



## CITY COUNCIL AGENDA

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

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

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

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any 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. September Financial Report
  - B. Special Legal Services for Pension Plan Review
  - C. Dover Square Park Renovation Construction Contract
  - D. Open Space Acquisition of 8 Acres at Walnut Creek at 103<sup>rd</sup> & Zephyr
  - E. 73<sup>rd</sup> Avenue/Lowell Boulevard Redevelopment Project Development Agreement-Phase II
  - F. Second Reading Councillor's Bill No. 72 re 2005 and 2006 appropriations (Dittman – Price)
  - G. City Manager Employment Agreement with J. Brent McFall
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Public Hearing re Ranch Filing 6 Special Improvement District No. 1 for fencing
  - B. Councillor's Bill No. 75 creating Ranch Filing 6 Special Improvement District No. 1 for fencing
  - C. Public Hearing re Ranch Filing 2 Special Improvement District No. 2 for fencing
  - D. Councillor's Bill No. 76 creating Ranch Filing 2 Special Improvement District No. 2 for fencing
  - E. Councillor's Bill No. 77 re Corley Coffee Reserve Inc. Lease at the Sun Microsystems Ice Centre
  - F. Councillor's Bill No. 78 re House Rental Lease for the Strasburg Natural Resource Farm
  - G. Resolution No. 68 re IGA with CDOT re 120<sup>th</sup> Avenue/I-25 Bridge Enhancements
  - H. Establishment of Church Ditch Authority Agreement and IGA with Northglenn
  - I. Stipulation and Plan for Exclusion of property from North Metro Fire Rescue District
  - J. Resolution No. 67 re Exclusion of property from North Metro Fire Rescue District
  - K. Councillor's Bill No. 79 re 3<sup>rd</sup> Quarter Supplemental Appropriation
11. Old Business and Passage of Ordinances on Second Reading
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
  - A. Asian Pacific Development Center Presentation
  - B. City Council
  - C. Executive Session
13. Adjournment

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

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 25, 2004 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Hicks moved, seconded by Dittman to approve the minutes of the meeting of October 11, 2004. The motion carried unanimously.

CITY MANAGER COMMENTS

Brent McFall, City Manager, advised Council of an executive session item on negotiations on an economic development matter.

CITY COUNCIL COMMENTS

Councillor Hicks commented on the Fastracks event recently held and Jefferson County Crystal Ball he attended

PROCLAMATION RE BUSINESS APPRECIATION WEEK:

Councillor Davia presented a proclamation regarding Business Appreciation week to Kim Greimling of the Westminster Business Advisory Group.

CONSENT AGENDA

The following items were considered as part of the consent agenda: September Financial Report, Special Legal Services for Pension Plan Review authorizing the Finance Director to sign a contract for legal services with Reinhart Boerner Van Deuren Norris & Rieselbach P.C., for special legal services in connection with advice pertaining to the legality of the City's pension distribution options; Dover Square Park Renovation Construction Contract authorizing the City Manager to sign a contract with Goodland Construction, Inc., in the amount of \$141,704 for construction work at Dover Square Park, and authorize a construction contingency in the amount of \$14,170 for a total budget of \$155,874, and charge the expense to the Park Renovation Capital Improvement Project Account; Open Space Acquisition of 8 Acres at Walnut Creek at 103<sup>rd</sup> & Zephyr authorizing the City Manager to execute a Purchase and Sale Agreement and all necessary closing documents for the acquisition of the Camalick property located at approximately W. 103<sup>rd</sup> Avenue and Zephyr Street and authorize the expenditure of \$540,000 plus miscellaneous closing costs not to exceed \$3,000 from the Open Space Land Purchases Account; 73<sup>rd</sup> Avenue/Lowell Boulevard Redevelopment Project Development Agreement-Phase II; Approve the Development Agreement with Community Builders, Inc. relative to Phase II of the 73<sup>rd</sup> Avenue/Lowell Boulevard Area redevelopment project, Councillor's Bill No. 72 on Second reading re 2005-2006 appropriations; and City Manager Employment Agreement with J. Brent McFall, authorizing the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2005 with an effective date of January 1, 2005, and automatic renewal for 2006 unless terminated by City Council.

Mayor McNally 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 Dixon to adopt the consent agenda items as presented. The motion carried unanimously.

PUBLIC HEARING re RANCH FILING 6 SID FOR FENCING:

At 7:10 p.m. a public hearing was opened to consider creating The Ranch Subdivision Special Improvement District No. 1 for Filing 6 and ordering the design construction, installation and acquisition of certain perimeter wall improvements. Aaron Gagne, Senior Projects Coordinator provided a power point presentation, entered copies of the petitions submitted, agenda memorandum, and the complete benefits study as exhibits. No other persons spoke. The public hearing was declared closed at 7:20 P.M.

COUNCILLOR'S BILL NO. 75 RE RANCH FILING 6 SID RE FENCING:

Councillor Dixon moved, seconded by Price to pass Councillor's Bill No. 75 on first reading creating The Ranch Subdivision Filing No. 6, Special Improvement District No. 1 and ordering the design construction, installation and acquisition of certain perimeter wall improvements. Upon roll call vote, the motion carried unanimously.

PUBLIC HEARING re RANCH FILING 6 SID FOR FENCING:

At 7:21 p.m. a public hearing was opened to consider creating The Ranch Subdivision Special Improvement District No. 2 for Filing 2 and ordering the design construction, installation and acquisition of certain perimeter wall improvements. Aaron Gagne, Senior Projects Coordinator provided a power point presentation, entered copies of the petitions submitted, agenda memorandum, and the complete benefits study as exhibits. No other persons spoke. The public hearing was declared closed at 7:22 P.M.

COUNCILLOR'S BILL NO. 76 RE RANCH FILING 2 SID RE FENCING:

Councillor Dixon moved, seconded by Price to pass Councillor's Bill No. 76 on first reading creating The Ranch Subdivision Filing No. 2, Special Improvement District No. 2 and ordering the design construction, installation and acquisition of certain perimeter wall improvements. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 77 RE CORLEY COFFEE AT ICE CENTRE LEASE

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Mayor Pro Tem Kauffman moved, seconded by Councillor Dittman to pass Councillors Bill No. 77 on first reading, authorizing the City Manager to sign a lease agreement between the City of Westminster, Hyland Hills Park and Recreation District (through its recreational facilities enterprise) and Corley Coffee Reserve Inc. for the lease of approximately 1,950 square feet of space in the Sun Microsystems Ice Centre. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 78 RE STRASBURG NATURAL RESOURCE FARM HOUSE LEASE:

Councillor Dittman moved, seconded by Dixon to pass Councillor's Bill No. 78 on first reading authorizing the City Manager to sign the rental lease agreement for the house located at 57401 E. 88<sup>th</sup> Avenue at the City's Strasburg Natural Resource Farm. Upon roll call vote, the motion carried unanimously.

EXCLUSION OF PROPERTIES FROM NORTH METRO FIRE RESCUE DISTRICT

Councillor Dittman moved, seconded by Dixon to approve the Stipulation and Plan for exclusion of recently annexed territory from the North Metro Fire Rescue District. The motion carried unanimously.

RESOLUTION NO. 67 RE EXCLUSION FROM NORTH METRO FIRE RESCUE DISTRICT

Councillor Davia moved, seconded by Dixon to adopt Resolution No. 67 approving the exclusion of recently annexed properties from the North Metro Fire Rescue District. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 79 RE 2004 BUDGET SUPPLEMENTAL APPROPRIATION

Councillor Price moved, seconded by Hicks to pass Councillor's Bill No. 79 on first reading providing for supplementary appropriations to the 2004 budget of the General, General Capital Improvement and Open Space Funds. Upon roll call vote, the motion carried unanimously.

ASIAN PACIFIC DEVELOPMENT CENTER PRESENTATION

Franklin Kim, Ph.D., Chief Executive Officer; Corey Ann Tanaka, Ph.D., Director of Clinical Services and Ge Thao of the Asian Pacific Development Center addressed City Council about the services they offer and asked the City to assist in finding City facilities to use to assist their clients.

ADJOURNMENT:

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

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**Subject:** Proclamation re: Business Appreciation Week – Week of October 25<sup>th</sup>

**Prepared By:** Kim Snetzinger, Economic Development Aide

**Recommended City Council Action**

Councillor Davia present a proclamation to Business Advisory Group members proclaiming the week of October 25<sup>th</sup> as “Business Appreciation Week” in the City of Westminster

**Summary Statement**

The City of Westminster has long recognized the importance of maintaining a healthy and diverse business community. The success of the City is closely linked to the success of our local businesses. Each year, Westminster hosts an appreciation event for local businesses to recognize their role as essential ingredients to the continued strength, well being, and high quality of life of our City. This year the event will be held on Friday, October 29<sup>th</sup> at the Westin Westminster Hotel.

The Mayor, on behalf of City Council, is requested to proclaim the week of October 25<sup>th</sup> as “Business Appreciation Week” in the City of Westminster.

A representative of the Business Advisory Group will be present at Monday night’s meeting to accept this proclamation.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Subject:** Proclamation re: Business Appreciation Week – Week of October 25<sup>th</sup> - Page 2

**Policy Issue**

Does City Council want to formally acknowledge the important contributions that Westminster businesses make to the community via the attached proclamation?

**Alternative**

City Council could choose to not proclaim the week of October 25<sup>th</sup> as “Business Appreciation Week.”

**Background Information**

On Friday, October 29, 2004 the City of Westminster will host the 14<sup>th</sup> annual Business Appreciation Event. This event recognizes the vital role that local business plays in the success of the City. Local businesses provide employment, shopping, entertainment and recreational opportunities for all citizens. Businesses contribute to the City’s General Fund sustained with revenue generated from sales and use tax and property tax collections. They enrich the quality of life in Westminster by supporting community organizations with financial and in-kind contributions. The high caliber mix of retail, service, and manufacturing establishments found in Westminster is virtually unparalleled in northwest metro Denver.

There are currently approximately 1,700 commercial businesses and 1,200 home occupation businesses located in the City. It is appropriate they be publicly recognized for their contributions to the community by proclaiming “Business Appreciation Week”, and encouraging all citizens to support their local businesses.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

WHEREAS, The City of Westminster benefits greatly from having a healthy and diverse business community; and

WHEREAS, Westminster businesses provide employment, shopping, entertainment and recreational opportunities to its citizens; and

WHEREAS, The success of local business in Westminster has also contributed to the City's financial stability, with a large portion of the City's general fund sustained with revenue generated from sales and use tax collections; and

WHEREAS, The City of Westminster will be hosting the 14<sup>th</sup> annual Business Appreciation event on Friday, October 29, 2004 to honor the 2,900 commercial and home occupation businesses of the City; and

WHEREAS, It is fitting that official recognition be given to the importance that local businesses play as essential ingredients to the continued strength and well being of our city.

NOW THEREFORE, I, Nancy McNally, Mayor of the City of Westminster, on behalf of the entire City Council and Staff do hereby proclaim the week of October 25, 2004 as

## **BUSINESS APPRECIATION WEEK**

in the City of Westminster, and encourage all citizens to support local businesses.

Signed this 25<sup>th</sup> day of October, 2004.

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Nancy McNally, Mayor





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

**Agenda Item 8 A**

City Council Meeting  
October 25, 2004



**SUBJECT:** Financial Report for September 2004

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

**Recommended City Council Action**

Accept the Financial Report for September 2004 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.

- Across all shopping centers, total sales & use tax receipts are down 3% over the one-month period of September 2004. In August the figure was up 3.0%. This difference from one month to the next is due to a reporting of more returns in August by a major grocery chain in 2003 than in 2004 due to their fiscal reporting, making 2003 look higher when compared to 2004. By next month, one can compare year-to-date 2004 to year-to-date 2003.
- The Westminster Mall is up 15% for September, compared to September of last year, due to a major audit payment received in August from one of the anchor stores. Last month this figure was down 9%. Year-to-date the Mall is down 3%; last month this figure was down 5%.
- Public Safety Tax receipts for the month of September were \$805,963; last month this figure was \$823,179.

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

- At the end of September, nine months of the year have passed, or 75% of the calendar year.
- The table attached shows the Sales and Use Tax Fund revenues are currently \$2,060,262 over pro-rated budget for the year. The September figures reflect the sales in August, tax receipts received in September. This is due, in part, to receipt of PST taxes, but is also due to excess revenues as Business Assistance Packages are retired, as well as a general upturn in the economy.
- Without the new PST, Sales Tax Returns (returns only and adjusted for early and late returns) are up for September 2004 compared to September 2003 by 0.1%, an increase of \$1,591 over September 2003. Income from retired business assistance packages of \$44,007 accounted for all of this increase. In other words, for this month, the increases due to economic activity alone are negative.
- Looking at year-to-date figures without the PST, analysis shows the following:
  - For the nine months ending in September, Sales Tax Returns (only) are 4.6% ahead of 2003 year-to-date, or an increase of \$1,313,712. For the nine months ending in September the fund is 2.9% ahead of 2003 year-to-date. Last month this figure was 3.2%.
- For the month of September, the entire fund is 0.8% ahead of September 2003. Last month this figure was 1.1%. The reasons for this difference are as follows:
  - Sales Tax Returns (only) are up \$1,591 for September compared to August's increase of \$62,977.
  - Use taxes are down \$18,051 from September 2003. Last month use taxes showed a decrease of \$103,626 from August 2003. Use tax flows are volatile and reflect purchases of large-ticket items.
- The General Fund revenue is currently 101.5% of pro-rated budget for nine months.

## **Policy Issue**

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

## **Alternative**

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

## **Background Information**

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

For revenues, a positive indicator is a pro-rated budget percentage at or above 100%. For expenditures, a positive indicator is a pro-rated budget percentage that is below 100%. If a fund is on schedule for the year regarding revenues and/or expenditures, the percentage will be 100% of pro-rated budget figures.

## 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 September, the General Fund is in the following position regarding both revenues and expenditures:

- Revenues are over pro-rated budget by \$890,062, (101.5% of pro-rated budget). This is due to excess revenues on a pro-rated basis in Property Taxes, Licenses and Permits (especially Building Permit Fees from Adams County residential permits), Fines, Other Services, and Miscellaneous.
- Expenditures are under budget by \$8.4 million (87% of pro-rated budget), due to under-spending in several departments. Spending does not occur evenly throughout the year in many departments, particularly with regard to insurances in Central Charges and spending on contract services in several other departments. Public Safety Tax expenditures to date are largely reflected in the Police and Fire Department operating budgets, which are 87% and 82% of pro-rated budgets, respectively. Of 75 public safety personnel scheduled for hiring, 21 have been hired in the fire department and 28 police personnel have been hired. The seventh engine has been delivered and is currently being equipped and the two new ambulances are anticipated to be delivered in the near future for the Fire Department. It is anticipated that all of the Public Safety hiring and major equipment purchases will be complete by mid-2005.

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

These funds are the repositories for the 3.85% City Sales & Use Tax for the City. The Sales & Use Tax Fund provides monies for the General Fund, the Capital Project Fund and the Debt Service Fund. The Open Space Sales & Use Tax Fund revenues are pledged to meet debt service on the POST bonds, buy open space, and make park improvements on a pay-as-you-go basis. The Public Safety Tax was approved by the voters in the November 2003 election, and is a 0.6% sales and use tax to be used to fund public safety-related expenses. At the end of September, the position of these funds is as follows:

- Sales & Use Tax Fund revenues are over pro-rated budget by \$2,060,262 (105% of pro-rated budget). These numbers include all year-to-date PST receipts and year-to-date income due to retired business assistance packages.
- Sales & Use Tax Fund expenditures are even with pro-rated budget because of the transfers to the General Fund, Debt Service Fund and General Capital Improvement Fund.

- Open Space Sales & Use Tax Fund revenues are over pro-rated budget by \$29,968 (100.5% of pro-rated budget).
- Open Space Sales & Use Tax Fund expenditures are under pro-rated budget by \$2.01 million (64% of pro-rated budget). Expenses for the month were due mostly for transfer to another fund for debt service; there were no land purchases this month, thus slowing the pace of expenditures for the month.

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

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

- Combined Water & Wastewater revenues are under pro-rated budget by \$1,786,620 (94% of budget):
  - Water revenues under pro-rated budget by \$744,053 (96.6% of pro-rated budget). Water revenues from rates and charges are under pro-rated budget by \$2,313,029 (86% of pro-rated budget), which is a wider variance than last month's under budget figure of \$1,640,338, a reflection of reduced consumption. A series of wet periods contributed to a reduction in use. In addition, the constant media attention given to Denver's watering restrictions may have had an impact as citizens respond either under a simple desire to save water or an assumption of required compliance.
  - Wastewater revenues under pro-rated budget by \$1,042,567 (88% of pro-rated budget), due in part to revenues for monthly rates and charges being lower during this quarter than historical averages and due in part to the reversal of the unrealized gain in interest income. Staff is fairly certain that indoor consumption has been reduced thanks to a very positive response of the citizens to conservation messages. Sewer rates are based on winter consumption (indoor usage). Based upon the very positive response of to the City's low volume toilet and other rebates, the City has seen an increased awareness of overall water consumption, which translates into reduction in indoor water usage, and lower revenues in this category.
  - Storm water Drainage revenues slightly over pro-rated budget by \$4,142 (101% of pro-rated budget).
- Combined Water & Wastewater expenses are under budget by \$4,676,159 (78% of budget):
  - Water expenses under pro-rated budget by \$3,390,037 (78% of budget) due to lower contracted service and capital outlay expenses than budgeted year to date.
  - Wastewater expenses under pro-rated budget by \$1,286,122 (78% of budget) for the same reason – lower contracted service costs and capital outlay.
  - Storm Drainage expenses under pro-rated budget by \$51,597(71% of budget).

Golf Course Enterprise (Legacy and Heritage Golf Courses)

This enterprise reflects the operations of the City's two municipal golf courses. The enterprise as a whole is in net negative position on a pro-rated basis, with net income currently \$516,687 under pro-rated budget for the year. On October 11, City Council approved a four-point program to provide relief to the golf courses over the coming years.

- Legacy – Revenues are under pro-rated budget by \$372,409 (80% of pro-rated budget).
- Legacy – Operating expenses are under pro-rated budget by \$159,620 (88% of pro-rated budget).
- Heritage – Revenues are under pro-rated budget by \$506,847 (73% of pro-rated budget).
- Heritage – Operating expenses are under pro-rated budget by \$202,949 (86% of pro-rated budget).

Staff will attend the October 25<sup>th</sup> City Council Meeting to address any questions.

Respectfully submitted,

**City of Westminster  
Financial Report  
For the Nine Months Ending September 30, 2004**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget Pro-rated	% Pro-Rated Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues</b>						
Sales Tax						
Sales Tax Returns	38,439,143	28,948,120	(1)	30,065,506	1,117,386	104%
Sales Tx Audit Revenues	545,000	436,800		555,225	118,425	127%
S-T Rev. STX	<u>38,984,143</u>	<u>29,384,920</u>		<u>30,620,731</u>	<u>1,235,811</u>	104%
Use Tax						
Use Tax Returns	8,900,000	6,257,300	(1)	6,231,149	(26,151)	100%
Use Tax Audit Revenues	500,000	375,500		191,769	(183,731)	51%
S-T Rev. UTX	<u>9,400,000</u>	<u>6,632,800</u>		<u>6,422,918</u>	<u>(209,882)</u>	97%
Total STX and UTX	<u>48,384,143</u>	<u>36,017,720</u>		<u>37,043,649</u>	<u>1,025,929</u>	103%
Public Safety Tax						
PST Tax Returns	8,433,000	5,311,800	(3)	6,332,498	1,020,698	119%
PST Audit Returns	0	0		41,035	41,035	
Total Rev. PST	<u>8,433,000</u>	<u>5,311,800</u>		<u>6,373,533</u>	<u>1,061,733</u>	120%
Total Interest Income	<u>50,000</u>	<u>37,500</u>		<u>10,100</u>	<u>(27,400)</u>	27%
Carryover	0		(2)			
Total Revenues	<u>56,867,143</u>	<u>41,367,020</u>		<u>43,427,282</u>	<u>2,060,262</u>	105%
<b>Expenditures</b>						
Central Charges	<u>56,867,143</u>	<u>42,650,357</u>	(4)	<u>42,650,357</u>	(0)	100%
Revenues Over(Under) Expenses	<u>0</u>	<u>(1,283,337)</u>		<u>776,925</u>	<u>2,060,262</u>	

(1) At end of September, historical averages are as follows: Returns 75.3%, Audit 80.1%,  
Use Tax Returns 75%, Building Use Tax 75.9%, Auto Use Tax 65.3%, Use Tax Audit 75.1%.

(2) Carryover from prior year is always budgeted for the next year; included here to render correct  
balanced budget perspective.

Carryover (Actual) represents use of prior year fund balance, as budgeted.

(3) Public Safety Sales Tax returns 61.9% Use tax returns 62.4%, Bldg tax returns 75.9%, Auto returns 65.3%.

(4) Expenditures are fund transfers to General Fund, GCIP, and Debt Service.



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Special Legal Services for Pension Plan Review

**Prepared By:** Dawn Majluf, Pension Administrator

**Recommended City Council Action**

Authorize the Finance Director to sign a contract for legal services with Reinhart Boerner Van Deuren Norris & Rieselbach P.C., for special legal services in connection with advice pertaining to the legality of the City's pension distribution options.

**Summary Statement**

- Section 401(a) of the Internal Revenue Code states that all Defined Contribution plans, including Money Purchase Pension plans, must provide an annuity payment as the default distribution option. Spousal consent is required if the participant wishes to waive the default option or name another beneficiary for more than 49% of their vested balance.
- The City's Pension Plans do not provide for the default annuity option, nor do they provide for spousal protection regarding distribution options.
- Staff recommends that the City hire the firm of Reinhart Boerner Van Deuren Norris & Rieselbach P.C., as special legal counsel to provide legal consultation regarding the validity of the City's current provisions, and to prepare and file the corrected amendments if necessary.
- Pension staff requests the services of an attorney that specializes in non-ERISA, public pension policies to assist in these efforts.

**Expenditure Required:** Not to exceed \$2,000

**Source of Funds:** Pension Fund Budget

**Policy Issue(s)**

Should the City hire Reinhart Boerner Van Deuren Norris & Rieselbach P.C., to review and provide expert legal advice and guidance on the legality of the City's pension distribution procedures?

**Alternative(s)**

Delay or not hire specialized legal counsel and proceed without the benefit of a legal opinion. This is not recommended because the City needed to determine whether it is in compliance with pension law, and, if not, what amendments need to be adopted to bring the plan into compliance.

**Background Information**

The IRS Code is specific in its description of distribution options available to participants of qualified plans. For all defined benefit plans, as well as defined contribution plans that are "subject to minimum funding standards, such as Money Purchase Plans" (this defines the City's General and Police pension plans), the default distribution option must be an annuity option. Participants may elect to waive the annuity option, however, spousal consent is required.

The annuity distribution default is designed to provide protection to spousal beneficiaries, assuring that they are entitled to at least 50% of the participant's benefit. If they do not wish to receive this benefit, they must sign an acknowledgement waiving their rights. Currently, the City's distribution options do not provide for spousal protections through either the annuity default option, or spousal consent requirements.

Staff desires to seek an opinion regarding the Plans' compliance to the distribution provisions under the Internal Revenue Code. If the Plans are out of compliance, it will be necessary to determine what measures must be taken to bring them back into compliance, including filing an amendment to the plans and seeking council's approval of an updated pension ordinance.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



WESTMINSTER

**COLORADO**  
Agenda Memorandum

City Council Meeting  
October 25, 2004



**SUBJECT:** Dover Square Park Renovation Construction Contract

**Prepared By:** Becky Eades, Landscape Architect II

**Recommended City Council Action**

Authorize the City Manager to sign a contract with Goodland Construction, Inc., in the amount of \$141,704 for construction work at Dover Square Park, and authorize a construction contingency in the amount of \$14,170 for a total budget of \$155,874, and charge the expense to the Park Renovation Capital Improvement Project Account.

**Summary Statement**

- Construction documents were prepared in-house.
- The renovation consists primarily of irrigation replacement and concrete sidewalk installation in Dover Square Park and replacement of the concrete walk along the adjacent Silo Greenbelt.
- Bids were solicited from three reputable construction companies, with Goodland Construction, Inc., submitting the lowest bids.
- Goodland Construction, Inc., has successfully completed construction projects for the City in past, most recently the renovation of Ranch Park.

**Expenditure Required:** \$ 155,874.

**Source of Funds:** General Capital Improvement Fund Park Renovation Project

**Policy Issue**

Should the City continue using resources to renovate existing parks?

**Alternative**

City Council could choose to not authorize the construction contract for Dover Square Park. However, the existing irrigation system in the park is 25 years old and is no longer maintainable and the existing concrete trail along Silo Greenbelt is severely cracked and heaved in many areas creating tripping hazards.

**Background Information**

Dover Square Park is a 5.4-acre park located at 8521 West 89<sup>th</sup> Avenue. Currently, the park is an open turf area with trees and an irrigation system that was installed 25 years ago. There are currently no concrete walks in the park; however, adjacent neighborhoods cut through the park to access Moore Middle School. The adjacent Silo Greenbelt has a concrete trail that connects Dover Square Park to Yukon Street. This concrete trail is used extensively by residents in the Silo neighborhood and was installed over 20 years ago. This renovation project consists of replacing the existing antiquated irrigation system with a system that will be connected to the City's centralized irrigation control system, adding new concrete sidewalks through the park in areas that have existing footpaths, and replacing the Silo Greenbelt concrete trail. Construction is anticipated to take approximately six to eight weeks, weather permitting.

A bid package was sent out to three construction companies on September 23, 2004, and bids were received on October 13, 2004, as follows:

Goodland Construction, Inc.	\$141,704.00
Arrow J Landscape, Inc.	\$157,718.07
T-2 Construction	\$168,912.56

The low bid, received from Goodland Construction, Inc., is a good bid meeting the City's specifications.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting

October 25, 2004



**SUBJECT:** Open Space Acquisition along Walnut Creek Open Space and Trail Corridor

**Prepared By:** Lynn Wodell, Open Space Coordinator and  
John Carpenter, Director of Community Development

**Recommended City Council Action:**

Authorize the City Manager to execute a Purchase and Sale Agreement and all necessary closing documents for the acquisition of the Camalick property located at approximately W. 103<sup>rd</sup> Avenue and Zephyr Street and authorize the expenditure of \$540,000 plus miscellaneous closing costs not to exceed \$3,000 from the Open Space Land Purchases Account.

**Summary Statement:**

- Staff has negotiated the purchase of the approximately 8 acres located on the west side of Zephyr Street and the Burlington Northern Santa Fe Railroad Tracks and adjacent to and east of The Nature Conservancy Chambers Preserve along the Walnut Creek Open Space Corridor (See attached map). The purchase price is \$540,000
- This property is located on both sides of Walnut Creek and is the last parcel required to complete the Walnut Creek Open Space and Trail Corridor. The parcel has interesting topography including a steep wooded hillside on the south side. The mountain views from 103<sup>rd</sup> Avenue along the south boundary are spectacular.
- The property is required for the trail to be completed from US 36 to Simms Street and may be used as the location for an underpass to go under the railroad tracks and through the embankment.
- This property is a high priority acquisition of the Open Space Advisory Board.
- In addition to the purchase price, the negotiated terms include a one-year option for the sellers to purchase the Bott Log House located to the east for a price of \$40,000 to move it to their remaining two acres north of the property to be purchased by City.

**Expenditure Required:** \$ 540,000 Plus Miscellaneous Closing Costs Not to Exceed \$3,000.

**Source of Funds:** Open Space Land Purchases Account

**Policy Issue**

Should the City's Open Space Funds be used for this acquisition?

**Alternatives**

Not acquire this property. This alternative is not recommended because Staff has been encouraging the sellers to sell their property to the City for at least 5 years.

Not acquire this property at this time. This alternative is also not recommended because the acquisition of this property is a valuable addition to complete the Walnut Creek Open Space and Trail Corridor from U.S. Highway 36 to Simms Street.

**Background Information**

The acquisition of this site as an addition to the Walnut Creek Open Space and Trail Corridor has been identified as a Priority No. 1 property of the Open Space Advisory Board.

Staff has recently negotiated the purchase of the property with terms that are acceptable to the landowner. The purchase price of \$540,000 equals \$67,500 per acre (or \$1.55 per square foot). Although a majority of this property is in the floodplain there is enough property on the southern border along 103<sup>rd</sup> Avenue to build a significant residence such as those being built to the north. The property is in the Jefferson County enclave area and is anticipated to be annexed into the City at a future date.

If the sellers exercise the option to buy and move the Bott Log House on the other side of the railroad embankment, the purchase price of the property will be reduced by \$40,000 and will eliminate the City's need to either demolish or move the house at the City's expense.

Proceeds from the sale of the City property to the Academy of Charter Schools will be used for this purchase. Staff recommends moving forward with the acquisition of this property to complete the Walnut Creek Open Space and Trail Corridor.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment: Location Map



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** 73<sup>rd</sup> Avenue/Lowell Boulevard Redevelopment Project Development Agreement-Phase II

**Prepared By:** Tony Chacon, Senior Projects Coordinator

**Recommended City Council Action**

Approve the Development Agreement with Community Builders, Inc. relative to Phase II of the 73<sup>rd</sup> Avenue/Lowell Boulevard Area redevelopment project, in substantially the same form as the attached agreement.

**Summary Statement**

- The City Council and Westminster Economic Development Authority (WEDA) entered into an agreement with Community Builders, Inc. (Developer) in 2001 to redevelop the 73<sup>rd</sup> Avenue and Lowell Boulevard area, including the Aspen Care Nursing Home site, in a series of phases.
- City Council approved a Development Agreement for Phase I on December 23, 2002, authorizing the construction of 50 townhomes on three sites along the west side of Lowell Boulevard between Westminster Place and 75<sup>th</sup> Avenue (Aspen Care site), and in the 7200 block of Meade Street.
- The Developer has completed 23 townhouse units on the Aspen Care site and has proceeded with construction of the remaining 27 townhouse units on the other two sites.
- The Developer is prepared to proceed with Phase II, which includes a 12,000 square foot commercial building and up to 12 townhouses at the northwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard. A letter of intent has been signed by a prospective buyer for the commercial building.
- Per the proposed Phase II Agreement, the Westminster Housing Authority (WHA) would partner with the City to contribute \$410,000 in cash towards land acquisition. The Developer further would receive fee and use tax waivers and water tap credits from the City valued at about \$500,000. A total of \$1.085 million in financial assistance was provided by the WHA towards Phase I.
- The agreement requires the Developer to sign a promissory note requiring repayment of any profit resulting from the sale or resale of the commercial building in excess of \$1,650,000.00. The proportional share of any profit shall be reduced in increments of 10% per year over a 10 year period.
- The City will assume responsibility for sidewalk and landscaping improvements within the adjacent right-of-way as part of the City's CDBG funded 2004/2005 Lowell Boulevard Improvements project.
- All affected property owners have verbally indicated a desire to sell their property.
- Phase II is estimated to generate about \$700,000 to \$800,000 in sales and property tax increment that WEDA could use to repay WHA in accordance with an existing intergovernmental agreement.

**Expenditure Required:** No cash outlay by the City is required. However the proposed development-related fees, use tax waivers, and water tap credits have an estimated value of \$500,000. In addition, a cash outlay of \$410,000 by the Westminster Housing Authority is required.

**Source of Funds:** Development-related Fees, Use Tax Waivers and Water Tap Credits  
Westminster Housing Authority Funds

### **Policy Issues**

- Should the City provide significant financial assistance to encourage development in blighted and underutilized areas in the urban renewal area?
- Should City Council pledge all development-related fees and use tax proceeds in assisting redevelopment projects as it could raise similar expectations from other developers interested in building in the City?
- Is the cost to the City reasonable given the benefits to be gained as a result of the revitalization and construction of new housing to replace underutilized properties in an urban renewal area?

### **Alternatives**

- Council may choose to reduce the level of City participation and instruct Staff to renegotiate the terms accordingly. Staff advises that such a request could put the project in jeopardy of proceeding as the prospective buyer indicates that he cannot incur a higher price for the building given the low lease rates that could be commanded at this time. Without a tenant or purchaser the developer cannot proceed with the project.
- Council may choose to not proceed with redevelopment of property within the 73<sup>rd</sup> Avenue/Lowell Boulevard area at this time. Staff recommends that Council not pursue this alternative as it could impair the City's momentum already gained related to attracting developers for other projects throughout the South Westminster revitalization area. Also, the 73<sup>rd</sup> Avenue/Lowell Boulevard area is unsightly and sorely in need of redevelopment.

### **Background Information**

In May 2001, the City issued a request-for-proposal (RFP) seeking a developer to work with the City in redeveloping property along Lowell Boulevard and Meade Street in the vicinity of 73<sup>rd</sup> Avenue. Upon accepting a proposal from Community Builders, Inc.(CBI), the City entered into a pre-development agreement with CBI on November 12, 2001 authorizing the developer to proceed with plans, secure properties, and negotiate financial assistance for the project in phases as follows: Phase I – a total of 50 townhouses on the old Aspen Care site, along the west side of Lowell Boulevard, and on the 7200 block of Meade Street; Phase II – a commercial/office building and additional 12 townhouses at the northwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard; Phase III – commercial space and condos on Lowell Boulevard between 72<sup>nd</sup> and 73<sup>rd</sup> Avenues; and Phase IV – commercial space at Meade Street and 72<sup>nd</sup> Avenue.

On December 23, 2002 the Westminster City Council and Westminster Economic Development Authority approved a Development Agreement with CBI to proceed with Phase I of the project. Per the Agreement, \$1.085 million in public funds were pledged toward the project and the funds were advanced by the WHA to WEDA to be repaid by WEDA using tax increment from the district as funds become available. Development-related revenues from the project (over 12 years of remaining Urban Renewal Area designation) were to be used to cover the \$1,085,000 of assistance. By providing \$1,085,000 of public assistance, the City leveraged over \$7 million in private construction funding which in turn will raise property value from about \$600,000 to \$8.5 million.

With Phase I under construction, CBI proceeded to evaluate development opportunities for Phase II on the northwest corner of 73<sup>rd</sup> Avenue and Lowell Boulevard. CBI located and has been in discussions with a prospective tenant/buyer for a planned commercial building on the Phase II site. Having secured a verbal interest from the prospect, the Developer proceeded to prepare and submit an Official Development Plan (ODP) for City consideration that proposes a 12,000 square foot, two-story commercial building and 12 townhouse units. Having submitted the ODP for approval, the CBI has been working with City staff to determine an acceptable level of financial assistance from the City that would allow the Developer to proceed with the Phase II improvements. Based upon these discussions and negotiations, the Developer is requesting City Council support to enter into a formal Development Agreement relative to Phase II improvements as proposed on the submitted ODP.

Property Acquisition

Three properties must be acquired to support the proposed Phase II development, and include:

<i>Name of Seller</i>	<i>Description</i>	<i>Cost</i>	<i>Status</i>
Brothers Redevelopment, Inc.	Single family house; zoned commercial	\$160,000	Secured in 2001 by CBI for development; Structure demolished and removed.
Dr. Tsamasferos	Medical Clinic	\$400,000	Under contract by Developer to purchase
Genesee Reservation (Bill Prescott)	Old bowling alley & Qwik Pik market	\$185,000	Site cleared; Property owner has agreed to sell.
Subtotal		\$745,000	

Staff has reviewed the proposed land sale prices and considers them reasonable based on comparable sales and appraisals conducted in the area. Staff did not conduct an appraisal for all properties, but single-family homes in the neighborhood are selling for between \$150,000 and \$180,000. Staff did have an appraisal prepared for the Genesee property which established its value at \$226,500. The City recently acquired the adjacent Vehicle Service Property for \$550,000 and nearby Rodeo Market building for \$485,000. In addition to land acquisition, the developer estimates demolition, asbestos remediation and site prep costs of about \$150,000, resulting in a total cost of \$895,000 for land assemblage and site preparation. The Developer, however, has determined that his land costs need to be about \$5.00 per square foot for the land for Phase II, or a total of about \$200,000 to enable the proforma to work. Thus, the City and/or its partners (WHA, WEDA) would need to contribute incentives worth a comparable value of \$735,000 towards land acquisition and site preparation alone. In addition to land acquisition and site preparation costs, the developer needs financial assistance to “write-down” the cost of constructing the commercial building so as to make it financially viable to the prospective buyer given the depressed value of comparable office buildings. This additional subsidy is estimated at about \$150,000 to \$200,000.

The Developer’s costs and projected revenues for Phase II are as follows based upon a 10% profit margin.

Development Costs

Land Acquisition/Demolition	\$ 895,000
Commercial Building	\$1,909,070
Townhouse Units	<u>\$1,755,930</u>
<b>Total Developer Costs</b>	<b>\$4,560,000</b>

Developer Revenues

Commercial Building	\$1,610,000 (capitalized at \$12.00/s.f. lease rate)
Townhouse Units	\$2,040,000 (\$170,000 sales price)
<b>Required Assistance</b>	<b>\$ 910,000</b>

**Financial Considerations**

Per the proposed agreement, the WHA, as a partner with the City, would contribute \$410,000 in cash to be applied towards land acquisition, demolition and site preparation to be undertaken by the Developer. The Developer would assume responsibility for acquisition of all the required property. In addition to a cash contribution from the WHA, the Developer would receive fee and use tax waivers and water tap credits having an estimated value of about \$500,000. The combined assistance package would total about \$910,000.

Staff estimates that Phase II of the 73<sup>rd</sup> Avenue/Lowell Boulevard Redevelopment project as proposed could generate about \$750,000 - \$800,000 in property and sales tax revenue over the remaining 12 years of the Urban Renewal District designation.

These revenues cannot be immediately applied towards reimbursing the WHA given the tax increment is pledged towards repayment of the South Westminster Urban Renewal District's current debt obligation. However, at such time the covenants on the existing debt are withdrawn or WEDA is able to issue additional debt, WEDA would be able to use the proceeds from the Phase II development to provide reimbursement to the WHA. The WHA and WEDA did enter into an intergovernmental agreement following approval of the initial development agreement for Phase I of the redevelopment project. The agreement stipulates that WEDA would reimburse the WHA upon receipt of any discretionary tax increment coming from the redevelopment project.

The economic base of the immediate area would further improve as the new development would significantly enhance the character of the immediate area. Accordingly, tax revenue from other nearby sources is expected to also increase. The City would continue to collect higher levels of property tax and increased sales tax revenues after expiration of the Urban Renewal District in 2017.

### **Environmental Remediation Requirements**

The Genesee owned property is known to have groundwater contamination resulting from the operation of a gas station which had a leaking underground storage tank. The tank has been removed, though the contamination remains. As such, the State of Colorado placed the current property owner on notice that the contamination must be cleaned up. In 2003, the State of Colorado agreed to take on full responsibility for the cleanup under a contractual agreement with the property owner. As a result of this agreement, the existing property owner and owners thereafter have no responsibility or liability relative to the remediation and use of the site. The State of Colorado has estimated their cleanup cost to be from \$600,000 to \$800,000, and has proceeded with the cleanup.

The cleanup would be completed at such time development proceeds by Community Builders. All contractual rights between the current owner (Genesee Reservation) and the State are fully assignable to a new owner, therefore, there will not be any cost to the City, WEDA, WHA or CBI relative to the ongoing cleanup effort. Knowing CBI's development interest on the site, State Oil and Public Safety Division staff has agreed to work in partnership to ensure the remediation strategy is complementary to the proposed development upon the site.

The Developer will be responsible for asbestos remediation and structural demolition of one structure, foundations, and asphalt or concrete surface materials. The Developer has estimated these costs at about \$150,000.

### **Prospective Tenant for Commercial Building**

The Developer has received a letter of intent from a prospective office user to purchase the commercial building. The buyer would occupy about 6,000 square feet of the second floor space. The balance of the space would be leased to primarily retail tenants so as to optimize sales tax revenue generation. The buyer's interest is based upon the Developer being able to deliver the building for a sales price of \$1,610,000. The actual cost to construct the building (including land costs) is estimated to be about \$2.1 million. Given this cost, the space would need to rent for between \$15.00 and \$20.00 per square foot. This range is significantly higher than the \$8.00 to \$12.00 per square foot rates currently being commanded for older space in the immediate neighborhood. The prospective building owner believes he would be able to initially command about \$10.00 to \$12.00 per square foot in the earlier years, and as the area improves he would be able to command higher rents. In the meantime, the relatively low rent thresholds translate to a purchase price of about \$1.6 million, assuming the building is fully leased. The buyer believes the ground floor retail space would lease up quickly given reasonably low lease rates of between \$10.00 and \$12.00 per square foot.

**Infrastructure and Off-site Improvements**

The Developer will assume full responsibility for making on-site improvements as required in the ODP. The City would assume the cost of improvements within the right-of-way along Lowell Boulevard and 73<sup>rd</sup> Avenue, which will be completed in conjunction with the City's Lowell Boulevard improvements project, tentatively scheduled to begin in the late part of 2004 or early 2005. As another condition of the agreement, the City would assume the responsibility for completing the required landscaping improvements along Lowell Boulevard and Meade Street in coordination with the City's two CDBG funded capital improvement projects. These improvements would be maintained by the abutting private property owners including a homeowners association for the townhouse project.

**Development Fees, Use Tax and Tax Increment**

Per the development agreement the City would waive all the development-related fees and construction use tax, with the exception of water and sewer taps. The Developer would be entitled to receive water tap credits for 11 townhouses based upon the existing taps used on the properties, those taps having previously served a convenience gas station, ice cream shop, bowling alley, doctor's office, and single family house. In addition, 15 remaining water tap credits from the Westminster Plaza shopping center project would be applied to assist the project. The developer would pay for a total of 18 water taps for the townhouse development from Phase I and Phase II. The Developer will also pay for the commercial water tap.

Upon completion and full occupancy, it is estimated that the Phase II project will produce about \$65,000 annually in property and sales tax increment. Over the remaining 12-years of the Urban Renewal District designation, the total tax increment would amount to about \$750,000-\$800,000 in collections to be applied towards repayment of WEDA bond obligations for the South Westminster Urban Renewal District.

**City Risk Reduction and Mitigation Measures**

The financial assistance proposed is premised upon the commercial building selling for no more than \$1,650,000, which is estimated to be the present market value. Given the construction value is about \$2.1 million, the City and/or WHA would have a vested financial interest in the building of \$350,000. So as to ensure that the Developer or its successor in title does not walk away with a quick profit upon the sale or resale of the commercial building, a provision has been included in the Development Agreement requiring the Developer to sign and record a promissory note covering the City's \$350,000 investment. As an inducement to a prospective buyer, the term of the promissory note would be for a period of 10 years, whereby the proportional share to the City/WHA of any profit shall be reduced by increments of 10% per year down to zero. This provision would entice the current prospective buyer to operate his business on the premises for an extended time period, thereby providing the opportunity to enhance sales tax revenue collections from businesses within the building and nearby establishments.

Other provisions are also built into the proposed Development Agreement to ensure the City is able to proceed with the development on the property in the event Community Builders is unable to fulfill completion of the project. The developer will be required to have written assurance from its lender that the City may, at its discretion, intercede to either take possession or find a new developer for the project prior to proceeding with any foreclosure on any of the properties. In addition, any repayment of the WHA contribution for the acquisitions would be premised on the tax increment raising capability of the project itself. Accordingly, revenue would eventually be generated so long as the project is completed, regardless of who actually completes the development. Thus, if Community Builders were to default on the Development Agreement, the WHA and City could step in to complete the development with another developer.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Second Reading of Councillor's Bill No. 72 re 2005 and 2006 Appropriations

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

**Recommended City Council Action:**

Pass Councillors Bill No.72 on second reading appropriating funds for the 2005 and 2006 budgets.

**Summary Statement**

- City Council has reviewed the Proposed 2005 and 2006 Budgets, taking into consideration citizen requests and Staff recommendations. The final product of these deliberations, including Council modification from the budget retreat, is reflected in the budget resolution that City Council approved October 11, 2004.
- City Council is requested to pass on second reading the Appropriations Ordinance for 2005 and 2006, which sets forth the amounts of estimated revenue and expenditures by each separate fund of the City for calendar years/fiscal years 2005 and 2006. This action is in compliance with City Charter Budget Provisions.
- This Councillor's Bill was passed unanimously on first reading on October 11, 2004.

**Expenditure Required:**

2005 = \$139,759,137, plus \$17,227,850 in reserves and \$4,975,689 in contingency accounts; and  
2006 = \$145,208,385, plus \$17,499,250 in reserves and \$4,237,769 in contingency accounts.

**Source of Funds:**

General, Utility, General Reserve, Utility Reserve, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Open Space, Conservation Trust, General Capital Improvement, and Debt Service Funds

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment



BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2004

COUNCILLOR'S BILL NO. 72  
INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2005 AND 2006 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Non-emergency reserve as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

NON-EMERGENCY RESERVE AND NEW REVENUE

	Fiscal Year 2005	Fiscal Year 2006
a. General Fund	\$82,941,554	\$86,209,579
b. Utility Fund	41,478,593	42,879,223
c. General Capital Improvement Fund	7,587,000	7,668,000
d. Fleet Maintenance Fund	1,549,828	1,589,394
e. General Capital Outlay Replacement Fund	2,917,759	2,966,109
f. General Debt Service Fund	7,748,883	8,442,782
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	60,560,581	62,783,108
i. Open Space Fund	4,414,869	4,563,535
j. General Reserve Fund	7,744,350	7,954,400
k. Utility Reserve Fund	9,483,500	9,544,850
l. Golf Course Fund	<u>3,333,363</u>	<u>3,380,092</u>
Total Funds Available	\$230,385,280	\$238,606,072
Less Transfers	<u>-68,422,604</u>	<u>-71,660,668</u>
 GRAND TOTAL	 \$161,962,676	 \$166,945,404

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2005	Fiscal Year 2006
a. General Fund	\$82,941,554	\$86,209,579
b. Utility Fund	41,478,593	42,879,223
c. General Capital Improvement Fund	7,587,000	7,668,000
d. Fleet Maintenance Fund	1,549,828	1,589,394
e. General Capital Outlay Replacement Fund	2,917,759	2,966,109
f. General Debt Service Fund	7,748,883	8,442,782
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	60,560,581	62,783,108
i. Open Space Fund	4,414,869	4,563,535
j. General Reserve Fund	7,744,350	7,954,400
k. Utility Reserve Fund	9,483,500	9,544,850
l. Golf Course Fund	<u>3,333,363</u>	<u>3,380,092</u>
Total Funds Available	\$230,385,280	\$238,606,072
Less Transfers	<u>-68,422,604</u>	<u>-71,660,668</u>
GRAND TOTAL	\$161,962,676	\$166,945,404

This ordinance shall become effective January 1, 2005.

INTRODUCED AND PASSED on first reading this 11<sup>th</sup> day of October, 2004.

PASSED AND ADOPTED on second reading this 25<sup>th</sup> day of October, 2004.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Revised Employment Agreement with J. Brent McFall

**Prepared by:** Matt Lutkus, Deputy City Manager for Administration

**Recommended City Council Action**

Authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2005 with an effective date of January 1, 2005, and automatic renewal for 2006 unless terminated by City Council.

**Summary Statement**

- City Council is requested to approve a revised employment agreement with J. Brent McFall for services as City Manager for a one-year period beginning January 1, 2005. The agreement will be automatically renewed for 2006 unless it is terminated by City Council no later than October 31, 2005.
- Under the proposed revised agreement, Mr. McFall's base compensation will be \$172,151, which represents a three percent increase over his annual compensation for 2004. This will be comprised of a salary of \$154,151 and City-paid deferred compensation of \$18,000.
- The attached proposed agreement with Mr. McFall is similar to the current employment agreement with the exceptions of the total allocated for salary and deferred compensation, changes in language to address any potential concerns regarding compliance with the multi-year contract provisions of the Taxpayers' Bill of Rights (TABOR) and the change in the effective dates for the contract.

**Expenditure Required:** \$172,151, plus the cost of other fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund, City Manager's Office Budget

**Policy Issue**

Whether to continue essentially the same employment agreement with J. Brent McFall for 2005.

**Alternatives**

Council could make further adjustments to the employment agreement with Mr. McFall.

**Background Information:**

J. Brent McFall has been employed as City Manager since May 21, 2001. His previous experience includes holding city manager or city administrator positions in Merriam, Kansas; Emporia, Kansas; Federal Way, Washington; and Kent, Washington. He has also served as a consultant and facilitator for Sumek Associates, conducting organizational development activities and facilitating strategic planning sessions with various cities. Mr. McFall is an active member of both the International City County Management Association and the Colorado/City County Managers' Association.

During the past year, the sluggish economy continued to present challenges for the City as the organization coped with strained financial resources. A number of the positions that had been frozen have now been removed from the City's overall staffing plan. These staffing changes and other measures that have been taken to operate within a lean budget have had a minimal impact on citizen services. The success of these efforts was clearly demonstrated by the very favorable ratings that respondents gave to City services in the biennial citizen survey during the past year.

Under Mr. McFall's leadership, the City continued to make major progress in some key areas including South Westminster revitalization, the Shops at Walnut Creek and the plans for the shopping center at 144<sup>th</sup> and Huron. The year also saw the completion of some important capital projects including the 136<sup>th</sup> Avenue/I-25 Interchange, the Irving Street Library and the new Fire Station #2. Finally, during the past twelve months, citizens in Westminster showed their support for the City and Police and Fire services in particular. With a favorable vote of 57%, Westminster voters gave their approval to a .6 percent increase in the City's sales tax to finance enhancements to public safety staffing and equipment.

Two organizational efforts that continued to be championed by Mr. McFall were the continuation of a strong emphasis on strategic planning and a focus on the values identified in the acronym SPIRIT. The City's Strategic Plan has become the basis for determining many of the City's budget decisions and staff's recommendations for Council action throughout the year. The values of Service, Pride, Integrity, Responsibility, Innovation and Teamwork have provided the guiding principles on how the City organization operates on a day-to-day basis.

The proposed employment agreement with Mr. McFall is similar to the current agreement that Council approved in October 2003 with exception of the effective dates of the agreement, the level of compensation and wording changes to address potential TABOR concerns.

The revised agreement will provide for a combined salary and deferred compensation of \$172,151 in City-paid deferred compensation. This amount is \$5,014 or 3% higher than his total salary and deferred compensation for 2004.

This past summer City Staff asked attorney John Hayes to review the Council's employment agreements with the City Manager, City Attorney and Presiding Judge to ensure that these documents comply with all applicable laws. Mr. Hayes suggested changes in Section 2 of the agreements to address a possible challenge to the agreement under the Taxpayers' Bill of Rights (TABOR) provisions related to multiyear contracts. By changing the document from a two-year agreement, Section 3 also needed to be changed to ensure that the employees would continue to receive the designated amount of severance and pay regardless of when during the one-year period the agreement was terminated. The changes in the City Manager's Employment Agreement are contained in Sections 2.A and D and 3.F.

Funds are available in the City Manager's Office approved 2005-2006 Budget to provide for the salary and fringe benefits described in the agreement.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January 2005, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and J. BRENT McFALL, hereinafter called "EMPLOYEE", as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of J. BRENT McFALL, as City Manager of the City of Westminster as provided by City Charter, Chapter IV, Section 7; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE's services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DUTIES:

CITY hereby agrees to continue the employment of J. BRENT McFALL as City Manager of CITY to perform the duties and functions specified in Section 4.8 of the City Charter and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

### SECTION 2. TERMS:

- A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as City Manager for calendar years 2005 and 2006. EMPLOYEE agrees to remain in the exclusive employ of CITY and EMPLOYEE will serve as City Manager from January 1, 2005 through December 31, 2006. Further, EMPLOYEE agrees not to become employed by any other employer until said termination date, unless said termination date is effected as hereinafter provided.

The term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraph A and B of this agreement.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth below.
- D. This Employment Agreement is for a one-year term, but shall be automatically renewed for 2006 unless terminated no later than October 1, 2005.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

- A. In the event City Council decides to exercise its right to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to give EMPLOYEE nine (9) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing nine (9) months, provided however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.
- B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the nine (9) months' severance pay provisions herein.
- C. The severance provisions contained in section A and B shall remain the same in 2006 except that the nine (9) months of notification or severance pay shall be increased to ten (10) months beginning January 1, 2006. Furthermore, it is Council's intent to increase the length of notice or the number of months of severance pay provided in lieu of such notice to eleven (11) months on January 1, 2007, and twelve (12) months on January 1, 2008.
- D. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY sixty (60) days notice in advance in writing.
- E. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this section.
- F. In the event this Agreement is not renewed by the City Council, such non-renewal shall be considered a termination as provided for in Section 3.A. hereof and shall entitle EMPLOYEE to the lump sum cash payment described therein.

SECTION 4. SALARY:

The CITY agrees to pay EMPLOYEE for his services rendered hereto a combined salary and deferred compensation amount of \$172,151. The salary portion of this amount shall be payable in installments at the same time as other employees of the CITY are paid. The EMPLOYEE shall designate a portion of this amount not to exceed the amount allowed by Federal Law to be paid as a lump sum payment to the EMPLOYEE's deferred compensation plan.

CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

- A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

- B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the Council. Provided, that such consulting or other non-City connected business does not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. City Council shall be the sole judge of such conflicts whose determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he have an EMPLOYEE-provided automobile. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. A monthly car allowance of \$500 shall be paid to EMPLOYEE to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

SECTION 8. PROFESSIONAL DEVELOPMENT:

CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the International City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job-affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job-affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to all other Department Head level employees, except that when such benefits are in conflict with this contract, said contract shall control.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

- A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City Charter or any other law.
- B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

- C. In the 2005 Budget, the City Council shall appropriate the sum of \$60,000, which sum shall be placed into a separate account within the City, which amount shall be paid in one lump sum payment to EMPLOYEE on January 2, 2011 in the event EMPLOYEE continues to serve as City Manager through said date. This retention incentive payment shall be in addition to any salary or other benefit paid to EMPLOYEE during the term of this Employment Agreement.

SECTION 12. GENERAL PROVISIONS:

- A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This agreement becomes effective on January 1, 2005 and if automatically renewed shall be in effect through December 31, 2006.
- D. If any provision, or any portion hereof contained in this agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.
- E. Nothing in this agreement shall be construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20.
- F. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this agreement.

Approved by Westminster City Council on this 25th day of October 2004.

\_\_\_\_\_  
Mayor

ATTEST:

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

\_\_\_\_\_  
J. Brent McFall

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney





WESTMINSTER

COLORADO

Agenda Memorandum

Agenda Item 10 A - D

City Council Meeting  
October 25, 2004



**SUBJECT:** Councillor's Bill No. 75 and No. 76 re Formation of The Ranch Special Improvement Districts No. 1 and No. 2 – Public Hearing and First Reading

**Prepared By:** Aaron B. Gagné, Senior Projects Coordinator

**Recommended City Council Actions:**

- Hold a public hearing
- Pass Councillors Bill No. 75 on first reading creating The Ranch Subdivision Special Improvement District No. 1 for Filing 6 and ordering the design construction, installation and acquisition of certain perimeter wall improvements.
- Hold a public hearing
- Pass Councillors Bill No. 76 on first reading creating The Ranch Subdivision Special Improvement District No. 2 for Filing 2 and ordering the design construction, installation and acquisition of certain perimeter wall improvements.

**Summary Statement:**

- In March of 2003, Council was presented with a request from the homeowners within The Ranch Filings 2 and 6 to form two special improvement districts (“SIDs”) to replace the existing deteriorated fence with a high-quality masonry wall along 120<sup>th</sup> Avenue and portions of Zuni Street
- Council directed that petitions for the formation of the district or districts would be accepted with no less than 60% of the homeowner’s support.
- Staff has worked closely with the respective Homeowners Associations (“HOA’s”) to establish a wall specification that is of sufficient quality and durability to be accepted by the City.
- “Real-world” project costing was conducted with the input of an experienced masonry wall contractor.
- Beginning in August of 2004, the proposed program was introduced to the full membership of both HOA’s, and petitions for the formation of two separate SID’s were signed. Signatures were obtained from 63.7% of Filing 2 homeowners and from 64.6% of Filing 6 homeowners. (See attached map) Both petitions are on file with the City Clerk.
- On September 27, 2004, the City Council passed resolutions issuing the preliminary order for the establishment of the two SID’s and scheduling the public hearing and first reading of the ordinances to create the SID’s. Those resolutions also directed the notification of the affected property owners by publication and by mail.
- At the time of publication of the Notice of Public Hearing, staff also commenced publication of the Invitation to Bid for design-build services for the actual construction of the wall. Those bids are due on October 25, 2004, and will be evaluated and the low responsible bid will be brought back to City Council for action. Construction would therefore be expected to commence before the end of the year.

**Expenditure Required:** An estimated \$300,724 for SID No. 1 (Filing 6) and \$268,984 for SID No. 2 (Filing 2), including wall construction, a 10% contingency, legal and engineering costs, including City administrative costs. The actual outlay of City funds is expected to be lower since some individual homeowners may pre-pay their full assessment.

**Source of Funds:** General Capital improvement Fund - Development Participation Project

**Policy issue:**

Should the City support the creation of two new Special Improvement Districts at The Ranch subdivision to facilitate the replacement of private improvements required by the original Official Development Plan?

**Alternative:**

Not advance the petitions filed by a majority of the HOA members of The Ranch Filings 2 and 6. This alternative is not recommended, as the City has worked with the respective HOA's toward this pilot fence replacement program, with the direction of City Council, since early 2003. Such action would likely force the respective HOA's to either attempt to repair the existing deteriorated fence or replace it with similar materials, leading to more maintenance challenges in the near and long term.

**Background:**

The original Official Development Plan ("ODP") for The Ranch Filings 2 and 6 called for the construction and HOA maintenance of a perimeter fence. Little reinvestment and preventative maintenance has occurred since its original fence installation, to the point where it needs to be replaced in its entirety. Some time ago, the respective HOA Boards approached the City of Westminster with a request to form a special improvement district ("SID") to enable them to replace the deteriorated wooden fence with a higher quality, longer lived structure.

City staff reviewed the conditions, opportunities and limitations of the HOA and concurred with the recommendation to form an SID to replace the fence. Based on legal requirements for the formation of special improvement districts, long-term maintenance issues and the need to construct the replacement structure within the public right-of-way of 120<sup>th</sup> Avenue, it is necessary that the new wall be owned by the City. This proposal was presented to City Council, and staff was instructed to work with the respective HOA's to develop the program and to facilitate the preparation and presentation of signed petitions to City Council. Council requested that at least 60% of the HOA membership sign the petition, and thereby 60% of the properties that would be included in the SID, and formal petitions were prepared and presented at two informational meetings for each filing in order to consider the proposal.

Wall specifications for a single-thickness brick wall were developed, quotes received from masonry wall contractors to validate proposed project budget estimates, and special legal assistance was obtained to aid in the preparation of the petitions and SID formation documents. A "Benefit Study" was conducted for each filing to evaluate the benefits that may be reasonably expected to accrue to all properties with in the respective filings. Copies of the summaries of those benefit studies are attached hereto. The wall is projected to increase the value of each home in each filing by between 4% and 8%, which exceeds the proposed cost of the SID assessment on each home.

The proposal for Filing 2 is for approximately 1,139 linear feet of wall at an estimated cost-per-home of \$2,637, or a total of \$268,984, including capitalized maintenance and insurance, engineering and administrative costs. These capitalized costs represent one-time capital contributions that will cover insurance, maintenance and administrative costs for the 10 year lifespan of the SID. Financed via the SID, at a rate of 6.0% per year, the annual payment for a homeowner in Filing 2 would be approximately \$358.

The proposal for Filing 6 is for approximately 1,570 feet of wall at an estimated cost-per-home of \$4,627, or a total of \$300,724, including capitalized maintenance and insurance, engineering and administrative costs. Financed via the SID, at a rate of 6.0% per year, the annual payment for a homeowner in Filing 6 would be approximately \$629.

While these values are estimates based on the best information available, staff has committed to the membership of the respective HOA's that should final design-build bids come in above those values, we will return to the membership to reaffirm their approval.

Homeowners will have an opportunity to avoid financing costs by pre-paying the full amount. The source of capital for the project is intended to be the New Development Participation account, which currently has a sufficient balance to support the project at current cost estimates. The actual capital outlay from that account is expected to be lower than the actual construction costs, because several homeowners in each filing are proposing to pre-pay and avoid the financing costs. Borrowing the funds needed for this project is cost prohibitive, as it is simply too small an amount to bond.

The interest that the City will forego by committing the New Development Participation Account funds is in the range of 4% to 5% per year. Additionally, the City will be administering the annual certification and accounting for the SIDs, thus increasing the cost to somewhere between 5% and 6%. If the HOA were to attempt to finance the project on its own, it would likely be in a range closer to 8%. Staff believes that the proposed rate of 6% is highly favorable in light of lost interest revenue, avoidance of the cost-of-issuance of a bond, the City's costs to administer, and comparative rates available to an HOA.

The Filing 2 HOA representatives submitted their petitions with a total of 63.7% of the households endorsing the project and requesting that an SID be formed. The Filing 6 HOA representatives presented their petitions with 64.6% of the households endorsing the project and requesting that an SID be formed. The next steps in the process of forming the SID's include introducing the attached ordinances and conducting the previously scheduled public hearing. Following a parallel track to those steps, Staff has published notice and is soliciting bids from multiple masonry contractors to secure the best possible pricing for the residents of the respective filings.

Next steps for the project include:

1. Bid Opening (October 25, 2004)
2. Ordinance Second Reading (November 8, 2004)
3. Award of Bid (November, 2005)
4. Construction Commences (December, 2004 – weather permitting)
5. Construction Complete (March, 2005)
6. Council certifies costs and final assessment (April, 2005)
7. Open period to pre-pay full assessment (April-May, 2005)
8. SID rolls certified to County Assessor (June, 2005)
9. First regular SID payment due (2005 property tax bills arriving in 2006)

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments:

1. Filings 2 and 6 benefit Studies - Summary and Conclusion
2. Ranch SID Voting Map
3. Proposed SID Ordinance forming SID No. 1 (Filing 6)
4. Proposed SID Ordinance forming SID No. 2 (Filing 2)
5. Schematic Wall Location and Height Map

**A BENEFIT / IMPACT ANALYSIS  
OF THE RANCH SUBDIVISION, 2<sup>nd</sup> FILING FENCE PROJECT  
ALONG WEST 120<sup>th</sup> AVENUE AND ZUNI STREET  
WESTMINSTER, COLORADO**

For

Aaron B. Gagné  
Senior Projects Coordinator  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

By

Raymond C. Hart  
Certified General Appraiser  
Colorado Certification Number CG 01315506

SHELTON ASSOCIATES, INC.  
230 South Holland St.  
Lakewood, CO 80226

Date of Report: October 10, 2003

*Appraiser's File Number - 05503 - 2<sup>nd</sup> Filing*

October 20, 2003

City of Westminster  
Department of Community Development  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Dear Mr. Gagné :

As requested, a benefit / impact analysis has been conducted and a summary report prepared, in an effort to measure the benefits of the proposed masonry fence project at The Ranch Subdivision, 2<sup>nd</sup> Filing, in The City of Westminster, Colorado. The purpose of the report is to assist the City in assessing the potential impacts on property values as a result of the construction of a proposed masonry fence around a portion of The Ranch Subdivision, 2<sup>nd</sup> Filing. This report is not intended for any other use.

The real estate involved was personally inspected by the undersigned on July 22, 2003 with a follow-up visit by my associates on September 15 and October 02 & 10, 2003.

Numerous inspections and investigations were made of residential subdivisions in the Denver Metropolitan Area which are already improved with masonry fences similar to the proposed Ranch Subdivision project. Our research also included extensive inquiry of knowledgeable local real estate professionals, including Realtors, Developers, and Home Owner Associations. The relevant information was reviewed along with other pertinent market data from our office files and from public records.

It is most likely the masonry fence, as proposed, will add a measure of value to The Ranch Subdivision, 2<sup>nd</sup> Filing in the range of 4 to 8 percent. The added value is attributed to reduction in traffic noise; increased privacy; enhanced neighborhood conformity and identification; and to enhanced security. Furthermore, it is my opinion that, over time, the added value will be approximately the same for all property owners in the development.

The following report sets forth the conclusions we have reached with respect to the benefits anticipated to accrue to the property owners of The Ranch Subdivision, 2<sup>nd</sup> Filing as a result of the proposed fence.

It has been a pleasure to serve you in this assignment. If further information regarding this report or analysis is required, please do not hesitate to contact me.

Respectfully Submitted,

Raymond C. Hart  
Certified General Appraiser  
# CG 01315506

**A BENEFIT / IMPACT ANALYSIS OF THE RANCH SUBDIVISION, 6<sup>TH</sup> FILING  
FENCE PROJECT  
ALONG WEST 120<sup>th</sup> AVENUE AND ZUNI & DECATUR STREETS  
WESTMINSTER, COLORADO**

For

Aaron B. Gagné  
Senior Projects Coordinator  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

By

Raymond C. Hart  
Certified General Appraiser  
Colorado Certification Number CG 01315506

SHELTON ASSOCIATES, INC.  
230 South Holland St.  
Lakewood, CO 80226

Date of Report: October 10, 2003

*Appraiser's File Number - 05503 - 6<sup>th</sup> Filing*

October 20, 2003

City of Westminster  
Department of Community Development  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Dear Mr. Gagné :

As requested, a benefit / impact analysis has been conducted and a summary report prepared, in an effort to measure the benefits of the proposed masonry fence project at The Ranch Subdivision, 6<sup>th</sup> Filing, in The City of Westminster, Colorado. The purpose of the report is to assist the City in assessing the potential impacts on property values as a result of the construction of a proposed masonry fence around a portion of The Ranch Subdivision, 6<sup>th</sup> Filing . This report is not intended for any other use.

The real estate involved was personally inspected by the undersigned on July 22, 2003 with a follow-up visit by my associates on September 15 and October 02 & 10, 2003.

Numerous inspections and investigations were made of residential subdivisions in the Denver Metropolitan Area which are already improved with masonry fences similar to the proposed Ranch Subdivision project. Our research also included extensive inquiry of knowledgeable local real estate professionals, including Realtors, Developers, and Home Owner Associations. The relevant information was reviewed along with other pertinent market data from our office files and from public records.

It is most likely the masonry fence, as proposed, will add a measure of value to The Ranch Subdivision, 6<sup>th</sup> Filing in the range of 4 to 8 percent. The added value is attributed to a reduction in traffic noise; increased privacy; enhanced neighborhood conformity and identification; and to enhanced security. Further, it is my opinion that, over time, the added value will be approximately the same for all property owners in the development.

The following report sets forth the conclusions we have reached with respect to the benefits anticipated to accrue to the property owners of The Ranch Subdivision, 6<sup>th</sup> Filing, as a result of the proposed fence.

It has been a pleasure to serve you in this assignment. If further information regarding this report or analysis is required, please do not hesitate to contact me.

Respectfully Submitted,

Raymond C. Hart  
Certified General Appraiser  
# CG 01315506

# RANCH SID VOTING





BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_

COUNCILLOR'S BILL NO. **75**

SERIES OF 2004

INTRODUCED BY COUNCILLORS  
\_\_\_\_\_

A BILL

**FOR AN ORDINANCE CREATING THE RANCH SUBDIVISION SPECIAL IMPROVEMENT DISTRICT NO. 1, ORDERING THE CONSTRUCTION, INSTALLATION, AND ACQUISITION OF CERTAIN PERIMETER WALL IMPROVEMENTS, TOGETHER WITH NECESSARY INCIDENTALS, AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the City of Westminster, Colorado (the "City") is a municipal corporation and political subdivision of the State of Colorado organized and existing as a home rule city pursuant to authority in Article XX of the Colorado Constitution; and

WHEREAS, pursuant to Part 5 of Article 25, Title 31, Colorado Revised Statutes, the City has the power to create improvement districts for the purpose of constructing, installing, or acquiring local improvements of every character within such districts, and to assess the costs thereof, wholly or in part, upon the property specially benefited within such districts; and

WHEREAS, on or about September 16, 2004, the City received a petition (the "Petition") requesting the organization of a special improvement district, designated The Ranch Subdivision Special Improvement District No. 1 (the "District"), for the construction, installation, and acquisition of perimeter wall improvements, together with necessary incidentals (the "Improvements"), the entire costs thereof to be assessed against the property in the Ranch Subdivision Filing No. 6, as identified in the Petition; and

WHEREAS, the Petition is signed by the owners of property proposed to be assessed for more than sixty percent (60%) of the entire costs estimated to be assessed; and

WHEREAS, by Resolution No.60, Series of 2004, adopted by the City Council at a meeting thereof held September 27, 2004, the City Council made and entered a preliminary order for the Improvements (the "Resolution"); and

WHEREAS, the City Council scheduled and gave notice of a public hearing concerning the creation of the District and the construction, installation, and acquisition of the improvements by publication in at least one issue of *The Westminster Window*, a newspaper of general circulation in the City, at least twenty (20) days prior to the date of the hearing, and in addition, notice was mailed by first-class mail to each property owner to be assessed for the cost of improvements who is included within the proposed District, on or about the date of such publication; and

WHEREAS, at the time and place set forth in the notice, the City Council met in open session for the purpose of hearing any complaints or objections that might be made against the proposed District or the improvements to be constructed or installed.

NOW THEREFORE, THE CITY OF WESTMINSTER, COLORADO ORDAINS AS FOLLOWS:

Section 1. Findings. The above and foregoing recitals are incorporated herein by reference and are adopted as findings and determinations of the City Council. The City Council further finds and

determines that the improvements proposed to be constructed, installed and acquired confer a special benefit upon the real property in the District to be assessed for the costs thereof and a general benefit to the City as a whole. The City Council further finds and determines that there exists a necessity for the creation of The Ranch Subdivision Special Improvement District No. 1 in the City, and for the construction and installation therein of certain perimeter wall improvements, together with necessary incidentals, as provided in the Resolution.

Section 2. Creation of District. A special improvement district for the construction, installation, and acquisition of certain perimeter wall improvements, together with necessary incidentals, hereinafter described (the "Project"), is hereby created and established in accordance with the laws of the State of Colorado, and shall be known and designated The "Ranch Subdivision Special Improvement District No. 1 (the "District"). All proceedings heretofore taken and adopted in connection with the District are hereby ratified, approved, and confirmed.

Section 3. Approval of Engineering Plans. The reports of the engineer for the Project, together with all of the details, specifications, estimates, maps, and schedules thereto attached or appended, as on file in the office of the Community Development Department of the City, are hereby approved and adopted. The improvements and estimated assessments are described in more detail in the preliminary engineering report on file in the office of the City of Westminster Community Development Department.

Section 4. Boundary of District. The area to be included within the District will consist of all of the lots in The Ranch Subdivision Filing No. 6, a part of the Northeast Quarter, Section 5, Township 2 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, City of Westminster, County of Adams, State of Colorado, more particularly described as follows:

Lots 1-22, inclusive, Block 1,  
Lots 1-43, inclusive, Block 2.

Only the property described above will receive an assessment for the costs of the improvements.

Section 5. Description of Project. The Project shall consist of a single-thickness brick perimeter wall, with foundation, cap, and major and minor brick columns, having elevations varying from 6 feet to 8 feet above existing grade, located in the right-of-way of 120<sup>th</sup> Avenue, extending approximately 1290 linear feet along the north boundary of the District to an angled entryway at Zuni Street, thence approximately 280 linear feet along the east boundary of Block 1, The Ranch Subdivision, Filing No. 6., in the right-of-way of Zuni Street, south from the angled entryway at 120<sup>th</sup> Avenue to the north right-of-way line of 119<sup>th</sup> Avenue, all in the City of Westminster, Adams County, Colorado. The improvements include demolition and disposal of the existing perimeter fence currently at the above locations, and replacement of sod disturbed during construction.

Section 6. Improvements Authorized. The construction, installation and acquisition of the Project is hereby authorized and ordered. The materials to be used for the construction, installation and acquisition of the Project shall be in accordance with the engineering plans and specifications.

Section 7. Assessment of Costs. The estimated probable cost of the Improvements to be assessed against the property in the District, including capitalized insurance and maintenance of the Improvements for a period of ten (10) years, engineering, and the costs of organizing the District, is \$300,724.00. Said amount is expected to be assessed against the property in the District on per-lot basis. The estimated probable cost per lot is \$4,627.00. In the judgment of the City Council the foregoing method of assessment reflects the benefits which accrue to the properties to be assessed, as shown by the estimates of the Engineer. Such cost estimates and approximate amounts to be assessed have been formulated in good faith on the basis of the best information available, but are not binding. After a hearing on the assessments the City Council may

make such modifications and changes to the assessments as may seem equitable. The cost of the Project shall be assessed, by ordinance, upon all real property within the District based upon the benefit conferred by the improvements upon each lot within the District.

Section 8. Payment of Assessments. The assessments for the Project may be paid in ten (10) equal annual installments of principal, with interest on unpaid principal. The installments of assessments will begin in 2005 and end in 2014, and the rate of interest to be paid on unpaid principal shall not exceed 6.00% *per annum*, as shall later be determined by the City Council and set forth in the assessing ordinance. The assessments will be due and payable without demand within sixty (60) days from and after the final publication of an ordinance assessing the cost of said improvements against the real property in the District. If any owner of such real property fails to pay the whole of such assessment against his or her property within said sixty (60) days, then the whole cost of the improvements so assessed against such property shall be payable in not more than ten (10) equal annual installments of principal, with interest on unpaid principal as aforesaid. The first of such installments shall be due and payable at such time as may be determined in and by the assessing ordinance, and the remainder of said installments shall be due and payable successively on the same day in each year thereafter until all are paid in full.

Section 9. Repealer. All ordinances, orders, bylaws, resolutions, or parts thereof inconsistent or in conflict herewith are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 11. Effective Date. This ordinance shall take effect upon its passage after second reading.

Section 12. Publication. 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 25<sup>th</sup> day of October, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8<sup>th</sup> day of November, 2004.

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Nancy McNally, Mayor

ATTEST:

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Michele Kelley, City Clerk

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_

COUNCILLOR'S BILL NO. **76**

SERIES OF 2004

INTRODUCED BY COUNCILLORS  
\_\_\_\_\_

A BILL

**FOR AN ORDINANCE CREATING THE RANCH SUBDIVISION SPECIAL IMPROVEMENT DISTRICT NO. 2, ORDERING THE CONSTRUCTION, INSTALLATION, AND ACQUISITION OF CERTAIN PERIMETER WALL IMPROVEMENTS, TOGETHER WITH NECESSARY INCIDENTALS, AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the City of Westminster, Colorado (the "City") is a municipal corporation and political subdivision of the State of Colorado organized and existing as a home rule city pursuant to authority in Article XX of the Colorado Constitution; and

WHEREAS, pursuant to Part 5 of Article 25, Title 31, Colorado Revised Statutes, the City has the power to create improvement districts for the purpose of constructing, installing, or acquiring local improvements of every character within such districts, and to assess the costs thereof, wholly or in part, upon the property specially benefited within such districts; and

WHEREAS, on or about September 16, 2004, the City received a petition (the "Petition") requesting the organization of a special improvement district, designated The Ranch Subdivision Special Improvement District No. 2 (the "District"), for the construction, installation, and acquisition of perimeter wall improvements, together with necessary incidentals (the "Improvements"), the entire costs thereof to be assessed against the property in the Ranch Subdivision Filing No. 2, as identified in the Petition; and

WHEREAS, the Petition is signed by the owners of property proposed to be assessed for more than sixty percent (60%) of the entire costs estimated to be assessed; and

WHEREAS, by Resolution No. 59, Series of 2004, adopted by the City Council at a meeting thereof held September 27, 2004, the City Council made and entered a preliminary order for the Improvements (the "Resolution"); and

WHEREAS, the City Council scheduled and gave notice of a public hearing concerning the creation of the District and the construction, installation, and acquisition of the improvements by publication in at least one issue of *The Westminster Window*, a newspaper of general circulation in the City, at least twenty (20) days prior to the date of the hearing, and in addition, notice was mailed by first-class mail to each property owner to be assessed for the cost of improvements who is included within the proposed District, on or about the date of such publication; and

WHEREAS, at the time and place set forth in the notice, the City Council met in open session for the purpose of hearing any complaints or objections that might be made against the proposed District or the improvements to be constructed or installed.

NOW THEREFORE, THE CITY OF WESTMINSTER, COLORADO ORDAINS AS FOLLOWS:

Section 1. Findings. The above and foregoing recitals are incorporated herein by reference and are adopted as findings and determinations of the City Council. The City Council further finds and

determines that the improvements proposed to be constructed, installed and acquired confer a special benefit upon the real property in the District to be assessed for the costs thereof and a general benefit to the City as a whole. The City Council further finds and determines that there exists a necessity for the creation of The Ranch Subdivision Special Improvement District No. 2 in the City, and for the construction and installation therein of certain perimeter wall improvements, together with necessary incidentals, as provided in the Resolution.

Section 2. Creation of District. A special improvement district for the construction, installation, and acquisition of certain perimeter wall improvements, together with necessary incidentals, hereinafter described (the "Project"), is hereby created and established in accordance with the laws of the State of Colorado, and shall be known and designated The "Ranch Subdivision Special Improvement District No. 2 (the "District"). All proceedings heretofore taken and adopted in connection with the District are hereby ratified, approved, and confirmed.

Section 3. Approval of Engineering Plans. The reports of the engineer for the Project, together with all of the details, specifications, estimates, maps, and schedules thereto attached or appended, as on file in the office of the Community Development Department of the City, are hereby approved and adopted. The improvements and estimated assessments are described in more detail in the preliminary engineering report on file in the office of the City of Westminster Community Development Department.

Section 4. Boundary of District. The area to be included within the District will consist of all of the lots in The Ranch Subdivision Filing No. 2, a replat of a portion of Front Range Country Club Second Filing Subdivision, and a part of the Sections 4 and 5, Township 2 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, City of Westminster, County of Adams, State of Colorado, more particularly described as follows:

Lots 1-38, inclusive, Block 1,  
Lots 1-16, inclusive, Block 2,  
Lots 1-31, inclusive, Block 3,  
Lots 1-17, inclusive, Block 4.

Only the property described above will receive an assessment for the costs of the improvements.

Section 5. Description of Project. The Project shall consist of a single-thickness brick perimeter wall, with foundation, cap, and major and minor brick columns, having elevations varying from 6 feet to 12 feet above existing grade, located in the right-of-way of 120<sup>th</sup> Avenue, extending approximately 881 linear feet along the north boundary of the District to an angled entryway at Zuni Street, thence approximately 258 linear feet along the west boundary of Block 1, The Ranch Subdivision Filing No. 2, in the right-of-way of Zuni Street, south from the angled entryway at 120<sup>th</sup> Avenue to the north right-of-way line of 119<sup>th</sup> Avenue, all in the City of Westminster, Adams County, Colorado. The improvements include demolition and disposal of the existing perimeter fence currently at the above locations, and replacement of sod disturbed during construction.

Section 6. Improvements Authorized. The construction, installation and acquisition of the Project is hereby authorized and ordered. The materials to be used for the construction, installation and acquisition of the Project shall be in accordance with the engineering plans and specifications.

Section 7. Assessment of Costs. The estimated probable cost of the Improvements to be assessed against the property in the District, including capitalized insurance and maintenance of the Improvements for a period of ten (10) years, engineering, and the costs of organizing the District, is \$268,984.00. Said amount is expected to be assessed against the property in the District on per-lot basis. The estimated probable cost per lot is \$2,441.00. In the judgment of the City Council the foregoing method of assessment reflects the benefits which accrue to the properties to be assessed, as shown by the estimates of the Engineer. Such cost

estimates and approximate amounts to be assessed have been formulated in good faith on the basis of the best information available, but are not binding. After a hearing on the assessments the City Council may make such modifications and changes to the assessments as may seem equitable. The cost of the Project shall be assessed, by ordinance, upon all real property within the District based upon the benefit conferred by the improvements upon each lot within the District.

Section 8. Payment of Assessments. The assessments for the Project may be paid in ten (10) equal annual installments of principal, with interest on unpaid principal. The installments of assessments will begin in 2005 and end in 2014, and the rate of interest to be paid on unpaid principal shall not exceed 6.00% *per annum*, as shall later be determined by the City Council and set forth in the assessing ordinance. The assessments will be due and payable without demand within sixty (60) days from and after the final publication of an ordinance assessing the cost of said improvements against the real property in the District. If any owner of such real property fails to pay the whole of such assessment against his or her property within said sixty (60) days, then the whole cost of the improvements so assessed against such property shall be payable in not more than ten (10) equal annual installments of principal, with interest on unpaid principal as aforesaid. The first of such installments shall be due and payable at such time as may be determined in and by the assessing ordinance, and the remainder of said installments shall be due and payable successively on the same day in each year thereafter until all are paid in full.

Section 9. Repealer. All ordinances, orders, bylaws, resolutions, or parts thereof inconsistent or in conflict herewith are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 11. Effective Date. This ordinance shall take effect upon its passage after second reading.

Section 12. Publication. 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 25<sup>th</sup> day of October, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8<sup>th</sup> day of November, 2004.

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Nancy McNally, Mayor

ATTEST:

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Michelle Kelley, City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Councillors Bill No. 77 re Corley Coffee Lease at Sun Microsystems Ice Centre

**Prepared By:** Bill Walenczak, Director of Parks, Recreation and Libraries

**Recommended City Council Action**

Pass Councillors Bill No. 77 on first reading, authorizing the City Manager to sign a lease agreement between the City of Westminster, Hyland Hills Park and Recreation District (through its recreational facilities enterprise) and Corley Coffee Reserve Inc. for the lease of approximately 1,950 square feet of space in the Sun Microsystems Ice Centre.

**Summary Statement**

- Corley Coffee plans to operate this space as a coffee/juice shop and lounge serving a variety of coffee's, juice beverages, smoothies, protein bars, baked goods and ice cream.
- They also plan to offer a service for cleaning sports gear (primarily hockey).
- This was formerly leased to Quest Diagnostics which vacated the space in 2003 due to lack of sufficient business at this location.
- City Staff believes that this type of use is compatible with other activities and uses at the Promenade.
- The agreed-to rent for this space is \$3,575.00 per month, (or \$22 per square foot) which Staff believes is very good based on current market conditions.
- The proposed use of this space is in compliance with the current zoning.
- The Hyland Hills Board of Directors has reviewed this lease agreement and approved the terms as presented.
- In addition, this agreement has been reviewed and is recommended for approval by the City Attorney's Office.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Councillors Bill re Corley Coffee Lease at Sun Microsystems Ice Centre – Page 2

### **Policy Issue**

Does City Council believe that a coffee shop/juice bar is an appropriate use for the retail space at the Sun Microsystems Ice Centre?

### **Alternative**

City Council could reject approving this lease agreement and direct Staff to seek a lessee with a different use. Staff believes this is a good use and the rental income will assist in improving the Ice Centre's bottom line.

### **Background Information**

On March 5, 2001 City Council approved a lease between the City, Hyland Hills enterprise and Quest Diagnostics to operate a clinical testing laboratory at this site. Unfortunately, with the downturn in the economy, the company had to close down several of these testing laboratories.

Corley Coffee Reserve Inc. contacted Bob Bebber, Manager of the Sun Microsystems Ice Centre and inquired about leasing the space for a coffee shop/juice bar. Mr. Bebber and Greg Mastriona, Executive Director of Hyland Hills Park and Recreation District met with representatives of Corley Coffee Reserve and negotiated a very attractive lease rate for the enterprise. City Staff has reviewed this agreement and concurs with Hyland Hills Staff's recommendation to enter into a lease agreement with Corley Coffee Reserve.

Highlights of the proposed lease agreement are as follows:

- The initial term of the lease is for 5 years.
- The tenant shall operate the premises as a coffee shop/juice bar as well as selling baked goods and ice cream.
- A rental payment of \$3,575.00 (\$22.00 per square foot) shall be paid each month in advance.
- Total revenue generated over the lease term is anticipated to be \$214,500.00.
- The tenant shall pay all charges for natural gas and electric, trash removal, and 6 percent of the Ice Centre's common area maintenance fee monthly.
- Tenant shall maintain the premises, including HVAC systems.
- Tenant shall provide a policy of general liability insurance insuring the landlord against any liability arising out of ownership use, occupancy, or maintenance of the premises. Such insurance shall be in the amount of \$1 million per occurrence.
- At the end of the lease term, the tenant may elect to extend the lease for an additional 60 months at the original monthly lease rate, plus the percentage of increase based upon the Consumer Price Index Urban, for Denver, Colorado.
- The tenant shall make no improvements to the premises without prior written consent of the landlord.

Other lessees at the Sun Microsystems Ice Centre include Jackson's All-American Grill and AT&T Wireless.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachment



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **77**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE APPROVING A CONCESSION AGREEMENT BETWEEN THE CITY, HYLAND HILLS PARK AND RECREATION DISTRICT, AND CORLEY COFFEE RESERVE INC. FOR THE LEASE OF A PORTION OF THE ICE CENTRE AT THE WESTMINSTER PROMENADE FOR A COFFEE SHOP/JUICE BAR.

WHEREAS, City Council previously authorized an intergovernmental agreement between the City and the Hyland Hills Park and Recreation District for the purpose of constructing and operating an Ice Centre at the Westminster Promenade; and

WHEREAS, the City and Hyland Hills have selected Corley Coffee Reserve Inc. as one of the tenants at the Ice Centre's retail space; and

WHEREAS, the final form of the lease agreement has been agreed to by the parties; and

WHEREAS, the City Charter requires such leases to be approved by ordinance.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: The Lease Agreement between the City, Hyland Hills Park and Recreation District, acting by and through its Recreational Facilities Enterprise, and Corley Coffee Reserve Inc. for the lease of a portion of the Ice Centre at the Westminster Promenade for a coffee shop/juice bar is approved.

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

Section 3: 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 25<sup>th</sup> day of October, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8<sup>th</sup> day of November, 2004.

ATTEST:

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Mayor

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City Clerk

## LEASE

This Lease, made and entered into this \_\_\_ day of September, 2004, by and between HYLAND HILLS PARK AND RECREATION DISTRICT and the CITY OF WESTMINSTER, hereinafter collectively referred to as "Landlord" and CORLEY COFFEE RESERVE, INC., a Colorado corporation, hereinafter referred to as "Tenant".

### 1. LEASED PREMISES:

Upon the terms, conditions, covenants, limitations and agreements, and at the rental and for the terms as hereinafter set forth, Landlord hereunto leases unto Tenant and Tenant hereby leases from Landlord the Leasehold Premises ("Premises"), containing approximately 1,950 square feet of floor area, at Landlord's Sun Microsystems Ice Centre ("Ice Centre"), 10710 Westminster Blvd., Jefferson County, Colorado, as more fully described in Exhibit A attached hereto.

### 2. TERM:

2.1 The term of this Lease and the right of Tenant to take possession and occupy the Premises, pursuant to this Lease, shall commence at 12:01 a.m. on the \_\_\_ day of \_\_\_\_\_, 2004, and, unless sooner terminated or later extended, as provided herein, shall expire at 12:00 a.m. on a date which is the last day of the 60th month following the rental commencement date as more fully set forth in paragraph 4.1, below.

### 3. USE OF PREMISES:

3.1 Tenant shall occupy, use and operate the Leasehold Premises as a coffee/juice shop and lounge serving a variety of coffees and juice beverages, smoothies, protein bars and other supplements, baked goods, desserts and ice cream, the operation of gear cleaning equipment such as a SaniSport system, and any other associated use (collectively, the "Permitted Use"). Notwithstanding anything in the foregoing to the contrary, Tenant shall not have the right to sell Red Bull energy drinks from the Leasehold Premises during the term of this Lease. Tenant acknowledges that Landlord has an existing contract with Pepsi Cola Metropolitan Bottling, Inc. ("Pepsi") dated February 22, 1999 (the "Pepsi Contract"), paragraph 2 of which limits the type of beverage products that may be sold at any of Landlord's facilities. Landlord acknowledges that Tenant and Pepsi entered into a letter agreement dated September 8, 2004 (the "Letter Agreement") pursuant to which Pepsi has authorized Tenant to sell certain of the restricted beverage products at the Leasehold Premises. Tenant shall not sell or otherwise provide any products at the Leasehold Premises which would violate the Pepsi Contract, unless otherwise permitted by the Letter Agreement.

3.2 Tenant shall not:

a. Permit any unlawful practice to be carried on or committed on the Leasehold Premises;

b. Make any use or allow the Leasehold Premises or any part thereof to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by Landlord, for any purposes other than those hereinabove specified, nor for any purpose that shall constitute a public or private nuisance, shall be in violation of any governmental laws, ordinances or regulations, shall be contrary to any restrictive covenants, agreements or limitations of record, or shall render the premises, or any part thereof, uninsurable with standard insurance at ordinary rates. Notwithstanding the foregoing, Landlord believes and understands that use of the Leased Premises for the Permitted Use will not invalidate or increase the rate of Landlord's insurance, and is not contrary to any restrictive covenants, agreements or limitations of record.

c. Keep or permit to be kept or used on the Leasehold Premises any flammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the Lessor or the Lessor's insurance carriers without obtaining prior written consent of the Lessor, except for small quantities of cleaning and cooking products incidental to the permitted uses described in this Agreement;

d. Use the Leasehold Premises for any purpose which creates a nuisance or injures the reputation of the Leasehold Premises or the Lessor;

e. Commit or suffer any waste in or about the Leasehold Premises;

f. Permit any odors to emanate from the Leasehold Premises in violation of any local, state or federal law or regulation;

g. Use any portion of the Leasehold Premises for storage of other purposes except as is necessary and required with its use specified in this Agreement; or

h. Conduct, or allow to be conducted, gambling on site.

#### 4. RENT AND SECURITY DEPOSIT:

4.1 Tenant shall pay to Landlord as minimum rent during the term of this Lease the sum of Three Thousand Five Hundred Seventy-Five and No/100ths U.S. Dollars (\$3,575.00) per month, together with any additional rents as may hereinafter be reserved. Said rental, exclusive of any additional rents, shall be payable in advance, commencing on rental commencement date, and on that same date of the month for every month of the rental term thereafter. The rental commencement date shall be one month after the earliest of: (1) the day of completion of tenant finish construction and Tenant opening for business from the Leasehold Premises, or; (2) one hundred twenty (120) days from execution of this Agreement. Every such payment referenced above shall be payable at the office of Landlord, 1800 West 89th Avenue, Denver, Colorado 80260, without notice or demand whatsoever. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Lease in the event Tenant is unable to obtain all licenses and permits necessary for Tenant to operate its business in the Premises, despite using reasonable efforts to obtain the same, within sixty (60) days after the date hereof.

4.2 Tenant shall pay to Landlord, upon execution of this Agreement, the sum of \$5,000.00 as a security deposit. Said security deposit will be returned, together with interest thereon, minus any amounts retained and applied to damages, ordinary wear and tear excepted, caused by Tenant or rent owing to Landlord from Tenant, upon completion of all necessary repairs to the Premises or within ninety (90) days of termination of the this Lease, whichever comes earlier.

4.3 Any other sums of money or charges to be paid by the Tenant, pursuant to the provisions of this Lease, shall be designated as "additional rent". A failure to pay additional rent shall be treated in all events as the failure to pay rent.

4.4 If the payment of any rent or any other monies payable under the terms of this Lease shall be more than ten (10) days in arrears, Tenant agrees, upon demand of Landlord, to make a late payment charge equivalent to five percent (5%) of the amount which remains late and unpaid. Notwithstanding anything in the foregoing to the contrary, Tenant shall not be required to pay any late payment charge, if not more often than twice during any calendar year, Tenant pays any additional rent which is delinquent within ten (10) days after written notice from Landlord.

## 5. OCCUPANCY OF THE PREMISES:

Occupancy of all or a part of the Premises by Tenant shall be deemed an acceptance of the same in good and suitable condition by said Tenant. Notwithstanding the foregoing, Landlord represents and warrants that to the best of its knowledge, as of the delivery of the Premises to Tenant, the Premises shall be in compliance with all applicable laws, rules and regulations, including, without limitation, the Americans with Disabilities Act.

## 5. PARKING:

Landlord agrees that Tenant, its employees and customers shall have the non-exclusive right to use the parking lots adjoining and adjacent to the Ice Centre together with other patrons of the Premises.

## 7. UTILITIES:

Tenant shall pay all charges for, gas and electrical utilities and trash removal for the Premises. In addition, Tenant shall pay to Landlord 6.0% of the Ice Centre's total expenses for real estate taxes, common area maintenance and insurance, payable monthly; provided that common area expenses shall not include utilities, trash removal or any other expenses for which Tenant is billed directly or separately. Total charges will change year to year based on the actual cost of providing the common area maintenance services and snow removal. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to contribute to any costs incurred in connection with snow removal from the parking lots of the Ice Centre.

Landlord, not later than February 1 of each year of term of this Agreement, shall provide Tenant with an itemized statement of the Ice Centre's expenses for real estate taxes, common area maintenance and insurance incurred by Landlord during the preceding calendar year. To the extent such accounting reveals that the total of Tenant's monthly payment exceed 6.0% of such expenses during the preceding calendar year, Landlord shall credit such overpayment against the next due monthly rental payments.

## 8. MAINTENANCE AND REPAIRS:

8.1 Tenant shall keep and maintain the Premises, including all sewer and water connections and HVAC systems which exclusively serve the Premises, in good condition and repair at the sole expense of Tenant and, at the expiration of this Lease, Tenant shall surrender and deliver up the said Premises in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as said Premises were accepted by Tenant at the commencement of this Lease. Landlord shall transfer and assign to Tenant any and all warranties on said sewer and water connections and HVAC system for the term of this Lease. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to replace the HVAC unit, carpeting or water heater during the term of this Agreement.

8.2 Tenant shall keep the Premises clean and in the sanitary condition required by the ordinances and health and police regulations of the City of Westminster, County of Jefferson and State of Colorado. Tenant shall neither permit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Premises.

8.3 If Tenant shall fail or refuse to complete or perform any maintenance, repairs or upkeep required pursuant to the terms of this paragraph 8 within fifteen (15) days after written request by Landlord so to do, Landlord may cause such maintenance, repairs or upkeep to be made or done and may thereafter charge the reasonable cost thereof to Tenant and the same shall be and constitute additional rent due hereunder.

## 9. LIENS AND CLAIMS AGAINST LANDLORD:

9.1 Tenant shall pay, when due, for all work performed on or for the benefit of or materials furnished to, the Premises by any person at Tenant's request. In this regard, Tenant shall indemnify and hold harmless and defend Landlord from any and all liability and expense resulting from any lien, claim of lien, or claim against Landlord arising from such work or labor. Tenant shall have the right to contest the validity of such lien, claim of lien, or claim.

9.2 Tenant shall not contract for the performance of any such labor or the acquisition of or delivery of any such materials in connection with, or the installation of any such improvements unless Tenant shall first obtain Landlord's written approval thereof which approval shall not be unreasonably withheld, conditioned, or delayed.

## 10 INSURANCE:

10.1 Tenant shall, at Tenant's expense, obtain and keep in force, during the term of this Lease, from an "A-" or better rated insurance carrier:

a. A policy of commercial general liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in a amount of not less than \$1,000,000.00 per occurrence and shall further include contractual liability, products liability, fire, broad form property damage and personal injury coverage. The limit of any such insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto.

b. Worker's compensation insurance coverage for all employees as required by Colorado law.

c. All risk insurance coverage for all insurable equipment, furnishings, and fixtures owned, operated or leased by Tenant for the full insurable replacement value and personal property insurance for replacement value.

10.2 Hyland Hills Park and Recreation District and the City of Westminster and their respective elected officials, and employees shall be included as additional insureds by endorsement, to the General Liability policy.

10.3 Tenant shall deliver to Landlord, prior to right of entry, and make available for examination by Landlord at all times during the term of this Lease, copies of the policies of insurance required hereunder or certificates evidencing the existence and amount of such insurance with loss payable clauses satisfactory to Landlord.

10.4 Such policy or policies shall provide that the same may not be canceled or amended except upon thirty (30) days written notice by insurer to Landlord.

10.5 Tenant covenants that it will neither permit nor suffer the Premises or the walls or floors thereof to be endangered by overloading, nor said Premises to be used for any purpose which would render the insurance void or the insurance risk more hazardous.

10.6 Tenant will indemnify, defend and hold Landlord, its officers, directors and agents harmless from any and all claims by third parties (including without limitation, all costs, actions, proceedings, liabilities, judgments, expenses, damages and reasonable attorneys' fees) which arise out of or in connection with: (a) the Tenant's breach of this agreement or any representation or warranty made by the Tenant herein; (b) any act or omission to act of the Tenant or its employees, officers or agents in the Premises, except to the extent that the act or omission is caused by Landlord; (c) any act or omission to act of any vendor, promoter, or subtenant of the Premises or other contractor of Tenant in the Premises, except to the extent that the act or omission is caused by Landlord; or, (d) any personal injury or property damage occurring at or about the Premises, except to the extent that the injury of damage is caused by the negligence or actions or omissions of Landlord.

#### 11. DAMAGE BY FIRE OR OTHER CASUALTY:

11.1 Unless as set forth in subparagraph 11.2, below, this Lease and all agreements, covenants, terms and conditions contained herein shall remain in full force and effect notwithstanding damage to or destruction of any of the furniture, fixtures, inventory or equipment maintained upon the Premises and, regardless of the nature or extent of the damage and Tenant shall not be entitled to any reduction in or abatement of the rental hereinabove reserved, nor shall Tenant be entitled to any reduction, abatement, or postponement of any of the monthly rental installments hereinabove reserved for or on account of such damage or destruction.

11.2 However, in the event that such damage or destruction was not caused by any act of Tenant, its officers, employees, or agents, than in that event, Landlord shall inform Tenant, within thirty (30) days of the date of destruction or damage, of Landlord's intent to remedy such damage or destruction by replacement or renovation of the damaged property (except for such damage covered under the policies of insurance more fully described in paragraph 10, above). If Landlord does not replace or renovate the non-covered damage or destruction or if the Premises cannot be reasonably restored to the condition existing at the time of the damage or destruction, either within ninety (90) days of such damage or destruction, Tenant may, at Tenant's option terminate this Lease without further obligation on Tenant's part and Tenant shall vacate the Premises within twenty (20) days of such decision to terminate or Tenant may elect to continue the Lease and shall cooperate fully with Landlord in restoring/repairing the damage or destruction. If Tenant elects to so continue the Lease, and if the Premises are untenable, Tenant shall receive an apportionment of the rent until the Premises are tenable.

#### 12. ASSIGNMENT AND SUBLETTING:

12.1. Tenant may not assign, in whole or in part, this Lease or any interest therein, nor may Tenant sublet all or any part of the Premises without the prior written consent of Landlord being first had and obtained, which consent shall not be unreasonably withheld, conditioned or delayed; provided that the proposed transferee's use of the Premises is, in Landlord's opinion: (a) lawful, (b) consistent with the Permitted Use; (c) consistent with the general character of business carried on by tenants of the Ice Centre; (d) not in conflict with any exclusive rights or covenants not to compete in favor of any other tenant or proposed tenant of the Ice Centre; (e) not going to increase the likelihood of damage or destruction of the Premises or the Ice Centre; (f) not going to increase the rate of wear and tear to the Leased Premises or the Common Areas; (g) not likely to cause an increase in the insurance premiums for insurance policies applicable to the Building; and (h) not going to require new tenant improvements incompatible with the then existing Building systems and components. Any assignment or sublease in violation of the provisions of this paragraph shall be null, void and of no effect whatsoever, regardless of the fact that Landlord may have received other sums of money or services from the proposed assignee or sublessee. Any sum so received shall be deemed to have been received from Tenant.

12.2 No attempted assignment or attempted subletting of all or any part of the Premises shall relieve Tenant from any of its obligations under the provisions of this Lease, including the payment of rent and any notice required to be given by the provisions of this Lease shall be deemed to be properly given to all putative assignees and putative sublessees when given to Tenant as herein provided.

12.3 Tenant may not grant any easement or license to any person or entity not a party hereto for any reason whatsoever without the express written consent of Landlord.

12.4 Notwithstanding the foregoing, Tenant may assign this Lease or any renewal thereof or sublet the Premises or any portion of the Premises without Landlord's consent and without Tenant incurring any liability, fees or costs relating to assignment or subleasing to: any corporation which controls, is an affiliate of, or is controlled by or is under common control with Tenant; to any corporation resulting from a merger or consolidation with Tenant; or, to any person or entity which acquires substantially all of the assets of Tenant in the normal course of business, provided that, in each case: (1) the use remains the same or substantially the same as is stated in paragraph 3.1, above; (2) the assignee or sublessee assumes, in full, the obligations of Tenant under this Lease; and, (3) Tenant remains fully liable under this Lease.

### 13 SURRENDER OF LEASEHOLD PREMISES:

Upon the expiration or other termination of this Lease or any extension thereof, Tenant shall quit and surrender the Premises to Landlord in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as when said premises were accepted by Tenant at the commencement of this Lease. Tenant's obligation to observe or perform the provisions of this paragraph shall survive the expiration or termination of this Lease.

### 14. HOLDING OVER:

If, after the expiration or other termination hereof, Tenant shall remain in possession without a written agreement therefor, such holding over shall be deemed to be upon a month-to-month tenancy under the same terms, conditions and provision contained herein, and for a monthly rental equal to one hundred fifty percent (150%) of the amount of the last monthly installment of rent and additional rent paid pursuant to the terms hereof.

### 15 EXTENSION OF LEASE:

15.1 If, at the end of the lease term set forth in paragraph 2, above, Tenant shall not be in default of any of the provisions of this Lease, the term of this Lease shall be automatically extended for an additional sixty (60) months. The monthly rental for the first 12 months of such extension, shall be that amount computed by applying an increase to the original monthly rental of Three Thousand Five Hundred Seventy-Five and No/100ths U.S. Dollars (\$3,575.00), equal to the percentage increase in the Consumer Price Index Urban, All Items, for Denver, Colorado, for each twelve month period of the original Lease term, as if such original monthly rental was actually increased every twelve months during the initial term of the Lease. Thereafter, the monthly rental for each successive 12 month period of this extension shall be monthly rental for the preceding twelve months increased by applying an increase to said monthly rental equal to the percentage increase in the Consumer Price Index Urban, All Items, for Denver, Colorado for the preceding twelve month period, provided, however, that if Tenant shall give Landlord written notice, no later than one hundred and twenty (120) days prior to the expiration of the term of this Lease, of its desire not to extend the term of the Lease, this paragraph shall be null and void and of no effect. Additional extensions beyond the automatic extension shall be subject to negotiations between the parties.

16. DEFAULTS BY LESSEE AND REMEDIES:

16.1 Subject to the other provisions of this paragraph, each of the following events shall constitute a default by Tenant and a breach of this Lease:

a. If the rent, additional rent, or any part thereof, as herein reserved, shall be unpaid within five (5) days after such amount is due.

b. If Tenant does not comply with any provision of this Lease which imposes an obligation upon Tenant and fails to cure such failure within thirty (30) days after written notice from Landlord.

c. If Tenant should violate or fail to comply with any of the statutes, ordinances, rules, orders, regulation or requirements, as the same exist or may hereinafter be established, of the government of the United States of America, the State of Colorado, County of Jefferson and the City of Westminster, or of any bureau, department or subdivision thereof applicable to Tenant's use of the Premises.

d. If the Premises should be abandoned or vacated and Tenant fails to pay rent or additional rent.

e. If Tenant should attempt to sell, assign, sublet or mortgage all or any part of either the Premises or the leasehold interest herein created in violation of Article 12.

f. If by operation of law this Lease should be transferred to, or pass to, or devolve upon, any person or entity other than Tenant in violation of Article 12.

g. If Tenant should be adjudicated as bankrupt or insolvent and such proceeding should not be vacated within thirty (30) days.

h. If Tenant should file a petition in bankruptcy or make a general assignment for the benefit of creditors.

i. If Tenant should file a petition or answer seeking reorganization or readjustment under Federal bankruptcy laws.

j. If a Receiver or Trustee should be appointed with respect to all or substantially all property of Tenant in any suit or proceeding against Tenant or in any bankruptcy proceeding.

k. If any execution or attachment shall be issued against Tenant, or any of Tenant's property, whereby someone other than Tenant shall take or occupy the Premises.

16.2 Upon the occurrence of any of the events of default set forth above, then, and at any time thereafter, Landlord may, at Landlords' sole option and in addition to all other rights available to Landlord at law or equity or contained in this Lease, either:

a. Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified herein. On the date specified in such notice, Tenant's right to use, occupancy and possession of the Premises shall cease and this Lease shall thereupon be terminated; or

b. Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate. Should Landlord take possession hereunder pursuant to legal proceedings or pursuant to any notice provided by law or this Lease, Landlord may (1) terminate this Lease, or (2) from time to time without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises but reserving to Landlord the right at any time to elect to terminate this Lease as paragraph 22.2 (a) provides.

16.3 In the event Landlord shall elect to terminate this Lease, Landlord shall give Tenant thirty (30) days written notice of the existence and nature of such default and of Landlord's election so to terminate. If such default exists at the expiration of such thirty (30) day period, and Landlord shall not have waived the same by written instrument, this Lease, and the term hereof, together with any and all right, title and interest in the Premises as herein granted to Tenant, shall terminate on the date fixed in said notice with the same force and effect (except as to the continuance of Tenant's liability) as if the date fixed by notice were the expiration of the term originally granted herein.



16.4 In the event Landlord shall elect to retake the Premises without terminating this Lease, Landlord shall give Tenant thirty (30) days written notice of the existence and nature of any such default and of Landlord's election to retake under the terms hereof. If such default exists at the expiration of said thirty (30) day period, and Landlord shall not have waived the same by written instrument, Landlord may, without terminating this Lease, retake possession of the Premises.

16.5 In the event that Landlord does not elect to terminate this Lease as permitted in paragraph 16.2(a), but on the contrary elects to take possession as provided in paragraph 16.2(b), then such possession of the Premises by Landlord shall not relieve Tenant of its liability and obligation under this Lease, all of which shall survive such repossession. In the event of such repossession, Tenant shall pay the fixed rent and all additional rent as herein provided up to the time of termination of this Lease (which Landlord can declare at any time while Tenant remains in default), and thereafter Tenant, until the end of what would have been the term of this Lease in the absence of such repossession, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord as liquidated current damages:

a. The fixed rent and additional rent as herein provided which would be payable hereunder if such possession had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation all repossession costs, legal expenses and attorneys' fees and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord on the days on which the fixed rent would have been payable hereunder if Landlord had not repossessed, and Landlord shall be entitled to receive the same from Tenant on each such day.

b. If Tenant breaches or defaults any term of this Lease and abandons or vacates the Premises before the end of the term hereof in violation of Section 16.1, or if Tenant's right to possession is terminated by Landlord because of a breach or default of this Lease, Landlord may recover from Tenant a judgment from a court of law having appropriate jurisdiction, in addition to any other damages provided for at law, in equity, in this Lease, or otherwise, a sum equal to the unpaid lost rent for the balance of the rental term, or any exercised extension thereto, minus the amount of such rental loss for the same period the Tenant proves could be reasonably avoided.

16.6 Tenant shall, at the expiration of the thirty (30) days notice periods set forth above if Tenant has not cured any default, immediately quit and surrender to Landlord the entire Premises, and Landlord may enter into or repossess the Premises either by force, summary proceedings, or otherwise. In the event of repossession by Landlord, Tenant shall have an additional five (5) day period to remove from the Premises all of Tenant's furniture, fixtures, inventory or equipment then located upon said Premises. At the expiration of such five (5) day period Landlord may, without notice to tenant, sell such of Tenant's inventory, furniture, fixtures or equipment as then remain upon the Premises in such manner and for such amount as Landlord may deem advisable. Thereafter, Landlord shall remit the proceeds of such sale, after deduction for the costs of the sale and the amount owed to Landlord pursuant to the term of this Lease, to Tenant.

#### 17. LESSEE'S BUSINESS OPERATIONS:

Intentionally deleted.

#### 18. IMPROVEMENTS TO LEASEHOLD PREMISES:

18.1 Except for the initial tenant improvements to be constructed by Tenant pursuant to paragraph 18.3 below, Tenant shall make no improvements to the Premises without the written consent of Landlord and only upon such terms and conditions as set forth by Landlord. Notwithstanding the foregoing, Tenant shall have the right to make interior alterations and other improvements which do not affect the structure of the Premises and cost less than \$15,000 during any calendar year, without the written consent of Landlord.

All such improvements other than Tenant's personal property, trade fixtures, furniture, inventory and equipment, however denominated, shall be and remain the property of Landlord and may not be removed by Tenant at any time, from the Premises, without the express written consent of Landlord, except for those improvements which can be removed by Tenant without damage to the Premises.

18.2 For and on account of tenant finish, Landlord shall credit to the reserved rent owing from Tenant to Landlord, for the first 24 months commencing from the rental commencement date as set forth in paragraph 4.1, above, the amount of One Thousand Two Hundred Eighteen and 75/100ths U.S. Dollars (1,218.75) per month. However, if this Lease shall terminate for any reason other than Landlord's default or Tenant shall abandon the Leasehold Premises, the obligation of Landlord to make such credit shall immediately cease and terminate.

18.3 Following delivery of possession of the Premises to Tenant, Tenant shall have the right to construct tenant improvements in the Premises pursuant to plans and specifications approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall, in writing, approve or provide detailed objections to any plans or other submittals provided by Tenant within ten (10) days after receipt thereof. Landlord, at no expense to Landlord, shall reasonably assist Tenant in obtaining any permits, licenses or other approvals required by Tenant in connection with the tenant improvements and the Permitted Use.

#### 19. SIGNAGE:

19.1 Tenant may cause to be installed one or more interior and exterior signs, at no additional rent or charge by Landlord to Tenant, in such design(s) and location(s) as shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Such sign(s) shall be and remain the property of Tenant and Tenant shall be solely responsible for the purchase, installation, operation and maintenance of the sign(s) and all associated costs. Tenant shall maintain all signs or advertisements approved by Landlord in good and attractive condition. Landlord shall assist with the electrical hook-up of said sign(s). Upon the termination of the Lease, unless otherwise agreed to by Landlord, Tenant shall cause such sign(s) and any associated improvements to be immediately removed from the premises and repair any resulting damage to the Premises, all at Tenant's expense. All of Tenant's signs shall be in compliance with the requirements of the City of Westminister sign code and any other applicable regulations.

#### 20. RELATIONSHIP OF PARTIES:

Landlord and Tenant are not nor shall they become, by virtue of this Lease, anything other than Landlord and Tenant. Landlord and Tenant are not joint venturers, partners, or agents of one another nor is either party employed by the other.

#### 21. NOTICES:

All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if deposited in the United States mail, registered or certified, postage prepaid, and addressed as indicated below:

Landlord:  
Executive Director  
Hyland Hills Park and Recreation District  
1800 West 89th Avenue  
Denver, Colorado 80221

Tenant:  
Corley Coffee Reserve, LLC  
3765 W. 110th Avenue  
Westminster, Colorado 80031  
Attn: Tom Corley

22. ENTIRE AGREEMENT:

This Lease, with all exhibits and schedules annexed hereto, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, waive, release, discharge, terminate, or effect an abandonment of, this Lease, in whole or in part, unless such executory agreement is in writing and signed by both Landlord and Tenant.

23. SEVERABILITY:

If any provision, sentence, phrase, or word of this Lease, or application thereof to any person or circumstance, shall be held invalid, the remainder of this Lease, or the application of such provision, sentence, phrase or work to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

24. BINDING EFFECT:

Except as is otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the heirs, administrators, devisees, personal representatives, successors and assigns of Landlord and Tenant.

25. WAIVER:

No assent, express or implied, to any breach of any one or more of the covenants and agreements hereof shall be deemed or taken to be a waiver of any other or succeeding breach.

26. SURVIVAL CLAUSE:

All unperformed agreements, covenants and conditions herein contained shall survive the execution, expiration or termination hereof and shall not be merged therewith.

27. PARAGRAPH HEADINGS:

The paragraph headings contained herein are for convenience only and shall in no way change, alter, modify or affect any of the provisions or conditions herein contained.

28. ACKNOWLEDGMENT OF EXAMINATION:

The parties hereto acknowledge that they have carefully read and thoroughly understand the terms and conditions of this Lease. It contains the entire agreement and understanding under which they have entered into this Lease and the results and understandings of all of their negotiations have been merged in this Lease. Tenant and Landlord accept the terms and conditions hereof in all respects and agree to be bound thereby. Each of the parties hereto acknowledge that they have either had benefit of legal counsel in the negotiation and preparation hereof, or, in the alternative, they recognize the need for such counsel but have elected not to seek the same.

29. PERMITS AND LICENSES:

Tenant shall procure, supply, and post in accordance with applicable laws, at its own expense, all permits and licenses necessary for the operation of the Leasehold Premises and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise. Tenant understands and acknowledges that any approval of Tenant improvements does not constitute formal approval by the City of Westminster of any such improvements and that Tenant must proceed through the normal City of Westminster process of all applicable zoning, building and business permits.

### 30. ACCESS AND INSPECTION:

Landlord, its designated agents, employees, servants, and any other person authorized by Landlord may enter the Leasehold Premises, at any reasonable time and with reasonable written notice, for the purpose of inspecting the same. Any entry onto or inspection of the Leasehold Premises by Landlord pursuant to this section shall not constitute interference with the operations of Tenant and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

### 31. OTHER PAYMENT OBLIGATION:

Tenant shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Leasehold Premises, and shall maintain all licenses, municipal, state or federal, required for the conduct of business and shall not permit any of said taxes or fees to become delinquent. Tenant shall pay promptly when due all bills, debts and obligations attributable to the Premises, including but not limited to its portion of charges for water, sewer, light and electricity as set out in Section 7 herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Leasehold Premises and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of Lessor under this Agreement. All such costs and expenses of Tenant are to be borne by Tenant.

### 32. RELATIONSHIP TO TRUSTEE:

32.1 The parties hereto acknowledge that pursuant to that certain Ground Lease Agreement ("Lease"), and that certain Lease Purchase and Sublease Agreement ("Sublease") dated 1998, both by and between the City of Westminster and the City of Westminster Building Authority, the City has leased to the City of Westminster Building Authority the Sun Microsystems Ice Centre building and the improvements located therein and said Building Authority has subleased to the City said building and improvements.

32.2 The parties hereto further acknowledge that the City of Westminster Building Authority has assigned certain of its rights pursuant to the documents described in subparagraph 32.1 and that certain 1998 Mortgage and Indenture of Trust ("Indenture") to the U. S. Bank National Association d/b/a Colorado National Bank, as Trustee.

32.3 The parties hereto further acknowledge that, pursuant to paragraph 13.2 of the above-referenced Sublease:

- a. This Agreement is subordinate to the Lease, Sublease and Indenture;
- b. If a Termination Event occurs (as defined in said Sublease), Tenant, provided Tenant's occupancy is not disturbed, shall pay to the Trustee all rents payable under this Agreement and this Agreement will be assigned to the Trustee;
- c. So long as Tenant is in compliance with the terms of this Agreement, neither the Trustee, the City, Hyland Hills Park and Recreation District, nor the Building Authority shall disturb Tenant's use of the Premises.

32.4 Landlord warrants that nothing in this Agreement violates any terms of the Ground Lease or any associated document, law, or regulation and that Landlord is not in default thereof.

33. ATTORNEYS FEES:

If any dispute shall arise between the parties hereto regarding the interpretation of this lease or any provision thereof or the application of any provision, which dispute results in the filing of any suit or legal proceeding, the party adjudged by the judge or legal officer presiding over such proceedings to be the prevailing party shall be awarded its reasonable attorneys fees and costs from the non prevailing party.

34. DEFAULT BY LANDLORD:

34.1 Landlord's failure to perform or observe any material obligation hereunder which remains uncured for a period of thirty (30) days after the Landlord receives notice from Tenant setting forth in reasonable detail the nature and extent of the Default and identifying the applicable Lease provision(s) constitutes a default by Landlord.

34.2 In addition to any other remedies available at law or equity, Tenant may, upon prior written notice to Landlord, pursue any of the following remedies if Landlord's Default remains uncured pursuant to Paragraph 34.1 hereof:

- a. Set off the reasonable cost of remedying the default against any Rent due, or;
- b. Terminate this Lease and immediately surrender the Premises to Landlord.

34.3 In the event the Ice Centre is closed to the public in excess of thirty (30) days, other than during periods of maintenance and repair, which periods shall not exceed one hundred eighty (180) days, Tenant, at its option, may terminate this Lease.

35. CONSENT:

Throughout this Lease, where Landlord's consent is required, such consent shall not be unreasonably withheld or delayed.

36. EXCLUSIVE:

During the term of this Lease, Landlord shall not permit any space in the Ice Centre to be used by any occupant operating its premises for a premium coffee/juice shop, the sale of general protein and other supplement products (excluding Power Bars and Red Bull energy drinks), and the operation of gear cleaning equipment.

37. PATIO AREA:

During the term of this Lease, Tenant shall have the right to place outdoor seating and tables in the area immediately west of the Premises for use by its customers (the "Outdoor Seating Area"). Tenant, at its sole cost and expense, shall keep the Outdoor Seating Area in a clean and sanitary condition during its use thereof.

LANDLORD:

HYLAND HILLS PARK AND RECREATION DISTRICT

\_\_\_\_\_  
Greg Mastriona, Executive Director

Approved as to legal form: \_\_\_\_\_  
Richard Fuller, Administrative Counsel

CITY OF WESTMINSTER

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

\_\_\_\_\_  
Michele Kelley, City Clerk

Approved as to legal form: \_\_\_\_\_  
City Attorney

TENANT:

CORLEY COFFEE RESERVE, INC.,  
a Colorado corporation

By:  
Name:  
Its:



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Councillor's Bill No. 78 re House Rental Lease for the Strasburg Natural Resource Farm

**Prepared By:** Ron Hellbusch, Special Projects Coordinator

**Recommended City Council Action**

Pass Councillor's Bill No. 78 on first reading authorizing the City Manager to sign the rental lease agreement for the house located at 57401 E. 88<sup>th</sup> Avenue at the City's Strasburg Natural Resource Farm.

**Summary Statement**

- The City of Westminster owns an approximately 3,000 acre farm used for Bisosolids application.
- There are four houses on the 3,000 acre farm, which collectively with the farmland leases generate approximately \$50,000 per year income for the City.
- City Staff has negotiated a lease agreement with tenants, and is seeking City Council approval of the house lease agreement located at 57401 E. 88<sup>th</sup> Avenue.
- This house lease is for a one-year period of time with a monthly rental rate of \$600 and includes a \$600 deposit. Staff has recently surveyed the surrounding market and this rate is competitive with other comparable housing in the area.
- Leasing of property owned by the City must be ratified by ordinance under Section 13.4 of the City's Charter.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issues**

Should the City of Westminster enter into a house lease agreement with the tenants at the City's Strasburg Natural Resource Farm?

**Alternatives**

The City could choose to lease the house to other tenants. Or the City could choose to not lease the house and leave the house vacant. If the City chose to not lease the house the City would not benefit by the income of \$7,200 per year, which will be realized as a result of entering into this house lease agreement.

**Background Information**

Westminster purchased approximately 2,700 acres of farmland north of Strasburg, Colorado, in 1997 and acquired an additional 300 acres in 2001 for the purpose of biosolids application. City Council previously approved leases to various tenants who are farming the cultivated land and tenants who occupy the other three houses.

The combination of leases for the farmland and houses generates an average annual income of approximately \$50,000 per year for the City of Westminster. The farmland and house leases have been cost effectively managed by the City generating income for the City.

Respectively submitted,

Stephen P. Smithers  
Acting City Manager

Attachment



BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2004

COUNCILLOR'S BILL NO. **78**  
INTRODUCED BY COUNCILLORS

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A BILL  
FOR AN ORDINANCE APPROVING A HOUSE LEASE AT THE CITY'S  
STRASBURG NATURAL RESOURCE FARM

WHEREAS, the City owns property in central Adams County for the purposes of applying biosolids; and

WHEREAS, it is in the City's interest to maximize the income generated from such operation by collecting rental income from the houses location on the farm,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager is hereby authorized to execute a house lease with the following parties as summarized below:

Richard Jones and Karen Petersen, for the house located at 57401 E. 88<sup>th</sup> Avenue, Adams County, Colorado at a rental rate of \$600 per month.

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

Section 3. 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 25<sup>TH</sup> DAY OF OCTOBER, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2004

ATTEST:

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Mayor

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City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Resolution No. 68 re Intergovernmental Agreement with the Colorado Department of Transportation, the City of Northglenn and the Regional Transportation District re the 120<sup>th</sup> Avenue Bridge Replacement over I-25

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

**Recommended City Council Action**

Adopt Resolution No. 68 authorizing the City Manager to execute a contract with the Colorado Department of Transportation (CDOT), the City of Northglenn and the Regional Transportation District (RTD) pertaining to the construction and maintenance of a new bridge for 120<sup>th</sup> Avenue over I-25. Further Council action is requested to authorize the payment of up to \$453,526, which includes a 20% contingency, for the total cost of certain architectural and other aesthetic enhancements to the new bridge.

**Summary Statement**

CDOT will replace the 120<sup>th</sup> Avenue Bridge over I-25 beginning in January of 2005. The design that CDOT would normally employ for such a bridge would provide chain link fencing, standard light poles and fixtures, smooth concrete retaining walls and relatively narrow sidewalks. In keeping with the City's recent practice of constructing identity features such as those that were previously incorporated into the designs of bridges located at 136<sup>th</sup> Avenue/I-25, 92<sup>nd</sup> Avenue/US 36, Federal Boulevard/US 36 and Westminster Boulevard/US 36, City Staff has worked with CDOT Staff to include certain aesthetic enhancements in the design of the new 120<sup>th</sup> Avenue bridge.

The enhancements desired by City Staff and the City of Northglenn include decorative railings in lieu of chain link fencing along the edges of the bridge, ornamental street light poles and heads that would be identical to those used on the 136<sup>th</sup> Avenue bridge, split block facing on exposed surfaces of retaining walls in the vicinity of the interchange and an 8-foot wide sidewalk along the south side of the bridge rather than the CDOT standard 6-foot wide walk. Additionally, RTD and the two cities would like to attain a continuous acceleration/deceleration lane in the eastbound direction between the entrance to the Wagon Road Park-n-Ride and the southbound I-25 ramp.

CDOT is agreeable to the inclusion of these enhancements in the bridge design as long as Westminster, Northglenn and/or RTD assume responsibility for the payment and maintenance of those items. The attached Resolution No. 68 and the contract, which will be delivered to Council prior to the October 25 meeting, define the financial and maintenance obligations of the various parties.

The City's portion of the cost of this project is \$275,207 (plus contingency costs up to \$44,041). The total expenditure figure shown below reflects the total cost of the project which includes Northglenn's portion of the enhancements (\$102,731 plus 20% contingency of \$20,548). This cost breakdown is further discussed in the background section of this agenda memo.

**Expenditure Required:** \$453,526

**Source of Funds:** General Capital Improvement Fund - Community Enhancement Project

**Policy Issue**

Should the City pursue certain architectural and other aesthetic enhancements to the new 120<sup>th</sup> Avenue bridge over I-25?

**Alternative**

City Council could decide to include some or none of the enhancements proposed by Staff within the design of the bridge. City Staff considered a long list of potential enhancements to the 120<sup>th</sup> Avenue bridge, including free-standing monuments at each of the four corners of the structure and extensive landscaping of the “infield” portion of the interchange (i.e., the areas between the mainline of I-25 and the ramps), which were rejected as being too expensive at this time or, in the case of the landscaping, better to construct separately once the bridge is completed. Staff believes that the enhancements that have been presented to City Council for approval represent a financially prudent yet aesthetically pleasing mix of improvements to be funded by the City.

**Background Information**

For the past several years, the 120<sup>th</sup> Avenue interchange at I-25 has experienced extraordinary traffic congestion during peak periods and a significant amount of traffic during off-peak periods. Much of this congestion is due to the lack of lane capacity (e.g., only four through lanes) on the existing bridge. CDOT representatives have acknowledged the need to replace and widen this bridge, and such a project was scheduled to commence within the next few years. Structural damage to one of the bridge girders earlier this summer caused the timetable for the bridge replacement to be accelerated. Now, CDOT wishes to construct the new bridge between January and November of 2005 and a second phase of the project – the lowering of the I-25 mainline under 120<sup>th</sup> Avenue – would occur during 2006.

During the early planning for the bridge replacement project, the Cities of Westminster and Northglenn and the RTD expressed an interest in participating with CDOT by financing certain aesthetic and/or functional enhancements to the proposed structure. The City of Thornton, whose jurisdictional boundaries abut the northeast quadrant of the interchange, was invited to participate but declined. Specifically, the RTD was interested in the construction of a continuous acceleration/deceleration lane in the eastbound direction on 120<sup>th</sup> Avenue between the entrance to the Wagon Road Park-n-Ride and the ramp to southbound I-25. The Cities of Westminster and Northglenn were also in favor of this acceleration/deceleration lane as well as a few aesthetic improvements. Those enhancements include the installation of ornamental railings along the edges of the structure, decorative street light poles and fixtures, split block face retaining walls in the vicinity of the interchange and a widened sidewalk along the south side of the bridge. At the request of the participating entities, CDOT included all of these enhancements in the bridge project design, and the costs of these items have been estimated. The total estimated cost of the enhancements that were requested by Westminster Staff equals \$275,207, the estimated cost of Northglenn’s share of the desired enhancements and acceleration deceleration lane equals \$152,481 and RTD’s share of the acceleration/deceleration lane equals \$99,500. However, CDOT will insist that just one local entity be contractually responsible to them for payment of all of the aesthetic enhancements (excluding the acceleration/deceleration lane), and the State requested that Westminster serve in this capacity since the City requested the inclusion of the majority of these enhancements. Therefore, the contract will state that Westminster is responsible for the payment of the estimated total of \$377,938 for aesthetic enhancements, but Northglenn will reimburse \$102,731 of that amount to the City. This cost sharing agreement between Westminster and Northglenn was approved by the City Council on September 27, 2004.

CDOT is willing to include all of these items in the design of the bridge replacement project and receive bids for their costs. If the bids are reasonably close to the estimated costs, CDOT will expect the local entities to pay for these expenses. Furthermore, CDOT will insist that the local entities provide all maintenance for the enhancement items. The contract will define the financial and maintenance responsibilities of each party with respect to the bridge and enhancement items of work. Unfortunately, continuing negotiations between City Staff and CDOT representatives regarding certain details of the contract prevented the attachment of a final draft of the agreement to this agenda memorandum. However, it is crucial to the accelerated schedule for the bridge construction that this contract and resolution be approved before the end of this month. While Staff regrets that a final copy of the contract cannot be provided to the City Council well in advance of their consideration of this item, it is recognized that the replacement of the 120<sup>th</sup> Avenue bridge over I-25 is an urgent priority for the City as well as for CDOT and, thus, Staff recommends that the City make every attempt to adhere to CDOT's construction schedule. A copy of the draft agreement will be provided to City Council Monday evening.

CDOT also mandates that a resolution of agreement to the terms of the contract be approved by the governing bodies of each local partner. City Council's approval of the attached resolution is requested to adhere to CDOT's requirement.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

RESOLUTION

RESOLUTION NO. **68**

INTRODUCED BY COUNCILLORS

SERIES OF 2004

A resolution of the City Council of the City of Westminster approving an Intergovernmental Agreement between the City of Westminster and The Colorado Department of Transportation (CDOT) for the construction and maintenance of the improvements to be constructed by CDOT at the Interchange at I-25 and 120<sup>th</sup> Avenue.

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, et seq., and 29-20-205 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the agreement identifies the City's share of costs and the City's maintenance responsibilities associated with CDOT's replacement of the bridge that carries 120<sup>th</sup> Avenue over I-25.

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

1. That the agreement between the City of Westminster and the Colorado Department of Transportation pertaining to the construction oversight and maintenance of the I-25/144<sup>th</sup> Avenue Interchange, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved

2. That the City Manager is hereby authorized to execute and the City Clerk to attest the attached agreement

Passed and adopted this 25<sup>th</sup> day of October, 2004.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Establishment of the Church Ditch Water Authority

**Prepared By:** Dan Strietelmeier, Water Resources Engineering Coordinator

**Recommended City Council Action**

Authorize the Mayor to enter into an Intergovernmental Agreement and Establishing Contract with the City of Northglenn for the creation of the Church Ditch Water Authority.

**Summary Statement**

- The Church Ditch Company is a carrier ditch company, operated through the City of Northglenn and managed by a Board of Directors. The City of Westminster holds one seat on the three person Board with Northglenn holding the remaining two seats.
- Since the 1980's, the municipal water holders in the Church Ditch Company have been researching the idea of converting from a carrier ditch company to a water authority.
- Creation of a Church Ditch Water Authority ("Authority") would allow the ditch to be operated more efficiently, would streamline the rate setting process, and would provide a housekeeping of many of the easement and property ownership issues.
- The Authority would assume the duties of the Church Ditch Company, mainly operating and maintaining the Church Ditch. The City of Westminster would continue to have one-third control and ownership of the Church Ditch property by virtue of being a member of the Authority.
- The process to establish the Authority would include dissolution of the Church Ditch Company.
- The establishment of a water authority, a governmental entity, would also provide protection, under the governmental immunity act, during operation of the Church Ditch.
- Establishment of the Authority will allow the ditch to be maintained more efficiently assisting with seepage control and capacity restoration issues.
- The City owns one-third of the Church Ditch while Northglenn owns the other two-thirds.
- The City of Northglenn approved the Church Ditch Water Authority at its October 14 City Council meeting.

**Expenditure Required:** \$0

**Source of Funds:** N/A

## **Policy Issue**

Should the City of Westminster enter into an agreement to establish the Church Ditch Water Authority for operation of the Church Ditch?

## **Alternative**

The City of Westminster City Council could choose to not create the Church Ditch Water Authority and continue to operate the ditch through the Church Ditch Company. Staff does not recommend this alternative since the City of Northglenn owns two-thirds of the Church Ditch and they will be proposing the creation of the authority during their October 14 City Council meeting. In addition, for the reasons stated above, this would not be in the best long-term interest of the Church Ditch.

## **Background Information**

The Church Ditch diverts water from Clear Creek and flows approximately 27 miles through Golden, Jefferson County and Arvada, delivering water to Standley Lake and other agricultural users. In 1995, the City of Westminster purchased one-third of the Church Ditch easement from Broomfield. The City of Northglenn owns the remaining two-thirds of the easement. The Church Ditch has senior water rights on Clear Creek and the Company's mission is to ensure the appropriate delivery of water to the contract inch holders in the Ditch. The water in the ditch is distributed proportionally to the number of contract inches owned by a particular user. Westminster owns approximately 47% of the contract inches, which constitutes the largest ownership interest of all inch holders. These inches represent approximately 2,700 acre feet of firm yield water per year for Westminster. The City of Northglenn owns approximately 17% of the inches, Thornton and Arvada, as well as Coors Brewing Company, also own Church Ditch inches.

Since the 1980's, the Church Ditch Company and City of Northglenn legal counsel have been researching the process for converting the Church Ditch Company from a carrier ditch company, to a water authority. The ability to create an authority is covered by Colorado law, pursuant to C.R.S. § 29-1-204.2, which specifically authorizes, by contract, any combination of municipalities to establish a water authority in order to effect the development of water resource systems or facilities in whole or in part for the benefit of the inhabitants of such contracting parties. The Authority would be governed by a Board of Directors consisting of two Directors appointed by the City of Northglenn, and one Director appointed by the City of Westminster.

The Authority would accept all real and personal property rights, water rights, diversion structures, contract rights, assets, rights, liabilities and obligations of the Company and the Cities of Northglenn and Westminster. The inch-holders would be known by the Authority as "Contractual Users," and would have the same contractual relationship previously enjoyed with the Church Ditch Company operating as a carrier ditch company. Although there is some debate on the issue, there does not appear to be anything in the definition of a carrier ditch that would preclude it from being operated by an authority, as long as the carrier ditch is meeting its contractual obligation to provide water.

The Authority would be authorized to set carriage rates for the water delivery contracts. Presently, the Church Ditch carriage rates are set by the Jefferson County commissioners in accordance with Colorado law. This process is extremely inefficient and makes little sense for the Cities, the majority inch holders, when preparing the Church Ditch Company budget. The Water Resources Staff from Northglenn and Westminster have more expertise in ditch operations and creating an Authority will streamline the rate setting process. The Authority would be required to hold noticed public hearings to establish a procedure and criteria for rate setting, which criteria and procedure would then be duly adopted by the Authority by Resolution. At the 2004 Church Ditch annual inch holders meeting held in February, the new authority and rate setting procedure were presented and since that time there have been several questions regarding the rate setting from the inch holders.

The Company has shared information on the creation of the Authority; however, inch holders have been encouraged to contact their own legal counsel regarding the State statute allowing the creation of an authority and the subsequent change in the rate setting process.

The Authority, as a governmental entity operating a public water facility, would enjoy many benefits including sovereign immunity. The Authority would also be eligible for insurance coverage through the Colorado Intergovernmental Risk Sharing Agency ("CIRSA").

As stated previously, conversion of the Church Ditch Company from carrier ditch to water authority would allow the ditch to be operated more efficiently and would be advantageous in dealing with many of the adjacent property owner encroachment and drainage issues along the ditch. At a minimum, the new authority would enjoy the benefits of sovereign immunity and it would give the Cities a great deal more flexibility in rate setting to ensure adequate maintenance of the ditch. Northglenn City Council approved the IGA and establishing contract at their October 14th meeting. Creation of the Authority is in the best interests of Northglenn and Westminster as well as all of the inch holders and will provide improved protection of Westminster's Church Ditch water supply.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager





**Agenda Memorandum**

City Council Meeting  
October 25, 2004

**SUBJECT:** Exclusion of Properties From North Metro Fire Rescue District

**Prepared by:** Tami Cannon, Paralegal

**Recommended City Council Action**

Approve the Stipulation and Plan for exclusion of recently annexed territory from the North Metro Fire Rescue District (hereinafter "District").

**Summary Statement**

The City has been negotiating with the District regarding the exclusion of recently annexed properties from the District. The District considered the Stipulation on first reading on October 12 and is scheduled to adopt the Stipulation following second reading on November 2.

This Stipulation (copy attached) will allow the City to proceed in an uncontested manner in Adams County District Court for the purpose of obtaining an Order excluding the four (4) recently annexed parcels of property covered under the Stipulation. Three of the parcels are within Jefferson County and one is within Adams County.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Exclusion of Properties From North Metro Fire Rescue District Page 2

**Policy Issue**

Whether to approve the Stipulation agreeing to provide fire protection services to properties recently annexed to the City and proposed to be excluded from the District.

**Alternative**

Do not approve the Stipulation and Plan for exclusion of properties from the North Metro Fire Rescue District. This is not recommended, since it would result in double taxation and duplicative fire protection services to the properties.

**Background Information**

The important components of the Stipulation are as follows: (1) An agreement that the quality of fire protection service to be provided by the City will be comparable and not inferior to the fire protection service now provided by the District; (2) Existing indebtedness of the District for which the excluded properties would remain liable; (3) An agreement that the District shall have the right to levy a mill levy not to exceed 0.5 mill against the excluded properties for five consecutive years for the District's Volunteer Firemen's Pension Fund; and (4) Transfer of fire protection service responsibilities to be effective January 1, 2005. Vicinity maps showing the areas to be excluded are also attached.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

District Court, Adams County, Colorado Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601 303-659-1161	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Petitioners:</b></p> <p>THE CITY OF WESTMINSTER, COLORADO, a home-rule City, and THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER</p> <p><b>Defendant:</b></p> <p>THE BOARD OF DIRECTORS OF THE NORTH METRO FIRE RESCUE DISTRICT, and All Taxpaying Electors of the NORTH METRO FIRE RESCUE DISTRICT, as a class.</p>	
City of Westminster Sharon Widener, #12571 Assistant City Attorney 4800 West 92 <sup>nd</sup> Avenue Westminster, CO 80031 Phone: 303-430-2400 Fax: 303-650-0158 E-mail: swidener@ci.westminster.co.us	Case Number: 4825  Division: A  Courtroom:
<p><b>STIPULATION AND PLAN FOR EXCLUSION OF CERTAIN TERRITORY FROM THE NORTH METRO FIRE RESCUE DISTRICT</b></p>	

COME NOW the parties hereto, by their respective counsel, and stipulate as follows:

PREAMBLE

1. This action is based upon the Petition of the City of Westminster pursuant to section 32-1-502, et seq., C.R.S., as amended, to exclude certain territory from the North Metro Fire Rescue District (hereinafter "District") because that territory is located within the City of Westminster which also provides fire protection service. The territory sought to be excluded is described in Exhibit "A" attached hereto and incorporated herein by reference.

2. This Stipulation and Plan is submitted pursuant to and in satisfaction of the requirements of section 32-1-502(2)(c) which provides that as a condition to the exclusion of the property which is the subject of this petition, the governing body of the City and the board of directors of the District shall each

submit a plan for the disposition of assets and continuation of services to all areas of the District, and that said plans shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territories both within and without the municipal boundaries and of services to all territories served or previously served by the special district, and further, that if the City and the District agree upon a single plan and enter into a contract incorporating its provisions, the court shall review such contract, and if it finds the contract to be fair and equitable, the court shall approve the contract and incorporate its provisions into its exclusion order.

3. The City Council of the City of Westminster, as its governing body, has met, considered and approved all of the terms of this Stipulation and Plan.

4. The Board of Directors of the District, as its governing body, has met, considered and approved all of the terms of this Stipulation and Plan.

### STIPULATION AND PLAN

5. All notice requirements of the statute and of the Colorado Rules of Civil Procedure have been fully, completely and properly complied with. No objection to the exclusion has been made by any taxpaying elector, individually or on behalf of the class designated Taxpaying Electors. The District and the City consent to the exclusion of the property described in Exhibit "A", subject to the provisions of this Stipulation and Plan.

6. The parties further stipulate that:

A. The City of Westminster has provided and is now providing the same fire protection services that the District provided in or to the territory proposed for exclusion.

B. The governing body of the City of Westminster agrees, and has agreed, by resolution, to provide the service provided by the District to the area described in the exclusion petition effective immediately upon entry of the exclusion order regardless of its later effective date.

C. The quality of fire protection service to be provided by the City of Westminster will not be inferior to the fire protection service now provided by the District in the territory proposed for exclusion and described in the Petition for Exclusion.

D. No election has been held or is required to be held pursuant to subsection (5) of section 32-1-502, C.R.S., as amended, and it is stipulated that the quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by this exclusion.

E. The District owns no facilities or assets located within the territory that is proposed for exclusion.

F. The District has no outstanding bonded indebtedness.

7. Commencing the taxable year 2005, the District, for a period of five (5) years, shall have the right to assess and collect the proceeds of a mill levy of one-half (1/2) mill against the assessed value of the applicable excluded property, which proceeds shall be paid to and for the exclusive benefit of the District's Firemen's Pension Fund.

8. Pursuant to section 32-1-502, C.R.S., as amended, District and City agree to the

following plan for disposition of assets and contribution of services to all areas of the District:

A. The District owns no real property or improvements within the territory described in the Petition for Exclusion and the City does not seek ownership of any such assets located in any other part of the District.

B. The City does not seek ownership of any firefighting equipment or other personal property now owned by the District and the Order of Exclusion may so state.

C. The City shall provide fire protection to the territory described in the Petition and shall continue to honor any mutual aid agreement with the District applicable to any District territory not excluded.

D. All other resources of the City Fire Department will be available to respond as the circumstances of any emergency or other situation may require.

E. City officers will also be responsible for safety inspections and other fire code enforcement within the territory described in the Petition.

F. Primary responsibility for fire protection in all territory of the District not proposed for exclusion shall remain with the District.

9. The City of Westminster shall assume fire protection service responsibility to the excluded area from the District effective January 1, 2005. Nothing in this Stipulation and Plan shall impair or negate the validity or effectiveness of any existing mutual aid agreement between the parties.

10. The District and its firefighters, including those residing in the excluded area, shall continue to have the right to operate District and personal vehicles and equipment as authorized emergency vehicles within said excluded area and the City of Westminster, for bona fide emergency purposes, as the District may deem necessary in fulfilling District obligations. Authorized emergency vehicles shall be those as defined by section 42-1-102, C.R.S., as amended, and shall include the right of District firefighters who reside in the excluded area to respond to emergency calls in personal vehicles and District vehicles which are operated as emergency vehicles.

11. Pursuant to section 32-1-503, C.R.S., as amended:

A. The change of boundaries of the District, which is accomplished by the Court Order, shall not impair nor affect its organizations, nor shall it affect, impair or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

B. For the taxable year 2005 and thereafter, the excluded property shall not be subject to any property tax levied by the District for operating costs.

C. For the purpose of retiring the District's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the applicable excluded territory shall be obligated only for that proportion of the District's outstanding indebtedness and the interest thereon existing immediately prior to January 1, 2005.

D. The excluded territory shall in no event become obligated for the payment of any bonded indebtedness created after the date of the Court's exclusion order.

12. This Court may, immediately upon presentation of this Stipulation and Plan, enter an Order consistent herewith excluding the territory described in Exhibit "A" from the District. The Order shall become effective, as provided by statute, on January 1, 2005. The form of the Order is attached hereto as Exhibit "B" and all of the terms of said Order are hereby incorporated by reference in this Stipulation and Plan.

13. The Court's Exclusion Order shall become effective January 1, 2005.

Respectfully submitted,

IRELAND, STAPLETON, PRYOR  
& PASCOE, PC

CITY OF WESTMINSTER

By: \_\_\_\_\_  
Dino Ross #20965  
Attorney for Respondent  
1675 Broadway, Suite 2600  
Denver, CO 80202  
303-628-3686

By: \_\_\_\_\_  
Sharon Widener #12571  
Attorney for Petitioners  
4800 W. 92nd Avenue  
Westminster, CO 80031  
303-430-2400

APPROVED:

NORTH METRO FIRE  
RESCUE DISTRICT

CITY OF WESTMINSTER, a  
home-rule City

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Nancy McNally, Mayor

By \_\_\_\_\_  
Fire District Manager

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

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

## Exhibit "A"

### Bull Canal/United Power:

#### Parcel 1

Commencing at the north quarter corner of said section 27 from whence the northwest corner of said section bears N89°58'56"W, 2624.59 feet as shown on the City of Westminster GIS survey plats and on which all bearings hereon are based thence along the north line of said section N89°58'56"W, 199.56 feet; thence at right angles to said line S00°01'04"W, 30.00 feet to the true point of beginning a point at the intersection of the west line of US Highway I-25 and the south line of west 136<sup>th</sup> Avenue a point on the west line of the annexation to the City of Westminster recorded at reception number 621803 of the records of the Adams County Clerk and Recorder.

Thence along said west line S00°52'40"E, 208.70 feet to a point on the lines of the annexation to said city recorded at reception number B626335 of said records; thence along said lines N89°58'56"W, 208.70 feet; thence continuing along said lines N00°52'40"W, 208.70 feet to a point on the south line of West 136<sup>th</sup> Avenue on the south line of the annexation to said city recorded at reception number B621803 of said records; thence along said south line S89°58'56"E, 208.70 feet to the true point of beginning.

Contains 43556 square feet or 0.9999 acres more or less.

#### Parcel 2

Commencing at the north quarter corner of said section 27 from whence the northwest corner of said section bears N89°58'56"W, 2624.59 feet as shown on the City of Westminster GIS survey plats and on which all bearings hereon are based; thence along the north line of said section N89°58'56"W, 1956.20 feet; thence at right angles to said line S00°01'04"W, 30.00 feet to the true point of beginning a point on the south line of West 136<sup>th</sup> Avenue a point on the northerly line of the annexation to the City of Westminster recorded at reception number 626335 of the records of the Adams County Clerk and Recorder;

Thence along the lines of said annexation and the following 6 courses 1) S26°00'03"E, 808.92 feet; 2) N87°41'04"E, 160.50 feet; 3) N67°29'48"E, 520.10 feet; 4) N80°13'44"E, 190.46 feet; 5) S58°38'48"E, 567.35 feet to a point of curve right; 6) along said curve with a central angle of 33°00'11", a radius of 269.45 feet and an arc length of 155.21 feet, long chord bears S42°08'43"E, 153.07 feet to a point on the west line of US Highway I-25 on the west line of the annexation to said city recorded at reception number 621803 of said records; thence along said west line S00°52'40"E, 225.75 feet to a point on the easterly line of the annexation to said city recorded at reception number B626334 of said records to a point on a non-tangent curve right; thence along said line along said curve with a central angle of 02°28'40", a radius of 269.45 feet and an arc length of 11.65 feet, long chord bears S25°07'36"W, 11.65 feet; thence continuing along said line S26°21'56"W, 176.78 feet to a point on the north line of the annexation to said city recorded at reception number 959691 of said records; thence along said line N89°58'46"W, 106.01 feet to a point on the lines of the annexation to said city recorded at reception number B626334 of said records; thence along the lines of said annexation and the following 7 courses 1) N26°21'56"E, 223.82 feet to a point of curve left; 2) along said curve with a central angle of 85°00'44", a radius of 174.45 feet and an arc length of 258.84 feet, long chord bears N16°08'26"W, 235.74 feet; 3) N58°38'48"W, 531.71 feet; 4) S80°13'44"W, 144.22 feet; 5) S67°29'48"W, 526.41 feet; 6) S87°41'04"W, 239.48 feet; 7) N26°00'03"W, 917.36 feet to a point on the south line of West 136<sup>th</sup> Avenue a point on the south line of the annexation to said city recorded at reception number

B621803 of said records; thence along said south line S89°58'56"E, 105.71 feet to the true point of beginning.

Containing 265358 square feet or 6.0918 acres more or less.

### **Chamberlain:**

A parcel of land being a portion of tract 55, Mandalay Gardens, in the County of Jefferson, State of Colorado, per plat recorded in the Office of the Clerk and Recorder of said county, lying within the southeast quarter of section 11 and the northeast quarter of section 14, township 2 south, range 69 west of the sixth principal meridian, in said county and state, more particularly described as follows:

Commencing at the southeast corner of said section 11, whence the south quarter corner of said section 11 bears south 88°52'45" west, and all bearings are made as a reference hereon; thence south 83°39'39" west 330.74 feet to the southerly right-of-way of Reed Street, as described in the warranty deed to the City of Westminster recorded October 25, 1996 at reception no. F0321025 in the office of the clerk and recorder of said county, also being the southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster per annexation map recorded at reception no. F1027164 in said office of the clerk and recorder and the point of beginning; thence along the southerly, southwesterly, and southeasterly right-of-way of said Reed Street and along the southerly, southwesterly, and southeasterly boundary of said annexation the following 4 courses: 1) south 89°48'37" west 164.12 feet to the beginning of a tangent curve concave northeasterly having a radius of 103.00 feet; 2) northwesterly along said curve through a central angle of 49°03'00" an arc length of 88.18 feet; 3) tangent to said curve, north 41°08'23" west 78.64 feet to the beginning of a tangent curve concave southerly having a radius of 33.00 feet; 4) westerly along said curve through a central angle of 92°10'16" an arc length of 53.09 feet to the southeasterly right-of-way of Church Ranch Boulevard as described in the warranty deed to the City of Westminster recorded March 15, 1990 at reception no. 90021374, in said office of the clerk and recorder and the beginning of a compound curve concave southwesterly having a radius of 1613.50 feet; thence along said southeasterly right-of-way, continuing along said southeasterly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation, and southwesterly along said curve through a central angle of 00°15'41" an arch length of 7.36 feet to the westerly line of said tract 55, Mandalay Gardens and the easterly boundary of the Church Ranch homeplace annexation to the City of Westminster per annexation map recorded at reception no. 88080480 in said office of the clerk and recorder; thence along the westerly and southerly boundary of said tract 55 and along the easterly and northerly boundary of said Church Ranch homeplace annexation the following 2 courses: 1) non-tangent to said curve, south 00°05'32" west 430.85 feet; 2) north 88°52'14" east 230.05 feet; thence departing said southerly and northerly boundaries, north 00°05'32" east 188.87 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 133.50 feet, the radius point of said curve bears north 49°54'59" west; thence northeasterly along said curve through a central angle of 03°41'57" an arc length of 8.62 feet; thence tangent to said curve, north 36°23'05" east 144.20 feet to the beginning of a tangent curve concave southeasterly having a radius of 86.50 feet; thence northeasterly along said curve through a central angle of 23°24'06" an arc length of 35.33 feet to the point of beginning.

Containing 2.181 acres (95,019 sq. ft.), more or less.



### **Asbury Acres:**

A parcel of land located in Section 23, Township 2 South, Range 69 West of the 6<sup>th</sup> Principal Meridian, being all of Block 28, except the north 5 feet thereof and the east 275.5 feet thereof, of Greenlawn Acres and Reservoir, a plat on file and recorded in the office of the Jefferson County Clerk and Recorder, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the north one-quarter corner of said Section 23; thence S00°00'10"E and along the west line of the northeast one-quarter of Section 23, a distance of 984.07 feet; thence N89°19'25"E, a distance of 30.00 feet to a point on the east right-of-way of Wadsworth Boulevard, said point being the point of beginning; thence continuing N89°19'25"E, a distance of 362.39 feet; thence S00°00'25"W, a distance of 330.23 feet to a point on the north line of Cambridge Farm Subdivision, a plat on file and recorded in the office of the Jefferson County Clerk and Recorder; thence S89°08'48"W and along said north line, a distance of 362.35 feet to a point on the east right-of-way line of Wadsworth Boulevard; thence N00°00'10"W and along said east right-of-way line of Wadsworth Boulevard, a distance of 331.35 feet to the point of beginning.

Said parcel containing 2.752 acres.

### **Chamberlain East:**

A parcel of land being a portion of Tract 55, Mandalay Gardens, in the County of Jefferson, State of Colorado, per plat recorded in the office of the Clerk and Recorder of said County, lying within the county and state, more particularly described as follows:

Commencing at the northeast corner of said Section 14, whence the north quarter corner of said Section 14 bears 88°52'45" West, and all bearings are made as a reference hereon, said northeast corner being a point on the westerly boundary of the former Hawn Property annexation to the City of Westminster per annexation map recorded at Reception No. F1444643 in said office of the Clerk and Recorder; thence along the easterly line of said northeast quarter and the westerly line of said former Hawn Property annexation, South 00°42'14" West 78.99 feet to the southerly right-of-way of Reed Street, as described in the warranty deed to the City of Westminster recorded October 25, 1996 at Reception No. F0321025 in the office of the Clerk and Recorder of said county, also being the southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster per annexation map recorded at Reception No. F1027164 in said office of the Clerk and Recorder and the point of beginning; thence departing said southerly right-of-way and continuing along said easterly line and said westerly boundary, South 00°42'14" West 284.01 feet to the southerly boundary of said Tract 55 and the northerly boundary of the Church Ranch Homeplace annexation to the City of Westminster per annexation map recorded at Reception no. 88080480 in said office of the Clerk and Recorder; thence along said southerly boundary and said northerly boundary, South 88°52'14" West 441.63 feet to the easterly boundary of the Church Ranch Amoco annexation to the City of Westminster per annexation map recorded at Reception No. F2020175 in said office of the Clerk and Recorder; thence along the easterly and southeasterly boundary of said Church Ranch Amoco annexation the following 4 courses:

- 1) North 00°05'32" East 188.87 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 133.50 feet, the radius point of said curve bears North 49°54'59" West;
- 2) Northeasterly along said curve through a central angle of 03°41'56" an arc length of 8.62 feet;
- 3) Tangent to said curve, North 36°23'05" East 144.20 feet to the beginning of a tangent curve concave southeasterly having a radius of 86.50 feet;

- 4) Northeasterly along said curve through a central angle of  $23^{\circ}24'06''$  an arc length of 35.33 feet to said southerly right-of-way of Reed Street and said southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster;

Thence along the southerly and southeasterly right-of-way of said Reed Street and along the southerly and southeasterly right-of-way of said U.S. Highway 36/Church Ranch Boulevard annexation the following 3 courses:

- 1) North  $89^{\circ}48'37''$  East 251.02 feet to the beginning of a tangent curve concave southwesterly having a radius of 33.00 feet;
- 2) Southeasterly along said curve through a central angle of  $52^{\circ}48'12''$  an arc length of 30.41 feet to the beginning of a reverse curve concave northeasterly having a radius of 80.00 feet;
- 3) Southeasterly along said curve through a central angle of  $43^{\circ}08'25''$  an arc length of 60.24 feet to the point of beginning.

Containing 3.147 acres (137,067 sq. ft.), more or less.

District Court, Adams County, Colorado Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601 303-659-1161	<b>▲ COURT USE ONLY ▲</b>
<p><b>Petitioners:</b></p> <p>THE CITY OF WESTMINSTER, COLORADO, a home-rule City, and THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER</p> <p><b>Defendant:</b></p> <p>THE BOARD OF DIRECTORS OF THE NORTH METRO FIRE RESCUE DISTRICT, and All Taxpaying Electors of the NORTH METRO FIRE RESCUE DISTRICT, as a class.</p>	
City of Westminister Sharon Widener, #12571 Assistant City Attorney 4800 West 92 <sup>nd</sup> Avenue Westminister, CO 80031 Phone: 303-430-2400 Fax: 303-650-0158 E-mail: swidener@ci.westminster.co.us	Case Number: 4825  Division: A  Courtroom:
<b>ORDER FOR EXCLUSION OF CERTAIN TERRITORY FROM NORTH METRO FIRE RESCUE DISTRICT</b>	

THIS MATTER comes before the Court this \_\_\_\_ day of \_\_\_\_\_, 2004, upon the Stipulation and Plan of the parties to this action for entry of an Order excluding certain territory from the North Metro Fire Rescue District, upon terms and conditions set forth in the Stipulation and Plan and hereinafter approved and adopted.

The parties appear by Sharon Widener, Assistant City Attorney, counsel of record for Petitioners, and Dino Ross, counsel for Respondents, the Board of Directors of the North Metro Fire Rescue District. No other parties or counsel have appeared in this action.

The Court, having reviewed the Stipulation, heard statements of counsel, and being fully advised of the facts and circumstances surrounding this action,

**Exhibit "B"**

DOTH ORDER, ADJUDGE AND DECREE:

1. The Stipulation and Plan for Exclusion of Certain Territory from the North Metro Fire Rescue District presented to the Court this date, which Stipulation and Plan was approved by counsel for both parties to the action and by the governing bodies of the City of Westminster, Colorado, and the North Metro Fire Rescue District, as evidenced by the signatures of the appropriate officers of each governing body, hereby finds that the Stipulation and Plan for Exclusion constitutes a contract which is fair and equitable. The provisions of said Stipulation and Plan are hereby approved and incorporated in the remaining paragraphs of this Order.

2. All notice requirements of the statute and of the Colorado Rules of Civil Procedure have been duly, completely and properly complied with. No objection to the exclusion has been made by any taxpaying elector, individually or on behalf of the class designated Taxpaying Electors.

3. The Court has jurisdiction of all necessary parties and of the subject matter of this action.

4. The Court finds:

A. The City of Westminster has provided and is now providing the same fire protection services which the North Metro Fire Rescue District has provided in or to the territory proposed for exclusion.

B. The governing body of the City of Westminster agrees, and has agreed, by resolution, to provide the service provided by the North Metro Fire Rescue District to the area described in the exclusion petition effective immediately upon entry of the exclusion order regardless of its later effective date.

C. The quality of fire protection service to be provided by the City of Westminster will not be inferior to the fire protection service now provided by the North Metro Fire Rescue District in the territory proposed for exclusion and described in the Petition for Exclusion.

D. No election has been held or is required to be held pursuant to subsection (5) of section 32-1-502, C.R.S., as amended, and the quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by this exclusion.

E. The District owns no facilities or assets located within the territory which is proposed for exclusion.

F. The District has no current outstanding bonded indebtedness.

G. The District owns no real property or improvements within the territory described in the Petition for Exclusion and the City does not seek ownership of any such assets located in any other part of the District.

H. The City does not seek ownership of any firefighting equipment or other personal property now owned by the District and the Order of Exclusion may so state.

I. The City shall provide fire protection to the territory described in the Petition and shall continue to honor any mutual aid agreement with the District applicable to any District territory not excluded.

J. City officers will also be responsible for safety inspections and other fire code enforcement within the territory described in the Petition.

K. Primary responsibility for fire protection in all territory of the District not proposed for exclusion shall remain with the District.

5. The Court orders:

A. The District shall have the right to levy, collect, and pay the proceeds of a mill levy not to exceed one-half (1/2) mill against the applicable excluded property to the District's Firemen's Pension Fund for five (5) consecutive years, commencing taxable year 2005.

B. The City of Westminster shall assume fire protection service responsibility to the excluded area from the District effective January 1, 2005.

Nothing in the Stipulation and Plan shall impair or negate the validity or effectiveness of any existing mutual aid agreement between the parties.

C. The North Metro Fire Rescue District and its firefighters, including those residing in the excluded area, shall continue to have the right to operate District and personal vehicles and equipment as authorized emergency vehicles within said excluded area and the City of Westminster, for bona fide emergency purposes, as the District may deem necessary in fulfilling District obligations.

Authorized emergency vehicles shall be those as defined by section 42-1-102, C.R.S., as amended, with privileges as provided by section 42-4-106, C.R.S., as amended, and shall include the right of District firefighters who reside in the excluded area to respond to emergency calls in personal vehicles and District vehicles which are operated as emergency vehicles.

D. The change of boundaries of the District, which is accomplished by this Court Order shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had such change of boundaries not been made.

E. For the taxable year 2005, and thereafter, the excluded property shall not be subject to any property tax levied by the District for operating costs.

F. For the purpose of retiring the District's outstanding indebtedness and the interest thereon existing on January 1, 2005, the applicable excluded property shall be subject only for that proportion of the District's outstanding indebtedness and the interest thereon existing immediately prior to January 1, 2005.

G. The excluded territory shall in no event become obligated for the payment of any bonded indebtedness created after the effective date of this Exclusion Order.

H. This Order shall become effective January 1, 2005.

DONE AND SIGNED in Open Court this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY THE COURT:

\_\_\_\_\_  
District Court Judge

APPROVED AS TO FORM:

CITY OF WESTMINSTER

By \_\_\_\_\_  
Sharon Widener #12571  
City Attorney for Petitioners  
4800 W. 92nd Avenue  
Westminster, CO 80031  
(303) 430-2400

By \_\_\_\_\_  
Dino Ross #20965  
Attorney for Respondent District  
Ireland, Stapleton, Pryor & Pascoe, PC  
1675 Broadway, Suite 2600  
Denver, CO 80202  
(303) 623-2700



**Agenda Memorandum**

City Council Meeting  
October 25, 2004

**SUBJECT:** Resolution No. 67 re Exclusion From North Metro Fire Rescue District

**Prepared by:** Tami Cannon, Paralegal

**Recommended City Council Action**

Adopt Resolution No. 67 approving the exclusion of recently annexed properties from the North Metro Fire Rescue District (hereinafter "District").

**Summary Statement**

This item is related to the approval of the Stipulation and Plan for exclusion appearing previously on Council's agenda. Three of the parcels to be excluded are within Jefferson County and one parcel is within Adams County.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**SUBJECT:** Resolution re Exclusion From North Metro Fire Rescue District Page 2

**Policy Issue**

Whether to approve the exclusion of recently annexed properties from the District in order to avoid double taxation and duplicative fire protection services.

**Alternative**

Do not approve the exclusion of recently annexed properties from the District. This is not recommended, since it would result in double taxation and duplicative fire protection services to the properties.

**Background Information**

In order for the City Attorney's Office to proceed with the filing of the exclusion documents, the exclusion statutes require that City Council adopt the attached Resolution indicating the City's agreement to provide the fire protection services provided by the District to the area described in the Stipulation and Plan within one year from the effective date of the exclusion order as required by statute.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment: Resolution



SERIES OF 2004

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EXCLUSION OF TERRITORY FROM THE NORTH METRO FIRE RESCUE DISTRICT

WHEREAS, it is in the public interest and a policy of the City of Westminster to eliminate the overlapping of services provided by local governments and the double taxation that may occur because of annexation when all or part of the territory lies within the boundaries of both the City of Westminster and a special district; and

WHEREAS, Colorado statutes provide an orderly procedure to eliminate such overlapping of services and double taxation, which procedure is found in section 32-1-502, et seq., C.R.S., as amended; and

WHEREAS, the City Council of the City of Westminster has been informed by City Staff and now finds that such a situation exists in the area described on Exhibit "A" attached hereto and incorporated herein by reference and that there is an overlapping of fire protection services by the City of Westminster and the North Metro Fire Rescue District (hereinafter "District") and double taxation resulting from the territory described in Exhibit "A" being within the boundaries of both the City and the District; and

WHEREAS, the City Council, based upon information provided by its Staff, has found that the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the District in the territory described in Exhibit "A" attached hereto, based upon the Westminster Fire Department's service capability, which includes operations out of six (6) existing fire stations that are strategically located throughout the City; an extensive fleet of sophisticated firefighting and emergency medical vehicles including five (5) fire engines, two (2) aerial trucks, three (3) reserve fire engines, four (4) ambulances, two (2) reserve ambulances, two (2) attack units, and other support apparatus, operated by an authorized full-time career staff of one hundred and forty (140) personnel, one hundred and twenty-four (124) of which are highly trained front-line firefighters and paramedics; and

WHEREAS, evidence gathered in previous proceedings for exclusion from other Districts, and applicable to this proceeding also, establishes that fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

WHEREAS, City officials and representatives of the District are negotiating the City's proposal to exclude from the Fire District, and are working towards a mutually acceptable exclusion agreement; and

WHEREAS, the City Council of the City of Westminster is willing to agree by this Resolution to provide the service provided by the District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and more specifically, immediately upon the effective date of the exclusion order;

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

1. That the City proceed at once to exclude the territory described in Exhibit "A" from the District by filing its Petition in the District Court of Adams County, pursuant to the provisions of section

32-1-502, et seq., C.R.S., as amended.

2. That the City Council of the City of Westminster agrees, by this Resolution, to provide the service provided by the District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and specifically, immediately upon the effective date of the exclusion order.

3. That the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the District in the territory described in Exhibit "A" and the fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

4. That the City Attorney is instructed to petition the Court and carry out all notification requirements as contained in applicable state statutes.

PASSED AND ADOPTED this 25<sup>th</sup> day of October, 2004.

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Mayor

ATTEST:

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City Clerk

## Exhibit A

### Bull Canal/United Power:

#### Parcel 1

Commencing at the north quarter corner of said section 27 from whence the northwest corner of said section bears N89°58'56"W, 2624.59 feet as shown on the City of Westminster GIS survey plats and on which all bearings hereon are based thence along the north line of said section N89°58'56"W, 199.56 feet; thence at right angles to said line S00°01'04"W, 30.00 feet to the true point of beginning a point at the intersection of the west line of US Highway I-25 and the south line of west 136<sup>th</sup> Avenue a point on the west line of the annexation to the City of Westminster recorded at reception number 621803 of the records of the Adams County Clerk and Recorder.

Thence along said west line S00°52'40"E, 208.70 feet to a point on the lines of the annexation to said city recorded at reception number B626335 of said records; thence along said lines N89°58'56"W, 208.70 feet; thence continuing along said lines N00°52'40"W, 208.70 feet to a point on the south line of West 136<sup>th</sup> Avenue on the south line of the annexation to said city recorded at reception number B621803 of said records; thence along said south line S89°58'56"E, 208.70 feet to the true point of beginning.

Contains 43556 square feet or 0.9999 acres more or less.

#### Parcel 2

Commencing at the north quarter corner of said section 27 from whence the northwest corner of said section bears N89°58'56"W, 2624.59 feet as shown on the City of Westminster GIS survey plats and on which all bearings hereon are based; thence along the north line of said section N89°58'56"W, 1956.20 feet; thence at right angles to said line S00°01'04"W, 30.00 feet to the true point of beginning a point on the south line of West 136<sup>th</sup> Avenue a point on the northerly line of the annexation to the City of Westminster recorded at reception number 626335 of the records of the Adams County Clerk and Recorder;

Thence along the lines of said annexation and the following 6 courses 1) S26°00'03"E, 808.92 feet; 2) N87°41'04"E, 160.50 feet; 3) N67°29'48"E, 520.10 feet; 4) N80°13'44"E, 190.46 feet; 5) S58°38'48"E, 567.35 feet to a point of curve right; 6) along said curve with a central angle of 33°00'11", a radius of 269.45 feet and an arc length of 155.21 feet, long chord bears S42°08'43"E, 153.07 feet to a point on the west line of US Highway I-25 on the west line of the annexation to said city recorded at reception number 621803 of said records; thence along said west line S00°52'40"E, 225.75 feet to a point on the easterly line of the annexation to said city recorded at reception number B626334 of said records to a point on a non-tangent curve right; thence along said line along said curve with a central angle of 02°28'40", a radius of 269.45 feet and an arc length of 11.65 feet, long chord bears S25°07'36"W, 11.65 feet; thence continuing along said line S26°21'56"W, 176.78 feet to a point on the north line of the annexation to said city recorded at reception number 959691 of said records; thence along said line N89°58'46"W, 106.01 feet to a point on the lines of the annexation to said city recorded at reception number B626334 of said records; thence along the lines of said annexation and the following 7 courses 1) N26°21'56"E, 223.82 feet to a point of curve left; 2) along said curve with a central angle of 85°00'44", a radius of 174.45 feet and an arc length of 258.84 feet, long chord bears N16°08'26"W, 235.74 feet; 3) N58°38'48"W, 531.71 feet; 4) S80°13'44"W, 144.22 feet; 5) S67°29'48"W, 526.41 feet; 6) S87°41'04"W, 239.48 feet; 7) N26°00'03"W, 917.36 feet to a point on the south line of West 136<sup>th</sup> Avenue a point on the south line of the annexation to said city recorded at reception number B621803 of said records; thence along said south line S89°58'56"E, 105.71 feet to the true point of beginning.

Containing 265358 square feet or 6.0918 acres more or less.

**Chamberlain:**

A parcel of land being a portion of tract 55, Mandalay Gardens, in the County of Jefferson, State of Colorado, per plat recorded in the Office of the Clerk and Recorder of said county, lying within the southeast quarter of section 11 and the northeast quarter of section 14, township 2 south, range 69 west of the sixth principal meridian, in said county and state, more particularly described as follows:

Commencing at the southeast corner of said section 11, whence the south quarter corner of said section 11 bears south 88°52'45" west, and all bearings are made as a reference hereon; thence south 83°39'39" west 330.74 feet to the southerly right-of-way of Reed Street, as described in the warranty deed to the City of Westminster recorded October 25, 1996 at reception no. F0321025 in the office of the clerk and recorder of said county, also being the southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster per annexation map recorded at reception no. F1027164 in said office of the clerk and recorder and the point of beginning; thence along the southerly, southwesterly, and southeasterly right-of-way of said Reed Street and along the southerly, southwesterly, and southeasterly boundary of said annexation the following 4 courses: 1) south 89°48'37" west 164.12 feet to the beginning of a tangent curve concave northeasterly having a radius of 103.00 feet; 2) northwesterly along said curve through a central angle of 49°03'00" an arc length of 88.18 feet; 3) tangent to said curve, north 41°08'23" west 78.64 feet to the beginning of a tangent curve concave southerly having a radius of 33.00 feet; 4) westerly along said curve through a central angle of 92°10'16" an arc length of 53.09 feet to the southeasterly right-of-way of Church Ranch Boulevard as described in the warranty deed to the City of Westminster recorded March 15, 1990 at reception no. 90021374, in said office of the clerk and recorder and the beginning of a compound curve concave southwesterly having a radius of 1613.50 feet; thence along said southeasterly right-of-way, continuing along said southeasterly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation, and southwesterly along said curve through a central angle of 00°15'41" an arch length of 7.36 feet to the westerly line of said tract 55, Mandalay Gardens and the easterly boundary of the Church Ranch homeplace annexation to the City of Westminster per annexation map recorded at reception no. 88080480 in said office of the clerk and recorder; thence along the westerly and southerly boundary of said tract 55 and along the easterly and northerly boundary of said Church Ranch homeplace annexation the following 2 courses: 1) non-tangent to said curve, south 00°05'32" west 430.85 feet; 2) north 88°52'14" east 230.05 feet; thence departing said southerly and northerly boundaries, north 00°05'32" east 188.87 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 133.50 feet, the radius point of said curve bears north 49°54'59" west; thence northeasterly along said curve through a central angle of 03°41'57" an arc length of 8.62 feet; thence tangent to said curve, north 36°23'05" east 144.20 feet to the beginning of a tangent curve concave southeasterly having a radius of 86.50 feet; thence northeasterly along said curve through a central angle of 23°24'06" an arc length of 35.33 feet to the point of beginning.

Containing 2.181 acres (95,019 sq. ft.), more or less.

**Asbury Acres:**

A parcel of land located in Section 23, Township 2 South, Range 69 West of the 6<sup>th</sup> Principal Meridian, being all of Block 28, except the north 5 feet thereof and the east 275.5 feet thereof, of

Greenlawn Acres and Reservoir, a plat on file and recorded in the office of the Jefferson County Clerk and Recorder, County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the north one-quarter corner of said Section 23; thence S00°00'10"E and along the west line of the northeast one-quarter of Section 23, a distance of 984.07 feet; thence N89°19'25"E, a distance of 30.00 feet to a point on the east right-of-way of Wadsworth Boulevard, said point being the point of beginning; thence continuing N89°19'25"E, a distance of 362.39 feet; thence S00°00'25"W, a distance of 330.23 feet to a point on the north line of Cambridge Farm Subdivision, a plat on file and recorded in the office of the Jefferson County Clerk and Recorder; thence S89°08'48"W and along said north line, a distance of 362.35 feet to a point on the east right-of-way line of Wadsworth Boulevard; thence N00°00'10"W and along said east right-of-way line of Wadsworth Boulevard, a distance of 331.35 feet to the point of beginning.

Said parcel containing 2.752 acres.

### **Chamberlain East:**

A parcel of land being a portion of Tract 55, Mandalay Gardens, in the County of Jefferson, State of Colorado, per plat recorded in the office of the Clerk and Recorder of said County, lying within the county and state, more particularly described as follows:

Commencing at the northeast corner of said Section 14, whence the north quarter corner of said Section 14 bears 88°52'45" West, and all bearings are made as a reference hereon, said northeast corner being a point on the westerly boundary of the former Hawn Property annexation to the City of Westminster per annexation map recorded at Reception No. F1444643 in said office of the Clerk and Recorder; thence along the easterly line of said northeast quarter and the westerly line of said former Hawn Property annexation, South 00°42'14" West 78.99 feet to the southerly right-of-way of Reed Street, as described in the warranty deed to the City of Westminster recorded October 25, 1996 at Reception No. F0321025 in the office of the Clerk and Recorder of said county, also being the southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster per annexation map recorded at Reception No. F1027164 in said office of the Clerk and Recorder and the point of beginning; thence departing said southerly right-of-way and continuing along said easterly line and said westerly boundary, South 00°42'14" West 284.01 feet to the southerly boundary of said Tract 55 and the northerly boundary of the Church Ranch Homeplace annexation to the City of Westminster per annexation map recorded at Reception no. 88080480 in said office of the Clerk and Recorder; thence along said southerly boundary and said northerly boundary, South 88°52'14" West 441.63 feet to the easterly boundary of the Church Ranch Amoco annexation to the City of Westminster per annexation map recorded at Reception No. F2020175 in said office of the Clerk and Recorder; thence along the easterly and southeasterly boundary of said Church Ranch Amoco annexation the following 4 courses:

- 1) North 00°05'32" East 188.87 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 133.50 feet, the radius point of said curve bears North 49°54'59" West;
- 2) Northeasterly along said curve through a central angle of 03°41'56" an arc length of 8.62 feet;
- 3) Tangent to said curve, North 36°23'05" East 144.20 feet to the beginning of a tangent curve concave southeasterly having a radius of 86.50 feet;
- 4) Northeasterly along said curve through a central angle of 23°24'06" an arc length of 35.33 feet to said southerly right-of-way of Reed Street and said southerly boundary of the U.S. Highway 36/Church Ranch Boulevard annexation to the City of Westminster;

Thence along the southerly and southeasterly right-of-way of said Reed Street and along the southerly and southeasterly right-of-way of said U.S. Highway 36/Church Ranch Boulevard annexation the following 3 courses:

- 1) North  $89^{\circ}48'37''$  East 251.02 feet to the beginning of a tangent curve concave southwesterly having a radius of 33.00 feet;
- 2) Southeasterly along said curve through a central angle of  $52^{\circ}48'12''$  an arc length of 30.41 feet to the beginning of a reverse curve concave northeasterly having a radius of 80.00 feet;
- 3) Southeasterly along said curve through a central angle of  $43^{\circ}08'25''$  an arc length of 60.24 feet to the point of beginning.

Containing 3.147 acres (137,067 sq. ft.), more or less.



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004



**SUBJECT:** Councillor's Bill No. 79 re 2004 Budget Supplemental Appropriation

**Prepared By:** Karen Creager, Internal Auditor

**Recommended City Council Action:**

Pass Councillor's Bill No. 79 on first reading providing for supplementary appropriations to the 2004 budget of the General, General Capital Improvement and Open Space Funds.

**Summary Statement**

At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.

This is the 2004 3rd quarter supplemental appropriation.

**General Fund amendments:**

- \$13,122 Police Department overtime reimbursement
- \$10,623 Police Department grants
- \$7,000 Police Department training funds
- \$1,325 Gates Foundation grant
- \$3,463 Xcel Energy Rebate
- \$2,700 Fire Department overtime reimbursement
- \$9,375 Business Appreciation Event contributions

**General Capital Improvement Fund amendments:**

- \$44,500 State Historical Fund grants

**Open Space Fund amendments:**

- \$64,350 sale of land
- \$2,000 easement payment

Appropriation of these unbudgeted funds allows the funds to be spent in 2004.

**Expenditure Required:** \$158,458

**Source of Funds:** The funding sources for these expenditures include grants, reimbursements, proceeds from land sales, training funds, contributions, easement payment and a rebate.

**Policy Issue**

Does City Council support amending the appropriations for the 2004 budget of the General, General Capital Improvement and Open Space Funds?

**Alternative**

The alternative would be not to amend the 2004 budget appropriations for the General, General Capital Improvement and Open Space Funds and utilize these funds to increase reserves. Staff does not recommend this alternative as the various departments have already incurred these expenses and covered them in their current budget in anticipation of receipt of the funds.

**Background Information**

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

The Police Department (PD) received \$5,613 from the City of Thornton on behalf of the North Metro Drug Task Force, \$7,214 from the City of Lakewood on behalf of the West Metro Drug Task Force and \$295 from the US Department of Justice for High Intensity Drug Trafficking Area (HIDTA) Investigations overtime reimbursements. These reimbursements were for overtime incurred by members of the Police Department while working on Federal HIDTA cases. (General Fund)

The PD received three grants, \$4,200, \$5,623 and \$800, from the State of Colorado, the Federal Bureau of Justice Assistance and Target Corporation, respectively. The grant from the State of Colorado was for overtime expended during the "Click It or Ticket" campaign from May 24, 2004 through June 6, 2004. During this campaign, overtime was expended for officers to enforce seat belt laws. The grant from the Bureau of Justice Assistance is for reimbursement of bullet proof vest purchases made by the PD. The grant from Target Corporation was in support of the PD's patrol bikes. (General Fund)

Additionally, the PD has received \$7,000 in revenue for training classes hosted by Westminster PD. These funds are over the amount originally budgeted for training revenue. In order to cover the cost of these trainings, these funds are being appropriated to the PD's training expenditure account. (General Fund)

The Library Division received a Gates Foundation grant of \$1,325 for the purchase of a computer with applicable software for public use at the Irving Street Library. (General Fund)

The Building, Operations and Maintenance Division received a rebate in the amount of \$3,463 from Xcel Energy. Xcel Energy offers a rebate program for the installation of energy efficient heat pumps such as the pumps that were installed during the heating, ventilation and air conditioning (HVAC) construction project for the City Hall Remodel Project. This is the first of a two-part rebate with the second rebate being available in 2005. (General Fund)

The Fire Department received a reimbursement of \$2,700 from the City and County of Broomfield for overtime expenses incurred by Fire personnel to participate in a Department of Justice Domestic Preparedness Grant Field Exercise held on April 22, 2004. (General Fund)

Community Development received contributions in the amount of \$9,375 from various businesses to offset the expenses of the annual Business Appreciation Event. (General Fund)

Community Development received two grants totaling \$44,500 from the Colorado Historical Society. One grant of \$4,000 is an interim payment toward a \$10,000 grant that was awarded for the purpose of conducting a structure assessment on the Rodeo Market 3915 W. 73rd Ave., acquired by the Westminster Housing Authority. The second grant of \$40,500 is an interim payment toward a \$101,361 grant that was awarded to the City and the Westminster Grange Association in order to complete an exterior restoration of the Grange Hall (General Capital Improvement Fund)



The Open Space fund received \$64,350 for the sale of open space land for right-of-way and \$2,000 for an easement payment. Qwest paid the City \$2,000 for an easement at Countryside. As part of the Huron Street Project, it was necessary to purchase land from the Open Space Fund for right-of-way purposes for \$64,350. These payments are being appropriated so the funds are available for other open space land purchases in 2004. (Open Space Fund)

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **79**

SERIES OF 2004

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE 2004 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUNDS.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2004 appropriation for the General Fund initially appropriated by Ordinance No. 2977 in the amount of \$71,828,317 is hereby increased by \$47,608 which, when added to the fund balance as of the City Council action on October 25, 2004 will equal \$86,639,207. 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. The appropriation is due to the receipt of grants, reimbursements, training funds and a rebate..

Section 2. The \$47,608 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$48,014	\$25,645	\$73,659
General Misc	1000.43060.0000	156,491	4,263	160,754
PD Training	1000.41360.0000	11,000	7,000	18,000
Contributions	1000.43100.0000	26,500	9,375	35,875
Other Grants	1000.40640.0000	0	<u>1,325</u>	1,325
Total Change to Revenues			<u>\$47,608</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Overtime	10025260.60400.0000	\$190,900	\$2,700	\$193,600
Elec & Gas	10012390.67200.0000	7,300	3,463	10,763
Comp Soft/hard	10050620.75400.0000	9,500	1,325	10,825
Overtime	10020300.60400.0344	17,014	13,122	30,136
Overtime	10020500.60400.0000	629,620	4,200	633,820
Unif & Equip	10020500.61000.0000	123,375	5,623	128,998
Other Equip	10020500.76000.0000	213,993	800	214,793
Career Dev	10020050.61800.0612	11,000	7,000	18,000
Spec Promo	10030340.67600.0000	41,100	<u>9,375</u>	50,475
Total Change to Expenses			<u>\$47,608</u>	

Section 3. The 2004 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2977 in the amount of \$9,036,000 is hereby increased by \$44,500 which, when added to the fund balance as of the City Council action on October 25, 2004 will equal \$19,592,662. 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 appropriation is due the receipt of two grants.

Section 4. The \$44,500 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
State Grants	7500.40620.0000	\$0	\$44,500	\$44,500
Total Change to Revenue			\$44,500	

EXPENSES

Description	Account Number	2004 Adopted	Amendment	2004 Revised
South Westminster	80175030024.80400.8888	\$1,459,000	\$44,500	\$1,503,500
Total Change to Expenses			\$44,500	

Section 5. The 2004 appropriation for the Open Space Fund initially appropriated by Ordinance No. 2977 in the amount of \$4,663,797 is hereby increased by \$66,350 which, when added to the fund balance as of the City Council action on October 25, 2004 will equal \$7,596,631. The actual amount in the Open Space Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This appropriation is due to the sale of land and the receipt of an easement payment.

Section 6. The \$66,350 increase in the Open Space Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Sale of Assets	5400.43040.0000	\$2,852,453	\$64,350	\$2,916,803
General	5400.43060.0000	42,000	2,000	44,000
Total Changes to Revenue			\$66,350	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Land Purchases	54010900.76600.0000	\$3,850,937	\$66,350	\$3,917,287
Total Change to Expenses			\$66,350	

Section 7. – 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 8. This ordinance shall take effect upon its passage after the second reading.

Section 9. 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 25th day of October, 2004.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of November, 2004.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 25, 2004

**SUBJECT:** Citizen Communication – Asian Pacific Development Center

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

**Recommended City Council Action**

Listen to the presentation by member of the Asian Pacific Development Center

**Summary Statement**

Representatives of the Asian Pacific Development Center have requested time on Monday night's City Council agenda to address City Council regarding their activities.

The Asian Pacific Development Center representatives have indicated that their presentation will be longer than 5 minutes. Because of the length of time, this item has been placed at the bottom of the City Council Agenda.

Dr. Frank Kim Executive Director and Dr. Carey Tanaka Programs Manager will be present to make the presentation

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, October 25, 2004. . Mayor McNally, Councillors Davia, Dittman, Dixon, Hicks, Kauffman, and Price were present at roll call. Absent none.

The minutes of the October 11, 2004 meeting were approved.

Council proclaimed the week of October 25<sup>th</sup> as Business Appreciation Week.

Council approved the following: September Financial Report, Special Legal Services for Pension Plan Review; Dover Square Park Renovation Construction Contract; Open Space Acquisition of 8 Acres at Walnut Creek at 103<sup>rd</sup> & Zephyr; 73<sup>rd</sup> Avenue/Lowell Boulevard Redevelopment Project Development Agreement-Phase II; City Manager Employment Agreement with J. Brent McFall; establishment of Church Ditch Water Authority; and stipulation and plan for exclusion of property from North Metro Fire Rescue District.

At 7:10 P.M. a public hearing was held on The Ranch SID for filing No. 6

At 7:21 P.M. a public hearing was held on The Ranch SID for filing No. 2.

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

A BILL FOR AN ORDINANCE CREATING THE RANCH SUBDIVISION SPECIAL IMPROVEMENT DISTRICT NO. 1, ORDERING THE CONSTRUCTION, INSTALLATION, AND ACQUISITION OF CERTAIN PERIMETER WALL IMPROVEMENTS, TOGETHER WITH NECESSARY INCIDENTALS, AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH. Purpose: Creating SID for The Ranch Filing No. 6 fence.

A BILL FOR AN ORDINANCE CREATING THE RANCH SUBDIVISION SPECIAL IMPROVEMENT DISTRICT NO. 2, ORDERING THE CONSTRUCTION, INSTALLATION, AND ACQUISITION OF CERTAIN PERIMETER WALL IMPROVEMENTS, TOGETHER WITH NECESSARY INCIDENTALS, AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH. Purpose: Creating SID for The Ranch Filing No. 2 fence.

A BILL FOR AN ORDINANCE APPROVING A CONCESSION AGREEMENT BETWEEN THE CITY, HYLAND HILLS PARK AND RECREATION DISTRICT, AND CORLEY COFFEE RESERVE INC. FOR THE LEASE OF A PORTION OF THE ICE CENTRE AT THE WESTMINSTER PROMENADE FOR A COFFEE SHOP/JUICE BAR. Purpose: Approving concession lease at Ice Centre.

A BILL FOR AN ORDINANCE APPROVING A HOUSE LEASE AT THE CITY'S STRASBURG NATURAL RESOURCE FARM Purpose: Approving lease at 57401 East 88<sup>th</sup> Avenue

A BILL FOR AN ORDINANCE AMENDING THE 2004 BUDGETS OF THE GENERAL, GENERAL CAPITAL IMPROVEMENT AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2004 ESTIMATED REVENUES IN THE FUNDS. Purpose: additional monies for Capital Improvements and open space

The following Councillor's Bill was adopted on seconded reading:

A BILL FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2005 AND 2006 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW

The following Resolutions were adopted:

Resolution No. 67 re Exclusion of property from North Metro Fire Rescue District

Resolution No. 68 re IGA with CDOT re 120<sup>th</sup> Avenue/I-25 Bridge Enhancements

At 7:56 p.m. the meeting was adjourned

By order of the Westminster City Council  
Michele Kelley, CMC, City Clerk

Published in the Westminster Window on November 8, 2004

BY AUTHORITY

ORDINANCE NO. **3162**  
SERIES OF 2004

COUNCILLOR'S BILL NO. **72**  
INTRODUCED BY COUNCILLORS  
Dittman - Price

A BILL

FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2005 AND 2006 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW.

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Non-emergency reserve as of December 31, along with revenue for the calendar and fiscal year are combined and reflected as the total in each of the following funds:

**NON-EMERGENCY RESERVE AND NEW REVENUE**

	Fiscal Year 2005	Fiscal Year 2006
a. General Fund	\$82,941,554	\$86,209,579
b. Utility Fund	41,478,593	42,879,223
c. General Capital Improvement Fund	7,587,000	7,668,000
d. Fleet Maintenance Fund	1,549,828	1,589,394
e. General Capital Outlay Replacement Fund	2,917,759	2,966,109
f. General Debt Service Fund	7,748,883	8,442,782
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	60,560,581	62,783,108
i. Open Space Fund	4,414,869	4,563,535
j. General Reserve Fund	7,744,350	7,954,400
k. Utility Reserve Fund	9,483,500	9,544,850
l. Golf Course Fund	<u>3,333,363</u>	<u>3,380,092</u>
Total Funds Available	\$230,385,280	\$238,606,072
Less Transfers	<u>-68,422,604</u>	<u>-71,660,668</u>
<b>GRAND TOTAL</b>	<b>\$161,962,676</b>	<b>\$166,945,404</b>

Section 2: The following amounts are hereby appropriated for expenditure by fund to be expended by the City Manager in accordance with the City Charter.

	Fiscal Year 2005	Fiscal Year 2006
a. General Fund	\$82,941,554	\$86,209,579
b. Utility Fund	41,478,593	42,879,223
c. General Capital Improvement Fund	7,587,000	7,668,000
d. Fleet Maintenance Fund	1,549,828	1,589,394
e. General Capital Outlay Replacement Fund	2,917,759	2,966,109
f. General Debt Service Fund	7,748,883	8,442,782
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	60,560,581	62,783,108
i. Open Space Fund	4,414,869	4,563,535
j. General Reserve Fund	7,744,350	7,954,400
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l. Golf Course Fund	<u>3,333,363</u>	<u>3,380,092</u>
Total Funds Available	\$230,385,280	\$238,606,072
Less Transfers	<u>-68,422,604</u>	<u>-71,660,668</u>
<b>GRAND TOTAL</b>	<b>\$161,962,676</b>	<b>\$166,945,404</b>

This ordinance shall become effective January 1, 2005.

INTRODUCED AND PASSED on first reading this 11<sup>th</sup> day of October, 2004.

PASSED AND ADOPTED on second reading this 25<sup>th</sup> day of October, 2004.