



## CITY COUNCIL AGENDA

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

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

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

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

### 8. Consent Agenda

- A. Financial Report for September 2009
- B. Quarterly Insurance Claim Report: July – September 2009
- C. Revised Employment Agreement with J. Brent McFall
- D. Revised Employment Agreement with Martin R. McCullough
- E. IGA re City Assistance in Maintaining Westminster Housing Authority owned Property
- F. Revised and Amended Storage Facility Agreement and Water Lease Agreements with Aggregate Industries
- G. Second Reading of Councillor's Bill No. 35 re Amendment to the Adopted 2010 Budget
- H. Second Reading of Councillor's Bill No. 36 re Amending Ordinance #3462 re Moratorium on Special Use Permits

### 9. Appointments and Resignations

#### 10. Public Hearings and Other New Business

- A. Revised Employment Agreement with John A. Stipech
- B. Councillor's Bill No. 37 re Municipal Judge Salary
- C. Resolution No. 45 re 2010 Jefferson County Joint Venture Grant Application for the City Park Playground
- D. Resolution No. 46 re Service Commitment Award Extension for Planning Area 4 of the Walnut Grove PUD
- E. Resolution No. 47 re Service Commitment Award Extension for the Huron Park Planned Unit Development

#### 11. Old Business and Passage of Ordinances on Second Reading

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

- A. City Council
- B. Executive Session – Discussion on the progress and status of negotiations with Xcel Energy (Public Service Company), determination of the City's position on proposed Franchise terms, and request for Council instruction to the City's negotiators, as authorized by §1-11-3(C)(7) W.M.C. and §24-6-402(4)(e) C.R.S.

#### 13. Adjournment

**WESTMINSTER HOUSING AUTHORITY MEETING (separate agenda)**

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

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, OCTOBER 12, 2009 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Major, to approve the minutes of the regular meeting of September 28, 2009, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that mail ballots would be sent to registered electors of the City between October 13 and 16. He urged electors to educate themselves on the candidates, to mark their ballots, and to mail or personally deliver them to a drop-off location.

Following the Council meeting, the Council would conduct meetings of the Westminster Economic Development Authority, Westminster General Improvement Districts, and then meet in executive session to discuss a personnel matter, as permitted in Section 1-11-3(C)(1) of the Westminster Municipal Code and Section 24-6-402(4)(f) of the Colorado Revised Statutes.

CITY COUNCIL COMMENTS

Councillor Briggs congratulated the Legacy High School Marching Band on its selection to march in a London, England parade on January 1, 2010. He also reported that Council would be meeting on October 13 with past City Councillors to gain their input on planning for the future.

Mayor McNally thanked the Tri-City Baptist Church for dedicating the October 4 service to honor firefighters during Fire Prevention Month and remarked on the quality of the service and support given by the church to Westminster's public safety officers.

PRESENTATIONS

Councillor Major presented the International City and County Management Association Certificate of Excellence in Performance Measurement Award to members of the City's Performance Measurement Team. Westminster was one of 14 cities in the nation to receive the award, the highest distinction bestowed by ICMA for performance measurement. This was the fifth time the City had been recognized for its performance measurement program. Key outcome performance measurements were used in decision making, budgeting, strategic planning, and employee training.

Mayor McNally presented the City-County Communications and Marketing Association (3CMA) Award of Excellence for the City website to members of the Web Development Team. The award had been given in the category of Digital Interactive – Overall Website in the 2009 Savvy Awards Competition. The site's clean and user-friendly design, as well as strong home page features had been noted by judges as the basis of their decision.

PROCLAMATIONS

Councillor Lindsey presented a proclamation in support of artists' initiatives in south Westminster to Becky Silver of Aar River Gallery, Mary Lane of the Harris Park Art Cooperative, and Laurie Brandt of the South Westminster

Arts Group. Several artists and performing musicians had located in south Westminster during the past few years and had approached Council requesting designation of a Historic Westminster Art District. Art galleries were conducting monthly, family-friendly art walks in the 73<sup>rd</sup> Avenue area and had created a map to identify not only arts' destinations, but also local historic sites. The proclamation voiced City Council's support of the artists' initiatives in south Westminster and congratulated them on their business successes in 2009.

Councillor Kaiser presented a proclamation declaring October 23 to 31 to be Red Ribbon Week to members of the Westminster Community Awareness Action Team Board of Directors. Clifford "Skeet" Hartman, Chair of the Board, reported on activities that would be held in the community during Red Ribbon Week. Red ribbons were distributed to those in attendance and they were asked to wear the ribbons from October 23 to 31 as a visible statement of the community's strong commitment to a drug-free environment.

### CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the City Manager to execute a contract with Tiger Natural Gas, Inc. for the purchase of natural gas for building operations for up to 21 City facilities, with options for four additional one-year renewals; ratify the application submitted by the Department of Community Development for grant funding in fiscal year 2013 for the replacement of the Little Dry Creek Bridge located at the intersection of 72<sup>nd</sup> Avenue and Raleigh Street; authorize cumulative purchases from Dana Kepner Company, HD Waterworks Ltd., and Ferguson Waterworks in the amounts not to exceed \$125,000 for each vendor for 2009, authorize cumulative purchases from Mountain States Pipe & Supply not to exceed \$75,000 for 2009, and award the bid for the purchase of mechanical joint restraints, fire hydrants, and brass/copper materials to Dana Kepner in the amount of \$60,570; determine that the public interest would be best served by joint purchase of fuel and ratify a contract for purchase of 126,000 gallons of unleaded gasoline and #2 diesel fuel to Chief Petroleum Oil to be delivered to City sites for a cost of \$273,042 between July 1, and December 31, 2010; authorize the City Manager to sign an agreement with Jefferson County, the Cities of Arvada, Lakewood, Wheat Ridge, Golden and Westminster, concerning the reimbursement costs associated with the construction of the Table Mountain Animal Center in substantially the same form as the agreement included in the agenda packet; and final passage of Councillor's Bill No. 34 authorizing the City Manager to sign a three-year lease agreement with Dakota & Amanda Enterprises, LLC for the continuation of the Kids Nite Out Program in substantially the same form as the lease included in the agenda packet

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. None did and Councillor Major moved to approve the consent agenda as presented. The motion was seconded by Councillor Lindsey and carried.

### HUMAN SERVICE BOARD RECOMMENDATIONS ACCEPTED

It was moved by Councillor Winter, seconded by Councillor Kaiser, to accept the Human Services Board recommendations and authorize payment for 2010 fund as outlined in Attachment A to the agenda memorandum, which identified the agencies to which the City would provide financial support during FY2010 and the associated dollar amounts. The motion carried with all Council members voting affirmatively.

### COUNCILLOR'S BILL NO. 35 AMENDING THE 2010 ADOPTED BUDGET

It was moved by Councillor Winter, seconded by Mayor Pro Tem Dittman, to pass Councillor's Bill No. 35 on first reading amending the FY2010 budgets of the General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Storm Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), and General Capital Improvement Funds. At roll call, the motion passed unanimously.

RESOLUTION NO. 44 AMENDING THE 2010 EMPLOYEE PAY PLAN AND BENEFIT PACKAGE

Mayor Pro Tem Dittman moved, seconded by Councillor Kaiser, to adopt Resolution No. 44 amending the 2010 City Employee Pay Plan and benefit package previously approved by Council. The motion passed unanimously on roll call vote.

2010 EMPLOYEE HEALTH INSURANCE RENEWALS AND RATES

Councillor Lindsey moved, seconded by Councillor Kaiser, to authorize the City Manager to renew contracts with Great-West Healthcare, Kaiser Permanente and Delta Dental and authorize the continuation of a four-tier rate structure with the employer and employee premium rates as presented. The motion passed with all Councillors voting affirmatively.

COUNCILLOR'S BILL NO. 36 EXTENDING TEMPORARY MORATORIUM ON SPECIAL USE PERMITS

Upon a motion by Councillor Briggs, seconded by Councillor Major, the Council voted unanimously on roll call vote to pass Councillor's Bill No. 36 on first reading to amend Ordinance No. 3462 and extend the temporary moratorium on Special Use Permits.

ADJOURNMENT

There being no further business to come before the Council, it was moved by Councillor Kaiser, seconded by Major, to adjourn. The motion passed unanimously, and the meeting adjourned at 7:35 p.m.

ATTEST:

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

\_\_\_\_\_  
Mayor



## Agenda Item 6 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Presentation of Employee Service Awards

**Prepared By:** Debbie Mitchell, Human Resources Manager  
Dee Martin, Human Resources Administrator

### Recommended City Council Action

Present service pins and certificates of appreciation to employees celebrating 20 or more years of service with the City and in five year increments thereafter. Special recognition to the City's 25-year employees will be given with the presentation of \$2,500 bonuses.

### Summary Statement

- In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, and City Council recognition of employees with 20 years or more of service, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.
- In 1986, City Council adopted a resolution to award individuals who have given 25 years of service to the City with a \$2,500 bonus to show appreciation for such a commitment. Under the program, employees receive \$100 for each year of service, in the aggregate, following the anniversary of their 25th year of employment. The program recognizes the dedicated service of those individuals who have spent most, if not all, of their careers with the City.
- In the sixth grouping of 2009, employees with 20, 25, 30, 35 and 40 years of service will be celebrated tonight.
  - Mayor Pro Tem Dittman will present the 35 and 40-year certificates.
  - Mayor McNally will present the 25-year certificates.
  - Faith Winter will present the 20 and 30-year certificates.

**Expenditure Required:** \$ 5,000

**Source of Funds:** General Fund  
- Fire Department  
- Police Department

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

The following 20-year employees will be presented with a certificate and service pin:

Jackie June	Employee Development Analyst	General Services
Michele McLoughlin	Planner III	Community Development

The following 25-year employees will be presented with a certificate, service pin and check for \$2,500, minus amounts withheld for Federal and State income taxes after their anniversary date:

Jack Bell	Sergeant	Police Department
Tracy Haze	Fire Lieutenant	Fire Department

The following 30-year employees will be presented with a certificate and service pin:

Dennis Bishop	Fire Training Coordinator	Fire Department
Steve McClay	Senior Police Officer	Police Department
Kevin Sailor	Sergeant	Police Department

The following 35-year employees will be presented with a certificate and service pin:

Bill Work	Deputy Chief/Operations	Fire Department
Ray Porter	Street Operations Manager	Public Works & Utilities

The following 40-year employee will be presented with a certificate and service pin:

Pat Sexton	Street Supervisor	Public Works & Utilities
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On November 18, 2009, the City Manager will host an employee awards luncheon. During that time, 4 employees will receive their 15 year service pin, 5 employees will receive their 10 year service pin, and 10 employees will receive their 5 year service pin. Recognition will also be given to those celebrating their 20<sup>th</sup>, 25<sup>th</sup>, 30<sup>th</sup>, 35<sup>th</sup> and 40<sup>th</sup> anniversaries. This will be the sixth luncheon in 2009 to recognize and honor City employees for their service to the public.

The aggregate City service represented among this group of employees for the sixth luncheon will be 450 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens. Background information on each individual being recognized is attached.

The recognition of employee’s years of service addresses Council’s Strategic Plan goal of Financially Sustainable City Government Providing Exceptional Services as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been recognized as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
October 26, 2009



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

**Recommended City Council Action**

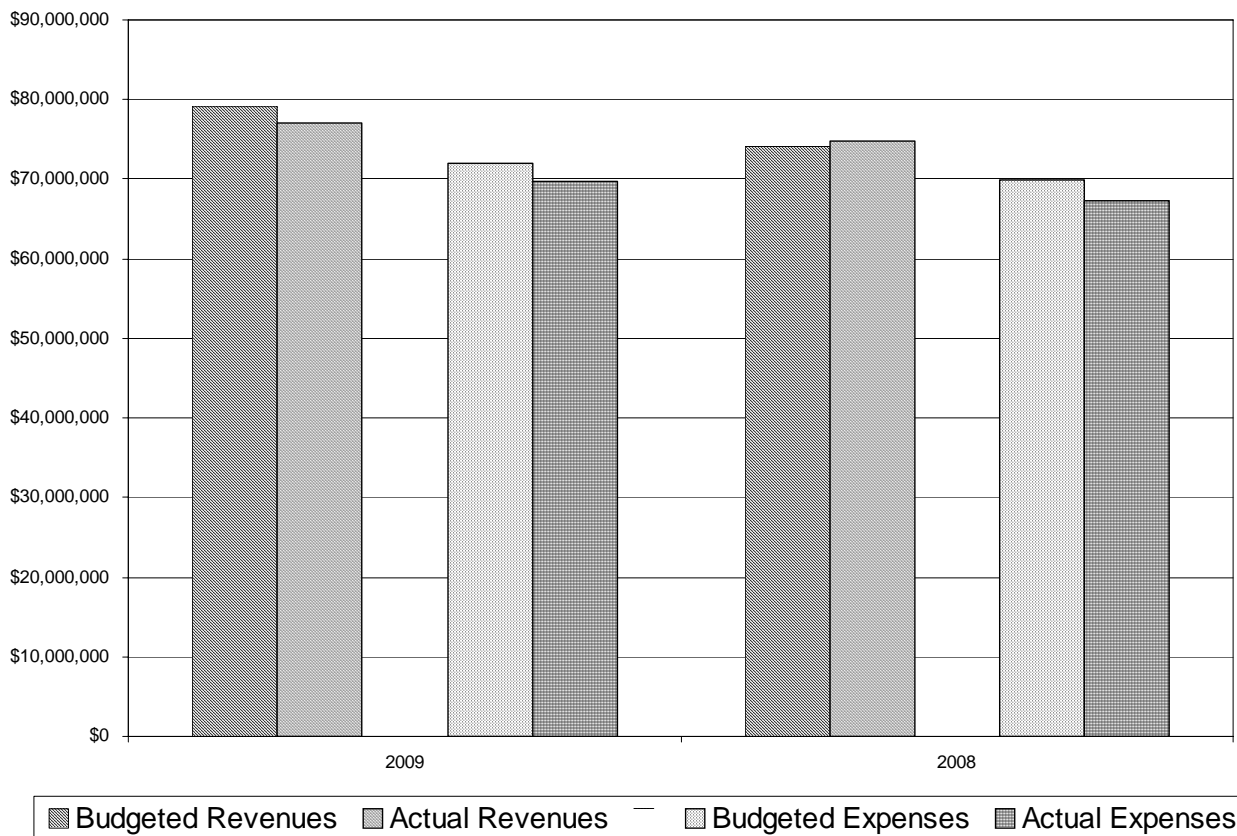
Accept the Financial Report for September as presented.

**Summary Statement**

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

The General Fund revenues and carryover exceed expenditures by \$7,492,837. This figure includes carryover and does not reflect the significant impact the economy has had on overall General Fund revenues. The following graph represents Budget vs. Actual for 2008 – 2009.

**General Fund  
Budget vs Actual**

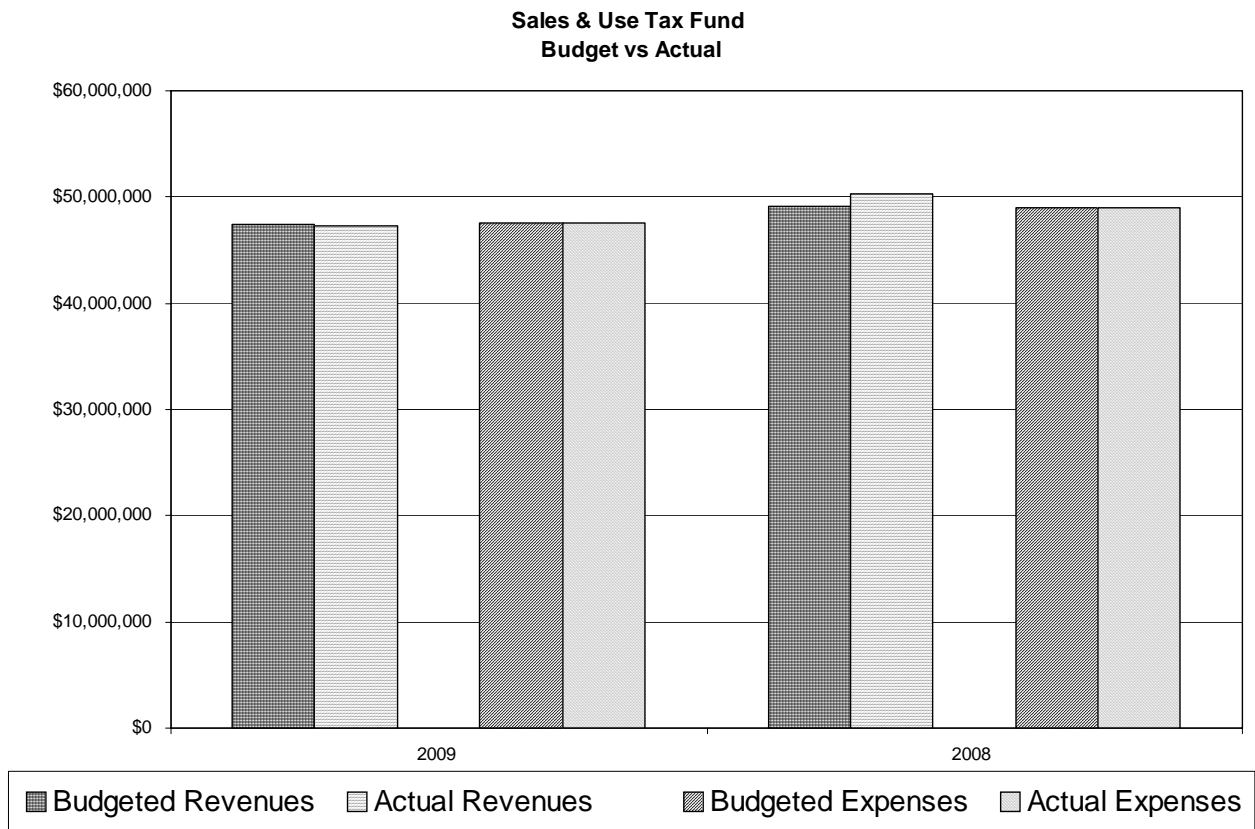




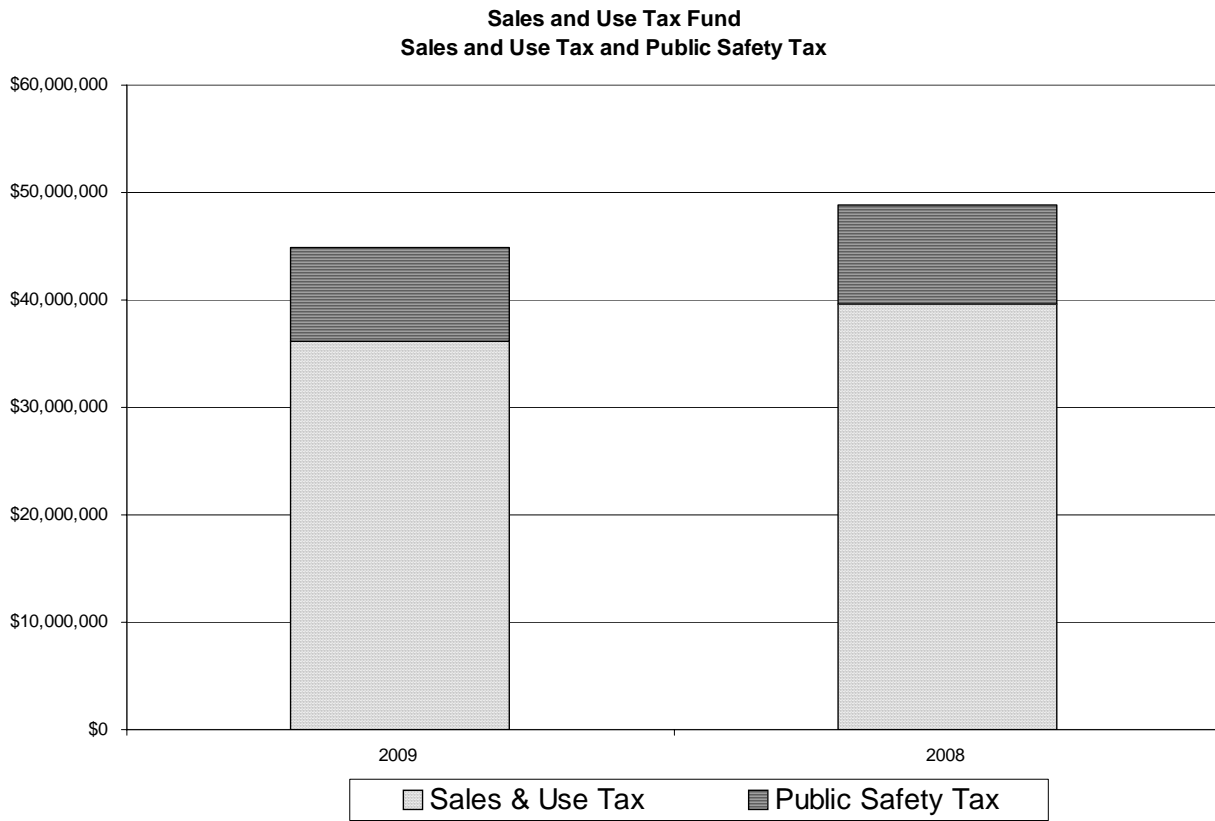
The Sales and Use Tax Fund revenues and carryover are less than expenditures by \$270,882.

- On a year-to-date cash basis, sales and use tax returns are down 6.8% from 2008.
- On a year-to-date basis, across the top 25 shopping centers, total sales and use tax receipts are down 0.5% from the prior year. This includes Urban Renewal Area money that is not available for General Fund use. Without Urban Renewal money, total sales and use tax receipts are down 5.0%.
- The top 50 Sales Tax payers, who represent about 62% of all collections, were down 2.87% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 27.0% on a year-to-date basis.
- Building Use Tax is down 60.5% year-to-date from 2008.

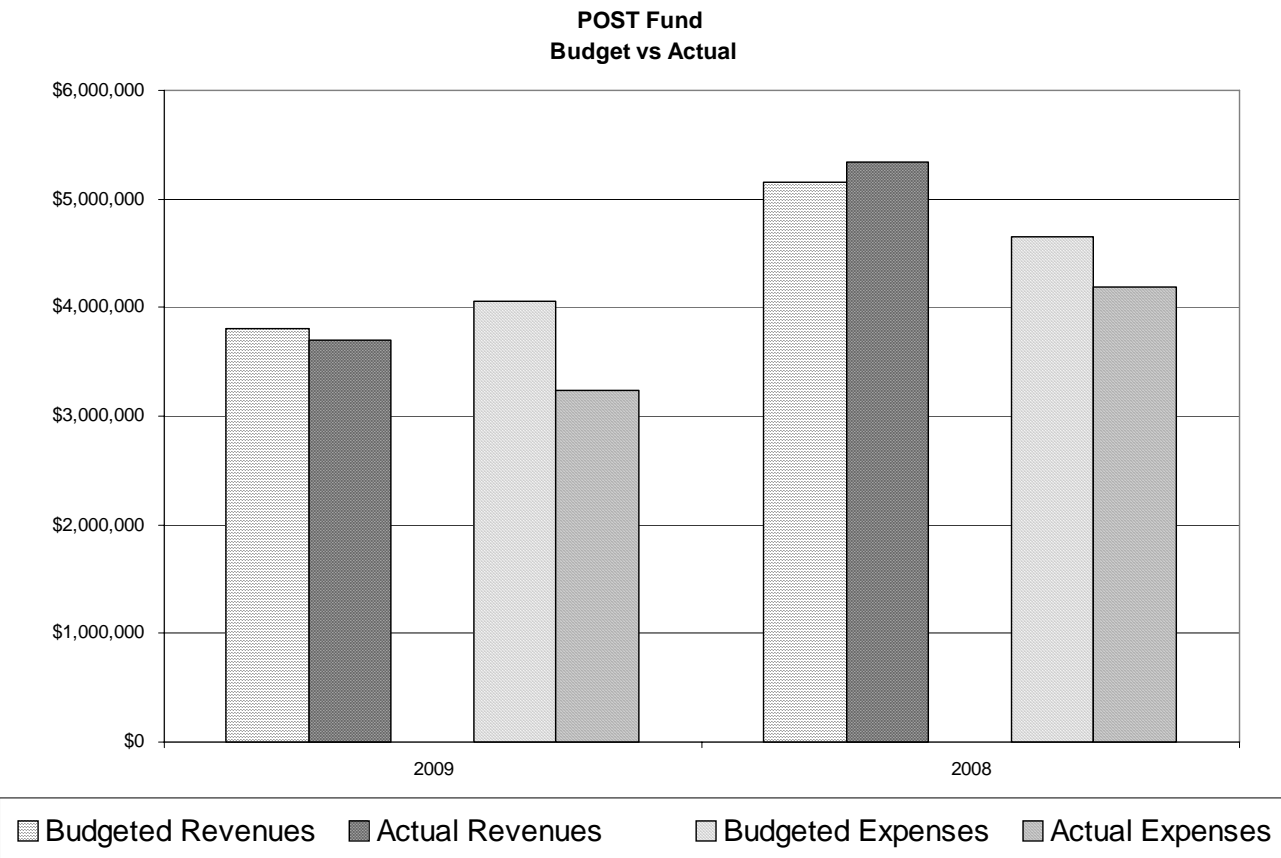
The graph below reflects adjustments made by the City to bring budgeted revenues more into line with actual revenues, as a result of the significant economic downturn.



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

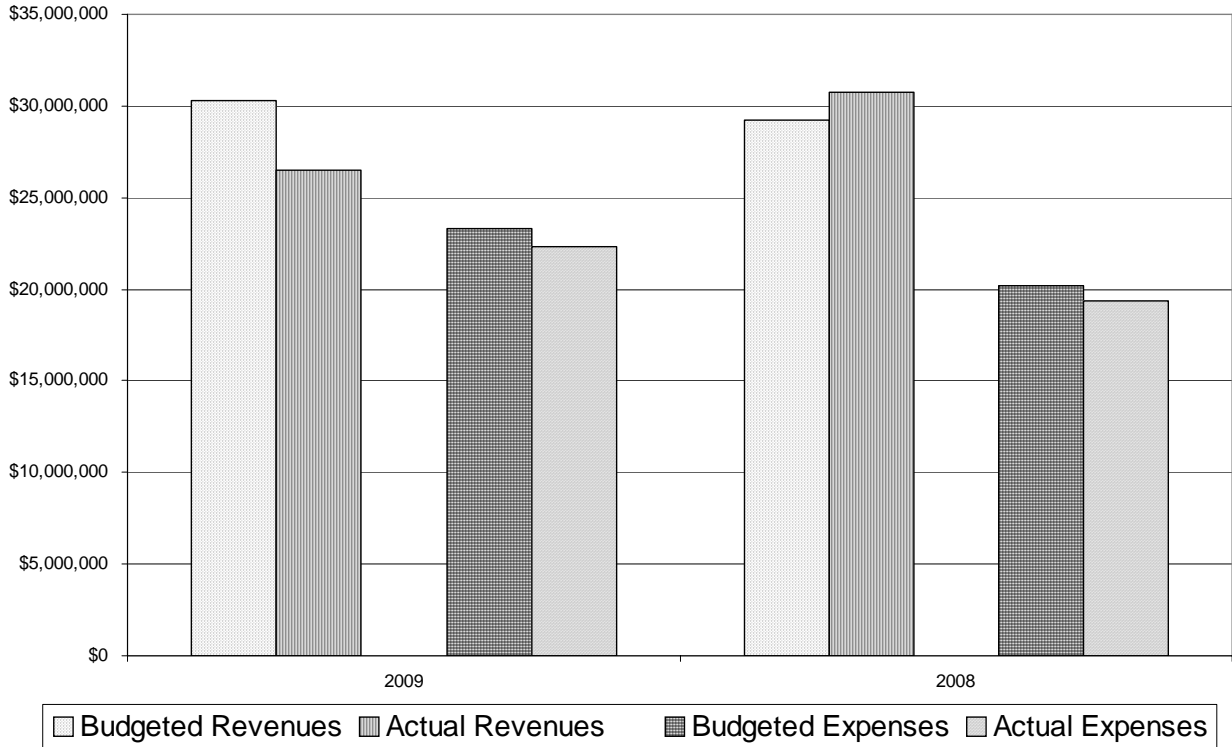


The Parks Open Space and Trails Fund revenues exceed expenditures by \$463,245.



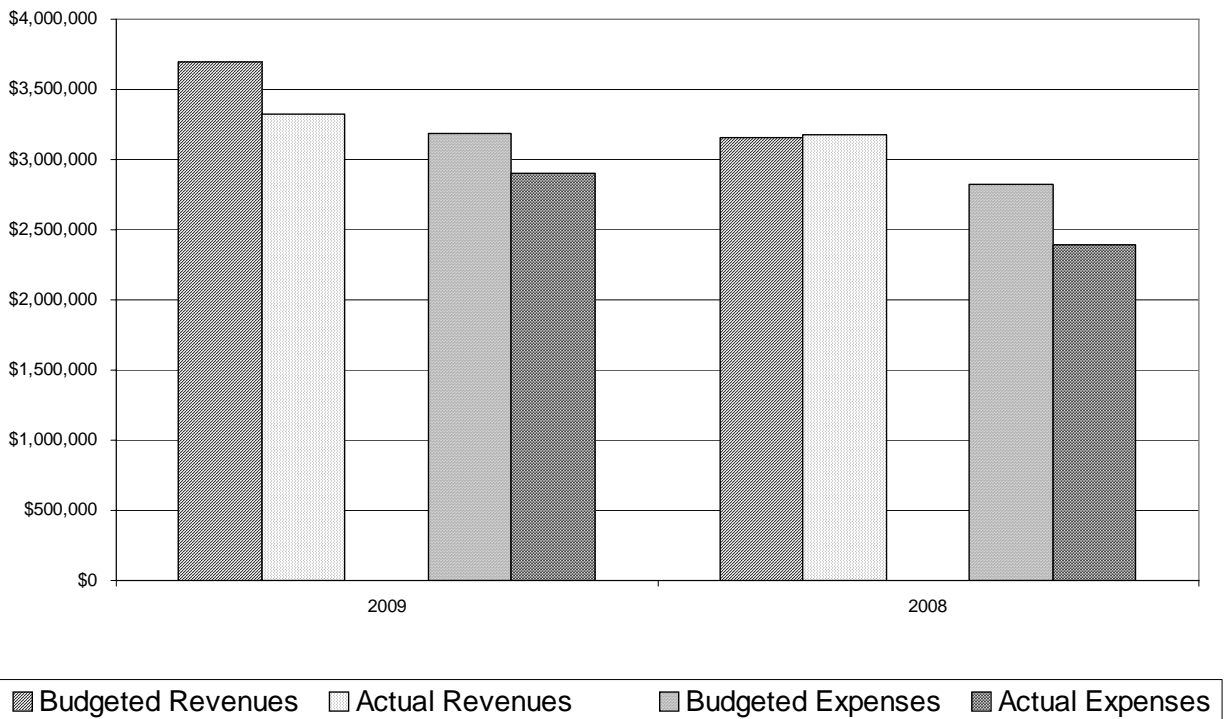
The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$24,184,405. This figure includes carryover and does not reflect the significant impact on revenues from lower tap fee and water sales. \$31,673,665 is budgeted for capital projects and reserves.

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



The combined Golf Course Fund revenues exceed expenses by \$424,124.

**Golf Course Enterprise  
Budget vs Actual**



**Policy Issue**

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

**Alternative**

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

**Background Information**

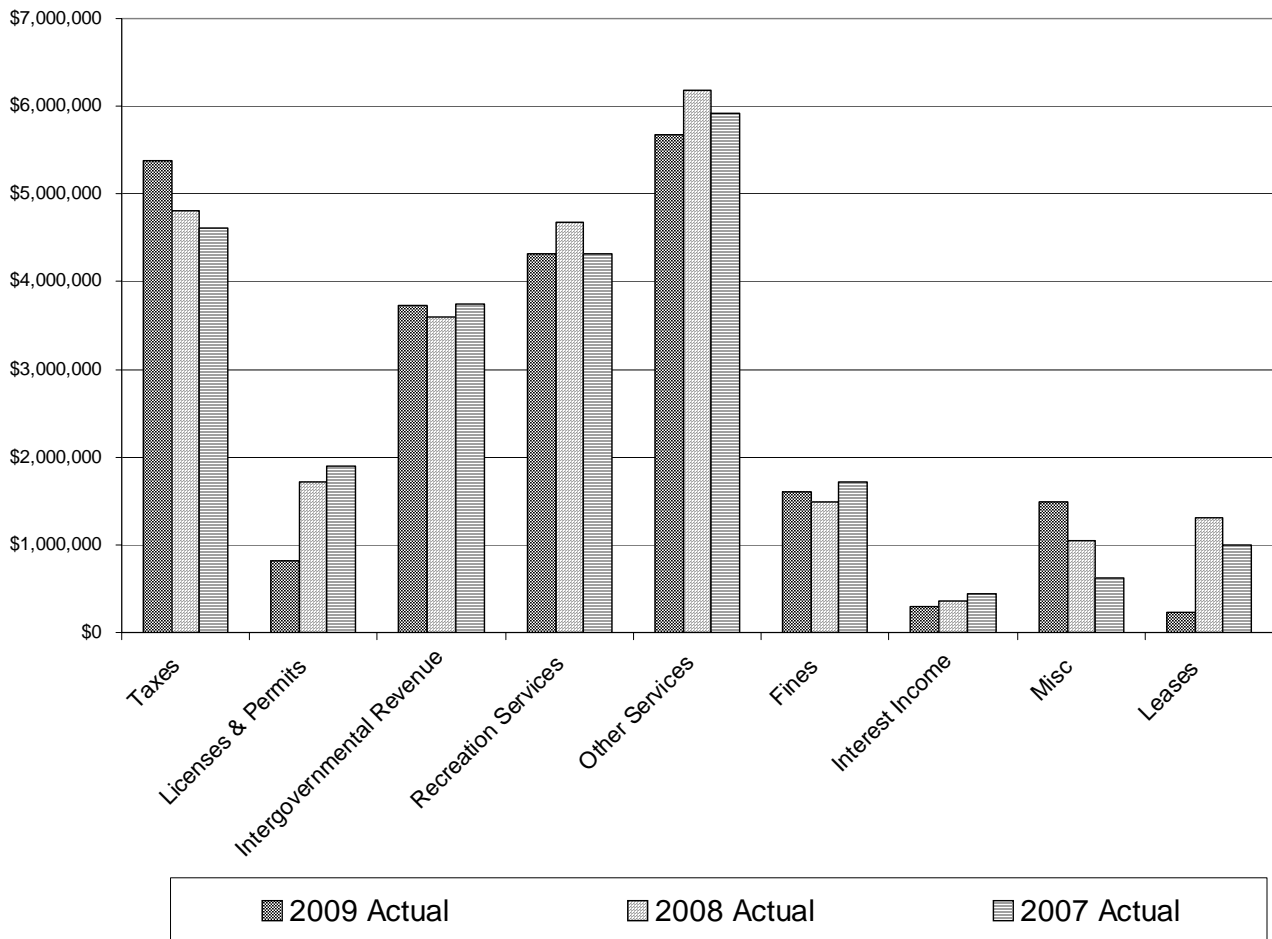
This section includes a discussion of highlights of each fund presented.

**General Fund**

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

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

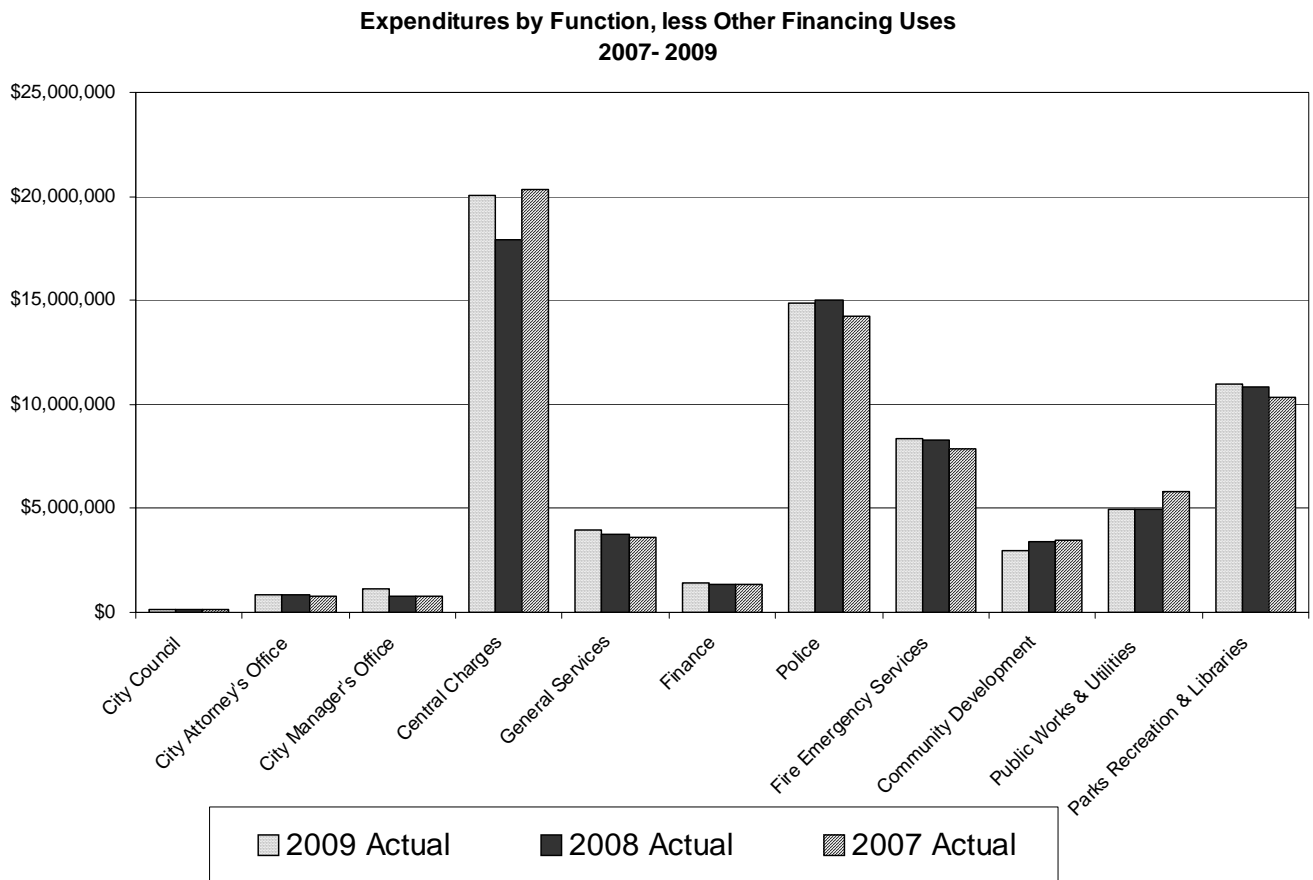
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources  
2007 - 2009**



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

- Increase in Taxes reflects Accommodations Tax previously recorded in the General Capital Improvement Fund, now recorded in the General Fund.
- Decrease in License and Permit revenue reflects commercial and residential building permit activity.
- Decrease in Recreation Services revenue is largely due to activity at the City Park Recreation Center.
- Decrease in Other Services revenue reflects in large part Xcel franchise fees.
- Increase in Fines reflects traffic fine collections.
- Increase in Miscellaneous revenue reflects reimbursements received from Thornton relating to the 144<sup>th</sup> Avenue bridge construction IGA.
- Decrease in Lease revenue is due mostly to the Conference Center and Pavillion leases which were terminated in 2008.

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



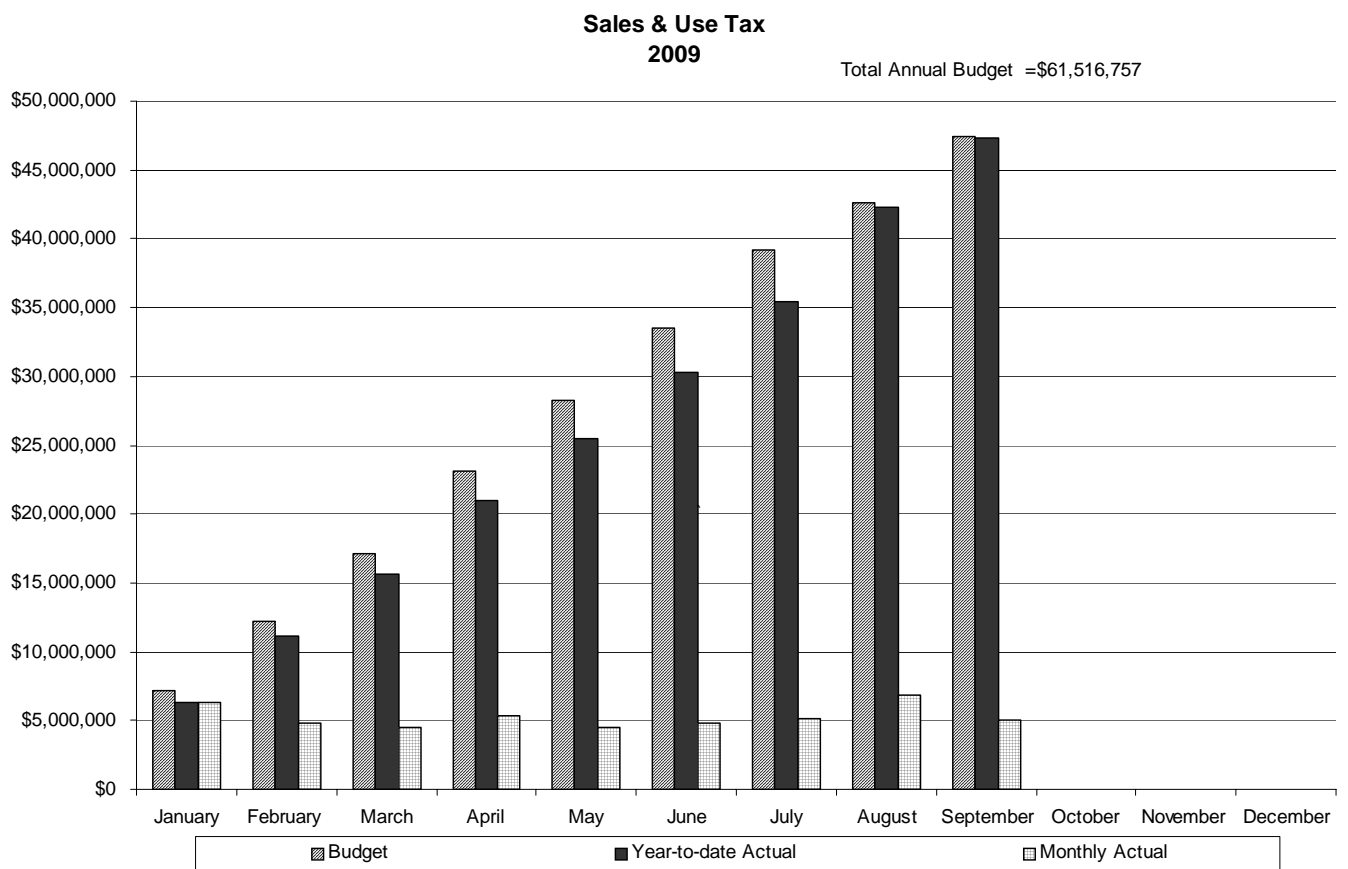
Significant variances in General Fund departmental expenditure categories are explained as follows:

- The increase in Central Charges is primarily due to the transfer made to establish the General Fund Stabilization Reserve.

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

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

This chart indicates how the City's Sales and Use Tax revenues are being collected on a monthly basis. An appropriation of Carryover in the amount of \$2,357,889 is included in this depiction. This chart does not include Open Space Sales & Use Tax.

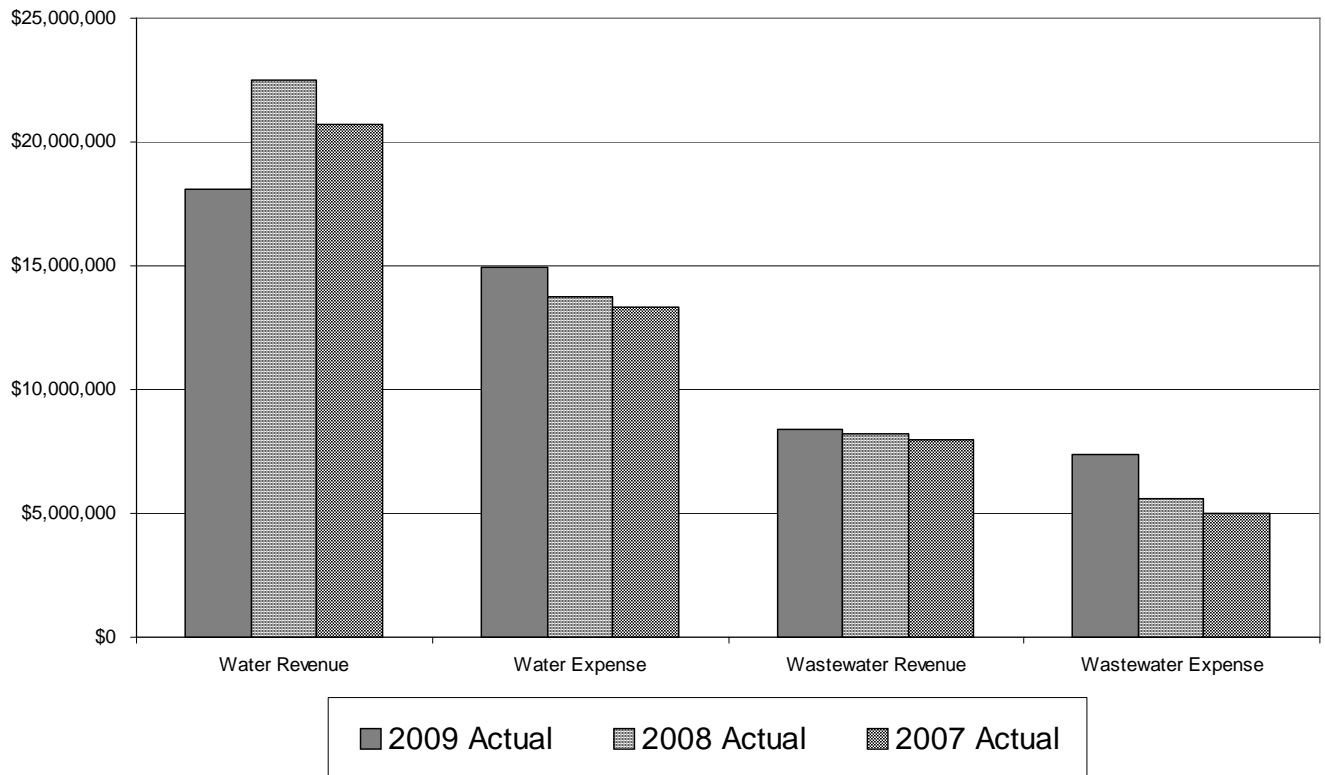


**Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)**

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

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

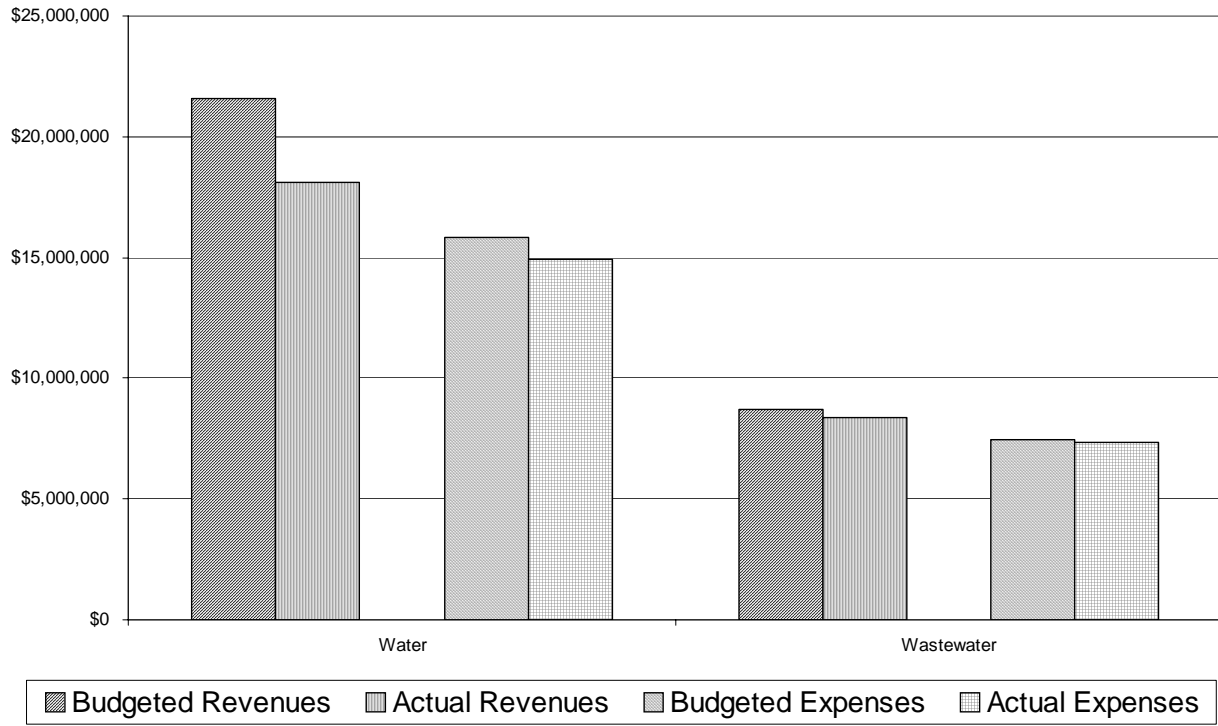
**Water and Wastewater Funds  
Operating Revenue and Expenses 2007-2009**



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

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

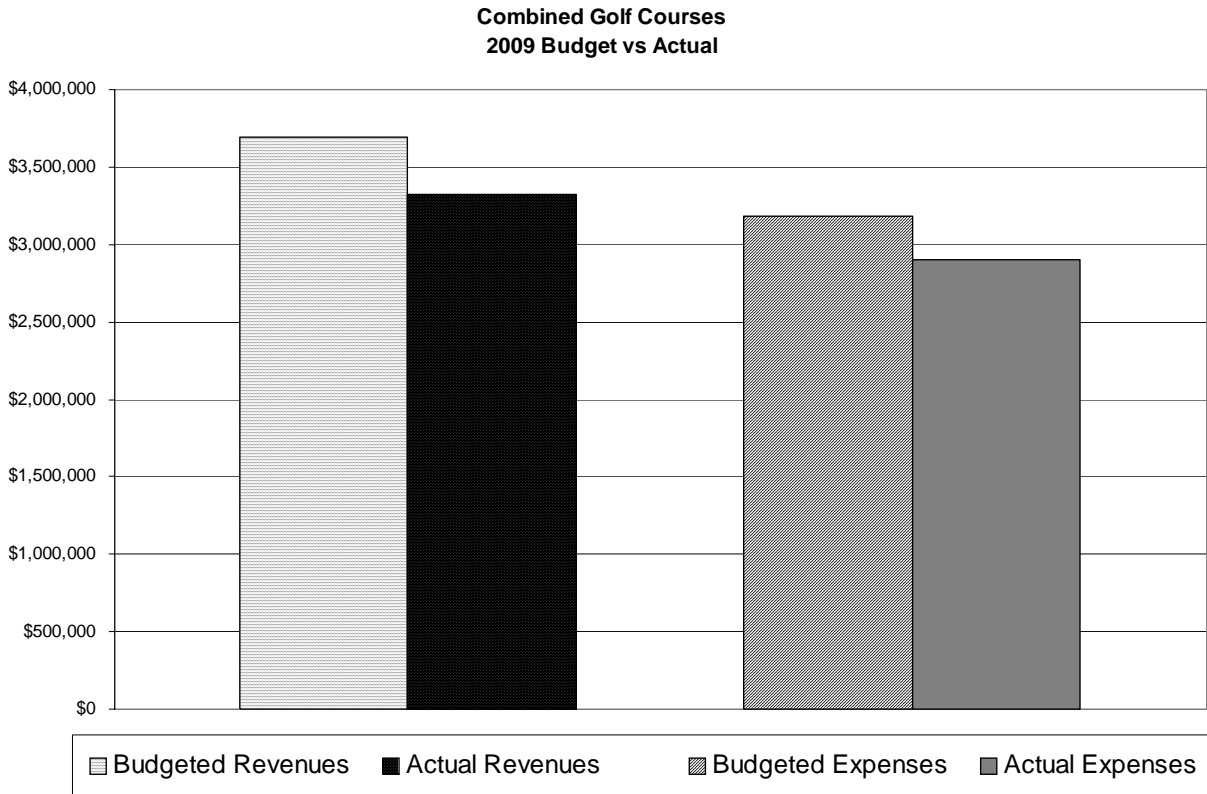
**Water and Wastewater Funds  
2009 Operating Budget vs Actual**



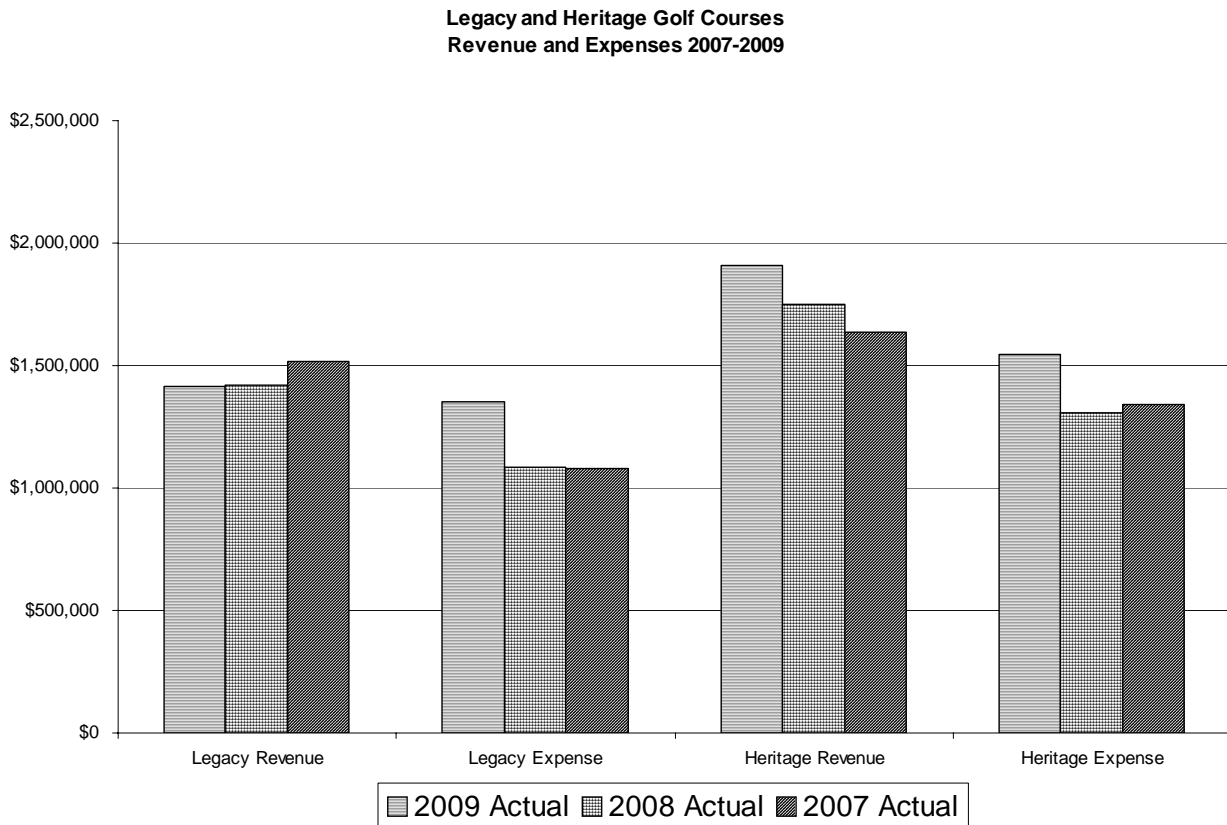


**Golf Course Enterprise (Legacy and Heritage Golf Courses)**

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

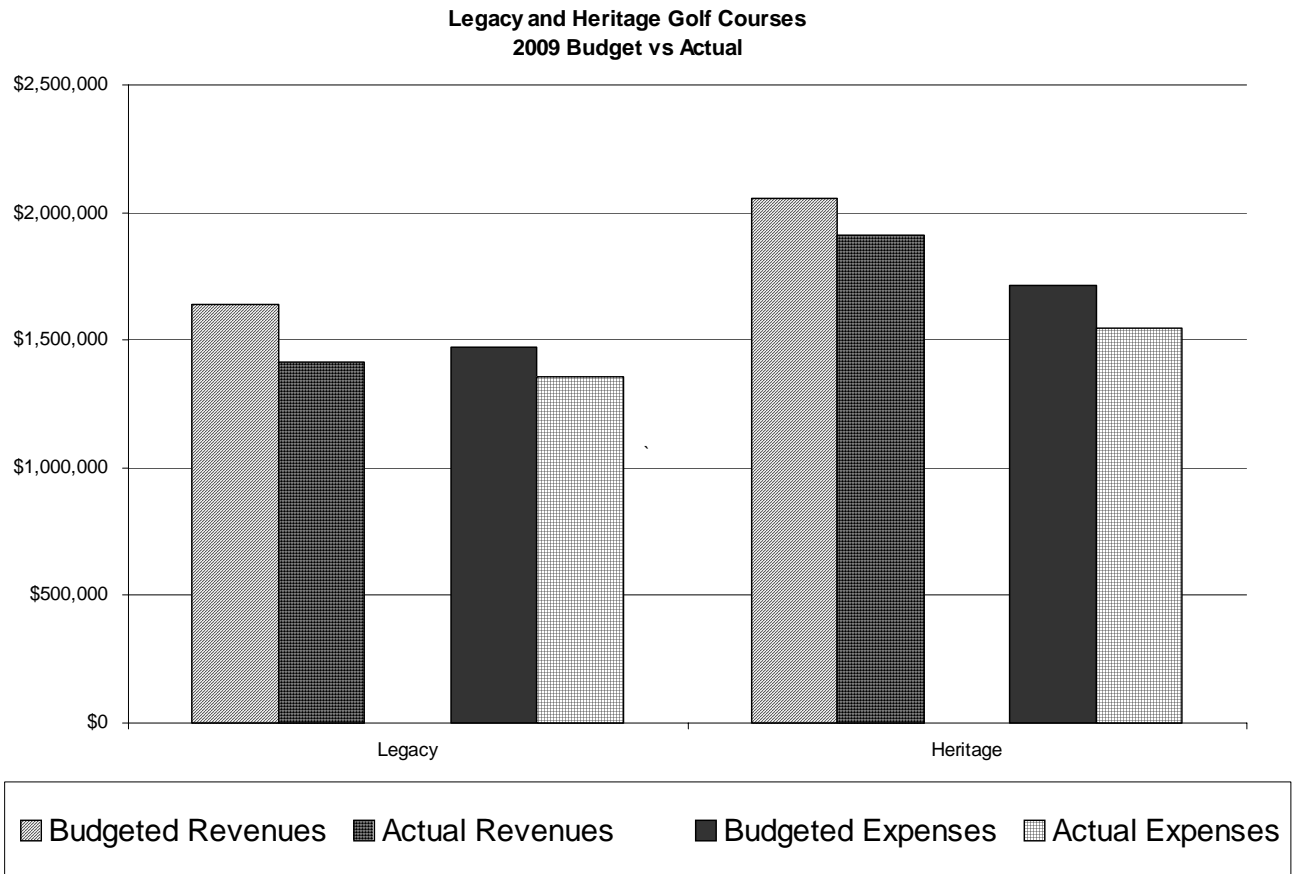


The following graphs represent the information for each of the golf courses.



Allocation of \$144,234 in carryover from Legacy to Heritage, a transfer that Heritage receives to help pay outstanding bonds and lease financing of a new golf cart fleet impacts this revenue representation. Elimination of these items would indicate a decrease in operating revenues from 2008 of \$172,084 at Legacy and \$122,937 at Heritage.

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



Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Revenues and Carryover</b>						
Taxes	6,089,541	5,631,480		5,376,833	-254,647	95.5%
Licenses & Permits	1,597,600	1,183,841		815,859	-367,982	68.9%
Intergovernmental Revenue	5,122,131	3,825,760		3,724,849	-100,911	97.4%
Charges for Services						
Recreation Services	5,910,792	4,596,972		4,311,767	-285,205	93.8%
Other Services	9,254,939	6,588,884		5,670,256	-918,628	86.1%
Fines	2,211,050	1,682,891		1,598,686	-84,205	95.0%
Interest Income	515,000	386,250		289,319	-96,931	74.9%
Misc	1,709,560	1,353,984		1,494,329	140,345	110.4%
Leases	295,925	221,944		234,841	12,897	105.8%
Interfund Transfers	59,601,420	46,072,137	(1)	46,100,148	28,011	100.1%
Other Financing Sources	584,990	584,990		584,990	0	100.0%
Sub-total Revenues	<u>92,892,948</u>	<u>72,129,133</u>		<u>70,201,877</u>	<u>-1,927,256</u>	<u>97.3%</u>
Carryover	6,951,071	6,951,071		6,951,071	0	100.0%
Revenues and Carryover	<u>99,844,019</u>	<u>79,080,204</u>		<u>77,152,948</u>	<u>-1,927,256</u>	<u>97.6%</u>
<b>Expenditures</b>						
City Council	183,819	123,070		134,088	11,018	109.0%
City Attorney's Office	1,170,579	885,725		848,113	-37,612	95.8%
City Manager's Office	1,669,730	1,210,710		1,107,786	-102,924	91.5%
Central Charges	28,298,349	20,213,924		20,069,650	-144,274	99.3%
General Services	5,844,397	4,107,730		3,944,230	-163,500	96.0%
Finance	1,975,712	1,485,881		1,425,173	-60,708	95.9%
Police	21,202,502	15,874,371		14,852,884	-1,021,457	93.6%
Fire Emergency Services	11,771,442	8,760,459		8,379,098	-381,371	95.6%
Community Development	4,351,650	3,244,360		2,992,318	-252,042	92.2%
Public Works & Utilities	7,523,153	4,808,553		4,945,690	137,137	102.9%
Parks, Recreation & Libraries	15,852,656	11,345,242		10,951,091	-364,151	96.6%
Total Expenditures	<u>99,844,019</u>	<u>72,050,025</u>		<u>69,650,111</u>	<u>-2,399,914</u>	<u>96.7%</u>
Revenues and Carryover						
Over/(Under) Expenditures	<u>0</u>	<u>7,020,179</u>		<u>7,492,837</u>	<u>472,858</u>	

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

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Sales and Use Tax Fund</b>						
<b>Revenues and Carryover</b>						
Sales Tax						
Sales Tax Returns	41,057,421	31,492,317		29,837,256	-1,655,061	94.7%
Sales Tax Audit Revenues	697,800	566,986		352,386	-214,600	62.2%
S-T Rev. STX	<u>41,755,221</u>	<u>32,059,303</u>		<u>30,189,642</u>	<u>-1,869,661</u>	94.2%
Use Tax						
Use Tax Returns	4,764,874	3,462,797		4,695,824	1,233,027	135.6%
Use Tax Audit Revenues	777,018	610,736		1,268,555	657,819	207.7%
S-T Rev. UTX	<u>5,561,892</u>	<u>4,073,533</u>		<u>5,964,379</u>	<u>1,890,846</u>	146.4%
Total STX and UTX	<u>47,317,113</u>	<u>36,132,836</u>		<u>36,154,021</u>	<u>21,185</u>	100.1%
Public Safety Tax						
PST Tax Returns	11,482,915	8,640,233		8,433,659	-206,574	97.6%
PST Audit Revenues	128,840	93,172		324,065	230,893	347.8%
Total Rev. PST	<u>11,611,755</u>	<u>8,733,404</u>		<u>8,757,724</u>	<u>24,319</u>	100.3%
Total Interest Income	230,000	172,500		75,086	-97,414	43.5%
Carryover	2,357,889	2,357,889		2,357,889	0	100.0%
Total Revenues and Carryover	<u>61,516,757</u>	<u>47,395,529</u>		<u>47,344,720</u>	<u>-51,910</u>	99.9%
<b>Expenditures</b>						
Central Charges	<u>61,516,757</u>	<u>47,615,602</u>		<u>47,615,602</u>	<u>0</u>	100.0%
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>-218,973</u>		<u>-270,882</u>	<u>-51,910</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

<b>Description POST Fund</b>	<b>Budget</b>	<b>Pro-rated for Seasonal Flows</b>	<b>Notes</b>	<b>Actual</b>	<b>(Under) Over Budget</b>	<b>% Budget</b>
<b>Revenues</b>						
Sales & Use Tax	4,973,386	3,733,345		3,648,071	-85,274	97.7%
Interest Income	31,000	23,250		46,203	22,953	198.7%
Miscellaneous	231,828	50,194		12,274	-37,920	24.5%
Interfund Transfers	180,000	0		0	0	N/A
<b>Total Revenues</b>	<u>5,416,214</u>	<u>3,806,789</u>		<u>3,706,548</u>	<u>-100,241</u>	97.4%
<b>Expenditures</b>						
Central Charges	5,075,985	3,806,989		3,046,004	-760,985	80.0%
Park Services	340,229	253,643		197,299	-56,344	77.8%
	<u>5,416,214</u>	<u>4,060,632</u>		<u>3,243,303</u>	<u>-817,329</u>	79.9%
<b>Over(Under) Expenditures</b>	<u>0</u>	<u>-253,844</u>		<u>463,245</u>	<u>717,088</u>	

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water and Wastewater Fund-Combined</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		72,060	15,810	128.1%
Intergovernmental Revenue	21,965	12,093		12,093	0	100.0%
Rates and Charges	38,724,370	29,885,496		26,246,998	(3,638,498)	87.8%
Miscellaneous	435,000	326,250		168,997	(157,253)	51.8%
<b>Total Operating Revenues</b>	<u>39,256,335</u>	<u>30,280,089</u>		<u>26,500,148</u>	<u>(3,779,941)</u>	<u>87.5%</u>
<b>Operating Expenses</b>						
Central Charges	6,013,371	4,510,028		4,583,783	73,755	101.6%
Finance	671,815	481,020		470,444	(10,576)	97.8%
Public Works & Utilities	22,421,266	16,147,338		15,192,377	(954,961)	94.1%
Parks, Recreation & Libraries	157,226	117,920		89,880	(28,040)	76.2%
Information Technology	2,808,228	2,035,965		1,958,401	(77,564)	96.2%
<b>Total Operating Expenses</b>	<u>32,071,906</u>	<u>23,292,271</u>		<u>22,294,885</u>	<u>(997,386)</u>	<u>95.7%</u>
<b>Operating Income (Loss)</b>	<u>7,184,429</u>	<u>6,987,818</u>		<u>4,205,263</u>	<u>(2,782,555)</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	7,020,000	5,282,436		2,066,249	(3,216,189)	39.1%
Interest Income	1,600,000	1,200,000		875,964	(324,036)	73.0%
Interfund Transfers	21,786,020	19,024,651		19,024,651	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	4,895,770	4,895,770		4,895,770	0	100.0%
Debt Service	(6,303,419)	(2,388,097)		(2,388,097)	0	100.0%
Reserve Transfer	(4,508,135)	(4,508,135)		(4,508,135)	0	100.0%
<b>Total Other Revenue (Expenses)</b>	<u>24,489,236</u>	<u>23,506,527</u>		<u>19,979,142</u>	<u>(3,527,485)</u>	<u>85.0%</u>
<b>Increase (Decrease) in Net Assets</b>	<u>31,673,665</u>	<u>30,494,445</u>	(1)	<u>24,184,405</u>	<u>(6,310,040)</u>	

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

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Water Fund</b>						
<b>Operating Revenues</b>						
License & Permits	75,000	56,250		72,060	15,810	128.1%
Intergovernmental Revenue	21,965	12,093		12,093	0	100.0%
Rates and Charges	27,006,370	21,183,018		17,857,623	(3,325,395)	84.3%
Miscellaneous	425,000	318,750		164,809	(154,141)	51.6%
<b>Total Operating Revenues</b>	<b>27,528,335</b>	<b>21,570,111</b>		<b>18,106,385</b>	<b>(3,463,726)</b>	<b>83.9%</b>
<b>Operating Expenses</b>						
Central Charges	4,268,956	3,201,717		3,279,299	77,582	102.4%
Finance	671,815	481,020		470,444	(10,576)	97.8%
Public Works & Utilities	13,839,429	9,995,332		9,138,213	(857,119)	91.4%
Parks, Recreation & Libraries	157,226	117,920		89,890	(28,040)	76.2%
Information Technology	2,808,228	2,035,965		1,958,401	(77,564)	96.2%
<b>Total Operating Expenses</b>	<b>21,745,654</b>	<b>15,831,954</b>		<b>14,936,237</b>	<b>(895,717)</b>	<b>94.3%</b>
<b>Operating Income (Loss)</b>	<b>5,782,681</b>	<b>5,738,157</b>		<b>3,170,148</b>	<b>(2,568,009)</b>	
<b>Other Revenue and Expenses</b>						
Tax Fees	5,739,000	4,310,178		1,682,406	(2,627,772)	39.0%
Interest Income	900,000	675,000		658,257	(16,743)	97.6%
Inter-fund Transfers	18,249,272	15,681,753		15,681,753	0	100.0%
Sale of Assets	0	0		12,740	12,740	N/A
Carryover	4,158,733	4,158,733		4,158,733	0	100.0%
Debt Service	(4,798,025)	(1,782,519)		(1,782,519)	0	100.0%
Reserve Transfer	(3,777,956)	(3,777,956)		(3,777,956)	0	100.0%
<b>Total Other Revenues (Expenses)</b>	<b>20,470,984</b>	<b>19,465,149</b>		<b>16,833,374</b>	<b>(2,631,775)</b>	<b>86.5%</b>
<b>Increase (Decrease) in Net Assets</b>	<b>26,253,665</b>	<b>25,203,306</b>	(1)	<b>20,003,522</b>	<b>(5,199,784)</b>	

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

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Wastewater Fund</b>						
<b>Operating Revenues</b>						
Rates and Charges	11,718,000	8,702,478		8,389,375	(313,103)	96.4%
Miscellaneous	10,000	7,500		4,388	(3,112)	58.5%
<b>Total Operating Revenues</b>	<u>11,728,000</u>	<u>8,709,978</u>		<u>8,393,763</u>	<u>(316,215)</u>	96.4%
<b>Operating Expenses</b>						
Central Charges	1,744,415	1,308,311		1,304,484	(3,827)	99.7%
Public Works & Utilities	8,581,837	6,152,006		6,054,164	(97,842)	98.4%
<b>Total Operating Expenses</b>	<u>10,326,252</u>	<u>7,460,317</u>		<u>7,358,648</u>	<u>(101,669)</u>	98.6%
<b>Operating Income (Loss)</b>	<u>1,401,748</u>	<u>1,249,661</u>		<u>1,035,115</u>	<u>(214,546)</u>	
<b>Other Revenue and Expenses</b>						
Tap Fees	1,281,000	972,260		383,843	(588,417)	39.5%
Interest Income	700,000	525,000		217,707	(307,293)	41.5%
Interfund Transfers	3,535,748	3,142,898		3,142,898	0	100.0%
Carryover	737,037	737,037		737,037	0	100.0%
Debt Service	(1,505,394)	(605,578)		(605,578)	0	100.0%
Reserve Transfer	(730,139)	(730,139)		(730,139)	0	100.0%
<b>Total Other Revenues (Expenses)</b>	<u>4,018,252</u>	<u>4,041,478</u>		<u>3,145,768</u>	<u>(895,710)</u>	77.8%
<b>Increase (Decrease) in Net Assets</b>	<u>5,420,000</u>	<u>5,291,139</u>	(1)	<u>4,180,883</u>	<u>(1,110,256)</u>	

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



**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Storm Drainage Fund</b>						
<b>Revenues and Carryover</b>						
Charges for Services	1,900,000	1,425,000		1,499,787	74,787	105.2%
Interest Income	0	0		60,839	60,839	N/A
Miscellaneous	0	0		1,489	1,489	N/A
Sub-total Storm Drainage Revenues	<u>1,900,000</u>	<u>1,425,000</u>		<u>1,562,115</u>	<u>137,115</u>	<u>109.6%</u>
Carryover	298,413	298,413		298,413	0	100.0%
Total Revenues and Carryover	<u>2,198,413</u>	<u>1,723,413</u>		<u>1,860,528</u>	<u>137,115</u>	<u>108.0%</u>
<b>Expenses</b>						
General Services	92,000	51,428		42,130	(9,298)	81.9%
Community Development	140,000	105,840		75,704	(30,136)	71.5%
Park Services	200,000	150,000		64,236	(85,764)	42.8%
Public Works & Utilities	396,000	239,976		181,802	(58,174)	75.8%
Total Expenses	<u>828,000</u>	<u>547,244</u>		<u>363,872</u>	<u>(183,372)</u>	<u>66.5%</u>
Increase (Decrease) in Net Assets	<u>1,370,413</u>	<u>1,176,169</u>	(1)	<u>1,496,656</u>	<u>320,487</u>	

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

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Golf Courses Combined</b>						
<b>Revenues and Carryover</b>						
Carryover	0	0		0	0	N/A
Charges for Services	3,335,142	2,905,592		2,470,710	(434,882)	85.0%
Interest Income	0	0		16,773	16,773	N/A
Interfund Transfers	467,272	350,454	(1)	396,512	46,058	113.1%
Other Financing Sources	439,745	439,745		439,745	0	100.0%
<b>Total Revenues and Carryover</b>	<b>4,243,159</b>	<b>3,695,791</b>		<b>3,323,740</b>	<b>(372,051)</b>	<b>89.9%</b>
<b>Operating Expenses</b>						
Central Charges	197,920	147,848		163,755	15,907	110.8%
Recreation Facilities	3,545,674	2,698,651		2,598,579	(300,072)	89.6%
<b>Total Operating Expenses</b>	<b>3,743,594</b>	<b>3,046,499</b>		<b>2,762,334</b>	<b>(284,165)</b>	<b>90.7%</b>
Operating Income (Loss)	499,565	649,292		561,406	(87,886)	86.5%
<b>Other Expense</b>						
Debt Service	499,565	137,282		137,282	0	100.0%
<b>Increase (Decrease) in Net Assets</b>	<b>0</b>	<b>512,010</b>		<b>424,124</b>	<b>(87,886)</b>	<b>0.0%</b>

(1) The Interfund Transfers variance reflects an unbudgeted payment from the General Capital Improvement Fund

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Legacy Ridge Fund</b>						
<b>Revenues and Carryover</b>						
Carryover	(192,312)	(144,234)		(144,234)	0	100.0%
Charges for Services	1,782,013	1,562,825		1,322,494	(240,331)	84.6%
Interest Income	0	0		16,773	16,773	N/A
Other Financing Sources	219,873	219,873		219,873	0	100.0%
<b>Total Revenues and Carryover</b>	<u>1,809,574</u>	<u>1,538,454</u>		<u>1,414,906</u>	<u>(223,558)</u>	<u>86.4%</u>
<b>Operating Expenses</b>						
Central Charges	98,780	73,295		87,533	14,238	119.4%
Recreation Facilities	1,710,794	1,397,719		1,266,744	(130,975)	90.6%
<b>Total Operating Expenses</b>	<u>1,809,574</u>	<u>1,471,014</u>		<u>1,354,277</u>	<u>(116,737)</u>	<u>92.1%</u>
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>167,450</u>		<u>60,629</u>	<u>(106,821)</u>	<u>0.0%</u>

**City of Westminster  
Financial Report  
For Nine Months Ending September 30, 2009**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
<b>Heritage at Westmoor Fund</b>						
<b>Revenues and Carryover</b>						
Carryover	192,312	144,234		144,234	0	100.0%
Charges for Services	1,554,129	1,342,767		1,148,216	(194,551)	85.5%
Interfund Transfers	467,272	350,454	(1)	396,512	46,058	113.1%
Other Financing Sources	219,872	219,872		219,872	0	100.0%
<b>Total Revenues and Carryover</b>	<u>2,433,585</u>	<u>2,057,327</u>		<u>1,908,834</u>	<u>(148,493)</u>	92.8%
<b>Operating Expenses</b>						
Central Charges	99,140	74,553		76,222	1,669	102.2%
Recreation Facilities	1,834,880	1,500,932		1,331,835	(169,097)	88.7%
<b>Total Operating Expenses</b>	<u>1,934,020</u>	<u>1,575,485</u>		<u>1,408,057</u>	<u>(167,428)</u>	89.4%
<b>Operating Income</b>	499,565	481,842		500,777	18,935	103.9%
<b>Other Expense</b>						
Debt Service	499,565	137,282		137,282	0	100.0%
<b>Increase (Decrease) in Net Assets</b>	<u>0</u>	<u>344,560</u>		<u>363,495</u>	<u>18,935</u>	105.5%

(1) The Interfund Transfers variance reflects an unbudgeted payment from the General Capital Improvement Fund

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

Center Location Major Tenant	Current Month			Last Year			Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	345,685	1,438	347,122	363,876	1,270	365,145	-5	13	-5
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	330,244	8,402	338,646	270,464	30,140	300,604	22	-72	13
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	240,335	454	240,789	237,666	704	238,370	1	-35	1
SHOPS AT WALNUT CREEK E04TH & REED TARGET	204,352	2,809	207,162	201,470	1,414	202,884	1	39	2
SCHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	189,594	229	189,732	178,166	230	178,396	6	-1	6
WESTCHESTER MALL 89TH & SHERIDAN 3 DEPARTMENT STORES	177,280	1,111	178,391	253,431	1,493	254,924	-30	-26	-30
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	174,932	577	175,509	357,569	1,762	359,330	-51	-67	-51
BROOKHILL I & II S SIDE 83RD OTIS TO WADS HOME DEPOT	162,648	1,638	164,286	175,289	2,301	177,590	-7	-29	-7
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	146,593	608	147,201	135,504	4,287	139,791	27	-86	23
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	142,896	619	143,516	175,057	1,672	176,729	-16	-63	-19
WESTMOOR NW OF 103TH AND WADSWORTH GE ACCESS	6,062	127,491	133,554	6,869	11,283	18,152	-12	1030	636
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BEYD SHANE/AMC	97,733	13,137	110,870	114,610	14,813	129,423	-15	-11	-14
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SCOOPERS	96,163	216	96,379	104,602	209	104,811	-8	4	-8
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	67,397	795	68,192	84,534	154	84,688	-20	415	-19
STANDLEY SHORES CENTER SW CORNER 109TH & WADS KING SCOOPERS	67,242	614	67,856	65,844	1,916	68,760	1	-68	-1

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

Center Location Major Tenant	Current Month			Last Year			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	64,051	21	64,073	57,965	46	58,011	11	-53	10
ROCKY MOUNTAIN PLAZA SW CORNER 85TH & SHER GUITAR STORE	59,548	348	59,895	62,563	805	63,367	-5	-57	-5
LUICENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUICENT TECHNOLOGY	4,602	40,983	45,587	5,639	37,691	43,330	-18	9	5
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	44,642	596	45,238	77,420	1,016	78,436	-42	-41	-42
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	43,997	0	43,997	30,961	93	31,054	42	****	42
STANDLEY LAKE MARKETPLACE NE CORNER 98TH & WADSWORTH SAFEWAY	42,159	425	42,584	69,760	489	70,249	-41	-13	-41
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	38,927	71	38,998	41,674	316	41,990	-7	-78	-7
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBRERO	35,754	0	35,754	219	0	219 16224	****	****	16224
WILLOW RUN 128TH & ZUNI SAFEWAY	35,308	116	35,424	79,554	470	80,034	-56	-75	-56
ELWAY/DUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	30,773	334	31,107	26,839	321	27,160	15	4	15
	2,847,826	203,033	3,050,859	3,158,616	114,891	3,273,507	-10	77	-7

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

Center Location Major Tenant	YTD 2009			YTD 2008			%Change		
	General Sales	General Use	Total	General Sales	General Use	Total	Sales	Use	Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,196,469	51,148	3,247,617	3,594,541	21,182	3,615,723	-11	141	-10
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	2,641,755	144,319	2,785,774	1,860,714	278,616	2,139,330	42	-48	30
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	2,115,397	18,037	2,133,434	1,958,262	81,937	2,040,199	8	-78	5
WESTMINSTER MALL 88TH & SHERIDAN 3 DEPARTMENT STORES	2,918,598	11,713	1,930,311	2,594,969	53,411	2,648,379	-26	-78	-27
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,905,211	41,373	1,946,584	1,931,793	14,771	1,946,563	-1	130	0
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSCO	1,864,526	10,129	1,874,655	1,893,237	25,386	1,918,624	-2	-60	-2
SCHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	1,629,793	6,671	1,636,465	691,544	5,163	696,707	136	29	135
BROOKHILL I & II N SIDE 88TH OFIS TO WADS HOME DEPOT	1,537,337	17,553	1,554,690	1,703,265	19,446	1,722,711	-30	-11	-10
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN BARNES & NOBLE	1,534,171	12,580	1,546,751	1,868,323	29,809	1,898,131	-18	-40	-18
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,367,843	17,065	1,404,908	1,094,051	29,503	1,123,555	27	-42	25
PROMENADE SOUTH/NORTH S/W SIDES OF CHURCH RANCH BLVD SHAKE/AMC	1,059,670	138,062	1,197,732	1,184,927	255,772	1,440,699	-11	-40	-17
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	973,134	4,332	977,466	1,001,921	5,035	1,006,956	-3	-14	-3
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	773,773	3,702	777,475	922,277	4,767	927,044	-16	-22	-16
STANLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	651,023	2,750	653,773	647,639	8,121	655,760	1	-66	0
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	591,653	5,976	597,629	578,057	2,467	580,524	2	142	3

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

Center Location Major Tenant	YTD 2009 General Sales	YTD 2009 General Use	Total	YTD 2008 General Sales	YTD 2008 General Use	Total	%Change Sales	%Change Use	Total
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER CULTAR STORE	529,921	2,480	532,401	553,001	3,390	556,390	-4	-27	-4
WESTMINSTER PLAZA FEDERAL--IRVING 7250-74TH SAFEWAY	429,965	3,737	433,702	516,043	25,104	544,147	-17	-97	-20
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WAUSWORTH SAFEWAY	410,007	4,218	414,224	484,072	2,213	486,284	-15	91	-15
WILLOW RUN 128TH & ZUNI SAFEWAY	375,826	2,458	378,283	457,397	3,278	460,675	-18	-25	-18
VILLAGE AT PARK CENTRE NW CORNER 120TH & ELSON CB & POTTS	369,340	1,987	371,327	384,581	10,022	394,602	-4	-80	-6
RANCHO PLAZA SE CORNER 72ND & FEDERAL RANCHO LIBORIO	248,140	24,750	272,890	219	0	219	132.05	****	24496
ELWAY/DUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	232,510	4,454	236,964	267,099	4,557	271,656	-13	-2	-13
MISSION COMMONS W SIDE WAUSWORTH 88-90TH BIG 5 SPORTS	217,429	1,229	218,658	198,340	2,391	200,732	10	-49	9
MCRIHVEY 92ND AVE YATES TO SHERIDAN SAFEGRASS	214,884	48,247	263,131	224,276	20,808	245,083	-4	132	7
BOULEVARD SHOPS 94TH & WAUSWORTH CORRIDOR AMERICAN FURNITURE WAREHOUSE	210,598	1,789	212,387	222,396	1,089	223,486	-5	64	-5
	27,018,970	560,258	27,599,228	26,832,844	902,237	27,735,082	1	-36	0





## Agenda Item 8 B

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Quarterly Insurance Claim Report: July - September 2009

**Prepared By:** Martee Erichson, Risk Management Officer

### Recommended City Council Action

Accept the Third Quarter 2009 Insurance Claims Report.

### Summary Statement

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

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

None identified

**Background Information**

Information on the status of each claim received during the 3rd quarter of 2009 is provided on the attached spreadsheet. All Incident Report forms are signed and reviewed by appropriate supervisors, Safety Committee representatives and department heads. Follow up action, including discipline if necessary, is taken on incidents where City employees are at fault.

For the third quarter of 2009, Staff has noted the following summary information:

- Seventeen of the 27 claims reported in the third quarter of 2009 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

	<b>3rd Qtr 2009</b>			<b>YTD</b>
<b>Department</b>	<b>Total Claims</b>	<b>Open</b>	<b>Closed</b>	<b>Total</b>
CD	3	2	1	7
Police	5	2	3	15
PR&L	9	2	7	15
PWU - Streets	1	0	1	5
PWU - Utilities	9	4	5	18
<b>TOTAL</b>	<b>27</b>	<b>10</b>	<b>17</b>	<b>60</b>

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

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

**Quarterly Insurance Report  
July - September 2009**

<b>Claim Number</b>	<b>Loss Date</b>	<b>Dept.</b>	<b>Claimant</b>	<b>Address</b>	<b>Claim Description</b>	<b>Payment</b>	<b>Status</b>	<b>Notes</b>
2009-204	7/1/2009	PRL	Carol Jones	9139 Winona Ct., Westminster CO 80031	Parks Services employee driving a mower hit a brick pillar behind the claimant's home causing damage to the pillar and the back fence/gate.	\$987.50	Closed	
2009-204	7/1/2009	PRL	Mark McCabe	9129 Winona Ct., Westminster CO 80031	Parks Services employee driving a mower hit a brick pillar behind the claimant's home causing damage to the pillar and the back fence/gate.	\$987.50	Closed	
2009-180	7/2/2009	PWU - Util	Qwest c/o Claims Mgmt Resources	615 N Classen Blvd., Oklahoma City OK 73106	Claimant alleges City crew damaged a buried cable owned by Qwest	\$0.00	Open	CIRSA investigating
2009-190	7/3/2009	PRL	John Stone	9526 Yukon St., Westminster CO 80021	Claimant's vehicle was damaged when a mower being operated by a City employee kicked up an object that hit his vehicle.	\$1,566.89	Closed	
2009-206	7/7/2009	PRL	Jamie White	10305 Dover St., Westminster CO 80021	Claimant's parked vehicle was hit by a mower being operated by a City employee	\$1,473.03	Closed	
2009-225	7/19/2009	PWU - Util	Jason Stombaugh	6957 Wolff St., Westminster CO 80030	Claimant alleges damage to his vehicle when he drove through an area where a water main break had been repaired.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-212	7/20/2009	PWU - Util	Don Harder	6985 Stuart St. #312, Westminster CO 80030	Claimant alleges damage to his vehicle when he drove through an area where a water main break had been repaired.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-218	7/21/2009	PRL	Pam Henderson	9185 W. 96th Dr., Westminster CO 80021	Claimant alleges damage to her fence and flower beds when a storm damaged a large tree in the Open Space behind her home.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-221	7/22/2009	PD	Jeremy Wettig	7361 Newton St., Westminster CO 80030	Claimant alleges the City is responsible for his vehicle damages when he failed to yield the right of way and hit a Police Officer driving a marked police car with emergency lights and siren operating.	\$0.00	Open	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. City is seeking damages against the claimant.
2009-275	7/26/2009	PRL	Nancy Robertson	14840 Mission Way, Broomfield CO 80021	Claimant alleges she was injured when she tripped and fell outside the AMC Theaters at the Promenade.	\$0.00	Open	CIRSA investigating
2009-229	7/28/2009	PWU - Util	Scott Oleson	6536 W. 114th St., Westminster CO 80020	Utility Division employee backed his City vehicle into the claimant's parked car.	\$1,282.64	Closed	

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-250	8/16/2009	PD	Vanessa Lyons	7430 Raleigh St., Arvada CO 80030	Claimant alleges damage to her home when the police came to arrest her boyfriend	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-265	8/17/2009	PD	Robert Willard	1035 Tucker Gulch Dr., Golden CO 80403	Claimant alleges damage to his rental property in Westminster as a result of Westminster SWAT officers entering the property with a search warrant.	\$0.00	Open	CIRSA Investigating
2009-271	8/19/2009	PRL	Gregory Pott	10073 Hooker St., Westminster CO 80031	Claimant alleges a soccer goalpost fell over and hit him, breaking his arm.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Goals had been moved by coaches not affiliated with the City's program.
2009-274	8/26/2009	Fire	Valery Strakh	7936 W. 90th Ave., Westminster CO 80021	Fire Department staff driving city ladder truck hit a parked car while responding to an emergency call.	\$1,826.65	Closed	
2009-279	8/27/2009	PWU - Streets	Tiffani DeFore	9002 Balsam Ct., Westminster CO 80021	Claimant alleges her garage door has been damaged due to excess water runoff after the City changed the neighboring storm drainage from an above ground system to an underground pipe.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2009-287	9/1/2009	PWU - Util	Jim & Sandi Meunier	10382 Tennyson Ct., Westminster CO 80031	Claimants' basement was damaged from a sewer backup caused by a blockage in the City's main line.	\$0.00	Open	Claim is being paid and expense is being shared between the City and the City's pipe cleaning contractor.
2009-287	9/1/2009	PWU - Util	Dr. & Mrs. Terry Yochum	10386 Tennyson Ct., Westminster CO 80031	Claimants' basement was damaged from a sewer backup caused by a blockage in the City's main line.	\$0.00	Open	Claim is being paid and expense is being shared between the City and the City's pipe cleaning contractor.
2009-287	9/1/2009	PWU - Util	Jon & Sharon Brodhacker	10392 Tennyson Ct., Westminster CO 80031	Claimants' basement was damaged from a sewer backup caused by a blockage in the City's main line.	\$0.00	Open	Claim is being paid and expense is being shared between the City and the City's pipe cleaning contractor.
2009-293	9/6/2009	PWU - Util	Cara Anderson	9912 Hoyt Way, Westminster CO 80032	Claimant's basement was damaged when a utility drain behind her home overflowed	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Citizen was referred to Mandalay Irrigation Company.
2009-299	9/9/2009	PRL	Sara Roberts	9791 King St., Westminster CO 80031	Claimant alleges she was injured when she fell into a hole at Squires Park.	\$0.00	Open	CIRSA Investigating.

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2009-301	9/11/2009	PD	Sergio Acosta	4159 E. 117th Ave., Thornton CO 80233	Claimant alleges damage to his vehicle after he gave consent to a search of his vehicle by a K9 officer.	\$0.00	Closed	City agreed to pay damages to exterior of the vehicle, but denied alleged damage to the interior of the vehicle. Ultimately, the claimant was able to repair the minor damage at no cost to the City.
2009-309	9/19/2009	PD	Pauline Martinez / Ceasar Crespin	11990 S. Boulder Rd. #172, Lafayette CO 80026	Claimant alleges damage to the interior of his vehicle after police officers searched the vehicle.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
<b>CLAIMS SUBMITTED RECENTLY WITH OCCURRENCE DATES PRIOR TO 3RD QUARTER 2009:</b>								
2009-197	1/8/2009	CD	Trinette Pelham	7720 Lowell Blvd., Westminster CO 80030	Claimant alleges she fell into a hole on her property that was put there by City of Westminster staff.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City. Citizen was referred to Xcel Energy who was relocating a power line and created the hole.
2009-226	1/24/2009	CD	Barnum Printing and Publishing	6899 Grove St., Westminster CO 80221	A local business alleges financial harm and loss of use of property due to the City no longer pursuing acquisition of said property.	\$0.00	Open	CIRSA investigating
2009-272	6/1/2009	CD	Gregory & Tommye Barnett	3830 W. 105th Dr., Westminster CO 80031	Claimants allege constitutional violations against the City for selectively enforcing provisions of an Official Development Plan concerning accessory buildings.	\$0.00	Open	CIRSA Investigating
2009-188	6/30/2009	PWU - Util	Samantha Saulton	8721 Oakwood St., Westminster CO 80031	Claimant alleges she was injured when she stepped into a meter pit.	\$0.00	Closed	Claim denied due to no negligence on the part of the City
2009-189	6/30/2009	PRL	Genevie Hemor	8095 W. 88th Ave., Arvada CO 80005	Claimant alleges that trees planted by the City have grown over the years and pushed her fence over.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City as the trees were seeded naturally and were not purposefully planted by the City
<b>TOTAL</b>						<b>\$8,127.21</b>		



## Agenda Item 8 C

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



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

**Prepared By:** Matt Lutkus, Deputy City Manager

#### Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2010 with an effective date of January 1, 2010, and automatic renewal for 2011 unless terminated pursuant to the provisions of the agreement.

#### Summary Statement

- City Council is requested to approve a revised employment agreement with Brent McFall for services as City Manager beginning January 1, 2010. The agreement will be automatically renewed for 2011 unless it is terminated by City Council or by Mr. McFall in accordance with the agreement provisions.
- Under the proposed revised agreement, Mr. McFall's combined salary and deferred compensation will remain at the 2009 level of \$209,175. The freezing of the City Manager's salary at the 2009 level was requested by Mr. McFall and is in line with the Council's decision to freeze the salaries of all Administrative Officers as one of a series of steps needed to trim expenditures in the revised 2010 Budget.
- The proposed agreement with Mr. McFall is identical to the current employment agreement with the exceptions of the elimination of the 2008 bonus payment and the change in the effective date for the contract.

**Expenditure Required:** 2010 - \$209,175, 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**

Should City Council make the recommended minor modifications to the employment agreement with J. Brent McFall for the continuation of his services as City Manager for 2010 and 2011?

**Alternative**

Council could make further adjustments to the proposed 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 four cities in Kansas and Washington prior to becoming Westminster's City Manager. Mr. McFall is an active member of the International City/County Management Association and currently holds the designation of Credentialed Manager through that organization. He is currently President of the Metro City Managers' Association and is also active with the Colorado City/County Managers' Association and with the Jefferson and Adams County/City Managers' groups. Mr. McFall has been a recipient of the Edwin O. Stene Award for Managerial Excellence by University of Kansas City Managers' Alumni in recognition of his outstanding accomplishments over thirty years as chief executive in five cities. His activities at the community level include serving on the Boards of Directors of the Metro North Chamber of Commerce and the Westminster Legacy Foundation. He also serves on the Board of Advisors for the Rocky Mountain Land Institute.

Under Mr. McFall's leadership, the City continues to use the City Council's Strategic Plan to guide the City departments' ongoing activities and the development of the City's biennial budget. During the past twelve months, Mr. McFall was closely involved in the achievement of many of the City's successes. Some of the key milestones for the past year were substantial progress toward the initial phases of the Westminster Center Urban Reinvestment Project including the completion of the blight study, creation of the urban renewal area and the selection process, currently underway, for a developer; re-assignment of the City's water contract with Thornton to the City of Brighton; sale of the Westminster Conference Center to the new owners of the Westin Hotel; completion of a comprehensive water supply plan; start of construction on Westminster Center Park; completion of Big Dry Creek Wastewater Treatment Facility expansion and upgrade project; completion of the Municipal Service Center renovation; refinance of the Westminster Economic Development Authority debt; implementation of the Leadership Development Certification program for the City's managers and supervisors and the start of the remodel work in the aquatics area at City Park Recreation Center.

Mr. McFall continues to champion the City organization's key values of service, pride, integrity, responsibility, innovation and teamwork (SPIRIT). Despite flat budget revenues over seven of the past eight years and budget reductions during the past year, the City continues to be a leader on many fronts and enjoys an excellent reputation for the quality of its facilities and programs.

As noted above, the past twelve months have presented significant budgetary challenges as the national recession caused a substantial reduction in City General Fund revenues. By taking a number of proactive measures, the City staff, under Mr. McFall's leadership, has been able to maintain the City's fiscal stability with minimal impact on City services. Moreover, the economic development initiatives that Mr. McFall has pursued with City Council's strong support will help ensure the long-term financial sustainability of the City organization and the services it provides to the community.

City Council met with Mr. McFall on September 28 to review his job performance during the past twelve months. The proposed employment agreement with Mr. McFall reflects Mr. McFall's request and Council's decision to maintain Mr. McFall's compensation at 2009 levels in recognition of the current City Budget constraints. This is consistent with the Council's decisions to freeze salaries for all City department heads, division managers, the City Attorney and the Presiding Judge in the 2010 revised Budget. The revised agreement will continue to provide for a combined salary and deferred compensation of \$209,175. The agreement allows the City Manager to designate a portion of his salary up to the maximum provided under Federal law to be paid out on a lump sum basis into his deferred compensation account.

City Council's favorable action on the continuation of the City Manager's employment agreement will support all five of the City Strategic Plan Goals by ensuring the City organization will continue to be managed by a highly skilled and experienced chief executive.

Funds are available in the 2010 Budget to provide for the compensation 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 2010, 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;

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 2010 and 2011. EMPLOYEE agrees to remain in the exclusive employ of CITY and EMPLOYEE will serve as City Manager from January 1, 2010 through December 31, 2011. 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 shall be in effect through December 31, 2010, but shall be automatically renewed through December 31, 2011, unless terminated on or before October 31, 2010.

### SECTION 3. TERMINATION 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 pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing twelve (12) months, provided however, that in the event the EMPLOYEE is terminated in relation to his conviction of an illegal act, then, and in that event, CITY has no obligation to 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 twelve (12) months' severance pay provisions herein.
- C. 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.
- D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in this section.
- E. 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 \$209,175 effective January 1, 2010. The base 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 \$750 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 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:

- A. 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 agreement, said agreement shall control.
- B. The EMPLOYEE shall continue to accrue General Leave at the rate prescribed for "over 20" years of continuous municipal service in the Westminster Municipal Code and City Personnel Policies and Rules and shall be able to use such accrued leave in accordance with the rate of use accorded to employees in the "over 20" category.

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 appropriated the sum of \$60,000, which sum was 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, bonus 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, 2010, and if automatically renewed shall be in effect through December 31, 2011.
- 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 26th day of October, 2009.

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

ATTEST:

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

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

APPROVED AS TO FORM:

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



## Agenda Item 8 D

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Revised Employment Agreement with Martin R. McCullough

**Prepared By:** Matt Lutkus, Deputy City Manager

### Recommended City Council Action

Authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2010 with an effective date of January 1, 2010, and an automatic renewal for 2011 unless terminated pursuant to the terms of the agreement.

### Summary Statement

- City Council is requested to approve a revised Employment Agreement with Martin McCullough for services as City Attorney beginning January 1, 2010. The Agreement will be automatically renewed for 2011 unless it is terminated by City Council or Mr. McCullough in accordance with the termination section of the Agreement.
- City Council met with Mr. McCullough for his annual performance and salary review on October 12. The attached proposed agreement reflects Council's direction with regard to modifications in the current agreement.
- Under the proposed revised Agreement, Mr. McCullough's 2010 salary and deferred compensation will continue to be \$165,948. The continuation of the City Attorney's annual compensation through 2010 at his 2009 pay rate is consistent with City Council's decision to freeze the City's Administrative Officers' salaries as part of a number of measures that are being taken to reduce overall City Budget expenditures in the coming year. These actions are necessitated by the reduced revenue projections resulting from the national economic downturn.
- The attached proposed agreement with Mr. McCullough is similar to the current employment agreement with the exceptions of the removal of a bonus provision that was included in the 2008 agreement and the change in the effective dates for the contract.

**Expenditure Required:** \$165,948 plus the cost of fringe benefits as described in the attached Employment Agreement

**Source of Funds:** General Fund - City Attorney's Office Budget

**Policy Issue**

Should City Council continue its employment agreement with Martin McCullough with minor modifications for his services as City Attorney for 2010 and 2011?

**Alternative**

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

**Background Information**

Martin McCullough was appointed City Attorney on February 10, 1986, after serving as Acting City Attorney since September 1985. Prior to holding these positions, he was an attorney with the municipal law firm of Calkins, Kramer, Grimshaw and Haring. Mr. McCullough holds a B.A. from the University of Virginia, an M.S. from Florida State University and graduated magna cum laude from the University of Houston School of Law in 1982. He is admitted to practice law in Texas and Colorado and is a member of the National Institute of Municipal Law Officers and the Colorado and Denver Bar Associations. Mr. McCullough has served as President of the Attorneys' Section of the Colorado Municipal League, is past President of the Metro City Attorneys' Association, and is a member and past Chairperson of the Local Government Committee of the Colorado Bar Association. Mr. McCullough is also a past recipient of the Metro City Attorney's Association's "City Attorney of the Year" and "Leadership" awards. In 2004, Mr. McCullough was designated a Fellow In Local Government Law by the International Municipal Lawyers' Association. Mr. McCullough's fellowship status was recently extended through 2014.

During the past twelve months, the City Attorney's Office has provided a significant amount of legal support for key City developments/projects including: the initial phases of the Westminster Center Urban Reinvestment Project, which included Council's approval of an Urban Renewal Plan and the development of a Request for Proposals for the project; the redevelopment of the 72<sup>nd</sup> and Sheridan Urban Renewal Area; the sale of the Westminster Conference Center to the Westin Hotel and resolution of the possessory interest tax issue with Jefferson County; renegotiation of the City's Xcel Energy franchise agreement; and preparation of an agreement with Main Street Power for the installation of solar energy systems at City facilities. The Office has also been involved in numerous capital improvement projects, real estate transactions, and sales tax enforcement actions.

During the past twelve months, the City Attorney's Office assisted in the preparation of twenty intergovernmental agreements and prepared twenty-four ordinances and resolutions for City Council action. The Office continues to provide legal staff support on an ongoing basis for both the Special Permits and License Boards and the Board of Adjustment and Appeals, and for other boards and commissions, as needed.

One of the City Attorney's important ongoing responsibilities is his oversight of the City Prosecutor's Office. During the past year, this Office represented the City in 9,580 Municipal Court cases including 2,500 traffic cases. Domestic violence cases continue to consume a considerable amount of prosecution time due to the difficult nature of these cases. In the past twelve months, 343 domestic violence (DV) cases were filed with the Court, an increase of 29 cases (9%) over the number of DV cases filed during the previous twelve month period.

The proposed City Attorney's employment agreement reflects City Council's decision to maintain the City Attorney's salary and deferred compensation at the 2009 level of \$165,948. This is consistent with Council's decision to freeze Administrative Officer salaries in the revised 2010 Budget as one in a series of measures being taken to reduce overall expenditures. The proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2010.

**SUBJECT:** Revised Employment Agreement with Martin R. McCullough

Page 3

The continuation of an employment agreement with Mr. McCullough supports all five of the City's Strategic Plan goals by ensuring quality legal advice and support for the wide range of government functions provided by the City organization.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 2010, by and between the CITY OF WESTMINSTER, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and MARTIN R. McCULLOUGH, 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 MARTIN R. McCULLOUGH, as City Attorney of the City of Westminster as provided by City Charter, Chapter IV, Section 4.13; 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

WHEREAS, EMPLOYEE previously accepted employment as City Attorney of said CITY.

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

### SECTION 1. DUTIES:

A. CITY hereby agrees to continue the employment of EMPLOYEE as City Attorney of CITY to perform the duties and functions specified in Section 4.13 of the City Charter, Chapter 16 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall prepare and submit a proposed budget for the City Attorney's Office following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

C. EMPLOYEE shall supervise the staff of the City Attorney's Office as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by the City Attorney in accordance with the provisions of section 1-16-3 of the City Code.

### SECTION 2. TERMS:

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as City Attorney for calendar years 2010 and 2011. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. EMPLOYEE agrees neither to seek, to accept, nor 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, Paragraphs 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 in Section 3, paragraph C of this Agreement.

D. This Employment Agreement expires December 31, 2010 but shall be automatically renewed for 2011 unless terminated no later than October 31, 2010.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides 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 Attorney, then and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) 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 six (6) months' severance pay provisions herein.

C. 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 four (4) months notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs A and C of this Section 3, and paragraph D in Section 2.

E. 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 3A hereof and shall entitle EMPLOYEE to the lump sum cash payment described herein.

### SECTION 4. SALARY:

A. Effective January 1, 2010, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$165,948. The EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid.

B. CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31 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 Attorney. 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 agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the City, including, but not limited to, the Colorado Bar Association, NIMLO, the Colorado Municipal League, and continuing legal education courses and seminars related to the practice of municipal law. In addition to reasonably funding educational/training programs for EMPLOYEE's professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each year.

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 Department Head level employees, except that when such benefits are in conflict with this Agreement, said Agreement 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.

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, 2010, and if automatically renewed, shall be in effect through December 31, 2011.

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. The parties agree that this Agreement is entered into and shall be governed by the laws of the State of Colorado.

F. Nothing in this Agreement shall be construed as creating any multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20.

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 both effective as of the day and year first above written.

APPROVED by Westminster City Council this 26th day of October, 2009.

ATTEST:

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

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

\_\_\_\_\_  
Martin R. McCullough



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 26, 2009



**SUBJECT:** Intergovernmental Agreement re City Assistance in Maintaining Westminister Housing Authority Owned Property

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

**Recommended City Council Action**

Authorize the Mayor to sign an intergovernmental agreement with the Westminister Housing Authority (WHA), in substantially the same form, as attached allowing the City to assist the WHA in maintaining and improving WHA-owned property.

**Summary Statement**

- The City and Westminister Housing Authority (WHA) have cooperated in pursuing redevelopment and redevelopment efforts in the South Westminister area over several years.
- The WHA purchased property in the South Westminister area to be used in conjunction with the City's redevelopment efforts, including three buildings, the Vehicle Service Center (VSC), an auxiliary storage building to the VSC, and the Rodeo Market building.
- The WHA is responsible for operating and maintaining the buildings so as to protect them from lost valuation in the interim prior to redevelopment.
- The WHA is requesting the City's assistance in maintaining and improving the property given WHA's limited financial resources.
- The WHA proposes to enter into an intergovernmental agreement with the City whereby the City could provide City personnel and/or funding to assist the WHA in making essential repairs and improvements.
- The City's Buildings, Operations and Maintenance (BO&M) Division would work in conjunction with the WHA to assess and make necessary repairs/improvements. Should BO&M not have the capability to repair/improve the property, the City may expend Community Development Department operational funds on behalf of the WHA.
- Per the proposed IGA, the City could seek reimbursement from the WHA for the cumulative cost of repairs/improvements should the property(s) be sold to a private party in the future.

**Expenditure Required:** Up to \$5,000 plus in-kind BOM staffing and material expenses

**Source of Funds:** General Fund BO&M Operating Account or Community Development Department Administration Account

**Policy Issue**

Should the City enter into an intergovernmental agreement (IGA) with the WHA providing City personnel support and funding to assist the WHA in maintaining WHA-owned property?

**Alternative**

The Council may choose not to enter into the IGA with the WHA. Staff recommends that Council not choose this alternative as the WHA may not be able to maintain the property in a manner that would protect the structural integrity of the buildings and the property valuation.

**Background Information**

Over the last 8 years, the City and WHA have worked collectively to promote and facilitate redevelopment within the South Westminster area. The initial project for this effort was the Harris Park townhomes along Lowell Boulevard and on Meade Street. In further pursuit of redevelopment and revitalization activity the WHA acquired several strategic properties that could be made available to the City for these efforts. Through this effort the WHA ended up owning several buildings. The first building purchased with the Vehicle Service Center at 73<sup>rd</sup> Avenue and Lowell Boulevard, which included an adjoining auxiliary building to the west. This was purchased with the intent of redeveloping the property, and several properties to the south, into a mixed use commercial/condo project. A third building was acquired in 2004 (the Rodeo Market building) at 3915 W. 73<sup>rd</sup> Avenue to be used in conjunction with the establishment of a community arts/cultural activity center.

Given that these buildings were useable and retained a significant value, the WHA chose to make the premises available to use by a local community theater and the South Westminster Arts Group (SWAG). As a result, the WHA has assumed responsibility for keeping the premises operable and in good repair so as to allow the arts groups to continue operations and protect the buildings from deterioration or structural damage. The WHA has limited financial resources to fund continued operations, maintenance or improvement to protect the property. The WHA has budgeted funds in 2010 to cover the cost of utilities and operational maintenance pursuant to a lease agreement with SWAG. The WHA does not have funds to budget or the staff to assist in taking on significant maintenance, repair or improvement items.

The WHA is requesting the City give consideration to entering into an IGA with the WHA to provide the necessary assistance to maintain the buildings. The attached IGA includes the following provisions:

- The City (BO&M Division) would first assess, and if within its ability, make the necessary repairs/improvements;
- Should the City staff determine that the repair/improvement is beyond its capability, the City may provide funding and hire a contractor to do the work. Such funding would be paid out of the operations account of the Community Development Department (\$5,000 was provided in the 2010 budget);
- The City will keep record of the costs associated with the repairs/improvements both for in-kind work and contracted services;
- The City may chose to recapture any costs incurred for repairs/improvements should the WHA chose to sell the property to a private party in the future. This recapture provision covers a time frame beginning in 2005 to cover costs already incurred by the City related to the repair/improvement of the WHA property.

The IGA provides the City and the WHA an acceptable means of accounting for services rendered along with respective costs.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachments

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
FOR THE MAINTENANCE AND IMPROVEMENT TO  
WESTMINSTER HOUSING AUTHORITY-OWNED PROPERTY**

This Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this 26th day of October, 2009, by and between the **WESTMINSTER HOUSING AUTHORITY** ("WHA"), a Colorado housing authority, and the **CITY OF WESTMINSTER** (the "City"), a Colorado home-rule municipality.

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

WHEREAS, the WHA is a Colorado housing authority, with all the powers and authority granted pursuant to C.R.S. section 29-4-201 et seq.; and

WHEREAS, pursuant to C.R.S. section 29-4-201 et seq., the City and WHA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to C.R.S. section 29-4-201 et seq., WHA has the authority to undertake housing-related projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with housing-related projects; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado State Statutes; and

WHEREAS, the WHA and City have worked cooperatively in planning or undertaking certain housing-related plans, projects, programs, works, operations, or activities of WHA within the South Westminster area, and agree to enter into agreements relative to protecting and preserving WHA-owned property from deterioration that could diminish value of such assets; and

WHEREAS, the WHA has acquired, operated and maintained property in the South Westminster neighborhood for the purposes of building new housing and supporting community facilities in partnership with the City; and,

WHEREAS, WHA and the City desire to enter into this Agreement for the upkeep and maintenance of WHA-owned property; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the City and WHA hereby agree as follows:

1. **WHA-owned property.**

The City may provide assistance relative to improvements and repairs deemed solely necessary for the purpose of preserving and protecting the properties from structural degeneration or damage, or hinder the operational integrity of the property that would be deemed detrimental to the health, safety and welfare of tenants, but not including routine maintenance and upkeep responsibility of the tenants, on the following WHA-owned properties as referenced in Exhibit A:

- a. Rodeo Building and property, 3915 W. 73<sup>rd</sup> Avenue;
- b. Vehicle Service Center building, 7287 Lowell Boulevard; and,
- c. VSC Auxiliary building, 3630 W. 73<sup>rd</sup> Avenue.

2. **Financial Consideration for the City.**

- a. WHA shall first consult with the City's Building Operations and Maintenance Division (BO&M) to assess and coordinate any repairs or improvements to any of aforementioned property in Subsection 1 above.
- b. Should the BO&M proceed with making the necessary repairs, the repair shall be entered into the City's standard BO&M tracking system using a separate account number for each WHA-owned property.
- c. WHA, upon written authorization of the City, may choose to hire an outside contractor to make such repairs/improvements to said buildings and properties in Section 1. The City may assist WHA in paying for such repairs and improvements.
- d. City staff shall keep a record of expenses for each property individually which shall be verified and certified by the Director of Community Development or designee at the end of each calendar year.

3. **Reimbursement Upon Sale of Property.**

- a. If the WHA sells one or more of the properties to a private party, the City may be reimbursed for all costs incurred under Section 2 above retroactive to January 1, 2005 for repairs and maintenance for the particular property(s) being sold.
- b. If the WHA sells one or more of the properties to the City, the City may receive a monetary credit towards the purchase price for all costs incurred under Section 2 above, from the date of this agreement forward for repairs and maintenance for the particular property(s) being purchased.

4. **Cooperation.** WHA and the City agree to work cooperatively and in good faith to defend and uphold every provision of this Agreement against any action or challenge involving the legality, validity, or enforceability of any provision hereof.

5. **Effective Date.** The City and WHA agree that it is their intent to implement this Agreement retroactive to January 1, 2005. In the event this Agreement is not approved by both parties prior to the date of adoption of the respective budgets of WHA and the City for fiscal year 2010, the parties agree to cooperate in good faith to take such actions as may be necessary to amend their respective budgets to reflect the intended applicability of this Agreement to their respective 2010 budgets.

6. **General Provisions.**

- a. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.
- b. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, shall be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.
- c. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and WHA, this Agreement shall control.

- d. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- e. **Third Parties.** The City and WHA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WHA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

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

**WESTMINSTER HOUSING  
HOUSING AUTHORITY**

**CITY OF WESTMINSTER**

By: \_\_\_\_\_  
J. Brent McFall  
Executive Director

By: \_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary for WHA

\_\_\_\_\_  
Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Walt Matthews, IV  
Attorney for WHA

\_\_\_\_\_  
Walt Matthews, IV  
Assistant City Attorney



EXHIBIT A

WHA OWNED PROPERTY





**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
October 26, 2009



**SUBJECT:** Revised and Amended Storage Facility Agreement and Water Lease Agreements with Aggregate Industries

**Prepared By:** Josh Nims, Water Resources Engineering Coordinator  
Mary Jay Vestal, Water Resources Engineer

**Recommended City Council Action**

Authorize the Mayor to enter into a revised and amended storage facility agreement, a water share lease agreement and a consumable water lease agreement with Aggregate Industries-WCR, Inc. in substantially the same form as the attached agreements.

**Summary Statement**

- The City entered into an agreement with CAMAS (now Aggregate Industries-WCR, Inc. (AI)) on October 24, 2000 for the creation of water storage near the town of Wattenberg in Weld County as a result of gravel mining activities.
- The gravel lake storage will allow the City to capture excess effluent and later pay required return flows to the South Platte River system. This will free up water at Big Dry Creek Wastewater Treatment Facility for use in the City's expanding reclaimed water system.
- Staff negotiated an agreement with South Adams County Water and Sanitation District (SACWSD) for SACWSD to participate financially in the project in exchange for 1,200 acre feet of storage at the Wattenberg Gravel Lakes.
- Due to various delays, the delivery date set forth in the original agreement was unattainable.
- In order to move forward, AI and the City have negotiated a revised and amended agreement outlining a new time frame with concrete milestones and remedies for future failure to perform.
- Sections of the original Storage Facility Agreement allowed AI to lease water from the City in the form of consumable effluent and shares in the Brighton Ditch Company. These lease agreements expired within the time frame of the original Agreement, so renewals are considered in the amended agreements.
- Staff recommends executing the revised and amended storage facility agreement and renewed consumable water lease agreements with AI to allow progress on developing lower South Platte storage for the City's water supply system.
- The effluent lease agreement will result in annual revenue of up to \$104,000 for the next eight years.
- The new agreements establish timeframes that will meet the City's water resources needs for the future.
- This project is a vital part of the City's Comprehensive Water Supply Plan.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

## **Policy Issues**

Should the City adopt a revised and amended storage facility agreement with Aggregate Industries-WCR, Inc. (AI) in order to move forward with developing water storage on the lower South Platte?

Should the City lease effluent and water shares to AI; water that they will need in order to create a storage facility?

## **Alternatives**

1. City Council could choose not to approve the revised and amended storage facility agreement with Aggregate Industries at this time and plan instead to move forward under the original agreement. This is not recommended because the dates in the original agreement have expired, and there is little language in the original to help enforce creation of storage within a specific time frame. There is a chance that the project could be abandoned under the expired agreement, which would be unfortunate because the storage is needed for the City's water supply system and the cost from the 2000 agreement is a very good price in today's market.
2. City Council could choose not to approve the renewed water leases to AI. This is not recommended as the leases bring in revenue to the City, and AI needs water in order to mine at the Wattenberg site and create the storage vessel.

## **Background Information**

Water storage on the lower South Platte River helps increase the efficiency of the City's overall water supply system by capturing excess effluent that cannot be otherwise used by the City. The water can be stored and used later to pay required return flows to the South Platte River and to effectuate exchanges that will increase the amount of water available to deliver to Standley Lake. Using stored excess effluent to pay returns will free up effluent at the City's Big Dry Creek Wastewater Treatment Facility for use in the City's expanding reclaimed water system.

In 2000, the City entered into a Storage Facility Agreement with CAMAS (now Aggregate Industries-WCR, Inc. (AI)) for the construction of between 4,000 acre feet (AF) and 7,000 acre feet of storage at a site near Wattenberg in Weld County. The basic concept of this agreement is that AI will mine out aggregate material from the City-owned property adjacent to the South Platte River. Upon completion of mining, the site will be prepared as a water storage facility for the City's water supply system operations. The project will provide between 1,350 and 2,800 AF of firm yield to the City's water supply system, depending on the final amount of storage. Right now, the facility is anticipated to have a capacity of 4,000 AF, of which 1,200 AF was purchased by South Adams County Water and Sanitation District (SACWSD) as part of an agreement entered into in December 2001.

Due to permitting issues, endangered species protection, and recent lack of market for aggregate materials, AI was unable to meet the delivery deadline set forth in the original storage facility agreement. Therefore, the City and AI have been meeting for the past couple of years to produce an amendment to this agreement setting forth a new time frame for the project. Negotiations are substantially complete, and a final draft of the First Revised and Amended Storage Facility Agreement is ready for execution.

The major revisions to the agreement center on creating a new time frame for delivery of storage, with specific project milestones and allowance for deadline extensions under certain circumstances. Also, the revised agreement spells out under what circumstances AI may open a gravel operation other than Wattenberg, so that the financial incentive to work elsewhere does not cause a delay at Wattenberg. The City and AI will meet bi-annually during the mining process, and the City will be allowed to review the company's books. The City will have legal remedies at their disposal should AI fail to meet the terms of this revised Agreement.

Milestones in the revised agreement are as follows:

- Final design of the impermeable slurry wall that will surround the storage facility shall commence by April 2010, and construction of said slurry wall shall be completed by the end of 2010.
- Relocation of utility lines at the property must begin by June 2010.
- Active mining of the property will begin no later than the end of 2012.

AI has agreed to complete 2,800 AF of storage by the end of 2017 and at least 4,000 AF by mid-2020. These dates may be extended in six-month increments if AI demonstrates a lack of market for their products as outlined in the revised agreement. In any case, 2,800 AF of storage must be delivered by the end of 2019 and 4,000 AF by mid-2022. It is possible that storage will be delivered as early as 2014 if the aggregate market rebounds. AI has also agreed not to open or operate an additional aggregate plant unless they are mining Wattenberg at full capacity.

The effluent lease agreement allows AI to lease up to 520 acre-feet of consumable water per year from the City from 2010 through 2017 at a rate of \$200 per acre-foot. They will use this water to augment out-of-priority depletions due to exposure of groundwater. AI would also like to lease the City's 1.038 shares in the Brighton Ditch Company until delivery of storage at Wattenberg and will temporarily take over paying any assessments and fees associated with those shares.

These agreements are very important for the City to secure and develop long-term water supply and support City Council's goal of Financially Sustainable City Government Providing Exceptional Services. The revenue also assists the City in meeting the goal of a Financially Sustainable City Government by having the proceeds for future Public Works and Utilities projects.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

# **FIRST REVISED AND AMENDED STORAGE FACILITY AGREEMENT**

THIS FIRST REVISED AND AMENDED STORAGE FACILITY AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2000~~ 2009, by and between Aggregate Industries-WCR, Inc., successor by merger to CAMAS Colorado, Inc., a corporation organized pursuant to the laws of the State of ~~Indiana~~ Colorado, ~~d/b/a Aggregate Industries, West Central Region~~ (“AI”), and the City of Westminster, acting by and through its Water and Wastewater Enterprise (the “City”).

WHEREAS, AI has conveyed certain lands more particularly described in the attached Exhibit A (the “Property”) to the City retaining the mineral rights pursuant to that certain Purchase and Sale Agreement dated December 16, 1999, as amended (the “Purchase and Sale Agreement”);

WHEREAS, the Property is currently ~~being~~ permitted for a aggregate mine to be operated by AI;

WHEREAS, during the normal course of AI’s mining operations, a lined below-grade storage facility will have been created;

WHEREAS, the Purchase and Sale Agreement contemplates the execution of this Agreement;

WHEREAS, the intent of this Agreement is to allow AI to mine its mineral interests in the Property, leaving lined water storage reservoirs;

WHEREAS, the purchase price for the Property is dependent on the volume of the lined storage reservoirs, and

WHEREAS, the City and AI previously entered into a Storage Facility Agreement dated October 24, 2000 and hereby amend said Agreement by this document.

NOW THEREFORE, the parties agree as follows:

## **ARTICLE 1**

### **THE STORAGE FACILITY**

1.1 After the completion of its mining activities on the Property, AI agrees to create a lined below-grade water storage facility for the City, located on the Property, in accordance with the scope attached as Exhibit B (the “Storage Facility”).

## 1.2 Election Amounts and Completion.

### 1.2.1 Storage Amounts.

AI and the City currently anticipate that a range of storage capacities between 4,000 acre feet and 7,000 acre feet may be produced at the Property. AI agrees to complete a minimum of 4,000 acre feet of storage at the Property. Subject to the terms of this Agreement, the City agrees to purchase all storage created at the Property up to a maximum of 7,000 acre feet of storage, ~~with an option to purchase any additional storage created above 7,000 acre feet.~~ Any such storage shall be lined below-grade storage as contemplated by this Agreement. AI will not construct above-grade storage, or storage involving a jurisdictional dam, at the Property without prior mutual written agreement of the Parties. In addition, the Parties may mutually agree by separate written agreement to revise the boundaries of the Property as described in Exhibit A.

### 1.2.2 Timing.

(1) AI agrees to complete ~~4,000~~ a minimum of 2,800 acre feet of storage by ~~May 15, 2008~~ December 31, 2017 and a cumulative total of no less than 4,000 acre feet of storage by June 30, 2020. The City agrees to accept conveyance of this storage capacity and pay for it pursuant to this Agreement. ~~If AI intends to complete more than 4,000 acre feet at the site by May 15, 2008, and if AI provides the notice required in paragraph 2.3, the City agrees to accept conveyance of this additional storage up to a maximum of 7,000 acre feet and pay for it pursuant to this Agreement.~~ The delivery dates set forth above may be extended based on market conditions; namely if AI's, and its subsidiary entities', production of sand and gravel materials in the Denver Area Market is less than a total of 1.8 million tons over the prior 12 months or upon mutual agreement. The "Denver Area Market" is defined as the counties of Denver, Arapahoe, Jefferson, Adams, Broomfield and that portion of Weld County south of Highway 52 and east of I-25. AI and the City will meet in July and January of each year for an update on AI's production of sand and gravel materials from the Denver Area Market during the prior 6 month period and to confirm status of the milestones set forth in the subsequent paragraph. In order to avail themselves of an extension of the delivery dates set forth above, AI has the burden of demonstrating that AI's, and its subsidiary entities', production of sand and gravel materials from the Denver Area Market for the prior 12 month period was less than a total of 1.8 million tons over the prior 12 months. To the extent AI establishes at the bi-annual meetings that its production of sand and gravel materials in the Denver Area Market has been less than a total of 1.8 million tons over the prior 12 months, AI shall be entitled to a 6 month extension of the delivery dates set forth above, and in paragraph 1.2.6, below. Although the City cannot guarantee confidentiality, the City agrees it will take all reasonable steps to maintain the confidentiality of trade secret information provided by AI at any such bi-annual meetings, within the limits of Colorado law. Regardless of market conditions in the Denver Area Market and any extensions of the delivery dates provided pursuant to this paragraph due to such market conditions, delivery of the 2,800 acre foot (or greater) cell must occur no later than December 31, 2019. Regardless of market conditions in the

Denver Area Market and any extensions of the delivery dates provided pursuant to this paragraph due to such market conditions, delivery of the cumulative total of 4,000 acre feet (or greater) of storage must occur no later than June 30, 2022.

In addition, the following milestones are independent of market conditions and will be accomplished on the following schedule. AI agrees it will commence final design work on the slurry wall for the 2,800 acre foot (or greater) cell of lined storage reservoir contemplated in the Storage Facility Agreement by April 15, 2010 and complete construction of said slurry wall by December 31, 2010 subject to funding by parent company Holcim Inc's normal budgetary process. The relevant cell will have a minimum storage capacity of 2,800 acre feet. AI further agrees it will commence relocation of utility lines on the Property by June 15, 2010 subject to funding by parent company Holcim Inc's normal budgetary process and commence active mining of the Property by no later than December 31, 2012. No later than 10 days after the commencement of active mining of the Property, AI shall send written notice to the City that active mining of the Property has commenced. "Active mining" for purposes of this Agreement shall mean removal of aggregate from the Property at a rate of no less than 500,000 tons over any consecutive 12 month period of time. Finally, upon execution of this Agreement and until delivery of lined storage as contemplated under this Agreement, AI further agrees that neither AI nor its subsidiary entities will open or operate a third aggregate plant and/or pit in the Denver Area Market, unless AI's or its subsidiary entities' total production of sand and gravel materials in the Denver Area Market exceeds 3.8 million tons per calendar year, of which at least 1.5 million tons per calendar year is being produced from the Property.

The parties agree that the City shall have the ongoing right to review and audit AI's, and its subsidiary entities', books and records regarding sand and gravel production for the preceding three years until final delivery of 4,000 acre feet of storage, as contemplated under this Agreement, is completed, or otherwise mutually agreed in writing. The City agrees to take all reasonable steps to maintain the confidentiality of said review and audits, within the limits of Colorado law.

(2) AI agrees to complete any storage at the Property greater than 4,000 acre feet up to a maximum of 7,000 acre feet (the "Additional Amounts"), by ~~May 15, 2012~~ June 30, 2022. The City agrees to accept conveyance of this storage capacity and pay for it pursuant to this Agreement. For planning purposes, AI must notify the City by December 31, 2019 if it intends to deliver more than 4,000 acre feet of storage at the site, and, if so, the anticipated total amount.

~~(3) If AI provides written notice to the City pursuant to Article 5 that AI will build storage capacity in excess of 7,000 acre feet at the Property and the City accepts some or all of this capacity beyond 7,000 acre feet, a completion date for such excess capacity will be mutually agreed upon.~~

~~The delivery dates in this paragraph 1.2 are subject to adjustment as provided in Article 5.~~ In addition, 5% variations in the number of acre feet from the projected delivered storage shall be considered de minimis under this Agreement. Any such de minimis variations in the number of acre feet of storage delivered shall not be grounds for the imposition of delay penalties under Paragraph 1.2.6, below. AI will provide an annual update to the City of the projected level of storage to be delivered.

### 1.2.3 Cell Configuration.

The Storage Facility completed by AI may consist of one reservoir or several cells, the location and configuration of which shall be determined by the parties pursuant to this Agreement.

### 1.2.4 Acceptance of Storage.

Consistent with the terms of this Agreement, the City shall accept and pay for reservoir storage cells when:

(1) The State Engineer certifies compliance with the “State Engineer’s Guidelines for Lining Criteria for Gravel Pits, August 1999” (or subsequent State Engineer guidelines applicable to the lined storage facility), (the “SEO Guidelines”),

(2) The volume of the storage has been surveyed pursuant to this Agreement, and

(3) A professional engineer mutually agreeable to the parties or with demonstrated experience with lined gravel pit storage facilities certifies to the City that the scope of work set forth in Exhibit B has been substantially completed.

AI agrees that, at the time of its completion and transfer of the Storage Facility, or any phase thereof, to the City, the Storage Facility shall be in substantial compliance with Exhibit B attached hereto and incorporated herein by this reference. For purposes of this agreement, reservoir storage shall be deemed “delivered” when all three provisions of 1.2.4(1), (2) and (3) are completed.

### ~~1.2.5 Delivery.~~

~~In the event that the storage capacity of the Storage Facility is created, in whole or in part, by a cell in excess of 4,000 acre feet, the completion date of May 15, 2008, shall be extended as necessary, up to May 15, 2010, so long as at least 4,000 acre feet of potential storage has been collectively created in one or more cells and at least one cell in excess of 4,000 acre feet is in process of being completed as of May 15, 2008. Such~~



~~extension of the completion date shall also suspend for the same period the decrease in unit price per acre foot described in paragraph 1.2.6. In order to secure this extension of time for delivery of the Storage Facility, AI shall provide a survey or other measurement that demonstrates the volume of storage capacity that has been completed as \_\_\_\_\_ of \_\_\_\_\_ May \_\_\_\_\_ 15, \_\_\_\_\_ 2008.~~

~~1.2.6—Delay.~~

~~(1) If AI fails to deliver 4,000 acre feet by May 2008 2,800 acre feet of storage by December 31, 2017, the unit price per acre foot to be paid by the City for the first 4,000 acre feet shall decrease at the rate of one percent (1%) per each month of delay beyond the intended required delivery date, subject to paragraphs 1.2.5 and 5.6 for the 2,800 acre feet of storage. Similarly, if AI fails to deliver the total of at least 4,000 acre feet of storage by June 30, 2020, the unit price per acre foot to be paid by the City shall decrease at the rate of one percent (1%) per each month of delay beyond the required delivery date for the remaining storage. The deadlines set forth herein are subject to extension pursuant to the terms of paragraph 1.2.2., above.~~

~~(2) If AI fails to deliver the Additional Amounts, if any, by May 2012, the unit price per acre foot to be paid by the City for the Additional Amounts shall decrease at the rate of one percent (1%) per each month of delay beyond the intended delivery date, subject to paragraphs 1.2.5 and 5.6~~

**ARTICLE 2**

**CONTRACT PRICE, SURVEY, PAYMENT**

2.1 The City shall pay AI for the ~~initial~~ 4,000 acre feet capacity of the Storage Facility at the unit price of \$2,500 per acre foot, as certified by the survey prescribed herein, less the \$150,000 down payment paid pursuant to the Purchase and Sale Agreement. For all capacity purchased by the City in excess of 4,000 acre feet, the City shall pay \$2,500 per acre foot escalated at the increase in the CPI for Denver/Boulder annually from ~~December 16, 1999~~ (insert new signing date), 2004, until the date of final payment, but under no circumstances shall the acre foot price paid by the City exceed \$5,000/AF. (The payments to be made upon delivery of all or a phase of the Storage Facility shall be referred to as a “Final Payment” herein.) These payments shall be decreased if delivery is late, as provided in paragraph 1.2. If storage capacity of the Storage Facility is delivered in phases, the City shall pay AI as the storage capacity is delivered to the City, in accordance with paragraph 1.2, provided that the first cell delivered to the City is at the lowest bedrock gradient of the Property so that outlet works to the South Platte River can be constructed by the City, at City cost, ~~to the South Platte River~~. In that event, at the time the cells are completed, AI shall also provide a temporary ditch between the permanent inlet works to be constructed by the City and any cells delivered to the City in addition to that in which the permanent inlet works are located.

2.1.1 The volume of the Storage Facility shall be calculated using a measurement where the high water surface elevation is equal to the lowest existing ground surface elevation along the reservoir perimeter based upon a pre-construction topographic survey.

2.1.2 The \$150,000 payment made by the City on December 16, 1999, to Transnation Title Company as escrow agent, ~~shall be~~ was paid to AI upon approval and execution of ~~this~~ the original Agreement by both parties.

2.2 Payment by the City for the Storage Facility shall be wired, paid in cash, or in certified funds as directed by AI within fifteen (15) calendar days after the requirements of paragraph 1.2.4 have been completed.

2.3 AI shall provide City with notice of anticipated completion of the Storage Facility at least 18 months prior to the beginning of City's fiscal year in which final completion of the Storage Facility is anticipated. The City's fiscal year commences on January 1 of each year. AI acknowledges that this notice is necessary in order for the City to budget payment and that funds will not be available for the City to pay AI unless the notice required by this paragraph is provided. De minimis non-compliance with this requirement shall not be considered noncompliance by AI unless such non-compliance prevents the City from including the payment in the relevant budget documents. In the event lack of notice prevents payment hereunder in the fiscal year in which payment would otherwise be due, the City shall make its best efforts to allocate funds for payment to AI as soon as possible and, in no event, shall payment be made later than January 10<sup>th</sup> of the next fiscal year.

2.4 The City shall not be required to make full payment to AI until written releases or estoppel certificates are provided by AI to the City from all of the subcontractors and suppliers retained by AI that performed work on the Property as documentation of final payment. In the event such releases or estoppel certificates are not provided, AI shall provide documentation of the amount in dispute between AI and any subcontractor or supplier and the City shall have the right to withhold only sums equal to the amount of alleged non-payment.

## 2.5 Completion Date and Survey.

2.5.1 AI shall notify the City when a cell is completed and shall cause the cell to be dewatered so that storage capacity maybe accurately measured. AI shall obtain all necessary permits to dewater the cell, including any temporary substitute supply plan as may be required by the State or Division Engineer.

2.5.2 The amount of the Final Payment due shall be based on an appropriate detailed survey of the final storage capacity, which survey shall be at the City's cost ("Final Survey") within 60 days of AI's written notice to the City of the completion of the phase of construction of the Storage Facility. The City shall provide AI with a copy of the Final Survey and the corresponding calculation of the final capacity.

2.5.3 If the City has not completed the survey within 60 days of AI's notification of its completion of mining operations, AI shall be entitled to conduct its own survey of final measured storage capacity of the Storage Facility at the City's cost which shall be binding on City for the purposes of determination of payment under this Agreement.

2.6 Allocation of Purchase Price.

2.6.1 At some time following the final determination of the total contract price pursuant to Article 2.1 of this contract, AI shall allocate (the "Allocation") the total contract price between amounts received in exchange for the Storage Facility and amounts received in exchange for services performed to prepare the Storage Facility for sale to the City (the "Service Fee"). The Allocation shall be made solely by AI, without any necessary approval from other parties to this contract.

2.6.2 In determining the amount of the Service Fee, AI shall determine the fair market value of the services rendered to the City in preparing the Storage Facility. AI shall not take into account those services rendered which are normally incident to mining.

2.6.3 In addition, services may be performed in addition to those for which City is obligated to AI under the contract to pay for at cost. Such amounts shall also be treated as payment for services not incident to normal mining received by AI.

2.6.4 Amounts payable under this contract pursuant to Article 2.1, excluding those amounts treated as the Service Fee pursuant to Article 2.6.2, are intended to be treated as the proceeds from the sale of the Property under the threat or imminence of condemnation, pursuant to Section 1033 of the Internal Revenue Code of 1986 (as amended).

**ARTICLE 3**

**WARRANTY AND ADDITIONAL AGREEMENTS  
OF AI**

3.1 Warranties of Work and Surety for Performance.

3.1.1 AI warrants that the reservoir liner shall meet with the then applicable SEO Guidelines for lined gravel pits as outlined in Exhibit B. These guidelines describe leakage test procedures which can be undertaken prior to or upon the completion of mining activities. The City will accept such a test provided the State's requirements are satisfied. AI shall make all needed repairs to the liner or modifications to the liner system until the SEO Guidelines/requirements are met. Should a major component of leakage inflow be from a source other than the reservoir liner, such as seepage through the bedrock forming the floor of the reservoir, the cost to investigate, design and repair

the seepage shall be shared equally between the City and AI, subject to the limitations of paragraph 5.6, below. AI will not excavate into or otherwise compromise the integrity of bedrock in an effort to increase storage capacity, or for any other reason, without prior written approval from the City.

3.1.2 AI warrants the slurry wall for the length of time that the slurry wall is warranted to AI by AI's subcontractor, but no less than twenty-four (24) months ("Slurry Wall Warranty Period") after such approval or after completion of any repairs performed by AI after certification. The City shall retain two and one-half percent (2 1/2%) of the payment(s) made to AI as warranty period surety until the end of the Slurry Wall Warranty Period. The retainage shall be released to AI within fifteen (15) days after successful completion of the Slurry Wall Warranty Period. If AI completes the slurry wall, obtains State Engineer's Office approval consistent with the SEO Guidelines, and the Slurry Wall Warranty Period is successfully completed prior to the Payment Date, no retainage will be necessary.

3.1.3 All work described in section 2 of Exhibit B shall be warranted for eighteen (18) months after the Payment Date or after completion of any repairs performed by AI (the "18-Month Warranty Period"). The City shall retain two and one-half percent (2 1/2%) of the payment(s) made to AI as warranty period surety until the end of the 18-Month Warranty Period. The retainage shall be released to AI within fifteen (15) days after successful completion of the 18-Month Warranty Period.

3.1.4 Warranty Period retention amounts shall be deposited by the City with Transnation Title Company or another mutually acceptable escrow agent to be held in an interest-bearing escrow account. AI shall receive the interest income in addition to retained amounts paid to AI at the end of the Warranty Periods.

3.1.5 If AI fails to begin to perform work required by the warranties provided herein within 30 days of written notice from the City, the City may perform the work and be reimbursed for its costs from the retained amounts held in escrow.

3.2 AI shall secure and pay for necessary permits, approvals, inspections, and any ongoing mitigation requirements with respect to its activities on the Property.

3.3 AI shall use its reasonable best efforts to coordinate its work on the Property with City's work on the inlet/outlet structure for the Storage Facility. AI shall not, however, have responsibility or liability for the inlet/outlet structure.

3.4 Upon completion of mining by AI and payment by the City for the Storage Facility, AI shall provide to City two sets of as-built drawings and a post-construction report from AI's design engineer.

3.5 Any additional work or services by AI in connection with the Storage Facility shall be by mutual agreement by a written change order.

3.6 All work covered by the 18-Month Warranty Period as identified in paragraph 3.1.3., above, is warranted only for normal reservoir operations. Specifically, the maximum rate at which the reservoir would be emptied is equal to a flow rate which would draw down the top five feet of water storage in five days. This is a minimum emergency draw down rate specified by the State Engineer's Office, Dam Safety Division.

3.6.1 During the 18 Month Warranty Period as identified in paragraph 3.1.3, above, the constructed reservoir side slopes shall be stable under normal reservoir operations including the maximum draw-down rate described above. Side slope embankment repairs shall be required if any of the following problems are encountered and result in a deformation greater than ten feet across, measured parallel to the constructed embankment slope in any direction, or exceed two feet in depth measured perpendicular to the side slope surface. Such side slope problems include the following:

- (1) Scarping of the side slope caused by local settlement.
- (2) Embankment sliding or sloughing caused by side slope instability or foundation movement.
- (3) Surface cracking caused by embankment movement or foundation movement.

3.7 AI shall reasonably cooperate with the City to provide any necessary access and easements to allow the City to construct an outlet works to the South Platte River and to allow the City to convey water from the City's diversion structure to complete cells of the Storage Facility.

#### **ARTICLE 4**

##### **ADDITIONAL AGREEMENTS OF THE CITY**

4.1 City acknowledges and agrees that Seller's reservation of mineral rights shall include the right to the occupation and use of the Property for the purpose of mining, extraction, and processing of aggregate and minerals contained therein, the extraction of any related materials encountered in the course of aggregate mining, and the normal and customary activities of Seller, its employees and agents associated therewith.

4.2 City shall reasonably cooperate with AI so that City's work on the inlet/outlet structure does not hinder or delay completion of the mining and reclamation process. AI acknowledges and agrees that the City's activities as of the date of this Agreement have

not caused any such hindrance or delay. AI agrees that it will cooperate with the City to facilitate the City's work on the inlet/outlet structure.

4.3 All drawings and specifications and plans for the Storage Facility shall remain the property of AI and shall not be used by City for any purpose except in connection with construction of the inlet/outlet structure and any related work.

4.4 The City represents and warrants that it has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder.

4.5 AI is an independent contractor and nothing herein contained shall constitute or designate AI or any of its employees, agents or employees of the City.

## ARTICLE 5

### TIME SCHEDULE, TERMINATION AND DELAYS

#### 5.1 Initial Phase.

5.1.1 ~~AI will use its reasonable best efforts to obtain~~ has obtained its Corps of Engineers Section 404 permit and its permit from the Division of Minerals and Geology ("DMG") ~~and will obtain all necessary permits as soon as possible for mining and construction of the Storage Facility.~~ AI will, at its sole cost, obtain any extensions necessary for the Section 404 permit or any other permit necessary or otherwise related to mining efforts at the Property until delivery of lined storage to the City is accomplished under this agreement. The City will cooperate with AI and bear the City's expenses, if any, solely related to the extension of the existing 404 permit in the context of the City's storage uses. AI has completed due diligence in carrying out all studies and investigations reasonably expected in the aggregate industry and has verified the constructability and commercial feasibility of mining the Property and constructing the Storage Facility. AI waives its right, if any, to terminate the Storage Facility Agreement for any reason other than a breach of said Storage Facility Agreement by the City of Westminster.

5.1.2 AI and the City will use their reasonable best efforts to identify:

(1) Mutually agreeable locations and configurations of storage cells and inlet and outlet facilities on the Property, and

(2) Mutually agreeable locations of City access to and around storage cells and to and from inlet and outlet works ("City Access Rights").

5.1.3 To the maximum extent practicable upon completion of mining and reclamation activities at the Property, City Access Rights shall include:

- (1) Vehicle access to each storage cell;
- (2) A 30-foot strip of land around the perimeter of each storage cell; and
- (3) A 30-foot strip of land adjacent to an inlet structure and an outlet structure.

5.1.4 Unless otherwise agreed by the parties in writing, any roads or other access to or around the cells shall be constructed by the City at the City's expense.

~~5.2 Within ninety (90) days after the date that the later of the Section 404 and DMG permits has been issued and the parties have completed the decisions required by 5.1.2, AI shall:~~

~~(1) Complete due diligence in carrying out all studies and investigations reasonably expected in the aggregate industry to verify the constructibility and commercial feasibility of mining the Property and constructing the Storage Facility;~~

~~(2) Decide, in its sole discretion, whether construction of the Storage Facility is impossible or impracticable of completion either due to commercial impracticability or lack of constructibility. Upon such a finding, AI shall have the right to terminate this Agreement upon written notice to City; and~~

~~(3) Determine whether it will build storage capacity in excess of 7,000 acre feet and notify the City in writing of the projected storage capacity. The City shall determine within ninety (90) days of receiving this notice whether to buy storage capacity in excess of 7,000 acre feet and shall notify AI in writing.~~

5.3 If AI terminates this Agreement pursuant to paragraph 5.2, it shall pay the City \$150,000 plus accrued interest at the annual rate of increase in the CPI for Denver/Boulder area from December 16, 1999, within 30 days after notice is given and the City shall re-convey the Property to AI by special warranty deed and neither party shall have further liability or responsibility to the other under this Agreement except pursuant to paragraph 5.4 below. In the event of such termination by AI, the parties shall make a good faith effort to find a replacement site that would allow the provisions of this Agreement to be carried out. The Right of First Option Agreement and Effluent Lease shall each be canceled and terminated. The Environmental Compliance and Indemnification Agreement shall survive this Agreement, and any breach thereof, and shall remain in effect in perpetuity, but shall be limited in scope as provided in paragraph 5 of said Environmental Compliance and Indemnification Agreement.

5.4 If AI terminates this Agreement and if, within ten (10) years from the date of written notice of AI's termination, AI subsequently commences or has specific plans to proceed with construction of lined storage at the Property, the City shall have the option to purchase from AI up to 4,000 acre feet of lined storage capacity at a price of \$2,500 per acre foot consistent with the terms of this Agreement, with appropriate extension of all time deadlines.

~~5.5 After the expiration of the first 90 day period specified in paragraph 5.2, AI may not terminate this Agreement due to commercial impracticability or lack of constructibility unless conditions are encountered that could not have reasonably been foreseen by AI. If such unforeseeable conditions are encountered, and subject to the limitations of paragraph 5.6, below, AI and the City shall use good faith efforts to determine a course of action and an equitable division of additional costs to address the unforeseeable conditions, or whether termination of this Agreement is the preferred resolution. “Unforeseeable conditions” means conditions that were not reasonably foreseeable pursuant to the efforts described in paragraph 5.2(1).~~

5.6 Neither party shall be required to incur additional costs pursuant to ~~paragraphs paragraph 3.1.1 or 5.5~~ in excess of ten percent (10%) each of the total anticipated purchase price of the entire project. If the City agrees to pay additional costs within this limit and AI has agreed to perform any necessary work, upon completion of any such work, AI will provide written notice to the City of the City’s share of the additional costs. The City shall pay its share of such additional costs to AI as soon as practicable, but in no event later than 18 months after receiving the written notice. The City shall also pay interest on its share of the additional costs to AI. Said interest shall accrue from the date of written notice until the date of payment at the then existing published prime rate of interest charged at Wells Fargo bank, or its successor entity. Either party may, in its sole discretion, agree to cover the costs ~~of curing the unforeseeable conditions~~ in excess of the ten percent limit identified above.

5.7 If AI is unreasonably delayed at any time in the progress of the Storage Facility or at any time by an act or neglect of City or its agents or representatives, ~~or by lack of market for AI’s aggregate products being mined from the Property as defined in paragraph 5.7.1,~~ labor disputes, flood, fire, unusual delays in deliveries, adverse weather conditions not reasonably ~~anticipatable~~ anticipated, enactment of applicable laws, regulations or requirements by any governmental agency beyond those currently in existence, unavoidable casualty or other causes beyond AI’s control, or by any other causes which City and AI agree may justify delay, then completion dates for the Storage Facility shall be extended for the full duration of any such delay, so long as AI has given written notice to City as required by Paragraph 5.7.1. AI must give the City timely written notice of delay before any completion dates are extended. ~~The payment price for the Storage Facility shall be equitably adjusted to reflect the costs to AI of any delay caused by City or agents or representatives.~~

5.7.1. ~~The Property is located within the South Platte Corridor, defined as AI’s mining operations along the South Platte River between the confluence of Clear Creek and the South Platte River and the South Platte River at Fort Lupton. For purposes of paragraph 5.7, above, and commencing after the first full calendar year of aggregate production at the Property, “lack of market” shall apply if all of the following three criteria are met:~~



- ~~(a) AI has produced less than 1.5 million tons of aggregate per annum from the Property; and,~~
- ~~(b) The total South Platte Corridor per annum aggregate production drops below 5 million tons; but~~
- ~~(c) AI has produced greater than 27.7% of its total South Platte Corridor per annum aggregate production from the Property.~~

~~If all of these three criteria are satisfied, AI shall be granted a time extension of the completion date as contemplated in paragraph 5.7, above. The duration of said time extension shall be calculated in the following manner: AI shall be entitled to a one month extension of the completion date for every 125,000 tons of actual aggregate production from the Property that was below the target production amount of 1.5 million tons per annum from the Property. If AI becomes aware of the onset of any circumstance listed in 5.7 that it reasonably believes will cause a delay in any completion date, AI shall provide written notice to the City within 60 days of learning of any such circumstance setting forth the specific nature and anticipated length of any such delay.~~

~~5.7.2 In addition to the meetings set forth in paragraph 1.2.2., above, in January of each year, AI will provide annual written reports to the City verifying the total aggregate production in tons from the Property for the previous year, and the total aggregate production in tons by AI and its subsidiary entities in the Denver Area Market for the previous year. Although the City cannot guarantee confidentiality, the City agrees it will take all reasonable steps to maintain the confidentiality of trade secret information provided by AI in said annual written reports, within the limits of Colorado law. If AI becomes aware of the onset of any circumstance listed in 5.7 that it reasonably believes will cause a delay in the completion date, AI shall provide written notice to the City within thirty days of learning of any such circumstance.~~

~~5.7.3 AI will provide annual written reports to the City verifying the total aggregate production in tons from the Property for the previous year, and the total aggregate production in tons by AI in the South Platte Corridor for the previous year.~~

## **ARTICLE 6**

### **RETAINED AND RELEASED PROPERTY**

6.1 Upon completion of all mining on the Property and the last Final Payment by the City to AI, AI shall relinquish control of the Storage Facility accepted by the City and all appurtenant Property subject to City Access Rights (“Retained Property”). AI shall convey to the City by special warranty deed the mineral rights owned by AI on the Retained Property and by bargain and sale deed any right, title and interest of AI in any water rights adjudicated subsequent to the date of this Agreement for use in connection with the Retained Property as specified herein. AI shall concurrently release the deed of trust encumbering the Retained Property.

6.2 The parties expressly acknowledge and agree that any portion of the Property utilized for mitigation purposes associated with any permit, including but not limited to wetlands mitigation, shall not be located on any portion of the City's Retained Property. AI shall have reasonable access across the City's Retained Property for purposes of operation and maintenance of mitigation sites.

6.3 The balance of the Property not included in the Retained Property ("Released Property"), including title to any mitigation sites, shall be re-conveyed by the City to AI by special warranty deed concurrently with AI's conveyances to the City, unless AI is required to convey title or conservation easements on mitigation sites to Weld County or another entity at an earlier time as a condition of AI's permits required for mining the Property. In its discretion, AI may direct the City to convey title to another entity designated by AI. The parties acknowledge and agree that the Released Property provides an important buffer zone for the slurry wall to be constructed at the Property. The design of the Storage Facility takes into account the benefits related to this buffer zone, including, but not limited to, groundwater mounding and slurry wall protection associated with the Released Property. As a result, in the re-conveyance deed from the City to AI, the City may retain a nonexclusive easement for buffer zone and slurry wall protection purposes over the Released Property. In addition, prior to re-conveyance, AI consents to the City placing a restrictive covenant on any portion of the Property utilized for mitigation purposes that prevents the construction, drilling, operation and use of any water well or water infiltration gallery on that portion of the Property without the City's written permission.

## ARTICLE 7

### COVENANTS FROM PURCHASE AND SALE AGREEMENT

7.1 AI will mine the aggregate and related materials from the Property and complete reclamation in accordance with the approved plan for mining and reclamation to which AI is subject in connection with the issuance of AI's permit to mine aggregate. Any amendments to the reclamation plan for the Property shall require approval of the City, which approval shall not be unreasonably withheld or delayed. Until the Storage Facility is conveyed to the City, AI shall have responsibility for maintaining and managing the Property, undertaking all actions in that regard that would ordinarily be required of the property owner, and shall do so in the manner required by Weld County or other applicable state of Colorado regulations and appropriate for aggregate mining operations. The City shall have the responsibility for any real property taxes due, if any, but AI shall remain responsible for all other taxes.

7.2 Except as approved in writing by the City, AI shall use its best efforts to preserve the character, property and assets of the Property intact as of the date hereof, subject to AI's right as mineral owner.

7.3 AI shall: (a) provide the City and its attorneys, accountants, representatives, agents and contractors with access, upon reasonable notice, to build permanent inlet and outlet works, to inspect the Property and the records of AI relating to the Property and other interests; and (b) cooperate with any soils, environmental, engineering, or other inspections of the property that may be initiated and paid for by the City which, at the City's sole option and expense, may include testing of the soil, groundwater, and such other items as the City or its agents or experts shall deem necessary.

7.4 AI shall not encumber the Property or other interests in any way, nor grant any property or contract right relating to the Property or other interests, nor alter the zoning of approved land uses on the Property without the prior written consent of the City.

7.5 The City will cooperate with AI to obtain approval of, and to amend, the mining and reclamation plan and other permits necessary to mine the aggregate deposit at the Property. AI shall timely apply for any necessary permits and shall agree to costs, restrictions, or conditions on such permits as are common in the aggregate mining industry for the issuance of such permits. AI will use good faith efforts in pursuit of a DMG permit to minimize the permit requirement for freeboard.

7.6 The parties acknowledge and agree that changes of water right and/or other water-right adjudications may be necessary to allow use by the City of the Property for its intended public purpose of a water storage facility. Additionally, AI acknowledges that pursuant to the December 12, 2001 Water Storage Agreement between the City and South Adams County Water and Sanitation District ("South Adams"), the City sold to South Adams and South Adams purchased from the City 1,200 acre feet of storage space in the storage to be produced at the Property. AI agrees that it will not oppose, but will cooperate with the City and South Adams in, any actions filed in the water court or administrative or other proceedings for approval of the City's, or South Adams', use of its water rights for storage purposes at the Property, including without limitation change of water right, alternate point of diversion, ~~appropriate~~ appropriative rights of exchange, or other water court applications involving water stored at the Property. ~~The City shall provide to AI, for AI's review and comment, a draft of any application relating to the Property to be filed in the water court prior to filing. The City will not enter into a stipulation for a proposed decree in such water court actions unless and until such proposed decree has been approved by AI, which approval will not be unreasonably withheld or delayed.~~

7.7 AI shall be responsible for obtaining and maintaining all required permits and approvals required concerning the replacement to the stream system for evaporation or other losses required to be replaced on, or in connection with the gravel mining operation at the Property until Final Payment. Such replacement will be carried out using water rights excepted from the sale described in Exhibit B of the Purchase and Sale Agreement or from other sources available to AI but at no expense, risk or responsibility to the City. AI shall hold the City harmless from any such expense or risk in the event responsibility for any such replacement is sought to be imposed on the City by any agency or entity.

7.8 Each of the foregoing paragraphs 7.1 through 7.7 inclusive shall constitute a covenant running with the Property and shall survive the conveyance of title hereunder. The parties shall cooperate with one another to sign an appropriate recordable release of these covenants upon completion or termination of the project.

## **ARTICLE 8**

### **MISCELLANEOUS**

8.1 This Agreement shall be governed by the laws of the State of Colorado.

8.2 This Agreement shall be deemed entered into in Weld County, State of Colorado. In any litigation concerning this Contract, venue shall be proper in the courts of Weld County.

8.3 This Agreement represents the entire agreement of the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the Storage Facility except as specifically set forth herein. This Agreement does not supersede:

- a. Environmental Compliance and Indemnification Agreement;
- b. Effluent Lease Agreement;
- c. Right of First Option Agreement; or
- d. The Purchase and Sale Agreement which remains in effect except as it is in conflict with this Agreement, in which case this Agreement prevails.

8.4 Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to be given and effective when delivered by telegram, telex or telecopies, or by Express Mail, Federal Express, or like service, or on the third mail delivery day after it is deposited to the United States mail, postage prepaid by certified or registered mail, return receipt requested, addressed to the parties as follows:

To AI: ~~Vice President and General Manager, Aggregates Division  
CAMAS Colorado, Inc.  
3605 So. Teller Street  
Lakewood, CO 80235~~  
Senior Vice President  
Aggregate Industries-WCR, Inc.  
1707 Cole Blvd  
Suite 100  
Golden, Colorado 80401  
Facsimile: ~~303-(303) 716-5340~~

with copies to: ~~Anne J. Castle, Esq.  
Holland & Hart LLP  
P.O. Box 8749  
Denver, CO 80201-8749  
Facsimile: ~~303-295-8261~~~~  
Timothy J. Flanagan, Esq.  
Fowler, Schimberg & Flanagan, P.C.  
1640 Grant Street  
Suite 300  
Denver, Colorado 80202  
Facsimile: (303) 298-8748

If to City: City of Westminster  
Water and Wastewater Enterprise  
c/o Director of Public ~~Storage Facilities~~ Works and Utilities  
4800 ~~W. West~~ 92<sup>nd</sup> Avenue  
Westminster, ~~CO 80030~~ Colorado, 80031  
Facsimile: ~~303-650-1643~~ (303) 706-3927

with copy to: Westminister City Attorney  
4800 ~~W. West~~ 92<sup>nd</sup> Avenue  
Westminster, ~~CO 80030~~ Colorado, 80031  
Facsimile: ~~303-(303) 650-0158~~

The parties may revise the names and addresses set forth above by providing notice by written communication in the manner described above.

8.5 No assignment by a party hereto of any rights under this Agreement will be binding on another party hereto without the written consent of the party sought to be bound.

8.6 It is agreed that this Agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns and successors.

8.7 Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person, other than City and AI and their respective successors, assigns and transferees.

8.8 The descriptive headings herein are inserted for convenience or reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

8.9 The parties hereto agree to execute such documents and take such action as shall be reasonably requested by the other party to effectuate the agreements and the intent of this Agreement.

8.10 All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

8.11 Each of the persons executing this Agreement on behalf of the parties hereto, covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.

8.12 The parties agree that the obligations of the City under this Agreement shall be the sole obligations of the City of Westminster Water & Wastewater Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City of Westminster or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Westminster within the meaning of any constitutional, statutory or charter limitation.

8.13 The City shall have no obligation to pay any compensation to Stillwater Resources and Investment, Inc. or any other agent or broker working on behalf of AI in connection with the matters described in this Agreement.

8.14 In the event of a default or breach of this Agreement, the parties hereto shall have all remedies available at law and in equity, including claims for damages or specific performance, or both. Waiver or failure to give notice of the particular default or defaults shall not be construed as acquiescence to any continuing or subsequent default.

**ARTICLE 9**

**CONTINGENCY**

This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither party shall be bound to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

CITY OF WESTMINSTER, ACTING  
THROUGH ITS WATER AND  
WASTEWATER ENTERPRISE

Attest:  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

Approved as to Legal Form:

\_\_\_\_\_  
City Attorney's Office

~~CAMAS Colorado, Incorporated d/b/a~~  
~~Aggregate Industries, West Central~~  
~~Region~~  
-WCR, Inc., a Colorado Corporation

Attest:  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

## **WATER LEASE**

**THIS LEASE** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009, between the City of Westminster (“Westminster”), lessor, and Aggregate Industries-WCR, Inc., a Colorado corporation (“AI”), lessee.

**WHEREAS**, Westminster is the owner of 1.038 shares in the Brighton Ditch, (the “BDC Shares”), identified as Stock Certificate Numbers 228 and 229:

**WHEREAS**, Westminster is a municipal corporation in the State of Colorado that provides water and sewer services to individuals located within the Westminster Water Service Area;

**WHEREAS**, Pursuant to Section 14.3 of the Westminster City Charter, the City is further authorized to lease water subject to subsections (a) and (b) of said Section 14.3. In the judgment of the Westminster City Council, the terms of this Water Lease, and the payments generated thereby, satisfy the requirements of Section 14.3 (a) and Section 14.3 (b) of the Westminster City Charter.

**WHEREAS**, AI is a corporation of the State of Colorado;

**WHEREAS**, AI desires to lease the water derived from the BDC Shares, and Westminster is willing to lease to AI the water derived from the BDC Shares under the specific conditions hereinafter set forth.

**WHEREAS**, Westminster and AI are parties to an Agreement dated October 24, 2000, (the “Storage Agreement”), as amended on \_\_\_\_\_, 2009, whereby AI is mining gravel deposits from certain lands located near Wattenberg, Colorado and, upon completion of mining, is constructing a water storage reservoir for Westminster on said lands.

**NOW THEREFORE**, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, the mutual covenants and agreements set forth in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Westminster and AI agree as follows:

1. Westminster agrees to lease the water derived from the BDC Shares to AI subject to the terms of this Lease.

2. AI agrees to put the water derived from the BDC Shares to “beneficial use” as that term is defined under Colorado Water Law, and will take no action that would constitute an abandonment of the BDC Shares or otherwise jeopardize the historical consumptive use associated with the BDC Shares. AI agrees to continue to divert the water derived from the BDC Shares and maintain the same level of consumptive use of the water that has occurred historically.

3. The parties expressly acknowledge and agree that Westminster has made no representation or warranties regarding the quality of or fitness for any use of the water derived from the BDC Shares and provided to AI pursuant to the terms of this lease. AI hereby waives any actual



or potential rights it might have concerning any warranties from Westminster as to fitness for a particular use, product liability claims, and all other extant or later created or conceived of strict liability or strict liability claims and rights concerning the fitness or appropriateness of the water for a particular use or users. Moreover, Westminster does not represent or guarantee that the water meets or will meet any particular water quality standards or complies with or will comply with any requirements of any governmental agency or authority, or that the water is suitable for any use by AI or others.

4. AI shall not have any right of ownership of the BDC Shares.

5. This Lease may not be assigned by AI without the prior written consent of Westminster. AI shall provide Westminster with notice of any intention to assign this Lease to any other third party. To the extent this Water Lease is assigned to any third party, AI will obtain a written acceptance of the terms of this Water Lease by the third party, including, but not limited to the provisions of Paragraph 3, above, as well as a written waiver signed by the third party specifically waiving the same rights waived by AI in Paragraph 3, above. Any assignment of this Water Lease by AI shall not be effective until the requirements of this paragraph have been satisfied.

6. This Lease shall expire upon the occurrence of any one of the following events:

a. The completion by AI and acceptance by Westminster of lined storage pursuant to the terms of the Storage Agreement; or

b. The termination of the Storage Agreement; or

c. AI's failure to make good faith efforts to mine and complete the lined water storage facility pursuant to the Storage Agreement; or

d. AI's breach or failure to fully comply with any terms of this Lease Agreement; or

e. AI's failure to make annual payments to Westminster as required under paragraph 7, below; or

f. Ten years for the date of execution of this lease; or

g. Upon mutual agreement of the parties.

7. As consideration for this lease, AI will pay Westminster an annual fee equivalent to the annual assessments, any special assessments or any related fees, including, but not limited to carriage and/or augmentation station usage fees, associated with the BDC Shares. During the term of this lease, Westminster will notify AI in writing of any assessments or fees paid on said BDC Shares. During the term of this lease, AI shall promptly reimburse Westminster for any payments made by Westminster that constitute annual assessments, special assessments, or related fees associated with the BDC Shares. AI's failure to reimburse Westminster within 30 days of written notice shall constitute grounds for terminating this Lease pursuant to paragraph 6(e), above.

8. All notices required to be given or made under the Water Lease shall be in writing

and sent by United States mail or hand delivery to the following addresses:

To Westminster:       City of Westminster  
Director of Public Works and Utilities  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031  
Facsimile: (303) 706-3927

To AI:                    Senior Vice President  
Aggregate Industries - WCR, Inc.  
1707 Cole Boulevard, Suite 100  
Golden, Colorado 80401  
Facsimile: (303) 716-5340

All notices will be deemed effective one (1) day after hand delivery, or if mailed, upon receipt. Either party, by written notice, may change the address to which future notices, billings, or payments shall be sent.

9. Findings of Westminster City Council. This lease of Consumable Water is made pursuant to the following findings hereby entered by the Westminster City Council: In the judgment of City Council, the terms of this Water Lease Agreement, including the payments received from the lease, will result in improvement of the capacity, efficiency, or service of Westminster's utility system, and Westminster enters into this Water Lease Agreement and will effect the lease of Consumable Water from Westminster's utility system and use the payment there from to facilitate improvements of Westminster's utility system.

10. In accordance with the requirements of Section 14.3 (a) of the Westminster City Charter, Westminster's obligations to deliver water under this Water Lease Agreement may be curtailed under the following circumstances. If, in Westminster's sole discretion, Westminster adopts mandatory citywide water use restrictions as a result of drought conditions, dam failure, or other catastrophic circumstance limiting Westminster's ability to satisfy the indoor water supply needs of its citizens, Westminster may curtail daily deliveries to AI under this lease by an amount consistent with said mandatory citywide water use restrictions. Once any such mandatory citywide water use restrictions expire or are otherwise lifted, Westminster shall immediately thereafter resume full daily deliveries under this Water Lease Agreement.

11. If, for any reason Westminster is temporarily unable to satisfy its obligations for delivery of water to AI under this Water Lease Agreement for any period of time, the parties agree that any damages resulting to AI therefrom shall be limited to a pro rata refund of the total lease payment. Westminster shall not be liable for any consequential, exemplary or punitive damages for failure to deliver water pursuant to this Water Lease Agreement. Other than a pro rata refund of the total lease payment, no other damages may be asserted or paid by Westminster to AI as a result of the inability to delivery water. AI expressly waives any and all other claims of damages.

12. During the term of this Lease, Westminster may, but is not required, seek to change the use of the BDC Shares to municipal uses. AI agrees that it will not oppose, but will cooperate

with the City, any actions filed in the water court or administrative or other proceedings for approval of the City's request for a change of use of the BDC Shares, including, but not limited to, an application involving a change of water right, alternate point of diversion, appropriate rights of exchange or other water court applications involving the BDC shares.

13. The terms of this Water Lease shall be binding on any successors and assigns, subject to the following additional provision. Notwithstanding the provisions of this paragraph and paragraph 6, above, Westminster may terminate this lease upon sale of the BDC Shares to a third party. In such circumstances, Westminster will make a good faith effort to replace the amount and timing of the consumptive use yield associated with the BDC Shares with alternate sources of fully consumable water acceptable to AI during what would have been the remaining term of this lease under paragraph 6, above.

14. This Water Lease constitutes the entire agreement between Westminster and AI concerning the provision of water by Westminster to AI derived from the BDC Shares, and all prior negotiations, representations, writings, understandings, or agreements pertaining to the provision of water by Westminster to AI derived from the BDC Shares are superseded by this Water Lease.

15. If any covenant, term, condition, or provision of this Water Lease shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained in this Water Lease. The intention of Westminster and AI is that all provisions hereof are severable.

CITY OF WESTMINSTER

\_\_\_\_\_  
J. Brent McFall, City Manager

Attest:

Approved as to Legal Form:

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

\_\_\_\_\_  
City Attorney's Office

AGGREGATE INDUSTRIES

\_\_\_\_\_  
add appropriate signature block

ATTEST:

\_\_\_\_\_  
Add appropriate signature block

## **CONSUMABLE WATER LEASE AGREEMENT**

This Consumable Water Lease Agreement (“Water Lease Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2009 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and Aggregate Industries - WCR, Inc. (“AI”), a corporation organized pursuant to the laws of the State of Colorado. Westminster and AI are also hereinafter referred to as the “parties” or separately as a “party”.

### 1. Recitals

1.1. Westminster owns and operates a municipal water supply system for the provision of municipal water supply to its inhabitants and to contract municipal water supply customers. In this connection, it owns and uses various decreed water rights in its system, which water rights and uses generate certain volumes of water that can be fully consumed and credited against other consumptive uses of water (“Consumable Water”). Westminster has determined that some of the Consumable Water in its water supply system is in excess of its current needs and desires to lease some Consumable Water to AI on the terms and conditions expressed herein.

1.2. AI is in the aggregate production business and, as such, it operates a number of gravel pits in the South Platte River basin. In connection with its business activities, AI needs additional consumptive use credits to augment out-of-priority exposure of groundwater. These credits may be incorporated by AI into a substitute water supply plan by appropriate administrative process. AI desires to lease fully consumable water from Westminster pursuant to the terms and conditions set forth herein.

1.3. Westminster and AI have entered into a Storage Facility Agreement dated October 24, 2000, (the “Storage Facility Agreement”), concerning the construction of certain storage reservoirs located in Weld County, Colorado. Nothing in this agreement modifies the terms of said Storage Facility Agreement or any amendments to the same.

1.4. Pursuant to Section 14.2 of the Westminster City Charter, Westminster may dispose of property constituting part of its utility system upon certain findings by the Westminster City Council.

1.5. Pursuant to Section 14.3 of the Westminster City Charter, the City is further authorized to lease water subject to subsections (a) and (b) of said Section 14.3. In the judgment of the Westminster City Council, the terms of this Water Lease, and the payments generated thereby, satisfy the requirements of Section 14.3 (a) and Section 14.3 (b) of the Westminster City Charter.

### 2. Consumable Water Lease.

Westminster will lease to AI for the term of this Agreement 519 acre-feet (AF) annually of Consumable Water from Westminster’s municipal water supply system subject to the further terms and conditions of this Agreement.

2.1 Term of Lease. The term of this Water Lease Agreement shall be from January 1,

2010 through December 31, 2019.

2.2 Amounts of Consumable Water Leased. The 519 acre feet of Consumable Water to be leased and delivered to AI shall be delivered on the following schedule:

<b>Month</b>	<b>Amount in acre feet</b>
January	123.00
February	111.00
March	79.00
November	83.00
December	123.00
Total	519.00 a.f. per year

Delivery shall be, as nearly as practicable, at a constant flow rate of 2.0 c.f.s. during each month of delivery consistent with the total volume of water to be delivered in each month. The parties may revise the delivery schedule or delivery amounts upon AI's written notification to Westminster of AI's projected delivery needs for the next calendar year by November 1 of the year preceding such revision..

2.3 Delivery.

2.3.1 Delivery Locations. The Consumable Water shall be delivered to AI at or above the confluence of Big Dry Creek and the South Platte River, at one or more of the following locations:

2.3.1.1. The Metropolitan Denver Wastewater Reclamation Plant ("Metro") currently located near Sand Creek and the South Platte River;

2.3.1.2. Westminster's Big Dry Creek Wastewater Treatment Plant located on Big Dry Creek above its confluence with the South Platte River;

2.3.1.3. Wattenberg Lake, now under construction near Wattenberg, Colorado;

2.3.1.4. Jim Baker Reservoir and/or West Gravel Lake, both located near Clear Creek;

2.3.1.5. Any other location where Westminster can, currently, or in the future, deliver Consumable Water from its water supply system to Clear Creek or to the South Platte River at or above the confluence of Big Dry Creek with the South Platte River.

Westminster shall determine, and may from time to time in its discretion change, the location or locations where the Consumable Water will be delivered to AI. After delivery at any of the

locations described above, AI shall bear any transit or evaporative losses from the point of delivery to the point of AI's uses.

2.4 Lease Payments. AI shall pay the sum of \$200.00 per acre-foot per year of Consumable Water leased hereunder. In consideration for the water delivered hereunder, AI agrees to make the following payments to Westminster:

2.4.1. An annual payment of \$103,800.00, or an adjusted annual payment based upon AI's projected delivery amount as provided to Westminster in accordance with Section 2.2. of this Water Lease Agreement, on or before December 31<sup>st</sup> of each year Consumable Water will be delivered pursuant to this agreement.

3. Other.

3.1. Findings of Westminster City Council. This lease of Consumable Water is made pursuant to the following findings hereby entered by the Westminster City Council: In the judgment of City Council, the terms of this Water Lease Agreement, including the payments received from the lease, will result in improvement of the capacity, efficiency, or service of Westminster's utility system, and Westminster enters into this Water Lease Agreement and will effect the lease of Consumable Water from Westminster's utility system and use the payment there from to facilitate improvements of Westminster's utility system.

3.2 Source and Quality of Consumable Water. The parties acknowledge that the Consumable Water delivered pursuant to this Water Lease Agreement may comprise treated municipal wastewater effluent, or, at Westminster's discretion, consumable raw water released from Westminster's raw water supply system. Westminster makes no representation or warranty as to the quality, or the fitness for a particular use, of the Consumable Water leased hereunder, except that to the extent the Consumable Water comprises treated municipal wastewater effluent, it shall be discharged in accordance with the limits and terms of wastewater discharge permits issued for the operation of any treatment plant from which the effluent is discharged; subject, however, to the terms of any compliance schedules imposed upon such plant, and to short term upsets or similar malfunctions of the treatment facilities. The parties further acknowledge that the Consumable Water leased hereunder is delivered on an "as-is" basis. AI accordingly waives any actual or potential rights it might have concerning any warranties or representations by Westminster as to the quality of the Consumable Water or its fitness for a particular use, any product liability claim and all other existing or later-created or conceived-of strict liability or strict liability claims and rights concerning the quality, or fitness for use, of the Consumable Water sold and delivered pursuant to this Agreement.

3.3. The water delivered pursuant to this Water Lease Agreement is provided strictly on a lease basis. AI shall not have any right of ownership of the water delivered hereunder. Westminster will properly account for the delivery of the water contemplated herein in a manner consistent with its current accounting practices and will provide copies of said accounting to AI upon request. Said accounting will identify the location of the delivery of water to AI.

3.4. This Water Lease Agreement may not be assigned by AI without the prior written consent of Westminster, which consent may be withheld in Westminster's sole discretion. AI shall provide Westminster with notice of any intention to assign this Water Lease Agreement to any other third party.

3.5. This Water Lease Agreement shall terminate upon the occurrence of any one of the following events:

- a. AI's failure to make a payment required by paragraph 2.4., above; or
- b. Failure of AI to meet any one of the milestones set forth in paragraph 1.2.2. of the Storage Facility Agreement dated October 24, 2000, and any amendments thereto; or
- c. AI's breach of the Storage Facility Agreement dated October 24, 2000, and any amendments thereto; or,
- d. Upon delivery of lined storage to Westminster pursuant to the Storage Facility Agreement dated October 24, 2000, and any amendments thereto; or,
- e. On December 31, 2019, unless a later date is subsequently agreed to by the parties.

3.6. Notices. All notices required to be given or made under this Water Lease Agreement shall be in writing and sent by United States mail or hand delivery to the following addresses:

To Westminster:      City of Westminster  
Director of Public Works  
4800 West 92nd Avenue  
Westminster, Colorado 80030  
Facsimile: (303) 650-1643

To AI:                      Senior Vice President  
Aggregate Industries, Inc.  
1707 Cole Blvd., Suite 100  
Golden, CO 80401  
Facsimile: (303) 716-5340

All notices will be deemed effective one (1) day after hand delivery, or if mailed, upon receipt. Either party, by written notice, may change the address to which future notices, billings, or payments shall be sent.

3.7. AI's use of this water shall be limited to use in a substitute water supply plan. AI shall not identify or otherwise attempt to use the water delivered hereunder in a Water Court



application for a plan for augmentation or in any plan for augmentation decree. AI agrees it will not jeopardize Westminster's water rights decrees by taking any action that causes, or could potentially cause, a reopening of any Westminster decree. AI will indemnify Westminster for any costs or expenses incurred if any Westminster water rights decree is reopened as a result of AI's application for use of the delivered water, or if any AI application causes Westminster or its staff to be deposed, subject to a subpoena, compelled to testify at trial, or otherwise subject to discovery requests. In such an event, AI agrees to promptly reimburse Westminster for its costs and expenses associated with the same, including staff time and reasonable attorney fees.

3.8. In accordance with the requirements of Section 14.3 (a) of the Westminster City Charter, Westminster's obligations to deliver water under this Water Lease Agreement may be curtailed under the following circumstances. If, in Westminster's sole discretion, Westminster adopts mandatory citywide water use restrictions as a result of drought conditions, dam failure, or other catastrophic circumstance limiting Westminster's ability to satisfy the indoor water supply needs of its citizens, Westminster may curtail daily deliveries to AI under this lease by an amount consistent with said mandatory citywide water use restrictions. Once any such mandatory citywide water use restrictions expire or are otherwise lifted, Westminster shall immediately thereafter resume full daily deliveries under this Water Lease Agreement.

3.9. If, for any reason Westminster is temporarily unable to satisfy its obligations for delivery of water to AI under this Water Lease Agreement for any period of time, the parties agree that any damages resulting to AI therefrom shall be limited to a pro rata refund of the total lease payment. Westminster shall not be liable for any consequential, exemplary or punitive damages for failure to deliver water pursuant to this Water Lease Agreement. Other than a pro rata refund of the total lease payment, no other damages may be asserted or paid by Westminster to AI as a result of the inability to delivery water. AI expressly waives any and all other claims of damages.

3.10. A default shall be deemed to have occurred if either party breaches its obligations hereunder and fails to cure such breach within 15 days of written notice from the non-breaching party specifying the breach. Waiver or failure to give notice of the particular default or defaults shall not be construed as acquiescence to any continuing or subsequent default. The parties hereto shall have all remedies available at law and in equity.

3.11. This Water Lease Agreement represents the entire agreement of the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the delivery of 519 acre feet of Consumable Water commencing on January 1, 2010, contemplated herein.

3.12. This lease may only be amended in writing by the mutual agreement of the undersigned parties, or their successors and assigns.

3.13. If any covenant, term, condition, or provision of this lease shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained in this lease. The intention of

Westminster and AI is that all provisions hereof are severable.

3.14. Each of the persons executing this lease on behalf of the parties hereto, covenants and warrants that he or she is fully authorized to execute this lease on behalf of the party he or she represents.

3.15. Counterparts. This agreement may be executed in duplicate original counterparts.

**CITY OF WESTMINSTER**

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

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

Approved as to Legal Form:  
  
\_\_\_\_\_  
City Attorney's Office

(SEAL)

**AGGREGATE INDUSTRIES-WCR, Inc.**

By \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_



# Agenda Item 8 G

## WESTMINSTER COLORADO

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Second Reading of Councillor's Bill No. 35 re Amendment to the Adopted 2010 Budget

**Prepared By:** Steve Smithers, Assistant City Manager  
Barbara Opie, Budget & Special Projects Manager  
Phil Jones, Management Analyst  
Aric Otzelberger, Management Analyst

### Recommended City Council Action

Pass Councillor's Bill No. 35 on second reading amending the FY2010 budgets of the General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Storm Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), and General Capital Improvement Funds.

### Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading amending the FY2010 budgets of the General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Storm Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), and General Capital Improvement Funds.
- A public meeting on the 2010 Adopted Budget was held on Monday, September 14, providing the public an opportunity to receive a financial update and make any requests of Council for the 2010 budget year.
- At the September 21 Council Study Session, Staff reviewed with City Council recommended modifications to the Adopted 2010 Budget, new citizen requests, and miscellaneous financial issues that Staff or Council wished to raise.
- This Councillor's Bill was passed on first reading on October 12, 2009.

**Expenditure Required:** 2010: \$190,504,416, plus \$32,998,023 in reserves and \$1,000,000 in contingency account

**Source of Funds:** General, General Reserve, General Fund Stabilization Reserve, Utility, Utility Rate Stabilization Reserve, Storm Drainage, Golf Course, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails (POST), and General Capital Improvement Funds

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **35**

SERIES OF 2009

INTRODUCED BY COUNCILLORS

**Briggs - Major**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2010 BUDGETS OF THE GENERAL, GENERAL RESERVE, GENERAL STABILIZATION RESERVE, WATER, UTILTIY RATE STABILIZATION RESERVE, WASTEWATER, GOLF COURSE, STORM DRAINAGE, FLEET MAINTENANCE, GENERAL CAPITAL OUTLAY REPLACEMENT, SALES & USE TAX, PARKS OPEN SPACE & TRAILS, AND GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION OR UN-APPROPRIATION FROM THE 2010 ESTIMATED REVENUES IN THE FUNDS.**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2010 appropriation for the General, General Reserve, General Stabilization Reserve, Water, Utility Rate Stabilization Reserve, Wastewater, Golf Course, Storm Drainage, Fleet Maintenance, General Capital Outlay Replacement, Sales & Use Tax, Parks Open Space & Trails, and General Capital Improvement Funds initially appropriated by Ordinance No. 3432 are hereby increased in aggregate by \$15,849,148. This appropriation is due a budget amendment for revised revenue projections and expense estimates for 2010.

Section 2. The net amount of increases or (decreases) of \$15,849,148 shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 A dated October 12, 2009 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	(\$3,371,415)
General Reserve Fund	1,003,116
General Stabilization Reserve Fund	3,500,000
Water Fund	25,178,554
Utility Rate Stabilization Reserve Fund	(1,435,842)
Wastewater Fund	(714,169)
Golf Course Funds	(98,618)
Storm Drainage Fund	130,000
Fleet Maintenance Fund	(579,219)
General Capital Outlay Replacement Fund	12,250
Sales & Use Tax Fund	(7,812,509)
Parks Open Space & Trails Fund	(510,000)
General Capital Improvement Fund	<u>547,000</u>
Total	<u>\$15,849,148</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 12<sup>th</sup> day of October, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 26<sup>th</sup> day of October, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

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



## Agenda Item 8 H

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Second Reading of Councillor's Bill No. 36 re Amending Ordinance #3462  
Extending the Temporary Moratorium on Special Use Permits

**Prepared By:** Jane Greenfield, Assistant City Attorney II  
Terri Hamilton, Planner III

### Recommended City Council Action

Pass Councillor's Bill No. 36 on second reading amending Ordinance #3462 extending the temporary moratorium on Special Use Permits.

### Summary Statement

- On May 11, 2009, City Council imposed a temporary 180-day moratorium on the submittal and processing of applications for special use permits to allow for the review and development by City Staff of possible amendments to the City's special use permit process and criteria.
- Due to the volume of changes required by these revisions and the need to present the revisions to various boards and commissions prior to bringing the final ordinance changes to Council for its consideration, Staff is requesting a 90-day extension of the existing ordinance in order to complete this work effort.
- This Councillor's Bill was approved on first reading by City Council on October 12, 2009.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **36**

SERIES OF 2009

INTRODUCED BY COUNCILLORS  
**Winter - Dittman**

**A BILL**

**AMENDING ORDINANCE #3462 EXTENDING THE TEMPORARY MORATORIUM ON  
SPECIAL USE PERMITS**

The City of Westminster Ordains:

Section 1. The City Council finds as follows:

A. Emergency Ordinance #3462 was adopted on May 11, 2009 establishing a 180-day temporary moratorium for the purpose of providing a reasonable period of time for the development and enactment of appropriate amendments to the special use permit section of the City Code;

B. Pursuant to City Charter Chapter XI.V, City Council has the responsibility to take appropriate action to mitigate potentially adverse effects of land development and to promote coordinated, innovative, high-quality planning to produce a well-balanced, technologically advanced City;

C. The City staff has diligently pursued the revisions to the Westminster Municipal Code ("W.M.C.") affecting special use permits but, due to the volume of conforming changes required by these revisions and the need to present the revisions to various boards and commissions prior to bringing the final ordinance changes to Council for its consideration, an additional period of time will be needed to complete the proposed Code revisions;

D. City Council finds that the public health, welfare, and safety of the citizens of the City of Westminster would be best served by the extension of the 180-day temporary moratorium for an additional period of time not to exceed 90 days.

Section 2. The provisions of Ordinance #3462 shall continue in effect for an additional period of no more than ninety (90) days, up to and including February 6, 2010, and Ordinance #3462 is so amended. All other applicable provisions of Ordinance #3462 shall remain in full force and effect.

Section 3. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 12th day of October, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 26th day of October, 2009.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
City Attorney's Office



## Agenda Item 10 A&B

WESTMINSTER  
COLORADO

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Revised Employment Agreement with John A. Stipech and  
Councillor's Bill No. 37 re Municipal Judge Salary

**Prepared By:** Matt Lutkus, Deputy City Manager

### Recommended City Council Action

1. Authorize the Mayor to execute a revised employment agreement with John A. Stipech for his services as Presiding Judge for 2010 with an effective date of January 1, 2010, and an automatic renewal for 2011 unless terminated by City Council.
2. Pass Councillor's Bill No. 37 on first reading setting the salary for the Municipal Judge for 2010.

### Summary Statement

- City Council is requested to approve a revised employment agreement with John A. Stipech for services as Presiding Judge. The agreement would go into effect January 1, 2010 and would automatically be renewed for 2011 unless it is terminated by City Council no later than October 31, 2010.
- In the proposed agreement, Judge Stipech's 2010 combined salary and deferred compensation will be \$127,683, which is the same as his annual salary for 2009. The continuation of the Judge's annual compensation at its current level is consistent with Council's decision to freeze the salaries of the City's Administrative Officers in the revised 2010 Budget, as part of a series of steps to achieve expenditure reductions. The agreement allows the Judge to designate a portion of his salary as City-paid deferred compensation to be paid as a lump sum at the beginning of 2010.
- The attached proposed agreement with Judge Stipech is similar to the current employment agreement with the exceptions of the elimination of a bonus that he received previously and a change in the effective dates of the contract.

**Expenditure Required:** 2010 - \$127,683 plus the cost of fringe benefits as described in the attached employment agreement

**Source of Funds:** General Fund - Municipal Court Division Budget



**Policy Issue**

Should City Council make minor modifications to its present employment agreement with the Presiding Judge for the continuation of his services through 2010 and 2011?

**Alternative**

Council could make further adjustments to the employment agreement with Judge Stipech.

**Background Information**

Since July 1991, City Council has used an employment agreement for Presiding Judge services. This approach is consistent with the practice of having employment agreements with the City Manager and the City Attorney who also serve at the pleasure of City Council. The agreement with the Presiding Judge addresses the overall duties of the position, the term of the agreement, compensation and benefits, professional development, and termination and separation provisions.

Presiding Judge John Stipech graduated from the University of Utah in 1967 with a Bachelor of Arts Degree and received his Juris Doctorate degree from the University of Denver Law School in 1971. In July 1979, he was appointed as an Associate Judge in Westminster's Municipal Court and has served as Presiding Judge since January 1, 1996. He is a member of the Colorado and Adams County Bar Associations and serves on the Board of Directors of the Colorado Municipal Judges' Association. Judge Stipech is a member of the Westminster Rotary Club and a member of the School District 50 Education Foundation Board of Directors.

The proposed employment agreement with Judge Stipech is similar to the current agreement that Council approved in October 2008 with the exception of the effective dates of the agreement and the elimination of a bonus provision that was included in the 2008 agreement.

City Council met with Judge Stipech on October 5 to review his job performance since his last performance appraisal and to determine his compensation for the coming year. The revised agreement incorporates the direction given by Council to Staff and will provide for the continuation of the Judge's 2009 combined salary and deferred compensation of \$127,683. The Council's decision to maintain the Judge's salary at the current level is consistent with Council's approval of a salary freeze for the City's Administrative Officers in the revised 2010 City Budget. The employment agreement allows the Judge to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. As in previous years, the proposed employment agreement with Judge Stipech provides that, except in those cases where the agreement provides for a different benefit level, the Judge will receive the same fringe benefits as those extended to all department heads.

Funds are available in the 2010 Budget to cover the expense for the salary and fringe benefits described in the agreement.

Section 16.2 of the Westminster City Charter requires that the Council set the Presiding Judge's salary by ordinance. The attached Councillor's Bill fulfills this requirement by designating a salary in the Municipal Code that reflects the amount listed in the proposed employment agreement.

The proposed agreement and Councillor's Bill supports City Council's Strategic Plan goal of "Safe and Secure Community" by ensuring that a highly competent and experienced jurist continues to serve as the City's Presiding Judge.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager  
Attachments

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT, effective as of the 1st day of January, 2010, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY," and JOHN A. STIPECH, hereinafter called "EMPLOYEE," both of whom understand as follows:

WHEREAS, the CITY desires to continue to employ the services of John A. Stipech as Presiding Municipal Judge of the City of Westminster as provided by City Charter, Chapter XVI, Section 16.2; 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:**

A. CITY hereby agrees to continue the employment of EMPLOYEE as Presiding Municipal Judge of CITY to perform the duties and functions specified in Section 16.2 of the City Charter, Chapter 22 of Title I of the City Code and such other legally and ethically permissible and proper duties and functions as the City Council shall from time to time assign.

B. EMPLOYEE shall administer the judicial component of the Municipal Court and shall be responsible for providing judicial coverage to insure efficient and expeditious hearing of all matters scheduled for hearing in the Court.

C. EMPLOYEE and the Court Administrator shall prepare and submit jointly a proposed budget for the Municipal Court, following guidelines established by the City Manager. This budget shall be reviewed by the City Manager's Office and submitted to the City Council for final approval as part of the City Manager's recommended City Budget. Requests for changes in the budget during the fiscal year shall also be submitted through the City Manager's Office.

D. EMPLOYEE shall supervise the judicial staff of the Municipal Court as may be authorized by the City Council. EMPLOYEE shall provide advice and direction to the Court Administrator in connection with the governance of the Court staff.

### **SECTION 2. TERMS:**

A. It is the intent of the City Council and the EMPLOYEE that EMPLOYEE will serve as Presiding Judge for calendar years 2010 and 2011. During the term of this Agreement, EMPLOYEE agrees to remain in the exclusive employ of CITY. Subject to the provisions of Section 2.D. and Section 3 of this Agreement, EMPLOYEE will serve as Presiding Municipal Judge for calendar years 2010 and 2011. EMPLOYEE is employed as a full-time employee and shall be compensated based upon his devoting normal business hours to his duties as Presiding Municipal Judge.

The term "employed" shall not be construed to include other judicial service, private law practice, 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 in Section 3, paragraph C of this Agreement.

D. This Employment Agreement is for a one-year term, but shall be automatically renewed for 2011 unless terminated no later than October 31, 2010.

### SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time EMPLOYEE is willing and able to perform the duties of Presiding Municipal Judge, then, and in that event, the CITY agrees to give EMPLOYEE six (6) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing six (6) months. In the event the City elects to terminate this Agreement without giving EMPLOYEE six (6) months' advance written notice thereof, the EMPLOYEE shall have as his sole and exclusive remedy the severance payment equal to six (6) months of EMPLOYEE'S base salary as provided in this paragraph and EMPLOYEE shall have no other rights or claims against the CITY and hereby expressly waives and releases the same; 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 six (6) months' severance pay provisions herein.

C. 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 four (4) months' notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs A and C of this Section 3, and paragraph D in Section 2.

E. 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:

A. Effective January 1, 2010, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$127,683. EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid, except that the EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then-current maximum allowed by law.

B. CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31 of each year. Salary evaluation each year shall be at the discretion of the CITY. Such evaluation shall consider the salary of judges of similar municipalities.

#### SECTION 5. HOURS OF WORK:

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.

#### 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 agrees to budget and to pay registration, travel and subsistence expenses of EMPLOYEE for professional and official travel to meetings and occasions related to the professional development of EMPLOYEE and to official and other functions as a representative of the CITY, including, but not limited to, the American Bar Association, the Colorado Bar Association, the Colorado Municipal Judges Association, and continuing legal education courses and seminars related to topics of the judiciary. In addition to reasonably funding educational/training programs for EMPLOYEE'S professional staff, sufficient funds shall be budgeted to permit EMPLOYEE to attend at least one national, one statewide, and one local educational/training program each year.

#### 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 Department Head level employees, including the monthly car allowance, except that when such benefits are in conflict with this agreement, said agreement shall control. The EMPLOYEE'S years of service with the City in an unbenefited capacity will be treated as years of continuous municipal service when the level of employee benefits is computed.

#### 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. EMPLOYEE is ultimately responsible for providing judicial coverage of all docketed matters in the Westminster Municipal Court.

SECTION 12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

C. This Agreement becomes effective on January 1, 2010, and, if automatically renewed, shall be in effect through December 31, 2011.

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. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

F. Effective January 1, 2010, this Agreement replaces and supersedes prior employment agreements between CITY and EMPLOYEE.

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.

Approved by the Westminster City Council on October 26, 2009, contingent upon approval of the Councillor's Bill setting the Municipal Judge salary for 2010.

ATTEST:

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

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

\_\_\_\_\_  
John A. Stipech

APPROVED AS TO FORM:

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

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2009

COUNCILLOR'S BILL NO. **37**  
INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE SETTING THE SALARY OF THE MUNICIPAL JUDGE FOR 2010**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-7-2, W.M.C., is hereby AMENDED as follows:

**1-7-2: MUNICIPAL JUDGE:** The salary of the Municipal Judge shall be as follows:

\$127,683 per annum, effective January 1, 2010, payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation. Such deferred compensation amount may, at the Municipal Judge's option, be paid as a lump sum at the beginning of the calendar year. ▼

Deleted: 2009

Section 2. 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.

Deleted: A bonus of \$5,000 shall be payable on or before December 12, 2008.

Deleted: ¶

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 26<sup>th</sup> day of October, 2009.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 9<sup>th</sup> day of November, 2009.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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



## Agenda Item 10 C

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Resolution No. 45 re 2010 Jefferson County Joint Venture Grant Application

**Prepared By:** Kathy Piper, Landscape Architect II

#### Recommended City Council Action

Adopt Resolution No. 45 authorizing the Department of Parks, Recreation and Libraries to pursue a Jefferson County Joint Venture Grant in the amount of \$150,000 for the City Park playground.

#### Summary Statement

- The Department of Parks, Recreation and Libraries wishes to pursue a grant from the Jefferson County Joint Venture Program for funding assistance with construction of the City Park playground.
- Staff recommends requesting up to \$150,000 for a Jefferson County Joint Venture Grant for the City Park playground.
- The City currently has budgeted funds of \$200,000 for this project. If Staff's request is successful, this would increase the project budget to \$350,000.
- Amenities proposed for the playground would include 100% ADA access, a picnic shelter and some type of western theme.
- The playground will be located northeast of the City Park Soccer Fields. (See attached location map)

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City attempt to seek assistance for the development of the City Park Playground by pursuing grant monies from the Jefferson County Joint Venture Grant Program?

**Alternative**

Council could choose not to pursue additional funding for the City Park Playground and proceed with the project budget of \$200,000. Staff recommends attempting to secure additional funding for this project through this grant opportunity in order to achieve the goals of the City's *Parks and Recreation Master Plan*.

**Background Information**

The Departments of Parks, Recreation and Libraries and Community Development have been successful in applying for and receiving grants for the development of parks, trails, and open space from a variety of sources in the past. The City has developed a strong partnership with Jefferson County in its successful use of these grant funds. Recent Jefferson County Joint Venture grants include: a 2009 grant in the amount of \$300,000 for renovation of the aquatics area of the City Park Recreation Center, a 2008 grant for \$250,000 for the Westminster Sports Center, and \$41,407 for the Heritage Golf Course restroom.

The City Park playground site will be approximately one acre in size. The site will include a unique playground for a variety of ages, along with poured-in-place surfacing, benches, and a few picnic tables. The site would be utilized year round by our citizens and also be a welcome addition to the City's summer playground program.

This grant request and project supports the City's Strategic Plan Goals of "Financially Sustainable City Government Providing Exceptional Services" and "Beautiful and Environmentally Sensitive City" by increasing revenues that support defined City projects and by providing the City with new community park space.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments



RESOLUTION

RESOLUTION NO. **45**

INTRODUCED BY COUNCILLORS

SERIES OF 2009

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**GRANT REQUEST FOR THE  
2010 JEFFERSON COUNTY JOINT VENTURE GRANT PROGRAM**

WHEREAS, Jefferson County has established a local government grant application process to assist municipalities and special districts within the County with the development of recreation capital improvements; and

WHEREAS, the City of Westminster has budgeted for improvements for City Park Playground and;

WHEREAS, grant money received from Jefferson County would significantly enhance the improvements for the above-mentioned project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER that Staff shall submit a grant application to the Jefferson County Joint Venture Grant program for the funding cycle of 2010, requesting funding in the amount of \$150,000 to enhance the development of City Park Playground.

PASSED AND ADOPTED this 26th day of October, 2009.

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Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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City Clerk

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City Attorney

# Proposed City Park Playground Location

September 2009





**WESTMINSTER**  

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**COLORADO**

**Agenda Item 10 D**

**Agenda Memorandum**

City Council Meeting  
October 26, 2009



**SUBJECT:** Resolution No. 46 re Service Commitment Award Extension for Planning Area 4 of the Walnut Grove Planned Unit Development

**Prepared By:** Patrick Caldwell, Planner II

**Recommended City Council Action**

Adopt Resolution No. 46 extending the existing Category B-2 Service Commitment award for Planning Area 4 of the Walnut Grove single family attached residential project through December 31, 2010. This is based on the finding that the need for an extension was the result of the downturn in the housing market that is beyond the control of the developer.

**Summary Statement**

- The 15-acre site is on the southwest corner of 108<sup>th</sup> Avenue and Wadsworth Parkway.
- If an Official Development Plan (ODP) is not approved by December 31, 2009, approval of the existing Service Commitments award for this project will expire. An ODP will not be approved by December 31, 2009 and the project owner is requesting an extension of 67.2 Service Commitments for a total of 96 residential units. The attached Resolution would grant this extension request until December 31, 2010.
- The request from the property owner for an extension of the Service Commitments for this development is attached.
- Staff concurs that the depressed housing market has created a significant impact on this project that warrants the extension of Service Commitments.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

## **Policy Issue**

Should the City Council adopt the attached Resolution extending the Service Commitment award through December 31, 2010?

## **Alternative**

Do not adopt the proposed resolution extending Service Commitments for this project. This is not recommended as staff believes the extension is needed to avoid undue hardship to the developer that would result if the extension were not granted.

## **Background Information**

### Nature of Request

Service Commitments were awarded for this project on June 12, 2006. A total of 67.2 Service Commitments were made available for this single family attached project in the B-2 category.

Westminster Municipal Code Section 11-3-5 (F) states that, unless an extension is specifically approved by the City Council, a Service Commitment award for any Category B-1, B-2, B-3, or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project.

Pursuant to City Council Resolution 33 of 2006, "The project must proceed with the development review process and receive Official Development Plan approval by December 31, 2009, or the entire Service Commitment award for the project shall expire."

The land owner, the Elizabeth L. Cooper Family Limited Partnership LLLP, has indicated that the need for a Service Commitment extension is the result of a depressed housing market, which is an unforeseeable circumstance beyond their reasonable control. At the time of the award in 2006, the property was under contract to DR Horton, Trimark, and the sale did not move forward and the ground remains undeveloped.

The City's Comprehensive Land Use Plan (CLUP) designation for this parcel is Commercial/Retail, and a Commercial designation is also shown in the Walnut Grove Preliminary Development Plan (PDP). The required CLUP and PDP amendments would be coordinated with the review of the ODP for this site.

### Location

The 15-acre site is at the southwest corner of 108<sup>th</sup> Avenue and Wadsworth Parkway. (Please see attached vicinity map). To the north, across 108<sup>th</sup> Avenue, is the Ball Campus Planned Unit Development (PUD). To the east, across Wadsworth Parkway, is the K-L Plaza PUD, with commercial/office uses that are not yet developed. Adjacent to the south is City-owned open space and Walnut Creek. Adjacent to the west is Walnut Grove Filing 11, an attached residential use.

### Project Description

The City's Comprehensive Land Use Plan (CLUP) designation for this parcel is Commercial/Retail, and a Commercial designation is also shown in the Walnut Grove Preliminary Development Plan (PDP). The required CLUP and PDP amendments would be coordinated with the review of the ODP for this site.

The 15-acre sloping grassland site is presently vacant. The proposed attached residential development will not have vehicular access to Wadsworth Parkway. The main point of access will be at the northwest corner of the site along 108th Avenue, and will align with potential access to the undeveloped part of the Ball Campus site that is on the north side of 108th Avenue. A secondary access to this development will connect to the existing secondary access in the Walnut Grove Filing 11 development adjacent to the west of this site. The City owned open space in Walnut Creek forms the south edge of this site.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

- Vicinity Map
- Letter from property owner
- Resolution for Extension of Service Commitments

# Vicinity Map for Walnut Grove



ELIZABETH L. COOPER FAMILY LIMITED  
PARTNERSHIP LLLP

3515 S. Tamarac Dr., Suite 300  
Denver, CO 80237  
(303) 771-8210

REC'D  
9-14-09  
JE

September 9, 2009

City of Westminster  
Attn: Mac Cummins  
Dept of Community Development  
4800 West 92<sup>nd</sup> Ave.  
Westminster, CO 80031

RE: Walnut Grove – 2006 Category B-2 Service Commitment Award  
Southwest corner of W. 108<sup>th</sup> Ave. & Wadsworth Parkway

Dear Mr. Cummins:

Please find attached Resolution No. 33 for Category B-2 (New Single-Family Attached) Competition and Service Commitment Award for a total of 67.2 awards for the above reference property.

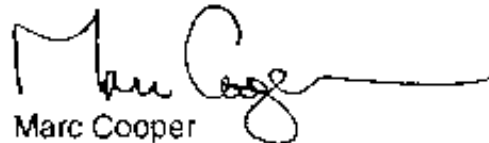
At the time of Award the property was under contract to DR Horton however the sale of the property did not move forward and the ground remains undeveloped.

The Resolution states that the Service Commitments will expire on December 31, 2009. As the owner of the property we would like to request that the City of Westminster grant an extension of the current 67.2 Service Commitments.

Due to the current economic downturn there has been very little interest in the property and it is also unfeasible for the owner at this time to consider developing the property. To maintain the availability of the Service Commitments will help in any effort to sell the property to potential buyers and for future development.

Please contact me if you have any questions.

Very truly yours,

  
Marc Cooper

MC:cml  
Enc.

RESOLUTION

RESOLUTION NO. 46

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION TO EXTEND THE CATEGORY B-2 SERVICE COMMITMENT AWARD FOR THE WALNUT GROVE PLANNED UNIT DEVELOPMENT**

WHEREAS, the City of Westminster has adopted by Ordinance No. 2848 a Growth Management Program for the period 2000 through 2010; and

WHEREAS, within Ordinance No. 2848 there is a provision that Service Commitments for residential projects shall be awarded to Category B-2 (New Single-Family Attached); and

WHEREAS, Category B-2 is the category that is appropriate for the Walnut Grove P.U.D.; and

WHEREAS, Resolution No. 33, Series 2006 establishes that 67.2 Service Commitments awarded to the Walnut Grove P.U.D. residential project shall expire unless it receives Official Development Plan approval by December 31, 2009; and

WHEREAS, the Walnut Grove P.U.D. residential project will be required to amend the Walnut Grove P.U.D. Preliminary Development Plan and the City's Comprehensive Land Use Plan from a Commercial use to allow a residential use; and

WHEREAS, the project owner is requesting a Service Commitment extension extending the approval of an Official Development Plan deadline to December 31, 2010; and

WHEREAS, Westminster Municipal Code Section 11-3-5 (F) states that unless an extension is specifically approved by the City Council, a Service Commitment award for any Category B-1, B-2, B-3, or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project; and

WHEREAS, the Service Commitment award extension for the Walnut Grove Filing 13 Planned Unit Development residential project is the result of an unusual and unforeseeable circumstance beyond the reasonable control of the developer, and is needed to avoid undue hardship that would otherwise result if the extension were not granted; and

WHEREAS, the Walnut Grove Official Development Plan is proposed to contain 96 single family attached residential dwellings. One single family attached unit is equal to 0.7 Service Commitments for a total of 67.2 service commitments.

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

1. A Category B-2 Service Commitment award is hereby extended to the Walnut Grove P.U.D. at the southwest corner of Wadsworth Parkway and 108<sup>th</sup> Avenue, as follows:

**Table 1**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>TOTAL</b>
<b>Original</b>	8.4	33.6	25.2	n/a	<b>67.2</b>
<b>Proposed</b>	-	-	-	67.2	<b>67.2</b>

2. The Service Commitment award to the project listed above is conditional and subject to the following:

- a) For each project, the applicant must complete and submit proposed development plans to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant shall be included as part of the proposed development and listed on the Official Development Plan for the project.
- b) Service Commitments for the project listed above, if approved by the City, may only be used within the project specified above.
- c) This Service Commitment award shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.



- d) Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density, and proposed number of units.
- e) The City of Westminster shall not be required to approve any Comprehensive Land Use Plan amendment, Preliminary Development Plan or amendment, Official Development Plan or amendment, or rezoning action necessary for development of the property involved in this extension of service commitment award, nor shall any other binding effect be interpreted or construed to occur by the City as part of the extension of Service Commitment award.
- f) Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
- g) The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
- h) Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer Service Commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s) provided the Service Commitments have not expired.
- i) In order to demonstrate continued progress on a project, the following deadline and expiration provision applies:
  - a. The project must proceed with the development review process and receive Official Development Plan approval by December 31, 2010, or the entire Service Commitment award for the project shall expire.
  - b. The project must be issued at least one building permit by December 31, 2010, or the entire Service Commitment award for the project shall expire.
  - c. Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no building permit is issued for the project during any consecutive 12-month period.
- j) If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the water supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
- k) This award resolution shall supersede all previous Service Commitment award resolutions for the specified project location.

3. The Category B-2 Service Commitments award shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 26th day of October 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



**WESTMINSTER**  

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**COLORADO**

## Agenda Memorandum

City Council Meeting  
October 26, 2009



**SUBJECT:** Resolution No. 47 re Service Commitment Award Extension for the Huron Park Planned Unit Development

**Prepared By:** Patrick Caldwell, Planner II

### Recommended City Council Action

Adopt Resolution No. 47 extending the existing Official Development Plan deadline for this project to December 31, 2010, and extending the existing new senior housing Service Commitment for the Huron Park Planned Unit Development residential project to December 31, 2012. This is based on the finding that the need for an extension is the result of the downturn in the housing market that is beyond the control of the developer.

### Summary Statement

- The 86.3-acre site is on the northeast corner of 128<sup>th</sup> Avenue and Huron Street.
- If an Official Development Plan (ODP) is not approved by December 31, 2009, approval of the existing Service Commitments award for this project will expire. An ODP will not be approved by December 31, 2009, and the project owner is requesting an extension of the ODP deadline to December 31, 2011. To be consistent with other recent requests for Service Commitment extensions the City will grant a one year extension for ODP approval. The attached Resolution would grant this extension request until December 31, 2010.
- The project owner is also requesting an extension of the 544 Service Commitments for attached senior residential units to December 31, 2012. The attached Resolution would grant this extension request until December 31, 2012.
- The request from Jim Johnson, on behalf of the property owner, Erickson Retirement Communities, for an extension of the Service Commitments for this proposed development is attached.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City Council adopt the attached Resolution extending the ODP deadline to December 31, 2011 and the award of 544 Service Commitments through December 31, 2012?

**Alternative**

Do not adopt the proposed resolution extending the ODP deadline to December 31, 2010 and the award of Service Commitments for this project to December 31, 2012. This is not recommended as staff believes the extensions are needed to avoid undue hardship to the developer that would result if the extensions were not granted.

**Background Information**

Nature of Request

Service Commitments were awarded for this project on August 14, 2006. A total of 544 Service Commitments were made available for this senior housing project in Category E.

Westminster Municipal Code Section 11-3-5 (F) states that unless an extension is specifically approved by the City Council, a Service Commitment award for any Category B-1, B-2, B-3, or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project. The attached Resolution would grant an extension of the Service Commitments until 2012.

Pursuant to City Council Resolution 40 of 2006, “The project must proceed with the development review process and receive Official Development Plan approval by December 31, 2009, or the entire Service Commitment award for the project shall expire.” To be consistent with other recent requests for Service Commitment extensions, staff recommends that City Council grant a one-year extension for ODP approval. If more time is needed, the developer may apply next year for another one year extension.

The land owner, the Erickson Retirement Communities, has indicated that the need for a Service Commitment extension is the result of a depressed housing market, which is an unforeseeable circumstance beyond their reasonable control. The owners have met with staff and they have indicated they may hold the property to build in better economical times, or they may sell the site to another developer.

Location

The 86.3-acre site is at the northeast corner of 128<sup>th</sup> Avenue and Huron Street. (Please see attached vicinity map). To the south, across 128<sup>th</sup> Avenue, is the campus of Mountain Range High School and the City-owned Tanglewood Creek open space. To the east, across Interstate 25, is the City of Thornton and attached housing. Adjacent to the north is City-owned land that contains the City’s Water Treatment Facilities and Big Dry Creek. Across Huron Street to the west is the Huron Plaza Planned Unit Development (PUD), currently vacant. That PUD allows office, residential, retail and office-warehouse uses.

Project Description

The City’s Comprehensive Land Use Plan (CLUP) designation for this parcel was amended in April, 2008, to District Center and this allows residential and open space uses. The Preliminary Development Plan (PDP) was amended at the same time and allows senior housing and open space uses.

The approved PDP shows three Planning Areas (PA). One PA is approximately 64 acres and will be developed as senior housing. Another PA is a 15.7 acre parcel along the eastern section of the site and will be devoted to the Tanglewood Creek open space corridor. In this PA a concrete trail is proposed to connect with the City owned open space along Tanglewood Creek that is south of 128<sup>th</sup> Avenue, adjacent to the campus of the Silver Middle School. At the north the trail is proposed to connect to the City owned land along Tanglewood Creek. The third PA is a 6.7 acre parcel near I-25. It is designated for a future interchange improvement at 128<sup>th</sup> Avenue and I-25.

In 2008 the Erickson group built a small sales building on the site to market the development. The office has since been closed, and the building was removed several months ago. The remainder of the property remains undeveloped.

Respectfully submitted,

Stephen P. Smithers  
Acting City Manager

Attachments

- Vicinity Map
- Letter from property owner
- Resolution for Extension of Service Commitments

# Vicinity Map for Erickson



**OTTEN JOHNSON**  
ROBINSON NEFF + RAGONETTI, PC

APR 21 2009

April 21, 2009

JIM JOHNSON  
303 575 7500  
JJOHNSON@OTTENJOHNSON.COM

VIA E-MAIL: •  
MCUMMINS@CITYOFWESTMINSTER.CO.US  
AND U.S. MAIL

Mac Cummins  
Planning Manager  
Department of Community Development  
4800 West 92nd Avenue  
Westminster, CO, 80031

Re: Erickson Retirement Communities ("Erickson"), Huron Park PUD, Service Commitment extension request

Dear Mr. Cummins:

This firm represents Erickson. I am writing on behalf of Erickson to request an amendment to Resolution 40-2006, adopted by City Council on August 14, 2006 (the "Resolution"), which awarded a maximum of 544 service commitments (the "Service Commitments") to the senior housing project proposed by Erickson on the property located at the northeast corner of 128<sup>th</sup> Avenue and Huron Street (the "Project"). As you may recall from a recent meeting, Erickson has determined that the current economic climate prevents it from proceeding with the Project, and accordingly, Erickson will be offering the property for sale.

Section 2(i)(1) of Resolution 40-2006 provides that the Project must receive official development plan ("ODP") approval by December 31, 2009, or the Service Commitments will expire. In light of the extreme economic circumstances and current lending restrictions, Erickson hereby requests that City Council amend Resolution 40-2006 to extend the ODP deadline to December 31, 2011. This extension will permit a buyer who wishes to develop the Project on the property to move forward quickly with the benefit of the Service Commitments.

Mae Cummins  
April 21, 2009  
Page 2

If you need any additional information or documentation, or have any questions, please call me at 303-575-7596. I look forward to working with you on this matter.

Sincerely,



Jim Johnson  
for the firm

JH/kei  
2009/04/21

cc: Johnny Holstead

RESOLUTION

RESOLUTION NO. 47

INTRODUCED BY COUNCILLORS

SERIES OF 2009

**A RESOLUTION TO EXTEND THE CATEGORY B-2 SERVICE COMMITMENT AWARD FOR THE HURON PARK PLANNED UNIT DEVELOPMENT**

WHEREAS, the City of Westminster has adopted by Ordinance No. 2848, a Growth Management Program for the period 2000 through 2010; and

WHEREAS, the goals of the Growth Management Program include balancing growth with the City's ability to provide water and sewer services, preserving the quality of life for the existing Westminster residents, and providing a balance of housing types; and

WHEREAS, within the Growth Management Program there is a provision that Service Commitments for new senior housing projects shall be awarded on a competitive basis through criteria adopted periodically by resolution of the City Council and that each development shall be ranked within each standard by the degree to which it meets and exceeds the said criteria; and

WHEREAS, the City's ability to absorb and serve new senior housing development is limited, and the City of Westminster has previously adopted Resolution No. 57, Series of 2003, specifying the various standards for new senior housing projects based upon their relative impact on the health, safety and welfare interests of the community, and has announced to the development community procedures for weighing and ranking projects prior to receiving the competition applications; and

WHEREAS, the City of Westminster allocated Service Commitments for the year 2006 for use in servicing one new senior housing project based on the criteria set forth in Section 11-3-1 of the Westminster Municipal Code; and

WHEREAS, the City conducted a senior housing competition in January 2006 and no applications were received and no Service Commitments were awarded in the senior housing category; and

WHEREAS, the City conducted a second senior housing competition in July 2006 and received one application with a total of 544 Service Commitments requested over a seven-year period beginning in 2007 through 2012; and

WHEREAS, the Huron Park Official Development Plan may contain a maximum of 1,553 residential dwelling units on 84.28 gross acres at a density of 18 du/acre; and

WHEREAS, Resolution No. 40, Series 2006, establishes that 544 Service Commitments awarded to the Huron Park PUD residential project shall expire unless it receives Official Development Plan approval by December 31, 2009; and

WHEREAS, Westminster Municipal Code Section 11-3-5 (F) states that unless an extension is specifically approved by the City Council, a Service Commitment award for any Category B-1, B-2, B-3, or new senior housing project shall expire as specified on the City Council Service Commitment award resolution for the project; and

WHEREAS, the Service Commitment award extension for the Huron Park PUD residential project is the result of an unusual and unforeseeable circumstance beyond the reasonable control of the developer, and is needed to avoid undue hardship that would otherwise result if the extension were not granted.

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

1. Category E Service Commitment awards are hereby extended to the Huron Park PUD at the northeast corner of 128<sup>th</sup> Avenue and Huron Street, as follows:

**Table 1**

	2006	2007	2008	2009	2010	2011	2012	TOTAL
<b>Original</b>	0	100	100	100	100	100	44	<b>544</b>
<b>Proposed</b>	-	-	-	-	400	100	44	<b>544</b>



2. These Service Commitment awards to the projects listed above are conditional and subject to the following:

- a. For each project, the applicant must complete and submit proposed development plans to the City for the required development review processes. All minimum requirements and all incentive items indicated by the applicant as specified within the competition shall be included as part of the proposed development and listed on the Official Development Plan for the project.
- b. Service Commitment awards for the projects listed above, if approved by the City, may only be used within the projects specified above.
- c. These Service Commitment awards shall be subject to all of the provisions specified in the Growth Management Program within Chapter 3 of Title XI of the Westminster Municipal Code.
- d. Each Service Commitment award is conditional upon City approval of each project listed above and does not guarantee City approval of any project, proposed density, and proposed number of units.
- e. The City of Westminster shall not be required to approve any Comprehensive Land Use Plan amendment, Preliminary Development Plan or amendment, Official Development Plan or amendment, or rezoning action necessary for development of property involved in this Category E award nor shall any other binding effect be interpreted or construed to occur in the City as a part of the Category E award.
- f. Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
- g. The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
- h. Awards shown for the year 2006 are effective as of the date of this Resolution (October 26, 2009). Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer Service Commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s) provided the Service Commitments have not expired.
- i. In order to demonstrate continued progress on a project, the following deadlines and expiration provisions apply:
  - 1) The project must proceed with the development review process and receive Official Development Plan approval by December 31, 2010, or the entire Service Commitment award for the project shall expire.
  - 2) The project must be issued at least one building permit within one year of Official Development Plan approval, or the entire Service Commitment award for the project shall expire.
  - 3) Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no building permit is issued for the project during any consecutive 12-month period.

- j. If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the Service Commitment supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
- k. This award resolution shall supersede all previous Service Commitment award resolutions for the specified project locations.

3. The Category E Service Commitment awards shall be reviewed and updated each year. If it is shown that additional or fewer Service Commitments are needed in the year specified, the City reserves the right to make the necessary modifications.

PASSED AND ADOPTED this 26th day of October 2009.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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

**WESTMINSTER HOUSING AUTHORITY**  
**WESTMINSTER CITY HALL, 4800 W. 92ND AVENUE**  
**MONDAY, October 26, 2009**  
**7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (September 14, 2009)
- 3. New Business**
  - A. Resolution No. 37 re 2008 Carryover Supplemental Appropriation
  - B. Resolution No. 38 re 2010 WHA Budget and the 2010 Westminster Commons Budget
  - C. Property Maintenance IGA with the City of Westminster
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY  
MONDAY, SEPTEMBER 14, 2009 AT 8:52 P.M.

ROLL CALL:

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

MINUTES OF PRECEDING MEETING:

Member Kaiser moved, seconded by Major, to accept the minutes of the meeting of August 24, 2009 as written and distributed. The motion carried unanimously.

RESOLUTION NO. 35 RE LEASE OF RODEO SUPER MARKET BUILDING TO ARTS GROUP

It was moved by Member Briggs, seconded by Winter, to adopt Resolution No. 35 authorizing the Chairman to execute a one-year lease for the South Westminster Arts Group to occupy the Rodeo Super Market building at 3715 West 73<sup>rd</sup> Avenue. The motion passed unanimously at roll call.

RESOLUTION NO. 36 RE DECLARATION OF INTENT TO ISSUE BONDS

Upon a motion by Member Briggs, seconded by Kaiser, the Authority voted unanimously at roll call to adopt Resolution No. 36 declaring the Westminster Housing Authority's intent to issue multifamily housing revenue activity bonds.

ADJOURNMENT:

There being no further business to conduct, it was moved by Kaiser, seconded by Major to adjourn. The motion carried and the meeting adjourned at 8:54 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

# WHA Agenda Item 3 A

## Agenda Memorandum

Westminster Housing Authority Meeting  
October 26, 2009



**SUBJECT:** Resolution No. 37 re 2008 Carryover Supplemental Appropriation

**Prepared By:** Karen Creager, Special Districts Accountant

### Recommended Board Action

Adopt Resolution No. 37 authorizing a supplemental appropriation of \$107,900 to the 2009 Westminster Housing Authority (WHA) budget.

### Summary Statement

- After the annual audit is completed, Staff calculates funds available for carryover from the previous year's revenues into the current year's budget for :
  - those items and services included in the previous year's budget but not received or provided until the current year;
  - new items and services not included in the previous year's budget or funds that were identified as available for these new priorities in late 2008, but the items or services were not received or provided until the current year;
  - existing or new capital projects and key operating priorities for which funds are needed and carryover funds are available.
- Due to the smaller volume of activity in WHA, Staffs waits until later in the year to prepare the carryover supplemental appropriation.
- In 2008, WHA incurred an expense to hire consultants to assess the structural and financial conditions and future viability of the WHA-owned Westminster Commons Senior Apartments. The contracted work was not completed until 2009. Therefore, \$7,900 is requested to be appropriated to 2009.
- Staff identified available carryover funds to make an additional principal payment against the Colorado Brownfields Revolving Loan Fund loan. Therefore, \$100,000 is requested to be appropriated to 2009 to make this additional principal payment.

**Expenditure Required:** \$107,900

**Source of Funds:** 2008 Westminster Housing Authority Carryover

**Policy Issue**

Should WHA appropriate funds as set forth in the attached Resolution?

**Alternatives**

1. The Board could decide not to appropriate the funds for the consulting contract at this time. This is not recommended because the appropriation is necessary to cover work completed in 2009 by the consultants and to balance the 2009 budget.
2. The Board could decide not to appropriate funds for the additional principal payment at this time. Staff recommends utilizing the carryover funds for the pay down of principal as noted in this memorandum to maximize the use of these funds.

**Background Information**

In 2002/2003 WHA acquired property along Little Dry Creek between Federal Boulevard and Lowell Boulevard in south Westminster. The land was purchased in conjunction with the City of Westminster’s interest in securing property along the Creek for possible park use and/or development related to the planned rail station adjacent to the property. An environmental assessment of the properties disclosed the presence of environmental conditions that required a moderate level of cleanup and clearance from the State of Colorado.

WHA sought and was granted a \$413,000 loan from the Colorado Brownfields Revolving Loan Fund (CBRLF) with which to provide funding for the cleanup. Per Board approval, WHA accepted the loan and proceeded to have an environmental remediation firm complete the environmental cleanup per a plan approved by the State of Colorado. Colorado Housing and Finance Authority and WHA closed on the loan on January 19, 2006. Repayment terms require 1) principal and interest payments of approximately \$27,000 annually 2) interest assessed at 2% of the unpaid principal balance and 3) a balloon payment of approximately \$275,000 in February, 2016.

During the review of carryover, Staff determined that there were sufficient carryover funds to make an additional principal payment of \$100,000 in 2009. While the interest rate on the CBRLF loan is quite low, WHA’s rate of return on its share of the pooled cash interest earnings is also low. Additionally, WHA’s anticipated revenue in the immediate future is limited. Therefore, it is prudent for WHA to use \$100,000 to reduce interest costs on the loan by making an additional principal payment.

In 2008 Staff determined the need to evaluate the long-term structural and financial viability of the WHA owned Westminster Commons Senior Apartments. Therefore, a consultant was hired in 2008 to perform a comprehensive study of the facility’s existing condition, capital needs and cost, and financial ability to undertake necessary improvements. The majority of the contract work was performed and paid for in 2008 with additional work in the amount of \$7,900 being completed in 2009.

The adjustments will amend the budget accounts as follows:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover	2600.40200.0000	\$47,148	<u>\$107,900</u>	\$155,048
Total Change to Revenues			<u>\$107,900</u>	

**EXPENDITURES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Contractual Services	26010900.67800.0000	\$2,000	\$7,900	\$9,900
Principal	26010900.78200.0000	\$19,288	<u>\$100,000</u>	\$119,288
Total Change to Expenses			<u>\$107,900</u>	

Respectfully submitted,

Stephen P. Smithers  
Acting Executive Director

Attachment

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **37**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

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**2008 CARRYOVER SUPPLEMENTAL APPROPRIATION**

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

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

WHEREAS, the Authority adopted an operating budget for the fiscal year (FY) 2009 on December 22, 2008; and

WHEREAS, there are additional unanticipated revenues from 2008 to cover consulting work that began in 2008 but not completed until 2009 and an additional principal payment on the Colorado Brownfields Revolving Loan Fund loan; and

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Housing Authority: The \$107,900 budget increase shall be allocated to WHA Revenue and Expenditure accounts as described in the WHA Agenda Item 3 A, dated October 26, 2009 (a copy of which may be obtained from the City Clerk) .

PASSED AND ADOPTED this 26<sup>th</sup> day of October, 2009.

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Nancy McNally, Chairperson

ATTEST:

APPROVED AS TO FORM:

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Secretary

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Attorney's Office



# WHA Agenda Item 3 B&C

## Agenda Memorandum

Westminster Housing Authority Meeting  
October 26, 2009



**SUBJECT:** Resolution No. 38 re 2010 Westminster Housing Authority and Westminster Commons Budgets and Property Maintenance IGA with City of Westminster

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

### Recommended Board Action

1. Adopt Resolution No. 38 adopting the 2010 Westminster Housing Authority Budget and the 2010 Westminster Commons Senior Housing Project Budget.
2. Authorize the Executive Director to enter into an intergovernmental agreement with the City of Westminster relative to the City providing assistance in maintaining WHA owned properties.

### Summary Statement

- The 2010 operating budget revenues for the Westminster Housing Authority (WHA) include a \$60,000 owner distribution from Westminster Commons.
- The operating budget expenses for the WHA include a \$70,000 payment to the City of Westminster for administrative services and \$12,000 for utilities, maintenance, and insurance expenses.
- The 2010 WHA budget includes a \$60,000 expense for consulting services to be used in conjunction with completing a financial analysis of the Westminster Commons.
- The WHA proposes to enter into an agreement with the City of Westminster whereby the City would provide the WHA City personnel and financial assistance in maintaining WHA owned properties in the South Westminster area.
- The 2010 Budget of Westminster Commons is shown separately from the WHA Budget.
- The Westminster Commons Budget includes net rental revenue of \$905,256 and other revenues of \$4,896 for total revenues of \$910,152. Expenses include administrative and payroll expenses of \$230,544, utilities expenses of \$105,320, repairs and maintenance expenses of \$132,132, taxes & insurance expenses of \$26,376, depreciation expense of \$124,415, and other miscellaneous expenses (including \$60,000 transfer to WHA) of \$156,504, for total expenses of \$775,291 leaving an Ordinary Income balance of \$134,861.

<b>Expenditure Required:</b>	\$142,000	WHA Operating Expenditures
	\$775,291	Westminster Commons Cost of Operations

**Source of Funds:** WHA Operating Revenues and Fund Balance  
Westminster Commons Revenues

**Policy Issue**

Does the Board of the WHA wish to support the activities of the Westminster Housing Authority and Westminster Commons by adopting the proposed 2010 budgets and approving an intergovernmental agreement with the City of Westminster relative to maintaining WHA owned properties?

**Alternative**

Do not adopt the 2010 Westminster Housing Authority or Westminster Commons Budgets and IGA with the City. This is not recommended as an approved budget is necessary for the operation of the Commons, for the WHA to carry out financing activities and for the WHA to enter into contracts needed to pursue WHA projects and goals. Further, the intergovernmental agreement will allow City personnel and resources to be used to assist the WHA in maintaining the WHA owned properties.

**Background Information**

Community Development staff manages the WHA and the contract with Howard Bishop & Company, which is the property manager for the Westminster Commons. The Westminster Commons budget is presented separately from the remaining WHA activities.

Westminster Housing Authority

WHA revenues from operating activities for 2010 will come only from the Westminster Commons project that generates \$60,000 per year as a distribution to the owner (the Authority). The WHA currently owns two buildings (Rodeo Market and Vehicle Service Center) that are currently under lease at nominal cost to the South Westminster Arts Group (SWAG). SWAG, however, is responsible for paying a portion of the utility cost. Thereby, the WHA will not receive any lease revenues from either of these buildings in 2010, which is reflected in the proposed budget.

Authority expenses include payment of \$70,000 to the City of Westminster for administrative services provided to the Authority. Additionally, expenses include \$9,000 for utilities that are higher than in 2009 to cover the additional cost associated with SWAG occupying the Rodeo Market building in addition to the Vehicle Service Center building. A \$63,000 expense for contractual expenses covers the cost of insurance and mowing of weeds on WHA owned vacant property and completing the financial assessment (estimated at \$60,000) for the Westminster Commons.

The 2010 budget also reflects a loan payment of \$27,548 to the Colorado Brownfields Revolving Loan Fund administered by the Colorado Housing Finance Authority. The budget also reflects an additional \$100,000 payment towards principal to be made in 2009 so as to reduce the amount of interest to be paid over the length of the loan. These payments are for a loan used to clean up contaminated property along Little Dry Creek in conjunction with the City's efforts to secure land between Federal Boulevard and Lowell Boulevard to be used for drainage and park improvements. The loan was taken on by the WHA due to "TABOR" limitations regarding incurring debt and multi-year contractual limitations.

The City of Westminster is also proposing to enter into an Intergovernmental Cooperation Agreement with the WHA that authorizes the City to assist the WHA in maintaining and improving WHA-owned property in South Westminster. Under the proposed agreement, the City would be permitted to use its Buildings, Operations, and Maintenance (BOM) Division personnel to assess and repair the Rodeo Market and Vehicle Service Center buildings as needed. The Agreement further provides for the City to expend City funds (budgeted at up to \$5,000 in 2010) for maintenance or improvements that exceed the BOM's capabilities on behalf of the WHA.

Westminster Commons

The Westminster Commons budget projects total income at \$910,152, which is an increase over 2009 due in part to a lower vacancy rate. This figure includes rental income from the Westminster Commons senior housing facility projected at \$456,204 in tenant payments and \$458,196 in assistance payments pursuant to the Section 8 program administered by the United States Department of Housing and Urban Development. The total net rental income (rents less vacancy) is projected at \$905,256. The income projection also includes \$4,896 from other miscellaneous sources.

Expenditures in the 2010 budget includes operating expenses of \$775,291 including administration and payroll, utilities, repairs and maintenance, depreciation, taxes and insurance, and other miscellaneous costs for mortgage payment and a \$60,000 transfer to WHA. Net cash flow is expected to be positive in the amount of \$134,861 for 2010. Additional details or proposed revenues and expenditures are attached to the proposed budget.

Respectfully submitted,

Stephen P. Smithers  
Acting Executive Director

Attachments:

- Resolution
- 2009 WHA Proposed Budget
- 2009 Westminster Commons Proposed Budget
- Intergovernmental Cooperative Agreement
- Exhibit A WHA Owned Property

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **38**

INTRODUCED BY COMMISSIONERS

SERIES OF 2009

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**A RESOLUTION ADOPTING THE 2010 BUDGET FOR THE  
WESTMINSTER HOUSING AUTHORITY AND THE 2010 WESTMINSTER COMMONS  
FACILITY BUDGET**

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

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

WHEREAS, the Westminster Housing Authority Board has not yet adopted a formal operating budget for fiscal year 2010 for the Westminster Housing Authority and the Westminster Commons senior apartment facility; and

WHEREAS, the Westminster Housing Authority has received revenue and anticipates receiving additional revenues; and

WHEREAS, the Westminster Housing Authority anticipates expenditures for various purposes relating to the goals of the Authority and operating the Westminster Commons senior housing project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Westminster Housing Authority That the attached 2010 Westminster Housing Authority Budget and 2010 Westminster Commons Facility Budget, are hereby approved and the amounts stated herein are hereby appropriated for the fiscal year 2010.

PASSED AND ADOPTED this 26<sup>th</sup> day of October, 2009.

ATTEST:

\_\_\_\_\_  
Nancy McNally, Chair

\_\_\_\_\_  
Authority Secretary

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Authority Attorney

**WESTMINSTER HOUSING AUTHORITY (Excluding Commons)**  
**2010 Proposed Budget**

	<u>2008 Actual</u>	<u>2009 Budget</u>	<u>2009 Estimated</u>	<u>2010 Proposed</u>
<b>Revenues</b>				
Monthly Revenue Transfers from Commons	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000
Rental Income (Rodeo Market)	4,309	-	-	-
Interest	19,100	-	10,260	1,200
<i>Total Operating Revenues</i>	<u>83,409</u>	<u>60,000</u>	<u>70,260</u>	<u>61,200</u>
<b>Expenditures</b>				
Administrative Fee	70,000	70,000	70,000	70,000
Utilities	3,177	7,600	6,500	9,000
Contractual	13,975	2,000	8,000	63,000
<i>Total Operating Activities</i>	<u>87,152</u>	<u>79,600</u>	<u>84,500</u>	<u>142,000</u>
<b>Net Operating Surplus (Deficit)</b>	<u>(3,743)</u>	<u>(19,600)</u>	<u>(14,240)</u>	<u>(80,800)</u>
<b>Other Financing Sources (Uses)</b>				
Debt Service:				
Principal	-	(19,288)	(119,288)	(19,674)
Interest expense	(7,572)	(8,260)	(8,260)	(7,874)
Capital Contributions	56,037	-	-	-
<i>Total other financing sources (uses)</i>	<u>48,465</u>	<u>(27,548)</u>	<u>(127,548)</u>	<u>(27,548)</u>
<b>Net change in cash balance</b>	44,722	(47,148)	(141,788)	(108,348)
<b>Cash balance beginning</b>	362,977	302,701	359,044	217,256
<b>Accrual and Balance Sheet Adjustments</b>	<u>(48,655)</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Cash balance ending</b>	<u>\$ 359,044</u>	<u>\$ 302,701</u>	<u>\$217,256</u>	<u>\$ 108,908</u>

2010 WESTMINSTER COMMONS BUDGET

	Acct	08' Budget	08' Actual	09 Budget	09' Proj.	10' Budget
<b>Ordinary Income</b>						
Rent Income - Apartments	5120	420,000	424,018	415,900	450,186	456,204
Income - Tenant Assist Pmts.	5121	473,880	478,442	481,124	464,214	458,196
Vacancies - Apartments	5220	-8,940	-8,998	-8,976	-8,976	-9,144
Interest Rev - Proj Operations	5410	408	617	408	554	552
Inc From Inv - Replacement Res	5440	5,004	2,320	1,824	1,349	1,344
Laundry & Vending Revenue	5910	2,100	2,004	2,004	2,302	2,400
Forfeited Security Deposits	5940	0	816	0	242	240
Other Revenue	5991	0	0	0	299	240
Other Revenue (loss) on Sale	5992	120	740	120	0	120
<b>Total Income</b>		<b>892,572</b>	<b>899,959</b>	<b>892,404</b>	<b>910,170</b>	<b>910,152</b>
<b>Expense</b>						
<b>Adminstrative Expense</b>						
Advertising	6210	1,608	1,246	1,200	1,200	1,200
Office Supplies	6311	17,004	18,870	18,564	17,674	17,676
Management Fees	6320	51,408	51,447	51,060	52,357	52,356
Manager Rent Free Unit	6331	13,752	13,884	14,016	18,976	21,600
Professional Fees						
Audit Expense	6350	5,208	5,200	5,208	5,500	5,496
Telephone Expense	6360	12,000	11,679	9,312	10,325	10,320
<b>Total Adminstrative Expense</b>		<b>100,980</b>	<b>102,326</b>	<b>99,360</b>	<b>106,032</b>	<b>108,648</b>
<b>Utilities</b>						
Electricity	6450	38,508	47,510	43,632	43,632	37,000
Water	6451	14,796	16,683	15,444	16,500	14,292
Gas	6452	55,404	45,882	49,008	28,341	37,000
Sewer	6453	9,504	10,317	9,504	13,620	17,028
<b>Total Utilities Expense</b>		<b>118,212</b>	<b>120,392</b>	<b>117,588</b>	<b>102,093</b>	<b>105,320</b>
<b>Repairs and Maintenance</b>						
<b>Janitorial &amp; Cleaning</b>						
Janitorial Supplies	6515	1,104	1,666	1,184	808	804
Janitorial Contracts	6517	3,708	7,747	8,443	4,681	4,680
Extermination	6519	960	960	960	1,437	1,440
Garbage & Trash Removal	6525	5,808	5,926	5,976	5,976	5,976
<b>Landscaping &amp; Groundskeeping</b>						
Grounds Supplies	6536	900	440	624	436	432
Grounds Contracts	6537	5,004	3,509	2,592	2,855	2,856
<b>Repairs and Maintenance</b>						

Repairs Material	6541	8,508	9,264	8,820	14,595	11,892
Repairs Contract	6542	51,408	26,066	25,920	23,873	24,000
Elevator Maintenance/Contract	6545	21,000	19,901	21,000	19,601	19,596
Heating/Cooling Repr & Maint	6546	25,008	25,294	26,091	20,762	21,996
Snow Removal	6548	3,408	1,605	3,408	1,115	1,608
Fire Alarm Maintenance	6581	6,000	5,192	9,132	8,992	9,132
Decorating						
Decorating Contract	6560	21,000	29,400	30,000	21,775	24,000
Decorating Supplies	6561	2,700	5,335	5,988	3,417	3,720
<b>Total Repairs and Maintenance</b>		156,516	142,305	150,138	130,323	132,132
<b>Depreciation Expense</b>						
Depr-Land Improve.	6611	18,078	18,078	18,078	18,078	18,078
Depr.-Bldgs & Improv	6620	67,112	67,112	67,112	67,112	67,112
Depr-Bldg Equip F&P	6630	24,898	24,898	24,898	24,898	24,898
Depr-Bldg Equip Port	6640	14,327	14,327	14,327	14,327	14,327
<b>Total Depreciation Expense</b>		124,415	124,415	124,415	124,415	124,415
<b>Taxes &amp; Insurance</b>						
Property & Liab. Ins.	6720	25,008	27,736	28,008	23,490	16,404
Fidelity Bond Ins.	6721	720	468	468	468	468
Health Ins.	6723	9,000	8,913	10,027	9,812	9,504
<b>Total Taxes &amp; Insurance</b>		34,728	37,117	38,503	33,770	26,376
<b>Payroll Expenses</b>						
Office Salaries	6310	58,008	62,207	61,536	59,174	59,172
Manager's Salaries	6330	22,800	36,333	38,556	40,664	40,668
Cleaning Payroll	6510	10,968	11,483	11,310	11,310	11,316
SS ER 6.29%	6712					6,888
Medicare ER 1.45%	6713					1,608
FUTA Expense .08%	6714					888
SUTA Expense 1.22%	6715					1,356
(FICA 08',09 only)	6711	6,804	10,056	10,464	9,950	
<b>Total Payroll Expenses</b>		98,580	120,079	121,866	121,098	121,896
<b>Other Expense</b>						
Workmen's comp	6722	3,900	3,472	3,900	3,952	3,960
Other-D&O, Discrimination	6729	5,604	5,940	5,940	5,940	5,940
Interest - Mortgage	6820	152,700	148,954	91,200	86,000	86,004
Transfer to WHA	6850	60,000	60,000	60,000	60,000	60,000
Deferred Loss Amortized	6891		906			600
<b>Total Other Expense</b>		222,204	219,272	161,040	155,892	156,504
<b>Total Expenses</b>		855,635	865,906	812,910	773,623	775,291

<b>Net Ordinary Income</b>	36,937	34,053	79,494	136,547	134,861
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## WESTMINSTER COMMONS

### Notes to the 2010 Proposed Budget

#### Income

5120	<u>Resident Portion of Rent</u> Full occupancy \$600 x 127 x 12 months (Managers + Maint. Assist. Units - 3 not included)
5220	<u>Vacancies</u> = 1%
5410	<u>Interest Income - Project Operations</u> Historic
5440	<u>Income from Interest - Reserve for Replacements</u> Based on current bank rates - approx. 1%
5910	<u>Laundry &amp; Vending Income - slightly increased charges to tenants</u>

#### Administrative Expenses

6331	<u>Manager Rent Free Units</u> 2 manager units + 1 maintenance assistant unit
6360	<u>Telephone</u> Decrease due to bundling services

#### Utilities

6450 - 6453	<u>Utilities</u> Overall decrease from prior years due to milder weather and energy efficiency policies.
6330	<u>Manager Salary</u> Includes a \$50/month salary increase for on-site manager Part-time maintenance staff pay included @ \$13/hr.
6331	<u>Manager Rent-Free Unit</u> 2 units @584 x 12

#### Repairs & Maintenance

6541	<u>Repairs Material</u> 09' projected higher due to one-time purchase of CO detectors
6542	<u>Repairs Contract</u> Continued savings realized due to hiring of a maintenance assistant

#### Taxes & Insurance

6720      Property & Liability Insurance  
09' decrease and 2010 budgeted reflect switching insurance companies  
- same coverage but larger savings through new company

**Payroll Expenses**

6310      Office Salaries  
No increases for 2010

6330      Manager's Salaries  
No increases for 2010

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
FOR THE MAINTENANCE AND IMPROVEMENT TO  
WESTMINSTER HOUSING AUTHORITY-OWNED PROPERTY**

This Intergovernmental Cooperation Agreement (the "Agreement"), is made and entered into this 26th day of October, 2009, by and between the **WESTMINSTER HOUSING AUTHORITY** ("WHA"), a Colorado housing authority, and the **CITY OF WESTMINSTER** (the "City"), a Colorado home-rule municipality.

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

WHEREAS, the WHA is a Colorado housing authority, with all the powers and authority granted pursuant to C.R.S. section 29-4-201 et seq.; and

WHEREAS, pursuant to C.R.S. section 29-4-201 et seq., the City and WHA are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity; and

WHEREAS, pursuant to C.R.S. section 29-4-201 et seq., WHA has the authority to undertake housing-related projects and to make and execute any and all contracts that it may deem necessary or convenient to the exercise of its powers; to arrange for the furnishing or repair by any public body of services, privileges, works, streets, roads, public utilities, or educational or other facilities, for or in connection with housing-related projects; and to make such appropriations and expenditures of its funds as it deems necessary to carry out the purposes of the Colorado State Statutes; and

WHEREAS, the WHA and City have worked cooperatively in planning or undertaking certain housing related plans, projects, programs, works, operations, or activities of WHA within the South Westminster area, and agree to enter into agreements relative to protecting and preserving WHA owned property from deterioration that could diminish value of such assets; and

WHEREAS, the WHA has acquired, operated and maintained property in the South Westminster neighborhood for the purposes of building new housing and supporting community facilities in partnership with the City; and,

WHEREAS, WHA and the City desire to enter into this Agreement for the upkeep and maintenance of WHA-owned property; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants set forth below, the City and WHA hereby agree as follows:

1. **WHA-owned property.**

The City may provide assistance relative to improvements and repairs deemed solely necessary for the purpose of preserving and protecting the properties from structural degeneration or damage, or hinder the operational integrity of the property that would be deemed detrimental to the health, safety and welfare of tenants, but not including routine maintenance and upkeep responsibility of the tenants, on the following WHA-owned properties as referenced in Exhibit A:

- a. Rodeo Building and property, 3915 W. 73<sup>rd</sup> Avenue;
- b. Vehicle Service Center building, 7287 Lowell Boulevard; and,
- c. VSC Auxiliary building, 3630 W. 73<sup>rd</sup> Avenue.

2. **Financial Consideration for the City.**

- a. **WHA** shall first consult with the City's Building Operations and Maintenance Division (BO&M) to assess and coordinate any repairs or improvements to any of aforementioned property in Subsection 1 above.
- b. Should the BO&M proceed with making the necessary repairs, the repair shall be entered into the City's standard BO&M tracking system using a separate account number for each **WHA**-owned property.
- c. **WHA**, upon written authorization of the City, may choose to hire an outside contractor to make such repairs/improvements to said buildings and properties in Section 1. The City may assist **WHA** in paying for such repairs and improvements.
- d. City staff shall keep a record of expenses for each property individually which shall be verified and certified by the Director of Community Development or designee at the end of each calendar year.

3. **Reimbursement Upon Sale of Property.**

- a. If the **WHA** sells one or more of the properties to a private party, the City may be reimbursed for all costs incurred under Section 2 above retroactive to January 1, 2005 for repairs and maintenance for the particular property(s) being sold.
- b. If the **WHA** sells one or more of the properties to the City, the City may receive a monetary credit towards the purchase price for all costs incurred under Section 2 above, from the date of this agreement forward for repairs and maintenance for the particular property(s) being purchased.

4. **Cooperation.** **WHA** and the City agree to work cooperatively and in good faith to defend and uphold every provision of this Agreement against any action or challenge involving the legality, validity, or enforceability of any provision hereof.

5. **Effective Date.** The City and **WHA** agree that it is their intent to implement this Agreement retroactive to January 1, 2005. In the event this Agreement is not approved by both parties prior to the date of adoption of the respective budgets of **WHA** and the City for fiscal year 2010, the parties agree to cooperate in good faith to take such actions as may be necessary to amend their respective budgets to reflect the intended applicability of this Agreement to their respective 2010 budgets.

6. **General Provisions.**

- a. **Governing Body.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Colorado.
- b. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, shall be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver of consent shall be effective only in the specific instance and for the specific purpose for which given.
- c. **Conflicts.** To the extent any term or provision of this Agreement conflicts with any other term or condition of any previous agreement between the City and **WHA**, this Agreement shall control.
- d. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

- e. **Third Parties.** The City and WHA expressly disclaim any intent to create any third-party beneficiary rights or benefits pursuant to this Agreement. Neither the City nor WHA shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

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

**WESTMINSTER HOUSING  
HOUSING AUTHORITY**

**CITY OF WESTMINSTER**

By: \_\_\_\_\_  
J. Brent McFall  
Executive Director

By: \_\_\_\_\_  
J. Brent McFall  
City Manager

ATTEST:

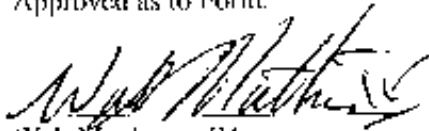
ATTEST:

\_\_\_\_\_  
Secretary for WHA

\_\_\_\_\_  
Linda Yeager, City Clerk

Approved as to Form:

Approved as to Form:

  
Walt Matthews, IV  
Attorney for WHA

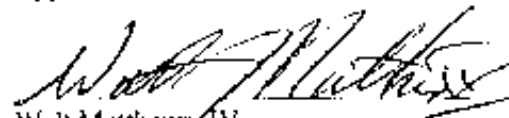
  
Walt Matthews, IV  
Assistant City Attorney

EXHIBIT A

WHA OWNED PROPERTY

