer.

4-1-12: TAX INFORMATION CONFIDENTIAL: All specific information gained under the provisions of this Title which is used to determine the total tax liability from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the City and its officers, employees or legal representatives as confidential.

(A) Except as directed by judicial order or as provided in this Section, no City officer, employee, or legal representative shall divulge any confidential information.

4. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE CITY'S RELEASE OF THE TERMS OF ANY BUSINESS ASSISTANCE OR OTHER AGREEMENT INVOLVING TAX REBATES OR CREDITS.

4-1-13: TIMELY PAYMENT; COMPUTATION OF DATES: (B) Any due date, payment date, or deadline for paying REMITTING the total tax liability or providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the Federal government or State of Colorado, shall be extended to the first business day following such weekend or holiday.

4-1-17: CLAIM FOR REFUND: No tax overpayment shall be refunded unless a Claim for Refund is signed and submitted to the City by the taxpayer.

(D) ~~No person shall~~ **FALSE STATEMENTS:** IT SHALL BE UNLAWFUL FOR ANY PERSON TO make any false statement in connection with a Claim for Refund.

4-1-21: PENALTIES: (A) Penalty for Late Payment REMITTANCE of Sales, Use and Accommodations Tax: A penalty of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, shall be levied on any tax deficiency.

(B) Penalty for Late Payment REMITTANCE of Admissions Tax: A penalty shall be levied on any tax deficiency.

1. For transactions consummated prior to January 1, 1992, such penalty shall be twelve percent (12%) of the tax deficiency.
2. For transactions consummated on or after January 1, 1992, such penalty shall be fifteen dollars (\$15) or ten percent (10%) of the tax deficiency, whichever is greater.

(E) OTHER PENALTIES; POWER TO WAIVE: IF THE FINANCE DIRECTOR DETERMINES THAT A PERSON HAS REGISTERED OR CAUSED TO BE REGISTERED A MOTOR VEHICLE OUTSIDE THE CITY AND THAT SUCH MOTOR VEHICLE SHOULD HAVE BEEN REGISTERED AT AN ADDRESS IN THE CITY, THE FINANCE DIRECTOR IS AUTHORIZED TO ASSESS A CIVIL PENALTY OF FIVE HUNDRED DOLLARS (\$500) AGAINST THE PERSON. A WRITTEN NOTICE OF THE PENALTY ASSESSMENT SHALL BE ISSUED, PAID AND PROTESTED IN THE SAME MANNER AS A NOTICE OF ASSESSMENT. THE FINANCE DIRECTOR MAY ENFORCE COLLECTION OF THE PENALTY ASSESSMENT IN THE SAME MANNER AS PROVIDED IN THIS TITLE FOR THE COLLECTION OF TAX DUE. ASSESSMENT AND COLLECTION OF THIS PENALTY SHALL NOT PRECLUDE THE COLLECTION OF ANY TAX DUE OR FEE OR THE IMPOSITION OF ANY OTHER CIVIL OR CRIMINAL PENALTY PROVIDED BY LAW.

(F) Abatement of Penalty: Any penalty assessed in this Section may be abated by the Finance Director if the Finance Director finds good cause therefore and:

1. If the taxpayer submits a written request for such abatement on or before the payment due date of the applicable Notice of Assessment; or
2. If no assessment was issued, within 60 days after ~~payment~~ REMITTANCE of the tax.

4-1-22: INTEREST: Interest shall be levied on any tax deficiency.

(A) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.

1. For transactions consummated on or after January 1, 1994, the annual rate of interest assessed shall be the rate established by the State Commissioner of Banking pursuant to Section 39-21-110.5 C.R.S.
2. For transactions ~~consummated~~ CONSUMMATED prior to January 1, 1994, the annual rate of interest assessed shall be fifteen percent (15%).

4-1-23: NOTICE OF ASSESSMENT: The Finance Director or specifically authorized agent shall issue a Notice of Assessment for any tax deficiency, penalties, or interest due

(B) The payment due date for REMITTANCE OF the total tax liability pursuant to a Notice of Assessment shall be twenty (20) days after the date of the Notice of Assessment.

4-1-32: JEOPARDY ASSESSMENT: (C) Dispute of Jeopardy Assessment: If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of total tax liability, the taxpayer shall ~~pay~~ REMIT the total tax liability as assessed and submit a claim for refund to the City.

4-1-33: DISTRAINT AND SALE: (A) Unless such property is exempt by State Statute from distraint and sale, the City Manager may sign and issue a warrant directed to any employee or agent of the City, or any sheriff of any county in Colorado, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for the payment of the total tax liability.

1. Such warrant may be issued if the total tax liability is not ~~paid~~ REMITTED on or before twenty (20) days from the ~~payment~~ DUE date of a Notice of Assessment and no protest of such assessment has been timely filed.

4-1-34: STATUS OF TAX DUE IN BANKRUPTCY AND RECEIVERSHIP: Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, the total tax liability shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the Finance Director the amount of the total tax liability. The officer shall ~~pay~~ REMIT any total tax liability before making payment to any judgment creditor or other claimants.

4-1-37: LEGISLATIVE INTENT: ANY CHANGES TO THE CITY'S TAX POLICY RESULTING IN A NET REVENUE INCREASE TO THE CITY SHALL BE SUBJECT TO VOTER APPROVAL IN ACCORDANCE WITH THE PROVISIONS OF COLORADO CONSTITUTION ARTICLE X, SECTION 20.

Section 2. The following Sections of Title IV, Chapter 2 of the Westminster Municipal Code are hereby amended as follows:

4-2-2: WORDS AND PHRASES DEFINED: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

(T) "**Prescription Drugs**" means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq., and the ~~regulations~~ REGULATIONS promulgated thereunder to be labeled with the following statement: "~~Caution~~ CAUTION: Federal law prohibits dispensing without a prescription.", and is, in fact, dispensed, delivered, or administered to a person or animal by, or pursuant to the director of, a licensed ~~practitioner~~ PRACTITIONER of the healing arts or veterinary medicine.

4-2-5: TRANSACTIONS AND ITEMS SUBJECT TO TAX:

(A) The tax levied by Section 4-2-3(A) shall apply to the price of the following:

2. Telecommunications services, except carrier access services and interstate private communications services, AND EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION FOR MOBILE TELECOMMUNICATION SERVICES, for all international, interstate and intrastate telecommunications service originating from or received on telecommunication equipment in the City if the charge for the service is billed to an apparatus, telephone or account in this City, to a customer location in this City, or to a person residing in this City without regard to where the bill for such services is actually received.

(a) MOBILE TELECOMMUNICATIONS SERVICE SHALL BE SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE ONLY IF THE SERVICE IS PROVIDED BY A HOME SERVICE PROVIDER TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS WITHIN THE CITY AND THE SERVICE ORIGINATES WITHIN THE CITY; FURTHER, THE TAX SHALL BE COLLECTED IN ACCORDANCE WITH THE PROVISIONS OF THE ACT.

(b) AS USED IN THIS SUBSECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- i. "ACT" MEANS THE FEDERAL "MOBILE TELECOMMUNICATIONS SOURCING ACT," 4 U.S.C. SECS. 116 TO 126, AS AMENDED.
- ii. "CUSTOMER" MEANS CUSTOMER AS DEFINED IN SECTION 124(2) OF THE ACT.
- iii. "HOME SERVICE PROVIDER" MEANS HOME SERVICE PROVIDER AS DEFINED IN SECTION 124(5) OF THE ACT.
- iv. "MOBILE TELECOMMUNICATIONS SERVICE" MEANS MOBILE TELECOMMUNICATIONS SERVICE AS DEFINED IN SECTION 124(7) OF THE ACT.
- v. "PLACE OF PRIMARY USE" MEANS THE PLACE OF PRIMARY USE AS DEFINED IN SECTION 124(8) OF THE ACT.

(c). THE FINANCE DIRECTOR MAY REQUIRE PAYMENT OF THE TAX ON ANY OTHER BASIS PERMITTED BY THIS CHAPTER WHEN A CUSTOMER FAILS TO PROVIDE ITS PLACE OF PRIMARY USE OR THE ACT IS DETERMINED TO BE INAPPLICABLE TO THE TAX IMPOSED BY THIS ARTICLE ON MOBILE TELECOMMUNICATIONS SERVICES.

4-2-6: EXEMPTIONS FROM SALES TAX

(A) The tax levied by Section 4-2-3(A) shall not apply to the following:

35. Insulin in all forms, dispensed pursuant to the direction of a licensed practitioner of the healing arts. This includes ~~elucose~~ GLUCOSE to be used for the treatment of insulin reactions, diabetic urine and blood testing kits and materials, and insulin measuring and injecting devices.

4-2-9: PROVISIONS RELATIVE TO BUILDING PERMITS:

(A) Except as provided by Section 4-2-6(A)(7), every person, including any charitable organization or governmental entity, who is required to obtain a City building permit shall ~~pay~~ REMIT use tax on construction materials used on that project, whether purchased from sources inside or outside the City, by one of the following methods:

1. Estimated prepayment. The estimated cost of construction materials shall be calculated by multiplying the total valuation of the construction project, entered on the building permit by the City Building Division, by fifty percent (50%). Use tax on such estimated cost of construction materials shall be paid at the time the building permit is issued. Use tax on the actual cost of materials may be subsequently determined through audit. If use tax is prepaid, interest on any tax deficiency related to construction materials shall be computed from the date of issuance of the certificate of occupancy.
2. Actual cost. The actual cost of construction materials shall be reported and paid on monthly returns. If use tax is paid on an actual cost basis, interest on any tax deficiency shall be computed from the date on which tax is due.0

4-2-13: USE TAX; METHOD OF PAYMENT: Every consumer who has not paid the sales tax to a retailer shall, unless the credit established in Section 4-1-3(B)(2) applies, complete the use tax schedule of a return and ~~pay~~ REMIT the total tax liability to the City.

4-2-14: INTERCITY CLAIMS FOR RECOVERY: The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer ~~or vendor~~ to correctly pay, collect, and remit sales and use taxes to the City.

(B) When it is determined by the Director of Finance of the City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the ~~vendor~~ TAXPAYER that taxes are being improperly collected and remitted, and that as of the date of the notice the ~~vendor~~ TAXPAYER must cease improper tax collections and remittances.

(C) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer ~~or vendor~~. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any claim for Recovery shall include a properly executed release of claim from the taxpayer ~~and/or vendor~~ releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.

(D) Within ninety (90) days after receipt of a claim for Recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the Claim in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the Claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a ~~vendor or~~ taxpayer, the check shall be made to the parties jointly. Denial of a Claim for Recovery may only be made for good cause.

Section 3. The following Sections of Title IV, Chapter 3 of the Westminster Municipal Code are hereby amended as follows:

4-3-1: LEGISLATIVE INTENT: It is hereby declared to be the legislative intent of the City Council that on and after the effective date of this Chapter, every person who pays to gain admission or access to a performance of a motion picture or an establishment licensed under the Colorado Beer or Liquor Codes; or any display of live animals and/or plants; or for the use of lanes and pin setters for bowling balls in a bowling alley in the City that is open to the public shall ~~pay~~ REMIT the tax imposed by this chapter, and every person, whether owner, lessee, or operator, who charges or causes to be charged admission to any such performance of a motion picture, establishment licensed under the Colorado Beer or Liquor Codes, any display of live animals and/or plants, or use of lanes and pin setters for bowling balls in a bowling alley shall collect the tax imposed by this Chapter.

4-3-2: DEFINITIONS: Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

(A) "**Admissions Charge**" means:

2. Any charge for the right or ~~privilege~~ PRIVILEGE to the use of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including charges for bowling by the line.

(J) "**Vendor**" means any operator as defined in Subsection ~~(C)~~(D) of this Section.

Section 4. This ordinance shall take effect on January 1, 2003. It is specifically intended that the amendments set forth herein shall apply to tax returns due on or after January 1, 2003.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of September, 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of September, 2002.

Mayor

ATTEST:

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Second Reading of Councillor's Bill No. 46 re Allocation of 2001 Carryover Revenues

Prepared By: Barbara Gadecki, Assistant to the City Manager

Recommended City Council Action:

Pass Councillor's Bill No. 46 on second reading allocating the 2001 Carryover Revenues as detailed in the background section of this agenda memo.

Summary Statement

- City Council action is requested to pass the attached Councillor's Bill on second reading appropriating 2001 Carryover revenues from all funds, totaling approximately \$11,473,003. Only \$10,703,919 of this amount is being recommended for appropriation in the attached Councillor's Bill.
- These carryover revenues are derived from higher than anticipated revenue collections and lower than anticipated expenditures in various City funds. Examples of the sources of the higher revenue collections include: tap fees from the continued residential and commercial growth the City has been experiencing, building use tax collections, and interest earnings in excess of what was anticipated.
- The City has historically allocated these funds to be spent on various general and utility capital improvements (as well as specific purposes where the funds are from a dedicated source of revenues). This follows the City's policy of spending one-time revenues on one-time expenses.
- In light of the continuing weak economic environment, Staff is recommending that all of the 2001 carryover funds in the Sales and Use Tax fund (\$409,745) be carried forward to 2002 as unallocated fund balance to provide additional protection against further weakening in the economy. Also, carryover of \$306,872 in the Open Space Fund and \$52,467 in the Conservation Trust Fund are not being appropriated and will carry over into future years. These funds cannot be expended until they are appropriated by City Council.
- This Councillor's Bill was passed on first reading on September 9, 2002.

Expenditure Required: \$10,703,919

Source of Funds: 2001 Carryover Funds

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **46**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, GENERAL CAPITAL OUTLAY REPLACEMENT AND UTILITY FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THESE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the General Fund initially appropriated by Ordinance No. 2913 in the amount of \$69,324,181 is hereby increased by \$3,836,481 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$78,870,512. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2001 carryover.

Section 2. The \$3,836,481 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 1000.40020.0000	\$6,496,477	<u>\$3,836,481</u>	\$10,332,958
Total Change to Revenues		<u>\$3,836,481</u>	
EXPENSES			
Transfer to General Capital Outlay Replacement Fund 10010900.79800.0450	\$0	\$986,481	\$986,481
Transfer to General Capital Improvement Fund 10010900.79800.0750	1,053,409	<u>2,850,000</u>	13,903,409
Total Change to Expenditures		<u>\$3,836,481</u>	

Section 3. The 2002 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2913 in the amount of \$10,305,000 is hereby increased by \$3,091,366 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$19,367,826. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation 2001 carryover.

Section 4. The \$3,091,366 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 7500.40020.0000	\$2,261,186	\$241,366	\$2,502,552
Transfer from General Fund 7500.45000.0100	11,053,409	<u>2,850,000</u>	13,903,409
Total Change to Revenues		<u>\$3,091,366</u>	

Description	Current Budget	Increase	Final Budget
EXPENSES			
Security Enhancements 80275012532.80400.8888	\$0	\$61,366	\$61,366
98 th Avenue Connection 80175030007.80400.8888	410,000	40,000	450,000
Lowell Boulevard Bike Route 80275050533.80400.8888	0	140,000	140,000
Irving Street Library 80175050020.80400.8888	2,497,966	1,250,000	3,747,966
106 th Oak to Kipling 80275030501.80400.8888	50,000	550,000	600,000
City Hall Space Allocation 80275012534.80400.8888	0	250,000	250,000
Huron Street 129 th /144 th 80175030069.80400.8888	500,000	300,000	800,000
112 th Ave: Federal to Huron 80275030535.80400.8888	0	<u>500,000</u>	500,000
Total Change to Expenditures		<u>\$3,091,366</u>	

Section 5. The 2002 appropriation for the Water Portion of the Utility Fund, initially appropriated by Ordinance No. 2913 in the amount of \$25,286,775 is hereby increased by \$2,500,000 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$44,514,557. The actual amount in the Water Portion of the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2001 carryover.

Section 6. The \$2,500,000 increase in the Water Portion of the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 2000.40020.0000	\$15,226,360	<u>\$2,500,000</u>	\$17,726,360
Total Change to Revenues		<u>\$2,500,000</u>	
EXPENSES			
Gravel Lakes Storage 80120035078.80400.8888	\$5,458,922	<u>\$2,500,000</u>	\$7,958,922
Total Change to Expenditures		<u>\$2,500,000</u>	

Section 7. The 2002 appropriation for the Wastewater Portion of the Utility Fund, initially appropriated by Ordinance No. 2913 in the amount of \$11,968,834 is hereby increased by \$4,119,640 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$13,759,467. The actual amount in the Wastewater Portion of the Utility Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2001 carryover.

Section 8. The \$4,119,640 increase in the Wastewater Portion of the Utility Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Carryover 2100.40020.0000	\$(513,007)	<u>\$4,119,640</u>	\$3,606,633
Total Change to Revenues		<u>\$4,119,640</u>	
EXPENSES			
Transfer to Utility Fund Reserve 21010900.79800.0205	\$0	\$2,000,000	\$2,000,000
Big Dry Creek Expansion 80121035044.80400.8888	1,471,179	<u>2,119,640</u>	3,590,819
Total Change to Expenditures		<u>\$4,119,640</u>	

Section 9. The 2002 appropriation for the Utility Fund Reserve, initially appropriated by Ordinance No. 2913 in the amount of \$4,697,184 is hereby increased by \$2,000,000 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$6,697,184. The actual amount in the Utility Fund Reserve on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of 2001 carryover.

Section 10. The \$2,000,000 increase in the Utility Fund Reserve shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Transfer from Wastewater Fund 2050.45000.0210	\$0	<u>\$2,000,000</u>	\$2,000,00
Total Change to Revenues		<u>\$2,000,000</u>	
EXPENSES			
Contingency 20510900.79900.0000	\$4,697,184	<u>\$2,000,000</u>	\$6,697,184
Total Change to Expenditures		<u>\$2,000,000</u>	

Section 11. This ordinance is the initial 2002 appropriation for the General Capital Outlay Replacement Fund. The initial appropriation of \$986,481 due to City Council action on September 9, 2002 will increase the General Capital Outlay Replacement Fund balance to \$986,481. This increase is due to the appropriation of 2001 carryover.

Section 12. The \$986,481 increase in the General Capital Outlay Replacement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Transfer from General Fund 4500.45000.0100	\$0	<u>\$986,481</u>	\$986,481
Total Change to Revenues		<u>\$986,481</u>	
EXPENSES			
Contingency 45010900.79900.0000	\$0	<u>\$986,481</u>	\$986,481
Total Change to Expenditures		<u>\$986,481</u>	

Section 13. – 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 14. This ordinance shall take effect upon its passage after the second reading.

Section 15. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED AND PUBLISHED this 9th day of September, 2002. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23th day of September, 2002.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

Subject: Second Reading of Councillor's Bill No.47 Appropriating EPA Brownsfield Grant Funds to the 2002 Budget

Prepared by: Tony Chacon, South Westminster Revitalization Projects Coordinator

Recommended City Council Action:

- Pass Councillor's Bill No. 47 on second reading authorizing a supplemental appropriation of \$240,000 (\$200,000 Supplemental Grant and \$40,000 Loan Fund Grant) to the 2002 budget of the General Capital Improvement Fund for the Brownfields CIP account.

Summary Statement:

- In March 1999, the City received a \$200,000 Brownfields Assessment Demonstration Pilot Project Grant from EPA, and has completed the EPA approved work program and fully expended the grant proceeds.
- The City applied for and was awarded an additional \$200,000 in Supplemental Brownfields funds to continue planning and environmental assessment work along Little Dry Creek between 72nd Avenue and Federal Boulevard within south Westminster.
- The City applied for and was awarded a \$1,000,000 grant to provide low interest loans to assist the City, property owners, and prospective developers in cleaning up contaminated property.
- In having accepted the clean-up grant and having agreed to join the Colorado Brownfields Revolving Loan Fund, the City is entitled to \$40,000 in grant proceeds to be used for administration.
- A \$240,000 supplemental appropriation to the 2002 budget (Brownfields CIP account) is required to receive and expend the grant proceeds, whereby \$200,000 is related to the Supplemental Brownfields grant and \$40,000 is associated with administration of the Brownfields Revolving Loan Fund.
- This Councillor's Bill was passed on first reading on September 9, 2002.

Expenditure Required: \$240,000

Source of Funds: The funding sources for these expenditures are a \$200,000 EPA Supplemental Brownfields grant and \$40,000 in grant proceeds from an EPA Brownfields Revolving Loan Fund grant.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.
SERIES OF 2002

COUNCILLOR'S BILL NO. 47
INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THIS FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2913 in the amount of \$10,305,000 is hereby increased by \$240,000 which, when added to the fund balance as of the City Council action on September 9, 2002 will equal \$16,757,826. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of an EPA Brownfield grant and an EPA revolving loan fund grant.

Section 2. The \$240,000 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Federal Grants 7500.40610.0000	\$0	<u>\$240,000</u>	\$240,000
Total Change to Revenues		<u>\$240,000</u>	
EXPENSES			
Brownfields Grant 80175030188.80400.8888	\$200,000	<u>\$240,000</u>	\$440,000
Total Change to Expenditures		<u>\$240,000</u>	

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of September, 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of September, 2002.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Intergovernmental Service Agreement with WEDA for reimbursable expenses

Prepared By: Robin Byrnes, Community Development Programs Coordinator

Recommended City Council Action:

Authorize the City Manager to sign an Intergovernmental Service Agreement with the Westminster Housing Authority (WHA) to provide for reimbursement of services rendered to the WHA by city staff.

Summary Statement

- The Westminster Housing Authority does not have its own professional staff and relies on City staff to facilitate and implement WHA activities.
- Since October of 2000, City staff has provided the WHA professional services in order to refinance Westminster Commons. City staff has provided administrative, accounting, management, planning, clerical, and legal services to the WHA.
- The proceeds from the refinancing of Westminster Commons provides the WHA with a revenue stream with which to compensate the City the cost of these City-provided services.
- The proceeds from the refinancing of Westminster Commons will also be utilized to pay for the City's affordable housing study contracted at \$19,000, approved on July 8, 2002 by the WHA Board. In the event there is a contract addendum to pay for Geographic Information System (GIS) mapping and 2000 census data integration into the City's GIS system, the funding would be available through this Intergovernmental Service Agreement.
- The City would annually invoice the WHA for the amounts listed below to reimburse the City for services rendered by City staff.

Expenditure Required: None at this time

Source of Funds: Westminster Housing Authority billings

SUBJECT: Intergovernmental Service Agreement with WEDA for reimbursable expenses – Page 2

Policy Issue

Does City Council want to utilize city staff to provide professional services to the Westminster Housing Authority?

Alternatives

- Do not sign the Intergovernmental Service Agreement and receive no compensation for the provision of city staff services rendered to the Westminster Housing Authority. This alternative is not recommended because it prevents the City from accepting legitimate payment for services provided by city staff.
- Sign the Intergovernmental Service Agreement but do not accept compensation for city services rendered to the WHA. This alternative is not recommended for the same reasons stated above.

Background Information

The Westminster Housing Authority historically has relied on City staff to render all services on its behalf. The WHA has never had a revenue stream to pay for its required services. In the past, payment for services has not been an issue for the City because administrative and programmatic requirements were minimal and not financially taxing to provide to the WHA. In the past year, WHA services have required complex technical staff skills to accomplish the refinancing of Westminster Commons. The refinancing of Westminster Commons provides a consistent revenue stream to pay the City for staff services provided. The proceeds from the refinancing will be as follows:

Equity proceeds	\$860,000
Residual Receipts (20 years of accumulated profit over expenses)	\$1,900,000
<u>Annual Profits over Expenses (estimated from 2001 proceeds)</u>	<u>\$143,228</u>
Total:	\$2,903,228

The attached Intergovernmental Service Agreement provides that the WHA compensate the City for services rendered in the amount of \$70,000 per year, initiating in 2002 and continuing through 2004. An additional amount, up to \$50,000 may be paid to the City in 2002 for the affordable housing study. WHA billings revenues have been included in the adopted 2002 and Proposed 2003/2004 Budgets.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

INTERGOVERNMENTAL SERVICE AGREEMENT

THIS INTERGOVERNMENTAL SERVICE AGREEMENT (the "Agreement") is made and entered into this 23rd day of September, 2002, (the "Effective Date") by and between THE CITY OF WESTMINSTER, COLORADO, a Colorado home-rule municipality, and the WESTMINSTER HOUSING AUTHORITY, a public housing authority (the "Parties").

RECITALS

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

WHEREAS, the Westminster Housing Authority (the "Authority") is a political subdivision of the State of Colorado, duly organized, existing, and acting pursuant to C.R.S. section 29-4-201 et seq. (the "Act"); and

WHEREAS, Section 18(2)(a) of Article XIV of the Constitution of the State of Colorado provides that nothing in the Constitution shall be construed to prohibit the State or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and

WHEREAS, Part 2 of Article 1 of Title 29 of the Colorado Revised Statutes, as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts; and

WHEREAS, the Constitution and the laws of the State of Colorado permit and encourage local government entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, the Authority was created to carry out the purposes of a public housing authority pursuant to state law; and

WHEREAS, the Authority does not have its own professional staff and is need of administrative services, including but not limited to legal, accounting, management, planning, engineering, community development, clerical, data processing, and similar services; and

WHEREAS, the City is willing to provide such services in exchange for the consideration set forth in this Agreement; and

WHEREAS, pursuant to C.R.S. §29-4-209, the Authority has the power to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Authority;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, and other good and valuable consideration, the Parties covenant and agree as follows:

ARTICLE I

TERM OF AGREEMENT

SECTION 1.1 Effective Date of the Agreement; Duration of Agreement Term. The Initial Term of this Agreement shall commence on the Effective Date set forth above and shall end on December 31, 2002. Thereafter, this Agreement shall automatically renew for additional one-year periods commencing on each January 1 following the Initial Term, provided, however, that subject to the provisions of Section 2.2 below, either party may terminate this Agreement upon at least thirty (30) days advance notice to the other, in which case this Agreement shall be deemed terminated as of the last day of the month next following the month in which said notice is given, or such other date to which the parties may agree.

ARTICLE II

SERVICES

SECTION 2.1 City Services. The City agrees to provide to the Authority administrative and professional services reasonably required to operate the Authority to fulfill the purposes for which it was created. Such services shall include, but not be limited to, legal (provided no conflict of interest exists between the City and the Authority), accounting, management, planning, engineering, community development, clerical, data processing, and similar services (the "Services"). Said Services shall be provided by City staff on an as-needed basis as may be required by the applicable laws and regulations pertaining to the operations of a Authority.

SECTION 2.2 Compensation. As compensation for the Services, the Authority shall pay the City, on or before December 1 of the year of service the following amounts per year:

2002	\$70,000
2003	\$70,000
2004	\$70,000

Prior to December 1, 2004, the parties shall review and negotiate in good faith a revised fee schedule for subsequent years.

In the event of any termination of this Agreement prior to the December 1 payment date, the Authority shall pay the City a pro-rated fee based on the length of time the Services were actually provided without payment. In the event of termination, however, there shall be no refund of any previously paid fees to the City.

SECTION 2.3 Further Reimbursement. The Authority shall also reimburse the City, upon invoice, the cost of the affordable housing study of the City of Westminster conducted by Kathy McCormick & Associates, not to exceed \$50,000.

ARTICLE III

MISCELLANEOUS PROVISIONS

SECTION 3.1 Remedies. A breach by either party to this Agreement shall entitle the non-breaching party to any and all remedies at law or in equity. In any action brought to enforce this Agreement, the prevailing party shall be entitled to recover from the other its reasonable attorneys fees and costs. Before bringing any such action, however, the parties agree to attempt in good faith a mediated resolution of their dispute using a mutually acceptable professional and independent mediator.

SECTION 3.2 Amendments. This Agreement may be amended at any time by mutual written agreement of the Parties.

SECTION 3.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect, impair or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

IN WITNESS WHEREOF, the Parties hereto have caused their names and seals to be affixed as of the date and year noted above.

CITY OF WESTMINSTER, COLORADO

By: _____
City Manager

(SEAL)

ATTEST:

City Clerk

WESTMINSTER HOUSING AUTHORITY

By: _____
Chair

(SEAL)

ATTEST:

City Clerk, Secretary of the Authority

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Councillor's Bill No. 09E re W&WW Utility Enterprise Revenue Bonds in the Amount of \$7,490,000

Prepared by: Mary Ann Parrot, Finance Director

Recommended City Council Action

Pass Councillor's Bill No. 09E as an emergency ordinance, approving the sale of \$7,490,000 million Utility Revenue Bonds and direct the Mayor, Finance Director, and City Clerk to sign necessary documents on behalf of the City.

Summary Statement

City Council is requested to adopt the attached Councillor's Bill on an emergency basis, approving the sale of \$7.49 million in Utility Fund Enterprise Revenue Bonds, thus completing the scheduled financing of the Northwest Water Treatment Plant (NWWTP).

- The total cost of the plant remains at \$22 million, as originally estimated and bid in September 2000.
- The financing of this was arranged in two pieces, due to the availability of extremely low interest rates:
 - The first increment of \$15 million was borrowed through the Colorado Resource Water and Power and Development Authority (CRWPDA) in April 2000, at a cost of 4.40%.
 - The bond issue for \$15 million was the maximum that could be borrowed from CRWPDA. The issue netted \$14.75 million for the construction fund, after deducting costs of issuance of \$250,000. That left \$7.25 million to be financed in 2002.
 - Staff intended to finance the remaining increment of \$7.25 million of the plant with the upcoming bond issue. This second bond issue was originally intended to include the financing for Standley Lake Dam Renovations, as well. These issues were combined in order to achieve lower interest costs and minimize costs of issuance.
 - Tax problems with the ownership of the Standley Lake Dam necessitated the restructuring of this bond issue to finance only the \$7.25 million for the remainder of the NWWTP, plus costs of issuance of \$240,000, for a total of \$7.49 million.
- Adoption of the ordinance is in accordance with the reimbursement resolution approved by the City Council on November 26, 2001, allowing construction to proceed in advance of the bonds being issued.
 - When the cash flows permit advance funding, Staff requests approval to spend cash, then issue bonds to reimburse the City fund for the expenditures. This was done last November in order to get the project underway and fund the project completely with the original \$15 million CWRPDA loan and \$7 million in cash funding from the Utility Fund.
 - When the bond proceeds are received in Fall 2002, the Utility Fund will be reimbursed.
 - This is a standard City Council action and has been used over the past several years to address timing differences that arise when the project must proceed and the financing is scheduled for a later date.

Expenditure Required: \$240,000

Source of Funds:

All fees are included in the bond proceeds; no additional funds need to be budgeted.

Policy Issues

- Should the funds be provided by debt financing?
- Should the borrowing be on a variable rate basis?

Alternatives

1. Do not issue bonds; pay for the improvements with cash. This option is not recommended at this time.
 - The 5-year Capital Improvement Plan allows the Utility Fund to finance selected projects with cash and other projects with debt over the next several years. Staff has spent considerable time developing long-term plans, which combine cash-funded with debt-financed projects. Some projects will be debt-financed, as with this one. Other projects will be cash funded (such as Standley Lake Improvements) in order to complete the infrastructure improvements needed to serve the citizens.
 - In addition, because interest rates are at a historically low point, it is in the City's best interest to issue bonds in the near future for this size project. This allows the City to keep its cash and continue to earn above-market interest earnings on cash, at the same time minimizing its interest expenses.
2. Issue fixed-rate bonds; do not issue variable-rate bonds. This is not recommended at this time.
 - On a near-term basis, the bonds will be issued at approximately 1.75% interest, while fixed rate bonds would cost approximately 4% to 4.25% in today's market. This translates into near-term savings of 2.25% to 2.50% annually, or approximately \$175,000 annually in reduced interest expenses for the bond size of \$7.49 million. Staff expects reduced interest savings to continue into the foreseeable future.
 - In addition, these bonds, issued at approximately 2%, combined with the earlier financing of 4.40% (fixed rate) will lower the average cost of borrowing on this project to approximately 3.6%.
 - On a long-term basis, the interest rate on the bonds may rise over the proxy to be used of 4% to 4.25%. History has shown that this does not last very long. In the long run, weekly rates (rates which re-set on a weekly basis) have stayed below fixed rates for long periods of time. In addition, the rates can be fixed on any regular weekly re-marketing, at no cost to the Enterprise.
 - Lastly, additional variable rate bonds will be issued in 2004 to partly finance the Big Dry Creek Wastewater Treatment Plant optimization project. (Staff intends to use a mix of cash and debt financing for the Big Dry Creek Wastewater Treatment Plant project.) Staff will have another opportunity to review the interest rate structure on this series of bonds. The second set of bonds will act to dilute any interest rate risk to which the Enterprise will be exposed. In other words, by issuing in two series, the interest costs can be spread. Staff will analyze the costs and savings of the second set of bonds and will make a recommendation to the Council at that time.

Background Information

The total cost of the Northwest Water Treatment Plant (NWWTP) project remains at the \$22 million as approved by City Council on September 25, 2000. The first segment of the financing was \$15 million; after subtracting out costs of issuance, this resulted in \$14.75 million in construction proceeds. These bonds were issued through the Colorado Water Resource Power and Development Authority (CWRPDA) and received on April 18, 2000. This type of funding was used because low interest rates can be obtained by gaining access to the State of Colorado's AAA rating.

At the same time, however, CWRPDA had a limit of \$15 million in total borrowing for this type of project. In order to keep the project on schedule, City Council approved a reimbursement resolution to make up the difference in construction costs by cash funding the remaining \$7.25 million of project costs.

SUBJECT: Councillor's Bill re W&WW Utility Enterprise Revenue Bonds in the Amount of \$7,490,000 Page 3

The reimbursement resolution states that when the bonds are issued, they will be used to reimburse the City for these pre-funded project costs. In anticipation of this need for temporary funding, Council adopted Resolution No. 68 at the November 26, 2001, Council meeting. The resolution approved reimbursement of costs incurred prior to the sale of the debt for the Northwest Water Treatment Plant. This action enabled the Utility Enterprise to pay for the continuation of construction with funds on hand to bridge the timing differences for cash flow needs. Upon issuance of bonds, the requested funds will be reimbursed to the Enterprise in accordance with the reimbursement resolution.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

CITY OF WESTMINSTER, COLORADO
WATER AND WASTEWATER UTILITY ENTERPRISE
VARIABLE RATE DEMAND WATER AND WASTEWATER REVENUE
BONDS, SERIES 2002
2002 ENTERPRISE BOND ORDINANCE

2002 ENTERPRISE BOND ORDINANCE

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BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2002

COUNCILLOR'S BILL NO. **9E**
INTRODUCED BY COUNCILLORS

A BILL

FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, VARIABLE RATE DEMAND WATER AND WASTEWATER REVENUE BONDS, SERIES 2002, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,600,000, PAYABLE SOLELY OUT OF THE PLEDGED REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER AND WASTEWATER ENTERPRISE; PROVIDING OTHER DETAILS CONCERNING THE BONDS, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Westminster, in the Counties of Adams and Jefferson, and State of Colorado (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado (the "State") and in particular under the provisions of Article XX of the Constitution of the State and the City's Charter (the "Charter"); and

WHEREAS, capitalized terms used in the recitals to this Ordinance and elsewhere herein shall have the definitions ascribed to them in Article 1 hereof; and

WHEREAS, the City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes; and

WHEREAS, pursuant to art. X, § 20 and art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(a) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bonds, without voter approval in advance; and

WHEREAS, the Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that water and wastewater revenue bonds in an aggregate principal amount of not to exceed \$7,600,000 be issued for the purpose of paying the costs of the Project; and

WHEREAS, the Enterprise intends to issue the Bonds to defray in part the cost of the Project; and

WHEREAS, the purchase price of any Bonds tendered or deemed tendered for purchase by the owners thereof and not successfully remarketed hereunder are payable from amounts made available under a Standby Bond Purchase Agreement between the Enterprise and the Bank; and

WHEREAS, except for the Series 2001 Bonds and the CWRPDA Loans, the Enterprise has never pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any securities or for any other purpose (excluding securities which have heretofore been redeemed in full, as to all principal, premium, if any, and interest, or are otherwise not Outstanding) and with the result that the Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds, and they may be made payable from the Pledged Revenues; and

WHEREAS, pursuant to Section 11-57-203, C.R.S., as amended, the Enterprise desires to delegate to the President or the Treasurer the power to accept the proposal to purchase the Bonds and to determine the initial rate of interest on the Bonds, the price at which the Bonds will be sold, the aggregate principal amount of the Bonds to be issued and the amount of principal maturing, or subject to mandatory redemption, in any particular year; and

WHEREAS, Section 12.H. of the Series 2001 Bond Ordinance provides that the consent of the Series 2001 Bond Insurer shall be required in lieu of the consent of Series 2001 Bond Owners, when required, for the execution and delivery of any amendatory or supplemental ordinance; and

WHEREAS, the Series 2001 Bond Insurer has consent to the amendment of the Series 2001 Bond Ordinance in the manner provided in Section 1504 hereof; and

WHEREAS, the Council desires to amend the Series 2001 Bond Ordinance in the manner provided in Section 1504 hereof; and

WHEREAS, the Council has determined and does hereby declare:

In order to meet the present and future needs of the City and the Enterprise, it is necessary to extend, better, otherwise improve and equip the System;

The Bonds shall be issued to finance the costs of the Project;

All action preliminary to the authorization of the issuance of the Bonds has been taken.

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

ARTICLE I.

DEFINITIONS, INTERPRETATION, RATIFICATION AND EFFECTIVE DATE

Short Title. This Ordinance shall be known as and may be cited by the short title “2002 Enterprise Bond Ordinance” (the “Ordinance”).

Meanings and Construction.

Definitions. The terms in this Section for all purposes of this Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and of any other ordinance or any other document pertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

“acquire” or “acquisition” means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any body corporate and politic therein, or any other Person, the endowment, bequest, devise, transfer, assignment, option to purchase, other contract, or other acquisition, or any combination thereof, of any properties pertaining to the System, or an interest therein, or any other properties herein designated.

“Acquisition Fund” means the special account within the Water and Wastewater Utility Fund designated by the City as the “City of Westminster, Colorado, Water and Wastewater Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002, Acquisition Fund” created pursuant to Section 601 hereof.

“Additional Parity Bonds” means any Parity Securities issued after the issuance of the Bonds.

“Annual Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the November 30 or May 31 nearest to but not later than the date which is one year from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Annual Interest Rate for whatever reason, or the Annual Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Annual Interest Rate exceed the Maximum Rate.

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

“Bank” means the Initial Bank and, upon the effective date of any Substitute Liquidity Facility, the Substitute Bank party thereto.

“Bank Bonds” means Bonds tendered or deemed tendered for purchase by the Owners thereof which have been purchased by the Bank under the Liquidity Facility pursuant to Section 1208(b) hereof and held by or on behalf of the Bank in accordance with the Liquidity Facility.

“Bank Rate” means, at the date of determination, the “Bank Rate” specified as being applicable under the Initial Liquidity Facility or the Substitute Liquidity Facility in effect on such date, but in no event in excess of the Maximum Bank Rate.

“Beneficial Owner” means, with respect to the Bonds, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Paying Agent or the Tender Agent, as applicable.

“Beneficial Ownership Interest” means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a book-entry system.

“Bond Counsel” means an attorney or a firm of attorneys, designated by the Enterprise and satisfactory to the Paying Agent, the Tender Agent and the Bank, of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bond Purchase Date” means any Bond Purchase Date as defined and provided for in Sections 501, 502, 503, 504 or 505 hereof.

“Bonds” means the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002” authorized by this Ordinance.

“Book-entry form” or “book-entry system” means, with respect to the Bonds, a form or system, as applicable, under which (a) the Beneficial Ownership Interests may be transferred only through a book entry and (b) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Owner, with the physical Bond certificates “immobilized” in the custody of the Depository. The book-entry system maintained by and the responsibility of the Depository and not maintained by or the responsibility of the Enterprise or the Paying Agent is the record that identifies, and records the transfer of the interests of, the owners of book-entry interests in the Bonds.

“Business Day” means a day of the year, other than a Saturday or Sunday, and other than a day on which commercial banks located in the city in which the principal corporate trust office of the Paying Agent or the principal office of the Remarketing Agent or the principal corporate trust office of the Tender Agent or the office of the Bank at which requests are made for purchase under the Liquidity Facility are located are required or authorized to remain closed and other than a day on which the New York Stock Exchange is closed.

“Capital Improvements” means those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

“Charter” means the home rule charter of the City, as from time to time amended.

“City” means the City of Westminster, Colorado.

“Closing Date” means the date of delivery of and payment for the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and the regulations promulgated thereunder.

“Combined Average Annual Debt Service Requirements” means the sum of the Average Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made.

“Combined Maximum Annual Debt Service Requirements” means the Maximum Annual Debt Service Requirements for all issues of Securities or portions thereof for which the computation is being made, treated as a single issue.

“Commercial Bank” means a state or national bank or trust company which is a member of the Federal Deposit Insurance Corporation (or any successors thereto) and of the Federal Reserve System, which has a capital and surplus of \$75,000,000 or more, and which is located within the United States of America.

“Consulting Engineer” means an independent consulting engineer or engineering firm or corporation having skill, knowledge and experience in analyzing the operations of municipal water and wastewater systems.

“Cost of the Project” means all costs, as designated by the Enterprise, of the Project, or any interest therein, which cost, at the option of the Enterprise (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to the Project, including, without limitation:

All preliminary expenses or other costs advanced by the Enterprise or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the Council, or any combination thereof, or otherwise;
The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;
The costs of contingencies;
The costs of premiums on any builders' risk insurance and performance bonds during the construction, installation and other acquisition of the Project, or a reasonably allocated share thereof;
The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, accountants, financial consultants, attorneys at law, clerical help and other agents and employees;
The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the Project, the taking of options and the issuance of the Bonds;
All costs and expenses of issuing the Bonds, including, without limitation, fees of the Paying Agent, the Remarketing Agent, the Tender Agent, the Bank, bond counsel, special counsel, counsel to the Bank, counsel to the Purchaser, financial advisor, rating agencies and printers to the extent not defrayed as an Operation and Maintenance Expense;
The costs of the filing or recording of instruments and the cost of any title insurance premiums;
The costs of funding any construction loans and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;
The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for the Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;
The costs of machinery and equipment;
The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;
The payment of the premium for the Insurance Policy issued by the Insurer;
The costs of labor, material and obligations incurred to contractors, builders and materialmen in connection with the acquisition and construction of the Project;
The costs of amending any ordinance, resolution or other instrument pertaining to the Bonds or otherwise to the System; and
All other expenses pertaining to the Project.

“Council” means the City Council of the City, acting as the governing body of the Enterprise.

“Credit Facility” means any letter or line of credit, policy of bond insurance, surety bond or guarantee or similar instrument (other than a Surety Bond but including the Liquidity Facility) issued by a financial, insurance or other institution and which specifically provides security and/or liquidity in respect of securities payable from Pledged Revenues.

“Credit Facility Obligations” means repayment or other obligations incurred by the Enterprise in respect of draws or other payments or disbursements made under a Credit Facility (excluding payments of principal of and interest on Bank Bonds).

“C.R.S.” means the Colorado Revised Statutes, as amended to the date of delivery of the Bonds.

“CWRPDA Loans” means the Loan Agreements by and between the Enterprise and the Colorado Water Resources and Power Development Authority dated as of May 1, 1997, April 1, 1998 and April 15, 2000, which have a lien on the Pledged Revenue junior and subordinate to the lien thereon of the Bonds, the Parity Credit Facility Obligations relating thereto, any Additional Parity Bonds and any Parity Securities heretofore or hereafter issued.

“Daily Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period, provided that any determination of the Daily Interest Rate made on the last Business Day of a week shall be in effect through, but not including, the next succeeding Business Day, or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Daily Interest Rate for whatever reason, or the Daily Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Daily Interest Rate exceed the Maximum Rate.

“Debt Service Requirements” means the principal of, interest on, and any premium due in connection with the redemption of the Bonds (including Bank Bonds) or any other Securities payable from the Pledged Revenues.

“Depository” means any securities depository that is a clearing agency under Federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book entry interests in bonds, and to effect transfers of book entry interests in bonds in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Direct Participant” means a Participant as defined in the Letter of Representations.

“Enterprise” means the City of Westminster, Colorado, Water and Wastewater Utility Enterprise created pursuant to the Enterprise Ordinance, and if the said enterprise should cease to exist, the City.

“Enterprise Ordinance” means Ordinance No. 2264, Series of 1994, of the City, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

“Event of Termination” means any of the events stated in Section 7.01 of the Initial Liquidity Facility.

“Events of Default” means the events stated in Section 1103 hereof.

“Excess Investment Earnings Fund” means the special account within the Water and Wastewater Utility Fund designated by the City as the “Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002 Arbitrage Payable Account” created and referred to in Section 706 hereof.

“Federal Government” means the United States of America and any agency, instrumentality or corporation thereof.

“Federal Securities” means bills, certificates of indebtedness, notes, or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America.

“First Optional Redemption Date” means, with respect to optional redemption of Bonds bearing interest at a Fixed Interest Rate, the first December 1 which is 10 years after the Fixed Interest Rate Commencement Date.

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

“Fitch” means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns.

“Five-Year Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the November 30 or May 31 nearest to but not later than the date which is five years from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Five-Year Interest Rate for whatever reason, or the Five-Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Five-Year Interest Rate exceed the Maximum Rate.

“Fixed Interest Rate” means the fixed rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the Fixed Interest Rate Commencement Date, to be the lowest interest rate from the Fixed Interest Rate Commencement Date to the final maturity date of the Bonds, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Fixed Interest Rate Commencement Date without credit enhancement; provided that in no event shall the Fixed Interest Rate exceed the Maximum Rate.

“Fixed Interest Rate Commencement Date” means the Interest Period Reset Date from and after which the Bonds shall bear interest at the Fixed Interest Rate, as that date shall be established as provided in Section 302C hereof.

“Income” means all income from rates, fees, tolls, and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from the System, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, and all income or other gain, if any, from any investment of Pledged Revenues and of the proceeds of Securities payable from Pledged Revenues (except income or other gain from any investment of moneys held in an escrow fund for the defeasance of Securities payable from the Pledged Revenues or any other similar fund) to the extent not required to be rebated to the federal government.

“Independent Auditor” means any certified public accountant, or any firm of certified public accountants, duly licensed to practice and practicing as such under the laws of the State:

(a) **Who is, in fact, independent and not under the domination of the City or the Enterprise;
Who does not have any substantial interest, direct or indirect, with the City or the Enterprise, and
Who is not connected with the City or the Enterprise as an officer or employee thereof, but who may be regularly retained to make annual or similar audits of any books or records of the City or the Enterprise.**

“Indirect Participant” means a person utilizing the book-entry system of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

“Initial Bank” means Dexia Credit Local, acting through its New York Agency, the provider of the Initial Liquidity Facility.

“Initial Liquidity Facility” means the Standby Bond Purchase Agreement dated as of the date of delivery of the Bonds among the Enterprise, the Tender Agent and the Initial Bank to provide for the payment of the purchase price of Bonds tendered or deemed tendered for purchase which are not successfully remarketed, as the same may be amended, supplemented or extended from time to time.

“Insurance Policy” means the insurance policy issued by the Insurer guaranteeing the scheduled payment of the principal of and interest on the Bonds when due.

“Insurer” means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

“Interest Payment Date” or “Interest Payment Dates” means (a) while the Bonds bear interest at the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate or the Fixed Interest Rate, the first day of each June and December, (b) while the Bonds bear interest at the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate, or the Quarterly Interest Rate, the first Business Day of each month, commencing November 1, 2002, (c) for any Bank Bond, the dates set forth therefor pursuant to the Liquidity Facility, and (d) for all Bonds, the maturity date thereof and each Interest Period Reset Date.

“Interest Period Reset Date” means the date on which the interest rate on the Bonds converts from the Interest Rate Mode applicable to the Bonds prior to such date to a new Interest Rate Mode. An Interest Period Reset Date shall be an Interest Rate Adjustment Date for the Interest Rate Mode in effect prior to such change.

“Interest Rate Adjustment Date” means any date on which the interest rate on the Bonds may be adjusted, either as the result of the conversion of the interest rate on the Bonds to a different Interest Rate Mode, or by adjustment of the interest rate on the Bonds within the applicable Interest Rate Mode. The Interest Rate Adjustment Date shall be the Interest Period Reset Date and thereafter, for each succeeding Interest Rate Period, the first day of the first month of the next Interest Rate Period if the Bonds bear interest at the Semiannual, Annual or Five-Year Interest Rate, the first Business Day of the first month of the next Interest Rate Period if the Bonds bear interest at the Quarterly Interest Rate; the first Business Day of a month if the Bonds bear interest at the Monthly Rate; Thursday of each week if the Bonds bear interest at the Weekly Interest Rate; and each Business Day if the Bonds bear interest at the Daily Interest Rate.

“Interest Rate Determination Date” means (a) with respect to the Quarterly Interest Rate, the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate and the Fixed Interest Rate, the tenth Business Day preceding an Interest Rate Adjustment Date, (b) with respect to the Monthly Interest Rate, the seventh Business Day preceding an Interest Rate Adjustment Date, (c) with respect to the Weekly Interest Rate, not later than 2:00 p.m. Eastern time on Wednesday of each week, or the next preceding Business Day if such Wednesday is not a Business Day; provided that upon any conversion to the Weekly Interest Rate from a different Interest Rate Mode, the first Interest Rate Determination Date shall mean not later than 2:00 p.m. Eastern time on the Business Day preceding the Interest Period Reset Date, and (d) with Respect to the Daily Interest Rate, 10:00 a.m. MST on each Business Day.

“Interest Rate Mode” means any of those modes of interest with respect to the Bonds permitted by this Ordinance, specifically, the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate, the Quarterly Interest Rate, the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate and the Fixed Interest Rate.

“Interest Rate Period” means that period of time for which the interest rate with respect to the Bonds has been determined by the Remarketing Agent or otherwise as provided in the definition

of the applicable Interest Rate Mode, commencing on the applicable Interest Rate Adjustment Date, and terminating on the day immediately preceding the following Interest Rate Adjustment Date, if any; provided that the Interest Rate Period for the Bonds while they bear interest at the Daily Interest Rate shall consist of one day unless otherwise provided in the definition of Daily Interest Rate.

“Investment Securities” means any securities or other obligations permitted as investments of moneys of the City under the laws of the State.

“Letter of Representations” means the Letter of Representations from the Enterprise, the Paying Agent, the Tender Agent and the Remarketing Agent to the Depository in connection with the issuance of the Bonds in a book-entry system, as supplemented and amended from time to time.

“Liquidity Facility” means the Initial Liquidity Facility and, upon the effective date of any Substitute Liquidity Facility, such Substitute Liquidity Facility.

“Manager” means the duly appointed and acting Manager of the Enterprise and his or her successors in function.

“Mandatory Bank Tender” means the mandatory tender of Bonds (other than Bonds owned by or on behalf of the City or Enterprise and Bank Bonds) pursuant to Section 505 hereof upon receipt by the Tender Agent of notice from the Bank given pursuant to the Liquidity Facility that an Event of Termination, which is grounds for such mandatory tender under the Liquidity Facility, has occurred and is continuing and the date of termination of the Bank’s obligation to purchase Bonds pursuant to the Liquidity Facility, which date shall be not less than 30 days after receipt by the Tender Agent of such notice.

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

“Maximum Bank Rate” means the maximum rate of interest to be borne by Bank Bonds pursuant to the Initial Liquidity Facility or any Substitute Liquidity Facility.

“Maximum Rate” means 15% per annum.

“Monthly Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of the next month or, in the case of the Interest Rate Period commencing on the Closing Date, the first Business Day of the month which is at least twenty days after the Closing Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Monthly Interest Rate for whatever reason, or the Monthly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Monthly Interest Rate exceed the Maximum Rate.

“Moody’s” means Moody’s Investors Service, a Delaware corporation and its successors and its assigns.

“Official Statement” means the Official Statement delivered in connection with the original issuance and sale of the Bonds.

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

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

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

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

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

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

Ordinary and current rentals of equipment or other property;

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

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

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

“Operation and Maintenance Expenses” does not include:

(c) **Any allowance for depreciation;**

Any costs of reconstruction, improvement, extension, or betterment;

Any accumulation of reserves for capital replacements;

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

Any allowance for the redemption of any Securities payable from the Pledged Revenues or the payment of any interest thereon;

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

Any other ground of legal liability not based on contract.

“Operation and Maintenance Fund” means the expense account heretofore created within the Water and Wastewater Utility Fund and used by the City for the payment of Operation and Maintenance Expenses referred to in Section 703 hereof.

“Ordinance” means this Ordinance of the Enterprise authorizing the issuance of the Bonds.

“Outstanding” when used with reference to the Bonds or any other designated Securities and as of any particular date means all the Bonds or any such other Securities payable from the Pledged Revenues, as the case may be, in any manner theretofore and thereupon being executed and delivered:

(d) **Except any Bond or other Security canceled by the Enterprise, by any paying agent, or otherwise on the Enterprise’s behalf, at or before such date;**

Except any Bond or other Security deemed to be paid as provided in Section 1501 hereof or any similar provision of the ordinance authorizing the issuance of such other Security;

Except any Bond deemed to be tendered in accordance with Section 508 hereof; and

Except any Bond or other Security in lieu of or in substitution for which another Bond or other Security shall have been executed and delivered pursuant to Sections 306, 307 or

1307 hereof or any similar provisions of the ordinance authorizing the issuance of such other security.

“Owner” means the registered owner of any designated Bond or other designated Security.

“Parity Credit Facility Obligations” means any Credit Facility Obligations payable from the Pledged Revenues on a parity with the outstanding Parity Securities.

“Parity Securities” means the Bonds, the Series 2001 Bonds and any other Security or Securities payable from the Pledged Revenues equally or on a parity with the Bonds and the Series 2001 Bonds.

“Parity Security Ordinances” means any agreements hereafter entered into by the City with respect to Parity Securities and, without duplication, any ordinances hereafter adopted by the Council authorizing the issuance of Parity Securities.

“Paying Agent” means The Bank of Cherry Creek, a branch of Western National Bank, in Denver, Colorado, and being an agent of the Enterprise for the payment of the Debt Service Requirements of the Bonds, the registrar for the Bonds and for other administration of moneys pertaining to the Bonds, and includes any successor Commercial Bank as paying agent.

“Person” means a corporation, firm, other body corporate (including, without limitation, the Federal Government, the State, or any other body corporate and politic other than the City or the Enterprise), partnership, limited liability company, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“Pledged Revenues” means all Income remaining after the deduction of Operation and Maintenance Expenses.

“President” means the mayor of the City in his or her capacity as President of the Enterprise, or his or her successor in functions.

“Principal and Interest Fund” means the special account within the Water and Wastewater Utility Fund, created pursuant to the Series 2001 Bond Ordinance and referred to in Section 704 hereof.

“Project” means the land, facilities and rights constructed, installed, purchased and otherwise acquired for the System, the cost of which is to be defrayed with a portion of the proceeds of the Bonds and which constitutes Capital Improvements.

“Purchaser” means Stifel, Nicolaus & Co., Incorporated Hanifen Imhoff Division.

“Quarterly Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of February, May, August, or November, or nearest to but not later than the date which is three months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Quarterly Interest Rate for whatever reason, or the Quarterly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Quarterly Interest Rate exceed the Maximum Rate.

“Rating Agency” means each nationally recognized securities rating agency then maintaining a rating on the Bonds and initially means Fitch, Standard & Poor’s and Moody’s.

“Record Date” means (a) with respect to any Bond bearing interest at a Variable Rate, the Business Day immediately preceding an Interest Payment Date applicable to that Bond, (b) with

respect to any Bond bearing interest at the Fixed Interest Rate, the May 15 or November 15 next preceding the Interest Payment Date and (c) with respect to Bank Bonds, the Business Day immediately preceding each Interest Payment Date for the Bank Bonds.

“Redemption Date” means the date fixed for the redemption prior to their respective maturities of any Bonds or other designated Securities payable from Pledged Revenues in any notice of prior redemption or otherwise fixed and designated by the Enterprise.

“Redemption Price” means, when used with respect to a Bond or any other designated security payable from Pledged Revenues, the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof prior to the stated maturity date of such security on a Redemption Date in the manner contemplated in accordance with the security’s terms.

“Remarketing Agent” means, initially, Stifel, Nicolaus & Co., Incorporated Hanifen Imhoff Division, and any other Person meeting the qualifications of Section 1202 hereof and designated from time to time by the Enterprise to act as Remarketing Agent under Section 1201 hereof and under the Remarketing Agreement.

“Remarketing Agreement” means the Remarketing Agreement dated as of the date of delivery of the Bonds between the Enterprise and the Remarketing Agent, and any amendments or supplements thereto, or any similar agreement as may be substituted therefor.

“Remarketing Reimbursement Fund” means the special account designated as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002 Remarketing Reimbursement Fund” created pursuant to Section 1205 hereof.

“Reserve Fund” means the special account within the Water and Wastewater Utility Fund created pursuant to the Series 2001 Bond Ordinance and referred to in Section 705 .

“Reserve Fund Requirement” means an amount equal to the least of: (i) ten percent (10%) of the original proceeds, (ii) one hundred twenty-five percent (125%) of the Combined Average Annual Debt Service Requirements, or (iii) one hundred percent (100%) of the Combined Maximum Annual Debt Service Requirements of the Bonds, any Additional Parity Bonds or other Parity Securities to which the Reserve Fund is pledged, to be maintained in the Reserve Fund if required in accordance with the provisions of Section 705 hereof, except to the extent of any Surety Bond therein. For purposes of computing the Reserve Fund Requirement, any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, shall be assumed, at the time of the computation, to bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty is rated “A” or higher by a Rating Agency at the time of the calculation.

“Secretary” means the City Clerk of the City in his or her capacity as the Secretary of the Enterprise and his or her successors in functions.

“Security” or “Securities” means any bond, warrant, note, lease or any other evidence of advancement of money to the Enterprise or the City.

“Semiannual Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent, on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the November 30 or May 31 nearest to but not later than the date which is six months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Semiannual Interest Rate for whatever reason, or the Semiannual Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Semiannual Interest Rate exceed the Maximum Rate.

“Series 2001 Bond Insurer” means Ambac Assurance Corporation, a Wisconsin-domiciled stock insurance company, or its successors.

“Series 2001 Bond Ordinance” means the ordinance authorizing the issuance of the Series 2001 Bonds and any amendments thereto.

“Series 2001 Bonds” means the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Refunding Bonds, Series 2001” originally issued in the aggregate principal amount of \$20,990,000.

“Special Record Date” means a special date fixed by the Paying Agent to determine the names and addresses of Owners of Bonds for the purpose of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 302 hereof.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of McGraw-Hill, Inc., a corporation organized and existing under the laws of the State of New York, its successors and its assigns.

“State” means the State of Colorado.

“Stated Termination Date” means the stated date upon which the Liquidity Facility by its terms expires, as the same may be extended from time to time, and includes the date upon which the Liquidity Facility expires pursuant to a termination under Section 8.08 of the Liquidity Facility.

“Subordinate Credit Facility Obligations” means any Credit Facility Obligations payable from Pledged Revenues subordinate and junior to the lien thereon of the Bonds.

“Subordinate Securities” means Securities payable from the Pledged Revenues having a lien thereon subordinate or junior to the lien thereon of the Bonds.

“Substitute Bank” means the one or more commercial banks, trust companies, insurance companies or other entities, approved by the Insurer, which provide the Substitute Liquidity Facility.

“Substitute Liquidity Facility” means any letter of credit, standby bond purchase agreement, line of credit, surety bond, insurance policy or other agreement or instrument, approved by the Insurer, under which any Person (other than the City or the Enterprise) undertakes to make or provide funds to pay the purchase price of Bonds tendered or deemed tendered for purchase which are not successfully remarketed, delivered to and received by the Tender Agent (a) replacing the then existing Liquidity Facility, (b) dated as of a date prior to the Stated Termination Date of the then existing Liquidity Facility, (c) expiring at least 364 days from the date of its issuance, (d) expiring on a date which is later (but not earlier) than the Stated

Termination Date of the then existing Liquidity Facility, and having a stated amount equal to the sum of (i) the aggregate principal amount of Bonds at the time Outstanding, plus not less than (ii) an amount equal to (A) 35 days' interest on all Outstanding Bonds if the Bonds bear interest at the Weekly Interest Rate, the Monthly Interest Rate or the Quarterly Interest Rate or (B) if the Bonds bear interest at the Semiannual Interest Rate, the Annual Interest Rate or the Five-Year Interest Rate, such number of days of interest on all outstanding Bonds as may be required by each Rating Agency then maintaining a rating on the Bonds to continue its rating, in each case computed at the Maximum Rate, (e) accompanied by an opinion of Bond Counsel to the effect that the delivery thereof is authorized or permitted by the terms of this Ordinance, and will not adversely affect the exclusion from gross income of interest on the Bonds for Federal income tax purposes, and (f) approved by the Insurer, provided, however, an extension of the Stated Termination Date of the existing Liquidity Facility shall not be deemed a Substitute Liquidity Facility if there is delivered to the Enterprise, the Paying Agent, the Tender Agent and the Remarketing Agent an opinion of counsel for the Bank regarding the enforceability of such Liquidity Facility in substantially the form delivered to such parties upon the execution and delivery of the Initial Liquidity Facility and there has been no downgrade in the ratings of the provider of the Liquidity Facility during the term of the Liquidity Facility.

“Substitution Date” means the day on which a Substitute Liquidity Facility becomes effective.

“Superior Securities” means Securities payable from the Pledged Revenues having a lien thereon superior or senior to the lien thereon of the Bonds.

“Supplemental Public Securities Act” means Part 2 of Article 57 of Title 11, C.R.S., as amended.

“Supplemental Public Securities Act Certificate” means the certificate of the Enterprise described in Section 211 hereof.

“Surety Bond” means any surety bond, insurance policy, letter of credit or similar instrument or agreement guaranteeing certain payments into the Reserve Fund as provided therein and subject to the limitations set forth therein.

“System” means the Water Facilities and the Wastewater Facilities of the City owned and operated by the City as a single utility system.

“Tax Compliance Certificate” means the Federal Tax Exemption Certificate executed by the Enterprise in connection with the initial issuance and delivery of the Bonds as it may from time to time be modified pursuant to its terms.

“Tender Agent” means (a) The Bank of Cherry Creek, a branch of Western National Bank, and (b) any successor Tender Agent appointed by the Enterprise pursuant to Section 1205 hereof.

“Tender Agreement” means the Tender Agent Agreement dated as of the date of delivery of the Bonds between the Enterprise and the Tender Agent and any amendments or supplements thereto, or any similar agreement as may be substituted therefor.

“Tender Bonds” means the Bonds and any other Securities payable from Pledged Revenues which by their terms may be required to be tendered for purchase, or which may be tendered by and at the option of the Owner thereof for purchase, prior to the stated maturity thereof.

“Treasurer” means the duly appointed and acting Treasurer of the Enterprise and his or her successors in function.

“Trust Bank” means a Commercial Bank which is authorized to exercise and is exercising trust powers located within or without the State, and also means any branch of the Federal Reserve Bank.

“Variable Rate” means any interest rate to be borne on the Bonds other than the Fixed Interest Rate.

“Variable Rate Bonds” means the Bonds and any other Securities payable from Pledged Revenues issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue.

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

“Water and Wastewater Utility Fund” means the self-balancing group of accounts heretofore created by the City as an enterprise fund to record all financial activity of the Enterprise created pursuant to the Series 2001 Bond Ordinance and referred to in Section 702 hereof.

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

“Weekly Interest Rate” means (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date, to be the lowest interest rate for the Interest Rate Period of one week (or less in the case of any such Interest Rate Period commencing on an Interest Period Reset Date which is not a Thursday) commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions) at which, as of such Interest Rate Determination Date, the Bonds could be remarketed at par, plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Weekly Interest Rate for whatever reason, or the Weekly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the interest rate then in effect with respect to the Bonds, without adjustment; provided that in no event shall the Weekly Interest Rate exceed the Maximum Rate.

City-Held Securities. Any Securities payable from any Pledged Revenues held by the City or the Enterprise shall not be deemed to be Outstanding for the purpose of redemption nor Outstanding for the purpose of consents hereunder or for any other purpose herein.

Parties Interested Herein. Nothing herein expressed or implied confers any right, remedy or claim upon any Person, other than the City, the Council, the Enterprise, the Paying Agent, the Remarketing Agent, the Tender Agent, the Insurer, the Bank, the Owners of the Bonds and the Owners of any other Securities payable from the Pledged Revenues when reference is expressly made thereto. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Enterprise shall be for the sole and exclusive benefit of the City, the Council, the Enterprise, the Paying Agent, the Remarketing Agent, the Tender Agent, the Insurer, the Bank, the Owners of the Bonds and the Owners of any such other Securities in the event of such a reference.

Ratification; Approval of Documents. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council, the officers of the Enterprise and otherwise taken by the Enterprise directed toward the Project and the sale and delivery of the Bonds for such purposes, be, and the same hereby is, ratified, approved and confirmed.

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

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.

Ordinance Irrepealable. After any of the Bonds are issued, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Owner or Owners of the Bonds and this Ordinance shall be and shall remain irrepealable until the Bonds, as to all Debt Service Requirements, shall be fully paid, canceled, and discharged, except as herein otherwise provided.

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

**DETERMINATION OF THE ENTERPRISE’S AUTHORITY AND OBLIGATIONS;
APPROVAL OF RELATED DOCUMENTS; AND ELECTION TO APPLY
SUPPLEMENTAL PUBLIC SECURITIES ACT TO THE BONDS**

Authority for This Ordinance. This Ordinance is adopted by virtue of the City’s powers as a home rule city reorganized and operating pursuant to Article XX, § 6 of the State Constitution, Chapter XI, Section 11.1(a) of the Charter, and the Enterprise Ordinance and pursuant to their provisions. Pursuant to Article XX of the State Constitution and the Charter, all statutes of the State which might otherwise apply in connection with the Project or the Bonds are hereby superseded, other than the Supplemental Public Securities Act.

Bonds Equally Secured. The covenants and agreements herein set forth to be performed on behalf of the Enterprise shall be for the equal benefit, protection and security of the Owners of any and all of the Outstanding Bonds (including Bank Bonds) and any Outstanding Parity Securities heretofore or hereafter authorized and issued and any Parity Credit Facility Obligations relating thereto, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of such securities over any other thereof, except as otherwise expressly provided in or pursuant to this Ordinance.

Special Obligations. All of the Debt Service Requirements of the Bonds and the Credit Facility Obligations related thereto shall be payable and collectible solely out of the Pledged Revenues, which revenues are so pledged; the Owner or Owners of the Bonds and the Bank may not look to any general or other fund for the payment of such Debt Service Requirements, except the herein designated special funds pledged therefor; the Bonds and the Credit Facility Obligations shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the Bonds and the Credit Facility Obligations shall not be considered or held to be general obligations of the City or the Enterprise but shall constitute special obligations of the Enterprise. No Charter, statutory or constitutional provision enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the Enterprise to comply with the provisions of this Ordinance or to pay the Debt Service Requirements of the Bonds and the Credit Facility Obligations related thereto as herein provided.

Character of Agreement. None of the covenants, agreements, representations and warranties contained herein or in the Bonds shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise (except the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor).

No Pledge of Property. The payment of the Bonds or the Credit Facility Obligations related thereto is not secured by an encumbrance, mortgage or other pledge of property of the Enterprise or the City, except for the Pledged Revenues and other moneys pledged for the payment of the Bonds. No property of the Enterprise or the City, subject to such exception, shall be liable to be forfeited or taken in payment of the Bonds or the Credit Facility Obligations related thereto.

No Recourse Against Officers and Agents. No recourse shall be had for the payment of the Debt Service Requirements of the Bonds or the Credit Facility Obligations related thereto or for any claim based thereon or otherwise upon this Ordinance or any other ordinance pertaining hereto, against any individual member of the Council or any officer, employee or other agent of the City or the Enterprise, past, present or future, either directly or indirectly through the Council, the City, the Enterprise, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bonds and as part of the consideration of their issuance specially waived and released.

Authorization of the Project. The Council, on behalf of the Enterprise, does hereby determine to undertake the Project, which is hereby authorized, and the proceeds of the Bonds shall be used therefor.

Sale of Bonds.

Approval of Bond Purchase Agreement. The contract for the purchase of the Bonds is hereby awarded to the Purchaser at the price specified in the Supplemental Public Securities Act

Certificate, subject to the parameters and limitations contained in this Ordinance. The President or the Treasurer is hereby authorized to execute said purchase contract on behalf of the Enterprise.

Delivery. After the Bonds have been duly executed, authenticated and registered as provided herein, the Treasurer shall cause the Bonds to be delivered to the Purchaser (through the Depository) upon receipt of the agreed-upon purchase price.

Official Statement. The preparation of the Official Statement is hereby authorized. The President is hereby authorized to approve, on behalf of the Enterprise, the Official Statement. The execution of the Official Statement by the President shall be conclusively deemed to evidence the approval of the form and contents thereof by the City.

Other Related Documents. The forms, terms and provisions of, and the performance by the Enterprise of its obligations under, the Initial Liquidity Facility, the Remarketing Agreement and the Tender Agreement, are hereby approved and the President, the Treasurer and the Manager and any deputy thereof are hereby authorized and directed to execute each of such documents on behalf of and in the name of the Enterprise, and to deliver each of such documents, in substantially the form presented to the Council at this meeting, with such changes as are not inconsistent herewith.

Election to Apply Supplemental Public Securities Act to the Bonds. The Council hereby elects to apply Sections 11-57-205, 11-57-206, 11-57-207, 11-57-208, 11-57-209, 11-57-210 and 11-57-212 of the Supplemental Public Securities Act to the Bonds. Pursuant to such election to apply Section 11-57-205 of the Supplemental Public Securities Act to the Bonds, the Council hereby delegates to the President or the Treasurer, the power to make the following determinations with respect to the Bonds without any requirement that the Council approve such determinations:

Interest Rate. The initial rate of interest to be borne by the Bonds, which shall not exceed 6.00% per annum.

Purchase Price. The price at which the Bonds will be sold to the Purchaser, which shall not be less than 99.75% of the aggregate principal amount of the Bonds.

Principal Amount. The aggregate principal amount of the Bonds; provided that such principal amount shall not exceed \$7,600,000.

Maturity Schedule. The amount of principal of the Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year, not to be more than \$600,000 annually.

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

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

Authorization of Bonds. For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City and the Enterprise and of defraying wholly or in part the Cost of the Project, the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002” in an aggregate principal amount set forth in the Supplemental Public Securities Act Certificate are hereby authorized to be issued; and the Enterprise pledges irrevocably, but not necessarily exclusively, the Pledged Revenues to the payment of the Debt Service Requirements of the Bonds.

Bond Details.

Basic Provisions. The Bonds shall be issuable as fully registered Bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof while the Bonds bear interest at a Variable Rate or \$5,000 or any integral multiple thereof while the Bonds bear interest at the Fixed Interest Rate. The Bonds shall be lettered “R” and shall be numbered separately from 1 upward. The Bonds shall be dated as of the Closing Date. The Bonds shall mature on the date provided in the Supplemental Public Securities Act Certificate, subject to prior redemption as set

forth herein and in the Supplemental Public Securities Act Certificate. The Bonds shall bear interest at a Variable Rate or the Fixed Interest Rate, all as more specifically set forth hereinafter in this Section. The Bonds shall initially bear interest at the Weekly Interest Rate at the rate set forth in the Supplemental Public Securities Act Certificate for the dates set forth therein. The Bonds shall bear interest from the most recent date to which interest has been paid or, if no interest has been paid, from the Closing Date, payable on each Interest Payment Date. Interest shall accrue on Bank Bonds as provided herein and in the Liquidity Facility. No interest shall accrue on any Bonds owned by or on behalf of the Enterprise or the City. At no time shall the Bonds (other than Bank Bonds) bear interest at a rate higher than the Maximum Rate. At no time shall the Bank Bonds bear interest at a rate higher than the Maximum Bank Rate.

Variable Rate Mode Conversion. On any Interest Period Reset Date, Bonds bearing interest at a Variable Rate may be converted to a different Variable Rate Interest Rate Mode upon receipt by the Paying Agent, the Tender Agent, the Remarketing Agent and the Bank of a written direction from the Enterprise, not less than 45 days prior to such Interest Period Reset Date, to convert the Variable Rate on the Bonds to a different Variable Rate other than the Interest Rate Mode then in effect. Except when converting from the Daily Interest Rate Mode or the Weekly Interest Rate Mode, no Interest Period Reset Date shall be earlier than the date after the end of the last Interest Rate Period for the Interest Rate Mode in effect on the date of such direction from the Enterprise, the end of such Interest Rate Period to be determined as if such direction had not been given. Such direction to convert the interest rate on the Bonds to a different Variable Rate Interest Rate Mode shall be accompanied by (i) an opinion of Bond Counsel delivered to the Enterprise, the Paying Agent, the Tender Agent, the Bank and the Remarketing Agent stating that such conversion to the specified Interest Rate Mode will not adversely affect the exclusion of the interest on the Bonds from gross income for Federal income tax purposes, (ii) evidence satisfactory to the Tender Agent that the interest component of the Liquidity Facility is equal to the amounts set forth below and that the Stated Termination Date of the Liquidity Facility is no earlier than 10 days after the end of the new Interest Rate Period, and (iii) a written certificate of the Remarketing Agent stating that it has received certifications, opinions or other evidence satisfactory to it that there has been or will be compliance with any applicable state or Federal securities law requirements. If the Bonds bear interest at the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate or the Quarterly Interest Rate, the interest coverage period for the Liquidity Facility shall be at least 35 days of interest at the Maximum Rate. If the Bonds bear interest at the Semiannual Interest Rate, the Annual Interest Rate or the Five-Year Interest Rate, then the interest coverage period for the Liquidity Facility shall be such number of days of interest on all outstanding Bonds as may be required by each Rating Agency then maintaining a rating on the Bonds to continue its rating, in each case computed at the Maximum Rate and the Enterprise shall be required to provide a Substitute Liquidity Facility which will provide the required interest coverage. Notwithstanding any provision of this paragraph, no conversion shall be effective (a) if the proposed conversion is to an Annual Interest Rate or Five-Year Interest Rate and the Enterprise makes an election on or prior to the day immediately succeeding any Interest Rate Determination Date not to proceed with the proposed conversion, or (b) if the Remarketing Agent has not received on the effective date of such conversion an opinion of Bond Counsel to the same effect as described in clause (i) of this paragraph above. In either such event, the Interest Rate Mode for the Bonds will remain as the Interest Rate Mode then in effect for the Bonds without regard to any proposed conversion. The Bonds will continue to be subject to tender for purchase on the scheduled effective date of the proposed conversion without regard to the failure of such proposed conversion. If the Tender Agent shall have sent any notice to Owners regarding the proposed conversion, then in the event of a failure of such conversion, as specified above, the Tender Agent shall promptly notify all Owners of such

failure, of the reason for such failure, and of the continuation of the Interest Rate Mode then in effect.

Fixed Interest Rate Conversion. On any Interest Period Reset Date, Bonds bearing interest at a Variable Rate may be converted to the Fixed Interest Rate upon receipt by the Paying Agent, the Tender Agent, the Remarketing Agent and the Bank of a written direction from the Enterprise, not less than 60 days prior to such Interest Period Reset Date, to convert the interest rate on the Bonds to the Fixed Interest Rate. Upon conversion of the interest rate on the Bonds to the Fixed Interest Rate, the Liquidity Facility will terminate. Such direction to convert the interest rate on the Bonds to the Fixed Interest Rate shall be accompanied by (i) an opinion of Bond Counsel delivered to the Enterprise, the Paying Agent, the Tender Agent, the Bank and the Remarketing Agent stating that such conversion to the Fixed Interest Rate shall not adversely affect the exclusion of the interest on the Bonds from gross income for Federal income tax purposes and (ii) a written certificate of the Remarketing Agent stating that it has received certifications, opinions or other evidence satisfactory to it that there has been or will be compliance with any applicable state or Federal securities law requirements. Notwithstanding any provision of this paragraph, no conversion shall be effective (a) if the Enterprise makes an election on or prior to the day immediately succeeding any Interest Rate Determination Date not to proceed with the proposed conversion, or (b) if the Remarketing Agent has not received on the effective date of such conversion an opinion of Bond Counsel to the same effect as described in clause (i) of this paragraph above. In either such event, the Interest Rate Mode for the Bonds will remain as the Interest Rate Mode then in effect for the Bonds without regard to any proposed conversion. The Bonds will continue to be subject to tender for purchase on the scheduled effective date of the proposed conversion without regard to the failure of such proposed conversion. If the Tender Agent shall have sent any notice to Owners regarding the proposed conversion, then in the event of a failure of such conversion, as specified above, the Tender Agent shall promptly notify all Owners of such failure, of the reason for such failure, and of the continuation of the Interest Rate Mode then in effect.

Rate Determination Conclusive. The determination of the Variable Rates or the Fixed Interest Rate for the Bonds shall be conclusive and binding upon the Enterprise, the Paying Agent, the Bank and the respective Owners of the Bonds.

Notice of Interest Rate. On each Interest Rate Determination Date, the Remarketing Agent shall give the Paying Agent and the Enterprise telephonic notice (immediately confirmed in writing) of the interest rate to be borne by the Bonds for the following Interest Rate Period; provided that if the interest rate is determined pursuant to clause (b) of the definition of the applicable Interest Rate Mode on the Interest Rate Determination Date, the Paying Agent shall give notice to the Enterprise and the Bank as above provided.

Notice of Conversion. If the interest rate on the Bonds is converted to a different Interest Rate Mode, at least 30 days prior to the Interest Period Reset Date the Tender Agent shall notify the Bank, the Paying Agent, the Remarketing Agent and the Owners of all Outstanding Bonds by first-class mail that upon such Interest Period Reset Date the Bonds shall be converted to a different Interest Rate Mode, and that all Bonds shall be subject to a mandatory tender pursuant to Section 502 hereof.

Calculation of Interest. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months so long as interest is payable at the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate or the Fixed Interest Rate. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, for the number of days actually elapsed so long as interest is payable at the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate or the Quarterly Interest Rate. Any calculation of the interest rate to be borne by the Bonds shall be rounded to the nearest one-hundredth of one percent (0.01%).

Payment of Bonds. The principal of each Bond shall be payable at the principal corporate trust office of the Paying Agent, or at such other office as the Paying Agent directs in writing to the Owners of the Bonds, or at the principal office of its successor, upon presentation and surrender of the Bond. Any payment of the purchase price of a Bond tendered for payment shall be payable as provided in Section 508 hereof. Payment of interest on Bank Bonds shall be made by wire transfer to the Bank. Payment of interest on any Bond other than a Bank Bond shall be made to the Person who is the Owner thereof at the close of business on the Record Date for such Interest Payment Date (or, if such Interest Payment Date is not a Business Day, on the next succeeding Business Day) by check mailed by the Paying Agent to such Owner at his or her address as it appears on the registration records kept by the Paying Agent. Notwithstanding the foregoing and while the Bonds are held by a Depository, interest on any Bond other than a Bank Bond shall be paid by wire transfer in immediately available or next day funds to the bank account number and address filed with the Paying Agent by such Depository. Any such interest not so timely paid shall cease to be payable to the Person who is the Owner thereof at the close of business on the Record Date and shall be payable to the Person who is the Owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Owners of the Bonds not less than ten days prior thereto by first-class postage prepaid mail to each such Owner as shown on the registration records, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to in writing between the Owner of such Bond and the Paying Agent. If any Bond is not paid upon its presentation and surrender at or after its maturity or prior redemption, interest shall continue at its stated rate per annum until the principal thereof is paid in full. All such payments shall be made in lawful money of the United States of America.

Bank Bonds. Notwithstanding anything in this Ordinance to the contrary, Bank Bonds shall bear interest calculated at the Bank Rate applicable from time to time under the Liquidity Facility (including, in the case of the Initial Liquidity Facility, “Excess Bank Bond Interest Amount” and the “Differential Interest Amount” as each is defined in the Initial Liquidity Facility) and such interest shall accrue and be payable by the Enterprise on the dates as specified in the Liquidity Facility; provided that no Bank Bond shall ever bear interest in excess of the Maximum Bank Rate. The Enterprise shall pay the “Interest Component” (as defined in the Initial Liquidity Facility) and interest thereon as specified in the Initial Liquidity Facility. Notwithstanding anything contained herein to the contrary, only the Bank (and the Insurer in the event that it becomes subrogated to the rights of the Bank following a payment under the Insurance Policy to the Bank) is entitled to receive interest on Bank Bonds at the Bank Rate or the Maximum Bank Rate, as the case may be.

Information for Bondholders and Enterprise. The Paying Agent agrees to provide to any Owner, upon the written request of such Owner, information regarding the Interest Rate Periods, Interest Payment Dates and interest rate or rates applicable to such Owner’s Bonds. The Paying Agent shall provide the Enterprise with a statement of the amount of interest due prior to each Interest Payment Date.

Notices. The Remarketing Agent agrees to provide to the Enterprise and the Bank notice of all determinations made by the Remarketing Agent pursuant to this Ordinance including, but not limited to, interest rate determinations on a timely basis.

Execution of Bonds. The Bonds shall be executed by and on behalf of the Enterprise with the facsimile or manual signature of the President, shall be attested with the facsimile or manual signature of the Secretary, shall be countersigned with the facsimile or manual signature of the Treasurer and shall be

authenticated with the manual signature of an authorized signatory of the Paying Agent. Any Bond may be signed (manually or by facsimile), sealed or attested on behalf of the Enterprise by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office. The President, Treasurer and Secretary may adopt as and for his or her own facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears on any of the Bonds. Before the execution of any Bond, the President, Treasurer and Secretary shall each file with the Secretary of State of the State his or her manual signature certified by him or her under oath.

Authentication Certificate. The authentication certificate upon the Bonds shall be substantially in the form and tenor provided in the form of the Bonds attached to this Ordinance as Exhibit A. No Bond shall be secured hereby or entitled to the benefit hereof, nor shall any Bond be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Paying Agent and such certificate of the Paying Agent upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder. The certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds.

Registration and Payment. The Paying Agent shall keep or cause to be kept sufficient records for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Enterprise, the Bank and the Tender Agent. Upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said records, Bonds as herein provided. Except as provided in (i) Sections 302, 501, 502, 503, 504, 505, 1203 and 1204 hereof with respect to Beneficial Ownership Interests and (ii) this Section and in the first paragraph of Section 307 hereof, the Person in whose name any Bond shall be registered on the registration records kept by the Paying Agent shall be deemed and regarded as the absolute owner thereof for the purpose of making payment of the Debt Service Requirements thereof and for all other purposes; and payment of or on account of the Debt Service Requirements of any Bond shall be made only to the Owner thereof or his or her legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid. The foregoing provisions of this Section are subject to the provisions of Section 308 hereof.

Transfer and Exchange. Any Bond may be transferred upon the records required to be kept pursuant to the provisions of Section 305 hereof by the Person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. Whenever any Bond or Bonds shall be surrendered for transfer, the Paying Agent shall authenticate and deliver a new Bond or Bonds for a like aggregate principal amount of Bonds of the same interest rate and of any authorized denominations. The Bonds may be exchanged by the Paying Agent for a like aggregate principal amount of Bonds of the same interest rate and of other authorized denominations. The execution by the Enterprise of any Bond of any denomination shall constitute full and due authorization of such denomination and the Paying Agent shall thereby be authorized to authenticate and deliver such Bond.

The Paying Agent shall not be required to transfer or exchange (a) any Bond subject to redemption during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day such notice is mailed, or (b) any Bond so selected for redemption in whole or in part after the mailing of notice calling such Bond or any portion thereof for prior redemption except the unredeemed portion of Bonds being redeemed in part. The foregoing provisions shall not preclude an exchange or transfer of a Bond in the case of an optional or mandatory tender under Section 501, 502, 503, 504 or 505 hereof.

The Paying Agent shall require the payment by any Owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer, and may charge

a sum sufficient to pay the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the Enterprise or the Paying Agent incurred in connection therewith.

The foregoing provisions of this Section are subject to the provisions of Section 308 hereof.

Bond Replacement. Upon receipt by the Enterprise and the Paying Agent of evidence satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them, and in the case of a mutilated Bond upon surrender and cancellation of the Bond, (a) the Enterprise shall execute and the Paying Agent shall authenticate and deliver a new Bond of the same date, interest rate and denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (b) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Enterprise may pay such Bond. Any such new Bond shall bear a number not previously assigned. The applicant for any such new Bond may be required to pay all expenses and charges of the Enterprise and of the Paying Agent in connection with the issuance of such Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds, negotiable instruments or other Securities.

Custodial Deposit. Notwithstanding the provisions of Sections 305 and 306 hereof, the Bonds shall be originally issued only to a Depository to be held in a book-entry system and: (a) the Bonds shall be registered in the name of the Depository or its nominee, as Owner, and immobilized in the custody of the Depository; (b) unless otherwise requested by the Depository, there shall be a single Bond certificate for the Bonds; and (c) the Bonds shall not be transferable or exchangeable, except for transfer to another Depository or another nominee of a Depository, without further action by the Enterprise as set forth in the next succeeding paragraph of this Section. While the Bonds are in Book-Entry Form, Bonds in the form of physical certificates shall only be delivered to the Depository.

So long as a book-entry system is in effect for the Bonds, except as herein provided with respect to Beneficial Ownership Interests, the Enterprise, Paying Agent and Tender Agent shall recognize and treat the Depository, or its nominee, as the Owner of the Bonds for all purposes, including payment of the Debt Service Requirements of the Bonds (other than Bank Bonds), giving of notices and enforcement of remedies. The crediting of payments of the Debt Service Requirements of the Bonds and the transmittal of notices and other communications by the Depository to the Direct Participants in whose Depository account the Bonds are recorded and such crediting and transmittal by Direct Participants to Indirect Participants or Beneficial Owners and by Indirect Participants to Beneficial Owners are the respective responsibilities of the Depository and the Direct Participants and the Indirect Participants and are not the responsibility of the Enterprise, the Paying Agent or the Tender Agent; provided, however, that the Enterprise and the Paying Agent understand that neither the Depository or its nominee shall provide any consent requested of Owners of Bonds pursuant to this Ordinance, and that the Depository will mail an omnibus proxy (including a list identifying the Direct Participants) to the Enterprise or the Paying Agent which assigns the Depository's, or its nominee's, voting rights to the Direct Participants to whose account at the Depository the Bonds are credited (as of the record date for mailing of requests for such consents). If the Enterprise shall receive any such omnibus proxy, the Enterprise shall promptly provide such omnibus proxy (including the list identifying the Direct Participants attached thereto) to the Paying Agent, which shall treat such owners as Owners of the Bonds for purposes of obtaining any consents pursuant to the terms of this Ordinance.

If any Depository determines not to continue to act as a Depository for the Bonds held in a book-entry system, the Enterprise may attempt to have established a securities depository/book-entry system relationship with another Depository under this Ordinance. If the Enterprise does not or is unable to do so, the Enterprise and the Paying Agent, after the Paying Agent has made provision for notification of the Beneficial Owners by appropriate notice to the then Depository, shall permit withdrawal of the Bonds from the Depository and shall authenticate and deliver Bond certificates in fully registered form to the assignees of the Depository or its nominee or to the Beneficial Owners. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing and delivering such replacement Bonds) of the Enterprise. Such replacement Bonds shall be in the denominations specified in Section 302 hereof.

None of the Enterprise, the Paying Agent or the Tender Agent will have any responsibility or obligation to any Direct Participant, Indirect Participant or any Beneficial Owner or any other Person not shown on the registration records of the Paying Agent as being an Owner with respect to: (a) the Bonds; (b) the accuracy of any records maintained by the Depository or any Direct Participant or Indirect Participant; (c) the timely exercise by the Depository or any Direct Participant or Indirect Participant of any direction by a Beneficial Owner in respect of its election to tender its interest in the Bonds; (d) the timely or ultimate payment by the Depository or any Direct Participant or Indirect Participant of any amount due to any Beneficial Owner in respect of the purchase price of tendered Bonds or the Debt Service Requirements of the Bonds; (e) the delivery by any Direct Participant or Indirect Participant of any notice to any Beneficial Owner which is required or permitted under the terms of this Ordinance to be given to Owners; (f) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds; or (g) any consent given or other action taken by the Depository as Owner.

Bond Cancellation. Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled and destroyed by the Paying Agent, and a certificate of such cancellation and destruction shall be furnished by the Paying Agent to the Enterprise.

Incontestable Recital in Bonds. Pursuant to Article XX of the State Constitution, the Supplemental Public Securities Act and this Ordinance, each Bond shall recite that it is issued under the authority of this Ordinance and the Supplemental Public Securities Act and that it is the intention of the Enterprise that such recital shall conclusively impart full compliance with all the provisions of this Ordinance and shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value and that all the Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Bond Form. Subject to the provisions of this Ordinance, each Bond shall be in substantially the form attached hereto as Exhibit A, with such omissions, insertions, endorsements and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance, be consistent with this Ordinance or be necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto; provided, however, that the Bonds may be modified in such manner as is approved by the Enterprise for the purpose of reflecting the substitution of a Substitute Liquidity Facility. Following the conversion of the interest rate on the Bonds to the Fixed Interest Rate, the form of the Bonds may be appropriately revised to reflect such conversion, to delete provisions from the form of Bond set forth in Exhibit A hereto which are then of no further force and effect, to include a description of the Fixed Interest Rate Mode and to make any other changes therein which are necessary or appropriate in the circumstances.

REDEMPTION

Mandatory Redemption.

The Bonds are subject to mandatory sinking fund redemption at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The principal amount of the Bonds to be redeemed and the dates of such redemption shall be set forth in the Supplemental Public Securities Act Certificate.

On or before the fortieth day prior to the sinking fund Redemption Date, the Paying Agent shall proceed to select for redemption (by lot in such manner as the Paying Agent shall deem equitable and fair) from all Bonds Outstanding, \$5,000 units of such Bonds equal in the aggregate to the total principal amount of Bonds redeemable with the required sinking fund payment, and shall call such Bonds, or portions thereof, for redemption from the sinking fund on the next Redemption Date, and give notice of such call, as provided in Section 404 hereof. At the option of the Enterprise to be exercised by delivery of a written certificate to the Paying Agent on or before the forty-fifth day next preceding any sinking fund Redemption Date, it may (a) deliver to the Paying Agent for cancellation Bonds or portions thereof (\$5,000 or any integral multiple thereof provided that the portion of the Bond not to be credited shall be \$100,000 or more if the Bonds then bear interest at a Variable Rate) in an aggregate principal amount

desired by the Enterprise or (b) specify a principal amount of Bonds or portions thereof (\$5,000 or any integral multiple thereof) which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation for the Bonds. Each Bond or portion thereof so delivered or previously redeemed shall be credited by the Paying Agent at 100% of the principal amount thereof against the obligation of the Enterprise on such sinking fund Redemption Date and any excess over such amount shall be credited against future sinking fund redemption obligations for the Bonds, in chronological order or any other order specified by the Enterprise. In the event the Enterprise shall avail itself of the provisions of clause (a) of the second sentence of this paragraph, the certificate required by the second sentence of this paragraph shall be accompanied by the Bonds or portions thereof to be canceled.

The Enterprise shall redeem Bank Bonds that are subject to mandatory redemption pursuant to the Liquidity Facility (including, without limitation, pursuant to Section 3.04 of the Initial Liquidity Facility), at the time or times required by the Liquidity Facility at a Redemption Price of 100% of the principal amount of the Bank Bonds to be redeemed plus accrued interest, if any, to the Redemption Date. The Bank Bonds shall be redeemed by the Paying Agent pursuant to the provisions of this Section without any notice from or direction by the Enterprise.

Notwithstanding anything to the contrary herein, upon any redemption of less than all of the Bonds Outstanding, Bank Bonds shall be selected and redeemed prior to any other Bonds.

Optional Redemption. The Bonds (other than Bonds owned by or on behalf of the Enterprise or the City) are subject to redemption, at the option of the Enterprise (a) if the Bonds do not bear interest at the Fixed Interest Rate, in whole or in part (in integral multiples of \$5,000, provided that the unredeemed portion of any Bond redeemed in part shall be \$100,000 or more) on any Interest Rate Adjustment Date (except in the case of Bonds bearing interest at the Daily Interest Rate or the Weekly Interest Rate, only on the first Business Day of each month) at the Redemption Price of 100% of the principal amount redeemed plus accrued interest, if any, thereon to the Redemption Date, and (b) after the Fixed Interest Rate Commencement Date and on or after the First Optional Redemption Date, in whole or in part (in integral multiples of \$5,000) at any time at a Redemption Price equal to 100% of the principal amount redeemed plus accrued interest to the date fixed for redemption. On or prior to the Fixed Interest Rate Commencement Date, the Enterprise may deliver to the Paying Agent an alternative redemption schedule setting forth a different date or dates on which Bonds may be redeemed after the Fixed Interest Rate Commencement Date and a redemption price or prices payable on such different Redemption Date or Dates if the Enterprise delivers to the Paying Agent an opinion of Bond Counsel to the effect that the alternative schedule of redemption will not adversely affect the validity and enforceability of the Bonds in accordance with their terms and will not have an adverse effect on the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Partial Redemption. If fewer than all of the Outstanding Bonds are called for redemption at one time, the selection of Bonds to be redeemed, or portions thereof, in amounts equal to \$5,000 or any integral multiple thereof shall be made by lot by the Paying Agent in any manner which the Paying Agent may determine; provided that the Paying Agent shall select Bonds for redemption so as to assure that after such redemption no Owner shall retain Bonds in an aggregate amount less than \$100,000 if the Bonds then bear interest at a Variable Rate; and provided further that if less than all of an Outstanding Bond in a book-entry system is to be called for redemption, the Paying Agent shall give notice to the Depository or the nominee of the Depository that is the Owner of such Bond, and the selection of the Beneficial Ownership Interest in that Bond to be redeemed shall be at the sole discretion of the Depository and its Direct Participants and its Indirect Participants. In the case of a partial redemption of Bonds by lot, each unit of face value of principal thereof equal to \$5,000 (each such \$5,000 unit is hereinafter referred to as a "Unit") shall be treated as though it were a separate Bond in the amount of such Unit. If it is determined that one or more, but not all of the Units represented by a Bond are to be called for redemption, then upon notice of redemption of a Unit or Units of Bonds, the Owner of that Bond shall surrender the Bond to the Paying Agent (a) for payment of the Redemption Price of the Unit or Units of Bonds called for redemption (including without limitation, the interest accrued to the date fixed for redemption), and

(b) for issuance, without charge to the Owner thereof, of a new Bond or Bonds, in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof if Bonds bear interest at a Variable Rate or \$5,000 if Bonds bear interest at the Fixed Interest Rate, aggregating a principal amount equal to the unredeemed portion of, and bearing interest at the same rate as the Bond surrendered.

Notwithstanding anything in this Section to the contrary, any Bank Bonds (or Beneficial Ownership Interest therein) shall be selected for redemption pursuant to this Section prior to the selection of any other Bonds.

Notice of Prior Redemption. Notice of any prior redemption (mandatory or optional) shall be given by the Paying Agent on behalf of the Enterprise by mailing a copy of the redemption notice by first-class postage prepaid mail, not less than 30 nor more than 45 days prior to the Redemption Date (except in the case of redemption pursuant to Section 402(a) in which case such notice shall be given at least 5 days and not more than 15 days prior to the date fixed for redemption) to the Bank and to the Owners of the Bonds to be redeemed at their addresses as shown on the registration records kept by the Paying Agent. Such notice shall specify the number or numbers of the Bonds to be so redeemed (if less than all are to be redeemed), the Redemption Price to be paid and the date fixed for redemption; and such notice shall further state that on the Redemption Date there will become and will be due and payable upon each Bond or portion thereof so to be redeemed at the Paying Agent (designated by name) the Redemption Price, and that from and after such date interest on the Bonds (or portions thereof) called for redemption will cease to accrue. Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the Redemption Date so designated and upon presentation thereof at the Paying Agent, the Enterprise will pay the Bond or Bonds so called for redemption. No further interest shall accrue on the principal of any such Bond (or portion thereof) called for redemption from and after the Redemption Date, provided sufficient funds are on deposit with the Paying Agent on the Redemption Date.

Notice of any redemption hereunder with respect to Bonds held under a book-entry system shall be given by the Paying Agent only to the Depository, or its nominee, as the Owner of such Bonds. Selection of book entry interests in the Bonds called for redemption is the responsibility of the Depository and any failure of any Direct Participant or Indirect Participant to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice or any proceedings for the redemption of such Bonds.

If the Bonds then bear interest at the Variable Rate, prior to mailing a notice of redemption there shall be deposited with the Paying Agent an amount of money sufficient to redeem the Bonds being called for redemption and such amounts shall be invested, if at all, only in Federal Securities maturing on or before the date of redemption. Notwithstanding the provisions of this section, when the Bonds bear interest at the Fixed Interest Rate any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

Bonds Owned by the Enterprise or the City. Bonds owned by or on behalf of the Enterprise or the City shall not be subject to redemption. At any time the Enterprise or the City may surrender any Bonds owned by or on behalf of the Enterprise or the City to the Paying Agent, which shall promptly cancel such Bonds.

No Partial Redemption After an Event of Default. Anything in this Ordinance to the contrary notwithstanding, if there shall have occurred and is continuing an Event of Default hereunder of which an officer of the Paying Agent has actual knowledge, there shall be no redemption of less than all of the Bonds at the time Outstanding (other than pursuant to Section 401A hereof).

TENDER OF BONDS

Tender at Option of Owners.

Non-Daily or Weekly Interest Rate Optional Tender. While the Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) bear interest at the Monthly

Interest Rate, the Quarterly Interest Rate, the Semiannual Interest Rate, the Annual Interest Rate or the Five-Year Interest Rate, on each Interest Rate Adjustment Date (each a “Bond Purchase Date”) each Owner and each Beneficial Owner shall have the option to tender for purchase at 100% of the principal amount thereof plus accrued interest to the purchase date, if any, all of the Bonds owned by such Owner or all Beneficial Ownership Interests owned by such Beneficial Owner, as applicable, or (in either case) such lesser principal amount thereof (in denominations of \$100,000 or integral multiples of \$5,000 in excess thereof, provided that the untendered portion of any Bond or Beneficial Ownership Interest shall be \$100,000 or more in principal amount) as such Owner or Beneficial Owner may specify in accordance with the terms, conditions and limitations hereinafter set forth.

Daily or Weekly Interest Rate Optional Tender. While the Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) bear interest at the Daily Interest Rate or the Weekly Interest Rate, each Owner and each Beneficial Owner shall have the option to tender for purchase on any Business Day at 100% of the principal amount thereof plus accrued interest, if any, to the purchase date (a “Bond Purchase Date”) all of the Bonds owned by such Owner or all Beneficial Ownership Interests owned by such Beneficial Owner, as applicable, or (in either case) such lesser principal amount thereof (in denominations of \$100,000 or integral multiples of \$5,000 in excess thereof, provided that the untendered portion of any Bond or Beneficial Ownership Interest shall be \$100,000 or more in principal amount) as such Owner or Beneficial Owner may specify in accordance with the terms, conditions and limitations hereafter set forth.

Exercise of Optional Tender. To exercise the option granted in subsection A of this Section, the Owner or Beneficial Owner shall (i) no earlier than 15 calendar days before the Bond Purchase Date and no later than 1:00 p.m. Eastern time on the eighth Business Day prior to the Bond Purchase Date, or in the event the Bonds bear interest at the Monthly Interest Rate, the fifth Business Day prior to the Bond Purchase Date, give notice to the Remarketing Agent and the Tender Agent by telecopy or in writing which states (a) the name and address of the Owner or Beneficial Owner, as applicable, (b) the principal amount, CUSIP number and Bond numbers of the Bonds to be purchased, (c) that such Bonds are to be purchased on such Bond Purchase Date pursuant to the terms hereof, and (d) that such notice is irrevocable; (ii) in the case of a Beneficial Owner, provide the Tender Agent with evidence satisfactory to the Tender Agent of such Beneficial Owner’s Beneficial Ownership Interest; (iii) in the case of an Owner, no later than 12:00 noon Eastern time on the seventh day preceding such Bond Purchase Date (or the next preceding Business Day if such seventh day is not a Business Day), or in the event the Bonds bear interest at the Monthly Interest Rate, the fourth day preceding such Bond Purchase Date (or the next preceding Business Day if such fourth day is not a Business Day), deliver to the principal corporate trust office of the Tender Agent the Bonds to be purchased in proper form, accompanied by fully completed and executed Instructions to Sell, the form of which shall be printed on the Bonds; and (iv) in the case of a Beneficial Owner, no later than 12:00 noon Eastern time on the Bond Purchase Date, cause the transfer of the Beneficial Owner’s Beneficial Ownership Interest on the records of the Depository, in accordance with the instructions of the Remarketing Agent.

To exercise the option granted in subsection B of this Section, the Owner or Beneficial Owner shall (i) no later than 1:00 p.m. Eastern time on the seventh calendar day prior to the Bond Purchase Date if the Bonds bear interest at the Weekly Interest Rate, and no later than 9:00 a.m. on the Bond Purchase Date if the Bonds bear interest at the Daily Interest Rate, give notice to the Remarketing Agent and the Tender Agent by telecopy or in writing which states (a) the name and address of the Owner or Beneficial Owner, as applicable, (b) the principal amount, CUSIP number and Bond numbers of the Bonds to be purchased, (c) that such Bonds are to be purchased on the Bond Purchase Date pursuant to the terms hereof, and

(d) that such notice is irrevocable; (ii) in the case of a Beneficial Owner, provide the Tender Agent with evidence satisfactory to the Tender Agent of such Beneficial Owner's Beneficial Ownership Interest; (iii) in the case of an Owner, no later than 12:00 noon Eastern time on the Business Day immediately preceding the applicable Bond Purchase Date, deliver to the principal corporate trust office of the Tender Agent the Bonds to be purchased in proper form, accompanied by fully completed and executed Instructions to Sell, the form of which shall be printed on the Bonds; and (iv) in the case of a Beneficial Owner, no later than 12:00 noon Eastern time on the Bond Purchase Date, cause the transfer of the Beneficial Owner's Beneficial Ownership Interest on the records of the Depository, in accordance with the instructions of the Remarketing Agent.

Any Bonds for which a notice of tender has been given by the Owner shall be deemed to be tendered for remarketing notwithstanding any failure of delivery of such Bonds to the Tender Agent. Subject to the right of such non-delivering Owners to receive the purchase price of such Bonds and interest accrued thereon to the day preceding the applicable Bond Purchase Date, such Bonds shall be null and void and the Paying Agent shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Bonds or the delivery of such Bonds to the Bank in lieu of remarketing such Bonds as described in Section 1204 hereof. Any Beneficial Owners who have elected to tender Beneficial Ownership Interests shall be obligated to transfer such Beneficial Ownership Interests on the records of the Depository.

Tender Notice Irrevocable. Upon the giving of the notice pursuant to subsection D of this Section with respect to Bonds or portions of Bonds, the Owner's tender of such Bonds or portions thereof or the Beneficial Owner's tender of Beneficial Ownership Interests or portions thereof shall be irrevocable. Upon receipt of the Bonds, the Tender Agent shall determine whether Instructions to Sell have been properly submitted and its determination shall be binding. If less than all of a Bond so delivered or deemed tendered is to be purchased, the Paying Agent shall, pursuant to this Ordinance, authenticate one or more Bonds in exchange therefor, registered in the name of such Owner, having the aggregate principal amount being retained by such Owner, and shall deliver such authenticated Bond or Bonds to such Owner.

Mandatory Tender Upon Conversion to a New Interest Rate Mode. If at any time the Enterprise shall convert the interest rate on the Bonds to a different Interest Rate Mode in accordance with the provisions of Section 302 hereof, on the Interest Period Reset Date upon which such conversion is effective, all Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) and Beneficial Ownership Interests are subject to mandatory tender in whole by the Owners or Beneficial Owners thereof for purchase on the Interest Period Reset Date (a "Bond Purchase Date") at a price of 100% of the principal amount thereof, plus accrued interest (if any) to such Bond Purchase Date. Bonds or Beneficial Ownership Interests which are not tendered for purchase as required by this Section shall be deemed to have been tendered without further notice or action by the Owners or Beneficial Owners thereof, subject to the right of the Owners of such Bonds or Beneficial Owners of such Beneficial Ownership Interests to receive the purchase price of such Bonds or Beneficial Ownership Interests and interest accrued thereon to the Bond Purchase Date.

Mandatory Tender Upon Stated Termination Date of Liquidity Facility. The Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) and Beneficial Ownership Interests are subject to mandatory tender in whole on the Interest Payment Date which next precedes the Stated Termination Date (a "Bond Purchase Date") at a price of 100% of the principal amount thereof plus accrued interest (if any) to such Bond Purchase Date unless, at least 45 days prior to any such Bond Purchase Date, the Bank shall have extended or further extended the Stated Termination Date to a date not earlier than 364 days from the Stated Termination Date being extended.

At least 30 days prior to such Interest Payment Date pursuant to this Section, the Tender Agent shall notify the Owners of all Outstanding Bonds by first-class mail of the Stated Termination Date and advise the Owners that all Bonds shall be subject to mandatory tender on such Bond Purchase Date.

Bonds or Beneficial Ownership Interests which are not tendered for purchase as required by this Section shall be deemed to have been tendered without further notice or action by the Owners or Beneficial Owners thereof, subject to the right of the Owners of such Bonds or Beneficial Owners of such

Beneficial Ownership Interests to receive the purchase price of such Bonds or Beneficial Ownership Interests and interest accrued thereon to the Bond Purchase Date.

Mandatory Tender Upon Delivery of Substitute Liquidity Facility. The Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) and Beneficial Ownership Interests are subject to mandatory tender in whole on the earlier of 2 Business Days or 5 calendar days prior to the date of delivery of a Substitute Liquidity Facility (a “Bond Purchase Date”) at a price of 100% of the principal amount thereof plus accrued interest to such Bond Purchase Date. At least 30 days prior to the proposed date of the delivery of a Substitute Liquidity Facility, the Tender Agent shall notify the Remarketing Agent and the Owners of all Outstanding Bonds by first-class mail that a Substitute Liquidity Facility is to be provided and the expected date of delivery of the Substitute Liquidity Facility. Such notice shall advise the Owners of the Bond Purchase Date, that the requirements of this Ordinance and the Bonds relating to a Substitute Liquidity Facility have been met, the name of the financial institution providing the Substitute Liquidity Facility, the short term rating on the Bonds upon the provision of the Substitute Liquidity Facility and that all Bonds and Beneficial Ownership Interests shall be subject to mandatory purchase from the Owners and Beneficial Owners thereof, subject to the right of each Owner or Beneficial Owner to affirmatively elect to waive the mandatory tender for purchase and retain its Bonds or Beneficial Ownership Interests.

Notwithstanding such mandatory tender, any Owner or Beneficial Owner may elect to retain its Bonds or Beneficial Ownership Interests by delivering to the Remarketing Agent and the Tender Agent a written notice no later than 12:00 noon Eastern time on the eighth Business Day prior to such Bond Purchase Date, which notice shall state that (a) such Owner or Beneficial Owner has received notice of and realizes that the Enterprise is providing a Substitute Liquidity Facility pursuant to Section 1209 hereof, and (b) such Owner or Beneficial Owner affirmatively elects to retain its Bonds or Beneficial Ownership Interests and acknowledges that the short-term rating on the Bonds may be reduced or withdrawn by each Rating Agency.

Bonds or Beneficial Ownership Interests with respect to which the Tender Agent shall not have received the election referred to in the preceding paragraph which are not tendered for purchase as required by this Section shall be deemed to have been tendered without further notice or action by the Owners of such Bonds or Beneficial Owners of such Beneficial Ownership Interests, subject to the right of the Owners of such Bonds or Beneficial Owners of such Beneficial Ownership Interests to receive the purchase price of such Bonds or Beneficial Ownership Interests and interest accrued thereon to the Bond Purchase Date.

Mandatory Bank Tender. The Bonds (other than Bank Bonds and Bonds owned by or on behalf of the Enterprise or the City) are subject to mandatory tender by the Owners thereof when the Tender Agent gives notice to the Owners of the Bonds of a Mandatory Bank Tender. Upon the giving of such notice, the Bonds shall be purchased on a date designated by the Tender Agent which is not less than 2 Business Days after the date of the notice to the Owners and in no event less than 5 Business Days nor more than 29 days (a “Bond Purchase Date”) after the Tender Agent receives a notice of Mandatory Bank Tender from the Bank at a purchase price equal to 100% of the principal amount thereof plus, if such purchase date is not an Interest Payment Date, accrued interest to the Bond Purchase Date. The Owner of any Bond may not elect to retain its Bond. The Tender Agent shall give such notice promptly upon the receipt by the Tender Agent of a written notice from the Bank of the Mandatory Bank Tender.

Bonds or Beneficial Ownership Interests which are not tendered for purchase as required by this Section shall be deemed to have been tendered without further notice or action by the Owners of such Bonds or Beneficial Owners of such Beneficial Ownership Interests, subject to the right of the Owners of such Bonds or Beneficial Owners of such Beneficial Ownership Interests to receive the purchase price of such Bonds or Beneficial Ownership Interests and interest accrued thereon to the Bond Purchase Date.

Termination or Suspension of Bank’s Obligations. If an Event of Termination occurs under the Liquidity Facility resulting in the immediate termination or suspension of the obligation of the Bank to purchase the Bonds under the terms of the Liquidity Facility, then the Tender Agent shall as soon as practicable thereafter notify Owners of all the Bonds then Outstanding that: (a) the Liquidity Facility has been terminated or suspended, as the case may be; (b) the Tender Agent will no longer be able to purchase Bonds with moneys available under the Liquidity Facility; (c) the rights of the Owners of the Bonds to tender Bonds for purchase has been terminated or suspended, as the case may be; (d) the Bank is

under no obligation to purchase Bonds or to otherwise advance moneys to fund the purchase of Bonds; and (e) the Enterprise is under no obligation to purchase Bonds or to otherwise advance moneys to fund the purchase of Bonds.

Limit on Remarketing. Any Bond purchased pursuant to Section 501, 502, 503, 504 or 505 of this Ordinance from the date notice is given of redemption of such Bond pursuant to Section 404 hereof through the date for such redemption or from the date of notice of mandatory purchase of such Bond pursuant to Section 502, 503, 504 or 505 hereof through the date for such mandatory purchase shall not be remarketed except to a buyer who has been notified at the time of such purchase of the requirement to deliver such Bond for redemption to the Paying Agent on the Redemption Date or for purchase to the Tender Agent on the Bond Purchase Date. Tendered Bonds shall not be remarketed to the Enterprise or the City. The Paying Agent and the Tender Agent shall not be required to monitor the actions of the Remarketing Agent to ensure that it will not remarket any Bonds to the Enterprise or the City and, for the purposes of Section 1207B(1) hereof, the Paying Agent and the Tender Agent may, in the absence of actual notice to the contrary, assume that no funds furnished to the Tender Agent by the Remarketing Agent constitute proceeds of the remarketing of any Bonds to the Enterprise.

General Provisions Relating to Tenders. The purchase price for each such Bond or Beneficial Ownership Interest, or portion thereof, shall be payable in lawful money of the United States of America by check, shall equal the principal amount, or such portion thereof, to be purchased and, if such Bond Purchase Date is not an Interest Payment Date during any period a Liquidity Facility is in effect, accrued interest, if any, and shall be paid in full on the applicable Bond Purchase Date, subject to the provisions of Section 1207B hereof.

While tendered Bonds are in the custody of the Tender Agent pending purchase pursuant hereto, the tendering Owners thereof shall be deemed the Owners thereof for all purposes, and interest due on tendered Bonds through the day preceding the applicable Bond Purchase Date is to be paid from the Principal and Interest Fund as if such Bonds had not been tendered for purchase.

Notwithstanding anything herein to the contrary, any Bond or Beneficial Ownership Interest or portion thereof tendered under Section 501, 502, 503, 504 or 505 hereof will not be purchased if such Bond or portion thereof matures or is redeemed on or prior to the applicable Bond Purchase Date.

In the event that sufficient moneys are on deposit in the Remarketing Reimbursement Fund to pay the applicable purchase price of any Bond tendered for purchase or required to be tendered for purchase as provided herein, such tendered Bond shall be deemed to have been purchased whether or not delivered by the Owner thereof on the date such tendered Bond is to be purchased. In the event any such purchased Bond is not so delivered, the Enterprise shall execute and the Paying Agent shall authenticate and deliver a replacement Bond of like date, tenor and denomination and in the same aggregate principal amount and in the applicable Interest Rate Mode as the Bond deemed tendered for purchase and bearing a number not contemporaneously outstanding.

With respect to any Bonds held in Book-entry form, delivery of such Bonds to the Tender Agent in connection with any optional or mandatory tender pursuant to this Article shall be effected by the making of, or the irrevocable authorization to make, appropriate entries on the books of the Depository or any Direct Participant to reflect the transfer of the Beneficial Ownership Interest in such Bond to the account of the Tender Agent, or to the account of a Direct Participant acting on behalf of the Tender Agent. With respect to any Bond which is not held in Book-entry form, delivery of such Bond to the Tender Agent in connection with any optional or mandatory tender pursuant to this Article shall be effected by physical delivery of such Bond to the Tender Agent at its principal corporate trust office, accompanied by an instrument of transfer thereof, in a form satisfactory to the Tender Agent, executed in blank by the Owner thereof.

Neither the Enterprise nor the Insurer shall have any obligation to purchase or to otherwise advance money to fund the purchase of tender Bonds.

USE OF BOND PROCEEDS AND OTHER MONEYS

Disposition of Bond Proceeds. The net proceeds derived from the sale of the Bonds shall be credited to the special account within the Water and Wastewater Utility Fund hereby created and to be known as

the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002, Acquisition Fund”. Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Cost of the Project.

On the date of delivery of the Bonds, the Enterprise shall pay from the net proceeds of the Bonds, prior to the application of such proceeds pursuant to the preceding paragraph, the premiums payable to Insurer for its Insurance Policy.

Payment of Expenses. So long as an Event of Default has not occurred and is continuing, moneys deposited in the Acquisition Fund pursuant to Section 601 hereof may be used and paid out by the Enterprise to defray the administrative Costs of the Project, including, without limitation, amounts to be paid to the Paying Agent, the Remarketing Agent and the Tender Agent, legal fees, accounting fees, financial advisory fees, printing costs and rating fees. The Enterprise may defray any such administrative costs from time to time as Operation and Maintenance Expenses to the extent the moneys deposited in the Acquisition Fund pursuant to Section 601 hereof are insufficient therefor.

Completion of Project. When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses and all administrative Costs of the Project referred to in Section 602 hereof, are paid, or for which full provision is made, the Treasurer, shall cause all surplus moneys remaining in the Acquisition Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations, to be transferred to (i) the Excess Investment Earnings Fund so as to enable the Enterprise to comply with Section 1031 hereof, (ii) the Reserve Fund to such extent as shall not cause the amount in the Reserve Fund to exceed the Reserve Fund Requirement, if required to be funded pursuant to Section 705 hereof, and (iii) the Principal and Interest Fund to the extent of any remaining balance of such moneys to be applied against the next principal payment or payments coming due on the Bonds. Nothing herein prevents the transfer from the Acquisition Fund to the Principal and Interest Fund, at any time prior to the termination of the Acquisition Fund, of any moneys which the Treasurer by certificate determines will not be necessary for the Project and will not be designated to be transferred to the Excess Investment Earnings Fund.

Lien on Bond Proceeds. Until the proceeds of the Bonds deposited in the Acquisition Fund are applied as herein provided, such Bond proceeds are subject to a lien thereon and pledge thereof for the benefit of the Owners of the Outstanding Bonds as provided in Section 701 hereof.

Purchaser Not Responsible. The validity of the Bonds is not dependent upon nor affected by the validity or regularity of any proceedings relating to the application of the Bond proceeds. The Purchaser and any subsequent Owners of any of the Bonds are not responsible for the application or disposal by the Enterprise or by any of its officers, agents and employees of the moneys derived from the sale of the Bonds or of any other moneys herein designated.

ADMINISTRATION OF AND ACCOUNTING FOR PLEDGED REVENUES

Pledge Securing Bonds. Subject only to the right of the Enterprise to cause amounts to be withdrawn and paid on account of Operation and Maintenance Expenses of the System, the Pledged Revenues and, subject to the right of the Enterprise to cause amounts to be withdrawn to pay the Cost of the Project as provided herein and other than moneys and securities held in the Excess Investment Earnings Fund to the extent such amounts are required to be paid to the United States, all moneys and securities paid or to be paid to or held or to be held in any account under this Article or under Section 601 hereof (but not in the Remarketing Reimbursement Fund) are hereby pledged to secure the payment of the Debt Service Requirements of the Outstanding Parity Securities, (including Bank Bonds) and Credit Facility Obligations related thereto. The pledge of the Pledged Revenues to secure the payment of the Debt Service Requirements of the Outstanding Bonds and the Credit Facility Obligations related thereto with respect to the Bonds and any Parity Securities is on a parity with the pledge of the Pledged Revenues for, and lien thereon of any other Additional Parity Bonds hereafter issued in compliance with the provisions of Article IX hereof. This pledge shall be valid and binding from and after the date of the delivery of the

Bonds, and the moneys as received by the Enterprise and hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Enterprise except any Outstanding Parity Securities heretofore or hereafter authorized and any Parity Credit Facility Obligations as provided herein. The lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Enterprise (except as herein otherwise provided) irrespective of whether such parties have notice thereof.

Water and Wastewater Utility Fund. Except as otherwise provided herein, the entire Income, upon receipt thereof from time to time, shall be deposited immediately in the Water and Wastewater Utility Fund. Operation and Maintenance Expenses shall be paid as provided in Section 703 hereof. The Pledged Revenues on deposit in the Water and Wastewater Utility Fund shall be applied in the following order of priority:

First, to the Principal and Interest Fund in the manner set forth in Section 704 hereof and any similar sections contained in any Parity Security Ordinances including, but not limited to, Section 5D of the Series 2001 Bond Ordinance.

Second, if required by Section 705 hereof, to the Reserve Fund in the manner set forth in and as required by Section 705 hereof and any similar sections contained in any Parity Security Ordinances including, but not limited to, Section 5E of the Series 2001 Bond Ordinance.

Third, to the Excess Investment Earnings Fund in accordance with Section 706 hereof.

Fourth, to the payment of the Debt Service Requirements of Subordinate Securities in accordance with Section 707 hereof.

Fifth, to be used in accordance with Section 708 hereof.

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

Principal and Interest Fund. Any accrued interest on the Bonds shall be deposited, forthwith upon receipt of the proceeds of the Bonds, into the Principal and Interest Fund, to apply to the payment of interest first due on the Bonds.

There shall also be deposited in the Principal and Interest Fund from the Pledged Revenues, simultaneously with any deposits required by any Parity Security Ordinances, the following amounts:

Interest Payments. So long as the Bonds bear interest at the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate or the Quarterly Interest Rate, monthly, commencing at least 3 days prior to the first Interest Payment Date an amount equal to the interest coming due on the Bonds then Outstanding on such Interest Payment Date, and so long as the Bonds bear interest at the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate or the Fixed Interest Rate, monthly, commencing at least 3 days prior to the first day of the month immediately succeeding the conversion of the interest rate on the Bonds to such Mode, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding. To the extent the interest rate on the Bonds for any period between such payment date and the Interest Payment Date is not known, the Enterprise shall assume such interest rate is the Maximum Rate.

Principal Payments. Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, or commencing one year next prior to the first mandatory Redemption Date of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next due installment of principal (whether at maturity or on a mandatory Redemption Date) of the Bonds then Outstanding.

The moneys credited to the Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Parity Securities and any Additional Parity Bonds then Outstanding, as such Debt Service Requirements become due, except as provided in Sections 709 and 1501 hereof. No interest or principal shall be paid on any Bonds owned by or on behalf of the Enterprise or the City.

Reserve Fund. Not later than 60 days following the end of each Fiscal Year of the Enterprise, the Treasurer shall certify the amount of Pledged Revenues received and the amount of the Combined Maximum Annual Debt Service Requirements for the Bonds and any Outstanding Parity Securities. Beginning on the first day of the month following a certification by the Treasurer that in the Fiscal Year immediately preceding such certification the Enterprise did not receive Pledged Revenues in an amount at least equal to 150% of the Combined Maximum Annual Debt Service Requirements for the Bonds and any Outstanding Parity Securities, the Enterprise shall, subject to the payments required by Section 704 hereof, deposit Pledged Revenues into the Reserve Fund in twelve equal monthly installments sufficient to accumulate the Reserve Fund Requirement.

The Reserve Fund shall continue to be maintained after it has been established as a continuing reserve for the payment of the Debt Service Requirements of the Bonds, any Additional Parity Bonds or other Parity Securities to which the Reserve Fund is pledged. In the event that the amount on deposit in the Reserve Fund falls below the Reserve Fund Requirement, there shall be deposited in the Reserve Fund such Pledged Revenues as may be needed to accumulate or reaccumulate the amount therein so that at all times the amount of the Reserve Fund equals the Reserve Fund Requirement. The moneys in the Reserve Fund shall be set aside, accumulated, and, if necessary, reaccumulated as provided herein, from time to time, and maintained as a continuing reserve to be used only to prevent deficiencies in the Principal and Interest Fund resulting from failure to deposit therein sums sufficient to pay such Debt Service Requirements of the Bonds, any Additional Parity Bonds or other Parity Securities to which the Reserve Fund is pledged as the same become due.

If at any time there shall not be deposited for any reason in the Principal and Interest Fund the full amount provided in Section 704 and any similar provisions in any Parity Security Ordinances, then there shall be deposited in the Principal and Interest Fund at such time from the Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so required. The money so used shall be replaced to the Reserve Fund from the first Pledged Revenues thereafter received and not required to be otherwise applied by Section 704 hereof.

Nothing in this Ordinance shall be construed as limiting the right of the Enterprise to substitute for any cash deposit which may be required to be maintained hereunder a Surety Bond to ensure that cash in the amount otherwise required to be maintained hereunder will be available to the Enterprise as needed, provided that any such substitution shall be approved by the Insurer and shall not cause the then-current

ratings of the Bonds to be adversely affected. Any such Surety Bond shall be deposited with the Paying Agent, which shall ascertain the necessity for a claim against or draw upon the Surety Bond and provide notice to the issuer thereof in accordance with its terms prior to each Interest Payment Date. The Paying Agent and the Enterprise shall use all cash in the Reserve Fund before drawing on a Surety Bond. If there is more than one Surety Bond on deposit in the Reserve Fund, the Paying Agent shall draw on them on a pro rata basis, based upon the amount available to be drawn on each.

The Reserve Fund shall be replenished from the Pledged Revenues in the following priority (after all deposits required by Section 704 and any similar provisions in any Parity Security Ordinances): first, principal and interest on any Surety Bonds on deposit therein shall be paid on a pro rata basis from first available Pledged Revenues; second, after all such amounts are paid in full, amounts necessary to fund the Reserve Fund in an amount equal to the Reserve Fund Requirement, after taking into account the amounts available under any Surety Bond or Surety Bonds, shall be deposited from next available Pledged Revenues.

Excess Investment Earnings Fund. There is hereby created the Excess Investment Earnings Fund, into which there shall be deposited, subject to the payments required by Sections 704, 705 and 706 hereof, Pledged Revenues in the amounts and at the times specified in the Tax Compliance Certificate so as to enable the Enterprise to comply with Section 1031 hereof. Amounts on deposit in the Excess Investment Earnings Fund shall not be subject to the lien and pledge of this Ordinance to the extent that such amounts are required to be paid to the United States Treasury. The Enterprise shall cause amounts on deposit in the Excess Investment Earnings Fund to be forwarded to the United States Treasury (at the address provided in the Tax Compliance Certificate) at the times and in the amounts set forth in the Tax Compliance Certificate.

If the moneys on deposit in the Excess Investment Earnings Fund are insufficient for the purposes thereof, the Enterprise shall transfer moneys in the amount of the insufficiency to the Excess Investment Earnings Fund from the Acquisition Fund and from the Reserve Fund and the Principal and Interest Fund. Upon receipt by the Enterprise of an opinion of Bond Counsel to the effect that the amount in the Excess Investment Earnings Fund is in excess of the amount required to be contained therein, such excess may be transferred to the Water and Wastewater Utility Fund.

Payment of Subordinate Securities. Subject to the payments required by Sections 704 and 705 hereof, any remaining Pledged Revenues may be used for the payment of Debt Service Requirements of Subordinate Securities payable from the Pledged Revenues and authorized to be issued in accordance with this Ordinance and any other Parity Security Ordinances, including reasonable reserves for such Subordinate Securities; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be subordinate to the lien and pledge of the Bonds, any Additional Parity Bonds and any other Parity Securities as herein provided.

Use of Remaining Revenues. Subject to the payments required or permitted by Sections 702 through 707 hereof, any remaining Pledged Revenues may be used for any one or any combination of lawful purposes.

Termination of Deposits. No payment need be made into the Principal and Interest Fund or the Reserve Fund pursuant to this Article VII if the amount in the Principal and Interest Fund and the amount in the Reserve Fund (exclusive of the amount available under a Surety Bond) total a sum at least sufficient so that all Bonds Outstanding are deemed to have been paid pursuant to Section 1501 hereof, in which case moneys therein (taking into account the known minimum gain from any investment of such moneys in Investment Securities from the time of any such investment or deposit shall be needed for such payment which will not be designated for transfer to the Excess Investment Earnings Fund) shall be used (together with any such gain from such investments) solely to pay the Debt Service Requirements of the Outstanding Bonds as the same become due; and any moneys in excess thereof in those two accounts and any other moneys derived from the Pledged Revenues or otherwise pertaining to the System may be used to make required payments into the Excess Investment Earnings Fund or in any other lawful manner determined by the Council.

Budget and Appropriation of Sums. The sums required to make the payments specified in Sections 702 through 708 are hereby appropriated for said purposes. Said amounts for each year shall be

included in the annual budget and the appropriation ordinance or measures to be adopted or passed in each year respectively while the Bonds, either as to principal or interest, are Outstanding and unpaid.

GENERAL ADMINISTRATION

Administration of Accounts. The special accounts and funds designated in Articles VI and VII hereof shall be administered as provided in this Article (but not any account under Section 1501 hereof or the Remarketing Reimbursement Fund).

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

Investment of Moneys. Any moneys in said special accounts or funds may be invested, reinvested or deposited only in Investment Securities. Investment Securities in any fund or account shall be deemed at all times to be a part of the applicable fund; provided that with the exceptions of the Reserve Fund and the Excess Investment Earnings Fund, the interest accruing on such investments and any profit realized therefrom shall be applied, and any loss resulting from such investments shall be charged, to the Water and Wastewater Utility Fund. Interest and profit realized from investments in the Reserve Fund shall be applied thereto; provided that, so long as the amount therein equals the Reserve Fund Requirement, such interest and profit shall be transferred to the Principal and Interest Fund. Any loss resulting from such investments in the Reserve Fund shall be charged thereto. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given fund whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such fund or account. The City shall not invest any moneys accounted for hereunder if any such investment would contravene the covenant concerning arbitrage in Section 1031 hereof.

Moneys in the Remarketing Reimbursement Fund shall not be invested.

Character of Funds. The moneys in any account or fund designated in Articles VI and VII hereof shall consist either of lawful money of the United States or Investment Securities, or both such money and such Investment Securities. Moneys deposited in a demand or time deposit account in a bank or savings and loan association, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Payment of Debt Service Requirements. The moneys credited to any fund or account designated in Article VII hereof for the payment of the Debt Service Requirements of any Bonds shall be used without requisition, voucher, warrant, further order or authority (other than is contained herein), or any other preliminaries, to pay promptly the Debt Service Requirements of any Bonds payable from such fund or account as such amounts are due, except to the extent any other moneys are available therefor.

SECURITIES LIENS AND ADDITIONAL SECURITIES

First Lien Bonds. The Bonds, the Parity Credit Facility Obligations relating thereto, any Additional Parity Bonds and any Parity Securities heretofore or hereafter issued constitute an irrevocable and first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues.

Equality of Bonds. The Bonds, the Parity Credit Facility Obligations relating thereto, any Additional Parity Bonds and any Parity Securities heretofore or hereafter issued are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of the Bonds and any other such Parity Securities or Parity Credit Facility Obligations, it being the intention of the Council that

there shall be no priority among the Bonds and any such Parity Securities and any Parity Credit Facility Obligations relating thereto regardless of the fact that they may be actually issued and delivered at different times.

Issuance of Additional Parity Bonds. Nothing herein, subject to the limitations stated in Section 906 hereof, prevents the issuance by the Enterprise or the City of Additional Parity Bonds payable from the Pledged Revenues and constituting a lien on the Pledged Revenues on a parity with, but not prior or superior to, the lien thereon of the Bonds; but before any such Additional Parity Bonds are authorized or actually issued, the following conditions shall be satisfied:

Absence of an Event of Default. At the time of the adoption of the supplemental ordinance or other instrument authorizing the issuance of the Additional Parity Bonds as provided in Section 906 hereof, the Enterprise shall not be in default in making any payments required by Article VII hereof and there shall not have occurred and be continuing any Event of Default.

Historic Revenues Tests. Except as hereinafter provided in the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bonds and other Parity Securities then Outstanding, the Pledged Revenues for the last complete Fiscal Year prior to the issuance of the proposed Additional Parity Bonds, as certified by a Consulting Engineer, an Independent Auditor or if the Series 2001 Bonds have been defeased, the Treasurer, must have been equal to at least one hundred twenty-five percent (125%) of the Combined Maximum Annual Debt Service Requirements of the Bonds then Outstanding, any Additional Parity Bonds then Outstanding, any other Parity Securities then Outstanding and the Additional Parity Bonds proposed to be issued. If any adjustment in water or wastewater rates, fees, tolls or charges or tap fees, or any combination thereof, is made by the City during such Fiscal Year, the Consulting Engineer or Independent Auditor shall adjust the calculation of the Pledged Revenues to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such Fiscal Year. For purposes of this Section 903B, when computing the Maximum Annual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty is rated "A" or higher by a Rating Agency at the time of the calculation. In the case of Additional Parity Bonds issued for the purpose of refunding less than all of the Bonds and other Parity Securities then Outstanding, compliance with this Section 903B shall not be required so long as the Maximum Annual Debt Service Requirements payable on all Bonds and other Parity Securities Outstanding after the issuance of such Additional Parity Bonds on each Interest Payment Date does not exceed the Maximum Annual Debt Service Requirements payable on all Bonds and other Parity Securities Outstanding prior to the issuance of such Additional Parity Bonds on such Interest Payment Dates.

Adequate Reserves. The Reserve Fund shall be fully funded in accordance with Section 705 hereof, and the proceedings under which any such Additional Parity Bonds are issued must provide for the deposit of moneys to the Reserve Fund on substantially the same terms as provided in Section 705 hereof and contain a covenant by the City to maintain the Reserve Fund in an amount equal to the Reserve Fund Requirement. If such action is deemed to be necessary or desirable in order to comply with any statute or regulation governing the exemption from federal income taxes of interest on any such Additional Parity Bonds, the proceedings under which any such Additional Parity Bonds are issued may provide for the deposit of moneys to a reserve account (other than the Reserve Fund) established and maintained for such Additional Parity Bonds on substantially the same terms as provided in Section 705 hereof and contain a covenant by the City to maintain such reserve fund or account in an amount equal to the Reserve Fund Requirement, except as may be necessary to comply with such statute or regulation. Any such reserve account shall have a claim to the Pledged Revenues equal to and on a parity with that of the Reserve Fund.

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

Subordinate Securities Permitted. Nothing herein, except the limitations stated in Section 906 hereof, prevents the Enterprise or the City from issuing Subordinate Securities for any lawful purpose.

Superior Securities Prohibited. Neither the Enterprise nor the City shall issue any Superior Securities.

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

PROTECTIVE COVENANTS

General. The Enterprise hereby covenants and agrees with the Owners of the Bonds and makes provisions which shall be a part of its contract with such Owners to the effect and with the purpose set forth in the following Sections of this Article.

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

Contractual Obligations. The Enterprise shall perform all contractual obligations undertaken by it under any agreements relating to the Bonds, the Pledged Revenues, the Project, or the System, or any combination thereof, with any other Persons, including, without limitation, the Liquidity Facility.

Further Assurances. At any and all times the Enterprise shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments,

acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged, or intended so to be, or which the Enterprise may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Ordinance. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged hereunder and all the rights of every Owner of any of the Bonds against all claims and demands of all Persons whomsoever.

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

Rate Maintenance. The City shall prescribe, revise, and collect water and wastewater rates, fees, tolls, and charges and tap fees or any combination thereof, which shall produce Income sufficient, together with any other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund, to make the payments and accumulations required by this Ordinance and which shall produce Pledged Revenues in each Fiscal Year sufficient, together with all other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund after payment of Operation and Maintenance Expenses, to pay an amount at least equal to one hundred twenty-five percent (125%) of the actual Debt Service Requirements of the Outstanding Bonds and any Outstanding or proposed Additional Parity Bonds or other Outstanding Parity Securities plus any amounts required to meet then existing deficiencies pertaining to any fund relating to the Pledged Revenues or any Securities payable therefrom. For purposes of this Section, when computing the actual Debt Service Requirements for any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Securities Outstanding at the time of the computation will bear interest during any period at the actual rate applicable during said period. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities.

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

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

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

Prompt Payment of Bonds. The Enterprise shall promptly pay the Debt Service Requirements of the Bonds (including Bank Bonds) at the places, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

Use of Bond and Reserve Funds. The Principal and Interest Fund and the Reserve Fund shall be used solely and only and the moneys credited to such accounts are hereby pledged for the purpose of paying the Debt Service Requirements of the Bonds (including Bank Bonds) and Additional Parity Bonds to their respective maturities or any Redemption Date or Dates, subject to the provisions of Sections 705, 706, 709, 803 and 1501, and any Parity Credit Facilities Related thereto.

Corporate Existence. The Enterprise shall maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another body corporate and politic by operation of law succeeds to the powers, privileges, rights, liabilities, disabilities, duties and immunities of the Enterprise and is obligated by law to operate and maintain the System and to fix and collect the Income as herein provided without adversely and materially affecting at any time the privileges and rights of any Owner of any Outstanding Bond.

Disposal of System Prohibited. Subject to Section 1013 hereof, except for the use of the System and the sale of commodities or services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until all of the Bonds have been paid in full, as to all Debt Service Requirements thereof, or unless provision has been made therefor, or until the Bonds have otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized. Subject to Section 1013 hereof, the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the System.

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

Competing System. So long as any of the Bonds are Outstanding, the Enterprise and the City shall not grant any franchise or license to any competing facilities so that the Pledged Revenues shall not be sufficient to satisfy the covenant in Section 1020 hereof.

Loss From Condemnation. If any part of the System is taken by the exercise of the power of eminent domain, the amount of any award received by the Enterprise as a result of such taking shall be paid into the Water and Wastewater Utility Fund or into a capital improvement account pertaining to the System for the purposes thereof, or, applied to the redemption of the Outstanding Bonds, Parity Securities and

any Outstanding Additional Parity Bonds or Parity Credit Facility Obligations relating thereto, all as the Enterprise may determine.

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

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

Budgets. The Council and officials of the Enterprise shall annually and at such other times as may be provided by law prepare and adopt a budget pertaining to the System.

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

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

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

Accumulation of Interest Claims. In order to prevent any accumulation of claims for interest after maturity, the Enterprise shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on any of the Bonds or any other Securities payable from the Pledged Revenues; and the Enterprise shall not directly or indirectly be a party to or approve any arrangements for

any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of all of the Bonds and any such securities the payment of which has not been extended.

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

Other Liens. Other than the CWRPDA Loans and the Series 2001 Bonds, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Pledged Revenues.

Fidelity Bonds or Insurance. Each official or other person having custody of any Pledged Revenues or responsible for their handling shall be fully bonded or insured at all times, which bond or insurance shall be conditioned upon the proper application of said moneys. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

Maintenance of Records. So long as any of the Bonds and any other Parity Securities or Credit Facility Obligations relating thereto payable from the Pledged Revenues remain Outstanding, proper books of record and account shall be kept by the Enterprise, separate and apart from all other records and accounts.

Audits Required. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the Enterprise to be made forthwith by an Independent Auditor and order an audit report for each fund pertaining to the Income.

Accounting Principles. System records and accounts, and audits thereof, shall be currently kept and made, as nearly as practicable, in accordance with the then generally accepted accounting principles, methods and terminology followed and construed for utility operations comparable to the System, except as may be otherwise provided herein or required by applicable law or regulation or by contractual obligation existing on the effective date of this Ordinance.

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

Federal Income Tax Exemption. The Enterprise and the City covenant for the benefit of the Owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the Enterprise and the City or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in

calculating corporate alternative minimum taxable income or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present State law. In furtherance of this covenant, the Enterprise and the City agree to comply with the procedures set forth in the Tax Compliance Certificate. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Enterprise and the City in fulfilling the above covenant under the Code and Colorado law have been met.

Continuing Disclosure. If the Interest Rate Mode of the Bonds is changed to the Fixed Interest Rate, or if otherwise required by law, the Enterprise agrees to enter into a written understanding for the benefit of the Owners in order to comply with or allow the Purchaser of the Bonds or the Remarketing Agent to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240, 15c2-12).

PRIVILEGES, RIGHTS AND REMEDIES

Owners' Remedies. Each Owner of any Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in the Charter and this Ordinance, and as otherwise provided or permitted by law or in equity or by any statutes, except as provided in Sections 202 through 206 hereof, but subject to the provisions herein concerning the pledge of and the covenants and the other contractual provisions concerning the Income and the proceeds of the Bonds.

Right to Enforce Payment. Nothing in this Article affects or impairs the right of any Owner of any Bond to enforce the payment of the Debt Service Requirements due in connection with his or her Bond or the obligation of the Enterprise to pay the Debt Service Requirements of each Bond to the Owner thereof at the time and the place expressed in the Bond.

Events of Default. Each of the following events is hereby declared an "Event of Default":

Nonpayment of Principal. Payment of the principal of any of the Bonds is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption, or otherwise;

Nonpayment of Interest. Payment of any installment of interest on any of the Bonds is not made when the same becomes due and payable;

Cross Defaults. The occurrence and continuance of an "event of default," as defined in any Parity Security Ordinance;

Failure to Reconstruct. The Enterprise or the City unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any part of the System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure promptly to repair the same is due to impracticability of such repair or replacement or is due to a lack of moneys therefor or for any other reason), but it shall not be an Event of Default if such reconstruction is not essential to the efficient operation of the System;

Appointment of Receiver. An order or decree is entered by a court of competent jurisdiction with the consent or acquiescence of the Enterprise appointing a receiver or receivers for the System or for the Income and any other moneys subject to the lien to secure the payment of the Bonds, or if an order or decree having been entered without the consent or acquiescence of the Enterprise is not vacated or discharged or stayed on appeal within 60 days after entry; and

Default of Any Provision. The Enterprise defaults in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds or in this Ordinance on its part to be performed (other than Section 1032 hereof), and such default continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to the Enterprise, the Insurer, and the Bank specifying the failure and requiring that it be remedied, which notice may be given by the Paying Agent in its

discretion and shall be given by the Paying Agent at the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding.

Remedies for an Event of Default. Upon the happening and continuance of any Event of Default, the Owner or Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the Enterprise and its agents, officers and employees to protect and to enforce the rights of any Owner of Bonds under this Ordinance by mandamus or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy as such Owner or Owners may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any Owner of any Bond, or to require the Enterprise to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds and any other Parity Securities and any Parity Credit Facility Obligation relating thereto.

Receiver's Rights and Privileges. Any receiver appointed in any proceedings to protect the rights of such Owners hereunder, the consent to any such appointment being hereby expressly granted by the Enterprise, may enter and may take possession of the System, may operate and maintain the same, may prescribe fees, rates and other charges, and may collect, receive and apply all Income arising after the appointment of such receiver in the same manner as the Enterprise itself might do.

Rights and Privileges Cumulative. The failure of any Owner of any Outstanding Bond to proceed in any manner herein provided shall not relieve the Enterprise, or any of its officers, agents or employees of any liability for failure to perform or carry out any duty, obligation or other commitment. Each right or privilege of any such Owner (or trustee thereof) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

Duties upon an Event of Default. Upon the happening of any Event of Default, the Enterprise shall do and perform all proper acts on behalf of and for the Owners of Bonds to protect and to preserve the security created for the payment of the Bonds and to insure the payment of the Debt Service Requirements promptly as the same become due. While any Event of Default exists, except to the extent it may be unlawful to do so, all Income shall be paid into the Principal and Interest Fund and into bond or similar funds established for other Parity Securities then Outstanding, pro rata based upon the aggregate principal amount of the Bonds and Parity Securities then Outstanding. If the Enterprise fails or refuses to proceed as in this Section provided, the Owner or Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the Owners of the Bonds as hereinabove provided, and to that end any such Owners of the Outstanding Bonds shall be subrogated to all rights of the Enterprise under any agreement, lease or other contract involving the System or the Income entered into prior to the effective date of this Ordinance or thereafter while any of the Bonds are Outstanding.

REMARKETING AGENT; TENDER AGENT; REMARKETING REIMBURSEMENT FUND; LIQUIDITY FACILITY

Concerning the Remarketing Agent. Stifel, Nicolaus & Co., Incorporated Hanifen Imhoff Division is hereby appointed the Remarketing Agent. Any subsequent Remarketing Agent shall be appointed by the Enterprise and shall meet the qualifications set forth in this Section and Section 1202 hereof. The Remarketing Agent shall designate to the Bank, the Paying Agent and the Tender Agent its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Enterprise, the Bank, the Tender Agent and the Paying Agent. In addition to its duties under Sections 1203 and 1204 hereof, the Remarketing Agent will agree particularly to:

Compute Rates. Compute the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate, the Quarterly Interest Rate, the Semiannual Interest Rate, the Annual Interest Rate, the Five-Year Interest Rate and the Fixed Interest Rate, as applicable, and give notices of such

computations to the Paying Agent and the Enterprise on each applicable Interest Rate Determination Date, all in accordance with this Ordinance.

Record Keeping. Keep such records with respect to all actions taken and all funds and securities received, held and delivered under this Ordinance and the Remarketing Agreement as shall be consistent with prudent industry practice and make such records available for inspection by the Enterprise, the Paying Agent, the Bank and the Tender Agent at all reasonable times.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

Qualifications of Remarketing Agent. The Remarketing Agent shall have a capitalization of at least \$25,000,000, or have a line of credit with a commercial bank in the amount of at least \$25,000,000, shall be authorized by law to perform all the duties imposed upon it by this Ordinance and shall be acceptable to the Insurer. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving at least 30 days' notice of such resignation to the Enterprise, the Tender Agent, the Insurer, the Bank and the Paying Agent. Notwithstanding the foregoing, the Remarketing Agent shall remain the Remarketing Agent hereunder until a successor is named, so long as the Enterprise is not in default in the payment of any fees or expenses of the Remarketing Agent under the Remarketing Agreement, or the Remarketing Agent is not prohibited by law or regulation from performing the duties of Remarketing Agent hereunder. The Remarketing Agent may be removed at any time by the Enterprise with the written consent of the Insurer and the Bank, which consent shall not be unreasonably withheld. The Enterprise shall remove the Remarketing Agent at the direction of the Insurer for any breach of its duties under the Remarketing Agreement. To effect such removal, the Enterprise shall give at least 30 days' notice of such removal to the Remarketing Agent, the Tender Agent, the Insurer, the Bank and the Paying Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity to its successor or, if there be no successor, to the Paying Agent.

In the event that the Remarketing Agent shall resign, or be removed or dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or Federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Enterprise shall not have appointed a successor Remarketing Agent, the Paying Agent, notwithstanding the provisions of the first paragraph of this Section, shall ipso facto be deemed to be the Remarketing Agent until the appointment by the Enterprise of a successor Remarketing Agent; provided, however, that the Paying Agent shall not remarket Bonds or fix the interest rate for the Bonds, but shall be required only to implement the purchase of Bonds pursuant to Liquidity Facility as provided for in Section 1210 hereof.

The Paying Agent, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency and to the Owners of the Bonds.

Remarketing of Bonds. As soon as practicable and otherwise no later than 4:00 p.m. (11:00 a.m. if the Bonds bear interest at the Daily Interest Rate) Eastern time (a) on the eighth Business Day prior to each Bond Purchase Date while the Bonds bear interest at the Quarterly Interest Rate, the Semiannual Interest Rate, the Annual Interest Rate or the Five-Year Interest Rate, or (b) the fifth Business Day prior to each Bond Purchase Date while the Bonds bear interest at the Monthly Interest Rate, or (c) on each Bond Purchase Date while the Bonds bear interest at the Daily Interest Rate, or (d) on the seventh calendar day prior to the Bond Purchase Date if the Bonds bear interest at the Weekly Interest Rate, the Tender Agent shall give notice to the Remarketing Agent by telephone or telecopy, confirmed on the same day in writing which states (i) the name and address of each Owner or Beneficial Owner which has given notice of exercise of an option with respect to such Bond Purchase Date as provided in subsection C of Section 501 hereof, and the principal amount of Bonds or Beneficial Ownership Interests to be tendered by such Owner or Beneficial Owner, and (ii) the aggregate principal amount of Bonds or Beneficial Ownership Interests which are deemed to be tendered pursuant to Sections 502, 503, 504 and 505 hereof.

Unless an Event of Termination has occurred which causes an immediate suspension or termination of the Bank's obligations under the Liquidity Facility or the Bank has given a Notice of Termination (as defined

in the Liquidity Facility), the Remarketing Agent shall use its best efforts to sell all Bonds or Beneficial Ownership Interests tendered or deemed tendered pursuant to Sections 501, 502 and 504 hereof for settlement on the applicable Bond Purchase Date at par. Anything in this Ordinance to the contrary notwithstanding (a) if there is no Liquidity Facility in effect, there shall be no remarketing of Bonds tendered or deemed tendered for purchase, except upon conversion of the Bonds to a Fixed Interest Rate, and (b) if there shall have occurred an Event of Termination which causes an immediate suspension or termination of the Bank's obligations under the Liquidity Facility or the Bank has given a Notice of Termination, there shall be no remarketing of Bonds tendered or deemed tendered for purchase.

The Remarketing Agent shall have the right to remarket any Bond or Beneficial Ownership Interests (or portion thereof) tendered or deemed tendered pursuant to Sections 501, 502 and 504 hereof. The Remarketing Agent shall have the right to purchase any Bond or Beneficial Ownership Interest tendered or deemed tendered pursuant to Sections 501, 502 and 504 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond or Beneficial Ownership Interest. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond or Beneficial Ownership Interest to the Enterprise, any guarantor of the Bonds (excluding the Bank) or any Person which is an "insider" of the Enterprise or any such guarantor within the meaning of the United States Bankruptcy Code.

No later than 11:00 a.m. Eastern time on each Bond Purchase Date, the Remarketing Agent shall pay to the Tender Agent, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds or Beneficial Ownership Interests tendered for purchase on such Bond Purchase Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds or Beneficial Ownership Interests to pay the purchase price plus accrued interest (if any) directly to the Tender Agent in immediately available funds. The proceeds from the remarketing of the Bonds or Beneficial Ownership Interests shall be segregated from any funds of the Enterprise and shall in no case be considered to be or be assets of the Enterprise.

Delivery of Purchased Bonds or Beneficial Ownership Interests and Remarketing of Bank

Bonds. Not later than 11:00 a.m. on the Bond Purchase Date if the Bonds bear interest at the Daily Interest Rate and not later than 4:00 p.m. Eastern time on or before the Business Day next preceding each Bond Purchase Date if the Bonds bear interest at any other Variable Rate, the Remarketing Agent, by telephonic advice, shall notify the Enterprise, the Tender Agent, the Paying Agent and the Bank of (a) the principal amount of Bonds or Beneficial Ownership Interests to be sold by the Remarketing Agent pursuant to Section 1203 hereof and the purchase price, names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (b) the principal amount of Bonds or Beneficial Ownership Interests tendered for purchase on such Bond Purchase Date which will not be sold by the Remarketing Agent pursuant to Section 1203 hereof. Such telephonic advice shall be confirmed by written notice delivered or mailed on the same date as the telephonic advice.

Bonds or Beneficial Ownership Interests purchased by the Tender Agent on a Bond Purchase Date shall be delivered as follows:

Bonds Sold by Remarketing Agent. Bonds sold by the Remarketing Agent pursuant to Section 1203 hereof shall be authenticated by the Paying Agent and delivered to the purchasers thereof. With respect to Beneficial Ownership Interests sold by the Remarketing Agent pursuant to Section 1203 hereof, the Remarketing Agent and the Paying Agent shall take such actions as may be necessary to reflect the transfer of such Beneficial Ownership Interests to the purchasers thereof in the book-entry system maintained by the Depository.

Bonds Not Sold by Remarketing Agent. Bonds and Beneficial Ownership Interests not sold by the Remarketing Agent pursuant to Section 1203 hereof shall be held as Bank Bonds by the Tender Agent, as agent for the Bank, subject to any instructions from the Bank to deliver the Bank Bonds to the Bank and to the pledge in favor of the Bank created pursuant to the provisions of the Liquidity Facility. Any Bank Bonds held by the Tender Agent shall not be released or transferred except to the Bank or to the Remarketing Agent at the written direction of the Bank as provided in the last paragraph of this Section. Bonds and Beneficial Ownership Interests not sold by the Remarketing Agent shall be deemed purchased by the Bank upon application of the

proceeds of the Liquidity Facility to pay the purchase price thereof, subject to the terms of the Liquidity Facility.

Bonds or Beneficial Ownership Interests (other than Bank Bonds) delivered as provided in this Section shall be registered (or recorded through the Depository) in the manner directed by the recipient thereof. Bank Bonds shall be registered (or recorded through the Depository) in the name of the Bank or its designee, as requested by the Bank.

The Remarketing Agent shall use its best efforts to remarket Bank Bonds; provided, however, the Remarketing Agent shall not remarket Bank Bonds held as a result of a mandatory tender pursuant to Section 503 hereof prior to receiving written notice from the Tender Agent that the Initial Liquidity Facility or any Substitute Liquidity Facility has been replaced with a Substitute Liquidity Facility which satisfies Section 1209 hereof. Upon the remarketing of the Bank Bonds, the Remarketing Agent shall notify the Bank, the Paying Agent, the Tender Agent and the Enterprise of such remarketing, the name, address and social security or other tax identification number of the purchaser, and the date (the "Sale Date") on which the purchaser shall deliver the purchase price to the Tender Agent or the Remarketing Agent by 1:00 p.m. Eastern time. The Sale Date shall be at least 2 Business Days after the date the notice of the purchase is given by the Remarketing Agent.

No later than 11:00 a.m. Eastern time on each Sale Date, the Remarketing Agent shall pay to the Tender Agent, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bank Bonds on such Sale Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bank Bonds to pay the purchase price plus accrued interest (if any) directly to the Tender Agent in immediately available funds. The proceeds from the remarketing of the Bank Bonds shall be segregated from any funds of the Enterprise and shall in no case be considered to be assets of the Enterprise. The Tender Agent shall deposit such funds in the Remarketing Reimbursement Fund and shall pay the Bank such funds by wire transfer on the Sale Date. The Bank shall deliver any Bank Bonds held by the Bank (or evidence of Beneficial Ownership Interests in such Bank Bonds) which have been so remarketed to the Tender Agent against payment on the Sale Date and the payment (or provision for payment) by the Enterprise of any Differential Interest Amount. With respect to any Bank Bonds not so held by the Bank, the Bank shall direct the Tender Agent to release such Bank Bonds which have been so remarketed to the Remarketing Agent against payment therefor and the payment (or provision for payment) by the Enterprise of any Differential Interest Amount on the Sale Date. Notwithstanding the foregoing, no Bank Bonds shall be released until the Tender Agent shall have received evidence that the Bank has reinstated amounts available for purchase of the Bonds under the Liquidity Facility to the levels required by Section 302B hereof; such reinstatement to be effective upon the receipt by the Bank of the proceeds from the remarketing of Bank Bonds and the Differential Interest Amount. On the Sale Date, the Paying Agent shall authenticate and deliver, if applicable, new Bonds in replacement of the remarketed Bank Bonds to the purchasers thereof.

Tender Agent. The Bank of Cherry Creek, a branch of Western National Bank, is hereby appointed the Tender Agent. Any subsequent Tender Agent shall be appointed by the Enterprise, subject to the conditions set forth in Section 1206 hereof. The Tender Agent shall designate its principal corporate trust office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Enterprise, the Paying Agent, the Bank, and the Remarketing Agent. By acceptance of its appointment hereunder, the Tender Agent agrees:

to hold all Bonds delivered to it pursuant to Article V hereof, as agent and bailee of, and in escrow for the benefit of, the respective Owners which shall have so delivered such Bonds until moneys representing the purchase price of such Bonds shall have been delivered to or for the account of or to the order of such Owners;

to establish and maintain, and there is hereby established with the Tender Agent, a separate segregated trust fund designated as the "Enterprise of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002 Remarketing Reimbursement Fund" until such time as it has been discharged from its duties as Tender Agent hereunder;

to hold all moneys (without investment thereof) delivered to it hereunder in the Remarketing Reimbursement Fund for the purchase of Bonds pursuant to Section 1203 hereof as agent and bailee of, and in escrow for the benefit of, the Person which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such Person;

to hold all Bonds registered in the name of the new Owners thereof which have been delivered to it by the Paying Agent for delivery to the Remarketing Agent in accordance with the Tender Agreement;

to hold Bonds for the account of the Bank (or its nominee), or to deliver Bonds to the Bank, as contemplated by Section 1204B hereof; and

to keep such books and records with respect to the Bonds as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Enterprise, the Paying Agent, the Bank and the Remarketing Agent at all reasonable times.

The Enterprise shall cooperate with the Paying Agent to cause the necessary arrangements to be made and to be thereafter continued to enable the Tender Agent to perform its duties and obligations described above.

Qualifications of Tender Agent; Resignation; Removal. The Tender Agent shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof and having a combined capital stock, surplus and undivided profits of at least \$20,000,000, shall be authorized by law to perform all the duties imposed upon it by this Ordinance and the Tender Agreement and shall be acceptable to the Insurer. The Tender Agent may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving at least 30 days' written notice to the Enterprise, the Paying Agent, the Remarketing Agent, the Insurer and the Bank. Such resignation shall take effect on the day a successor Tender Agent shall have been appointed by the Enterprise and shall have accepted such appointment, as further provided in the Tender Agreement. The Tender Agent may be removed at any time by an instrument signed by the Enterprise, the Insurer and the Bank, and filed with the Tender Agent, the Paying Agent, the Remarketing Agent, the Insurer and the Bank; provided, that, such removal shall only take effect on the day a successor Tender Agent shall have been appointed by the Enterprise and shall have accepted such appointment, as further provided in the Tender Agreement.

In the event of the resignation or removal of the Tender Agent, the departing Tender Agent shall pay over, assign and deliver any Bonds and moneys held by it in such capacity and transfer the Liquidity Facility to its successor, or if there is no successor, to the Paying Agent.

Notice of Bonds Delivered for Purchase; Purchase of Bonds.

Tender of Bonds. As promptly as practicable, the Tender Agent shall give telephonic or telecopy notice, promptly confirmed by a written notice, to the Bank, the Paying Agent, the Remarketing Agent and the Enterprise specifying the principal amount of Bonds, if any, as to which it shall

have received notice of tender for purchase in accordance with Section 501 hereof. The Tender Agent shall determine timely and proper delivery of Bonds pursuant to this Ordinance and the proper endorsement of such Bonds. Such determination shall be binding on the owners of such Bonds, the Enterprise, the Remarketing Agent, the Paying Agent and the Bank, absent manifest error. The Tender Agent shall also give notice as required by Section 1203 hereof.

Purchase of Bonds. Bonds required to be purchased in accordance with Sections 501, 502, 503, 504 or 505 hereof shall be purchased from the Owners thereof by the Tender Agent on the date and at the purchase price at which such Bonds are required to be purchased. If the Remarketing Agent has notified the Tender Agent pursuant to Section 1204 hereof that Bonds or Beneficial Ownership Interests will not be sold by the Remarketing Agent pursuant to Section 1203 hereof and the Liquidity Facility is then in effect, the Tender Agent shall give the Bank notice in accordance with the requirements of the Liquidity Facility no later than 11:30 a.m. (Eastern time) on the Bond Purchase Date of the aggregate purchase price of the Bonds or Beneficial Ownership Interests tendered or deemed tendered which have not been successfully remarketed. Funds for the payment of such purchase price by the Tender Agent from the Owners of Bonds shall be derived from the following sources in the order of priority indicated:

the moneys received upon the remarketing of Bonds to any Person pursuant to the Remarketing Agreement (other than Bonds sold to the Enterprise in violation of Section 1203 hereof); and moneys received by the Tender Agent pursuant to the Liquidity Facility to be applied to pay the purchase price of Bonds tendered or deemed tendered for purchase which are not successfully remarketed; and

moneys received by the Tender Agent from the Enterprise (in its sole discretion) to the extent that moneys obtained pursuant to (1) or (2) above are insufficient on any date to pay the purchase price of Bonds tendered or deemed tendered for purchase which are not successfully remarketed. Nothing in this Ordinance requires or obligates the Enterprise to provide moneys to pay the purchase price of the Tender Bonds.

The Tender Agent shall establish separate accounts or subaccounts within the Remarketing Reimbursement Fund for each deposit made into the Remarketing Reimbursement Fund so that (i) the Tender Agent may at all times ascertain the date of deposit of the funds in each account or subaccount, and (ii) the amounts derived from the source described in (2) above may be segregated from other sources and such amounts shall not be commingled with any funds from the source described in (3) above. The Tender Agent shall pay the purchase price specified above of each Bond tendered or deemed tendered for purchase from the sources specified above to the Owner thereof by 4:30 p.m., Eastern time, on the Bond Purchase Date, provided that such Owner has delivered such Bond (with any necessary endorsements) to the principal corporate trust office of the Tender Agent no later than 4:00 p.m., Eastern time, on such date.

Undelivered Bonds. In the event any Bonds purchased as provided in this Section shall not be presented to the Tender Agent, the Tender Agent shall segregate and hold the moneys for the purchase price of such Bonds in trust, uninvested, for the benefit of the former Owners of such Bonds, who shall, except as provided in the following sentence, thereafter be restricted exclusively to such moneys for the satisfaction of any claim for the purchase price of such Bonds. Any moneys which the Tender Agent shall segregate and hold in trust for the payment of the purchase price of any Bond and remaining unclaimed for two years after the date of purchase shall, to the extent legally permissible, upon the Enterprise's written request to the Tender Agent, be paid to the Bank, if the Enterprise then owes funds under the Liquidity Facility or otherwise to the Enterprise. After the payment of such unclaimed moneys to the Enterprise, the former Owner of such Bond shall look only to the Enterprise for the payment thereof.

Remarketing Reimbursement Fund. The Remarketing Reimbursement Fund shall be held by the Tender Agent. There shall be deposited into the Remarketing Reimbursement Fund by the Tender Agent from time to time the following:

the moneys received upon the remarketing of Bonds to any Person pursuant to the Remarketing Agreement (other than Bonds sold to the Enterprise in violation of Section 1203 hereof); moneys received by the Tender Agent pursuant to the Liquidity Facility to be applied to pay the purchase price of Bonds tendered or deemed tendered for purchase which are not successfully remarketed; and moneys received by the Tender Agent from the Enterprise pursuant to paragraph (3) of Section 1207B.

Moneys in the Remarketing Reimbursement Fund shall be held in trust exclusively for the payment of the purchase price of Bonds tendered or deemed tendered for purchase; provided, however, under no circumstances shall moneys made available pursuant to the Liquidity Facility be used to purchase Bonds owned by the Enterprise or Bank Bonds and provided further that any excess moneys contained in the Remarketing Reimbursement Fund shall be paid by the Tender Agent to the Bank to the extent any amounts are owed to the Bank under the Liquidity Facility. Moneys on deposit in the Remarketing Reimbursement Fund shall not be invested. Any moneys derived from the Liquidity Facility shall not be commingled with any other moneys on deposit in the Remarketing Reimbursement Fund.

Liquidity Facility. The Enterprise hereby covenants that at all times prior to the date when the Bonds shall bear interest at the Fixed Interest Rate the Enterprise will maintain a Liquidity Facility in full force and effect which is approved by the Insurer.

The Liquidity Facility shall be reduced in whole or in part, as provided therein, upon the receipt by the Bank of a written request from the Tender Agent requesting that a specified amount of the Liquidity Facility be reduced, a copy of which written request shall be provided by the Tender Agent to the Paying Agent and the Enterprise. The Enterprise shall not consent to a reduction in the Liquidity Facility to an amount less than the principal amount of the Bonds Outstanding plus interest thereon in an amount equal to not less than (a) 35 days interest on all Outstanding Bonds if the Bonds bear interest at the Daily Interest Rate, the Weekly Interest Rate, the Monthly Interest Rate or the Quarterly Interest Rate or (b) if the Bonds bear interest at the Semi-Annual Interest Rate, the Annual Interest Rate or the Five-Year Interest Rate, such number of days of interest on all outstanding Bonds as may be required by each Rating Agency then maintaining a rating on the Bonds to continue its rating, in each case computed at the Maximum Rate.

Prior to the date on which the Outstanding Bonds bear interest at the Fixed Rate, a Substitute Liquidity Facility may become effective on any Business Day, which shall be a Substitution Date. The Enterprise shall cause a draft of any Substitute Liquidity Facility in substantially final form and a commitment letter with respect thereto, together with written evidence from each Rating Agency of the short term rating on the Bonds after the Substitution Date, to be delivered to the Paying Agent and the Insurer not less than 15 days prior to the proposed Substitution Date. On each Substitution Date the Enterprise and the Tender Agent shall also receive (a) an opinion of counsel for the Substitute Bank regarding the enforceability of

the Substitute Liquidity Facility in substantially the form delivered to the Tender Agent upon execution and delivery of the Liquidity Facility then in effect, (b) an opinion of Bond Counsel to the effect that the substitution of the Substitute Liquidity Facility for the Liquidity Facility then in effect will not adversely affect the validity of the Bonds or the exclusion of interest on the Bonds from gross income for Federal income tax purposes, (c) written approval of the Substitute Liquidity Facility by the Insurer, and (d) the executed Substitute Liquidity Facility. On any Substitution Date on which a Substitute Liquidity Facility becomes effective in accordance with the provisions of this Section, the Tender Agent and the Enterprise shall consent to the cancellation of the Liquidity Facility then in effect.

If the short-term rating of the Bank is reduced below P-1 by Moody's, A-1 by Standard & Poor's or F1 by Fitch or if the short-term rating of the Bank by such Rating Agencies is suspended or withdrawn, the Enterprise shall use its best efforts to replace the Bank with a Substitute Bank acceptable to the Insurer, unless the Insurer otherwise consents.

Immediate notice shall be given by the Tender Agent to the Bank, the Enterprise, the Paying Agent and the Remarketing Agent and each Rating Agency if no satisfactory Substitute Liquidity Facility shall be furnished to the Tender Agent in accordance with this Section on or prior to the Stated Termination Date of the then current Liquidity Facility.

Upon the Stated Expiration Date of the Liquidity Facility, the Tender Agent shall, if applicable, return the Liquidity Facility to the Bank in accordance with the terms thereof.

The Insurer may direct the Enterprise to convert the Bonds to the Fixed Interest Rate (a) upon the failure of the Bank to purchase Bonds as required herein, (b) upon termination of the Liquidity Facility without a Substitute Liquidity Facility being provided, (c) if Bonds are held as Bank Bonds for 60 consecutive days, (d) if Bank Bonds bear interest at the Maximum Bank Rate for 30 consecutive days, or (e) the Enterprise fails to provide a Substitute Liquidity Facility when so required herein.

Payments under Liquidity Facility. During the term of the Initial Liquidity Facility or any Substitute Liquidity Facility, the Tender Agent shall request the Bank under the Liquidity Facility in accordance with the terms thereof to pay when due the purchase price of Bonds tendered or deemed tendered for purchase to the extent moneys described in subsection (a) of Section 1208 hereof are not available therefor.

Notwithstanding any provision to the contrary which may be contained in this Ordinance, (a) in computing the amount to be requested under the Liquidity Facility on account of the payment of the purchase price of Bonds tendered or deemed tendered for purchase, the Tender Agent shall exclude any such amounts in respect of any Bonds which are Bank Bonds or any Bonds owned by or on behalf of the Enterprise on the date such payment is due, and (b) the Bank shall not pay the purchase price of Bonds tendered or deemed tendered for purchase which are Bank Bonds or Bonds owned by or on behalf of the Enterprise on the date such payment is due.

Paying Agent. The Bank of Cherry Creek, a branch of Western National Bank, is hereby appointed as Paying Agent. The Paying Agent shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof and having a combined capital stock, surplus and undivided profits of at least \$20,000,000 and authorized by law to perform all the duties imposed upon it by this Ordinance and the Paying Agreement. The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving at least 30 days' written notice to the Enterprise, the Paying Agent, the Remarketing Agent, the Insurer and the Bank. Such resignation shall take effect on the day a successor Paying Agent shall have been appointed by the Enterprise and shall have accepted such appointment, as further provided in the Paying Agency Agreement described in Section 1502B hereof.

The Paying Agent may be removed at any time by an instrument signed by the Enterprise, the Insurer and the Bank, and filed with the Paying Agent, the Remarketing Agent, the Insurer and the Bank; provided, that such removal shall take effect on the day a successor Paying Agent shall have been appointed by the Enterprise and shall have accepted such appointment, as further provided in the Paying Agency Agreement described in Section 1502B hereof.

AMENDMENT OF ORDINANCE

Privilege of Amendments. Except as hereafter provided, this Ordinance may be amended or supplemented by ordinances adopted by the Council in accordance with law, including the Charter,

without receipt by the Enterprise of any additional consideration, but with the written consent of, the Insurer, the Bank and, subject to Section 1401 hereof, the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance excluding, pursuant to Section 101B hereof, any Bonds which may then be held or owned for the account of the Enterprise. Notwithstanding the foregoing, no such ordinance shall permit:

Changing Payment. A change in the maturity, terms of redemption or interest payment of any Outstanding Bond; or

Reducing Return. A reduction in the principal amount of any Bond or the rate of interest thereon, without the consent of the Owner of the Bond; or

Prior Lien. The creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this Ordinance; or

Modifying Any Bond. A reduction of the principal amount or percentages or otherwise affecting the description of Bonds the consent of the Owners of which is required for any such modification or amendment; or

Purchase Price. A change in the purchase price of Bonds which have been tendered or deemed tendered for purchase or which may be tendered for purchase, without the consent of the Owner of the Bond; or

Priorities Between Bonds. The establishment of priorities as between Bonds issued and Outstanding.

Notwithstanding the foregoing provisions of this Section, this Ordinance and the rights and obligations of the Enterprise and of the Owners of the Bonds may also be modified or amended at any time, with the written consent of the Insurer and the Bank but without the consent of any Owners of the Bonds, but only to the extent permitted by law and only for any or all of the following purposes:

to add to the covenants and agreements of the Enterprise in this Ordinance contained other covenants and agreements thereafter to be observed;

in connection with the provision of a Surety Bond subsequent to the issuance of the Bonds;

to implement a conversion of the interest rate on the Bonds to a Fixed Interest Rate or another Variable Rate, including but not limited to modifying, amending or supplementing the form of Bond to reflect, among other things, a change in the designated title of the Bonds, the fixing of an annual rate of interest, the termination of the rights of any owner of Bonds to tender such Bonds for purchase and the fact that the purchase price of the Bonds is no longer payable out of moneys drawn under the Liquidity Facility;

in connection with the provision of an Substitute Liquidity Facility pursuant to the provisions of this Ordinance;

to provide for the appointment of a new Paying Agent, Remarketing Agent or Tender Agent; or

to make such provisions for the purpose of curing any ambiguity or of curing or correcting any formal defect or omission in this Ordinance, or in regard to questions arising under this Ordinance, as the Enterprise may deem necessary or desirable, and which shall not adversely affect the interests of the Owners of the Bonds.

Notice of Amendment. Whenever the Council proposes to amend or modify this Ordinance under the provisions of this Article, it shall cause notice of the proposed amendment to be mailed to Owners of all Outstanding Bonds at their addresses as the same last appear on the registration records maintained by the Paying Agent and to the Insurer and the Bank. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance is on file in the office of the Secretary for public inspection.

Time for Amendment. If the ordinance is required to be consented to by the Owners of the Bonds, whenever at any time within one year from the date of the giving of such notice there shall be filed in the office of the Secretary an instrument or instruments executed by the Owners of at least 66% in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed amendatory ordinance described in such notice and shall specifically consent to and approve the

adoption of such ordinance, the Council may adopt such amendatory ordinance and such ordinance shall become effective. If the ordinance is not required to be consented to by the Owners of the Bonds, the amendatory ordinance may be adopted by the Council at any time.

Binding Consent to Amendment. If the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory ordinance requiring consent of the Owners of the Bonds, or the predecessors in title of such Owners, shall have consented to and approved the adoption thereof as herein provided, no Owner of any Bond, whether or not such Owner shall have consented to or shall have revoked any consent as in this Article provided, shall have any right or interest to object to the adoption of such amendatory ordinance or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the Enterprise from taking any action pursuant to the provisions thereof.

Time Consent Binding. Any consent given by the Owner of a Bond pursuant to the provisions of this Article shall be irrevocable for a period of 6 months from the date of the giving of the notice above provided for and shall be conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after 6 months from the date of such giving of such notice by the Owner who gave such consent or by a successor in title by filing notice of such revocation with the Secretary, but such revocation shall not be effective if the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding as in this Article provided, prior to the attempted revocation, consented to and approved the amendatory ordinance referred to in such revocation.

Unanimous Consent. Notwithstanding anything in the foregoing provisions of this Article, the terms and provisions of this Ordinance or of any ordinance amendatory thereof or supplemental thereto and the rights and the obligations of the Enterprise and of the Owners of the Bonds thereunder may be modified or amended in any respect upon the adoption by the Enterprise and upon the filing with the Secretary of an ordinance to that effect and with the consent of the Owners of all the then Outstanding Bonds, such consent to be given as provided in Section 1303 hereof; and no notice to Owners of Bonds shall be required as provided in Section 1302 hereof, nor shall the time of consent be limited except as may be provided in such consent.

Exclusion of Enterprise's Bonds. At the time of any consent or of other action taken under this Article, the Enterprise shall furnish to the Secretary a certificate of the Treasurer, upon which the Enterprise may rely, describing all Bonds to be excluded for the purpose of consent or of other action or of any calculation of Outstanding Bonds provided for in this Article, and the Enterprise shall not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article, as provided in Section 101B hereof.

Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the Council as to such action; and after the approval of such notation, then upon demand of the Owner of any Bond Outstanding and upon presentation of his or her Bond for that purpose at the principal office of the Paying Agent, suitable notation shall be made on such Bond by the Paying Agent as to any such action. If the Council so determines, new Bonds, so modified as in the opinion of the Council conform to such action, shall be prepared, executed, authenticated and delivered; and upon demand of the Owner of any Bond then Outstanding, shall be exchanged without cost to such Owner for Bonds then Outstanding upon surrender of such Bonds.

Proof of Instruments and Bonds. The fact and date of execution of any instrument under the provisions of this Article, the amount and number of the Bonds held by any Person executing such instrument, and the date of his or her holding the same may be proved as provided by Section 1503 hereof.

Consent of the Bank. Subject to the provisions set forth in Section 1507 hereof, a supplemental or amendatory ordinance under Section 1306 hereof which adversely affects the rights and obligations of the Bank under this Ordinance shall not become effective unless and until the Bank shall have consented in writing to the execution and delivery of such supplemental or amendatory ordinance. The Paying Agent shall cause notice of the proposed execution and delivery of any supplemental or amendatory ordinance, together with a copy of the proposed supplemental or amendatory ordinance and a written consent form to be signed by the Bank, to be mailed by first class mail, postage prepaid to the Bank at least 30 days prior to the proposed date of execution and delivery of any such supplemental or amendatory ordinance.

Copies of Supplemental Ordinances to Rating Agencies. Copies of any supplemental or amendatory ordinance shall be sent by the Enterprise to the Rating Agencies at least 10 days prior to the effective date thereof.

INSURANCE POLICY PROVISIONS

Insurer To Be Deemed Owner, Rights of the Insurer, Payments by the Insurer: Notices.

Notwithstanding any provision of this Ordinance to the contrary, so long as the Insurer is not in default in its payment obligations under the Insurance Policy, the Insurer shall at all times be deemed the sole and exclusive Owner of the Outstanding Bonds for the purposes of all approvals, consents, waivers, institution of any action, and the direction of all remedies pursuant to this Ordinance, including but not limited to approval of or consent to any amendment of or supplement to this Ordinance which requires the consent or approval of the Owners of 66% in aggregate principal amount of the Bonds then Outstanding pursuant to this Ordinance; provided, however, that the Insurer shall not be deemed to be the sole and exclusive Owner of the Outstanding Bonds with respect to any amendment or supplement to this Indenture which seeks to amend or supplement this Indenture for the purposes set forth in clauses A, B, C, D, E or F of Section 1301 hereof, and provided, further, that the Insurer shall not have the right to direct or consent to Enterprise, Paying Agent or Owner action as provided herein, if: the Insurer shall be in payment default under the Insurance Policy; any material provision of the Insurance Policy shall be held to be invalid by a final, non-appealable order of a court of competent jurisdiction, or the validity or enforceability thereof shall be contested by the Insurer; or a proceeding shall have been instituted in a court having jurisdiction in the premises seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution in respect of the Insurer under Article 16 of the Insurance Law of the State of New York or any successor provision thereto and such proceeding is not terminated for a period of 90 consecutive days or such court enters an order granting the relief sought in such proceeding.

In any event described in A(i), (ii) or (iii) above, the Bank shall hold and exercise all of the rights and remedies granted hereunder to the Insurer for so long as any such event continues and any monies are owed under the Liquidity Facility.

To the extent that the Insurer makes payment of any principal of or interest on a Bond, it shall be fully subrogated to all of the Owner's rights thereunder in accordance with the terms of the Insurance Policy to the extent of such payment, including the Owner's rights to payment thereof. In the event that the principal of or interest on a Bond shall be paid by the Insurer pursuant to the terms of the Insurance Policy (i) such Bond shall continue to be "outstanding" under this Ordinance, and (ii) the Insurer shall be fully subrogated to all of the rights of the Owner thereof in accordance with the terms and conditions of subsection B of this Section and the Insurance Policy.

This Ordinance shall not be discharged unless and until all amounts due to the Insurer have been paid in full or duly provided for.

The rights granted under this Ordinance to the Insurer to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit of or on behalf of the Owners, nor does such action evidence any position of the Insurer, positive or negative, as to whether Owner consent is required in addition to consent of the Insurer.

No modification, amendment or supplement to this Ordinance shall become effective except upon obtaining the prior written consent of the Insurer. Copies of any modification, amendment or supplement to this Ordinance shall be sent to each Rating Agency at least ten days prior to the effective date thereof.

No contract shall be entered into nor any action taken by the Enterprise or the Paying Agent pursuant to which the rights of the Insurer or security for or sources of payment of the Bonds under this Ordinance may be impaired or prejudiced except upon obtaining the prior written consent of the Insurer.

Deposits to Policy Payments Account; Payments Under the Insurance Policy.

So long as the Insurance Policy shall be in full force and effect, the Enterprise and the Paying Agent hereby agree to comply with the provisions of this Section.

If, on the Business Day prior to the related scheduled Interest Payment Date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required hereunder, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

In the event the claim to be made is for a mandatory sinking fund redemption installment, upon receipt of the moneys due, the Paying Agent shall authenticate and deliver to affected Owners who surrender their Bonds a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered. The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided, however, that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of

principal or interest payable by the Enterprise on any Bond or the subrogation rights of the Insurer.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Owners of Bonds referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Owners of Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Owners of Bonds in the same manner as principal and interest payments are to be made with respect to the Bonds under the provisions hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

The Insurer is a third-party beneficiary of this Ordinance.

Reporting Requirements. The Paying Agent shall provide the Insurer with the following information: Notice of any draw upon the Reserve Fund within two Business Days after the Paying Agent obtains knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Fund Requirement, and (ii) withdrawals in connection with a refunding of Bonds;

Notice of any default known to the Paying Agent within five Business Days after knowledge thereof;

All reports, notices and correspondence to be delivered under the terms of this Ordinance.

MISCELLANEOUS

Defeasance. If, when the Bonds shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), together with all other sums payable hereunder including, without limitation, under the Liquidity Facility, if any, then this Ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. Also if all Outstanding Bonds shall have been purchased by the Enterprise and delivered to the Paying Agent for cancellation, and all other sums payable hereunder including, without limitation, under the Liquidity Facility, if any, have been paid, or provision shall have been made for the payment of the same, then this Ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

Payment of any Outstanding Bond shall prior to the maturity or Redemption Date thereof be deemed to have been provided for within the meaning and with the effect expressed in this Section if (a) in case said Bond is to be redeemed on any date prior to its maturity, the Enterprise shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 404 hereof notice of redemption of such Bond on said Redemption Date, such notice to be given in accordance with the provisions of Section 404 hereof, (b) there shall have been deposited with the Paying Agent or other Trust Bank either moneys in an amount which shall be sufficient, or Federal Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Paying Agent or other Trust Bank at the same time, shall be sufficient to pay when due the Debt Service Requirements due and to

become due on said Bond on and prior to the Redemption Date or maturity date thereof, as the case may be, and (c) in the event said Bond is not by its terms subject to redemption within the next sixty days, the Enterprise shall have given the Paying Agent in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 404 hereof, a notice to the Owner of such Bond that the deposit required by (b) above has been made with the Paying Agent or other Trust Bank and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the Debt Service Requirements of said Bond. Neither such securities nor moneys deposited with the Paying Agent or other Trust Bank pursuant to this Section or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Debt Service Requirements of said Bond; provided any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent or other Trust Bank, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in (b) of this paragraph maturing at times and in amounts sufficient to pay when due the Debt Service Requirements to become due on said Bond on or prior to such Redemption Date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Ordinance, except for the purpose of any payment from such moneys or securities deposited with the Paying Agent or other Trust Bank.

The release of the obligations of the Enterprise under this Section shall be without prejudice to the right of the Paying Agent to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of and performance of its powers and duties hereunder.

Upon compliance with the foregoing provisions of this Section with respect to all Bonds then Outstanding, this Ordinance may be discharged in accordance with the provisions of this Section but the liability of the Enterprise in respect of the Bonds shall continue; provided that the Owners thereof shall thereafter be entitled to payment only out of the moneys or Federal Securities deposited with the Paying Agent or other Trust Bank as provided in this Section.

A Bond bearing interest at a Variable Rate shall be deemed to be paid within the meaning of this Section only if (x) the Enterprise has deposited with the Paying Agent or other Trust Bank the amounts required by the second paragraph of this Section 1501 (provided, that such deposit shall assume an interest rate equal to the Maximum Rate for periods during for which the actual interest rate on the Bonds cannot be determined), (y)(A) such Bond is called for redemption on or prior to the next date upon which such Bond is subject to purchase pursuant to Section 501, 502, 503, 504 or 505 hereof, and (B) the Paying Agent and the Enterprise receive evidence from an Independent Auditor satisfactory to the Paying Agent that the moneys and Federal Securities deposited with the Paying Agent or other Trust Bank pursuant to this Section are in an amount sufficient to pay the purchase price of the Bonds which may be tendered for purchase pursuant to Sections 501, 502, 503, 504 and 505 hereof during the period prior to payment in full of the Debt Service Requirements of such Bonds, in which case the Bonds purchased with the moneys deposited with the Paying Agent or other Trust Bank will be canceled; and (z) the Enterprise waives, to the satisfaction of the Paying Agent, its right to convert the method for determining the interest rate borne by such Bond pursuant to Section 302 hereof and a verification report delivered by an Independent Auditor confirms that the moneys and Federal Securities deposited with the Paying Agent or other Trust Bank for such purpose pursuant to and subject to the provisions of this Section will be sufficient to pay in full (in addition to the principal of such Bonds) all interest which may accrue on such Bond until its final payment. Bank Bonds shall not be advance refunded pursuant to this Section hereof without the consent of the Bank.

Delegated Powers. The officers and employees of the Enterprise be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limitation:

Final Certificates. The execution of such certificates as may be reasonably required by the Purchaser; and

Paying Agency Agreement. The execution and delivery of an agreement with the Paying Agent necessary or desirable to evidence the acceptance by the Paying Agent of its duties hereunder.

Evidence of Bond Owners. Any request, consent or other instrument which this Ordinance may require or may permit to be signed and to be executed by the Owners of any Bonds may be in one or more instruments of similar tenor and shall be signed or shall be executed by each such Owner in person or by his or her attorney appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the holding by any Person of the Bonds shall be sufficient for any purpose of this Ordinance (except as otherwise herein expressly provided) if made in the following manner:

Proof of Execution. The fact and the date of the execution by any Owner of any Bonds or his or her attorney of such instrument may be established by a certificate, which need not be acknowledged or verified, of an officer of a bank or trust company satisfactory to the Secretary or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, that the individual signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer; the authority of the individual or individuals executing any such instrument on behalf of a corporate Owner of any securities may be established without further proof if such instrument is signed by an individual purporting to be the president or vice president of such corporation with a corporate seal affixed and attested by an individual purporting to be its secretary or an assistant secretary; and the authority of any Person or Persons executing any such instrument in any fiduciary or representative capacity may be established without further proof if such instrument is signed by a Person or Persons purporting to act in such fiduciary or representative capacity; and

Proof of Holdings. The amount of Bonds held by any Person and the numbers, date and other identification thereof, together with the date of his or her holding the Bonds, shall be proved by the registration records maintained by the Paying Agent.

Amendment of Series 2001 Bond Ordinance.

The definition of “Reserve Fund Requirement” contained in Section 1(a)(59) of the Series 2001 Bond Ordinance is hereby amended to read accordingly:

“Reserve Fund Requirement” means an amount equal to the least of: (i) ten percent (10%) of the original proceeds, (ii) one hundred twenty-five percent (125%) of the Combined Average Annual Debt Service Requirements, or (iii) one hundred percent (100%) of the Combined Maximum Annual Debt Service Requirements of the Bonds, any Additional Parity Bonds or other Parity Securities to which the Reserve Fund is pledged, to be maintained in the Reserve Fund if required in accordance with the provisions of Section 5.E. hereof, except to the extent of any Surety Bond therein. For purposes of computing the Reserve Fund Requirement, any issue of Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, shall be assumed, at the time of the computation, to bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Securities is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated Maturity Dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate

payable on an interest rate exchange agreement or “swap” contract as the interest rate on any such issue of Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Securities and the counterparty is rated “A” or higher by a Rating Agency at the time of the calculation.

Except as specifically amended in this Section 1504, all provisions of the Series 2001 Bond Ordinance remain in full force and effect.

Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Enterprise, the City, the Insurer, the Bank, the Paying Agent, the Tender Agent, the Remarketing Agent and the Owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the Enterprise shall be for the sole and exclusive benefit of the Enterprise, the City, the Insurer, the Bank, the Paying Agent, the Tender Agent, the Remarketing Agent and the Owners of the Bonds.

Notices. Except as otherwise may be provided in this Ordinance, all notices, certificates, requests or other communications pursuant to this Ordinance shall be in writing and shall be sufficiently given and shall be deemed given by personal delivery or when mailed by first class mail, and either delivered or addressed as follows:

If to the Enterprise at:

City of Westminster, Colorado,
Water and Wastewater Utility Enterprise
4800 W. 92nd Avenue
Westminster, Colorado 80031
Attention: Mary Ann Parrot
(303) 430-2400, ext 2042 – Phone
(303) 429-3950 – Facsimile

If to the Paying Agent at:

The Bank of Cherry Creek,
a branch of Western National Bank
3033 E. First Avenue
Denver, Colorado 80206
Attention: Trust Department
(303) 394-5125 – Phone
(303) 394-5320 – Facsimile

If to the Tender Agent, at:

The Bank of Cherry Creek,
a branch of Western National Bank
3033 E. First Avenue
Denver, Colorado 80206
Attention: Corporate Trust
(303) 394-5125 – Phone
(303) 394-5320 – Facsimile

If to the Bank, at:

Dexia Credit Local
New York Agency
445 Park Avenue

8th Floor
New York, New York 10022
Attention: Public Finance
(212) 515-7003 – Phone
(212) 753-5516 – Facsimile

If to the Remarketing Agent, at:

Stifel, Nicolaus & Company, Incorporated
Hanifen, Imhoff Division
1125 17th Street
Suite 1600
Denver, Colorado 80202
(303) 296-2300 – Phone
(303) 291-5323 – Facsimile

If to the Insurer, at:

Financial Security Assurance Inc.
350 Park Avenue
New York, New York 10022
Attention: Managing Director-Surveillance
Re: Policy No. _____
(212) 826-0100 –Phone
(212) 339-3529 – Facsimile

If to S&P, at

Standard & Poors
Attn: Municipal Structured Surveillance
55 Water St., 38th Floor
New York, NY 10041
(212) 438-7976 – phone
(212) 438-2152 – fax

In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate “URGENT MATERIAL ENCLOSED.”

Any of the foregoing Persons may, by notice given hereunder to each of the other Persons, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

References to Bank. References in this Ordinance to the Bank shall be effective only so long as the Bank has not defaulted under its obligation to purchase Bonds under the Liquidity Facility and the Bonds do not bear interest at the Fixed Interest Rate.

Additional Notices to Rating Agencies. The Paying Agent hereby agrees that if at any time (a) the Enterprise shall redeem any portion of the Bonds Outstanding prior to maturity, but excluding redemptions pursuant to Section 401A hereof, (b) the Enterprise shall provide for the payment of any portion of the Bonds pursuant to Section 1501 hereof, (c) a successor Paying Agent is appointed hereunder, (d) any supplement to this Ordinance or to the Liquidity Facility shall become effective or any Person shall waive

any provision of this Ordinance, (e) any change in the Remarketing Agent or the Tender Agent occurs, (f) the interest rate on the Bonds is converted to any Interest Rate Mode not covered by the Liquidity Facility, (g) the Liquidity Facility then in effect expires or terminates or a Substitute Liquidity Facility is delivered, or (h) the Stated Expiration Date of the Liquidity Facility is changed, then, in each case, the Paying Agent shall give notice to each Rating Agency.

Business Days. If the date for making any payment or the last date for performance of any act or the exercising of any rights, as provided in this Ordinance, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

PASSED AND ADOPTED AS AN EMERGENCY MEASURE this 23rd day of September, 2002.
CITY OF WESTMINSTER, COLORADO,
WATER AND WASTEWATER UTILITY
ENTERPRISE

By: _____
President

(SEAL)

Attest:

Secretary

EXHIBIT A
(FORM OF BOND)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Enterprise or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTIES OF ADAMS AND JEFFERSON

CITY OF WESTMINSTER

WATER AND WASTEWATER UTILITY ENTERPRISE
VARIABLE RATE DEMAND WATER AND WASTEWATER
REVENUE BOND, SERIES 2002

No. R- _____ \$ _____

Maturity Date

Original
Issue Date

CUSIP

December 1, 2022

September __, 2002

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the "Enterprise"), in the Counties of Adams and Jefferson and State of Colorado (the "State"), for value received, hereby promises to pay to the registered owner specified above, or registered assigns, solely from the special funds provided therefor, as hereinafter set forth, the principal amount set forth above on the maturity date specified above (unless this Bond shall have been called for prior redemption, in which case on the redemption date) and to pay solely from such special funds interest thereon at the rate per annum determined as described in an ordinance adopted by the City Council of the City of Westminster, acting as the governing body of the Enterprise, on September 23, 2002 (the "Ordinance"). This is one of an authorized series of bonds issued under the Ordinance in the aggregate principal amount of \$_____ (the "Bonds"). The Bonds are all issued under and equally and ratably secured by and entitled to the security of the Ordinance. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance. This Bond bears interest, matures, is payable, is subject to tender, is subject to redemption and is transferable as provided in the Ordinance.

Reference is made to the Ordinance and to all ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, rights, duties and obligations of the Enterprise, the Paying Agent, the Tender Agent, the Remarketing Agent, the Bank and the Insurer, the rights of the Owners of the Bonds, the events of defaults and remedies, the circumstances under which any Bond is no longer Outstanding, the issuance of Additional Parity Bonds and the terms on which such Additional Parity Bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE ORDINANCE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ENTERPRISE, SECURED BY THE PLEDGED REVENUES; THE BONDS DO NOT CONSTITUTE A DEBT OF THE ENTERPRISE, THE CITY OF WESTMINSTER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF; AND NONE OF THE ENTERPRISE (OTHER THAN TO THE EXTENT OF PLEDGED REVENUES), THE CITY OF WESTMINSTER, THE STATE OR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NEITHER THE MEMBERS OF THE COUNCIL NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the Enterprise in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State, with the Charter, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that the Bonds are issued under the authority of the Ordinance and the Supplemental Public Securities Act. It is the intention of the Enterprise, as expressed in the Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Ordinance and shall be conclusive evidence of the validity and the

regularity of the issuance of the Bonds after their delivery for value and that all of the Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN WITNESS WHEREOF, the Enterprise has caused this Bond to be signed and executed in its name and upon its behalf with the facsimile signature of its President, has caused the facsimile of the seal of the Enterprise to be affixed hereon and has caused this Bond to be signed, executed and attested with the facsimile signature of its Secretary, and to be countersigned with the facsimile signature of the Treasurer, all as of the date specified above.

CITY OF WESTMINSTER, COLORADO,
WATER AND WASTEWATER UTILITY
ENTERPRISE

By: (Facsimile or Manual Signature)
President

ATTEST:

(Facsimile or Manual Signature)
Secretary

Countersigned:

(Facsimile or Manual Signature)
Treasurer

STATEMENT OF INSURANCE

Financial Security Assurance Inc. (“Financial Security”), New York, New York, has delivered its municipal bond insurance policy with respect to the scheduled payments due of principal of and interest on this Bond to The Bank of Cherry Creek, a branch of Western National Bank, Denver, Colorado, or its successor, as Paying Agent for the Bonds. Said Policy is on file and available for inspection at the Office of the Paying Agent and a copy thereof may be obtained from Financial Security or the Paying Agent.

(END OF FORM OF BOND)

(FORM OF CERTIFICATE OF AUTHENTICATION)

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within mentioned Ordinance.

THE BANK OF CHERRY CREEK, a branch of
Western National Bank,
as Paying Agent

By _____
Authorized Signatory

Date of Authentication and Registration: _____

(END OF FORM OF CERTIFICATE OF AUTHENTICATION)

(FORM OF ASSIGNMENT)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ to transfer the within Bond on the records kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed by an eligible guarantor institution as defined in 17 CFR § 240.17 Ad-15(a)(2).

Signature Guaranteed:

Address of Transferee:

Social Security or other tax
identification number of
transferee:

(END OF FORM OF ASSIGNMENT)

(FORM OF PREPAYMENT PANEL)

PREPAYMENT PANEL

The following installments of principal (or portions thereof) of this Bond have been prepaid in accordance with the terms of the Ordinance.

<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of DTC</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

(END OF FORM OF PREPAYMENT PANEL)

NOTICE OF EXERCISE OF TENDER OPTION
INSTRUCTIONS TO SELL

To: The Bank of Cherry Creek,
a branch of Western National Bank
3033 E. First Avenue
Denver, Colorado 80206
Attention: Corporate Trust

Re: City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Variable
Rate Demand Water and Wastewater Revenue Bonds, Series 2002

Gentlemen:

The undersigned, as the Owner of the Bond referred to below ("Bond"), hereby elects the option available to the undersigned pursuant to the Ordinance authorizing the issuance of the above-captioned bond issue (the "Ordinance"). In accordance with such option, the undersigned hereby tenders:

- | | | |
|---------------------------|--------------------------|--|
| check the appropriate box | <input type="checkbox"/> | the entire Bond |
| | <input type="checkbox"/> | (increments of \$5,000 with a
minimum of \$100,000) |

for purchase on the first Bond Purchase Date (as defined in the Bond) after the date hereof, pursuant to the Ordinance. In accordance with such tender, the undersigned hereby irrevocably sells, assigns and transfers such Bond or portion thereof at the purchase price set forth in the Ordinance, and does hereby irrevocably constitute and appoint the Tender Agent as attorney to transfer such Bond or portion thereof on the books of the Paying Agent, with full power of substitution in the premises.

Dated: _____

Signature

Signature Guaranteed:

NOTICE: To exercise the option available to the Owner pursuant to the Ordinance, the Owner must notify the Tender Agent of such exercise and deliver this Bond to the Tender Agent at the times and in the manner set forth in this Bond. The signature to these Instructions to Sell must correspond with the name as written upon the face of this Bond in every particular, without alteration or enlargement, or any change whatsoever.

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

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

1. The foregoing pages are a true, correct, and complete copy of an ordinance (the "Ordinance") passed and adopted by the City Council (the "Council") of the City, acting as the governing body of the Enterprise, at a meeting of the Enterprise held concurrently with a regular meeting of the Council at the City Hall on September 23, 2002.

2. The passage of the Ordinance as an emergency was duly moved and seconded, and the Ordinance was adopted at the meeting of September 23, 2002 by an affirmative vote of a majority of the members of the Council as follows:

Those Voting "Yes":	Mayor Ed Moss Mayor Pro Tem Herb Atchison Councillor Chris Dittman Councillor Sam Dixion Councillor Butch Hicks Councillor Nancy McNally
Those Voting "No":	None
Those Abstaining:	None
Those Absent:	Councillor Tim Kauffman

3. The Six (6) members of the Council were present at such meeting and voted on the passage of the Ordinance as set forth above.

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

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

6. Notice of the meeting of September 23, 2002, in the form, attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The Ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on October 3, 2002. The affidavit of publication is attached hereto as Exhibit B.

8. The Ordinance has not been repealed, rescinded, amended or otherwise modified and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2002.

City Clerk and Secretary of the Enterprise

EXHIBIT A

(Attach Notice of Meeting)

EXHIBIT B

(Attach Affidavit of Publication)



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Councillor's Bill No. 48 re Revisions to Title 11 and Title 2 re Accessory Structures and Fences

Prepared By: Sharon Widener, Assistant City Attorney

Recommended City Council Action:

Pass Councillor's Bill No. 48 on first reading making changes to Titles 2 and 11 of the Westminster Municipal Code pertaining to accessory structures, fences and certain clarifications.

Summary Statement

Staff has begun the process of reviewing Title 11 (the development section of the Westminster Municipal Code) and has recommended a number of amendments. Most of the proposed amendments are minor. The following items provide a summary of the amendments proposed:

- Setback requirements for accessory buildings such as detached garages and storage sheds have been changed, as Staff has noted an increase in requests for variances because the setbacks proved to be too restrictive in areas where houses have been built some time ago. Accessory buildings will be restricted to five percent (5%) of the building lot or 600 square feet; whichever is greater. The Board of Adjustments has reviewed these changes and has recommended to the City Council that they be approved.
- Fences and the placement of swimming pools, spas, and hot tubs have been moved to Chapter 4 as more appropriate for enforcement under the Zoning Code than the Building Code. No substantive changes have been made.
- Previously, Council approved a change in Title 2 that granted the Special Permit and License Board final authority to grant or deny special use permits. However, the corresponding change in Title 11 was not made; this amendment corrects the discrepancy, and clarifies that a use approved in an Official Development Plan does not need a separate special use permit.
- A new section is proposed for chapter 5 in which the requirements for City initiated rezonings are clarified.
- The proposed change to Title 2 will permit the Board of Adjustment to grant variances to the section of the Code that pertains to fences. This is currently handled by the Board of Building Code appeals.

Expenditure Required: N/A

Source of Funds: N/A

Policy Issues

- Should the regulation of fences and placement of swimming pools be enforced as a zoning issue rather than a building code issue? Council recently approved the removal of this section from the Building Code.
- Should the placement and size of accessory buildings be adjusted?

Alternatives

Do not pass the amendments to Title 11, leaving the ordinance in its present form. If Council decides to accept this option, the following conditions would remain:

- 1) There would be no review of fence permits by the City.
- 2) The problem of large setbacks for accessory structures would remain.
- 3) Outdated language would remain in the Code.

Background Information

Staff has reviewed and drafted suggested changes to the first four chapters of Title 11, which is the title of the Westminster Municipal Code that governs zoning, development procedures, growth management, home occupations, adult business, oil and gas operations, and adoption of the City's Comprehensive Land Use Plan. Regulations governing fences and swimming pools have been moved from the Building Code, and corrections have been made to conform the Zoning Code to previously approved provisions applicable to special use permits.

This review, and the recommended changes, are primarily of a "housekeeping" nature to keep the Code up-to-date and to recognize concerns, practices and understandings that have developed over the years. Staff plans to review the remaining chapters of Title 11 and bring proposed Code changes to Council in the near future.

The proposed changes are, for the most part, not of a substantive nature. For instance, a definition of "church" has been added while "existing manufactured home park" has been deleted, because the Code does not create a distinction between a manufactured home and one built on site. A definition of "variance" has been changed since the existing definition was limited to the floodplain ordinance. In the section on Growth Management, references to projects approved after 1994 have been deleted.

The proposed changes to Section 11-4-6 (N), Accessory Buildings, will reduce the required rear setback for accessory buildings in straight-zoned districts from twenty feet (20') to five feet (5'). This is a change recommended by the Board of Adjustments due to the large number of variance requests submitted for such structures. The proposed requirement of five feet (5') is similar to other jurisdictions in the area and past variances approved in the City.

No changes have been proposed in the remaining sections with the exception of a typographical error in the Adult Business section, which changed the meaning of the intent of the ordinance.

There is currently a conflict in the Code pertaining to City initiated rezonings. The Code permits the City to initiate rezonings without the permission of the affected property owners. This could be necessary in cases where the current zoning does not comply with Comprehensive Land Use Plan, or for City initiated annexations. The Code, however, currently requires that all landowners within a potential PDP area agree to the PDP. The new provision will permit the City to initiate a PDP without the consent of the landowners, which could be necessary for the above listed reasons.

The final proposed change is located in Title 2, Chapter 6, which is a conforming change allowing the Board of Adjustment to grant a variance in a fence situation, since fences will no longer be the province of the Building Code or the Board of Building Code Appeals.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **48**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE XI OF THE WESTMINSTER MUNICIPAL CODE
THE CITY OF WESTMINSTER ORDAINS

Section 1. Chapter 2 of Title XI of the Westminster Municipal Code is hereby amended to read as follows. Sections not shown shall remain unchanged:

11-2-3 "B"

(D) BUILDING CODE THE LATEST EDITION OF THE BUILDING CODE AS AMENDED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER.

(E) BUILDING CODE STANDARDS. THE LATEST EDITION OF THE BUILDING CODE STANDARDS AS AMENDED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER.

~~(D)~~ **(F) BUILDING OFFICIAL.** The officer or other person charged with the administration and enforcement of the Building Codes ~~and Sign Code~~ or the Building Official's duly authorized representative

~~(E)~~ **(G) BUILDING SERVICE EQUIPMENT.** The plumbing, mechanical, and electrical equipment, including piping, wiring, fixtures, and other accessories which provide sanitation, lighting, heating ventilation, cooling, refrigeration, fire protections, and facilities essential for the habitable occupancy of a mobile home, building, or structure. .

11-2-4: "C"

(C) CHURCH. A BUILDING OR STRUCTURE OR GROUP OF BUILDINGS OR STRUCTURES WHICH ARE PRIMARILY INTENDED FOR THE CONDUCTING OF ORGANIZED RELIGIOUS SERVICES AND ACCESSORY USES ASSOCIATED THEREWITH.

(Reletter subsequent sections.)

11-2-6: "E"

~~**(F) EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.**~~ A manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) were completed before September 30, 1988.

~~**(G)**~~ **(F) EXISTING RESIDENTIAL SUBDIVISIONS.** A platted and duly recorded residential subdivision or a residential subdivision for which an application for final plat was submitted by July 1, 1994, in accordance with Ordinance No. 2223. Any other subdivision shall be deemed to be a new residential subdivision within the meaning of this Chapter.

~~**(H) EXPANSION TO EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.**~~ The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

11-2-14: "M"

(A) MAINTENANCE, SIGN. The replacing, repairing or repainting of a portion of a sign structure, periodic changing of bulletin board panels or the renewing of copy which has become no longer usable through ordinary wear and tear, weather or accident. The replacing or repairing of a sign or sign structure which has been damaged to an extent exceeding fifty percent (50%) of the ~~appraised~~ replacement cost, as determined by the building official, shall be considered as "maintenance" only when said sign conforms to all of the applicable provisions of this code and when damage has been caused by an act of God or violent accident.

11-2-15 "N"

~~**(C) NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or pouring of concrete pads) is completed on or before September 30, 1988.~~

11-2-22: "U"

~~**(A) UNIFORM BUILDING CODE.** The latest edition of the Uniform Building Code published by the International Conference of Building Officials, as amended and adopted by the City Council of the City of Westminster.~~

~~**(B) UNIFORM BUILDING CODE STANDARDS.** The latest edition of the Uniform Building Code Standards published by the International Conference of Building Officials, as amended and adopted by the City Council of the City of Westminster.~~

~~**(A)-(C) UNRESTRAINED SLOPE.** Unstable earthen slope with high potential for movement or erosion.~~

11-2-23: "V"

~~**(A) VARIANCE.** A grant of relief by the City from the terms of this floodplain ordinance. A DEPARTURE FROM THE PROVISIONS OF THE ZONING ORDINANCE BUT NOT INCLUDING THE ACTUAL USE OR STRUCTURE.~~

Section 2. Chapter 3 of Title XI of the Westminster Municipal Code are hereby amended to read as follows:

**CHAPTER 3
GROWTH MANAGEMENT PROGRAM
FOR THE PERIOD DECEMBER 11, 2000 THROUGH DECEMBER 31, 2010**

11-3-2: DEFINITIONS: For the purpose of this article, certain terms and words are hereby defined as follows:

(A) ACTIVE RESIDENTIAL DEVELOPMENTS:

1. Active Residential Development means RESIDENTIAL DEVELOPMENT WITH AN APPROVED OFFICIAL DEVELOPMENT PLAN THAT HAS NOT EXPIRED PER W.M.C. 11-5-7 AND HAS SERVICE COMMITMENTS SET ASIDE (PROVIDED THE SERVICE COMMITMENTS HAVE NOT EXPIRED) FOR THE RESIDENTIAL AREA IN THE OFFICIAL DEVELOPMENT PLAN. ACTIVE RESIDENTIAL DEVELOPMENTS INCLUDE RESIDENTIAL PROJECTS UNDER CONSTRUCTION, BUILD-OUT, INFILL, AND SOUTH WESTMINSTER RESIDENTIAL PROJECTS.

(a) ~~A residential project with an approved Official Development Plan and Plat which was issued building permits on or after January 1, 1994; or~~

~~(b) Any newly approved residential project which received Official Development Plan approval in the 24 month period following January 1, 1994, if at least one building permit for the project was or is issued on or before December 31, 1996; or~~

~~(c) any residential project formally submitted for technical review which meets all of the following criteria:~~

~~1. The project has an approved Official Development Plan.~~

~~2. The plat and construction drawings were formally submitted to the City for development review within the 12 month period prior to February 12, 1996.~~

~~3. No public hearings are required for the project.~~

~~4. The project meets all residential design guidelines.~~

2. Notwithstanding the foregoing, A residential development will not be deemed to be an Active Residential Development if a building permit for at least one new dwelling unit is not issued during any two successive calendar years FOLLOWING INITIAL BUILDING PERMIT ISSUANCE, unless an extension is specifically approved by the City Council based on a finding that:

(a) The need for the extension is the result of some unusual and unforeseeable circumstance reasonably beyond the REASONABLE control of the developer; and

(b) The extension is needed to avoid undue or inequitable hardship that would otherwise result if the extension were not granted, and

(c) There is no reason to believe that the developer will not be able to proceed with the development of the project within the extended time period

(B) ACTIVE SENIOR HOUSING DEVELOPMENT: A Senior Housing Project which meets the following specifications:

1. GOVERNMENT SPONSORED SENIOR HOUSING AND NON-PROFIT SENIOR HOUSING: GOVERNMENT SPONSORED SENIOR HOUSING PROJECTS PROVIDED BY NON-PROFIT "501-C-3" ORGANIZATIONS AS DEFINED BY THE FEDERAL GOVERNMENT. SAID PROGRAMS MUST BE APPROVED BY THE CITY COUNCIL. SUCH PROJECTS SHALL BE SUBJECT TO THE PROVISIONS CONTAINED IN SECTION 11-3-8(B). SERVICE REQUIREMENTS FOR SAID PROJECTS SHALL BE REVIEWED INDIVIDUALLY, AND SERVICE COMMITMENTS SHALL BE AWARDED ON AN INDIVIDUAL BASIS BY CITY COUNCIL ACTION AT THE TIME OF APPROVAL OF AN OFFICIAL DEVELOPMENT PLAN.

2. NON-GOVERNMENT SPONSORED FOR-PROFIT SENIOR HOUSING:

(A) SKILLED NURSING FACILITIES: FACILITIES THAT INTEGRATE SHELTER FOR THE ELDERLY WITH MEDICAL, NURSING, PSYCHOLOGICAL, AND REHABILITATION SERVICES FOR PERSONS WHO REQUIRE 24 HOUR NURSING SUPERVISION AND CARE.

(B) ASSISTED LIVING: SHELTER AND SERVICES FOR FRAIL ELDERLY WHO ARE FUNCTIONALLY AND/OR SOCIALLY IMPAIRED AND IN NEED OF 24-HOUR SUPERVISION. SERVICES MUST INCLUDE AS A MINIMUM, ENVIRONMENTAL SECURITY, TRANSPORTATION, HOUSEKEEPING, SOCIAL ACTIVITIES, LAUNDRY AND MEALS.

(C) CONGREGATE CARE: SHELTER FOR ELDERLY WHO MAY NEED LIMITED ASSISTANCE BUT DO NOT NEED 24-HOUR SUPERVISION. SERVICES MUST INCLUDE AS A MINIMUM, ENVIRONMENTAL SECURITY, TRANSPORTATION, HOUSEKEEPING, SOCIAL ACTIVITIES, LAUNDRY AND MEALS.

(D) INDEPENDENT LIVING: ATTACHED OR MULTI-FAMILY HOUSING TARGETED SPECIFICALLY TO SENIORS WHO ARE FUNCTIONALLY AND SOCIALLY INDEPENDENT. SERVICES MUST INCLUDE AS A MINIMUM, ENVIRONMENTAL SECURITY, TRANSPORTATION, HOUSEKEEPING AND SOCIAL ACTIVITIES.

~~1. All of the criteria and requirements established in 11-3-4 (E) Category E, Active Senior Housing Developments, are met; and~~

~~2. The project received Official Development Plan (ODP) approval on or after January 1, 1994; or, a Preliminary Development Plan (PDP) amendment requesting senior housing land use was formally submitted for the technical review process prior to November 18, 1996 and the PDP and ODP are ultimately approved by the City Council.~~

~~Notwithstanding the foregoing, a senior housing development will not be deemed an active senior housing development if a building permit for at least one new dwelling unit is not issued during any two successive calendar years beginning January 1, 1998 unless an extension is specifically approved by the City council based on a finding that:~~

- ~~(a) The need for the extension is the result of some unusual and unforeseeable circumstance reasonably beyond the control of the developer, and~~
- ~~(b) The extension is needed to avoid undue or inequitable hardship that would otherwise result if the extension were not granted, and~~
- ~~(c) There is no reason to believe that the developer will not be able to proceed with the development of the project within the extended time period.~~

~~Any senior housing project which does not meet the criteria listed above for active senior housing development shall be considered a new senior housing development.~~

(D) BUILD-OUT DEVELOPMENT: A proposed residential development which does not meet the active residential definition but does meet all of the following:

1. There is an existing, City-approved Official Development Plan and Plat for the site; and
2. The proposed land use and density comply with the Comprehensive Land Use Plan; and
3. The project is located on land within a planned unit development which is at least 50% developed; and existing public improvements (water lines, sewer lines, streets, etc) are adjacent to the site; and
4. The undeveloped site for the proposed development does not exceed ten (10) acres.
5. The project will meet or exceed all of the City's minimum design standards and guidelines; and
6. The project will offer incentive items detailed within the City's competition guidelines and will, at a minimum meet the lowest score of the project(s) awarded service commitments for the most recent residential competition for that project type. The project may offer different incentive items than those chosen by the comparable project, but the total of incentive points offered must meet or exceed the score of ~~that~~ THE COMPARABLE project.

An official development plan amendment (bringing the project into compliance with City design guidelines) and plat must be submitted for review and are subject to City Manager approval. If the project is unable to meet all of the minimum and incentive design requirements and all other ODP requirements, the project will be subject to Planning Commission review and approval or denial.

11-3-3: CONDITIONS FOR BUILDING PERMIT ISSUANCE:

(A) ~~From December 11, 2000, through December 31, 2010,~~ NO building permits requiring new utility services shall be issued except in conjunction with a Service Commitment, adequate to serve the structure to be permitted, duly issued pursuant to the provisions of this Chapter.

11-3-4: CATEGORIES OF AWARD: Service Commitments shall be allocated by the City Council by resolution for the following categories:

(A) Category A: Active residential developments:

1. Category A-1: Active single family detached residential developments
2. Category A-2: Active single family attached residential developments having a density of ten (10) or less dwelling units per acre.
3. Category A-3: Active ~~single family attached~~ MULTI-FAMILY residential developments having a density of greater than ten (10) units per acre
4. Category A-4: Active residential developments within traditional mixed use neighborhood projects

(B) Category B: New residential developments:

1. Category B-1: New single family detached residential developments
2. Category B-2: New single family attached residential developments having a density of ten (10) or less dwelling units per acre

	15'	15'	15'	15'	15'	15'	(d)	15'	30'	30'	30'	30'
Accessory Building:	15'	15'	15'	15'	15'	15'	(d)	15'	30'	30'	30'	30'
Minimum Side Setback; Reverse Corner Lot -- Principal Building:	30'	30'	30'	30'	25'	25'	(d)	25'	15'	15'	30'	30'
Accessory Building:	30'	30'	30'	30'	30'	30'	(d)	30'	15'	15'	30'	30'
Minimum Rear Setback -- Principal Building:	20'	20'	20'	20'	20'	20'	(d)	20'	(c)	(c)	(c)	30'
Accessory Building: (less than 120 square feet)	3'	3'	3'	3'	3'	3'	(d)	20'	(e)	(e)	(e)	30'
Maximum Lot Coverage; Percent of Total Area -- Principal Building:	30%	30%	30%	30%	30%	30%	(d)	30%	(a)	(a)	(a)	5%
Accessory Building (e):	10%	10%	10%	15%	10%	10%	(d)	10%	(a)	(a)	(a)	10%
Maximum Building Height -- Principal Building:	25'	25'	25'	25'	35'	35'	(d)	35'	65'	65'	65'	25'
Accessory Building:	15'	15'	15'	15'	15'	15'	(d)	15'	15'	15'	15'	65'

(e) No accessory building shall exceed 600 square feet.

11-4-6: SPECIAL REGULATIONS: The following regulations apply to zoning districts as indicated below.

(K) **LOADING.** In B1, C1, C2, M1 AND PUD Districts, all loading areas and loading docks must be located on the site AND SCREENED so as not to be viewed from ~~major~~ PUBLIC roads, TRAILS, accessways, or residentially zoned property.

(M) SCREENING OF TRASH STORAGE AREAS IN ALL ZONE DISTRICTS.

4. The ~~is~~ requirements OF THIS SECTION shall apply to all new development prior to a certificate of occupancy. In addition, all such trash storage areas in existence as of the date of adoption of this ordinance (AUGUST 1997) shall come into conformance within one (1) year of the adoption hereof. For the purpose of enforcement, the land owner shall be held legally responsible for compliance with this law.

(N) ACCESSORY BUILDINGS.

1. Permitted Zone Districts: Accessory buildings are permitted in all residential zone districts or RESIDENTIAL planned unit developments IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CODE unless restricted on an approved official development plan. ACCESSORY BUILDINGS IN NON RESIDENTIAL ZONE DISTRICTS SHALL REQUIRE AN ODP WAIVER OR ODP AMENDMENT MEETING THE REQUIREMENTS OF THIS CODE.

2. Number permitted: One (1) accessory building will be permitted per building lot.

3. Architectural character: Accessory buildings ~~in the RE, R1, RA, R2, R3, R4, T1 and PUD zoned districts~~ must maintain the residential character of the surrounding neighborhood and architecturally resemble and be constructed of like or similar materials of that used on the exterior of the existing principal building on the property. Pre-fabricated or corrugated metal, plastic, vinyl, canvas or similar material buildings are prohibited.

4. Size: ~~For zone districts RE, R1, RA, R2, R3, R4, R5, T1 and PUD districts (where no regulations are included in the official development plans),~~ FOR ALL RESIDENTIAL ZONE DISTRICTS AND RESIDENTIAL PUD DISTRICTS, accessory buildings shall be limited to ~~40%~~ 5% of the building lot area, ~~not to exceed~~ OR 600 square feet, WHICHEVER IS GREATER. IN NO CASE SHALL THE ACCESSORY BUILDING BE LARGER THAN 2000 SQUARE FEET. FOR ALL NON RESIDENTIAL PUD ZONE DISTRICTS SIZE WILL BE DETERMINED IN THE ODP OR ODP AMENDMENT. Maximum height of an accessory building shall be limited to fifteen (15) feet EXCEPT IN O-1 ZONE DISTRICT WHERE MAXIMUM HEIGHT SHALL BE THIRTY-FIVE (35) FEET.

5. ~~Setbacks: For zone districts RE, R1, RA, R2, R3, R4, R5 and T1 see density schedule. Architectural features such as cornices, canopies, eaves, awnings or similar architectural roofline features may not encroach into the required side or rear setbacks for any accessory building.~~ THIS SECTION PROVIDES THE SETBACKS FOR ACCESSORY BUILDINGS. THE SETBACKS FOR ACCESSORY BUILDINGS IN RESIDENTIAL PUD ZONE DISTRICTS SHALL BE AS SPECIFIED ON AN APPROVED OFFICIAL DEVELOPMENT PLAN. IF SETBACKS ARE NOT SPECIFIED THEN THE SETBACKS SHALL FOLLOW THE REQUIREMENTS OF THIS SECTION. THE O-1 DISTRICT IS CONSIDERED A NON-RESIDENTIAL ZONE DISTRICT FOR THE PURPOSE OF THIS SECTION.

- ~~(a) Accessory buildings of one hundred twenty (120) square feet or less in PUD zone districts without specified setbacks on an approved official development plan shall meet the required front setback of the principal building and shall be placed within the rear and side setbacks a minimum of three (3) feet from the property lines.~~
- ~~(b) Accessory buildings that are greater than one hundred twenty (120) square feet in RE, R1, RA, R2, R3, R4, R5, T1 and PUD zone districts, without specified setbacks on an approved official development plan, shall meet the front setback and rear setback requirements for a principal building. The side setback for an accessory building greater than one hundred twenty (120) square feet may be a minimum of five (5) feet if the application for a building permit is accompanied by a signed agreement with the adjacent property owner(s) indicating approval of the setback. If no signed agreement accompanies the building permit application then the accessory building must meet the required side setbacks for the principal building.~~
- ~~(c) Accessory buildings that are greater than one hundred twenty (120) square feet in B1, C1, C2, M1 and O1 zone districts see density schedule.~~

- (a) ACCESSORY BUILDINGS ONE HUNDRED TWENTY (120) SQUARE FEET OR LESS: THE FRONT SETBACK SHALL BE THE SAME AS REQUIRED FOR THE PRINCIPAL BUILDING. THE SIDE AND REAR SETBACKS SHALL BE A MINIMUM OF THREE (3) FEET FROM THE PROPERTY LINE BUT MAY NOT ENCROACH INTO ANY EASEMENTS. THE SIDE OR REAR SETBACK ADJACENT TO A PUBLIC ROAD SHALL BE FIFTEEN (15) FEET.
- (b) ACCESSORY BUILDINGS GREATER THAN ONE HUNDRED TWENTY (120) SQUARE FEET: THE FRONT SETBACK SHALL BE THE SAME AS REQUIRED FOR THE PRINCIPAL BUILDING. THE SIDE AND REAR SETBACKS SHALL BE A MINIMUM OF FIVE (5) FEET FROM THE PROPERTY LINE BUT MAY NOT ENCROACH INTO ANY EASEMENTS. THE SIDE OR REAR SETBACK ADJACENT TO A PUBLIC ROAD SHALL BE FIFTEEN (15) FEET.
- (c) ACCESSORY BUILDINGS IN THE O-1 ZONE DISTRICT: THE FRONT SETBACK SHALL BE ONE HUNDRED (100) FEET. THE SIDE AND REAR SETBACKS SHALL BE THIRTY (30) FEET.
- (d) ARCHITECTURAL FEATURES SUCH AS CORNICES, CANOPIES, EAVES, AWNINGS OR SIMILAR ARCHITECTURAL ROOFLINE FEATURES MAY NOT ENCROACH INTO THE REQUIRED SIDE OR REAR SETBACK FOR ANY ACCESSORY BUILDING.

(O) FENCES.

1. GENERAL. FENCES ERECTED IN THE CITY SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION. FENCES AND SWIMMING POOLS SHALL ALSO COMPLY WITH THE PROVISIONS OF THE BUILDING CODE AS ADOPTED BY THE CITY.

2. FENCE CLASSIFICATIONS. FENCES SHALL BE CLASSIFIED AS FOLLOWS:

CLASS 1: MASONRY WALLS

CLASS 2: ORNAMENTAL IRON

CLASS 3: WOVEN WIRE

CLASS 4: FENCES MORE THAN 50 PERCENT OPEN

CLASS 5: FENCES LESS THAN 50 PERCENT OPEN

3. HEIGHT LIMITATIONS, RESIDENTIAL/BUSINESS DISTRICTS.

(a). FENCES ERECTED IN FRONT OF THE FRONT BUILDING LINE OR IN FRONT OF THE REQUIRED FRONT SETBACK MAY BE OF ANY CLASS PROVIDED THE HEIGHT OF THE FENCE DOES NOT EXCEED 36 INCHES. CLASS 2 AND 3 FENCES MORE THAN 50 PERCENT

OPEN MAY BE ERECTED TO A HEIGHT NOT TO EXCEED 42 INCHES. ORNAMENTAL POST CAPS SHALL NOT BE INCLUDED IN ANY CALCULATION OF FENCE HEIGHT.

(b). FENCES ERECTED IN SIDE YARDS WHICH DO NOT PROJECT BEYOND THE FRONT BUILDING LINE OR REQUIRED FRONT SETBACK, INCLUDING REAR YARD PERIMETER FENCES, MAY BE OF ANY CLASS AND SHALL NOT EXCEED THE HEIGHT OF 6 FEET.

(c). FENCES ERECTED ON TOP OF RETAINING WALLS SHALL NOT EXCEED THE HEIGHT LIMITATIONS SPECIFIED IN PARAGRAPH 1 AND 2 OF THIS SUBSECTION. THE HEIGHT OF SUCH FENCE SHALL BE MEASURED FROM THE GROUND LEVEL ON THE HIGH SIDE OF THE RETAINING WALL TO THE TOP OF THE FENCE.

4. HEIGHT LIMITATIONS, INDUSTRIAL DISTRICTS. FENCES ERECTED IN INDUSTRIAL DISTRICTS MAY BE OF ANY CLASSIFICATION. FENCES ERECTED IN REQUIRED FRONT YARDS SHALL NOT EXCEED A HEIGHT OF 6 FEET. IN OTHER THAN REQUIRED FRONT YARDS, FENCES MAY BE OF ANY HEIGHT.

5. MOBILE HOME FENCES. INDIVIDUAL LOT PERIMETER FENCES MAY BE ERECTED AT THE LOT LINE OF INDIVIDUAL MOBILE HOME SPACES. SUCH FENCES SHALL BE CONSTRUCTED OF THE CHAIN LINK FENCING AND SHALL BE OF A STANDARD DESIGN FOR THE ENTIRE MOBILE HOME PARK. THE TOP OF SUCH FENCES SHALL NOT EXCEED 36 INCHES IN HEIGHT. FENCE PERMIT ISSUANCE AND FEES THEREFOR SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE.

6. PROHIBITED FENCES.

(a). BARBED WIRE OR SIMILAR SHARP POINTED FENCES SHALL NOT BE ERECTED OR MAINTAINED UNLESS APPROVED ON THE OFFICIAL DEVELOPMENT PLAN OR THE PRELIMINARY DEVELOPMENT PLAN AND, WHEN APPROVED, SHALL BE INSTALLED AT A HEIGHT NOT LESS THAN 6 FEET ABOVE THE SURROUNDING GRADE LEVEL.

(b). NO ELECTRICALLY CHARGED FENCE SHALL BE ERECTED OR MAINTAINED.

7. INTERSECTION SIGHT DISTANCE CRITERIA. FENCES AND RETAINING WALLS ERECTED WITHIN VEHICULAR SIGHT TRIANGLES OR VEHICULAR SAFE LINE OF SIGHT SHALL COMPLY WITH THE CITY STANDARD SPECIFICATIONS FOR DESIGN AND CONSTRUCTION. NO FENCE OR RETAINING WALL SHALL BE ERECTED OR MAINTAINED WHICH OBSTRUCTS THE VISION OF MOTORISTS, AS DETERMINED BY THE CITY TRAFFIC ENGINEER. ANY FENCE OR RETAINING WALL WHICH DOES OBSTRUCT THE VISION OF THE MOTORISTS MAY BE ABATED AS A NUISANCE AS SET FORTH IN TITLE 8, CHAPTER 4 OF THIS CODE.

(P) **SWIMMING POOLS, SPAS, AND HOT TUBS.** OUTDOOR SWIMMING POOLS, WADING POOLS, HOT TUBS, SPAS, AND SIMILAR FACILITIES SHALL BE CONSTRUCTED OR INSTALLED SO THAT THERE WILL BE AT LEAST 5 FEET BETWEEN THE SIDE OR REAR PROPERTY LINE AND THE RIM OF THE FACILITY AND AT LEAST 50 FEET BETWEEN THE FRONT PROPERTY LINE AND THE RIM OF THE FACILITY, EXCEPT AS FOLLOWS:

1. IN THE CASE OF OUTDOOR SWIMMING POOLS, IN CONJUNCTION WITH RESIDENTIAL OCCUPANCIES LOCATED ON DEVELOPER OWNED OR COMMONLY OWNED LAND, THE FRONT SETBACK SHALL BE DETERMINED ON THE PRELIMINARY DEVELOPMENT PLAN OR THE OFFICIAL DEVELOPMENT PLAN.
2. PORTABLE WADING POOLS CONSTRUCTED OF FLEXIBLE PLASTIC, RUBBER, OR SIMILAR MATERIALS SHALL NOT BE SUBJECT TO THE SPACING REQUIREMENTS SPECIFIED IN THIS SECTION.

11-4-7: PUD -- PLANNED UNIT DEVELOPMENT DISTRICT:

(C) PERMITTED USES.

7. Land uses listed as permitted on a Preliminary Development Plan shall be subject to further review, adjustment ~~and~~ or modification, including elimination OF PARTICULAR USES, as part of the City's review

and approval of an Official Development Plan for the property. Review shall include, ~~in light of all~~ the site specific information provided as part of the Official Development Plan, including but not limited to architectural and aesthetic considerations, traffic, drainage, utility demands, heights, bulk, setbacks, common space and landscaping. Final land uses within a Planned Unit Development shall be as shown on the Official Development Plan for the property.

11-4-8: USES BY SPECIAL PERMIT:

(A) A permit for a Special Use may be granted within any zoning district in which the Special Use is allowed by this section. A special use permit shall be obtained prior to establishing any of the uses listed in this section. The applicant shall have the burden of establishing that the proposed use shall be for the public good and in the public interest. A permit for a special use may be granted by ~~City Council after a hearing before~~ the Special Permit and License Board AFTER A HEARING pursuant to the procedure outlined in section 11-4-9 of this Code. The exception to this procedure will be the administrative review and approval by the City Manager or designee thereof for a domestic violence shelter home

(B) The following special uses may be granted ~~in any zoning district~~; ACCORDING TO THE PROVISIONS OF THIS SECTION, except that if such use is A SPECIFICALLY allowed use in THE OFFICIAL DEVELOPMENT PLAN FOR a PUD zone district, no special use permit shall be required. and except that if such use is a domestic violence shelter home, it shall be limited to zoning districts R3, R4, T1, and multi-family residential areas within a PUD zone, and except that if the use is a correction home for seven (7) or more persons, including staff, it shall be limited to zoning districts R3, R4, T1, and multi-family residential areas within a PUD zone.

~~(C) The following special use may be granted by the City Council only in the C-1 District after application and review by the Special Permit and License Board as herein provided.~~

1.4. Used Merchandise/Thrift Stores: ~~In addition to meeting the general criteria for the issuance of a special use permit set forth in section 11-4-9 of this Code, a Special Use Permit shall be deemed conditioned upon the applicant's compliance with all provisions of the City Code concerning signage, building maintenance and landscaping, as well as all requirements contained on applicable Preliminary Development Plans or Official Development Plans. Furthermore, USED MERCHANDISE AND THRIFT STORES SHALL BE PERMITTED IN C-1, C-2, M-1, AND PUD ZONES ONLY.~~ The following specific regulations shall apply to applications for Special Use Permits for used merchandise and thrift stores:

~~(D)(C)~~ TERMINATION. A special use permit shall terminate whenever the permitted use is inactive for period of one year or more.

11-4-9: APPLICATIONS FOR SPECIAL USE PERMITS:

(A) In the event a proposed use requires a Special Use Permit, no approval for a business license, a license pursuant to State Statute, or a building permit shall be issued until the Special Permit and License Board ~~has reviewed the application and submitted a recommendation with the findings of fact to City Council and City Council~~ has approved the application and granted the Special Use Permit as herein provided. The exception to this procedure will be the administrative review and approval by the City Manager or designee thereof for a domestic violence shelter home.

(J) When GRANTING OR DENYING ~~making a recommendation for~~ a Special Use Permit, the Special Permit and License Board may also IMPOSE ~~recommend imposition of~~ conditions on the granting of a permit, including but not limited to:

1. Buffers or screens between the new activity and adjacent uses;
2. Limitations on operation of the use; and
3. Changes in design or layout.

~~(K) The findings of fact and recommendation shall be presented to the City Council at the next regularly scheduled meeting of City Council. The Council may:~~

- ~~1. Adopt the finding of fact of the Board and grant or deny the application accordingly.~~
- ~~2. Reject the finding of fact of the Board and hold a public hearing for the purpose of determining further information regarding the application. The Council shall consider the same criteria as set forth in this section in making its determination whether to grant or deny the application. The City Council may grant the permit with or without conditions recommended by the Board or with such additional conditions as the Council deems necessary.~~

(K) ~~(L)~~ When considering an application for a Domestic Violence Shelter Home, the review and approval will be by the City Manager or designee thereof. A certified list of adjacent property owners, public notice, public hearing, and petition will not be required.

11-4-13: ADULT BUSINESSES:

(A) **PURPOSE AND INTENT.** It is the purpose of this ordinance to regulate adult businesses to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of adult businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. ~~It is not~~ IT IS NOT the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

Section 4. Add a new Section 11-5-7(A) is hereby amended by the addition of a new subsection 6. as follows:

11-5-7(A)6. THE CITY MAY INITIATE AND APPROVE AN APPLICATION FOR A PRELIMINARY DEVELOPMENT PLAN. IN THAT EVENT, THE REQUIREMENTS OF THIS SUBSECTION (A) SHALL NOT BE APPLICABLE. ANY CITY INITIATED PRELIMINARY DEVELOPMENT PLAN SHALL MEET OR EXCEED THE REQUIREMENTS OF SECTION 11-5-14.

Section 5. Section 2 of Chapter 6 of Title II of the Westminster Municipal Code is amended by the addition of a new subsection (B)1.g. to read as follows:

BOARD OF ADJUSTMENT AND APPEALS

2-6-2: POWERS AND DUTIES:

(B) Variances:

1. The Board may grant a variance from the following provisions of Title XI of this Code, Land Development and Use Standards:

g. SECTION 11-4-6 (O) REGARDING FENCE REGULATIONS.

Section 5. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 23rd day of September, 2002. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 14th day of October, 2002.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Resolution No. 45 in Support of Adams County School District 50 Mill Ballot Issue

Prepared By: Emily Moon, Management Assistant

Recommended City Council Action:

Adopt Resolution No. 45 which formally supports the Adams County School District 50 ballot issue pertaining to a proposed \$5,950,000 increase of the existing mill levy for the purpose of improving student achievement, recruiting and retaining quality staff, and maintaining existing programs.

Summary Statement:

The Adams County School District 50 Board of Education has approved a resolution calling for a mill levy increase by School District 50 voters. City Staff has prepared a resolution in support of this ballot issue and is seeking City Council's review and approval.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does the City Council wish to formally support Adams County School District 50's ballot issue through adoption of the attached resolution?

Alternative

City Council could choose not to take a formal position on the School District ballot issue or to oppose the issue. Based on the financial needs of School District, which are generated in part by inflation, a desire to implement improvements under the District's Strategic Plan, and a need to provide school resources for a growing Westminster, Staff believes that a position of support is warranted.

Background Information

As part of the November 5th General Election, Adams County School District 50 voters will be asked to approve a financial issue that School District 50 has placed on the ballot. School District 50 requests a \$5,950,000 increase of the existing mill levy for the purpose of meeting essential needs of the district including improving student achievement, recruiting and retaining quality staff, and maintaining existing programs and schools.

The Adams County School District 50 was unsuccessful in its attempt to secure an override of the existing mill levy in November 2001. The last mill levy passed by School District 50 voters occurred fifteen years ago. School District 50 anticipates that it will need to take the following actions if the mill levy increase is not approved this year:

- Close one or more schools
- Reduce the number of teachers in the district (consequently increasing the number of students per classroom)
- Increase building and site user fees
- Eliminate busing for all high school students
- Eliminate middle school sports
- Reduce summer school offerings by 50%
- Eliminate certain high school sports
- Eliminate elementary band and orchestra

City Council has previously chosen to adopt a formal position regarding School District ballot issues. Staff is recommending support of this ballot issue. This mill levy increase will benefit the residents of Westminster by providing for essential needs of the district.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

RESOLUTION

RESOLUTION NO. **45**

INTRODUCED BY COUNCILLORS

SERIES OF 2002

CITY'S FORMAL POSITION ON ADAMS COUNTY
SCHOOL DISTRICT 50 MILL LEVY INCREASE BALLOT PROPOSAL

WHEREAS, a portion of the City of Westminster lies within Adams County School District 50 and Westminster residents attend District 50 public schools; and

WHEREAS, the City Council of Westminster does hereby recognize Adams County School District 50's commitment to educate the children of Westminster; and

WHEREAS, Adams County School District 50 has identified an essential need for additional funds to support increased student achievement and the recruitment and retention of quality staff, as well as maintaining existing programs and schools; and

WHEREAS, November 5, 2002 is the election date at which ballot issues proposing increasing taxes for the purposes set forth herein may be submitted to the eligible electors of the District pursuant to TABOR.

NOW, THEREFORE, be it resolved that the City Council of Westminster supports the efforts of Adams County School District 50 and the mill levy question to be proposed to the electors of Adams County, Colorado, and the City Council of Westminster urges all Adams County School District 50 voters to approve this ballot proposal.

Passed and adopted this 23rd day of September, 2002.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Councillor's Bill No. 49 re 2002 Local Law Enforcement Block Grant (LLEBG) Funds and Bulletproof Vest Partnership (BVP) Funds

Prepared By: Dan Montgomery, Chief of Police
Mike Simmons, Senior Management Analyst

Recommended City Council Action

Pass Councillor's Bill No. 49 on first reading appropriating \$42,868 from the Local Law Enforcement Block Grants (LLEBG) Program and \$9,610 from the Bulletproof Vest Partnership Program (BVP) to the Police Department's Patrol Services division budget.

Summary Statement

In June 2002, the Police Department applied for a federal Local Law Enforcement Block Grant, which provides funding for the purchase of law enforcement related equipment. The grant was approved and the Police Department accepted the award and special conditions on July 1, 2002. The funding of \$42,868 will be used to purchase hostage negotiation equipment, covert microphones, additional portable radios and parts, taser units, and a rifle for the Tactical Team.

Additionally, the department purchased 30 new bulletproof vests in the past year. The Department of Justice will reimburse 50% of this cost under the Bulletproof Vest Partnership Program. Thus, the department submitted receipts and was approved to receive \$9,610 in funds for these vest purchases.

Expenditure Required: \$42,868 grant/\$4,763 match (LLEBG)
\$9,610 grant/\$9,610 match (BVP)

Source of Funds: Department of Justice Local Law Enforcement Block Grant (LLEBG)
Department of Justice Bulletproof Vest Partnership Program (BVP)

Policy Issues

Should the City use grant funds for police equipment expenditures? The department supports the use of grant funds and finds them to be a viable and helpful alternative when operating expenses are not available.

Alternatives

City Council provided preliminary approval of the LLEBG grant funds at the August 5, 2002 Study Session meeting. City Council could choose not to pass the attached Councillor's Bill, which would result in the Police Department losing \$42,868 in grant funds. City Council could also choose not to seek 50% reimbursement for bulletproof vests that have already been purchased. Staff does not recommend this alternative since the Department of Justice has agreed to provide the Police Department with roughly \$52,500 in federal assistance for equipment needs.

Background Information

The Police Department submitted a grant application for a Federal Local Law Enforcement Block Grant (LLEBG) in the amount of \$42,868. The purpose of the grant is for the purchase of equipment used to support law enforcement and is for the calendar year 2002. On July 1, 2002, the Bureau of Justice Assistance (BJA) informed the police department that the grant application was approved. Staff accepted the award and special conditions to the grant. Acceptance of the award and special conditions does not result in an automatic payment of the block grant funds. Under the special requirements of the grant, the Police Department is not allowed to request the draw down of the approved funds until City Council has formally approved the grant funding at a public City Council meeting.

In an August Staff Report to City Council, the Police Department identified the following equipment to be purchased with the grant funds:

- portable radios
- taser units
- hostage negotiation phone and cameras
- covert microphones
- shredder and rifle

The hand-held portable radios are a critical piece of officer safety equipment and allow officers to communicate with dispatch, supervisors, and other officers when they are out of their cars conducting police investigations or routine patrol functions. Radio availability is limited due to patrol shift overlaps and the high demand on weekends when many officers are working special assignments or performing extra-duty assignments. Radios and parts will be funded at a cost of \$5,000.

The taser unit is a hand-held device that fires two electrically-charged probes into a suspect's skin. It is more effective than pepper spray, batons or bean bag rounds because it causes less injury to the suspect and officer. The department currently operates several tasers and would like to expand the use of this technology because of its safety benefits and proven ability to subdue violent and aggressive offenders. Twenty taser units cost approximately \$606 each for a total of \$12,118.

A hostage phone is used by the hostage negotiation team to communicate with suspects who threaten to take their own life or the lives of others. The current phone is over seven years old and has proven to be unreliable. The phone is typically thrown to the suspect and used to set-up a direct verbal communication link. In cases of a barricaded gunman, the technology this telephone offers is invaluable with regard to officer safety. The complete package consists of a phone, accessory case, hard throw case, and electronics system that is linked to the command post. The total cost is \$21,500.

SUBJECT: CB re 2002 Local Law Enforcement Block Grant (LLEBG) Funds and Bulletproof Vest Partnership (BVP) Funds

Page 3

Covert microphones are used by the Tactical Team in many emergency situations. This type of surveillance equipment is critical for officer safety in that it enables officers to listen and determine how many suspects may be present, what exactly is being said, and if weapons may be involved. This high tech equipment is another helpful tool used to combat and investigate crime. The cost is \$3,000.

The remaining items to be purchased through this grant include an M-14 rifle for the Tactical Team (\$750) and a shredder for the Senior Center (\$500). The M-14 is a .223 fully automatic and semi-automatic rifle, equivalent to the military M-16. The shredder will be available for seniors and allow them to shred important documents in order to avoid being the victims of identity theft and fraud.

The Local Law Enforcement Block Grant funds will be used to purchase all of these additional pieces of police equipment. A match of \$4,753 is required for use of these grant funds and is available in the Patrol Services operating budget.

Annually, the Police Department participates in the Bulletproof Vest Partnership Program, which is coordinated by the U.S. Department of Justice. The Department of Justice funds up to 50% of an agency's bulletproof vest costs under this program. In 2002, the Police Department requested a reimbursement of \$9,610 to cover 50% of the cost for 30 new vests. Because this program requires a 50% match, the Police Department funded the other half of these vest purchases with funds already budgeted in the Patrol Services operating budget.

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **49**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2002 appropriation for the General Fund initially appropriated by Ordinance No. 2913 in the amount of \$69,324,181 is hereby increased by \$52,478 which, when added to the fund balance as of the City Council action on September 23, 2002 will equal \$78,922,990. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to the appropriation of a Local Law Enforcement Block Grant and Bulletproof Vest Partnership Grant.

Section 2. The \$52,478 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	Increase	Final Budget
REVENUES			
Intergovernmental-Federal			
1000.40610.0000	\$0	<u>\$52,478</u>	\$52,478
Total Change to Revenues		<u>\$52,478</u>	
EXPENSES			
Other Equip-Police Dept			
10020500.76000.0000	\$13,000	<u>\$52,478</u>	\$65,478
Total Change to Expenditures		<u>\$52,478</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 23rd day of September 2002.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 7th day of October, 2002.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
September 23, 2002

SUBJECT: Second Reading of Councillor's Bill No. 43 re Solid Waste Collection Code

Prepared By: Rachel Harlow-Schalk, Environmental Services Coordinator
Kathleen Hix, Organizational Support Services Manager

Recommended City Council Action

Pass Councillor's Bill No. 43 on second reading, revising the Solid Waste Collection and the powers and duties of the Special Permit and License Board as amended.

Summary Statement

- The City's Solid Waste Code has been amended to include a requirement for trash collectors to provide annual recycling reports to the City, requirements that the trash set out for collection must be collected, and a requirement that recyclables properly prepared by customers must be recycled by the collector.
- This Councillor's Bill was passed on first reading on September 9, 2002. Council requested that the Code be amended to allow the City to issue stickers to trash collectors for placement in vehicles in lieu of the collectors carrying the actual trash collection vehicle license in the vehicle. This amendment has been made to section 5-7-4 of the Code and is reflected in the Councillor's Bill in bold letters.
- The Councillor's Bill on first reading did not include sections of the Solid Waste Collection Code that were being deleted. These changes are reflected in the attached Councillor's Bill in bold letters. Also, the original Councillor's Bill deleted items 3 and 4 from section 5-7-3. These items were not to be deleted and have been reintroduced to this Bill in bold letters.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

Ronald A. Hellbusch
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2002

INTRODUCED BY COUNCILLORS

Hicks-McNally

A BILL

FOR AN ORDINANCE AMENDING THE SOLID WASTE COLLECTION CODE AND
SPECIAL PERMIT AND LICENSE BOARD DUTIES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title V, Chapter 7 of the Westminster Municipal Code is hereby amended as follows:

5-7-1: DEFINITIONS: The following words, terms and phrases, when used in this Chapter, shall have the following meanings:

(B) "Commercial customers" shall mean any premise utilizing collection service where a commercial, industrial or institutional enterprise is carried on, including, without limitation, restaurants, hospitals, schools, day care centers, office buildings, nursing homes, clubs, churches and public facilities, AND MULTI-FAMILY CUSTOMERS.

(F) "Recyclable materials" shall mean materials which have been separated from solid waste and can be recovered as useful materials and are properly prepared for the purpose of recycling, provided that such materials have been designated by the City Manager as recyclable, PER SECTION 5-7-9 (A) OF THIS CHAPTER.

5-7-3: LICENSE APPLICATION:

(A) Any person desiring to obtain a license to engage in the business of solid waste or recycling materials collection shall make written application to the City Clerk on forms provided by the City. The application MUST BE COMPLETED IN ITS ENTIRETY. ~~shall include, without limitation, the following information:~~

- ~~1. The name and address of the applicant;~~
- ~~2. The principal place of business for the business to be conducted;~~
- ~~3. A list of vehicles owned or operated by the applicant directly in the collection of solid waste or recyclables in the City, including vehicle make, color, year, Colorado license plate number and empty tare weight, and the fees required by this Chapter;~~
- ~~4. Whether the applicant wishes to obtain a commercial or residential collection license or both.~~

(C) In determining whether to grant or deny a license, the City Manager shall take into consideration:

1. ~~Whether~~ The character of the applicant or its officers or directors, ~~is such that the violation of any provisions of this Code is likely to result if a license were granted~~—ESPECIALLY ANY PREVIOUS LICENSE VIOLATIONS OR CRIMINAL CONVICTIONS;
2. Whether licenses granted for the City are adequate to meet the reasonable needs of the community; ~~and~~
3. **If the applicant has previously done business in the City, the number of complaints received from citizens concerning the applicant's operations; AND**
4. **THE REVIEW AND CONCLUSION, IF ANY, OF THE ENVIRONMENTAL ADVISORY BOARD.**

5-7-4: LICENSE ADMINISTRATION:

(A) Every license issued by the City shall indicate the business name and address, the mailing address, and the license fee paid by the licensee. **THE LICENSEE IS REQUIRED TO HAVE A PROMINENTLY DISPLAYED AND AFFIXED DECAL ISSUED BY THE CITY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS PROVIDED IN THIS CHAPTER FOR THE ISSUANCE OF A LICENSE AND SUCH OTHER RULES AND REGULATIONS CONCERNING THE DISPLAY OF SUCH DECALS THAT THE CITY CLERK MAY ISSUE FROM TIME TO TIME.**

5-7-6: TERM OF LICENSE AND RENEWAL:

(A) All licenses issued hereunder shall expire on December 31 after the date of issuance, unless PREVIOUSLY cancelled, ~~suspended~~ or revoked, and ~~shall~~ MAY be renewed upon SUBMISSION OF A COMPLETED application for renewal and payment of the required fees. THE APPLICATION SHALL INCLUDE A CURRENT DESCRIPTION OF THE BUSINESS' RECYCLING PROGRAM AND ANY EFFORTS THE APPLICANT HAS MADE TO INCREASE CUSTOMER RECYCLING. Licenses are not transferable.

(B) The renewal application shall be reviewed by the City Manager who shall have the power to grant or deny such license renewal and to impose reasonable limitations and restrictions on any license renewed. ~~The City Manager shall evaluate the application under the criteria set forth for original applications.~~

5-7-7: LICENSE DENIAL, CANCELLATION, SUSPENSION OR REVOCATION:

(B) A license may be ~~suspended or revoked on the grounds of repeated violations of this Code.~~ (C) ~~A license may be~~ DENIED, cancelled, denied renewal, suspended or revoked ~~after the licensee has been given notice and hearing~~ BY THE CITY MANAGER. THE LICENSEE SHALL HAVE THE RIGHT TO A HEARING BEFORE THE SPECIAL PERMIT AND LICENSE BOARD, AFTER NOTICE. The notice shall set forth the reasons for the proposed action, in writing and shall be given by personal delivery to the licensee or mailed to the address contained on the license, postage prepaid, or as provided in Chapter 1 of this Title. Said notice shall be given no less than ten (10) days prior to a hearing to be scheduled before the Special Permit and License Board.

~~(D) An application for a new license may be denied by the City Manager for the reasons listed above. The applicant may appeal a denial to the Special Permit and License Board, unless the reason for the denial is an incomplete application, nonconformance with provisions of this code such as zoning or the building code, or failure to pay required fees. The reason for the denial of the application shall be provided to the applicant in writing.~~

~~(E)~~ (C) A license may be summarily suspended for no more than thirty (30) days by the City Manager when required for the immediate protection of the public health, safety and welfare. A hearing shall be scheduled as soon as may be reasonably possible.

~~(F)~~ (D) The Special Permit and License Board shall conduct A HEARING ON an appeal of the denial of a new ~~license or a hearing pursuant to the procedures established for hearings in Chapter 1 of this Title.~~, OR THE NON-RENEWAL, SUSPENSION, OR REVOCATION OF A LICENSE PURSUANT TO CHAPTER 2 OF TITLE 5. The Special Permit and License Board shall deliver its decision in writing within thirty (30) days.

~~(G)~~ (E) Decisions of the Special Permit and License Board ~~are final, subject only to appeal to a court of competent jurisdiction.~~ MAY BE APPEALED TO THE CITY COUNCIL PURSUANT TO CHAPTER 1 OF THIS TITLE. THE DECISION OF THE CITY COUNCIL SHALL BE DEEMED FINAL FOR PURPOSES OF JUDICIAL REVIEW.

5-7-8: RECYCLING REQUIREMENT:

(C) All licensed collectors of recyclable materials and solid waste operating within the City shall have the following duties and rights:

1. Except for materials which customers have not properly prepared for recycling, collectors may not dispose of recyclable materials set out by recycling customers by any means that may result in the materials not being recycled OR OTHERWISE IMPROPERLY DISPOSED OF.

2. The collector shall establish such ~~rules and regulations~~ POLICIES AND PROCEDURES as are necessary to provide for the orderly collection of recyclable materials, including requirements regarding the preparation of materials for collection, the collection of recyclable materials and requirements for source separation.

5-7-9: DESIGNATION OF RECYCLABLE MATERIALS:

(A) The City Manager shall, ~~on or before the 30th day of November of each year~~ PERIODICALLY, after consultation with representatives of the licensed collectors operating within the City AND THE ENVIRONMENTAL ADVISORY BOARD, determine which items shall be designated for recycling collection based upon the following criteria:

1. Local, state and federal laws and regulations;
2. Potential for waste stream reduction;
3. Availability of markets;
4. Market price;
5. COMMUNITY RECYCLING CONCERNS;
- ~~5-~~ 6. Safety factors and risks of transportation; and
- ~~6-~~ 7. Risks of commingling of liquid wastes.

THE LIST OF DESIGNATED RECYCLABLES SHALL BE KEPT ON FILE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE.

5-7-10: DESIGNATED COLLECTION DAYS:

(B) The City Manager ~~shall~~ MAY provide for exceptions based on holidays, severe weather, or inadvertently missed customers.

5-7-12: RECORDS AND REPORTS:

(A) All collectors shall report to the City ~~quarterly~~ BY MARCH 31ST OF EACH YEAR AN ANNUAL RECYCLING REPORT, FOR THE PREVIOUS YEAR, on forms to be provided by the City. ~~The quantities of recyclable materials collected and customer participation rates.~~ A COLLECTOR MAY REQUEST, IN WRITING, THAT SECTIONS OF THE REPORT BE HELD IN CONFIDENCE. SUCH REQUESTS SHALL BE HONORED BY THE CITY TO THE EXTENT AUTHORIZED BY THE COLORADO OPEN RECORDS ACT, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION.

(B) THE ENVIRONMENTAL ADVISORY BOARD SHALL REVIEW A BUSINESS' ANNUAL RECYCLING REPORT FOR COMPLIANCE WITH THE RECYCLING REQUIREMENTS OF THIS CHAPTER. THE REVIEW AND ANY RECOMMENDATIONS OF THE BOARD SHALL BE SUBMITTED TO THE CITY MANAGER, WHO MAY CONSIDER THE RECOMMENDATIONS WHEN DECIDING TO APPROVE OR DENY LICENSE APPLICATIONS, RENEWAL, SUSPENSION, OR REVOCATION PURSUANT TO THIS CHAPTER.

5-7-13: DISPOSAL OF SOLID WASTE:

(A) All persons holding licenses pursuant to this Chapter and engaged in the business of the collection of solid waste shall dispose of all such solid waste at any disposal site which is approved by the State. No solid waste shall be disposed of at any other location either inside or outside of the City.

(B) NO PERSON OTHER THAN THE CUSTOMER OR THE COLLECTOR OF RECYCLABLE MATERIALS SHALL TAKE PHYSICAL POSSESSION OF ANY RECYCLABLE MATERIALS PLACED FOR COLLECTION. A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED AT EACH ADDRESS FROM WHICH RECYCLABLE MATERIALS ARE TAKEN IN VIOLATION OF THIS PARAGRAPH.

(C) NO PERSON SHALL OPERATE ANY VEHICLE IN SUCH A MANNER AS TO DEPOSIT ON, OR LITTER, ANY PUBLIC WAY WITH SOLID WASTE.

(D) ALL PERSONS HOLDING LICENSES PURSUANT TO THIS CHAPTER ARE REQUIRED TO PICK-UP SOLID WASTE PROPERLY PREPARED FOR DISPOSAL BY THE CUSTOMER PURSUANT TO ANY AGREEMENT BETWEEN THE COLLECTOR AND THE CUSTOMER.

5-7-14: VIOLATIONS AND PENALTY:

(A) It shall be unlawful for any person to violate a provision of this Chapter. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code and may also be subject to civil remedies provided by Chapter 4 of Title ~~IX~~ VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter unless otherwise provided in this Chapter.

~~(B) It shall be unlawful for a licensed collector to dispose of materials designated by the City Manager as recyclable in a landfill or in a comparable manner that will result in the materials not being recycled.~~

~~(C) It shall be unlawful for any person other than the customer or the collector of recyclable materials to take physical possession of any recyclable materials placed for collection. A separate offense shall be deemed committed at each address from which recyclable materials are taken in violation of this provision.~~

~~(D) It shall be unlawful to operate any vehicle in such a manner as to deposit in or litter any public ways with solid waste.~~

~~(E) It shall be unlawful to operate a collection vehicle in the City without prominently displaying a license as described in this chapter. A violation of this subsection shall be punished by a fine as follows:~~

~~_____ Solid Waste Collection Vehicle \$250.00~~
~~_____ Recyclable materials collection vehicle \$ 10.00~~

Section 2. Title II, Chapter 5 of the Westminster Municipal Code is hereby amended as follows:

2-5-2: POWERS AND DUTIES:

(C) THE SPECIAL PERMIT AND LICENSE BOARD SHALL CONDUCT PUBLIC HEARINGS ON APPEALS FROM THE DECISION OF THE CITY MANAGER, DENYING LICENSE APPLICATIONS, DENYING RENEWAL OF LICENSES, OR SUSPENDING OR REVOKING LICENSES TO OPERATE AS A SOLID WASTE OR RECYCLABLE MATERIALS COLLECTOR PURSUANT TO CHAPTER 7 OF TITLE 5 OF THIS CODE. APPEALS FROM THE DECISIONS OF THE BOARD MAY BE MADE TO THE CITY COUNCIL.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 9th day of September, 2002. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 23rd day of September, 2002 AS AMENDED..

ATTEST:

City Clerk: _____

Mayor

Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, September 23, 2002. Present at roll call were Mayor Moss, Mayor Pro-Tem Atchison, Councillors Dittman, Dixon, Hicks, and McNally. Absent Kauffman.

The minutes of the September 9, 2002 meeting were approved as amended.

Council approved the following: Financial Report for August 2002; Awarded the bid for Construction of 104th and Grove Waterline to Asphalt Specialties for \$424,636; IGA with WHA for reimbursable expenses.

The following Councillor's Bill was passed as an emergency ordinance:

A BILL FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, VARIABLE RATE DEMAND WATER AND WASTEWATER REVENUE BONDS, SERIES 2002, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,600,000, PAYABLE SOLELY OUT OF THE PLEDGED REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER AND WASTEWATER ENTERPRISE; PROVIDING OTHER DETAILS CONCERNING THE BONDS, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING OTHER MATTERS RELATING THERETO AMENDING WATER SHORTAGE REGULATIONS purpose: \$7.5 million bond issue for construction of NW Water Treatment Plant

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

A BILL FOR AN ORDINANCE AMENDING TITLE XI OF THE WESTMINSTER MUNICIPAL CODE purpose: amendments to Title 11 and Title 2 re Accessory Structures and Fences

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THE FUND purpose: Law Enforcement Block Grant & Bulletproof Vest Partnership Program

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

A BILL FOR AN ORDINANCE AMENDING TITLE IV OF THE WESTMINSTER MUNICIPAL CODE CONCERNING TAX ADMINISTRATION

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT, GENERAL CAPITAL OUTLAY REPLACEMENT AND UTILITY FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THESE FUNDS

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGET OF THE GENERAL CAPITAL IMPROVEMENT FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THIS FUND

Council TABLED CB 43 re Solid Waste Collection.

The following Resolution was adopted:

Resolution No. 45 re Adams County School District 50 Ballot Issue

At 7:55 P.M. the meeting was adjourned.

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on October 3, 2002.

BY AUTHORITY

ORDINANCE NO. 9E
SERIES OF 2002

COUNCILLOR'S BILL NO. 9E
INTRODUCED BY COUNCILLORS
Dixion-Dittman

A BILL

FOR AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, VARIABLE RATE DEMAND WATER AND WASTEWATER REVENUE BONDS, SERIES 2002, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$7,600,000, PAYABLE SOLELY OUT OF THE PLEDGED REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER AND WASTEWATER ENTERPRISE; PROVIDING OTHER DETAILS CONCERNING THE BONDS, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Westminster, in the Counties of Adams and Jefferson, and State of Colorado (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado (the "State") and in particular under the provisions of Article XX of the Constitution of the State and the City's Charter (the "Charter"); and

WHEREAS, capitalized terms used in the recitals to this Ordinance and elsewhere herein shall have the definitions ascribed to them in Article 1 hereof; and

WHEREAS, the City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes; and

WHEREAS, pursuant to art. X, § 20 and art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(a) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bonds, without voter approval in advance; and

WHEREAS, the Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that water and wastewater revenue bonds in an aggregate principal amount of not to exceed \$7,600,000 be issued for the purpose of paying the costs of the Project; and

WHEREAS, the Enterprise intends to issue the Bonds to defray in part the cost of the Project; and

WHEREAS, the purchase price of any Bonds tendered or deemed tendered for purchase by the owners thereof and not successfully remarketed hereunder are payable from amounts made available under a Standby Bond Purchase Agreement between the Enterprise and the Bank; and

WHEREAS, except for the Series 2001 Bonds and the CWRPDA Loans, the Enterprise has never pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any securities or for any other purpose (excluding securities which have heretofore been redeemed in full, as to all principal, premium, if any, and interest, or are otherwise not Outstanding) and with the result that the Pledged Revenues may now be pledged lawfully and irrevocably for the payment of the Bonds, and they may be made payable from the Pledged Revenues; and

WHEREAS, pursuant to Section 11-57-203, C.R.S., as amended, the Enterprise desires to delegate to the President or the Treasurer the power to accept the proposal to purchase the Bonds and to determine the initial rate of interest on the Bonds, the price at which the Bonds will be sold, the aggregate principal amount of the Bonds to be issued and the amount of principal maturing, or subject to mandatory redemption, in any particular year; and