



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
 - B. International City & County Management Association Certificate of Distinction in Performance Measurement Award
 - C. Recognition of the Capabilities Store re "Women Count – Make Mine A Million" Program
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 2008
 - B. Quarterly Insurance Claim Report: July – September 2008
 - C. Date Change for First City Council Meeting in November
 - D. Revised Employment Agreement with J. Brent McFall
 - E. Revised Employment Agreement with Martin R. McCullough
 - F. County Club Highlands Waterline Upsizing
 - G. Treated and Consumable Water Supply Agreements with the City of Brighton
 - H. Swim & Fitness Center Roof Top Air Handling Units Replacement Contract
 - I. Proposed Sale of the Westminster Westin Conference Center
 - J. Natural Resource Damage Fund Grant for Open Space Purchases
 - K. Second Reading of Councillor's Bill No. 37 re 2009 and 2010 Appropriations
 - L. Second Reading of Councillor's Bill No. 38 re Approval of City Council Allowance and Salary
 - M. Second Reading of Councillor's Bill No. 39 re Fund Appropriation re Lambertson Farms Metro District 1

9. Appointments and Resignations

10. Public Hearings and Other New Business

- A. Resolution No. 52 re Schedule of Fees for Criminal Justice Records
- B. Resolution No. 53 re Support for the Adams 12 Five Star Schools 3A & 3B Ballot Measures
- C. Revised Employment Agreement with John A. Stipech
- D. Councillor's Bill No. 40 re Municipal Judge Salary
- E. Councillor's Bill No. 41 re 2008 3rd Quarter Budget Supplemental Appropriation
- F. Councillor's Bill No. 42 re Concession Agreement with Benders Bar & Grill
- G. Councillor's Bill No. 43 re Proposed Water and Wastewater Rate Adjustments
- H. Councillor's Bill No. 44 re Lease of Open Space Property – Feldman Property at 12661 Pecos Street

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 -
 - Discuss Westminster Mall redevelopment strategy and progress and provide direction and instructions to the City's negotiators, as allows by WMC 1-11-3(C)(4) and (7) and CRS 24-6-402(4)(e)

13. Adjournment

GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.

- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.

- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.

- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.

- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.

- F.** City Staff enters a copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;

- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);

- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;

- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.

- J.** Final comments/rebuttal received from property owner;

- K.** Final comments from City Staff and Staff recommendation.

- L.** Public hearing is closed.

- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, OCTOBER 13, 2008 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Members of Boy Scout Troop 324 presented the colors and led the Council, Staff, and audience in the Pledge of Allegiance.

After retiring the colors, members of the troop came forward, introduced themselves, and announced their reason for attending the meeting. Most were working to earn citizenship badges.

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Dittman, to approve the minutes of the regular meeting of September 22, 2008, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. Smithers reported that City Manager J. Brent McFall was out of town working on mall redevelopment plans. Additionally, he noted that local businesses with tenure of 20 years and more would be recognized at the City's annual Business Appreciation event on October 17 at the Westminster Westin Conference Center.

CITY COUNCIL COMMENTS

Councillor Briggs reported that he was a former leader of Boy Scout Troop 324 and was pleased to see that the tradition of scouting remained alive and well in the community.

Mayor McNally encouraged citizens to participate in Fire Station 4's Open House on Saturday, October 18.

PROCLAMATIONS

Councillor Kaiser read a proclamation designating October 23 to 31 as Red Ribbon Week and encouraged citizens to participate in drug prevention education activities. He presented the proclamation to Clifford "Skeet" Hartman, Eleanor Scott, Mike Pascoe and Kathy Pascoe, members of the Westminster Area Community Awareness Action Team Board of Directors.

Mayor McNally proclaimed the week of October 13 to be Business Appreciation Week. She encouraged residents to support Westminster businesses, noting that the success of local business was critical to the City's financial stability. Peter Smith of Smith Environmental Engineering accepted the proclamation on behalf of the Business Advisory Group. He thanked Council for the opportunity to provide input about business to the City through the Business Advisory Group.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authority to purchase PVC water line pipe from the lowest responsible bidder, HD Waterworks Inc., in the amount of \$113,358; find, based on the City Manager's recommendation, that the public interest would best be served by authorizing a negotiated purchase from the sole source provider, National Meter & Automation, Inc., for new water meter replacement transponders, and chambers and disc assembly purchases, in an amount not to exceed \$168,473; authority for the City Manager to execute a \$406,359 contract with Velocity Constructors Inc. for construction services related to the abandonment of Shaw Heights wells, authority for a 10% construction contingency of \$40,636, and authority for a budget revision transferring \$401,577 from the Standley Lake Water Interceptor Capital Improvement Project

account to the Shaw Heights Construction account in order to provide funding for the project with a total budget of \$509,292; authority for the City Manager to enter into a purchase agreement for 4.0 water shares within the Standley Lake Division of the Farmers Reservoir and Irrigation Company for \$460,000; authority for the City Manager to execute a \$63,150 contract with the low bidder, Clear Water Environmental, Inc., to complete cleaning and television inspection of 36,700 feet of large diameter sanitary sewer main and a 15% contingency of \$9,472; authority for the City Manager to execute a \$27,406 Change Order to the Reynolds-Tierdael Construction Company, Inc. contract for the Open-Cut Water and Sewer Replacements project, raising the total construction budget to \$1,568,672; authority for the City Manager to execute agreements with utility companies in a total amount not to exceed \$439,000 for the relocation of facilities in conflict with the proposed McKay Outfall Drainage improvements; and final passage of Councillor's Bill No. 36 to lease the Barnett open space property.

Mayor McNally asked if Councillors wished to remove any items from the consent agenda for discussion purposes or separate vote. None did.

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

RESOLUTION NO. 49 ADOPTING THE 2009/2010 CITY BUDGET

Mayor Pro Tem Dittman moved to adopt Resolution No. 49 setting the City mill levy at 3.65 mills for both fiscal years 2009 and 2010 and formally adopting the total 2009/2010 City budget, including staffing levels and the Five-year Capital Improvement Program. Councillor Lindsey seconded the motion and it passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 37 APPROPRIATING FUNDS FOR THE 2009/2010 BUDGETS

It was moved by Mayor Pro Tem Dittman and seconded by Councillor Winter to pass Councillor's Bill No. 37 on first reading to appropriate funds for the 2009/2010 budgets. At roll call, the motion passed unanimously.

COUNCILLOR'S BILL NO. 38 APPROVING CITY COUNCIL ALLOWANCE AND SALARY

It was moved by Councillor Briggs, seconded by Mayor Pro Tem Dittman to pass Councillor's Bill No. 38 on first reading to amend City Council's monthly allowance to \$300/month, with automatic adjustments every two years tied to the Denver-Boulder Consumer Price Index in concert with the adoption of the two-year budget, and monthly compensation as follows: Mayor \$1,400/month, Mayor Pro Tem \$1,200/month and Councillors \$1,000/month; both the allowance and compensation adjustments to become effective December 1, 2009. At roll call, the motion passed unanimously.

RESOLUTION NO. 50 TO ESTABLISH 2009 AND 2010 PAY PLANS

Upon a motion by Councillor Major, seconded by Councillor Kaiser, the Council voted unanimously at roll call to adopt Resolution No. 50 establishing the 2009 and 2010 Pay Plans.

2009 CITY EMPLOYEE HEALTH INSURANCE RENEWALS AND RATES

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

STIPULATION & PLAN TO EXCLUDE PROPERTIES FROM NORTH METRO FIRE RESCUE DISTRICT

Councillor Briggs moved, seconded by Councillor Major, to approve the Stipulation and Plan for exclusion of recently annexed territory from the North Metro Fire Rescue District. The motion carried with all Council members voting aye.

RESOLUTION NO. 51 TO EXCLUDE PROPERTIES FROM NORTH METRO FIRE RESCUE DISTRICT

It was moved by Councillor Major and seconded by Councillor Kaiser to adopt Resolution No. 51 approving the exclusion of recently annexed properties from the North Metro Fire Rescue District. At roll call, the motion passed unanimously.

COST-SHARING AGREEMENT WITH LAMBERTSON FARMS METROPOLITAN DISTRICT NO. 1

Mayor Pro Tem Dittman moved to authorize the City Manager to execute a Joint Development and Cost-Sharing Agreement with the Lambertson Farms Metropolitan District No. 1 to apportion costs of certain improvements to 136th Avenue between the City and the Metropolitan District; and authorize the expenditure of the City's cost share for the 136th Avenue Pedestrian Underpass not to exceed \$400,000. Councillor Major seconded the motion, and it passed unanimously.

COUNCILLOR'S BILL NO. 39 AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF FUNDS

It was moved by Mayor Pro Tem Dittman and seconded by Councillor Major to pass Councillor's Bill No. 39 on first reading appropriating a total of \$453,840 received from the Lambertson Farms Metropolitan District No. 1 as follows: \$400,000 to the 136th Avenue Pedestrian Underpass project and \$53,840 to the Capital Projects Reserve. The motion passed unanimously on roll call vote.

EXECUTIVE SESSION

Mr. McCullough announced that Council would convene in executive session after this meeting to discuss a personnel matter pursuant to Westminster Municipal Code Section 1-11-3(C)(1) and Colorado Revised Statutes Section 24-6-402(4)(f).

ADJOURNMENT

There being no further business to come before the City Council, it was moved by Councillor Kaiser and seconded by Councillor Major to adjourn. The motion passed unanimously, and the Mayor adjourned the meeting at 7:32 p.m.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



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 and 30 years of service with the City.

Summary Statement

- City Council is requested to present service pins and certificates of appreciation to those employees who are celebrating their 20th and 30th anniversaries of employment with the City.
- 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.
- The program recognizes the dedicated service of those individuals who have spent most, if not all, of their careers with the City.
- The 20 and 30 year groups for fourth quarter 2008 will be celebrated tonight.
 - Mayor Pro Tem Dittman will present the 20-year certificates.
 - Mayor McNally will present the 30-year certificates.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

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

Kim Barron	Police Commander	Police
Max Ruppeck	Senior Projects Planner	Community Development

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

Doug Hall	Deputy Chief/Administration	Fire
Marsha Johnson	Sales Tax Technician	Finance

On October 22, 2008, the City Manager hosted an employee awards luncheon, at which time 4 employees received their 15 year service pin, 21 employees received their 10 year service pin, and 3 employees received their 5 year service pin, while recognition was also given to those who celebrated their 20th and 30th anniversary. This was the fourth luncheon for 2008 to recognize and honor City employees for their service to the public. The luncheon was originally scheduled for October 29, 2008, but due to the Employee Benefit Fair taking place that day, the luncheon was moved forward one week.

The aggregate City service represented among this group of employees for the fourth quarter is 385 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 employees' years of service addresses Council's Strategic Plan goal of Financially Sustainable City Government as part of the overall recognition program developed to encourage and recognize employee commitment to the organization. Recognition efforts have long been acknowledged as an important management practice in organizations striving to develop loyalty, ownership and effectiveness in their most valuable resource – employees.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Presentation of the International City and County Management Association Certificate of Distinction in Performance Measurement Award

Prepared By: Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Mayor McNally to present the International City and County Management Association (ICMA) Certificate of Distinction in Performance Measurement Award to members of the City's Performance Measurement Team.

Summary Statement

- The City of Westminster's performance measurement program recently received the Certificate of Distinction Award from the International City and County Management Association (ICMA). The Certificate of Distinction Award recognizes local governments whose performance measurement programs exceed the standards established by the ICMA Center for Performance Measurement.
- The City of Westminster was selected for the award based on its utilization of performance measurement in decision making, strategic planning, employee training, and public reporting. The City's performance measurement program was also selected based on its commitment to accountability, transparency, and quality service delivery.
- This is the fourth time that the City of Westminster's performance measurement program has been awarded a Certificate of Distinction from ICMA for its performance measurement program. The City was one of 23 cities nationwide, and the only jurisdiction in Colorado, to receive this award.
- Mayor McNally will present the award to members of the City's Performance Measurement Team.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified

Alternative

None identified

Background Information

For the fourth time, the City of Westminster's performance measurement program has been recognized by the International City and County Management Association (ICMA) with a Certificate of Distinction. This award recognizes local governments whose performance measurement programs exceed the standards established by the ICMA Center for Performance Measurement (CPM) for the utilization of performance measurement in the management of local government operations. The criteria for the Certificate of Distinction Award were determined by CPM's Steering Committee and staff. Communities receiving the Certificate of Distinction Award report performance data to the public through budgets, newsletters, and information provided to elected officials. These communities also perform staff training in performance measurement and perform data verification to ensure performance data's reliability. In addition, communities receiving the Certificate of Distinction utilize performance measurement in management decision making and strategic planning. Finally, these communities share their performance measurement knowledge with other local governments through presentations, site visits, and other networking.

Performance measurement is one of the tools the City of Westminster uses to judge how well it is managing its operations. Performance measurement acts much like a scorecard, reflecting what progress the City has made in the past year toward achieving its goals, specifically those outlined in the City's Strategic Plan. Performance measurement involves clearly defining program purposes and goals, establishing objectives to meet those goals, developing quantitative and qualitative measures to monitor and evaluate progress, and reporting results to City Staff, City Council and the public. The City gathers performance measurement data through internal performance measures that describe City goals and show year-to-year trends for City programs, divisions and projects. The City also gathers performance measurement data through the biennial Citizen Survey and through ICMA's Center for Performance Measurement (CPM), both of which give the City an opportunity to compare its operations to local governments nationwide.

During 2007, the City has expanded its participation with CPM through the creation of the Colorado Performance Measurement Consortium. The Consortium is comprised of 14 cities and counties in Colorado plus two members from Wyoming participating. These cities and counties are working to develop core measures to better compare against each other, recognizing that levels of service, influenced by variables outside of our control such as climate and weather, vary significantly.

The primary venue for reporting performance measurement results is the City's annual performance measurement report which is available on-line, entitled "Take A Closer Look: How Performance Measures Build A Better City." Performance measurement supports the City's commitment to accountability, open communication, and continuous improvement.

This award was presented to the City on September 21 at the annual ICMA conference held in Richmond, Virginia.

Members of the City's Performance Measurement Team will be present Monday evening to accept this award from City Council.

Respectfully submitted,

J. Brent McFall
City Manager



Agenda Item 6 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Recognition of the Capabilities Store

Prepared By: Susan F. Grafton

Recommended City Council Action

Recognize the Capabilities Store and owners, Kathryn Arbour and Pam Pressel, for their recent selection by the national “Women Count – Make Mine a Million” program.

Summary Statement

- The Capabilities Store was started in 2005 by Pam Pressler and Kathryn Arbour.
- The store provides products and equipment to help increase medical and physical independence.
- “Women Count” is a national program that helps women owned businesses grow to the million dollar level.
- In late August, after a rigorous competition, Capabilities was chosen by “Women Counts” to aid them in getting the business to the million dollar level.
- The City desires to recognize Capabilities for this important honor.

Expenditure Required: \$ 0

Source of Funds: N/A

SUBJECT: Recognition of the Capabilities Store

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Policy Issue

None identified

Alternative

None identified

Background Information

The Capabilities store is located in the Brookhill Shopping Center at the northwest corner of Pierce Street and 88th Avenue in 2005. The store provides a variety of products to help people with medical/physical limitation. Kathryn Arbour and Pam Pressler are the owners of the store.

The recent recognition by “Women Count” will assist the ladies in growing their business. More significant, the recognition speaks well of the business’s current success and potential for growth since the Women Count selection process is quite rigorous.

Ms. Pressler and Ms. Arbour are being recognized by Council for achieving this national selection.

Respectfully submitted,

J. Brent McFall
City Manager



**WESTMINSTER
COLORADO**

Agenda Memorandum

Agenda Item 8 A

City Council Meeting
October 27, 2008



SUBJECT: Financial Report for September 2008
Prepared By: Tammy Hitchens, Finance Director

Recommended City Council Action

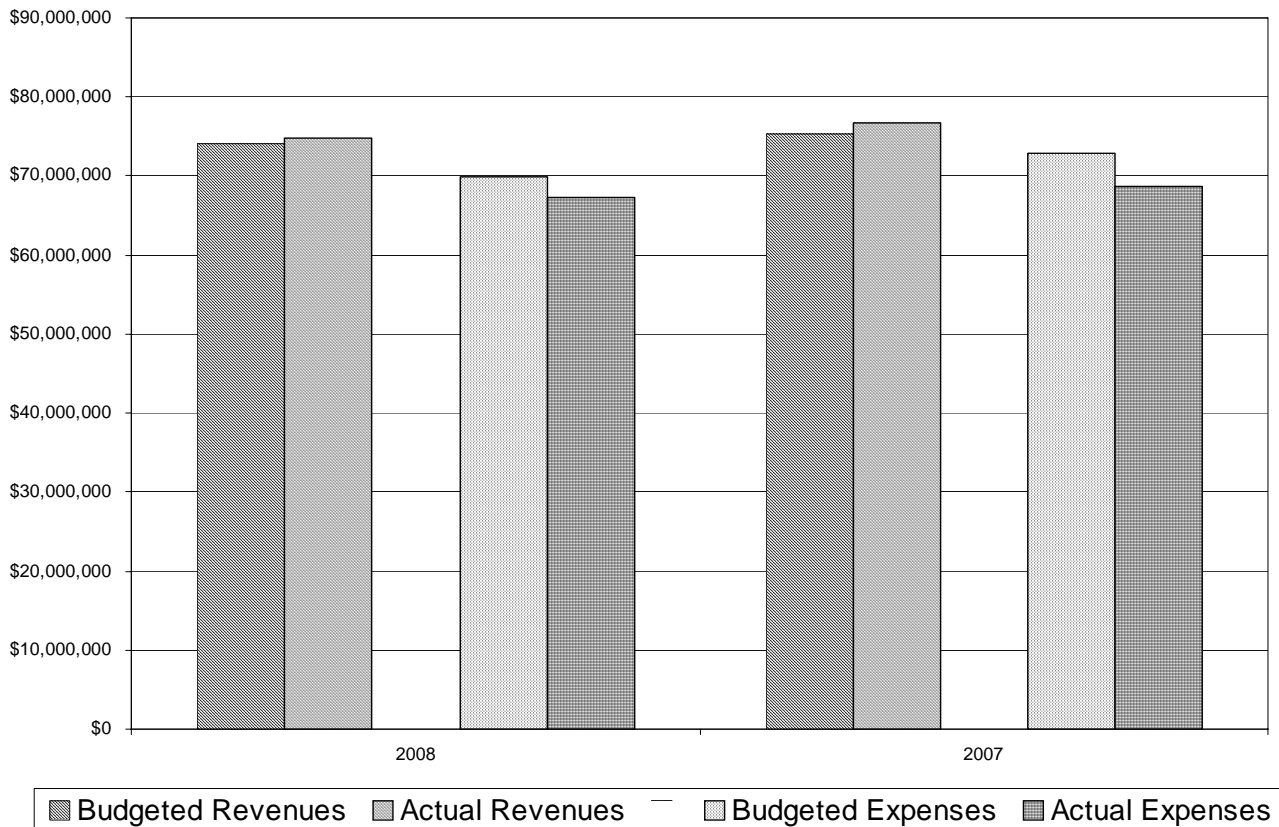
Accept the Financial Report for September as presented.

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 \$7,420,557. The following graph represents Budget vs. Actual for 2007 – 2008.

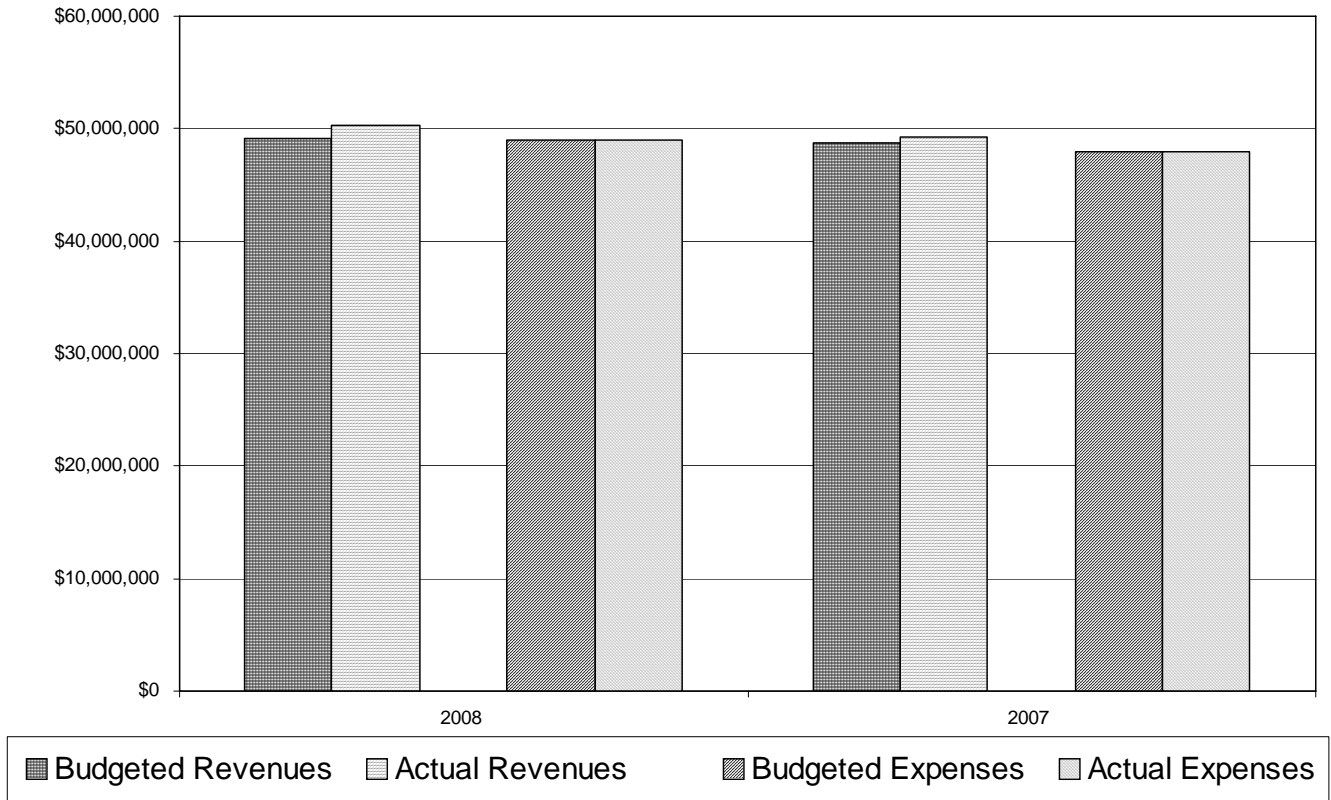
**General Fund
Budget vs Actual**



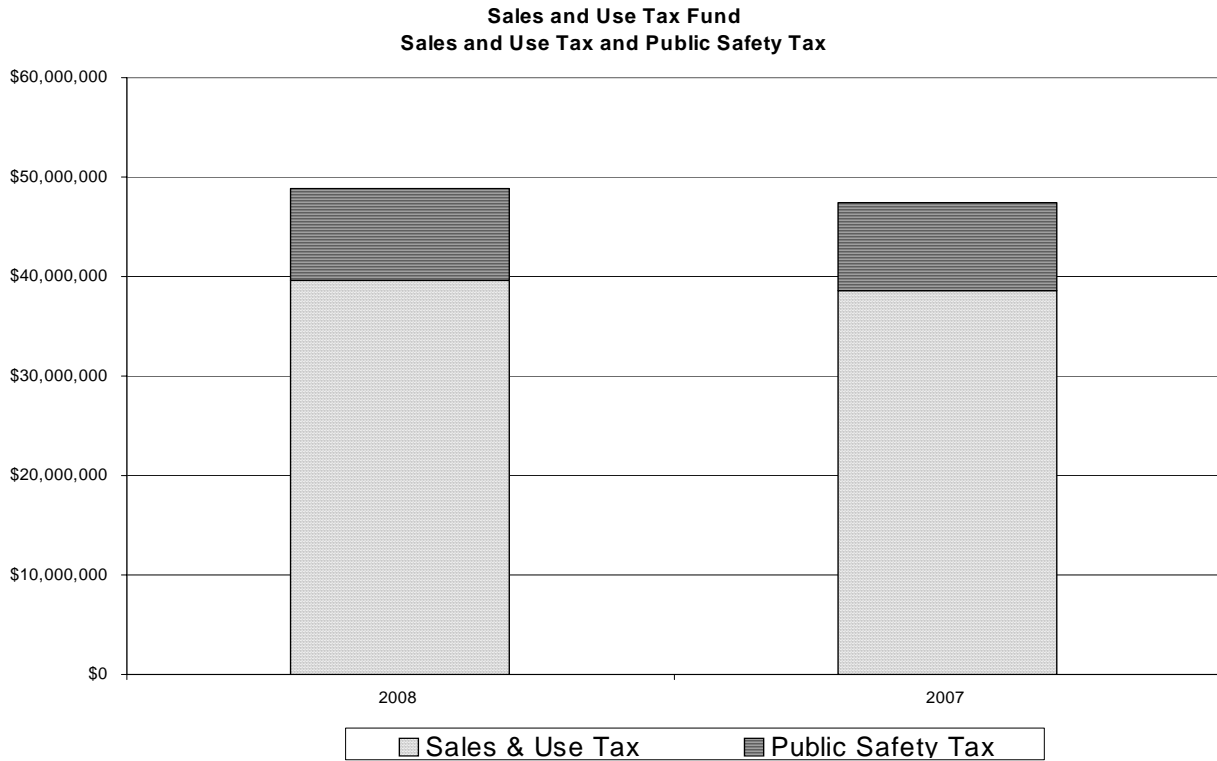
The Sales and Use Tax Fund revenues and carryover exceed expenditures by \$1,365,888.

- On a year-to-date cash basis, sales & use tax returns are up 5.9% over 2007.
- On a year-to-date basis, across the top 25 shopping centers, total sales & use tax receipts are up 6.0% 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 up 0.6%.
- The top 50 Sales Taxpayers, who represent about 62% of all collections, were up 0.3% after adjusting for Urban Renewal Area money that is not available for General Fund use.
- The Westminster Mall is down 18% on a year-to-date basis.
- Building Use Tax is down 6.6% year-to-date from 2007.

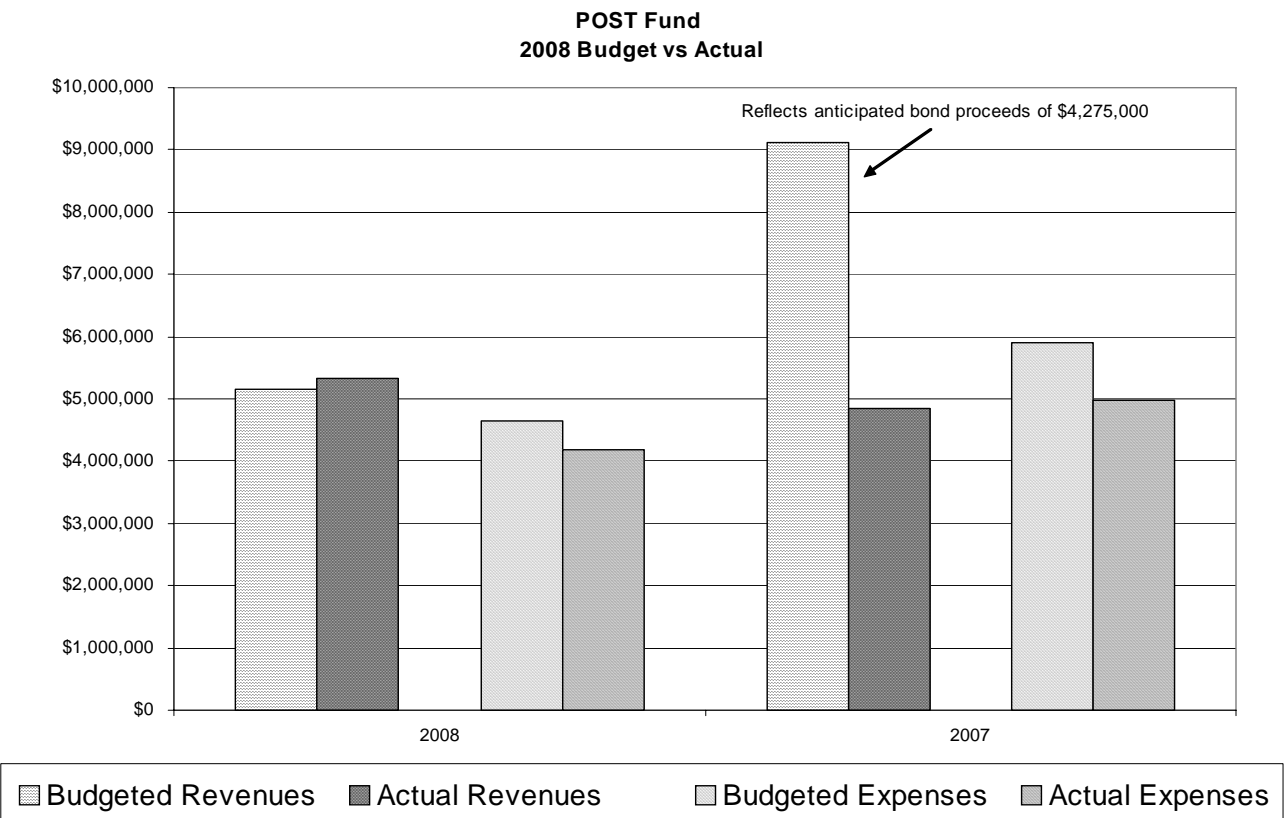
**Sales & Use Tax Fund
Budget vs Actual**



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

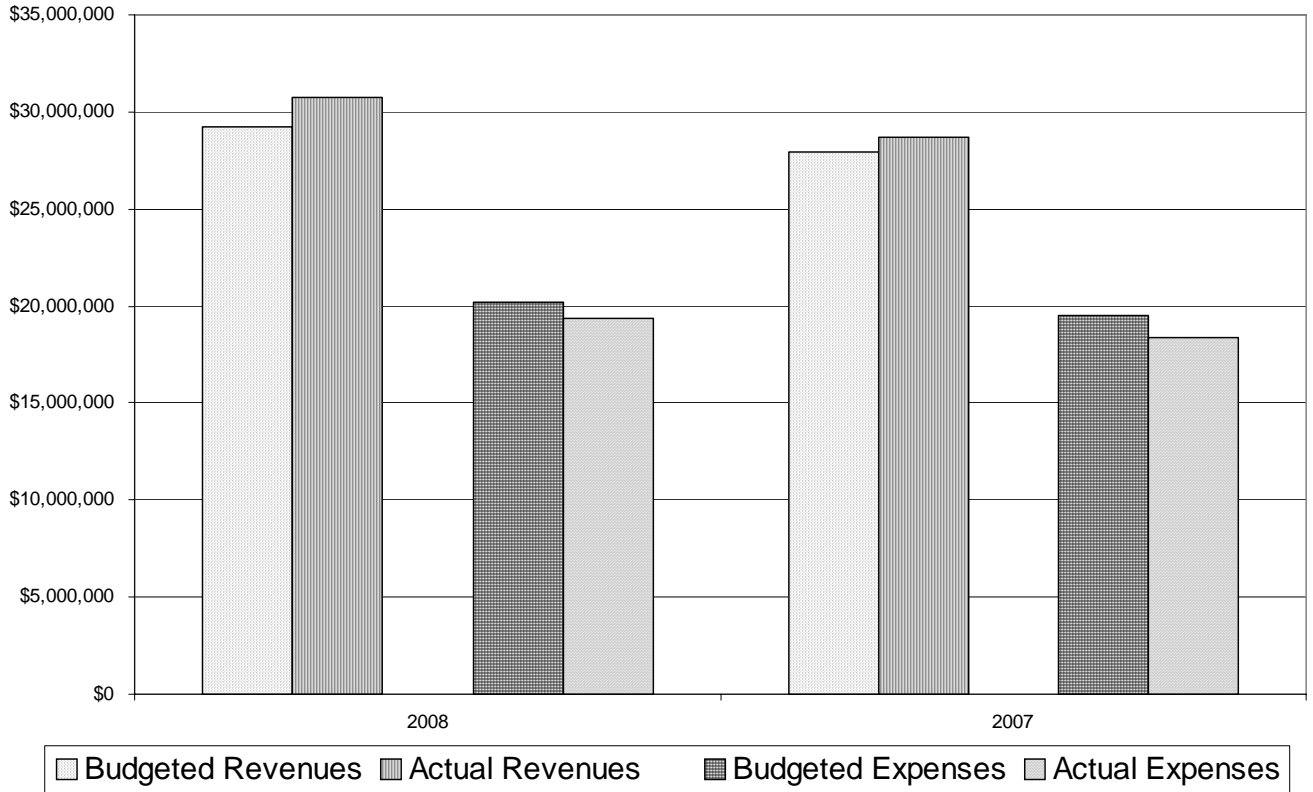


The Parks Open Space and Trails Fund revenues exceed expenditures by \$1,151,598.

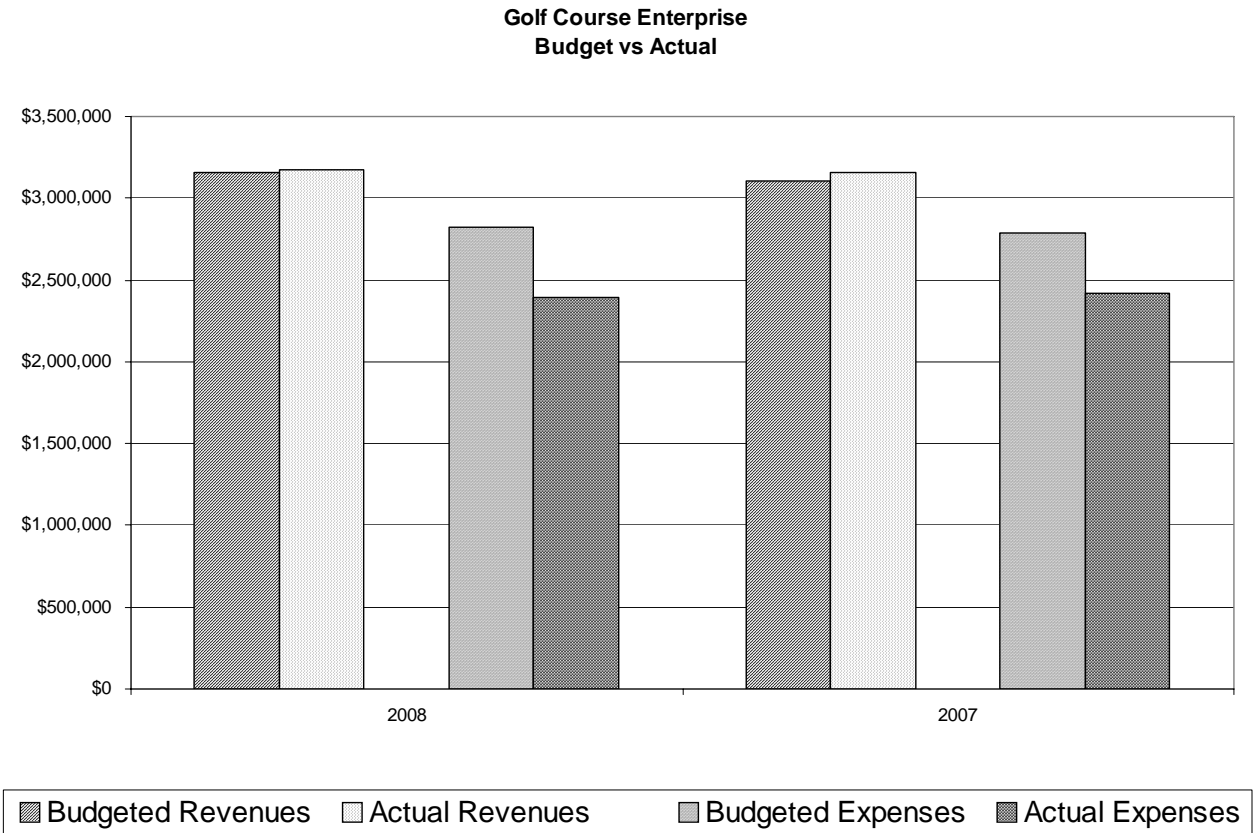


The combined Water & Wastewater Fund revenues and carryover exceed expenses by \$27,975,773. \$25,298,993 is budgeted for capital projects and reserves.

**Combined Water and Wastewater Funds
2008 Operating Budget vs Actual**



The combined Golf Course Fund revenues exceed expenditures by \$780,047.



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

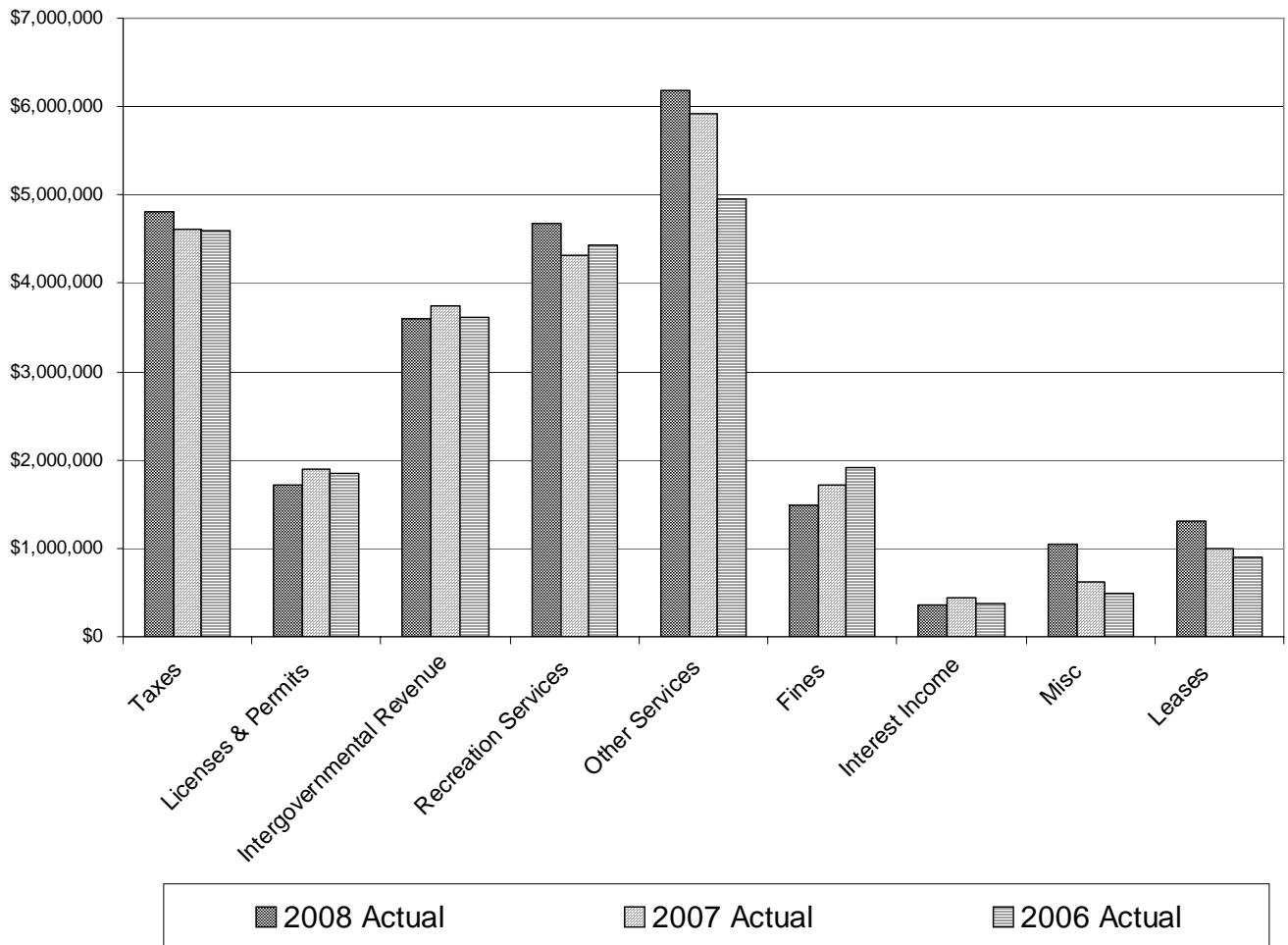
This section includes a discussion of highlights of each fund presented.

General Fund

This fund reflects the results 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 2006 – 2008 year-to-date.

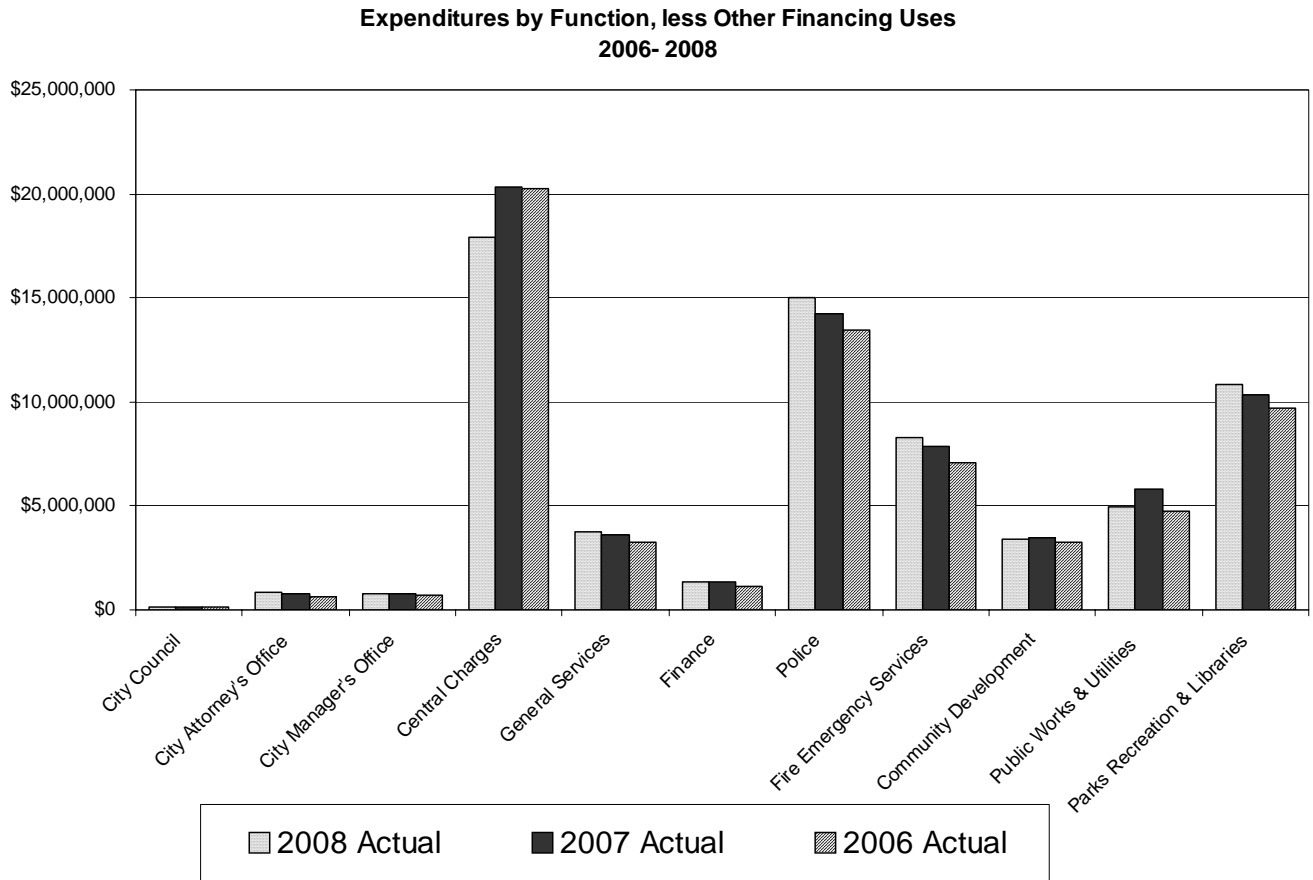
**General Fund Revenues without Transfers, Carryover, and Other Financing Sources
2006 - 2008**



Increases in General Fund revenue categories are explained as follows:

- Miscellaneous reflects a reimbursement from Thornton relating to the 144th Avenue bridge construction IGA
- Leases reflects rental income for the former police building at 88th Avenue and Sheridan Boulevard

The following chart identifies where the City is focusing its resources. The chart shows year-to-date spending for 2006–2008.

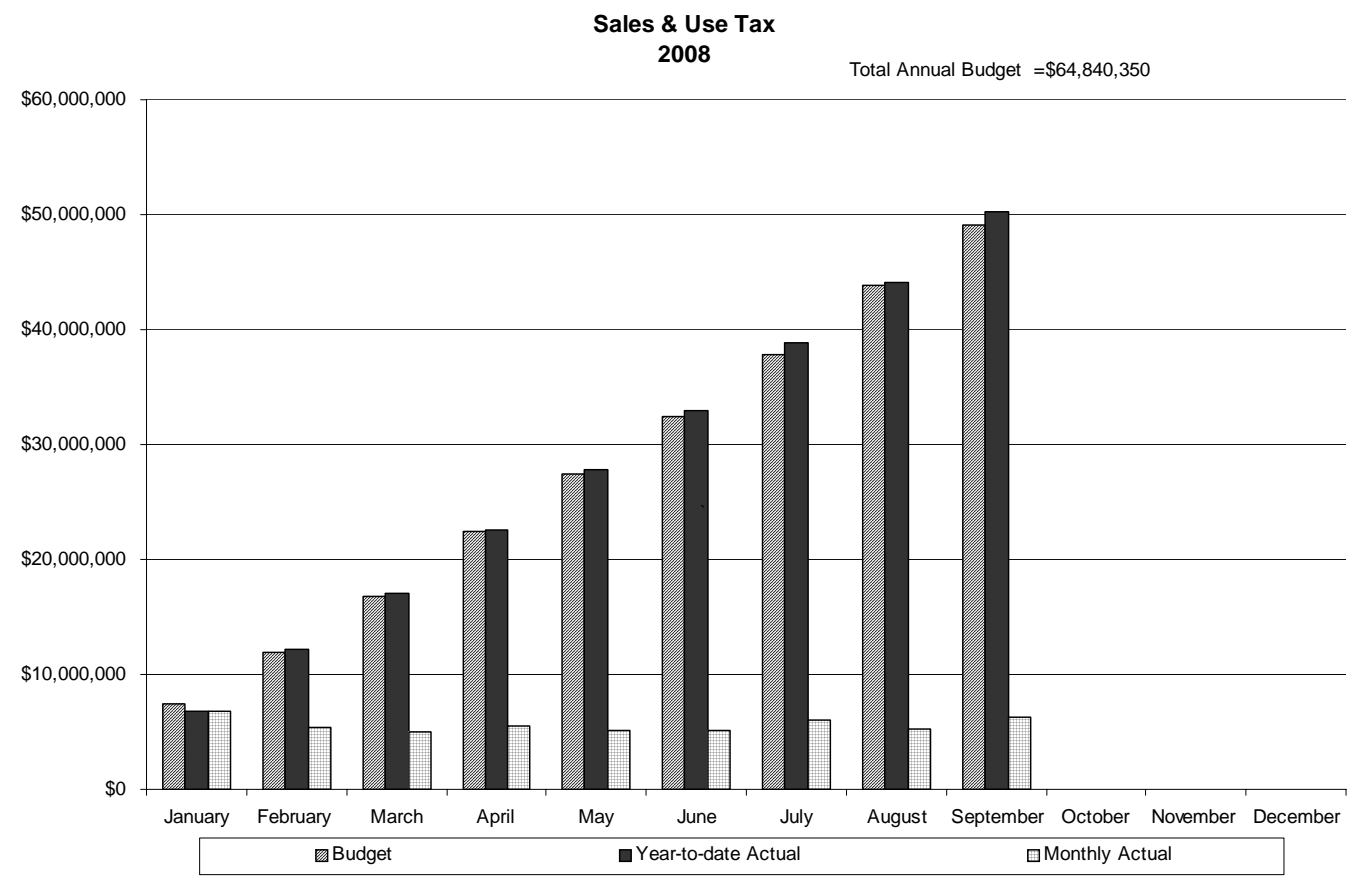


In 2008, Central Charges expenditures were less than in prior years due to a variance in the annual carryover appropriation of transfers to the General Capital Improvement Fund. Police and Fire expenditures are higher than normal in part because of personnel services relating to the Democratic National Convention (DNC) and other special assignments. These additional expenses for the DNC are being reimbursed by the federal government.

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

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

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

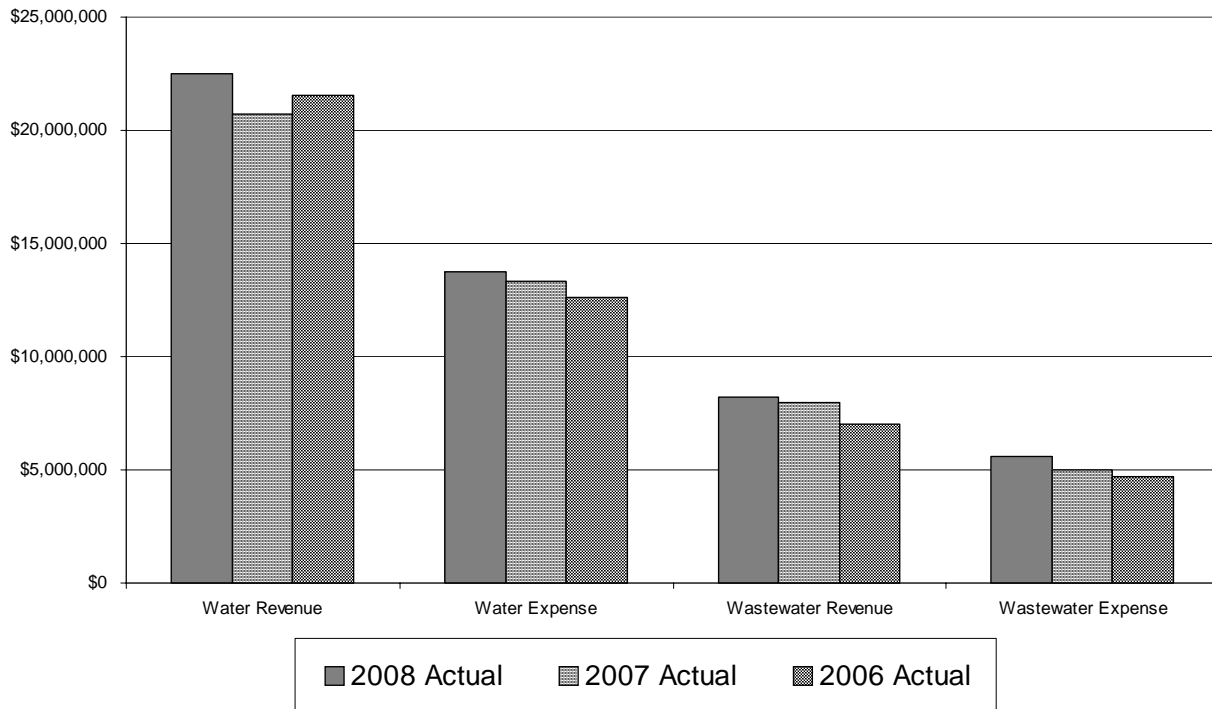


Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

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

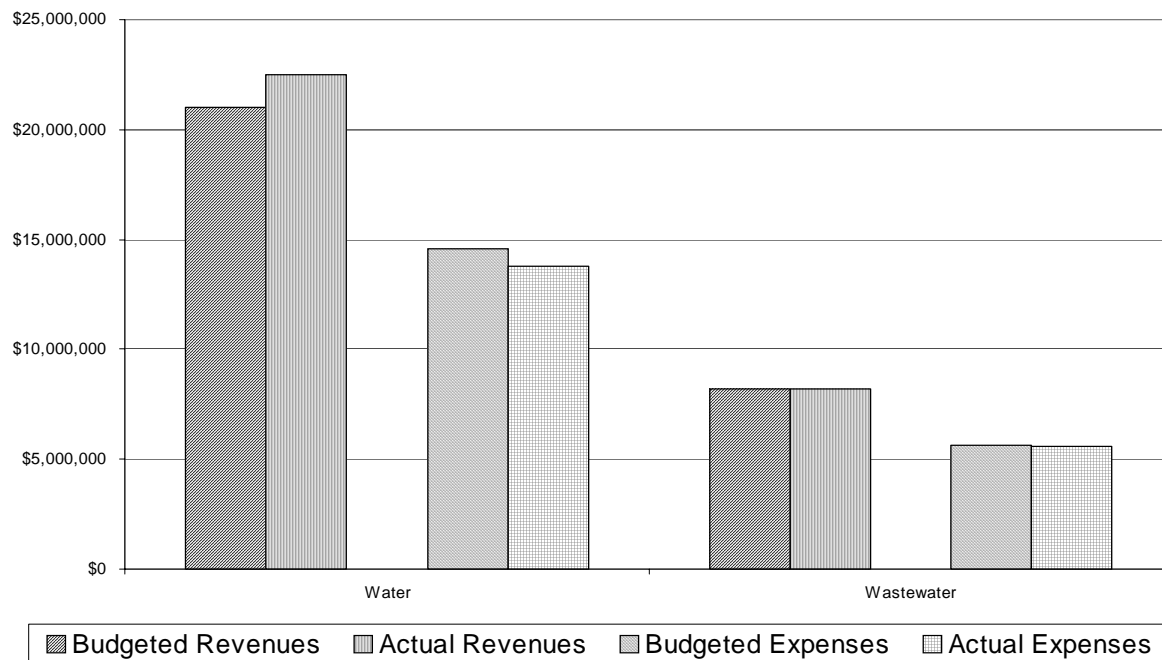
These graphs represent the segment information for the Water and Wastewater funds.

**Water and Wastewater Funds
Operating Revenue and Expenses 2006-2008**



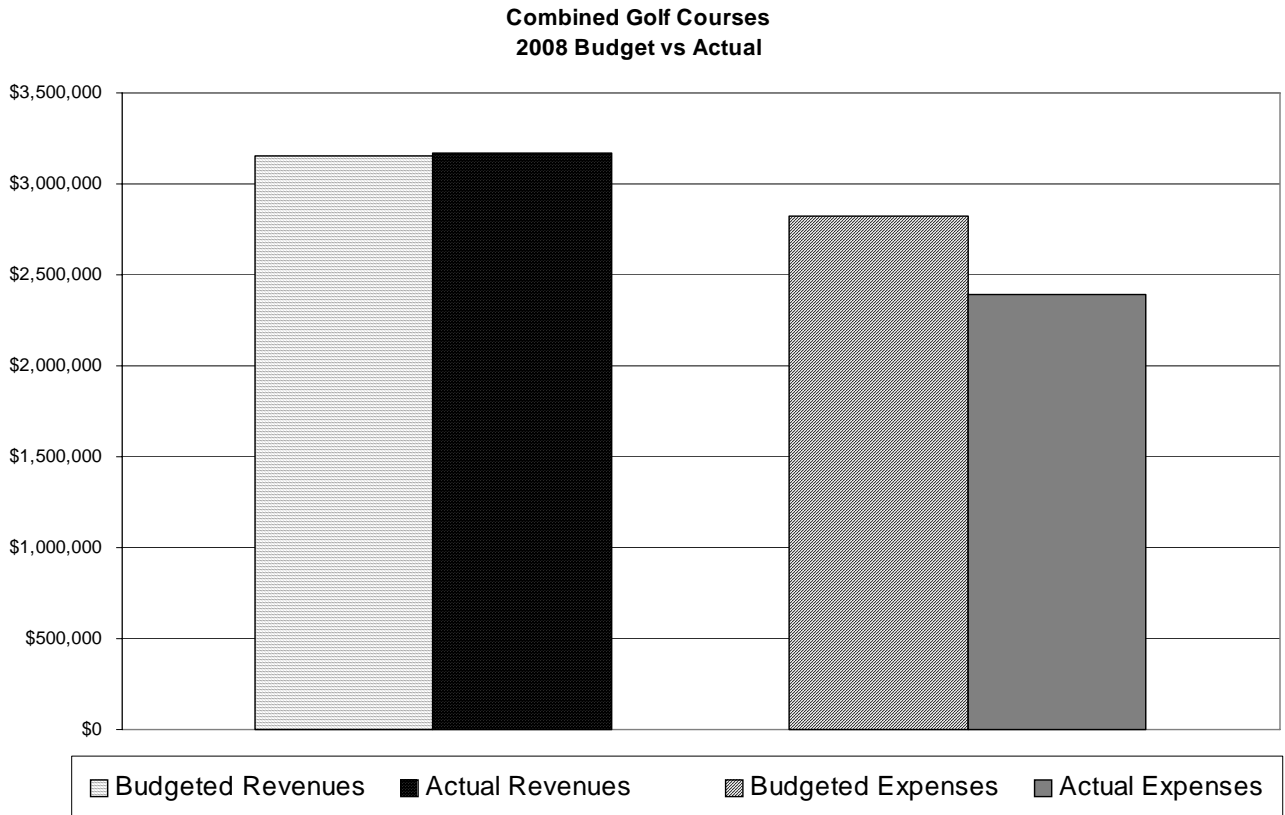
Fluctuation in water revenue between years reflects the effect of weather variations on water consumption.

**Water and Wastewater Funds
2008 Operating Budget vs Actual**

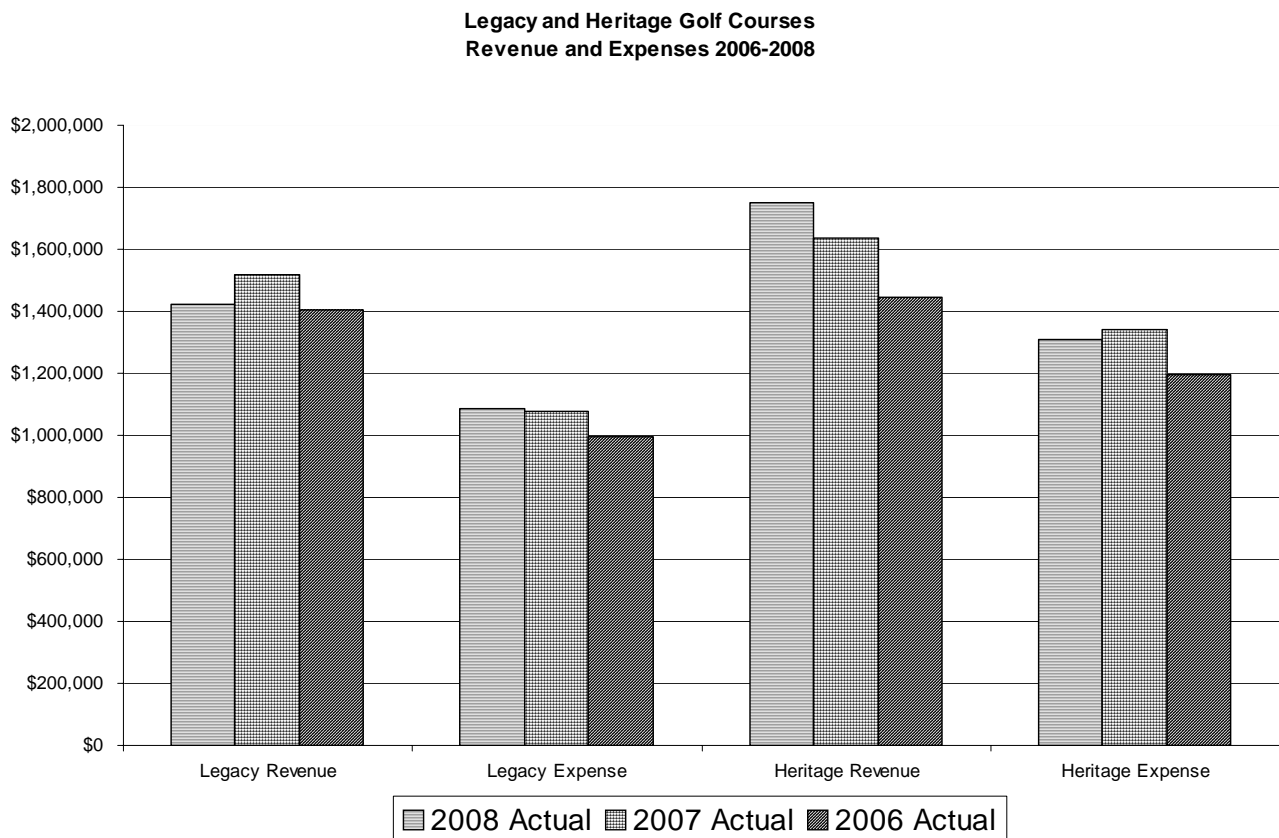


Golf Course Enterprise (Legacy and Heritage Golf Courses)

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

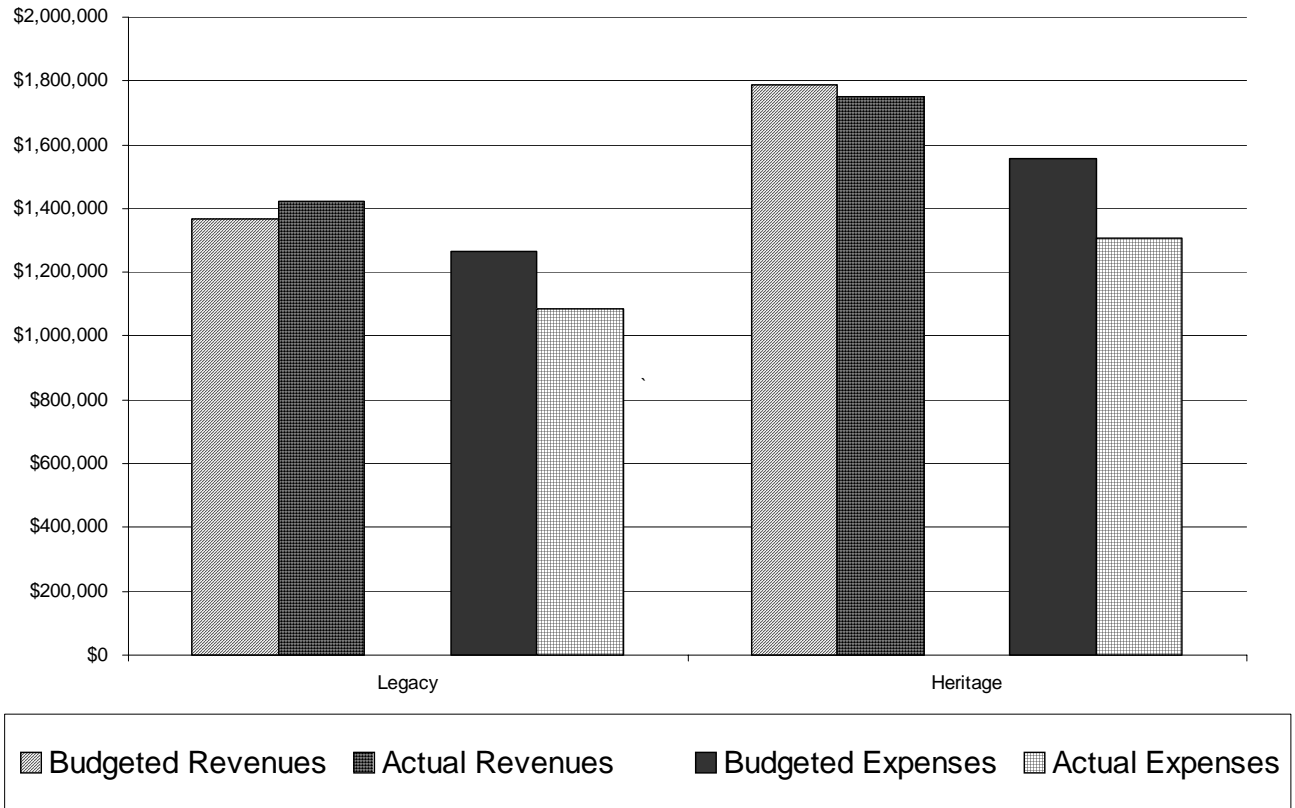


The following graphs represent the information for each of the golf courses.



A one time Other Financing Source and use of \$582,144 for a lease purchase of golf carts, was omitted from 2006 Heritage revenues and expenses for comparison purposes. One time inter-fund transfers from the General Fund for the write off of inter-fund loans in the amounts of \$521,678 and \$228,322 for Heritage and Legacy, respectively, have been omitted from 2006 revenues for comparison purposes.

**Legacy and Heritage Golf Courses
2008 Budget vs Actual**



Respectfully submitted,

J. Brent McFall, City Manager

Attachments

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description General Fund	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Revenues and Carryover						
Taxes	5,012,710	4,814,875		4,811,184	-3,691	99.9%
Licenses & Permits	1,575,000	1,141,579	(1)	1,722,537	580,958	150.9%
Intergovernmental Revenue	4,870,905	3,650,875		3,606,185	-44,690	98.8%
Recreation Services	5,689,173	4,553,655		4,685,143	131,488	102.9%
Other Services	8,577,178	6,141,239		6,177,406	36,167	100.6%
Fines	2,353,275	1,796,983		1,480,858	-316,125	82.4%
Interest Income	505,798	351,380		355,261	3,881	101.1%
Misc	1,863,505	750,443	(2)	1,051,715	301,272	140.1%
Leases	1,697,251	1,256,097		1,308,213	52,116	104.1%
Interfund Transfers	60,167,072	45,152,839		45,154,539	1,700	100.0%
Sub-total Revenues	<u>92,311,867</u>	<u>69,609,965</u>		<u>70,353,041</u>	<u>743,076</u>	<u>101.1%</u>
Carryover	4,420,614	4,420,614		4,420,614	0	100.0%
Revenues and Carryover	<u>96,732,481</u>	<u>74,030,579</u>		<u>74,773,655</u>	<u>743,076</u>	<u>101.0%</u>
Expenditures						
City Council	208,772	147,212		133,131	-14,081	90.4%
City Attorney's Office	1,105,473	842,119		816,189	-25,930	96.9%
City Manager's Office	1,191,924	885,744		797,845	-87,899	90.1%
Central Charges	28,225,813	18,572,424		17,930,194	-642,230	96.5%
General Services	5,357,775	3,917,816		3,734,407	-183,409	95.3%
Finance	1,899,205	1,440,265		1,328,967	-111,298	92.3%
Police	20,712,943	15,685,979		15,031,404	-654,575	95.8%
Fire Emergency Services	11,403,308	8,604,156		8,311,882	-292,274	96.6%
Community Development	4,723,775	3,575,346		3,425,072	-150,274	95.8%
Public Works & Utilities	7,278,255	5,254,817		4,986,502	-268,315	94.9%
Parks, Recreation & Libraries	14,625,238	10,957,754		10,857,505	-100,249	99.1%
Total Expenditures	<u>96,732,481</u>	<u>69,883,632</u>		<u>67,353,098</u>	<u>-2,530,534</u>	<u>96.4%</u>
Revenues and Carryover Over(Under) Expenditures	<u>0</u>	<u>4,146,947</u>		<u>7,420,557</u>	<u>3,273,610</u>	

(1) Reflects commercial building permit activity in the North Huron Urban Renewal Area

(2) Reflects reimbursement from the City of Thornton for 144th Avenue Bridge IGA

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Sales and Use Tax Fund						
Revenues and Carryover						
Sales Tax						
Sales Tax Returns	41,420,167	31,604,562		31,822,758	218,196	100.7%
Sales Tx Audit Revenues	684,000	568,200		511,745	-56,455	90.1%
S-T Rev. STX	<u>42,104,167</u>	<u>32,172,762</u>		<u>32,334,503</u>	<u>161,741</u>	<u>100.5%</u>
Use Tax						
Use Tax Returns	8,811,551	6,219,848		6,581,093	361,245	105.8%
Use Tax Audit Revenues	761,782	578,954		730,797	151,843	126.2%
S-T Rev. UTX	<u>9,573,333</u>	<u>6,798,802</u>		<u>7,311,890</u>	<u>513,088</u>	<u>107.5%</u>
Total STX and UTX	<u><u>51,677,500</u></u>	<u><u>38,971,564</u></u>		<u><u>39,646,393</u></u>	<u><u>674,829</u></u>	<u><u>101.7%</u></u>
Public Safety Tax						
PST Tax Returns	11,647,649	8,716,998		9,012,357	295,359	103.4%
PST Audit Revenues	126,284	91,843		248,366	156,523	270.4%
Total Rev. PST	<u>11,773,933</u>	<u>8,808,841</u>		<u>9,260,723</u>	<u>451,882</u>	<u>105.1%</u>
Total Interest Income	150,000	112,500		159,847	47,347	142.1%
Carryover	1,238,917	1,238,917		1,238,917	0	100.0%
Total Revenues and Carryover	<u>64,840,350</u>	<u>49,131,822</u>		<u>50,305,880</u>	<u>1,174,058</u>	<u>102.4%</u>
Expenditures						
Central Charges	<u>64,840,350</u>	<u>48,939,992</u>		<u>48,939,992</u>	<u>0</u>	<u>100.0%</u>
Revenues and Carryover Over(Under) Expenditures	<u><u>0</u></u>	<u><u>191,830</u></u>		<u><u>1,365,888</u></u>	<u><u>1,174,058</u></u>	

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
POST Fund						
Revenues and Carryover						
Sales & Use Tax	4,897,190	3,664,354		3,860,025	195,671	105.3%
Interest Income	60,000	45,000		36,185	-8,815	80.4%
Sale of Assets	50,000	50,000		50,000	0	100.0%
Miscellaneous	88,832	66,624		57,452	-9,172	86.2%
Interfund Transfers	100,000	100,000		100,000	0	100.0%
Sub-total Revenues	<u>5,196,022</u>	<u>3,925,978</u>		<u>4,103,662</u>	<u>177,684</u>	<u>104.5%</u>
Carryover	<u>1,234,737</u>	<u>1,234,737</u>		<u>1,234,737</u>	<u>0</u>	<u>100.0%</u>
Total Revenues and Carryover	<u>6,430,759</u>	<u>5,160,715</u>		<u>5,338,399</u>	<u>177,684</u>	<u>103.4%</u>
Expenditures						
Central Charges	6,091,667	4,429,926		3,961,421	-468,505	89.4%
Park Services	339,092	225,057		225,380	323	100.1%
	<u>6,430,759</u>	<u>4,654,983</u>		<u>4,186,801</u>	<u>-468,182</u>	<u>89.9%</u>
Over(Under) Expenditures	<u>0</u>	<u>505,732</u>		<u>1,151,598</u>	<u>645,866</u>	

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water and Wastewater Fund-Combined						
Operating Revenues						
License & Permits	70,000	52,500	(1)	73,010	20,510	139.1%
Intergovernmental Revenue	50,000	3,975		3,975	0	100.0%
Rates and Charges	37,661,877	28,963,996		30,395,965	1,431,969	104.9%
Miscellaneous	311,414	233,561		237,901	4,340	101.9%
Total Operating Revenues	<u>38,093,291</u>	<u>29,254,032</u>		<u>30,710,851</u>	<u>1,456,819</u>	<u>105.0%</u>
Operating Expenses						
Central Charges	5,735,227	4,301,420		4,215,727	(85,693)	98.0%
Finance	649,035	462,762		435,990	(26,772)	94.2%
Public Works & Utilities	19,698,959	13,438,179		12,814,276	(623,903)	95.4%
Information Technology	2,727,474	1,977,419		1,882,302	(95,117)	95.2%
Total Operating Expenses	<u>28,810,695</u>	<u>20,179,780</u>		<u>19,348,295</u>	<u>(831,485)</u>	<u>95.9%</u>
Operating Income (Loss)	<u>9,282,596</u>	<u>9,074,252</u>		<u>11,362,556</u>	<u>2,288,304</u>	
Other Revenue and Expenses						
Tap Fees	9,925,000	7,341,125	(1)	8,628,640	1,287,515	117.5%
Interest Income	1,550,000	1,162,500		1,256,654	94,154	108.1%
Interfund Transfers	10,160,069	8,554,800		8,554,800	0	100.0%
Sale of Assets	1,157,901	1,157,901		1,157,902	1	100.0%
Carryover	2,632,317	2,632,317		2,632,317	0	100.0%
Debt Service	(6,308,662)	(2,516,868)		(2,516,868)	0	100.0%
Reserve Transfer	(3,100,228)	(3,100,228)		(3,100,228)	0	100.0%
Total Other Revenue (Expenses)	<u>16,016,397</u>	<u>15,231,547</u>		<u>16,613,217</u>	<u>1,381,670</u>	<u>109.1%</u>
Increase (Decrease) in Net Assets	<u>25,298,993</u>	<u>24,305,799</u>	(2)	<u>27,975,773</u>	<u>3,669,974</u>	

(1) Reflects significant development activity in the North Huron Urban Renewal Area

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

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Water Fund						
Operating Revenues						
License & Permits	70,000	52,500	(1)	73,010	20,510	139.1%
Intergovernmental Revenue	50,000	3,975		3,975	0	100.0%
Rates and Charges	26,597,850	20,758,587		22,194,631	1,436,044	106.9%
Miscellaneous	301,414	226,061		237,888	11,827	105.2%
Total Operating Revenues	<u>27,019,264</u>	<u>21,041,123</u>		<u>22,509,504</u>	<u>1,468,381</u>	<u>107.0%</u>
Operating Expenses						
Central Charges	3,997,052	2,997,789		2,963,748	(34,041)	98.9%
Finance	649,035	462,762		435,990	(26,772)	94.2%
Public Works & Utilities	12,920,063	9,116,970		8,477,238	(639,732)	93.0%
Information Technology	2,727,474	1,977,419		1,882,302	(95,117)	95.2%
Total Operating Expenses	<u>20,293,624</u>	<u>14,554,940</u>		<u>13,759,278</u>	<u>(795,662)</u>	<u>94.5%</u>
Operating Income (Loss)	<u>6,725,640</u>	<u>6,486,183</u>		<u>8,750,226</u>	<u>2,264,043</u>	
Other Revenue and Expenses						
Tap Fees	7,500,000	5,498,500	(1)	6,564,536	1,066,036	119.4%
Interest Income	900,000	675,000		879,771	204,771	130.3%
Interfund Transfers	8,887,770	7,600,576		7,600,576	0	100.0%
Sale of Assets	1,157,901	1,157,901		1,157,902	1	100.0%
Carryover	1,616,781	1,616,781		1,616,781	0	100.0%
Debt Service	(4,801,939)	(1,907,074)		(1,907,074)	0	100.0%
Reserve Transfer	(2,712,160)	(2,712,160)		(2,712,160)	0	100.0%
Total Other Revenues (Expenses)	<u>12,548,353</u>	<u>11,929,524</u>		<u>13,200,332</u>	<u>1,270,808</u>	<u>110.7%</u>
Increase (Decrease) in Net Assets	<u>19,273,993</u>	<u>18,415,707</u>	(2)	<u>21,950,558</u>	<u>3,534,851</u>	

(1) Reflects significant development activity in the North Huron Urban Renewal Area

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

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Wastewater Fund						
Operating Revenues						
Rates and Charges	11,064,027	8,205,409		8,201,334	(4,075)	100.0%
Miscellaneous	10,000	7,500		13	(7,487)	0.2%
Total Operating Revenues	<u>11,074,027</u>	<u>8,212,909</u>		<u>8,201,347</u>	<u>(11,562)</u>	<u>99.9%</u>
Operating Expenses						
Central Charges	1,738,175	1,303,631		1,251,979	(51,652)	96.0%
Public Works & Utilities	6,778,896	4,321,209		4,337,038	15,829	100.4%
Total Operating Expenses	<u>8,517,071</u>	<u>5,624,840</u>		<u>5,589,017</u>	<u>(35,823)</u>	<u>99.4%</u>
Operating Income (Loss)	<u>2,556,956</u>	<u>2,588,069</u>		<u>2,612,330</u>	<u>24,261</u>	
Other Revenue and Expenses						
Tap Fees	2,425,000	1,842,625	(1)	2,064,104	221,479	112.0%
Interest Income	650,000	487,500		376,883	(110,617)	77.3%
Interfund Transfers	1,272,299	954,224		954,224	0	100.0%
Carryover	1,015,536	1,015,536		1,015,536	0	100.0%
Debt Service	(1,506,723)	(609,794)		(609,794)	0	100.0%
Reserver Transfer	(388,068)	(388,068)		(388,068)	0	100.0%
Total Other Revenues (Expenses)	<u>3,468,044</u>	<u>3,302,023</u>		<u>3,412,885</u>	<u>110,862</u>	<u>103.4%</u>
Increase (Decrease) in Net Assets	<u>6,025,000</u>	<u>5,890,092</u>	(2)	<u>6,025,215</u>	<u>135,123</u>	

(1) Reflects signifiant development activity in the North Huron Urban Renewal Area

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

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Storm Drainage Fund						
Revenues and Carryover						
Charges for Services	1,840,000	1,380,000		1,463,958	83,958	106.1%
Interest Income	0	0		60,530	60,530	N/A
Miscellaneous	4,000	3,000		5,429	2,429	181.0%
Sub-total Storm Drainage Revenues	<u>1,844,000</u>	<u>1,383,000</u>		<u>1,529,917</u>	<u>146,917</u>	<u>110.6%</u>
Carryover	<u>258,636</u>	<u>258,636</u>		<u>258,636</u>	<u>0</u>	<u>100.0%</u>
Total Revenues and Carryover	<u>2,102,636</u>	<u>1,641,636</u>		<u>1,788,553</u>	<u>146,917</u>	<u>108.9%</u>
Expenses						
General Services	100,860	53,658		45,075	(8,583)	84.0%
Community Development	123,740	92,310		87,505	(4,805)	94.8%
Park Services	178,000	133,500		148,201	14,701	111.0%
Public Works & Utilities	360,400	244,351		189,461	(54,890)	77.5%
Total Expenses	<u>763,000</u>	<u>523,819</u>		<u>470,242</u>	<u>(53,577)</u>	<u>89.8%</u>
Increase (Decrease) in Net Assets	<u>1,339,636</u>	<u>1,117,817</u>	(1)	<u>1,318,311</u>	<u>200,494</u>	

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

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Golf Courses Combined						
Revenues						
Carryover	0	0		0	0	N/A
Charges for Services	3,226,101	2,805,820		2,763,730	(42,090)	98.5%
Interest Income	0	0		18,774	18,774	N/A
Interfund Transfers	467,150	350,363		390,334	39,971	111.4%
Total Revenues	<u>3,693,251</u>	<u>3,156,183</u>		<u>3,172,838</u>	<u>16,655</u>	<u>100.5%</u>
Expenses						
Central Charges	210,500	156,695		143,425	(13,270)	91.5%
Recreation Facilities	2,982,436	2,520,820		2,106,708	(414,112)	83.6%
Total Expenses	<u>3,192,936</u>	<u>2,677,515</u>		<u>2,250,133</u>	<u>(427,382)</u>	<u>84.0%</u>
Operating Income (Loss)	500,315	478,668		922,705	444,037	
Debt Service Expense	<u>500,315</u>	<u>142,658</u>		<u>142,658</u>	<u>0</u>	<u>100.0%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>336,010</u>		<u>780,047</u>	<u>444,037</u>	

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Pro rated Budget	% Budget
Legacy Ridge Fund						
Revenues						
Carryover	(117,732)	(88,299)		(88,299)	0	100.0%
Charges for Services	1,661,452	1,457,093		1,492,577	35,484	102.4%
Interest Income	0	0		18,774	18,774	N/A
Total Revenues	<u>1,543,720</u>	<u>1,368,794</u>		<u>1,423,052</u>	<u>54,258</u>	<u>104.0%</u>
Expenses						
Central Charges	107,700	79,698		70,133	(9,565)	88.0%
Recreation Facilities	1,436,020	1,184,717		1,015,309	(169,408)	85.7%
Total Expenses	<u>1,543,720</u>	<u>1,264,415</u>		<u>1,085,442</u>	<u>(178,973)</u>	<u>85.8%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>104,379</u>		<u>337,610</u>	<u>233,231</u>	

**City of Westminster
Financial Report
For Nine Months Ending September 30, 2008**

Description	Budget	Pro-rated for Seasonal Flows	Notes	Actual	(Under) Over Budget	% Budget
Heritage at Westmoor Fund						
Revenues						
Carryover	117,732	88,299		88,299	0	100.0%
Charges for Services	1,564,649	1,348,727		1,271,153	(77,574)	94.2%
Interfund Transfers	467,150	350,363		390,334	39,971	111.4%
Total Revenues	<u>2,149,531</u>	<u>1,787,389</u>		<u>1,749,786</u>	<u>(37,603)</u>	<u>97.9%</u>
Expenses						
Central Charges	102,800	76,997		73,292	(3,705)	95.2%
Recreation Facilities	1,546,416	1,336,103		1,091,399	(244,704)	81.7%
Sub-Total Expenses	<u>1,649,216</u>	<u>1,413,100</u>		<u>1,164,691</u>	<u>(248,409)</u>	<u>82.4%</u>
Operating Income	500,315	374,289		585,095	210,806	
Debt Service Expense	<u>500,315</u>	<u>142,658</u>		<u>142,658</u>	<u>0</u>	<u>100.0%</u>
Increase (Decrease) in Net Assets	<u>0</u>	<u>231,632</u>		<u>442,438</u>	<u>210,806</u>	

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE SEPTEMBER 2008

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	General Sales	Last Year General Use	Total Sales	Use Total	Change
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER	363,876	1,270	365,145	409,480	2,338	411,817	-11	-46
WALMART 92ND								
NORTHWEST PLAZA SW CORNER 92 & HARLAN	357,678	1,762	359,439	171,216	1,027	172,244	109	71
COSTCO								
THE ORCHARD 144TH & I-25	263,995	29,887	293,882	74,988	224	75,211	252	13261
JC PENNEY/MACY'S								
WESTMINSTER MALL 88TH & SHERIDAN	253,102	1,493	254,596	236,338	2,446	238,784	7	-39
4 DEPARTMENT STORES								
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25	237,666	704	238,370	186,841	539	187,380	27	31
WALMART 136TH								
SHOPS AT WALNUT CREEK 104TH & REED	201,470	1,414	202,884	174,428	5,730	180,159	16	-75
TARGET								
BROOKHILL I & II N SIDE 88TH OTIS TO WADS	177,234	2,301	179,535	185,020	940	185,960	-4	145
HOME DEPOT								
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN	178,166	230	178,396	131	0	131	36092	***** 36268
WALMART 72ND								
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN	175,057	1,672	176,729	212,882	736	213,618	-18	127
CIRCUIT CITY								
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD	114,610	14,813	129,423	132,978	19,159	152,137	-14	-23
SHANE/AMC								
SHERIDAN CROSSING SE CORNER 120TH & SHER	121,973	4,540	126,513	114,599	1,208	115,807	6	276
KOHL'S								
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL	104,493	209	104,702	92,124	404	92,528	13	-48
KING SOOPERS								
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN	84,534	154	84,688	81,575	135	81,710	4	14
TOYS 'R US								
WILLOW RUN 128TH & ZUNI	79,564	470	80,034	49,284	222	49,506	61	112
SAFEWAY								
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH	77,420	1,016	78,436	52,182	348	52,530	48	192

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE SEPTEMBER 2008

Center Location Major Tenant	Current Month General Sales	Current Month General Use	Total	General Sales	Last Year General Use	Total Sales	Use Total	%Change
SAFEWAY	69,760	489	70,249	55,600	306	55,907	25 59	26
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	66,844	1,916	68,760	62,070	591	62,661	8 224	10
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	62,563	805	63,367	64,751	297	65,048	-3 171	-3
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	57,965	46	58,011	65,767	178	65,944	-12 -74	-12
WESTMINSTER CROSSING 136TH & I-25 LOWE'S	5,639	37,691	43,330	6,946	18,461	25,407	-19 104	71
LUCENT/KAISER CORRIDOR 112-120 HURON - FEDERAL LUCENT TECHNOLOGY	41,674	316	41,990	41,292	289	41,581	1 9	1
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	36,389	533	36,922	21,594	159	21,753	69 236	70
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	30,961	93	31,054	28,852	0	28,852	7 *****	8
GREEN ACRES NORTH SIDE 112TH SHER-FED CONOCO/FRCC	26,839	321	27,160	35,707	544	36,251	-25 -41	-25
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	25,550	109	25,659	25,503	70	25,574	0 55	0
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS	3,215,023	104,250	3,319,273	2,582,149	56,350	2,638,500	25 85	26

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE SEPTEMBER 2008

Center Location Major Tenant	YTD 2008 General Sales	YTD 2008 General Use	Total	YTD 2007 General Sales	YTD 2007 General Use	Total	%Change Sales	%Change Use Total
WESTFIELD SHOPPING CENTER NW CORNER 92ND & SHER WALMART 92ND	3,594,541	21,182	3,615,723	3,770,998	19,006	3,790,004	-5	11 -5
WESTMINSTER MALL 88TH & SHERIDAN 4 DEPARTMENT STORES	2,590,681	53,411	2,644,091	3,205,295	32,242	3,237,537	-19	66 -18
INTERCHANGE BUSINESS CENTER SW CORNER 136TH & I-25 WALMART 136TH	1,958,262	81,937	2,040,199	1,259,108	51,064	1,310,172	56	60 56
SHOPS AT WALNUT CREEK 104TH & REED TARGET	1,931,793	14,771	1,946,563	1,646,602	21,142	1,667,744	17	-30 17
NORTHWEST PLAZA SW CORNER 92 & HARLAN COSTCO	1,892,245	27,480	1,919,725	1,900,795	9,977	1,910,772	0	175 0
CITY CENTER MARKETPLACE NE CORNER 92ND & SHERIDAN CIRCUIT CITY	1,868,323	20,809	1,889,131	2,212,679	14,178	2,226,857	-16	47 -15
THE ORCHARD 144TH & I-25 JC PENNEY/MACY'S	1,854,245	278,363	2,132,608	1,033,502	11,581	1,045,083	79	2304 104
BROOKHILL I & II N SIDE 88TH OTIS TO WADS HOME DEPOT	1,714,827	19,446	1,734,273	1,694,914	15,039	1,709,954	1	29 1
PROMENADE SOUTH/NORTH S/N SIDES OF CHURCH RANCH BLVD SHANE/AMC	1,184,927	255,772	1,440,699	1,592,405	145,691	1,738,096	-26	76 -17
SHERIDAN CROSSING SE CORNER 120TH & SHER KOHL'S	1,100,520	29,756	1,130,277	1,173,148	11,715	1,184,863	-6	154 -5
NORTH PARK PLAZA SW CORNER 104TH & FEDERAL KING SOOPERS	1,000,823	5,033	1,005,855	898,941	13,176	912,117	11	-62 10
VILLAGE AT THE MALL S SIDE 88TH DEPEW-HARLAN TOYS 'R US	922,177	4,767	926,944	899,643	2,714	902,357	3	76 3
SHOENBERG CENTER SW CORNER 72ND & SHERIDAN WALMART 72ND	691,544	5,163	696,707	4,197	37	4,234 16378	13784	16355
STANDLEY SHORES CENTER SW CORNER 100TH & WADS KING SOOPERS	647,639	8,121	655,760	612,928	2,416	615,344	6	236 7
WESTMINSTER CROSSING 136TH & I-25	578,057	2,467	580,524	621,953	5,984	627,937	-7	-59 -8

CITY OF WESTMINSTER
 GENERAL RECEIPTS BY CENTER
 MONTH and YEAR-TO-DATE SEPTEMBER 2008

Center Location Major Tenant	YTD 2008 General Sales	YTD 2008 General Use	Total	YTD 2007 General Sales	YTD 2007 General Use	Total Sales	Use Total	%Change
LOWE'S	553,001	3,390	556,390	550,727	5,323	556,050	0	-36
ROCKY MOUNTAIN PLAZA SW CORNER 88TH & SHER GUITAR STORE	502,138	27,131	529,269	481,164	2,178	483,342	4	1146
WESTMINSTER PLAZA FEDERAL-IRVING 72ND-74TH SAFEWAY	484,072	2,213	486,284	486,417	2,225	488,642	0	-1
STANDLEY LAKE MARKETPLACE NE CORNER 99TH & WADSWORTH SAFEWAY	457,397	3,278	460,675	466,943	1,776	468,719	-2	85
WILLOW RUN 128TH & ZUNI SAFEWAY	384,581	10,022	394,602	363,245	14,274	377,519	6	-30
VILLAGE AT PARK CENTRE NW CORNER 120TH & HURON CB & POTTS	267,087	4,557	271,644	270,018	15,978	285,996	-1	-71
ELWAY/DOUGLAS CORRIDOR NE CORNER 104TH & FED ELWAY MOTORS	230,673	5,408	236,082	192,543	862	193,405	20	528
SUMMIT SQUARE NE CORNER 84TH & FED SAFEWAY	229,672	4,549	234,222	226,719	7,838	234,557	1	-42
STANDLEY PLAZA SW CORNER 88TH & WADS WALGREENS	224,751	6,162	230,913	138,258	1,493	139,752	63	313
BROOKHILL IV E SIDE WADS 90TH-92ND HANCOCK FABRICS	224,276	20,808	245,083	291,662	5,825	297,487	-23	257
NORTHVIEW 92ND AVE YATES TO SHERIDAN SALTGRASS								
	27,088,252	915,994	28,004,246	25,994,804	413,735	26,408,539	4	121



Agenda Item 8 B

WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Quarterly Insurance Claim Report: July - September 2008

Prepared By: Martee Erichson, Risk Management Officer

Recommended City Council Action

Accept the Third Quarter 2008 Insurance Claim 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 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 2008 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 2008, Staff has noted the following summary information:

- Ten of the 15 claims reported in the third quarter of 2008 are closed at this time.
- Total claims for the quarter and year-to-date breakdown by department as follows:

Department	3rd Qtr 2008			YTD
	Total Claims	Open	Closed	Total
CAO	1	1	0	1
CD	1	0	1	3
Fire	1	0	1	2
Police	3	2	1	5
PR&L	3	0	3	7
PWU - Streets	3	1	2	10
PWU - Utilities	3	1	2	11
TOTAL	15	5	10	39

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

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

**Quarterly Insurance Report
July - September 2008**

Claim Number	Loss Date	Dept.	Claimant	Address	Claim Description	Payment	Status	Notes
2008-213	7/2/2008	PWU - Util	John Hunter	7433 Benton St., Westminster CO 80031	Claimant alleges that he was injured when he fell into a meter pit at his home.	\$0.00	Open	CIRSA Investigating
2008-217	7/7/2008	PWU - Util	Joanna Zoll	11822 Eaton Way, Westminster CO 80031	A Utilities Division employee driving a City vehicle rear-ended the claimant's vehicle.	\$1,614.34	Closed	
2008-220	7/9/2008	PD	James Landis	469 S Lowell Blvd., Denver CO 80219	While conducting weekly canine training at a local business, the police officer handler took the dog out for a break and the dog bit the claimant who had stopped to drop an item into an after hours drop box.	\$0.00	Open	CIRSA Investigating
2008-238	7/11/2008	PWU - Util	Gretchen Skipworth	13274 Umatilla St., Westminster CO 80030	Claimant's water meter was shut off by Utilities staff to perform work and when it was turned back on, it was not turned on all the way. The ensuing low water volume caused a leak that flooded the claimant's basement.	\$185.00	Closed	
2008-249	7/15/2008	PRL	Litchfield Church Ranch LLC	7577 W. 103rd Ave., Westminster CO 80021	A water line break at Sensory Park caused a higher than normal water bill for the local business park where the water for the park drinking fountain comes from.	\$0.00	Closed	Parks Division handling with irrigation contractor
2008-243	7/23/2008	PWU - Streets	Debbie Howe	9315 Field Ln., Westminster CO 80021	Claimant alleges a rock came off a City dump truck and broke her windshield while she was driving behind the truck.	\$234.90	Closed	
2008-247	7/25/2008	PWU - Streets	Cherrlyn Friedrichsen	180 S Yukon St., Lakewood CO 80226	Claimant alleges a rock came off a City gravel truck and broke her windshield while she was driving behind the truck.	\$305.37	Closed	
2008-256	7/26/2008	PRL	Sharon Kessler	9008 Fontaine, Federal Heights CO 80260	Claimant alleges injuries from slipping and falling on the tile floor at the pool at City Park Recreation Center.	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2008-272	7/30/2008	Fire	Angela Lovato	7600 Acoma Ct., Denver CO 80221	Fire Engineer driving a City fire engine through a parking lot, failed to notice a parked car and hit the right front bumper of the claimant's parked vehicle.	\$1,710.11	Closed	
2008-305	8/31/2008	PD	Lorraine & Ederlyn Aceron	5734 118th Pl., Westminster CO 80021	Animal management staff took the claimant's dog into custody for an investigation of animal cruelty and while in City custody, the dog escaped and was hit by a car and killed.	\$0.00	Open	CIRSA Investigating

CLAIMS SUBMITTED IN 3rd QUARTER WITH OCCURRENCE DATES PRIOR TO 3rd QUARTER 2008:								
2008-248	10/10/2006	CAO/PD	Denise Caldarella	c/o The Salazar Consultant Group, 3842 E 127th Lane, Thornton CO 80241	Claimant alleges her constitutional rights were violated when she was arrested and prosecuted for violating a protection order.	\$0.00	Open	CIRSA Investigating
2008-219	4/25/2008	CD	Nicole Leo	711 Yakima Ct., Lochbuie CO 80603	Claimant alleges she suffered injuries and damages while working as a flagman in a construction zone in the City when a vehicle operated by a passing motorist struck her.	\$0.00	Closed	CIRSA has tendered the claim to the contractor who was responsible for the construction site and by contract agreed to indemnify the City.
2008-299	5/24/2008	PRL	Juanita Rodriguez	1446 Elmwood Ln., Denver CO 80221	Claimant alleges she suffered injuries and damages when she fell exiting the pool at the Swim & Fitness Center	\$0.00	Closed	Claim denied based on Colorado Governmental Immunity Act and investigation found no evidence of negligence on the part of the City.
2008-327	5/26/2008	PWU - Streets	Wesley Collins	5555 N Federal Blvd #27, Denver CO 80221	Claimant alleges injuries while riding his bike and attempting to go up onto a sidewalk via a driveway	\$0.00	Open	CIRSA Investigating
2008-212	6/27/2008	PD	Odean/ Denise Vardaman	365 Mulberry Cr., Broomfield CO 80020	Police Officer driving his patrol car was attempting a u-turn to stop a speeding vehicle and turned into the rear quarter panel of claimant's vehicle	\$3,061.18	Closed	
GRAND TOTAL						\$7,110.90		



Agenda Item 8 C

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Date Change for First City Council Meeting in November

Prepared By: Linda Yeager, City Clerk

Recommended City Council Action

Change the date of the regularly scheduled City Council meeting of November 10 to November 17.

Summary Statement

- City Council normally conducts regular meetings on the second and fourth Mondays of each month. On the second Monday of November, many members of City Council will be out of town attending the National League of Cities Annual Conference.
- When regular Council meeting dates have conflicted with the Council's ability to attend important conferences in the past, the meeting date has been changed. Staff recommends that the November 10, 2008, regularly scheduled meeting be rescheduled and held on November 17, 2008.
- If approved, City Council will conduct only one study session during November and that will be on November 3. Regular City Council meetings will be held on November 17 and 24.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

None identified

Alternative

Council could decide to conduct the first regular meeting of November on a different day of the week than Monday. Staff does not recommend this alternative, as the public is accustomed to Monday night meetings.

Background Information

Occasionally, conflicts arise when the dates of regularly scheduled Council meetings and the dates of holidays or other important events fall on the same day, and the City Council meeting date is changed. This year, the National League of Cities Annual Conference will be in progress on the second Monday of November, and members of the City Council plan to attend.

The public is aware that regular Council meetings and study sessions are held on Mondays, and it makes sense to reschedule meetings to a different Monday of the month when conflicts arise. To accommodate Council's participation in the referenced conference, Staff recommends that the date of the first regular meeting in November be changed from November 10 to November 17.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



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 2009 with an effective date of December 1, 2008, and automatic renewal for 2010 unless terminated by City Council.

Summary Statement

- City Council is requested to approve a revised employment agreement with Brent McFall for services as City Manager beginning December 1, 2008. The agreement will be automatically renewed for 2010 unless it is terminated by City Council no later than October 31, 2009.
- Under the proposed revised agreement, Mr. McFall's combined salary and deferred compensation will be \$209,175, which reflects a five percent increase over his annual compensation for 2008. The agreement also provides for a one-time bonus of \$10,000 payable in 2008 and an increase in his monthly car allowance to \$750.
- The proposed agreement with Mr. McFall is similar to the current employment agreement with the exceptions of the total allocated for compensation and bonus, the change in his car allowance and the change in the effective date for the contract.

Expenditure Required: 2008 - \$10,000
2009 - \$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 Council amend its present employment agreement with J. Brent McFall for his services as City Manager to incorporate modifications to his compensation package for the balance of 2008 and 2009?

Alternative

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

Background Information:

J. Brent McFall has been employed as City Manager since May 21, 2001. His previous experience includes holding city manager or city administrator positions in Merriam, Kansas; Emporia, Kansas; Federal Way, Washington; and Kent, Washington. 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 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 nearly thirty years as chief executive in five cities.

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 the grand opening of the Orchard Town Center; the announcement of a Centura Health Care Systems medical campus project at 144th Avenue and I-25; the redevelopment of the Shoenberg area; the grand opening of Walmart at 72nd Avenue and Sheridan Boulevard; the completion of Big Dry Creek Park; the completion and dedication of the Armed Forces Tribute Garden; and the Parks, Recreation and Libraries Department's recognition as the National Recreation and Parks Association Gold Medal Award for the third time. Other accomplishments included a reduction in the sales tax pledge for WEDA bonds for the Shops at Walnut Creek that will result in \$1.4 million savings with the City's Sales and Use Tax Fund over the life of the bonds; the refinancing of Street Improvement Bonds saving the City \$515,000; the renegotiation of the Federal Heights wholesale water contract that will increase City utility revenue by more than \$200,000 per year; the elimination of a revenue sharing agreement with Broomfield that saves the City more than \$220,000, annually; and the sale of \$20 million in Parks, Open Space and Trails bonds.

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 the past seven years, the City continues to be a leader on many fronts and enjoys an excellent reputation for the quality of its facilities and programs. Moreover, the biennial citizen survey conducted earlier this year once again showed overall high levels of citizen satisfaction with City services.

City Council met with Mr. McFall on September 22 to review his job performance during the past twelve months and determine his compensation for the coming year. The proposed employment agreement with Mr. McFall incorporates the changes requested by Council as a result of that meeting. It is similar to the current agreement that Council approved in October 2007 with exception of the effective dates of the agreement and the level of compensation.

The revised agreement will provide for a combined salary and deferred compensation of \$209,175, including City-paid deferred compensation. This amount is \$9,961 or 5% higher than his total salary and deferred compensation for 2008. 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. The Council has also indicated that they wish to provide Mr. McFall with a lump sum bonus of \$10,000 to be included in this agreement and paid in 2008 in recognition of Mr. McFall's significant accomplishments during the past twelve months.

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 2008 and 2009 Budgets to provide for the compensation described in the agreement.

Respectfully submitted,

Matthew J. Lutkus
Deputy City Manager

Attachment

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of December 2008, 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 2009 and 2010. EMPLOYEE agrees to remain in the exclusive employ of CITY and EMPLOYEE will serve as City Manager from January 1, 2009 through December 31, 2010. 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, 2009, but shall be automatically renewed through December 31, 2010, unless terminated on or before October 31, 2009.

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, 2009. 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. BONUS:

In recognition of his job performance during 2008, the EMPLOYEE shall be given a \$10,000 bonus payable no later than December 12, 2008.

SECTION 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 contract, said contract 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 12. 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 13. 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 December 1, 2008, and if automatically renewed shall be in effect through December 31, 2010.
- 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 27th day of October, 2008.

Nancy McNally, Mayor

ATTEST:

City Clerk

J. Brent McFall

APPROVED AS TO FORM:

City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



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 2009 with an effective date of December 1, 2008, and an automatic renewal for 2010 unless terminated by City Council.

Summary Statement

- City Council is requested to approve a revised Employment Agreement with Martin McCullough for services as City Attorney beginning December 1, 2008. The Agreement will be automatically renewed for 2010 unless it is terminated by City Council no later than October 31, 2009.
- The changes in his employment agreement reflect Council's positive appraisal of Mr. McCullough's work performance during 2008.
- Under the proposed revised Agreement, Mr. McCullough's compensation will be \$165,948, which represents a 5 percent increase over his annual compensation for 2008. Included in this compensation will be Mr. McCullough's base salary and an amount designated by him as a lump sum payment into his deferred compensation account. The proposed agreement also provides for a bonus of \$7,500 payable in 2008 and the increase in Mr. McCullough's car allowance to \$500 per month. Mr. McCullough will also receive a fringe benefits package that includes benefits currently provided to City Department Heads.
- The attached proposed agreement with Mr. McCullough is similar to the current employment agreement with the exceptions of the total allocated for base salary and deferred compensation, the addition of a bonus, an increase in the car allowance and the change in the effective dates for the contract.

Expenditure Required: 2008 - \$7,500
2009 - \$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 Council amend its present employment agreement with Martin McCullough to incorporate modifications to his compensation package for the balance of 2008 and 2009?

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 Harring. 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.

During the past twelve months, the City Attorney's Office has provided a significant amount of legal support for several key City developments/projects including: the Walmart at 72nd and Sheridan, the Shoenberg Farms commercial development, the Orchard Town Center, Metzger Farm Open Space, and the Westminster Mall Redevelopment. The Office has also been involved in numerous capital improvement projects, real estate transactions, and intergovernmental agreements and cooperative efforts. 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.

Other projects where the City Attorney's Office played a significant role during the past year include the development of regulations related to the Zebra Mussel Prevention Program, negotiating the Orchard Town Center police station agreement, negotiating several economic development agreements, renegotiating the Federal Heights water supply contract and assisting the City's Code Enforcement section in a number of key areas. The Office also represented the City in a number of lawsuits that secured favorable rulings on several sales/use tax enforcement actions and successfully appealed a significant unemployment compensation award.

The City Prosecutor's Office represented the City in 7,400 Municipal Court cases including 2,600 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, 314 domestic violence cases were filed with the Court.

City Council met with Mr. McCullough for his annual performance and salary review on October 6. The City Attorney's employment agreement includes the changes in the agreement requested by City Council as a result of that meeting. Modifications to the agreement include a 5 percent increase in salary / deferred compensation, an increase in his car allowance to \$500 per month and a bonus of \$7,500 in recognition of Mr. McCullough's outstanding performance during the past twelve months. The proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2009.

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,

J. Brent McFall
City Manager

Attachment

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of December, 2008, 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 2009 and 2010. 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, 2009 but shall be automatically renewed for 2010 unless terminated no later than October 31, 2009.

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, 2009, 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. BONUS:

In recognition of his job performance during 2008, the EMPLOYEE shall be given a \$7,500 bonus payable no later than December 12, 2008.

SECTION 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 December 1, 2008, and if automatically renewed, shall be in effect through December 31, 2010.

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 27th day of October, 2008.

ATTEST:

Nancy McNally, Mayor

City Clerk

Martin R. McCullough



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Country Club Highlands Waterline Upsizing

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

Recommended City Council Action

Authorize payment to reimburse John Laing Homes in an amount not to exceed \$89,833 for City requested upgrades to the water transmission system installed as part of the Public Improvements Agreement related to the Country Club Highlands Waterline Improvements.

Summary Statement

- The City and John Laing Homes have completed a Public Improvements Agreement for the development of Country Club Highlands.
- Part of the improvements addressed in the Agreement involves the relocation of an existing 12-inch water transmission main necessitated by the revised grading required for the development.
- The City identified the need to increase the size of the transmission line in this area to 24-inch in order to provide a more reliable water supply to the service area north of 120th Avenue. Public Works and Utilities staff determined that the desired alignment for the 24-inch main coincides with the 12-inch alignment and that it would be most economical to have the developer install the larger line at this time. This same approach was taken to upsize a segment of this waterline in Filing No. 1 in 2006.
- The developer presented a cost proposal in the amount of \$89,833 to extend and upsize the waterline from the limits of the first filing through the development to Federal Parkway. Staff reviewed these costs and found them to be both reasonable and competitive for this work.
- Adequate funding for this work was previously appropriated by City Council as part of the 2007 Utility Fund Capital Project Budget.

Expenditure Required: \$89,833

Source of Funds: Utility Fund Capital Improvement Program

Policy Issue

Should the City reimburse the developer of Country Club Highlands for completing improvements to the City's water transmission system as agreed to in the Public Improvements Agreement?

Alternative

The City could choose to not reimburse the developer for these costs, but this would not fulfill the terms of the Public Improvements Agreement.

Background Information

John Laing Homes (developer) received planning approval from the City for the Country Club Highlands Filing No. 1 and 3 located in the vicinity of Zuni Street and 120th Avenue (see attached location map). The City and the developer have executed a Public Improvements Agreement that addresses, among other issues, the installation of utility infrastructure for dedication to the City. As required by the site development plan, a portion of the site must be regraded such that an existing 12-inch waterline must be removed and reinstalled at a lower grade at no cost to the City.

The City identified the need to increase the size of the transmission main in this area to 24-inch in order to provide more reliable water supply to the service area north of 120th Avenue. Department of Public Works and Utilities staff reviewed the proposed utility plan for the development and determined that the alignment for the recommended 24-inch waterline coincided with the alignment of the 12-inch waterline that was intended to be replaced by the developer. Staff recommended that the developer install the 24-inch waterline in lieu of the 12-inch waterline at this time in order to reduce the overall costs to the City. By accomplishing the installation of the 24-inch waterline in this manner, the City only pays for the incremental cost difference between the 12-inch and 24-inch waterlines, and the newly constructed Zuni Street would not be excavated to install the line at a later date.

The developer has presented the costs to upsize the 12-inch waterline and related work to a 24-inch line, for a total cost of \$89,833. Staff has reviewed the detailed breakdowns of these costs and has found them to be both reasonable and competitive for this work. City Council previously appropriated \$200,000 for this work as part of the 2007 Utility Fund Capital Project Budget.

The long-term plan for providing increased volumes of water to the northern part of the City will include extending this new 24-inch waterline from Federal Boulevard and Zuni Street to approximately 128th Avenue and Zuni Street. By adding in these additional water lines north of 120th Avenue, the City will be providing redundant potable water to existing residential and new commercial developments. Currently the primary water transmission system is fed via Huron Street north to the City limits.

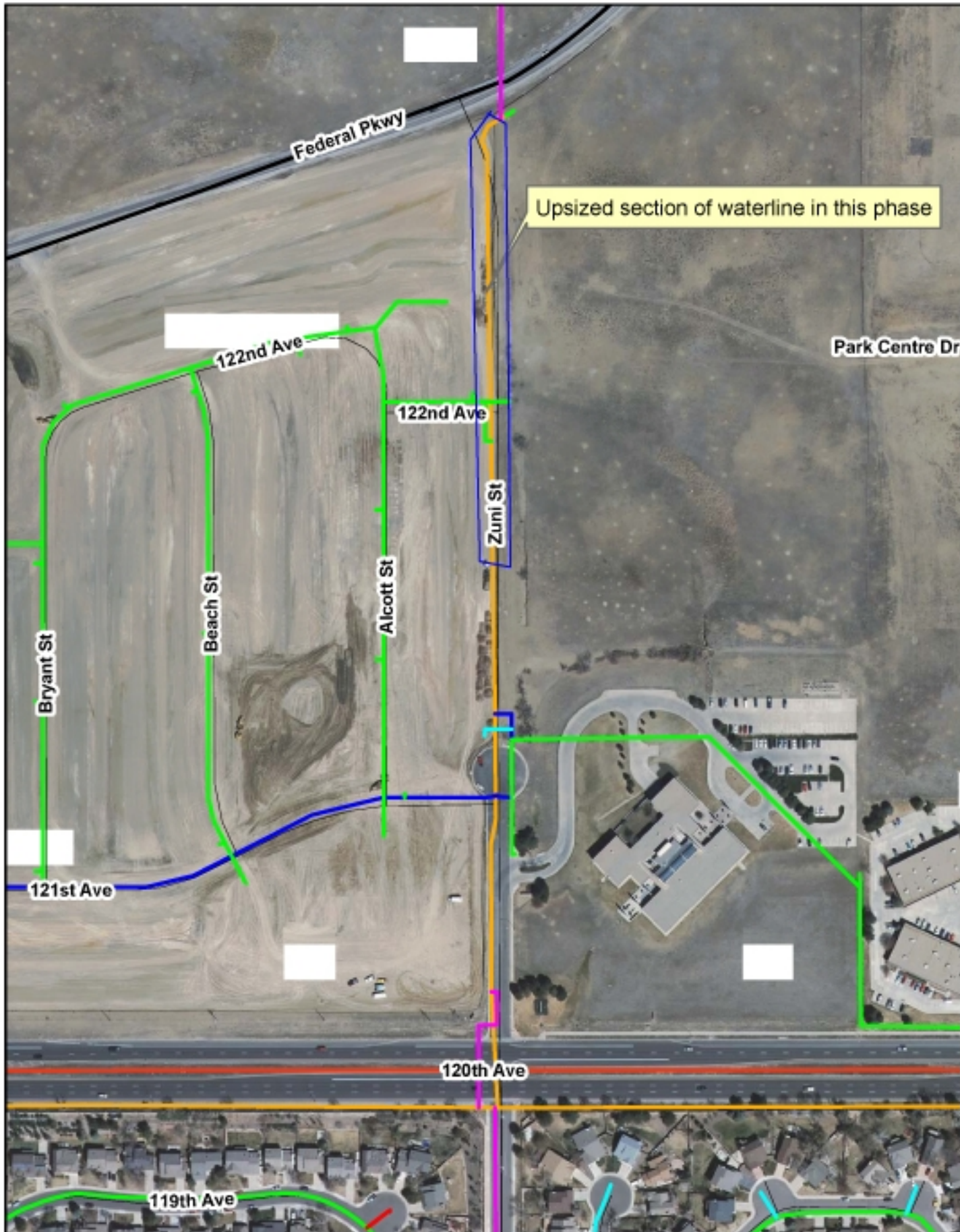
This project achieves City Council's Strategic Plan Goals of "Financially Sustainable City Government and Safe and Secure Community" by contributing to the following objectives:

- Well-maintained City infrastructure and facilities
- Citizens are safe anywhere in the City

Respectfully submitted,

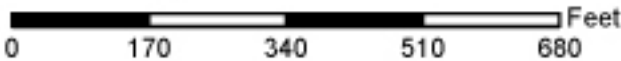
J. Brent McFall
City Manager

Attachment



Upsized section of waterline in this phase

Country Club Highlands Waterline Upsizing





WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Treated and Consumable Water Supply Agreements with the City of Brighton

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

Recommended City Council Action

Authorize the Mayor to enter into a treated water supply agreement, a consumable water sale agreement and a consumable water lease agreement with the City of Brighton in substantially the same forms as attached.

Summary Statement

- City Council directed Staff to pursue ending delivery of Thornton treated water to the City due to concerns about cost and water quality.
- Staff has negotiated a treated water supply agreement with the City of Brighton. The terms of the agreement state that the City will deliver the Thornton treated water to the City of Brighton and Brighton shall pay for the treated water at a rate equal to the rate charged to Westminster by Thornton.
- The City will continue to provide effluent to Thornton at the Metropolitan Sewage Disposal Treatment Plant while Brighton has agreed to provide consumable water to Westminster in amounts equal to the amounts provided to Thornton by Westminster. In order for Brighton to meet this consumable water obligation, effluent agreements will be entered into between the City and Brighton.
- The City of Westminster will save approximately \$2.1 million each year (at Thornton's current water rate) in lease payments.
- Brighton has agreed to lease up to 190 acre-feet (AF) per year of consumable water for a period of 15 years at a rate of \$350/AF that escalates with inflation each year.
- Brighton has also agreed to permanently purchase 38 AF of consumable water from the City at a rate of \$17,500 per acre-foot for a total price of \$665,000.
- Staff recommends executing the treated water supply agreement and consumable water agreements with the City of Brighton to eliminate delivery of treated water from Thornton to Westminster.
- Eliminating the Thornton water from our system will require replacing about 2,100 acre-feet of firm yield supply, replacement of which could be primarily funded by saved Thornton contract money.
- Due to the fact that the City is growing into its existing supply and can pursue cost effective alternatives to replace the supply, Staff believes that the elimination of deliveries of treated water from Thornton will not substantially impact Westminster's water supply situation.

Expenditure Required: \$ 0 - The effluent sale agreement will result in \$665,000 of revenue and the lease agreement will result in annual revenue of up to \$65,000 for the next 15 years, not including annual CPI adjustments to the lease rate. In addition, the City will save in payments to Thornton. At current rates (\$3.18 per 1,000 gallons), the City would save approximately \$2.1 million per year. These savings and revenue will be used to fund water supply alternatives to replace the Thornton treated water.

Source of Funds: N/A

Policy Issues

Should the City terminate delivery of treated water from Thornton to the City in order to reduce expenditures and improve water quality?

Should the City lease and sell effluent to the City of Brighton?

Should the City use savings and revenue from the lease and sale of effluent to fund replacement of the Thornton treated water with more cost effective permanent sources of water?

Alternative

City Council could choose not to approve the agreements with the City of Brighton at this time and plan instead for continued delivery of Thornton treated water. Staff does not recommend this option because the Thornton treated water is expensive and likely to become much more expensive in the future; it is the source for the majority of the City's taste and odor complaints.

Background Information

In 1982, Westminster and Thornton entered into an agreement whereby Thornton was to deliver to Westminster up to 2 million gallons per day (MGD) of treated water into Westminster's water system on a continuous basis. Westminster currently receives this treated water at an interconnection point at 85th Avenue and Zuni Street. In 1985, Westminster elected to exercise an option to increase the delivery from Thornton to 3 MGD. In the 1980s, Westminster's growth was outpacing its available water supply and the Thornton agreement helped Westminster keep up with its quickly growing water demands. At the time, Thornton's water rates were favorable and Westminster did not have to pay system development charges (tap fees) for this water.

However, since the agreements were entered into, Thornton has restructured its rates such that the cost to Westminster has increased significantly. The water rate has increased at a faster pace than Westminster's rate, causing this water to become very expensive to Westminster. Thornton's current rate of \$3.18 per thousand gallons results in an expense over \$2 million to the City's Utility Fund on an annual basis. Thornton is in the process of developing several major water supply projects that will likely significantly increase the cost of Thornton water, making it more expensive than other supply options available to the City. Moreover, the water quality of Thornton's water is of significant concern as taste and odor complaints are common from our customers receiving Thornton water. Although meeting Safe Drinking Water Act standards, the treated water delivered by Thornton does not meet the standards of quality to which Westminster aspires for the water supply it delivers to its customers.

Since the agreement with Thornton was signed, Westminster has developed significantly more water resources and is in a much different situation than in the early 1980s. The City no longer depends on the Thornton treated water supply and Staff believes that it is no longer necessary or ideal for the Westminster system. Consequently, Staff has been researching for sometime potential ways to reduce our delivery of Thornton treated water and replace that water supply with more economical, higher quality water supply over which the City has independent control. During the 2002 drought, Thornton requested to reduce deliveries temporarily to 2 MGD with an option for Westminster to make the reduction permanent. On December 22, 2003, City Council authorized an amendment to the lease agreement that permanently reduced deliveries of Thornton treated water from 3 MGD to 2 MGD.

Staff has persisted in exploring ways to divest the City from the Thornton treated water. Last Spring, Thornton management raised the idea of Westminster assigning the treated water lease portion of the Thornton water agreement to the City of Brighton, which is experiencing significant growth and is actively seeking additional treated and raw water supply. Staff has been actively pursuing this option since that time and recently has come to terms with Brighton on a treated water supply agreement.

Under the treated water supply agreement with Brighton, Thornton treated water and payment obligations are perpetually subleased to Brighton. Brighton shall be obligated to pay Westminster for all treated water actually made available for delivery to Brighton, regardless of whether Brighton actually takes delivery, and Brighton is required to provide and maintain a security deposit to ensure timely payment of sums due under the Thornton Agreement. Brighton is responsible for all infrastructure and all costs necessary to convey and deliver the treated water from the connection point for distribution and use in Brighton. The Thornton treated water will be provided to Brighton at the current point of connection at 85th Avenue and Zuni Street. Brighton's obligations under this agreement commence no later than April 1, 2010. Though Westminster would still be a party to and liable under the Thornton treated water contract, Westminster avoids the financial burden of Thornton's current and anticipated future treated water rates, and avoids having to provide lower-quality Thornton water to Westminster customers. In order to protect Thornton's water rights, Westminster will continue to account for the Thornton treated water effluent at the Metropolitan Sewage Disposal Treatment Plant and Brighton will provide an equivalent amount of consumable water to Westminster at or above the confluence of Big Dry Creek and the South Platte River. In order for Brighton to meet this consumable water obligation, the City and Brighton are finalizing effluent lease and sale agreements. Brighton will lease up to 190 acre-feet of additional consumable water from Westminster for a period of 15 years at a rate of \$350 per acre-foot that is adjusted by CPI each year starting in November 2011. The amount of water that Brighton must lease is expected to decrease each year as it will have more consumable water from its continued growth. Brighton will also purchase 38 acre-feet of permanent consumable water from the City at a rate of \$17,500 per acre-foot for a total price of \$665,000.

Staff recommends ending delivery of Thornton water in order to improve water quality, avoid significant costs and establish more control of the City's water system. Currently, the Thornton treated water contract accounts for approximately 7% of Westminster's water supply. Eliminating the contract with Thornton will require replacing approximately 2,100 acre-feet of firm yield supply, which could be primarily funded by saved Thornton contract money. The Brighton assignment offers a great opportunity to end the Thornton contract and Staff firmly believes that we can economically replace this water source.

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 and savings also assist 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,

J. Brent McFall
City Manager

Attachments

Treated Water Supply Agreement

This Treated Water Supply Agreement (“Agreement”) is entered into this ___ day of _____, 2008 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and the City of Brighton, a home rule municipal corporation of the County of Adams acting by and through its Water Activity Enterprise (“Brighton”). Westminster and Brighton 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. Westminster controls various sources of supply, both raw and treated, available for the provision of water supply to its inhabitants and its municipal water supply customers.

1.2. Brighton 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. Brighton has need of additional municipal water supply, and wishes to obtain a permanent municipal water supply of treated water from and through Westminster.

2. Treated Water Supply Agreement. For and in consideration of the premises, and of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, Westminster and Brighton agree that Westminster shall provide, and Brighton shall receive and pay for, treated water supply in accordance with the further terms and conditions of this Agreement. For purposes of this Agreement, the term “consumable” in reference to water or effluent means water or effluent possessed or controlled by a party that does not entail an obligation to “replace” or deliver water to the stream system on account of the receipt or use of the water. In other words, “consumable” water is water upon which no “return flow” or “replacement obligations” are “owed.”

3. Treated Water Deliveries. From and after the effective date of this Agreement, Westminster shall make available to Brighton, between 1.8 and 2.2 million gallons per day (MGD) of treated water as follows:

3.1. Source of treated water. Westminster will supply the treated water to be delivered to Brighton from the treated water delivered to Westminster by the City of Thornton (“Thornton”) pursuant to the lease of treated water described in paragraphs 9 through 20 of the agreement dated January 7, 1982 between Westminster and the City of Thornton, as amended (“Thornton Agreement”); provided that Westminster shall continue, in accordance with Paragraph 19 of the Thornton Agreement, to provide to Thornton, at the Metropolitan Sewage Disposal District No. 1 Treatment Plant (now known as Denver Metropolitan Wastewater

Reclamation District Treatment Plant) consumable effluent in an amount equal to what would result from use in Westminster's water service area of the treated water delivered by Thornton to Westminster pursuant to the Thornton Agreement. Brighton specifically understands and agrees that the source of treated water under this Agreement shall be such treated water, and Brighton will accept and use the treated water that is provided to Westminster by Thornton pursuant to the Thornton Agreement. The parties acknowledge that, as provided above, Westminster is obligated to provide consumable effluent to Thornton at the Denver Metropolitan Wastewater Reclamation District Treatment Plant on account of the treated water provided to Westminster by Thornton; that as provided in paragraph 3.8 below, Brighton is obligated to provide consumable water to Westminster at or above the confluence of Big Dry Creek and the South Platte in amounts equal to the amounts provided to Thornton by Westminster; and that therefore, the treated water delivered to Brighton by Westminster pursuant to this Agreement is consumable water as defined herein.

3.2. Water Quality. At the point of delivery to Brighton as described in Paragraph 3.3 below, the treated water delivered under this Agreement shall meet the standards established in Paragraph 15 of the Thornton Agreement, that is, it shall meet the standards from time to time established by the State of Colorado and its agencies for public drinking water supplies. The parties acknowledge that the treated water delivered to Westminster under the Thornton Agreement is subject to this water quality standard and that water delivered to Westminster under the Thornton Agreement will be of acceptable quality for Brighton under this Agreement.

3.3. Connection points and metering. Treated water will be provided to Brighton at a connection point to the Westminster treated water supply distribution system at or near the point or points of connection for delivery of water to Westminster under the Thornton Agreement. The connection shall be designed and constructed by Brighton, at its sole expense, subject to inspection and approval by Westminster, which shall cooperate in the location and construction of such connection. It is anticipated that the connection will attach directly to the existing connection point where treated water is delivered to Westminster pursuant to the Thornton Agreement, and Westminster and Brighton shall use and rely upon the meters used to measure deliveries to Westminster under the Thornton Agreement. If Brighton wishes to conduct tests or calibrations of the meter or meters and effect repairs or replacement thereof, it may do so at its sole cost and expense. Nothing in this Agreement shall prevent Brighton from negotiating alternative or additional connection points directly with the City of Thornton; provided that such additional or alternative connection points do not result in use of Westminster's water delivery system to carry the treated water to be delivered to Brighton.

3.4 Delivery Facilities. Brighton shall be responsible for all infrastructure, and all costs, necessary to convey and deliver the treated water from the connection point for distribution and use in Brighton, including, but not limited to, all pumping costs for such conveyance, including costs for the existing pumping station located at 8551 Zuni Street,

Thornton, Colorado, near the existing connection point where the treated water is delivered to Westminster by Thornton (“Existing Pump Station”).

3.5. Construction of Infrastructure. Westminster shall provide Brighton any necessary easements within its control at the point of connection and shall cooperate with Brighton, at Brighton’s expense, in securing additional easements at other points if necessary. In this connection, on the Effective Date Westminster shall transfer to Brighton the Existing Pump Station. Brighton shall commence receiving delivery of treated water at the earliest possible date after completion of the necessary infrastructure.

3.6. Rate of Delivery. The treated water shall be delivered, to the degree reasonably possible based upon the operation of Brighton’s utility system, at a fixed rate of flow between 1.8 and 2.2 MGD that aggregates, on a daily basis, to the total quantity of treated water to be supplied daily. It is the intention of the parties that the treated water supply delivered hereunder is not to be delivered as a peaking water supply. The parties also acknowledge that, pursuant to the Thornton Agreement, Westminster is entitled, during the months of November, December, January, February, and March, to specify a 30 percent differential in the otherwise fixed rate of delivery of water during any 24-hour period, and a 10 percent differential in the otherwise fixed rate of delivery during any billing period; and that it may, in addition, during the months of April, May, June, July, August, September, and October, induce a 10 percent differential in the otherwise fixed rate of delivery of water during any 24-hour period, as well as during any billing period. The parties agree that the treated water shall be delivered to Brighton at the rates and on the schedule upon which such water is delivered to Westminster under the Thornton Agreement. Further, upon request by Brighton, Westminster shall exercise its right under the Thornton Agreement to induce differentials in the rate of delivery of water under the Thornton Agreement. Nothing in this Agreement shall prevent Brighton from securing additional deliveries of treated water from Thornton.

3.7. Delivery Interruptions or Restrictions. If the delivery of treated water to Westminster pursuant to the Thornton Agreement is interrupted or reduced as a result of circumstances beyond Westminster’s control, such as water line breaks, pump station failures, or similar occurrences, then delivery of treated water to Brighton pursuant to this Agreement will be interrupted or reduced so long as, and to the extent that, the delivery interruptions or reductions to Westminster continue in effect. Likewise, to the extent deliveries of treated water to Westminster pursuant to the Thornton Agreement are limited pursuant to Paragraph 18 of the Thornton Agreement, deliveries of treated water to Brighton pursuant to this Agreement shall be identically restricted and limited.

3.8. Return Flow Water and Accounting. In partial consideration of this Agreement, Brighton shall provide to Westminster, at a point or points on the South Platte River at or upstream of the confluence of Big Dry Creek with the South Platte River, consumable water,

which may be consumable effluent or other consumable water available to Brighton (“Return Flow Water”) in an amount equal to the amount of consumable effluent Westminster provides to Thornton pursuant to Paragraph 3.1 above and Paragraph 19 of the Thornton Agreement. Brighton shall measure all Return Flow Water supplied to Westminster using measurement devices acceptable to the State water administration officials, shall account for such water weekly, and shall report to Westminster on such water monthly. A sample accounting form is attached hereto as Exhibit A; it may be revised on agreement of the parties over time as appropriate to ensure that it documents compliance with the provisions of this paragraph.

4. Payment for treated water supply.

4.1. Rates for treated water. Brighton shall pay for the treated water made available to it at a rate equal to the rate charged to Westminster by Thornton for the treated water delivered to Westminster under the Thornton Agreement, as such rate exists, and as it is changed, from time to time. Westminster shall forward invoices it receives from Thornton for such water to Brighton promptly upon receipt and Brighton shall pay Westminster the amount due as reflected in such invoices within 25 days of the invoice date.

4.2. Take or Pay and Security Deposit. The parties acknowledge that the provision of a permanent, secure treated water supply to their respective inhabitants involves significant planning, investment, and financial commitments, and that such investment and financial commitments necessitate reliable revenue streams and sources to ensure the proper operation and function of their respective municipal water supply systems. Accordingly, the parties agree that this treated water supply agreement shall constitute a so-called “take or pay” arrangement, and that Brighton shall be obligated to pay Westminster for all treated water actually made available for delivery to Brighton, regardless of whether Brighton actually takes delivery thereof. It is understood that Brighton shall not be obligated to pay for treated water that is not actually made available to Brighton.

The parties further agree that no later than the Effective Date, Brighton shall provide to Westminster and thereafter maintain at all times during the term of this Agreement, a Security Deposit in an amount equal to two months’ lease payments for the current year. The Security Deposit shall be jointly placed in an interest-bearing escrow or trust account (the “Security Deposit Escrow”), at an institution mutually agreeable to the parties. Interest earned on the Security Deposit Escrow shall be deposited into the account. The amount on deposit in the Security Deposit Escrow shall be compared annually, no later than August 31 of each year, to the estimated amount due upon the treated water lease in the ensuing calendar year; if such comparison indicates that additional sums must be deposited in order to maintain the Security Deposit in the required amount, Brighton shall remit, no later than January 15 of each year, any additional sums necessary to ensure that the amount on deposit in the Security Deposit Escrow remains equivalent to two months’ lease payments at then-current rates. Westminster may use

the deposit in its discretion to ensure timely payment of sums due under the Thornton Agreement; if Westminster advances funds from the Security Deposit Escrow to pay sums due under the Thornton Agreement, then Brighton shall promptly, upon receipt of invoice from Westminster, replenish the Security Deposit Escrow so as to maintain a Security Deposit equal to two months' lease payments at the current rate.

4.3. Remedies for Non-payment or Non-delivery of Return Flow Water. In case Brighton fails to pay any amount due hereunder (including lease payments or Security Deposit payments under paragraphs 4.1 and 4.2), or to provide Return Flow Water required under Paragraph 3.7, Westminster may, in addition to any other remedy available to it at law or in equity, cut off and cease delivery of the treated water that is the subject of this Agreement.

5. Term and Effective Date. The term of this treated water supply agreement shall be perpetual, beginning on the Effective Date, which shall be the earlier of April 1, 2010 or the date on which Brighton commences receiving delivery of treated water hereunder.

6. Other.

6.1 Representations and warranties of the parties. Westminster represents and warrants that it will provide, and continue to provide, the treated water supply hereunder to Brighton on a permanent basis, subject only to acts of God or other unforeseeable circumstances, which shall include, without limitation, the failure or refusal of Thornton to supply treated water to Westminster in accordance with the Thornton Agreement. Similarly, Brighton hereby represents and warrants that it will take and pay for the treated water supply provided for herein on a permanent basis, subject only to acts of God or other unforeseeable circumstances, and that the security arrangements set forth in Paragraph 4.2. hereof are appropriate to protect Westminster's financial investment necessary to enable it to enter into and fulfill its obligations under this Agreement.

6.2 Charter compliance. This Agreement is made and entered into subject to and in conformance with the charters of Westminster and Brighton. If it is finally determined by a court of competent jurisdiction that the provisions of this Agreement are inconsistent with the charters of either party without ratification by vote of the people, or without other curative act within the reasonable power of either party to perform, the parties each pledge within a prompt and reasonable time to submit such matters to appropriate vote, or to take other curative steps that are lawfully available so as to render each party the benefits of the entire bargain represented by this Agreement. In this connection, both parties specifically acknowledge and agree that the treated water supply to be delivered to Brighton pursuant to this Agreement shall be the treated water delivered to Westminster pursuant to the terms of the Thornton Agreement.

6.3 Further assurances. The parties acknowledge and agree that, to the extent appropriate, they shall each provide further assurances as necessary to ensure the effectuation of this Agreement; provided, however, that Westminster shall be under no obligation to undertake any actions or provide any guarantees with respect to, or for the benefit of, Thornton in connection with such further assurances.

6.4 Enforcement and Interpretation. The parties understand and agree that it may become necessary to interpret certain provisions of the Thornton Agreement in the operation of this Agreement. If said interpretation is necessary, Westminster shall cooperate and assist Brighton as necessary to protect the interests of Brighton and Westminster under this Agreement and the Thornton Agreement, but the costs and expenses of said action shall be paid by Brighton. However, if Thornton should materially breach the Thornton Agreement or claim a material breach by Westminster, the parties will jointly defend and/or pursue relief, with the costs and expenses of said action shared by the parties.

6.5 Notices. Notices rendered pursuant to this agreement shall be given in writing to the parties at the following addresses:

For Westminster:

City Manager, City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

For Brighton:

City Manager, City of Brighton
22 South 4th Avenue
Brighton, CO 80601

Notices may be transmitted by electronic transmission, and shall be effective upon receipt; provided that such written notices by electronic transmission are promptly followed by transmission by United States mail.

The foregoing addresses may be changed by written notice.

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

CITY OF BRIGHTON, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk

CITY OF WESTMINSTER, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk

Consumable Water Sale Agreement

This Consumable Water Sale Agreement (“Water Sale Agreement”) is entered into this ___ day of _____, 2008 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and the City of Brighton, a home rule municipal corporation of the County of Adams acting by and through its Water Activity Enterprise (“Brighton”). Westminster and Brighton 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 permanently in excess of its needs.

1.2. Brighton 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. Contemporaneously with this Water Sale Agreement, Brighton and Westminster are entering into a permanent treated water supply agreement, (“Treated Water Supply Agreement”). Pursuant to Paragraph 3.8 of the Treated Water Supply Agreement, Brighton is required to provide and deliver to Westminster certain volumes of water that may be fully consumed (“Return Flow Water”). Brighton requires a permanent right to use additional Consumable Water in order to meet its obligation to supply Return Flow Water under the Treated Water Supply Agreement.

1.3 Brighton wishes to acquire, and Westminster wishes to sell, a permanent right to the use of certain Consumable Water from Westminster’s municipal water supply system pursuant to the terms and conditions of this Water Sale Agreement.

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.

2. Consumable Water Sale. Westminster will sell and Brighton will purchase, in accordance with the further terms and conditions of this agreement, the right to use of 38 acre-feet (AF) annually of Consumable Water from Westminster’s municipal water supply system.

2.1 Purchase Price. The purchase price for the Consumable Water shall be the sum of \$17,500 per acre foot times 38 acre-feet purchased for a total purchase price of \$665,000.

2.1.1 Payment of Purchase Price. The purchase price shall be paid in cash or certified funds no later than April, 1, 2010. Payment of the Purchase Price in accordance with this agreement will entitle Brighton to the perpetual delivery of the Consumable Water herein without further charge therefore. Westminster will stand all costs of treatment, or other operation and maintenance, required for the delivery of the Consumable Water.

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

2.2.1 The Metropolitan Denver Wastewater Reclamation Plant (“Metro”) currently located near Sand Creek and the South Platte River;

2.2.2 Westminster’s Big Dry Creek Wastewater Treatment Plant located on Big Dry Creek above its confluence with the South Platte River;

2.2.3 Wattenberg Lake, now under construction near Wattenberg, Colorado;

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

2.2.5 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 Brighton. After delivery at any of the locations described above, Brighton shall bear any transit or evaporative losses from the point of delivery to the confluence of Big Dry Creek and the South Platte River.

2.3 Delivery Schedule. The Consumable Water will be delivered on the annual schedule set forth below:

Month	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
AF	3.17	3.17	3.17	3.17	3.17	3.17	3.17	3.17	3.17	3.17	3.17	3.17

Delivery shall be, as nearly as practicable, at a constant flow rate during each month. The parties may revise the delivery schedule in the future by mutual written agreement.

2.3 Use of Consumable Water. Brighton shall use the Consumable Water in meeting its obligations under Paragraph 3.8 of the Treated Water Supply Agreement.

3. Other.

3.1 Findings of Westminster City Council. This sale 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 Sale Agreement, including the payment received from the sale, will result in improvement of the capacity, efficiency, or service of Westminster's utility system, and Westminster enters into this Water Sale Agreement and will effect the disposition of a portion of Westminster's utility system and use the payment therefore 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 Sale 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 sold 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 sold hereunder is delivered on an "as-is" basis. Brighton 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 Running of Burdens and Benefits. The burdens and benefits of this Water Sale Agreement are intended to run with the Westminster municipal water supply system and the Brighton municipal water supply system, so that such burdens and benefits shall bind successors to the Westminster municipal water supply system and the Brighton municipal water supply system, and the Water Sale Agreement shall constitute an easement appurtenant burdening the facilities and rights of the Westminster municipal water supply system and benefitting the Brighton municipal water supply system. No assignment of the rights and obligations of this Water Sale Agreement to a third party that is not succeeding to either the Westminster or the Brighton municipal water supply system shall be permitted absent the express written consent of the parties hereto.

3.4 Notices. Notices rendered pursuant to this agreement shall be given in writing to the parties at the following addresses:

For Westminster:

City Manager, City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

For Brighton:

City Manager, City of Brighton
22 South 4th Avenue
Brighton, CO 80601

Notices may be transmitted by electronic transmission, and shall be effective upon receipt; provided that such written notices by electronic transmission are promptly followed by transmission by United States mail.

The foregoing addresses may be changed by written notice.

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

CITY OF BRIGHTON, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk

CITY OF WESTMINSTER, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk

Consumable Water Lease Agreement

This Consumable Water Lease Agreement (“Water Lease Agreement”) is entered into this ___ day of _____, 2008 by and between the City of Westminster, a Colorado Home Rule Municipality (“Westminster”) and the City of Brighton, a home rule municipal corporation of the County of Adams acting by and through its Water Activity Enterprise (“Brighton”). Westminster and Brighton 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.

1.2. Brighton 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. Contemporaneously with this Water Sale Agreement, Brighton and Westminster are entering into a permanent treated water supply agreement, (“Treated Water Supply Agreement”). Pursuant to Paragraph 3.8 of the Treated Water Supply Agreement, Brighton is required to provide and deliver to Westminster certain volumes of water that may be fully consumed (“Return Flow Water”). In order to meet its obligation to provide Return Flow Water to Westminster, Brighton expects that it will require, for a period of up to 15 years, additional Consumable Water beyond that currently produced in its municipal water supply system, and accordingly wishes to lease available Consumable Water from Westminster for a period of time pursuant to the terms and conditions of this Water Lease Agreement.

1.3 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.

2. Consumable Water Lease. Westminster will lease to Brighton for the term of this Agreement up to 152 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 April 1, 2010 through October 31, 2025.

2.2 Amounts of Consumable Water Leased. The volume of Consumable Water to be leased and delivered to Brighton during the period from April 1, 2010 through October 31, 2010 shall be 152 acre-feet (AF), which shall be delivered on the following schedule:

Thereafter, no later than October 1 of each year during the term of this lease, Brighton shall deliver to Westminster written notice of the volume of Consumable Water, up to 152 AF, it wishes to lease and have delivered for the ensuing November 1 through October 31.

2.3 Delivery.

2.3.1 Delivery Locations. The Consumable Water shall be delivered to Brighton 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 Brighton. After delivery at any of the locations described above, Brighton shall bear any transit or evaporative losses from the point of delivery to the confluence of Big Dry Creek and the South Platte River.

2.3.2 Delivery Schedule. The leased Consumable Water will be delivered on the annual monthly percentage delivery schedule set forth below; provided that Brighton may, by written notice delivered to Westminster no later than 90 days prior to the beginning of the month in which the revised delivery volume is to be delivered vary the delivery for each delivery period by up to 10%, provided, however, that any increase in the delivery for one delivery period must be offset by a corresponding decrease in the delivery for the subsequent delivery period, so that

the total volume of Consumable Water to be delivered does not exceed the volume of Consumable Water to be leased during the current November 1 through October 31 period as specified in the notice provided by Brighton pursuant to paragraph 2.2 above.

Month	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%	8.33%

Delivery shall be, as nearly as practicable, at a constant flow rate during each delivery period. The parties may revise the delivery schedule in the future by mutual written agreement.

2.4 Lease Payments. Brighton shall pay the sum of \$350 per acre-foot of Consumable Water leased hereunder. The per-acre-foot lease price shall be increased, each year beginning on November 1, 2011 by the percentage increase in the Denver-Boulder CPI published by the United States. Westminster shall bill Brighton monthly for leased Consumable Water provided, and Brighton shall pay Westminster the amount due within 30 days of the invoice date.

2.5 Use of Consumable Water. Brighton shall use the Consumable Water in meeting its obligations under Paragraph 3.8 of the Treated Water Supply 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. Brighton 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 Running of Burdens and Benefits. The burdens and benefits of this Water Lease Agreement are intended to run with the Westminster municipal water supply system and the Brighton municipal water supply system, so that such burdens and benefits shall bind successors to the Westminster municipal water supply system and the Brighton municipal water supply system for the term and according to the terms of, this Water Lease Agreement shall constitute an easement appurtenant burdening the facilities and rights of the Westminster municipal water supply system and benefitting the Brighton municipal water supply system. No assignment of the rights and obligations of this Water Lease Agreement to a third party that is not succeeding to either the Westminster or the Brighton municipal water supply system shall be permitted absent the express written consent of the parties hereto.

3.4 Notices. Notices rendered pursuant to this agreement shall be given in writing to the parties at the following addresses:

For Westminster:

City Manager, City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

For Brighton:

City Manager, City of Brighton
22 South 4th Avenue
Brighton, CO 80601

Notices may be transmitted by electronic transmission, and shall be effective upon receipt; provided that such written notices by electronic transmission are promptly followed by transmission by United States mail.

The foregoing addresses may be changed by written notice.

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

CITY OF BRIGHTON, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk

CITY OF WESTMINSTER, COLORADO:

By: _____
Mayor

Attest: _____
City Clerk



Agenda Item 8 H

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Swim & Fitness Center Roof Top Air Handling Units Replacement Contract

Prepared By: Jerry Cinkosky, Facilities Manager

Recommended City Council Action

Authorize the City Manager to execute a contract with Synergy Mechanical Services, Inc. in the amount of \$427,200 for the replacement of two mechanical roof top air handling units at the Swim & Fitness Recreation Center.

Summary Statement

- In 2007, the firm of Bornengineering Inc. completed the Citywide facilities needs assessment that identified the need to replace Swim & Fitness Center's two roof top air handling units in 2009. Bornengineering's recommendation was based on the age of the existing equipment, manufacturer's recommended useful life expectancy, and history of costs associated with critical repairs performed on the units during 2005 and 2006 (the two years prior to the assessment). The roof top air handling units are critical for providing required fresh air exchanges to the swimming pool area and the locker rooms of the facility.
- Based on Bornengineering's recommendation, Building Operations Staff has budgeted and originally planned on replacing both units in August 2009 during the facilities annual maintenance closing.
- With the upcoming remodel project at City Park Recreation Center pool tentatively scheduled to begin in early March 2009, Parks, Recreation and Libraries Staff requested to move the Swim & Fitness Center project up to late 2008 or early 2009 to prevent the closure of both City Park Recreation Center and Swim & Fitness Center pools being closed at the same time.
- Purchase of the roof top units requires a 12 – 15 week lead time to manufacture and ship. In the effort to accommodate Park, Recreation and Libraries request that the project be moved up; Staff immediately sent a request for proposal to three mechanical firms that specified the requirement for the completion of the roof top unit installation no later than February 2009.
- As a result of this competitive bid process, Staff is recommending awarding the roof top air handling replacement contract to Synergy Mechanical Services Inc. This recommendation is based on their submittal of the lowest competitive bid price and prior history of successful roof top air handling replacement projects at City Park Recreation Center, Municipal Court, and the MAC.

Expenditure Required: \$427,200

Source of Funds: General Capital Improvement Fund - Building Operations and Maintenance Recreation Facility Major Maintenance (2008 and 2009 funds proposed)

Policy Issue

Should City Council award a contract to Synergy Mechanical Services, Inc. for the replacement of two roof top air handling units at the Swim & Fitness Center?

Alternative

Do not proceed with the replacement of two roof top air handling units. Staff is not recommending this action based on the roof top mechanical system being essential to providing the required exchange of fresh air to both the pool and locker room areas. In addition, Staff believes it is important to make the necessary replacement as soon as possible to avoid the possibility of a critical failure to the equipment potentially causing both City recreation centers indoor pools to be closed at the same time.

Background Information

In early 2007, Bornengineering completed the Citywide facility needs assessment to assist City Staff in identifying both immediate needs and deficiencies for facilities and facility needs over the next 20 years. In Bornengineering’s report for the Swim & Fitness Recreation Center, the firm identified the need to replace both roof top air handlings units on the facility roof in 2009. This recommendation was based on the present age of the equipment, manufacturer’s recommended useful life expectancy and history of costs associated with critical maintenance repairs on the equipment for the years of 2005 and 2006.

During the 2009/2010 budget process, Staff requested Capital Improvement funding to replace both roof top units at the Swim & Fitness Center, and was tentatively planning on carrying out those replacements during the Center’s annual maintenance closing in August 2009. With the proposed remodel project for City Park Recreation Center tentatively scheduled to begin in early March 2009, Parks, Recreation and Libraries Staff requested moving the Swim & Fitness Center project to January/February of 2009 to avoid the possibility of having both indoor pools closed at the same time that would create an inconvenience to pool users and guests.

Knowing that it would take 12-15 weeks to manufacture and ship this type of equipment, Staff immediately sent out an RFP to make efforts to accommodate recreation staff’s request to complete this project in January/February of 2009. An onsite pre bid meeting was held with three mechanical firms to review the scope of work, and to inform them of the City’s requirement to have replacement of the roof top air handling units completed no later than the end of January 2009.

The bid results received for the roof top air handling units are as follows:

CONTRACTOR	BID AMOUNT
Superior Mechanical Services	\$474,628
All Temperature Controlled	\$432,000
Synergy Mechanical Services, Inc.	\$427,200

Based on Synergy Mechanical Service, Inc.’s submittal of the lowest responsive bid and past successful history with similar projects, Staff is recommending City Council’s approval of a contract with Synergy Mechanical Services Inc. for the Swim & Fitness Recreation Center’s roof top unit replacement.

In order to start building this type of equipment a mandatory deposit of \$218,000 is required by the manufacturer. Staff is proposing using 2008 capital project funds to pay the required deposit and using 2009 capital project funds to pay for the remaining balance of \$209,200 due after installation is complete in January 2009.

SUBJECT: Swim & Fitness Center Roof Top Air Handling Units Replacement Contract Page 3

The roof top air handling unit replacement Swim & Fitness Recreation Center, supports the City Council Strategic Plan Goals of “Safe and Secure Community” and “Financially Sustainable City Government” in the following areas:

- Well-maintained city infrastructure and facilities
- Effective cost containment/control measures for living within revenues and budget

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Proposed Sale of the Westminster Westin Conference Center

Prepared By: Steve Smithers, Assistant City Manager
Marty McCullough, City Attorney

Recommended City Council Action

Authorize the City Manager to execute a Purchase and Sale Agreement in substantially the same form as the attached agreement, and all other ancillary agreements necessary for the sale of the Westminster Conference Center and Pavilion Banquet Facility to Westminster Boulevard LLC, and authorize expenditure of closing costs, inclusive of the City's share of 2008 capital costs for the Conference Center, in an amount not to exceed \$175,000.

Summary Statement

- The Westin Hotel was sold by Inland Pacific Corporation to Westminster Boulevard LLC, in December of 2007.
- As part of discussions concerning the Westin sale last year, Westminster Boulevard LLC (made up of Amstar Group, Sage Hospitality Resources, and Inland Pacific Corporation) raised the possibility of purchasing the Conference Center/Pavilion from the City.
- After completion of the hotel sale last December, Staff entered into preliminary discussions with the new owners of the Westin to explore whether the sale of the Conference Center/Pavilion would be beneficial to the City.
- After many months of back and forth negotiations, Staff and Westminster Boulevard LLC have reached a proposed agreement for the sale of the Conference Center and Pavilion Banquet Facility. The proposal set forth in this agenda memorandum was discussed with City Council at an Executive Session on July 14, 2008.
- The detailed business points of the offer are outlined in the background section of this agenda memorandum.

Expenditure Required: Not to exceed \$175,000

Source of Funds: 2008 General Fund Carryover

Policy Issue

Should the City sell the Westminster Conference Center and Pavilion Banquet Facility to the current owners of the Westminster Westin Hotel per the terms and conditions contained in the Purchase and Sale Agreement?

Alternatives

1. The City could turn down this offer and continue to own these facilities. This alternative is not recommended because the City would lose the benefits as outlined in the Background Section of this agenda memorandum. These benefits outweigh the costs involved in the proposed transaction. In addition, this combining of the Hotel, Conference Center and Pavilion in a single ownership will position the Westin to be more competitive in the marketplace, which results in a variety of economic benefits to the City.
2. City Council could direct Staff to negotiate for different terms and conditions to be included in the Purchase and Sale Agreement. Staff believes the terms and conditions as proposed are beneficial and protect the City's interests. There was give and take in the negotiation process, and Staff is confident that this deal is a balanced approach to assuring the continued role this hotel development plays for the Promenade and the City as a whole.

Background Information

The City entered into a Joint Development Agreement and a subsequent Lease Agreement in 1998 with Inland Pacific Corporation for the construction and financing of the Westminster Conference Center. This agreement and other subsequent associated agreements entered into on this project set forth a series of complex terms and conditions by which the Westin Hotel would lease the Conference Center and Pavilion from the City. This deal was structured in a manner that made the construction of a Westin Hotel in a suburban environment possible. Prior to the construction of the Westin Westminster, very few, if any, Westin Hotels had been built outside of major cities or resorts.

The original Joint Development Agreement and subsequent revisions include the following key provisions:

- The payment of a business assistance rebate (which exceeded \$1.3 million in 2007) to the owners of the Westin that includes all sales and use taxes collected at the Hotel and Conference facility until 2026. This rebate is inclusive of an additional 1% fee the Hotel agreed to collect on all sales at the Hotel and Conference Center.
- Payment of property taxes (currently over \$300,000 per year) by the City on the Conference Center. At the time this provision was included in the agreement there was no legal requirement for the payment of property tax on the Conference Center since the center is municipally owned. This was changed by a Supreme Court decision after the facility was opened, resulting in a significant property tax liability to the City.
- A lease payment, \$1.275 million in 2008, with escalating payments up to \$2.1 million through the 25th year of the lease, thereafter the payments drop down to \$750,000 annually or 5% of the gross revenues of the Conference Center (whichever is greater), by the owner of the Westin to offset the City's financing of the Conference Center design and construction. The initial term of the lease is for 25 years, with an option to extend the lease for 25 years.

- A payment to the City of \$175,000 per year by the owner of the Westin to offset the City's financing of the Pavilion design and construction.
- The City is required to make all necessary capital improvements to the Conference Center and Pavilion. The Hotel owners are required to pay normal operating costs.

There are numerous other provisions in the Joint Development Agreement and other related agreements; however, the items outlined above are the pieces most relevant to the proposed Conference Center and Pavilion sale.

Westminster Boulevard LLC, the new owner of the Westin Hotel, has expressed a clear interest in replacing their current lease hold interest in the Conference Center/Pavilion with fee simple ownership. The new owners respect the long term relationship that has existed between the City and the Hotel; however, they believe that consolidating the ownership of these integrated facilities puts them in a better position to control their future destiny. Staff feels that the economic development goals that made City ownership of the Conference Center necessary have been achieved and there is no longer a reason for City ownership of the facility.

An initial offer made earlier this year by Westminster Boulevard LLC for the Conference Center/Pavilion was inadequate from Staff's perspective because it did not cover the investments that the City has made in these facilities. After significant negotiations, the following are the key points of the Purchase and Sale agreement being proposed (see attached agreement).

Westminster Boulevard LLC agrees to:

- Eliminate the City's obligation to make business assistance rebate payments after the closing on the sale. These payments are projected to range from \$1.4 million in 2008 to \$2.4 million in 2025.
- Eliminate the City's obligation to make future capital improvement obligations for the Conference Center/Pavilion. These facilities are currently in need of over \$1.2 million in improvements that would be a City obligation in 2008/2009 if the sale does not occur. Staff is projecting that this obligation will reoccur approximately every seven years and the financial obligation will escalate with the increasing cost of capital construction.
- Eliminate the City's obligation to pay property taxes on the Conference Center. The City's current possessory interest tax bill from Jefferson County for the Conference Center is in excess of \$300,000 annually, and this amount will escalate with the escalating Conference Center lease payment schedule. The City is currently appealing this tax assessment and a reduction in this payment is anticipated; however, at this point it is unclear what the final amount will be. Sale of the Conference Center will eliminate the City's annual possessory interest payment obligation.
- Continue the payment to the City of the 1% Hotel and Conference Center Fee that is currently in place above and beyond current City taxes through the year 2035. This fee is projected to produce in excess of \$7,500,000 between 2008 and 2035.

The City agrees to:

- Transfer fee simple ownership of the Conference Center and Pavilion to Westminster Boulevard LLC.

- Terminate the Conference Center lease and rental payments by the Hotel ranging from \$1.275 million in 2008 to \$2.1 million in 2025. As stated above these lease payments drop off after 2025 to the greater of \$750,000 or 5% of gross Conference Center revenues.
- Terminate the Pavilion lease and rental payment of \$175,000. This lease payment continues under the current agreement through 2025.
- Pay for a portion of 2008 Conference Center Capital Improvements (\$150,000) and sellers share of closing costs; total costs will not exceed \$175,000. The Conference Center capital payment is due by February 28, 2009 and would be paid out of 2008 Carryover funds.
- The City also agrees to continue existing Promenade maintenance work (paid by the hotel through common area maintenance charges) and fee based contract work conducted for the hotel.

Staff has calculated how these provisions net out over the term of the current agreement (through 2025) and it is projected that the City comes out \$1.9 million ahead in inflation adjusted dollars. In addition, the continuation of the 1% fee will generate over \$2.3 million in inflation adjusted net dollars for the City. These surplus dollars help to offset other factors not stated in the deal points above, including the \$1.6 million in cash the City put into the Pavilion and reimbursement for costs related to the structure of the current lease agreement with the Hotel.

Based on this analysis, Staff is recommending that City Council authorize the City Manger to execute the proposed Purchase and Sale Agreement for the Conference Center and Pavilion, and all other documents necessary to complete this transaction.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment – Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

for

**Westin Westminster Pavilion and Conference Center Facilities,
10600 Westminster Boulevard,
Westminster, Colorado**

between

THE CITY OF WESTMINSTER,

as Seller,

and

WESTMINSTER BOULEVARD, LLC,

as Purchaser

October 23, 2008

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into as of October 23, 2008 (the “**Effective Date**”), by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality (“**Seller**”), and WESTMINSTER BOULEVARD, LLC, a Delaware limited liability company (“**Purchaser**”).

Recitals

This Agreement is made with respect to the following facts:

A. Seller owns the following described property (the “**Property**”):

(1) The land described on Exhibit A attached hereto, together with all appurtenances thereto (collectively, the “**Land**”);

(2) Seller’s interest, as lessor, under: (1) Lease Agreement for the Lakeview Pavilion Banquet Center dated February 24, 2000, by and between Seller and Inland Pacific Colorado, L.L.C., a Colorado limited liability company (“**Inland**”), a memorandum of which is recorded in the real estate records of Jefferson County, Colorado, at Reception Number F2086915, the interest of Inland under which lease was assigned to Westminster Pavilion Development Company, LLC, a Colorado limited liability company (“**WPDC**”), pursuant to Assignment and Assumption of Agreements dated May 4, 2000, between Inland and WPDC, a memorandum of which assignment was recorded in such records at Reception Number 2007136486, which lease was amended by First Amendment to Lease Agreement (Lakeview Pavilion Banquet Center) dated as of December 1, 2007, by and between Seller and WPDC recorded in such records at Reception Number 2007136489 (the “**Pavilion Ground Lease**”); and (2) Lease Agreement dated September 21, 1998, by and between Seller and Inland, memoranda or short forms of which are recorded in the real estate records of Jefferson County, Colorado, at Reception Number F0699062 and Reception Number F2086914, which lease was amended by First Amendment to Lease Agreement (Conference Center) dated as of December 1, 2007, by and between Seller and Inland recorded in such records at Reception Number 2007136488 (the “**Conference Center Ground Lease**”; the Pavilion Ground Lease and the Conference Center Ground Lease are collectively referred to herein as the “**Ground Leases**”). The Ground Leases shall be terminated as part of the Closing as more particularly set forth herein;

(3) All improvements in, upon and under the Land, including all fixtures owned by Seller therein (collectively, the “**Improvements**”; the Land and the Improvements constitute a conference center facility (the “**Conference Center**”) and a pavilion facility (the “**Pavilion**”) located at 10600 Westminster Boulevard, Westminster, Colorado, and are hereinafter collectively referred to as the “**Real Property**”);

(4) The personal property owned by Seller and located on, or used exclusively in connection with, the Real Property (the “**Personal Property**”);

(5) All right, title and interest of Seller in and to all governmental permits, licenses, certificates and authorizations, including, without limitation, certificates of occupancy, if any, relating to the construction, use or operation of the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser (the “**Permits**”);

(6) All right, title and interest of Seller in and to all unexpired warranties, guarantees and bonds, including, without limitation, contractors’ and manufacturers’ warranties or guarantees, relating to the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser without consent by the respective obligors under such warranties, guarantees and bonds (the “**Warranties**”);

(7) All right, title and interest of Seller in and to any site plans; surveys; soil and substratus studies; environmental reports and studies; architectural drawings, plans and specifications; engineering, structural, electrical and mechanical reports, plans and studies; and landscape plans that relate to the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser without consent by the respective persons who prepared such documents (the “**Plans**”);

(8) All right, title and interest of Seller in and to any and all intangible property and appurtenances thereto owned by Seller used exclusively in connection with the operation of the Property or the Personal Property, including, without limitation, any and all trade names, to the extent they are assignable (the “**Intangible Property**”); and

B. On December 13, 2007 (the “**Hotel Closing Date**”), Purchaser acquired fee title to the land described on Exhibit B attached hereto (the “**Hotel Land**”) and the Westin Westminster Hotel located thereon with an address of 10600 Westminster Boulevard, Westminster, Colorado (the “**Hotel**”), and the interests of the lessees under the Ground Leases and has been in possession of the Hotel, Conference Center and Pavilion, subject to the rights of hotel guests and other lessees, since the Hotel Closing Date.

C. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Property and to terminate the Ground Leases, the Party Wall Declaration (defined below) and enter into other agreements as set out below (the “**Transaction**”), all on the terms and conditions hereinafter set forth.

Agreement

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

1. Transaction. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, assign and convey to Purchaser, and Purchaser agrees to purchase from Seller, the Property (the “**Sale**”) and to complete the Transaction.

2. Purchase Price. The consideration for the Transaction (the “**Consideration**”) shall be the Purchase Price and the mutual undertakings and agreements of the parties set out in

this Agreement or in the documents to be executed and delivered by Seller or Purchaser at Closing (defined below). The cash purchase price for the Property (the “**Purchase Price**”) will be Ten Dollars (\$10.00), payable upon closing of the transaction contemplated by this Agreement (“**Closing**”), subject to the adjustments and prorations provided for herein, to First American Title Insurance Company (“**Title Company**”) in immediately available funds.

3. Title.

3.1 Issuance of Title Policy. At Closing, Seller will cause Title Company to issue, or unconditionally commit to issue, to Purchaser an ALTA title insurance policy (the “**Title Policy**”), with coverage in the amount of \$80,883,955, subject only to the exceptions to title (the “**Permitted Exceptions**”) set forth in Purchaser’s existing title insurance policy with respect to the Hotel and the lessees’ interests under the Ground Leases (the “**Existing Title Policy**”) attached hereto as Exhibit H and reflecting that title to the Real Property is vested in Purchaser. Notwithstanding the foregoing, the Permitted Exceptions shall not include the Ground Leases or the Party Wall Declaration (defined below). Each party will be solely responsible for satisfying any requirements that Title Company may impose specifically with respect to such party, such as, for example, requirements with respect to such party’s organizational status or authority to complete the Transaction. If a survey is required to delete the standard printed exceptions, then Purchaser shall provide at its sole cost any needed survey or update.

3.2 Subsequent Title Defects. If prior to Closing Purchaser notifies Seller of the existence of any encumbrance, encroachment, defect in or other matter materially and adversely affecting title, other than the Permitted Exceptions (a “**Subsequent Defect**”), Seller will use such efforts and will expend such amount as it may, in its sole judgment, deem appropriate to remove or cure such Subsequent Defect of title prior to Closing. Seller will have no obligation, however, to cure any Subsequent Defect. If Seller does not or is unable to so remove or cure all Subsequent Defects prior to Closing, Purchaser may (a) waive all such uncured Subsequent Defects and accept such title as Seller is able to convey as of Closing without an abatement of the Consideration, and such Subsequent Defect will become one of the Permitted Exceptions; or (b) terminate this Agreement, and all parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof.

4. Seller’s Representations and Warranties.

4.1 Representations and Warranties. Seller represents and warrants to Purchaser as follows:

(a) Authority. Seller is a home-rule municipality in the State of Colorado. Seller has, or will prior to Closing have, full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite municipal action has been taken, or will prior to Closing be taken, by Seller in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby.

(b) Consents; Binding Obligations; Violations. All consents and approvals which may be required in order for Seller to enter into this Agreement or consummate the transaction contemplated hereby have been obtained or will be obtained prior to Closing. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, except to the extent that any necessary consents (which will be obtained prior to Closing) have not been obtained as of the Effective Date. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Seller is subject or by which Seller is bound, or constitute a breach or default under any agreement or other obligation to which Seller is a party or otherwise bound.

(c) No Options to Purchase. Seller has not executed any other agreement with respect to the purchase and sale of the Property, or any portion thereof, or with respect to an option to purchase the Property or any portion thereof.

(d) Condemnation. There is no pending condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Property, and Seller has not received any written notice of any of the same and Seller has no knowledge that any such proceeding is contemplated.

(e) Environmental Matters. To Seller's knowledge, (i) there are no "Hazardous Materials" (as defined below) present on or under the Real Property in any quantity or manner that violates any "Environmental Law" (as defined below) now in effect the presence of which arose subsequent to the Hotel Closing Date; and (ii) since the Hotel Closing Date, no underground fuel storage tanks have been installed at the Real Property. As used herein, "**Hazardous Materials**" means any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, gasoline and any other petroleum products (including crude oil or any fraction thereof), polychlorinated biphenyls and urea formaldehyde insulation. As used herein, "**Environmental Law**" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or to releases or threatened releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as now or may hereafter be in effect.

(f) Litigation. There are no pending or, to Seller's knowledge, threatened judicial, municipal or administrative proceedings affecting the

Property or which would materially and adversely affect Seller's right to enter into this Agreement.

(g) No Defaults under Ground Leases. To Seller's knowledge, Tenant (as defined in each Ground Lease) is not in default under the Ground Leases.

4.2 Seller's Knowledge. Whenever phrases such as "to Seller's knowledge," "Seller has no knowledge" or terms of similar import are used in the foregoing representations and warranties, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of Stephen P. Smithers, the Assistant City Manager of Seller ("**Seller's Representative**"). No duty of inquiry or investigation on the part of Seller or Seller's Representative will be implied by the making of any representation or warranty which is so limited to matters within Seller's knowledge.

4.3 Effective Date; Survival. All of the foregoing representations and warranties made by Seller are made as of the Effective Date and as of the Closing with the same force and effect as if made at and as of that time. Notwithstanding the foregoing, if prior to Closing, Seller becomes aware that any representation or warranty set forth in this Agreement has become incorrect due to changes in conditions or the discovery by Seller of information of which Seller was unaware on the Effective Date, then Seller shall immediately notify Purchaser thereof, and the representations and warranties set forth herein which are to be remade and reaffirmed by Seller at the Closing shall be supplemented by such new conditions or information. If in Purchaser's reasonable judgment such change in condition or new information has a material adverse impact on the Property, or Seller's right or ability to sell the Property, Purchaser may elect within ten (10) days after receipt of such notice (or, if such notice is received less than ten (10) days prior to the date of Closing, Purchaser may elect on or before Closing) to provide written notice to Seller of Purchaser's election to terminate this Agreement, in which case all parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof. In no event shall Seller be liable to Purchaser for any claim for breach of any of its representations or warranties if Purchaser received written notice of the inaccuracy or breach of such representation and warranty prior to the Closing Date and Purchaser nevertheless elected to proceed to Closing. All of the foregoing representations and warranties of Seller will survive Closing for a period of one year after the date of Closing, other than the representations in Subsections 4.1(a) and (b) which will survive indefinitely, and will not be deemed merged into any instrument of conveyance delivered at Closing.

4.4 "As Is" Transaction. Purchaser acknowledges and agrees that it has been in possession of the Property, subject to the rights of hotel guests and other lessees, since the Hotel Closing Date pursuant to the Ground Leases. Therefore, it is the agreement of the parties that the Property will be purchased without warranties or representations, except as set forth in Section 4.1 and as may be set forth in the documents signed and delivered by Seller in connection with Closing. ACCORDINGLY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 4.1 AND IN THE DOCUMENTS SIGNED AND DELIVERED BY SELLER IN CONNECTION WITH

CLOSING, SELLER HEREBY EXCLUDES AND DISCLAIMS, AND PURCHASER HEREBY ACKNOWLEDGES AND ACCEPTS SUCH EXCLUSION AND DISCLAIMER, ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION: THE PHYSICAL CONDITION OF ANY PART OF THE PROPERTY; THE ENVIRONMENTAL CONDITION, OR PRESENCE OF HAZARDOUS SUBSTANCES OR UNDERGROUND STORAGE TANKS AT OR UNDER THE PROPERTY; THE ZONING OF THE PROPERTY; THE MERCHANTABILITY, FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; WORKMANLIKE CONSTRUCTION; HABITABILITY; DESIGN; QUALITY; OR ANY OTHER MATTER RELATING TO THE CONDITION OF THE PROPERTY OR ANY PORTION THEREOF. AS TO ANY PERSONAL PROPERTY AND AS TO ANY CONSUMER PRODUCT (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL, STATE OR LOCAL LAWS OR THEIR IMPLEMENTING REGULATIONS) WHICH MAY BE A PART OF OR LOCATED ON THE PROPERTY AND ANY PERSONAL PROPERTY OR FIXTURES ON THE PROPERTY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 4.1 AND IN THE DOCUMENTS SIGNED AND DELIVERED BY SELLER IN CONNECTION WITH CLOSING, SELLER NEITHER MAKES NOR ADOPTS ANY WARRANTY WHATSOEVER AND SPECIFICALLY EXCLUDES EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER FURTHER ACKNOWLEDGES THAT, AS OF THE CLOSING DATE, PURCHASER SHALL HAVE CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE CONDITION OF THE PROPERTY AND ALL OTHER MATTERS RELATING TO OR AFFECTING THE PROPERTY AS PURCHASER DEEMED NECESSARY OR APPROPRIATE, AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PROPERTY, EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1 AND IN THE DOCUMENTS SIGNED AND DELIVERED BY SELLER IN CONNECTION WITH CLOSING, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS, AND PURCHASER WILL ACCEPT THE PROPERTY AT CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

5. Purchaser’s Representations and Warranties.

5.1 Representations and Warranties. Purchaser represents and warrants to Seller as follows:

(a) Authority. Purchaser is a limited liability company duly organized and existing and in good standing under the laws of the State of Delaware and qualified to transact business under the laws of the State of Colorado. Purchaser has, or will prior to Closing have, full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite limited liability company action has been taken, or will prior to Closing be taken, by Purchaser in connection with the entering into of this Agreement and the

instruments referenced herein and the consummation of the transaction contemplated hereby.

(b) Consents; Binding Obligations; Violations. All consents and approvals, including without limitation any necessary consents and approvals of Purchaser's equity investors and lenders, which may be required in order for Purchaser to enter into this Agreement or consummate the transaction contemplated hereby have been obtained or will be obtained prior to Closing. This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, except to the extent that any necessary consents (which will be obtained prior to Closing) have not been obtained as of the Effective Date. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will be in violation of any judgment, order, permit, writ, injunction or decree of any court, commission, bureau or agency to which Purchaser is subject or by which Purchaser is bound, or constitute a breach or default under any agreement or other obligation to which Purchaser is a party or otherwise bound.

(c) Owner of Leasehold Estate. Purchaser has not transferred or conveyed the leasehold estate under the Ground Leases.

(d) Other Documents. Purchaser is the successor in interest to Inland with respect to the Recreational Use Agreement (defined below) and is the successor in interest to Inland with respect to the Hotel, Conference Center and Pavilion and has taken by assignment all right, title and interest of Inland, of which Purchaser is aware, under the Development Agreement (defined below), to the extent that such relates to the Hotel and Conference Center, and Pavilion Development Agreement (defined below).

(e) Litigation. There are no pending or to Purchaser's knowledge threatened judicial proceedings which would materially and adversely affect Purchaser's rights to enter into this Agreement.

(f) No Defaults under Ground Leases. To Purchaser's knowledge, Landlord (as defined in each Ground Lease) is not in default under the Ground Leases.

5.2 Purchaser's Knowledge. Whenever phrases such as "to Purchaser's knowledge," "Purchaser has no knowledge" or terms of similar import are used in the foregoing representations and warranties, they will be deemed to refer exclusively to matters within the current actual (as opposed to constructive) knowledge of Daniel Cohen, an employee of the largest indirect equity investor in Purchaser ("**Purchaser's Representative**"). No duty of inquiry or investigation on the part of Purchaser or Purchaser's Representative will be implied by the making of any representation or warranty which is so limited to matters within Purchaser's knowledge.

5.3 Effective Date; Survival. The foregoing representations and warranties of Purchaser will be continuing and will be deemed remade by Purchaser as of the date of Closing with the same force and effect as if made at and as of that time. Notwithstanding the foregoing, if prior to Closing, Purchaser becomes aware that any representation or warranty set forth in this Agreement has become incorrect due to changes in conditions or the discovery by Purchaser of information of which Purchaser was unaware on the Effective Date, then Purchaser shall immediately notify Seller thereof, and the representations and warranties set forth herein which are to be remade and reaffirmed by Purchaser at the Closing shall be supplemented by such new conditions or information. If in Seller's reasonable judgment such change in condition or new information has a material adverse impact on Purchaser's right or ability to purchase the Property, Seller may elect within ten (10) days after receipt of such notice (or, if such notice is received less than ten (10) days prior to the date of Closing, Seller may elect on or before Closing) to provide written notice to Purchaser of Seller's election to terminate this Agreement, in which case all parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof. In no event shall Purchaser be liable to Seller for any claim for breach of any if its representations or warranties if Seller received written notice of the inaccuracy or breach of such representation and warranty prior to the Closing Date, and Seller nevertheless elected to proceed to Closing. All of the foregoing representations and warranties of Purchaser will survive Closing for a period of one year after the date of Closing, other than the representations in Subsections 5.1(a) and (b) which will survive indefinitely, and will not be deemed merged into any instrument of conveyance delivered at Closing.

6. Covenants and Agreements of the Parties. The parties covenant and agree as follows:

6.1 Termination of Ground Leases. As part of the Closing, Seller and Purchaser will cooperate reasonably to terminate, and remove as an exception to the Title Policy, the Ground Leases. The provisions of this section will survive Closing and the delivery of the Deed (defined below).

6.2 Termination of Party Wall Declaration. As part of the Closing, Seller and Purchaser will cooperate reasonably to terminate and remove as an exception to the Title Policy that certain Party Wall Declaration of Covenants, Conditions, Restrictions and Easements for Lot 3 and Lot 4, Westminster Promenade East recorded in the real estate records of Jefferson County, Colorado at Reception Number F0699060, as amended by First Amendment to the Party Wall Declaration of Covenants, Conditions, Restrictions and Easements for Lot 3 and Lot 4, Westminster Promenade East recorded in such records at Reception Number 2007136487, as heretofore amended from time to time (the "**Party Wall Declaration**"). The provisions of this section will survive Closing and the delivery of the Deed (defined below).

6.3 City Agreement. Prior to Closing, Seller and Purchaser shall cooperate with each other to prepare and finalize the form of an agreement (the “**City Agreement**”). The City Agreement shall be in recordable form and shall provide substantially as follows:

(a) From and after Closing and through December 31, 2035 (the “**Obligation Termination Date**”), the owner of the Hotel shall provide for the collection from Hotel guests a fee in an amount equal to one percent (1%) of the Hotel’s room rate charged to and collected from Hotel guests and one percent (1%) of the rental charges for conference center space charged to and collected from users of the conference center, including meeting rooms, display rooms, banquet rooms and other space for which a separate meeting or room rental charge is made (collectively, the “**Conference Center Fee**”). The Conference Center Fee shall be paid to the City monthly.

(b) The original design of the Hotel provided for future expansion capabilities up to an additional 100 hotel rooms and 20,000 square feet of additional conference center space.

(c) Reference is made to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Westminster Promenade East recorded in the real estate records of Jefferson, County, Colorado at Reception Number F066059, as heretofore amended from time to time (the “**Declaration**”). Seller confirms that it is to be solely responsible for any capital improvement costs, taxes, assessments, and major repairs for the Common Property (as defined in the Declaration) and the lake thereon (excluding repairs and maintenance of the pumps and mechanical systems associated with such lake, which repairs and maintenance shall be paid through Assessments of Common Expenses each, as defined in the Declaration).

(d) Purchaser will have the right to audit at Purchaser’s expense the books and records of the Maintenance District (as defined in the Declaration) or any party performing the obligations, and exercising the rights, of the Maintenance District.

(e) The Maintenance District described by the Declaration will not be established absent the mutual agreement of Seller and Purchaser.

6.4 Development Agreements. Prior to Closing, Seller and Purchaser shall cooperate with each other to finalize an agreement to terminate the Pavilion Development Agreement. Prior to Closing, Seller and Purchaser shall cooperate with each other to finalize an agreement to evidence the satisfaction of all obligations under the Development Agreement related to the Hotel and Conference Center, to confirm that no performance obligations related to the Hotel and Conference Center remain to be performed in the future under the Development Agreement, and to document a mutual release of all claims related to the Hotel and Conference Center under the Development

Agreement (other than the making of a final payment of the Business Assistance Rebate as described in Section 9.4 below).

6.5 Operation of Property until Closing. Prior to Closing, Seller will, to the extent Seller has done so prior to the Effective Date, operate and manage the Property in a normal businesslike manner, maintaining present services, and will perform when due all of its obligations under the Permits and the Permitted Exceptions. None of the Personal Property will be removed from the Real Property by or at the direction of Seller unless replaced by personal property of equal or greater utility or value.

6.6 Estoppel Certificates. Upon either party's request, Seller or Purchaser will provide estoppel certificates in form reasonably satisfactory to the requesting party with respect to the Development Agreement, the Declaration or any other Permitted Exception.

6.7 Recreational Use Amendment. Reference is made to that certain Recreational Use Letter Agreement dated September 16, 1998, between Inland and Seller, Inland's interest under which has been assigned to Purchaser (the "**Recreational Use Agreement**"). Prior to Closing, Seller shall cooperate with Purchaser to prepare and finalize the form of an amendment to the Recreational Use Letter Agreement (the "**Recreational Use Amendment**") for the purpose of (a) extending the term of the Recreational Use Agreement through the Obligation Termination Date and (b) providing that either party may terminate the Recreational Use Agreement upon at least sixty (60) days' notice to the other.

6.8 Tax Contest. The parties acknowledge that Seller has commenced proceedings seeking a reduction, refund and/or abatement of the real estate ad valorem taxes for Seller's benefit applicable to certain interests in the Conference Center (the "**Tax Contest**"). Prior to and following Closing, Seller will, for so long as Seller deems it to be in its best interest to pursue it, at Seller's cost and expense, diligently prosecute the Tax Contest to completion in a manner that does not jeopardize title to the Real Property.

6.9 Consent and Recognition Agreement. At or prior to Closing, Seller, Purchaser and JP Morgan Chase Bank, N.A. ("**Lender**") shall terminate that certain Consent and Recognition Agreement made as of December 13, 2007 by agreement in form attached as Exhibit G or in other equivalent format requested by Lender which is reasonably satisfactory to Seller and Purchaser (the "**Termination of Consent and Recognition Agreement**").

6.10 Purchaser's Miscellaneous Covenants. After the Effective Date and prior to Closing, Purchaser agrees: (a) to cause to be maintained all property and liability insurance historically carried by Purchaser in connection with the Property; (b) to promptly advise Seller of the commencement of any litigation by or against Purchaser which would adversely affect Purchaser's ability to carry out the transaction contemplated by this Agreement; and (c) not to do anything which would impair or modify the status of title as shown on the Existing Title Policy or the survey obtained by

Purchaser in connection with Purchaser's acquisition of the Hotel and the lessees' interests under the Ground Leases.

6.11 Seller's Miscellaneous Covenants. After the Effective Date and prior to Closing, Seller agrees: (a) to make no change in the zoning classification of the Real Property; (b) to cause to be maintained all property and liability insurance historically carried by Seller in connection with the Property; (c) to promptly advise Purchaser of the commencement of any litigation by or against Seller pertaining to the Property; and (d) not to do anything which would impair or modify the status of title as shown on the Existing Title Policy or the survey obtained by Purchaser in connection with Purchaser's acquisition of the Hotel and the lessees' interests under the Ground Leases.

6.12 City Services Agreement. Prior to Closing, Seller and Purchaser shall cooperate with each other to prepare and finalize the form of an agreement (the "**City Services Agreement**"). The City Services Agreement shall be in recordable form and shall provide substantially as follows:

(a) Seller agrees with respect to the Real Property and the Hotel Land not within any buildings thereon (i) to remove all snow and ice from the parking lots, driveways, sidewalks and pavers on as promptly as reasonably possible after any accumulation of two inches or more of snow or ice has occurred; (ii) other than the replacement of light bulbs and repair of lighting circuits, to keep the parking areas adequately lighted; (iii) to keep the parking and drive areas properly graded, marked, paved and striped and periodically resealed to assist in the orderly parking of cars; (iv) to maintain, mow, weed, trim and water the landscaped areas and to make such replacements of plants and other landscaping as may be reasonably appropriate and necessary; and (v) to clean the brick pavers.

(b) Ten days after the end of each calendar quarter, Seller will bill Purchaser for Seller's services in performing the obligations described in subsection (a) above. Such billing shall be based on the cost to Seller of performing such obligations, plus a reasonable charge for Seller's overhead related thereto. Without limiting the preceding sentence, Seller and Purchaser agree that the amount currently charged to Purchaser for Seller's performance of the obligations described in subsection (a) above is as reflected in Exhibit C attached hereto and represents the current cost to Seller of performing such services plus a reasonable charge for Seller's overhead related thereto.

(c) In the event that Purchaser believes that Seller is not materially performing service obligations under the City Services Agreement described in subsection (a) above in the manner in which such services have been performed historically, then Purchaser may make demand upon Seller to perform; such demand shall identify the specific failure to perform or describe the needed work. If Seller shall not have performed such obligations within fifteen (15) days following such demand, Purchaser will be entitled to perform such obligations and shall be entitled to prompt reimbursement by Seller of the positive difference, if any, between (i) the cost to Purchaser of performing such obligations, and

(ii) the amount to which Seller would have been entitled under subsection (b) above with respect to such obligations had Seller performed such obligations.

(d) Purchaser may, with or without cause upon thirty (30) day's notice to Seller, terminate the City Service Agreement, in which event Purchaser shall be liable for the final billing statement for services to the date of termination.

(e) Purchaser shall pay the charges billed to Purchaser in accordance with subsection (b) above within thirty (30) days following Purchaser's receipt of Seller's statement. In the event that Purchaser fails to timely pay such charges and such failure continues uncured for a period of ten (10) days following receipt by Purchaser of notice of such failure, Seller may terminate the City Services Agreement.

(f) The term of the City Services Agreement shall commence on the Closing Date and shall terminate at 11:59 p.m. Mountain Time on December 31, 2035, unless earlier terminated as set forth herein.

(g) Upon any termination of the City Services Agreement, Purchaser shall continue to be liable for any billing statement in default and the final billing statement for services performed to the date of termination.

6.13 Restatement of Certain Indemnities . The parties acknowledge that the provisions of Articles 19 and 24 of the Conference Center Ground Lease and the provisions of Articles 18 and 22 of the Pavilion Ground Lease, copies of which are attached hereto as Exhibit I, will survive the termination of the Ground Leases in accordance with their terms. In addition, the parties desire to continue the effect and benefits and burdens of such provisions as between the Seller, as landlord under the Ground Leases, and Purchaser, as tenant under the Ground Leases, for liabilities accruing during the period of time that Seller was landlord and owned the Property.

Accordingly, the indemnity provisions contained in Article 24 of the Conference Center Ground Lease as between Seller, as landlord, and Purchaser, as tenant, are restated and incorporated herein by this reference and shall constitute new reciprocal indemnities binding Seller and Purchaser, respectively, on the terms and conditions set forth in such article (as though Seller and Purchaser remained landlord and tenant, respectively), but only with respect to third party claims accruing on or prior to the date of Closing. In addition, the indemnity provision contained in Article 19 of the Conference Center Ground Lease as between Seller, as landlord, and Purchaser, as tenant, is restated and incorporated herein by this reference and shall constitute a new indemnity binding Purchaser on the terms and conditions set forth in such article (as though Seller and Purchaser remained landlord and tenant, respectively), but only with respect to third party claims accruing on or prior to the date of Closing.

Likewise, the indemnity provisions contained in Article 22 of the Pavilion Ground Lease as between Seller, as landlord, and Purchaser, as tenant, are restated and incorporated herein by this reference and shall constitute new reciprocal indemnities

binding Seller and Purchaser, respectively, on the terms and conditions set forth in such article (as though Seller and Purchaser remained landlord and tenant, respectively), but only with respect to third party claims accruing on or prior to the date of Closing. In addition, the indemnity provision contained in Article 18 of the Pavilion Ground Lease as between Seller, as landlord, and Purchaser, as tenant, is restated and incorporated herein by this reference and shall constitute a new indemnity binding Purchaser on the terms and conditions set forth in such article (as though Seller and Purchaser remained landlord and tenant, respectively), but only with respect to third party claims accruing on or prior to the date of Closing.

7. Conditions Precedent. In addition to any other express conditions set forth in this Agreement, unless waived by the party entitled to the benefit thereof, the obligations of either party to close under this Agreement are subject to satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement are true and correct in all material respects as of Closing and that the other party has performed all material covenants, agreements and obligations required to be performed by it under this Agreement.

7.1 Conditions Precedent to Purchaser's Obligations. Purchaser's obligation to close under this Agreement is expressly conditional upon (a) the Title Company's issuance at Closing, or unconditional commitment at Closing to issue thereafter, the Title Policy setting forth no exceptions to title other than the Permitted Exceptions; (b) the agreement by Seller and Purchaser upon the form of City Agreement, the City Services Agreement, the termination of the Ground Leases, the termination of the Party Wall Declaration and the Recreational Use Amendment; and (c) the consent of Lender to the termination of the Ground Leases, the termination of the Party Wall Declaration and the City Agreement. In the event that Purchaser determines that any condition precedent to its obligation to close is unlikely to be satisfied on the then-scheduled Closing Date, Purchaser may, by notice to Seller prior to or on the Closing Date, extend the Closing Date by up to thirty (30) days. If the Closing does not occur on or before the extended Closing Date, then at any time thereafter Purchaser may elect by notice to Seller to terminate this Agreement and all parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof.

7.2 Conditions Precedent to Seller's Obligations. Seller's obligation to close under this Agreement is expressly conditional upon (a) the agreement by Seller and Purchaser upon the form of City Agreement, the City Services Agreement, the termination of the Ground Leases, the termination of the Party Wall Declaration and the Recreational Use Amendment; (b) the execution and delivery by Lender of the Termination of Consent and Recognition Agreement and termination of the Party Wall Declaration; (c) the consent of Lender to the termination of the Ground Leases; and (d) the issuance of the Title Policy without the inclusion of the Ground Leases and Party Wall Declaration as exceptions to title. In the event that Seller determines that any condition precedent to its obligation to close is unlikely to be satisfied on the then-scheduled Closing Date, Seller may, by notice to Purchaser prior to or on the Closing Date, extend the Closing Date by up to thirty (30) days. If the Closing does not occur on or before the extended Closing Date, then at any time thereafter Seller may elect by notice to Purchaser to terminate this Agreement and all parties will be relieved of any

further obligations hereunder, except for those obligations which expressly survive any termination hereof.

8. Closing. Purchaser and Seller agree that the purchase and sale of the Property will be consummated as follows:

8.1 Closing Date. Closing will occur on October 31, 2008; provided, however, that in any case, Purchaser and Seller may agree, in their own sole discretion, to close on any earlier date (the "**Closing Date**"). Closing will take place at 2:00 p.m. (Mountain Time) at the offices of Title Company in Washington, D.C., on the Closing Date, subject to Section 8.2.

8.2 Escrow and Mechanics of Closing.

(a) The Closing of the sale of the Property shall take place through an escrow (the "**Closing Escrow**") to be established with the Title Company, with the intent that the parties will not be required to physically attend Closing. The Closing Escrow shall be deemed open upon delivery of a fully executed copy of this Agreement to the Title Company. Upon any termination of this Agreement or cancellation of the Closing Escrow, the Title Company shall be instructed by Seller and Purchaser to forthwith deliver to the appropriate party such item or items and all monies and documents previously delivered to the Title Company hereunder. Except as otherwise provided herein, the termination of Closing Escrow and this Agreement and/or the return of deposited funds or documents shall not constitute a waiver, release or discharge of any breach or default that has occurred in the performance of either party's obligations, agreements, covenants, representations or warranties contained herein.

(b) Any of the items required to be delivered by Seller and/or Purchaser, respectively, as set forth in Section 8.3, will be delivered by Seller or Purchaser to the Title Company to be held subject to the Closing Escrow, and disbursed or delivered by the Title Company at Closing, in accordance with escrow instructions from the delivering party.

8.3 Closing Documents. Seller and Purchaser, as appropriate, will deliver or cause to be delivered to into the Closing Escrow no later than 10:30 a.m. Eastern Time) on the Closing Date the following items (all documents will be duly executed and acknowledged where required):

(a) Special Warranty Deed. Seller will execute, deliver a special warranty deed, in the form attached hereto as Exhibit D, conveying to Purchaser all of Seller's right, title and interest in and to the Real Property, subject only to the Permitted Exceptions and the Ground Leases and Party Wall Declaration (the "**Deed**").

(b) Bill of Sale. Seller will execute and deliver a bill of sale and general assignment, in the form attached hereto as Exhibit E, conveying all of

Seller's right, title and interest in and to the Personal Property, Permits, Warranties, Plans and Intangibles.

(c) Assignment of Lessor's Interest in Ground Leases. Seller and Purchaser will execute and deliver an assignment of Lessor's Interest in Ground Leases, in the form attached hereto as Exhibit F, conveying all of Seller's right, title and interest in and to the Ground Leases.

(d) Termination of Ground Leases and Party Wall Declaration. Purchaser will execute and deliver one or more instruments terminating the Ground Leases and the Party Wall Declaration.

(e) City Agreement. Seller and Purchaser will execute and deliver the City Agreement.

(f) City Services Agreement. Seller and Purchaser will execute and deliver the City Services Agreement.

(g) Evidence of Satisfaction of Obligations under Development Agreement. Seller and Purchaser will execute and deliver, and Seller will cause Promenade Parking General Improvement District to execute and deliver, the agreement contemplated in Section 6.4 in recordable form and otherwise in form satisfactory to Purchaser and Seller related to the Amended and Restated Agreement between the City of Westminster, Inland Pacific Colorado, LLC, Westminster Promenade Development Company, LLC, and Promenade Parking General Improvement District for the Cooperative Development and Construction of the Westminster Promenade East Hotel, Conference Center, and Commercial Buildings, dated May 15, 2001, as heretofore amended from time to time (the "**Development Agreement**") to the extent that the Development Agreement applies to the Hotel, Conference Center and Pavilion facilities (other than the making of a final payment of the Business Assistance Rebate as described in Section 9.4).

(h) Termination of Pavilion Development Agreement. Seller and Purchaser will execute and deliver an instrument terminating the Agreement for the Cooperative Development and Construction of the Lakeview Pavilion Banquet Center dated February 24, 2000, between Seller and Inland (the "**Pavilion Development Agreement**").

(i) Recreational Use Amendment. Seller and Purchaser will execute and deliver the Recreational Use Amendment.

(j) Termination of Consent and Recognition Agreement. Seller and Purchaser will execute and deliver the Termination of Consent and Recognition Agreement.

(k) Title Policy. The Title Company will issue the Title Policy or provide an unconditional written commitment (in a form reasonably satisfactory to Purchaser) to issue the Title Policy promptly after Closing.

(l) Non-foreign Affidavit. Seller will execute and deliver an affidavit of Seller that evidences that it is exempt from the withholding requirements of Section 1445 of the Code.

(m) Local Transfer Documentation. Purchaser and Seller will execute and deliver such customary affidavits, reports, returns or other documentation required by the State of Colorado, Jefferson County or other applicable governmental entity or agency having jurisdiction over the transaction contemplated by this Agreement with respect to any and all transfer or recording taxes and/or tax withholding requirements.

(n) Settlement Sheets and Funds. Seller and Purchaser will execute and deliver settlement statements reflecting the Purchase Price and all adjustments and prorations to be made thereto pursuant to this Agreement including, without limitation, Section 9 below, together with any amounts, in immediately available funds, required to be paid by either party thereunder.

8.4 Further Documents. Seller and Purchaser will execute and deliver such other documents and will take such other action at Closing as may be necessary or appropriate to carry out their respective obligations under this Agreement, without further representations or warranties other than those contained herein.

8.5 Additional Deliveries. On the Closing Date, Seller will turn over to Purchaser all written Permits and Warranties, the Plans and all written evidence of the Intangible Property or Seller's rights thereto in Seller's possession or control.

8.6 Recording Instructions. The Closing shall not be considered final and no document shall be recorded until the Escrow Agent holds all fully executed documents listed above under escrow instructions from Seller and Purchaser which are consistent with this Agreement and not inconsistent with each other. The documents to be recorded and the order of recordation are as follows:

- (a) Deed;
- (b) Assignment of Lessor's Interest in Ground Leases;
- (c) Termination of Ground Leases;
- (d) Termination of Party Wall Declaration;
- (e) Agreement described in Section 8.3(g) related to the Development Agreement;
- (f) City Agreement; and

(g) City Services Agreement.

9. Adjustments and Prorations. The following adjustments and prorations will be made at Closing and reflected, as noted below on the settlement sheets described in Section 8.3(n) above:

9.1 Ground Lease Rentals. All rents (including all accrued tax and operating expense pass-throughs), charges and revenue of any kind receivable from the Ground Leases will be paid to Seller up to the date of Closing and reflected on the settlement sheets.

9.2 Ad Valorem Taxes. Seller will pay all real estate taxes based upon the possessory interest under the Conference Center Ground Lease and personal property taxes for the Equipment (as defined in the Conference Center Ground Lease) attributable to any period prior to the Closing Date (the “**Taxes**”), when billed to Seller or Purchaser by the Jefferson County Treasurer. Purchaser agrees to promptly notify Seller and deliver to Seller copies of all notices from the County Treasurer related to the Taxes which are delivered to Purchaser. Seller agrees to promptly notify Purchaser and deliver to Purchaser copies of all notices from the County Treasurer related to the Taxes which are delivered to Seller. Seller agrees to indemnify and hold Purchaser harmless from and against any loss, liability, lien, cost or expense (including, without limitation, interest, penalties, court costs and reasonable attorneys’ fees) paid or incurred by Purchaser as a result of or in connection with any failure by Seller to pay such Taxes before they become delinquent. Purchaser will pay all real estate and personal property taxes on the Property and Equipment accruing from and after the Closing Date when billed by the County Treasurer.

There shall be no proration of real estate taxes and personal property taxes related to the Pavilion Ground Lease, and Seller shall have no liability for such taxes which Purchaser, as Tenant under the Pavilion Ground Lease, has paid historically.

9.3 Operating Expenses. The parties agree that there shall be no proration of any utility and operating expenses of the Property which are currently paid by Purchaser under the Ground Leases.

9.4 Payments Obligations under Development Agreement, Declaration and Party Wall Declaration. Any payment obligations between Seller and the owner or operator of the Hotel, Conference Center and Pavilion under the Development Agreement, the Declaration and the Party Wall Declaration will be prorated as of the Closing Date and reflected on the settlement sheets, except Seller’s obligation to make a payment of the Business Assistance Rebate (as defined in the Development Agreement) for the calendar quarter which includes the Closing Date. On the next scheduled quarterly payment date, Seller shall pay to Purchaser the Business Assistance Rebate for the period of time to and including the Closing Date. Purchaser shall continue to collect and remit to Seller monthly sales tax, the Conference Center Fee and accommodations tax.

9.5 Recordation and Transfer Taxes. Purchaser will pay all of the recordation and transfer taxes payable with respect to the purchase and sale of the Real Property, including any taxes or fees associated with recording the Deed which will be reflected on the settlement sheets. Purchaser shall pay any sales or use taxes attributable to the conveyance of the Personal Property. Purchaser and Seller agree that the amount of the Consideration allocable to the Personal Property is \$0.

9.6 Closing Costs. Purchaser will pay (a) one-half of Title Company's closing fee which will be reflected on the settlement sheets; (b) the costs of the Title Policy in excess of \$4,569 which shall be reflected on the settlement sheets; and (c) Purchaser's attorneys' fees. Seller will pay (i) one-half of Title Company's closing fee which will be reflected on the settlement sheets; (ii) the costs of the Title Policy up to a maximum of \$4,569 which will be reflected on the settlement sheets; and (iii) Seller's attorneys' fees.

9.7 Insurance. Purchaser understands that Seller will cause all property and liability insurance currently being carried by Seller related to the Property to be canceled as of the Closing Date, and Purchaser will be responsible for obtaining new insurance coverage with respect to the Property as of Closing.

9.8 Capital Expenditures. Capital expenditures related to the Conference Center will be prorated as of Closing, such that Purchaser shall be entitled to a credit (the "**Capex Credit**") for the portion of the 2008 capital expenditures related to the Conference Center that are attributable to the period of Seller's ownership of the Conference Center. The parties have agreed to a Capex Credit in the amount of \$150,000.00 which will be a final settlement and not subject to later reconciliation based upon actual expenditures. Seller will pay the Capex Credit to Purchaser outside of Closing on or before February 28, 2009.

9.9 Prorations Calculation. No later than the date that is five business days prior to the Closing Date, Seller will provide Purchaser with a calculation of the estimated prorations for the Ground Leases and other matters contemplated by this Section 9. Purchaser and Seller will reasonably cooperate to finalize such prorations prior to Closing.

9.10 Post-Closing Reconciliation. If at any time on or before June 30, 2009 (a) either party discovers any items which should have been included in the settlement statements as provided in this Section 9, but were omitted therefrom, or (b) discovers any items that were improperly prorated in the settlement statements, or (c) obtains actual amounts with respect to which prorations at Closing on the settlement statements were based on estimates, then such items shall be adjusted in the same manner as if their existence or such improper proration or actual amounts had been known at the time of the preparation of the settlement statements.

9.11 Survival. The parties' obligations under this Section 9, to the extent not fully discharged by or through Closing, will survive Closing and remain fully enforceable thereafter until June 30, 2009; provided that Seller's obligations under Section 9.2 and

9.8 will survive beyond such date to the extent that such obligations then remain unsatisfied.

10. Casualty Damage.

10.1 Notice and Estimate. In the event that the Improvements should be damaged by any casualty prior to Closing, Purchaser cause an estimate to be made by an architect, engineer or contractor selected by Purchaser of the cost and amount of time required to repair such damage.

10.2 Minor Damage. If the estimated cost of repairing such damage is less than \$50,000, then restoration obligations will be as set forth in the Ground Leases, the Closing being extended until restoration is complete.

10.3 Major Damage. If the estimated cost of such repairs is \$50,000 or more, then Purchaser or Seller may elect to terminate this Agreement upon written notice to the other party given within 10 days after both parties' receipt of the estimate in which event both parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof; however, if neither Purchaser nor Seller elects to so terminate this Agreement, then this Agreement will remain in full force and effect and the parties will proceed in accordance with this Section 10.3.

11. Condemnation. Other than with respect to an "Immaterial Taking" (as defined below), any actual or threatened taking or condemnation for any public or quasi-public purpose or use by any competent authority in appropriate proceedings or by any right of eminent domain of all or any part of the Real Property between the Effective Date and the Closing Date will, at either party's option (except in the case of a proceeding brought or threatened by Seller, in which case the option shall be Purchaser's), cause a termination of this Agreement. The election to terminate provided hereby must be exercised by Seller or Purchaser (or will be deemed to have been waived) by notice to the other party to that effect given within 15 days following the last party to receive actual notice of such actual or threatened taking or condemnation. Upon delivery of such termination notice, both parties will be relieved of any future obligations hereunder, except for those obligations which expressly survive any termination hereof. If neither party elects to so terminate this Agreement, or in the event of an Immaterial Taking, Seller and Purchaser will be relieved of all obligations under this Agreement with respect to the portion of the Real Property so taken or condemned, Purchaser will be entitled to receive all proceeds of any such taking or condemnation, and Seller agrees that it will not make any adjustment or settlement of any such taking or condemnation proceeding without Purchaser's consent and will take at Closing all action necessary to assign its entire interest in such award to Purchaser. Any taking or condemnation for any public or quasi-public purpose or use which does not affect access, reduce parking or take any part of the Improvements will be deemed an "**Immaterial Taking.**"

12. Title Company and Commissions.

12.1 Provisions Regarding Title Company. The following provisions shall control with respect to the rights, duties and liabilities of Title Company:

(i) Title Company acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (A) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by Title Company, or (B) identity or authority of any person executing such instruction, notice or evidence.

(ii) Title Company shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by it hereunder, and Title Company shall have no liability except for its own willful misconduct or gross negligence.

(iii) Title Company shall not be responsible for the solvency or financial stability of any financial institution with which Title Company is directed to invest funds escrowed hereunder.

12.2 Sales Commissions. Seller and Purchaser each hereby represent and warrant to the other that their sole contact with the other or with the Property has been made without the assistance of any broker or other third party. Each party agrees to indemnify and hold the other harmless from and against any loss, liability, damage, cost or expense (including, without limitation, court costs and reasonable attorneys' fees) paid or incurred by the other as a result of or in connection with any breach by the indemnifying party of the representations, warranties and covenants set forth in this Section.

12.3 Leasing Commissions. Seller represents and warrants to Purchaser that any and all commissions or fees due to any broker or other third party in connection with the Ground Leases have been paid in full. Seller agrees to indemnify and hold Purchaser harmless from and against any loss, liability, damage, cost or expense (including, without limitation, court costs and reasonable attorneys' fees) paid or incurred by Purchaser as a result of or in connection with any breach by Seller of the representations and warranties set forth in this Section.

12.4 Survival. The parties' obligations under this Section 12 will survive Closing or any termination of this Agreement and remain fully enforceable thereafter.

13. Remedies.

13.1 Default. In the event that either party fails to perform any of the material covenants or agreements contained herein which are to be performed by such party, then the non-defaulting party may, as its exclusive remedy, terminate this Agreement by giving written notice of termination to the other party whereupon both Purchaser and

Seller will be relieved of any further obligations or liabilities hereunder, except for those obligations which expressly survive any termination hereof.

13.2 Indemnities; Defaults after Closing or Termination. The limitations on the parties' remedies set forth in Section 13.1 will not be deemed to prohibit either party from (a) seeking indemnification from the other for any matter with respect to which such other party has agreed hereunder in Sections 6.13, 9.2, 12.2 or 12.3 to provide indemnification or from seeking damages (but not special, consequential (other than reasonable attorneys fees and expenses) or punitive damages) to the extent of such other party's obligations under each indemnity from such other party in the event it fails or refuses to provide such indemnification; (b) subject to the express limitations set forth in Sections 4.3 and 5.3 respectively, seeking actual damages (but not special, consequential or punitive damages) incurred for the other party's breach of representation or warranty set out in Section 4.1 or 5.1; (c) seeking damages (but not special, consequential or punitive damages) or such equitable relief as may be available for the other party's failure to perform after Closing hereunder any obligation hereunder as set out in Sections 4.3, 5.3, 6.1, 6.2, 9, and 12 which expressly survive Closing; or (d) seeking damages (but not special, consequential or punitive damages) or such equitable relief as may be available for the other party's failure to perform after any termination of this Agreement any obligation hereunder as set out in Section 12 which expressly survive such termination.

14. General Provisions. The parties further agree as follows:

14.1 Confidentiality and Press Releases. Prior to Closing, no press release or public disclosure, either written or oral, of the existence or terms of this Agreement will be made by either Purchaser or Seller without the consent of the other, other than those public actions required by the Seller for the approval and performance of this Agreement.

14.2 Time and Dates. Time is of the essence of this Agreement and Seller's and Purchaser's obligations hereunder. As used herein, the term "business day" shall mean all days, excluding Saturdays, Sundays and all days observed by either the State of Colorado or the United States government as legal holidays. All references to "days" that do not specifically refer to "business days" will refer to calendar days. For purposes of determining dates under this Agreement (a) a day that is a specified number of days after a given date will be the day that occurs the specified number of days after (but not including) the given date (so that, for example, the day that is 10 days after January 1 will be January 11); and (b) a day that is a specified number of months after a given date will be the day that occurs on the same day of the calendar month as the given date the specified number of months later (so that, for example, the day that is three months after January 15 will be April 15), except that if the day is the last day of a month, it will also be the last day of the month that is the specified number of months later (so that, for example, the day that is three months after January 31 will be April 30). If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the Closing Date) should, under the terms hereof, fall on a day that is not a business day, then such date will be automatically extended to the next succeeding business day.

14.3 Attorneys' Fees. In the event it becomes necessary for Purchaser or Seller to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party in such suit will be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

14.4 Entire Agreement. No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

14.5 Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado.

14.6 Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; upon receipt of confirmation of facsimile transmission; as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of 12:00 Noon (local time for the recipient) on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows; to the address or facsimile number set forth below:

If to Seller, to:

The City of Westminster
Office of the City Manager
4800 West 92nd Avenue
Westminster, CO 80031
Attention: Stephen P. Smithers
Telephone: (303) 430-2400 Ext. 2113
Telecopy: (303) 426-5857

With a copy to:

The City of Westminster
Office of the City Attorney
4800 West 92nd Avenue
Westminster, CO 80031
Attention: Martin McCullough, Esq.
Telephone: (303) 658-2234
Telecopy: (303) 426-5857

If to Purchaser, to:

Westminster Boulevard, LLC
1050 Seventeenth Street, Suite 1200
Denver, Colorado 80265
Attention: Dan Cohen and Gabe L. Finke
Telephone: 303-573-4123
Telecopy: 303-534-6317

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Jay W. Philp
Telephone: 303-575-7559
Telecopy: 303-825-6525

If to Title Company, to:

First American Title Insurance Company
1801 K Street, NW, Ste. 200
Washington DC 20006
Attention: Cheryl Aviva Amitay, Assistant Vice President & Counsel
Telephone: 202-530-1800
Telecopy: 202-530-1435

or to such other address of which, or such other person of whom, any party notifies the other for such purpose in accordance with this Section.

14.7 No Recording. This Agreement will not be recorded by either party and any violation of this provision by Purchaser will, at the option of Seller to be exercised by written notice from Seller to Purchaser, cause this Agreement to be null and void except as to the agreements of Purchaser set forth in Section 14.1.

14.8 Headings. The headings which appear in some of the Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

14.9 Counterparts. This Agreement may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties will be deemed an original, but all of which when taken together will constitute one agreement.

14.10 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

14.11 Purchaser's Lender. Seller and Purchaser agree to amend this Agreement prior to Closing as reasonably requested by Lender; provided, that neither the obligations of Seller nor the obligations of Purchaser shall be materially increased as a result of such amendment; and further provided, that neither the rights of Seller nor the rights of Purchaser shall be materially impaired as a result of such amendment; and further provided that no amendment shall change the conditions precedent to either party's obligations to perform set out in Sections 7.1 and 7.2 related to Lender's execution of documents.

14.12 Post-Closing Relationship. Following Closing, Seller and Purchaser will negotiate in good faith in connection with making space in the Conference Center or Pavilion available to Seller at then-prevailing market rates for meetings and other events organized by Seller.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below, but effective as of the date first set forth above.

PURCHASER:

WESTMINSTER BOULEVARD, LLC, a Delaware limited liability company

By: Amstar/Sage Westminster Holdings, LLC, a Colorado limited liability company, its Managing Member

By: Amstar-29, LLC, a Colorado limited liability company, its Managing Member

By: _____,
_____, Manager

Date: _____, 2008

SELLER:

CITY OF WESTMINSTER, a Colorado home-rule municipality

By: _____
Name: _____
Title: _____

Date: _____, 2008

TITLE COMPANY:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Cheryl Aviva Amitay, Vice President

Date: _____, 2008

Exhibit A

LEGAL DESCRIPTION OF THE LAND

Parcel One:

Lot 4, Westminster Promenade East First Replat, according to the plat recorded June 1, 2000, at Reception No. F1064574, in the records of the Clerk and Recorder of Jefferson County, County of Jefferson, State of Colorado.

Parcel Two:

Lot 6, Westminster Promenade East First Replat, according to the plat recorded June 1, 2000, at Reception No. F1064574, in the records of the Clerk and Recorder of Jefferson County, County of Jefferson, State of Colorado.

Exhibit B

LEGAL DESCRIPTION OF THE HOTEL LAND

Lots 3 and 3A, Westminster Promenade East First Replat, according to the plat recorded June 1, 2000, at Reception No. F1064574, in the records of the Clerk and Recorder of Jefferson County, Colorado, County of Jefferson, State of Colorado.

Exhibit C

**FEES PAYABLE BY PURCHASER FOR SERVICES PROVIDED BY SELLER AT THE
PROPERTY**

[See attached]

Exhibit D

SPECIAL WARRANTY DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL THIS DEED TO:**

Otten, Johnson, Robinson, Neff & Ragonetti P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Jay W. Philp

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SPECIAL WARRANTY DEED

_____, a _____ (“Grantor”), whose street address is _____, in consideration of _____ in hand paid, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto _____, a _____ (“Grantee”), whose street address is _____, that certain real property in the County of _____ and State of Colorado that is legally described on Exhibit A attached hereto (the “Property”);

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of Grantor, either in law or equity, of, in and to the Property;

TO HAVE AND TO HOLD the Property unto Grantee forever;

AND Grantor covenants and agrees to and with Grantee, to warrant and defend the quiet and peaceable possession of the Property by Grantee, against every person who lawfully claims the Property or any part thereof, by, through or under Grantor, subject to the matters set forth on Exhibit B attached hereto.

[Signature on following page]

Exhibit E

**BILL OF SALE
AND
GENERAL ASSIGNMENT**

THIS BILL OF SALE AND GENERAL ASSIGNMENT (this “**Bill of Sale**”) is made as of _____, 2008, by the CITY OF WESTMINSTER, a Colorado home-rule municipality (“**Seller**”), to WESTMINSTER BOULEVARD, LLC, a Delaware limited liability company (“**Purchaser**”).

RECITALS

This Bill of Sale is made with respect to the following facts:

A. Seller has this date conveyed to Purchaser certain real property in the City of Westminster, Jefferson County, Colorado, more fully described in Exhibit A attached hereto (the “**Real Property**”).

B. In connection with its conveyance of the Real Property to Purchaser, Purchaser has requested that Seller convey and assign to Purchaser all of Seller’s right, title and interest in and to certain personal property, ground leases, permits, warranties, plans, intangible property and other matters more fully described below.

CONVEYANCE AND ASSIGNMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby conveys, transfers, grants and assigns to Purchaser all of Seller’s right, title and interest in and to the following:

1. The personal property owned by Seller and located on, or used exclusively in connection with, the Real Property (the “**Personal Property**”);

2. All right, title and interest of Seller in and to all governmental permits, licenses, certificates and authorizations, including, without limitation, certificates of occupancy, relating to the construction, use or operation of the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser (the “**Permits**”);

3. All right, title and interest of Seller in and to all unexpired warranties, guarantees and bonds, including, without limitation, contractors’ and manufacturers’ warranties or guarantees, relating to the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser (the “**Warranties**”);

4. All right, title and interest of Seller in and to any site plans; surveys; soil and substratus studies; environmental reports and studies; architectural drawings, plans and specifications; engineering, structural, electrical and mechanical reports, plans and studies; floor

plans; and landscape plans that relate to the Real Property or the Personal Property, to the extent the same may be lawfully assigned to Purchaser (the “**Plans**”); and

5. All right, title and interest of Seller in and to any and all intangible property and appurtenances thereto owned by Seller and related exclusively to, or used exclusively in connection with, the operation of the Property or the Personal Property, including, without limitation, any and all trade names, to the extent they are assignable (the “**Intangible Property**”).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first written above.

SELLER:

CITY OF WESTMINSTER,
a Colorado home-rule municipality

By: _____
Name: _____
Title: _____

EXHIBIT A

to

BILL OF SALE AND ASSIGNMENT

LEGAL DESCRIPTION OF THE REAL PROPERTY

[To be inserted at Closing]

Exhibit F

ASSIGNMENT OF LESSOR'S INTEREST IN GROUND LEASES

WHEN RECORDED MAIL THIS DOCUMENT TO:

Otten, Johnson, Robinson, Neff & Ragonetti P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Jay W. Philp

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF LESSOR'S INTEREST IN GROUND LEASES

This Assignment of Lessor's Interest in Ground Leases ("Assignment") is made and given as of the ____ day of _____, 2008 by the CITY OF WESTMINSTER, a Colorado home-rule municipality ("Assignor"), to WESTMINSTER BOULEVARD, LLC, a Delaware limited liability company ("Assignee"), pursuant to that certain Purchase and Sale Agreement dated _____, 2008, by and between Assignor and Assignee.

For Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Assignor does hereby sell, assign, transfer, and set over unto Assignee, all of the right, title, and interest of Assignor, as lessor, in, to, and under the following (collectively, the "Ground Leases"):

- (a) *[Insert description of Pavilion Ground Lease and memorandum];* and
- (b) *[Insert description of Conference Center Ground Lease and memorandum].*

Assignee does hereby accept the foregoing Assignment subject to the terms hereof, and (i) hereby assumes the obligations of Assignor under the Ground Leases accruing after the date hereof, and (ii) hereby agrees to indemnify, defend and hold harmless Assignor from and against all claims of unrelated third parties for which the Assignee has liability as successor Landlord (as defined in the Ground Leases) under the Ground Leases and which accrue from and after the Closing Date. Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against all claims of unrelated third parties for which Assignor would have had liability under the Ground Leases had it continued as Landlord without the effect of this Assignment and which accrue prior to the Closing Date.

This Assignment may be executed in several counterparts and all counterparts so executed shall constitute one Assignment, binding on all the parties hereto and thereto, notwithstanding that all the parties are not signatories to the same counterpart.

[Executions appear on following page(s)]

ASSIGNEE:

WESTMINSTER BOULEVARD, LLC, a Delaware limited liability company

By: Amstar/Sage Westminster Holdings, LLC, a Colorado limited liability company, its Managing Member

By: Amstar-29, LLC, a Colorado limited liability company, its Managing Member

By: _____
_____, Manager

STATE OF _____)
) ss.
CITY AND COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, as _____ of _____, a _____, on behalf of such _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Exhibit G

TERMINATION OF CONSENT AND RECOGNITION AGREEMENT

This Termination of Consent and Recognition Agreement ("Termination Agreement") is made as of the ___ day of _____, 2008, by and between **JPMorgan Chase Bank, N.A.**, a national banking association ("Bank"), **Westminster Boulevard, LLC**, a Delaware limited liability company ("Borrower") and the **City of Westminster**, a Colorado home-rule municipality ("City").

RECITALS

A. Bank, Borrower and City previously entered into that certain Consent and Recognition Agreement made as of December 11, 2007 ("Consent and Recognition Agreement") in connection with a certain loan from Bank to Borrower the purpose of which in part was to finance Borrower's acquisition of certain real estate and leasehold interests located in the County of Jefferson, State of Colorado.

B. All defined terms used in this Termination Agreement and not otherwise defined shall have the same meanings as in the Consent and Recognition Agreement.

C. City was asked to enter into the Consent and Recognition Agreement by virtue of the fact that it was the holder of the lessor's interests under the Conference Center Lease and Pavilion Lease.

D. Borrower and City have now entered into an agreement by which the Conference Center Lease and Pavilion Lease would be terminated and the City would convey the underlying fee simple interest in the subject property to Borrower ("Purchase and Sale Transaction").

E. Lender has reviewed and approved the terms of the Purchase and Sale Transaction.

F. Since the Conference Center Lease and Pavilion Lease will be terminated at the closing of the Purchase and Sale Transaction, the parties hereto have agreed to terminate the Consent and Recognition Agreement effective the date of such closing.

NOW THEREFORE, the parties agree as follows:

1. Lender has received a copy of and reviewed the Purchase and Sale Agreement for Westin Westminster Pavilion and Conference Center Facilities between the City, as seller, and Borrower, as purchaser, dated effective _____, 2008 and approves and consents to the transaction contemplated by such Purchase and Sale Agreement.

2. Effective the date hereof, the Consent and Recognition Agreement shall be and is hereby terminated.

Exhibit H

EXISTING TITLE POLICY

[See attached]

Exhibit I

GROUND LEASE INDEMNITY PROVISIONS

[See attached]



Agenda Item 8 J

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Natural Resource Damage Fund Grant Opportunity for Open Space Purchases

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Authorize the Department of Community Development to apply for a grant with the Natural Resource Trustees for Rocky Flats Natural Resource Damage Funds (NRD funds) for the acquisition of up to two parcels west and north of Standley Lake for open space.

Summary Statement

- The Department of Community Development wishes to pursue a grant from the Natural Resource Trustees for Rocky Flats for funding assistance for up to two acquisitions totaling approximately 35 acres to the west and north of Standley Lake for open space.
- Staff recommends requesting up to \$500,000 for a grant to match open space bond funds to assist with the acquisition of these parcels. These parcels are currently included on the Open Space Advisory Board's wish list and are considered high priority properties to purchase for open space.

Expenditure Required: Matching funds up to \$1,500,000

Source of Funds: Open Space Bond Funds

Policy Issue

Should the City attempt to seek assistance for the acquisition of these properties by pursuing grant monies from the Natural Resource Trustees for Rocky Flats?

Alternative

Council could choose not to pursue additional funding for these acquisitions and use Open Space Bond Funds for the purchase amount. However, Staff recommends attempting to secure additional funding for these acquisitions through this grant opportunity to allow for open space acquisition assistance.

Background Information

Federal Natural Resource Damage Funds in the amount of \$10 million were awarded to Rocky Flats in 2007. The Trust for Public Land spent \$5.5 million of this \$10 million to purchase mineral rights held underneath the Rocky Flats Wildlife Refuge. The Natural Resource Trustees for Rocky Flats are soliciting proposals for use of the remainder of the funds, approximately \$4.5 million, for projects that restore, enhance or replace similar natural resources that were injured from contaminant releases that occurred at the former Rocky Flats Plant site. The Natural Resource Trustees represent the following state and federal agencies:

- Colorado Department of Public Health and Environment
- Colorado Attorney General's Office
- Colorado Department of Natural Resources
- U.S. Department of Energy
- U.S. Department of the Interior

Communities surrounding Rocky Flats plan to submit one proposal for use of the Natural Resource Damage Funds. The City of Westminster seeks to submit as a part of this proposal the acquisition of up to two parcels within the larger 95 acres shown on the attached map to the east of Rocky Flats Wildlife Refuge. It is estimated that up to 35 acres within the larger 95 acres shown could be purchased using the NRD and matching funds. Acquisition of these properties surrounding Rocky Flats that restore, enhance or replace similar natural resources that were injured on site are an allowed use of the Natural Resource Damage Funds. The communities and non-profits that will submit a proposal for use of the NRD funds are Boulder County, City of Boulder, City of Superior, City and County of Broomfield, Enviro Support, Inc., Jefferson County Nature Association, The Trust for Public Land, and Westminster. The City may seek additional funding from sources such as Jefferson County and Great Outdoors Colorado to assist with the matching funds needed for this grant request at some point in the future. Staff will come back to Council to seek these funds once they are identified.

The City of Westminster has over 1,000 acres of open space to the east of the refuge within the Westminster Hills Open Space area and another 2,200 acres of land around Standley Lake. Acquisition of the parcels will protect prairie habitat that is similar to the habitat that was injured on the refuge and will fill in gaps within the City's existing open space system where development could occur causing loss of wildlife habitat. Acquisition of these parcels will serve as a buffer to the refuge and also help to create a continuous wildlife corridor from the refuge to the Westminster Hills Open Space area and Standley Lake Regional Park.

An active bald eagle nest is located east of the wildlife refuge on the northwest corner of Standley Lake. This nest site has been active for over 10 years. A large prairie dog colony occurs within the Westminster Hills Open Space area and on the acquisition parcels. This species is listed as a Colorado species of special concern because of habitat loss. The bald eagles hunt for food in the prairie dog colony to the north of their nest and on the wildlife refuge. Acquisition of these parcels will help to protect the prairie

dog habitat and critical bald eagle food source. Both parcels are within the ½ mile eagle nest buffer that is recommended by the Colorado Division of Wildlife for restricting construction. An active red-tailed hawk's nest has also been observed within the Stanley Lake Regional Park. These hawks most likely hunt for prey within the Westminster Hills Open Space area to the north as well.

These parcels have been on the Open Space Advisory Board's wish list as high priority purchases for open space for many years.

The Department of Community Development has been successful in applying for and receiving grants from a variety of sources in the past. In recent years, the City has received grant money from Adams and Jefferson County Open Space programs for park and trail development projects as well as open space acquisitions. The City successfully received a GOCO grant for the Metzger Farm purchase in 2006.

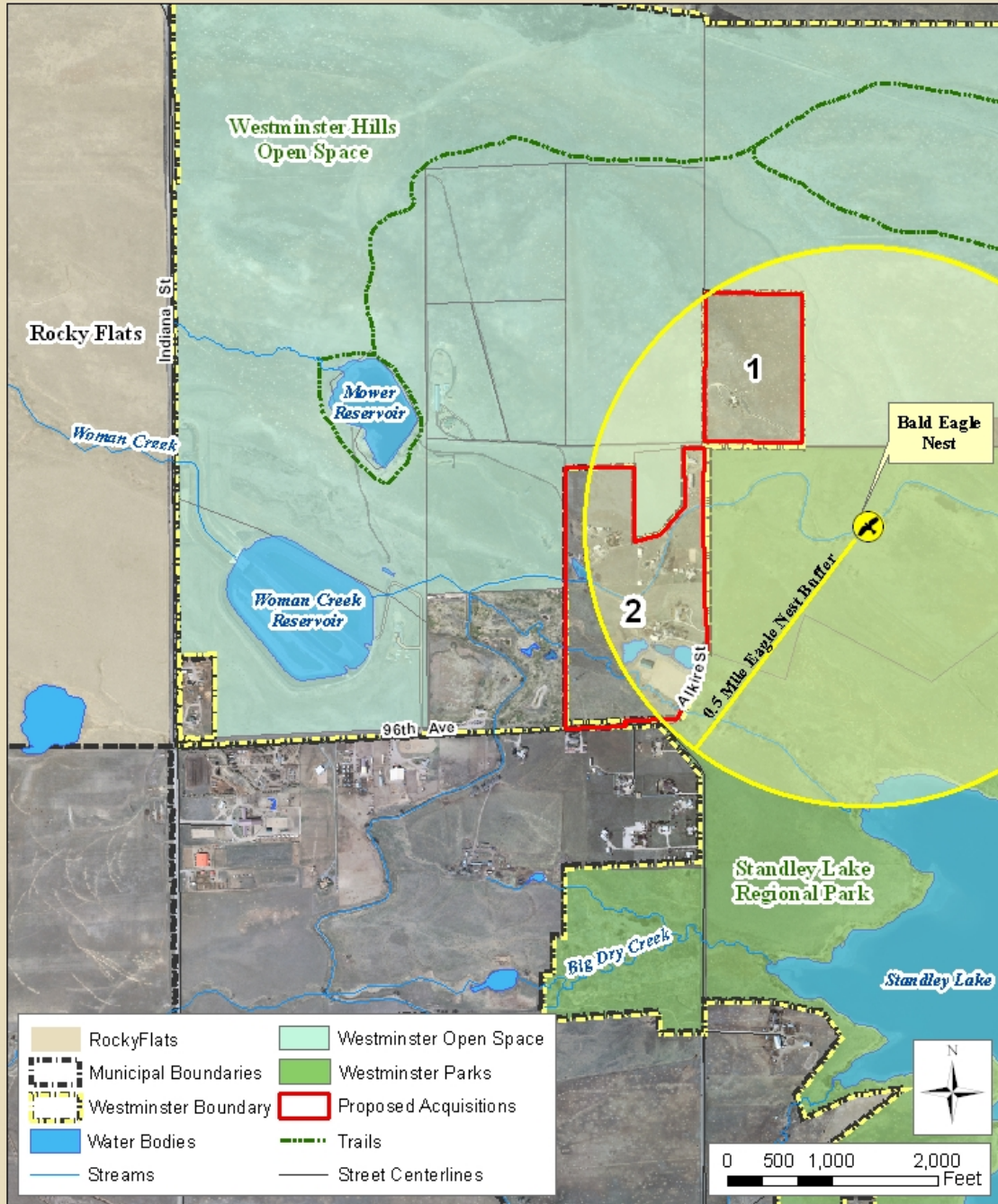
This grant request supports the City's Strategic Plan Goals of "Financially Sustainable City Government" and "Beautiful City" by increasing revenues that support defined City projects and by providing the City with increased open space.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

Rocky Flats National Wildlife Refuge NRD Fund Proposed Acquisitions





Agenda Item 8 K

WESTMINSTER COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Second Reading of Councillor’s Bill No. 37 re 2009 and 2010 Appropriations

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

Recommended City Council Action

Pass Councillor’s Bill No. 37 on second reading appropriating funds for the 2009/2010 Budget.

Summary Statement

- Under City Charter provisions, City Council is to hold a public hearing on the proposed City Budget for the ensuing year and adopt it no later than the fourth Monday in October. Two public meetings were held on June 9 and July 28 and the required public hearing was held on the proposed 2009/2010 Budget on September 8. A copy of the proposed 2009/2010 Budget has been on file in the City Clerk's Office, at College Hill and Irving Street Libraries, and on-line for citizen review since August 29, and the appropriate legal notices have been published in the official City newspaper.
- The 2009/2010 Budget reflects all City operations and services to be provided to Westminster citizens and businesses in 2009 and 2010. This budget is balanced based on no tax increases or new taxes. 2009 will be the seventeenth and 2010 will be the eighteenth years maintaining the City’s property tax mill levy at 3.65 mills. The 2009/2010 Budget reflects the City’s work towards sustainability and the goals identified in City Council’s Strategic Plan.
- The total Proposed 2009 Budget is \$175,567,431, excluding \$53,134,884 in reserves and \$1,000,000 in contingency. The total Proposed 2010 Budget is \$170,876,064, excluding \$53,588,817 in reserves and \$1,000,000 in contingency.
- City Council action is requested to pass the attached Councillors Bill on second reading.
- This Councillor’s Bill was passed on first reading on October 13, 2008.

Expenditure Required: 2009 - \$175,567,431, plus \$53,134,884 in reserves and \$1,000,000 in contingency
2010 - \$170,876,064, plus \$53,588,817 in reserves and \$1,000,000 in contingency

Source of Funds: General; Utility; General Reserve; Utility Reserve; Golf Course; Fleet Maintenance; General Capital Outlay Replacement; Sales & Use Tax; Parks, Open Space and Trails (POST); Conservation Trust; General Capital Improvement; and Debt Service Funds

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **37**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

Dittman - Winter

A BILL

FOR AN ORDINANCE MAKING APPROPRIATIONS TO PAY THE EXPENSE OF CONTINUING THE PUBLIC BUSINESS FOR THE YEAR 2009 AND 2010 AND OTHER PURPOSES REQUIRED BY THE CHARTER AND BY ANY OTHER LAW

THE CITY OF WESTMINSTER ORDAINS:

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

NON-EMERGENCY RESERVE AND NEW REVENUE

	Fiscal Year 2009	Fiscal Year 2010
a. General Fund	\$95,833,494	\$99,795,264
b. Utility Fund	60,600,498	52,539,114
c. General Capital Improvement Fund	8,828,000	8,544,000
d. Fleet Maintenance Fund	2,591,536	2,868,811
e. General Capital Outlay Replacement Fund	1,065,465	1,113,125
f. General Debt Service Fund	8,033,460	7,711,905
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	61,645,254	69,487,982
i. Parks Open Space & Trails Fund	5,528,218	5,723,834
j. General Reserve Fund	0	0
k. Utility Reserve Fund	11,041,474	1,435,842
l. Golf Course Fund	<u>3,803,414</u>	<u>3,873,928</u>
Total Funds Available	\$263,289,384	\$253,718,805
Less Transfers	<u>-86,751,953</u>	<u>-81,842,741</u>
GRAND TOTAL	\$176,537,431	\$171,876,064

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

	Fiscal Year 2009	Fiscal Year 2010
a. General Fund	\$95,833,494	\$99,795,264
b. Utility Fund	60,600,498	52,539,114
c. General Capital Improvement Fund	8,828,000	8,544,000
d. Fleet Maintenance Fund	2,591,536	2,868,811
e. General Capital Outlay Replacement Fund	1,065,465	1,113,125
f. General Debt Service Fund	8,033,460	7,711,905
g. Conservation Trust Fund	625,000	625,000
h. Sales and Use Tax Fund	65,368,825	69,487,982
i. Parks Open Space & Trails Fund	5,528,218	5,723,834
j. General Reserve Fund	0	0
k. Utility Reserve Fund	11,041,474	1,435,842
l. Golf Course Fund	<u>3,803,414</u>	<u>3,873,928</u>
Total Funds Available	\$263,289,384	\$253,718,805
Less Transfers	<u>-86,751,953</u>	<u>-81,842,741</u>
GRAND TOTAL	\$176,537,431	\$171,876,064

Section 3. This ordinance shall become effective January 1, 2009.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 13th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 27th day of October, 2008.

ATTEST:

Mayor

City Clerk



WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Second Reading of Councillor's Bill No. 38 re Approval of City Council Allowance and Salary

Prepared By: Barbara Opie, Budget & Special Projects Manager

Recommended City Council Action

Pass Councillor's Bill No. 38 on second reading amending City Council's monthly allowance to \$300/month, with automatic adjustments every two years tied to the Denver-Boulder Consumer Price Index in concert with the adoption of the two-year budget, and monthly compensation as follows: Mayor \$1,400/month, Mayor Pro Tem \$1,200/month and Councillors \$1,000/month; both the allowance and compensation adjustments will be effective December 1, 2009.

Summary Statement

- The amended allowance rate is primarily in response to the rising costs of serving as a City Council member, particularly the in-city commuting costs associated with rising fuel costs. The amended monthly compensation is based on the increasing costs that Council members have had to absorb since the last Council salary increase ten years ago. Both the amended allowance and monthly compensation will be effective December 1, 2009, after the City Council elections in November 2009.
- City Council action is requested to pass the attached Councillors Bill on second reading.
- This Councillor's Bill was passed on first reading on October 13, 2008.

Expenditure Required: \$ 0

Source of Funds: N/A

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **38**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

Briggs - Dittman

**A BILL
FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE
CONCERNING SALARIES FOR ELECTIVE OFFICERS**

THE CITY OF WESTMINSTER ORDAINS:

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

1-7-1: ELECTIVE OFFICERS: The salaries of the City's elective officers shall be as follows:

Mayor	\$ 1,000 1,400 per month
Mayor Pro Tem, elected by Council	\$ 900 1,200 per month
Councillors, other than Mayor or Mayor Pro Tem	\$ 800 1,000 per month

The City's elective officers shall receive an additional monthly allowance for expenses related to the performance of their respective duties. Commencing January 1, ~~2007~~ 2011, the BELOW-STATED allowance shall be adjusted, and biennially thereafter each January 1, by the then current Denver/Boulder Consumer Price Index, rounded to the nearest whole dollar. This allowance shall be in lieu of any reimbursement to which the Mayor, Mayor Pro Tem or Councillor may otherwise be entitled to for Internet service, fax communications, cell phone usage, and local commuting costs within the city limits. All mileage for trips outside of the City limits shall be a reimbursable expense.

The allowances shall be as follows:

Mayor, Mayor Pro Tem and Councillors	\$ 200 300 per month
--------------------------------------	---------------------------------

In addition, the City shall contribute to the City deferred compensation accounts of each such officer an amount equal to the officer's City deferred compensation contributions. The combined contributions from the City and the elective officer shall be subject to all applicable I.R.S. regulations, but in no event shall such combined contributions from the City and the elective officer exceed 25% of the officer's total City salary.

Section 2. This ordinance shall take effect on December 1, 2009.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of October, 2008.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Second Reading of Councillor's Bill No. 39 Authorizing a Supplemental Appropriation of Funds

Prepared By: Stephen C. Baumann, Assistant City Engineer

Recommended City Council Action

Pass Councillor's Bill No. 39 on second reading appropriating a total of \$453,840 received from the Lambertson Farms Metropolitan District No. 1 as follows: \$400,000 to the 136th Avenue Pedestrian Underpass project and \$53,840 to the Capital Projects Reserve.

Summary Statement

- In August 2007, City Council established cost recovery assessments to properties benefiting from the Huron Street improvements projects. This included the Lambertson Farms development in Broomfield at the northwest corner of 136th Avenue and Huron Street for which an assessment of \$453,840 was approved.
- The City and County of Broomfield formed the Lambertson Farms Metropolitan District to improve and widen the north side of 136th Avenue. The District will also install a pedestrian box culvert under the full width of 136th Avenue, with Westminster's participation in half the cost of the culvert and the associated modifications to 136th Avenue. A Joint Development and Cost-Sharing agreement was drawn to formalize a procedure whereby the Metro District designs and constructs the pedestrian box culvert and other shared-cost improvements and applies Westminster's share of those costs (approximately \$400,000) toward its financial obligation to the City. Even though this transaction does not officially appear on the City's books, it requires a supplemental appropriation in order to reflect the installation of this asset (136th Avenue box culvert).
- This Councillor's Bill was passed on first reading on October 13, 2008.

Expenditure Required: Not to exceed \$400,000

Source of Funds: Lambertson Farms Metropolitan District Assessment

Respectfully submitted,

J. Brent McFall
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **39**

SERIES OF 2008

INTRODUCED BY COUNCILLORS
DITTMAN - MAJOR

**A BILL
FOR AN ORDINANCE AMENDING THE 2008 BUDGET OF THE GENERAL CAPITAL
IMPROVEMENTS FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION
FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General Capital Improvement Fund initially appropriated by ordinance No. 3316 is hereby increased by \$453,840. This increase is due to the appropriation of cost recovery assessments from the Lambertson Farms development.

Section 2: The \$453,840 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10H & I dated October 13, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Capital Improvement Fund	<u>\$453,840</u>
Total	<u>\$453,840</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 13th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of October, 2008.

ATTEST:

Mayor

City Clerk



Agenda Item 10 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Resolution No. 52 re Schedule of Fees for Criminal Justice Records

Prepared By: Lee Birk, Chief of Police
Darrin Bacca, Records Supervisor

Recommended City Council Action

Adopt Resolution No. 52 repealing Resolution No. 7, Series of 1986, setting forth a fee schedule for producing criminal justice records.

Summary Statement

- House Bill 08-1076, amending Colorado Revised Statutes (C.R.S.) section 24-72-306, concerning fees for copies of criminal justice records, became effective August 6, 2008. This legislation prescribes a maximum fee for standard copy pages or fees that do not exceed actual costs for providing a copy, printout, photograph or criminal justice records in other than a standard page format.
- On February 24, 1986, City Council adopted Resolution No. 7 establishing hours of operation and fees for the search, retrieval and copying of criminal justice records. The provisions of Resolution No. 7 are no longer compliant with state statute.
- Repealing Resolution No. 7, Series of 1986, and adopting the attached Resolution, will assure compliance with the new state law and allow the City Manager and Chief of Police to administer timely policy and procedure changes to fees for the search, retrieval, and copying of criminal justice records that may occur with technology change or changing legal requirements.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issue

Does City Council want to change the Criminal Justice Record Copying Fee Schedule to assure compliance with state law?

Alternatives

Do not adopt Resolution 52, and retain Resolution 7, Series of 1986. Staff does not recommend this action because Resolution 7 was adopted in 1986, and is out of date. The Colorado Revised Statutes have since been revised and the fees for the search, retrieval, and copying of criminal justice records are not current with the standards for criminal justice records.

Background Information

House Bill 08-1076, amending C.R.S. section 24-72-306(1) concerning fees for copies of criminal justice records, became effective August 6, 2008. That statute was amended to provide that “criminal justice agencies may charge a fee not to exceed twenty-five cents per standard page for a copy of a criminal justice record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a criminal justice record in a format other than a standard page. The current fee schedule in place pursuant to Resolution No. 7, Series of 1986, does not comply with this provision of state law.

An original fee schedule for the search, copying and retrieval of criminal justice records was adopted by Resolution No. 25, Series of 1979, which was superseded by the adoption of Resolution No. 7, Series of 1986. That Resolution is now out of date and does not reflect the recent amendment of the Colorado Revised Statutes with the passage of House Bill 08-1076, nor the correct fees for the search, retrieval, redaction and copying of criminal justice records.

Westminster Municipal Code section 1-12-2(L) authorizes the City Manager to establish, by regulation, fees up to and including \$100. Administrative Memo 2007-03 states that “requests for inspection of criminal justice records shall be processed by the Police Department or the Municipal Court, according to procedures and guidelines established by those agencies.” W.M.C. section 3-1-3(B) gives the Chief of Police the authority to make or prescribe police department policies, procedures, rules, etc., which is done by virtue of the Westminster Police Department Policies and Procedures Manual. Section 309.1 of the Westminster Police Department Policies and Procedures Manual, titled “Records Creation, Processing and Disposal,” provides specific responsibilities for the department concerning the creation, processing, reporting, and records search and copy requests from other criminal justice agencies and the public and outlines the policies, procedures and rules concerning records and records management.

Staff has determined that the best course of action is to repeal Resolution 7, and adopt the attached Resolution that will bring the City and Police Department current with the recently amended Colorado Revised Statutes, and allow the City Manager and Chief of Police to administer policies and procedures relating to any future changes to fees for the search, retrieval, redaction, and copying of criminal justice records at the police department.

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

RESOLUTION

RESOLUTION NO. **52**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

**A RESOLUTION
REPEALING RESOLUTION NO. 7, SERIES OF 1986, CONCERNING CRIMINAL JUSTICE
FEES AND POLICE RECORDS CREATION, PROCESSING AND DISPOSAL**

WHEREAS, the City previously adopted Resolution No. 7, Series of 1986, with the intent to form a policy pursuant to C.R.S. section 24-72-301(2) of the Colorado Criminal Justice Records Act; and

WHEREAS, C.R.S. section 24-72-301(2) declares it to be the public policy of the State of Colorado that criminal justice agencies shall maintain records of their official actions; and

WHEREAS, C.R.S. section 24-72-303 requires that records of official actions of municipal criminal justice agencies be open for inspection at reasonable times; and

WHEREAS, House Bill 08-1076, amending C.R.S. section 24-72-306(1) concerning fees for copies of criminal justice records, states that criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment for the search, retrieval, and redaction of criminal justice records and may charge a fee not to exceed twenty-five cents per standard page; and

WHEREAS, W.M.C. section 1-12-2(L) authorizes the City Manager to establish fees up to and including \$100; and

WHEREAS, the City Manager has delegated authority to the Chief of Police to establish procedures and guidelines relative to requests for inspection of criminal justice records; and

WHEREAS, House Bill 08-1076 became effective at 12:01 a.m. on August 6, 2008; and

WHEREAS, the Westminster Police Department Manual, as amended, will set forth current hours of operation for the Records Unit and a schedule for criminal justice records fees.

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

1. Resolution No. 7, Series of 1986, is hereby repealed.
2. Current and future hours of operation for the Records Unit and a schedule of fees for criminal justice records, as established by the Chief of Police, shall be as set forth in the Westminster Police Department Manual in accordance with the Colorado Criminal Justice Records Act and W.M.C. section 1-12-2(L).

PASSED AND ADOPTED this 27th day of October, 2008.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney



Agenda Item 10 B

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Resolution No. 53 re Support for the Adams 12 Five Star Schools 3A and 3B
Ballot Measures

Prepared By: Philip Jones, Management Analyst

Recommended City Council Action

Adopt Resolution No. 53 supporting Adams 12 Five Star School's effort to gain voter approval for Ballot Measures 3A and 3B.

Summary Statement:

- Ballot Measure 3A will provide a 5.581 mill increase in property tax for funding to address operating priorities for the school district, avoiding significant budget cuts.
- Ballot Measure 3B seeks approval for the sale of \$80 million in bonds for the construction of two new elementary schools in the district and improvements to schools and infrastructure in the district.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to formally support Adams 12 Five Star Schools in their efforts to pass Ballot Measures 3A and 3B?

Alternative

Take no action regarding support for the ballot measure proposals of the Adams 12 Five Star Schools.

Background Information

At the October 20, 2008 Study Session, Adams 12 Five Star Schools Superintendent Mike Paskewicz presented information regarding two ballot measures for this November's general election. Measures 3A and 3B provide operating and capital dollars for the improvement of Adams 12 Five Star Schools. Measure 3A will increase the district's operating mill levy 5.581 mills, increasing property tax revenue in the district's operating budget by roughly \$9.9 million per year based on current property valuations in the county. This will assist in balancing the district's budget and allow for maintaining appropriate staff levels and class sizes, and keeping up-to-date with technology needs.

Measure 3B will allow the district to issue \$80 million in bonds, without any tax increase. The money from 3B will fund the construction of two new elementary schools, fund capital improvements in the district's schools and support facilities, and fund other district-wide capital projects. Five schools in the City of Westminster will be improved with bond proceeds including Mountain Range High School, Silver Hills Middle School, Rocky Mountain Elementary School, Cotton Creek Elementary School, and Arapahoe Ridge Elementary School.

Attached is a resolution for City Council's consideration encouraging residents within the Adams 12 school district to support Ballot Measures 3A and 3B.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **53**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

**CITY OF WESTMINSTER SUPPORT FOR
ADAMS 12 FIVE STAR SCHOOLS
BALLOT MEASURES 3A AND 3B**

WHEREAS, it is important to have excellent schools as a cornerstone of a high quality of life for the residents of the City of Westminster; and

WHEREAS, Adams 12 Five Star Schools is seeking voter approval for a bond issue and millage increase to continue its mission of exceptional education for Adams 12 students; and

WHEREAS, the proceeds of the bond issue and millage increase will directly benefit five schools in the City of Westminster, in turn benefitting the students, parents, and community who rely on those schools.

NOW THEREFORE, be it resolved that the City Council of the City of Westminster does hereby give its full support to Adams 12 Five Star Schools in their efforts to pass Ballot Measures 3A and 3B during the upcoming November, 2008 election, and encourages residents of the Adams 12 school district to support these ballot initiatives.

PASSED AND ADOPTED this 27th day of October, 2008.

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Revised Employment Agreement with John A. Stipech and
Councillor's Bill No. 40 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 2009 with an effective date of December 1, 2008, and an automatic renewal for 2010 unless terminated by City Council.
2. Pass Councillor's Bill No. 40 on first reading amending the salary for the Municipal Judge for 2009.

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 December 1, 2008 and would automatically be renewed for 2010 unless it is terminated by City Council no later than October 31, 2009.
- Judge Stipech's 2009 combined salary and deferred compensation will be \$127,683, which represents a five percent increase over his annual compensation for 2008. 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 2009. In addition, the proposed agreement includes a bonus of \$5,000 to be paid in 2008 and an increase in the Judge's monthly car allowance to \$500 per month.
- The attached proposed agreement with Judge Stipech is similar to the current employment agreement with the exceptions of the addition of a bonus, the increase in the car allowance, the total allocated for salary and deferred compensation and a change in the effective dates of the contract.

Expenditure Required: 2008 - \$5,000
2009 - \$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 the City Council amend its present employment agreement to incorporate modifications to the Presiding Judge's compensation package for the balance of 2008 and for 2009?

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 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 2007 with the exception of the effective dates of the agreement and changes to his compensation package.

City Council met with Judge Stipech on October 13 to review his job performance since his last performance appraisal and to determine his compensation for the coming year. The revised agreement incorporates the changes requested by Council and will provide for a combined salary and deferred compensation of \$127,683. This amount is \$6,080 or 5% higher than his total salary and deferred compensation for 2008. The employment agreement allows the Judge to designate a portion of his salary as deferred compensation up to the maximum allowed under federal law. The agreement also includes a provision for a bonus of \$5,000 in 2008 in recognition of the Judge's work performance during the past year and an increase in his car allowance from \$340 to \$500 per month. 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 2008 and 2009 Budgets to cover the expense for the bonus, 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 updating the salary in the Municipal Code to reflect 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,

J. Brent McFall
City Manager
Attachments

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of December, 2008, 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 commence 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 2009 and 2010. 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 2009 and 2010. 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 2010 unless terminated no later than October 31, 2009.

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, 2009, 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. BONUS:

In recognition of his job performance during 2008, the EMPLOYEE shall be given a \$5,000 bonus payable no later than December 12, 2008.

SECTION 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 contract, said contract 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 12. 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 13. 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 December 1, 2008, and, if automatically renewed, shall be in effect through December 31, 2010.

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 December 1, 2008, 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 27, 2008, contingent upon approval of the Councillor's Bill amending the Municipal Judge salary.

ATTEST:

Nancy McNally, Mayor

City Clerk

John A. Stipech

APPROVED AS TO FORM:

City Attorney

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **40**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE SALARY OF THE MUNICIPAL JUDGE**

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:

~~\$121,603~~ \$127,683 per annum, EFFECTIVE JANUARY 1, 2009, 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. A BONUS OF \$5,000 SHALL BE PAYABLE ON OR BEFORE DECEMBER 12, 2008.

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.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

Mayor

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Councillor's Bill No. 41 re 2008 3rd Quarter Budget Supplemental Appropriation

Prepared By: Gary Newcomb, Accountant

Recommended City Council Action

Pass Councillor's Bill No. 41 on first reading providing for supplemental appropriation of funds to the 2008 budget of the General and General Capital Improvement Funds.

Summary Statement

- At the end of each quarter Staff prepares an ordinance to appropriate unanticipated revenues received during the quarter. Preparing quarterly supplemental appropriation requests is done to simplify administrative procedures and reduce paper work.
- This is the 2008 3rd quarter supplemental appropriation.
- General Fund amendments:
 - \$5,500 Donation
 - \$1,000 Foundation Grant
 - \$1,000 County Grant
 - \$14,532 Program Revenues
 - \$16,725 Contributions
 - \$40,376 Federal Grants
 - \$86,941 Reimbursements
- General Capital Improvement Fund amendments:
 - (\$5,122) Open Space Grant
 - \$1,901 Federal Grant
 - \$28,966 State Grant

Expenditure Required: \$191,819

Source of Funds: The funding sources for these expenditures include donations, contributions, reimbursements, program revenues, and grants.

Policy Issue

Does City Council support amending the appropriations for the 2008 budget of the General and General Capital Improvement Funds?

Alternative

The alternative would be not to amend the 2008 budget appropriations for the General and General Capital Improvement Funds and utilize these funds for other purposes. Staff does not recommend this alternative as the various departments have already incurred expenses and covered them in their current budget in anticipation of appropriation of the funds.

Background Information

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

GENERAL FUND BUDGET AMENDMENTS

The Police Department provides training for various law enforcement topics to law enforcement and other organizations. Revenues from these trainings have exceeded budget by \$13,977. The department is requesting appropriation of these funds to the corresponding expenditure account.

The Police Department received three federally funded grants from the North Metro Task Force; awards of \$5,790 and \$2,969 for Organized Crime Drug Enforcement Task Force (OCDETF) and \$4,625 for High Intensity Drug Trafficking Area (HIDTA) investigations. These reimbursement awards were for overtime incurred by the Westminster Police Department's Task Force members while working on the investigations.

The Police Department participates in the Nationwide "Click It or Ticket" and "Teen Click It or Ticket" campaigns. Two federally funded grants sponsored by the State of Colorado, Department of Transportation (CDOT) in the amounts of \$920 and \$2,442 were received as reimbursement of overtime incurred by enforcement officers while enforcing a zero tolerance approach to seat-belt and graduated driver's license enforcement.

The Police Department participates in the Federal Law Enforcement Assistance Fund (LEAF) grant program sponsored by the State of Colorado, Department of Transportation (CDOT). Two grants in the amounts of \$4,993 and \$7,031 were received as reimbursement for overtime incurred by enforcement officers while working on DUI enforcement.

The Police Department received \$1,000 from the Adams County Melinda Taylor Victim Assistance Fund. The funding was provided as reimbursement for Victim Advocate training at the Colorado Victim Advocates conference.

The Police Department participates in the Federal Internet Crimes against Children (ICAC) grant program sponsored by the City of Colorado Springs. Two grants in the amounts of \$2,749 and \$2,936 were received as reimbursement for overtime incurred and supplies used by detectives while investigating ICAC cases and registration fees for the ICAC conference attended by the ICAC detective.

The Police Department received two reimbursements in the amounts of \$1,265 and \$4,578 from the Jefferson County Service Authority (E911 Authority Board). The reimbursements were for National Emergency Number Association (NENA) and National Intelligence Communication Equipment (NICE) conferences attended by the Communications Administrator and Communications Supervisor

The Police Department received a \$1,000 grant from the Wal-Mart Foundation through their Community Grant program. The funds were awarded for the purchase of a Crime Lab Speed Light, utilized by criminalists, enhancing night-time photography during investigations.

The Police Department received a donation of \$500 from Target Stores for the purchase of handouts for the National Night Out Program neighborhood events held on August 5, 2008.

The Fire Department received two Public Education Home Safety Grants from the Homeland Security – Federal Emergency Management Agency (FEMA). A grant award of \$943 reimburses supply purchases used to implement the Home Safety Program and an award of \$4,978 reimburses overtime incurred by Fire Department staff while providing Home Safety Checks.

The Fire Department received two reimbursements from the State of Colorado Forest Service on behalf of the Wildland Team. The reimbursements of \$7,600 and \$70,414 were for fire personnel overtime salaries, hotel, and meal costs incurred while deployed to the Bridger Fire in Colorado and the Piute Fire in Southern California respectively.

The Fire Department received two reimbursements from the Colorado Urban Search and Rescue Task Force, West Metro Fire Protection District. The reimbursements of \$1,238 and \$1,846 were for fire personnel overtime incurred while working on the task force.

The Fire Department received \$555 in class registration fees for conducting CPR training classes. The department is requesting appropriation of these funds to the EMS supplies account used to purchase supplies utilized during the classes.

The City received a donation of \$5,000 from Siemens Building Technologies Inc. through the company's Community Partnership program. The funds are requested for appropriation to support the City's citizen recycling program.

The City received contributions totaling \$16,725 in funds from various businesses who participated in the City of Westminster 2008 Business Appreciation Event as a sponsor or exhibitor. The funds are requested for appropriation to Economic Development Special Promotions account used to purchase supplies utilized in putting on the event.

GENERAL CAPITAL IMPROVEMENT FUND BUDGET AMENDMENTS

At the June 11, 2007 Council meeting, Council approved the appropriation of \$80,000 for an Adams County Open Space Grant for the construction of Cheyenne Ridge Park. The project is now complete and \$74,878 in qualifying expenses was reimbursed. The \$5,122 portion of the grant appropriated and not received must be un-appropriated at this time.

The City received a \$1,901 grant of federal funds sponsored by the Colorado Tree Coalition. The grant was awarded to partially fund the printing of the Forestry Section's tree care guide "Growing Healthy Trees."

On November 15, 2007, the City submitted a Certified Local Government grant application to the Colorado Historical Society for a Jefferson County Scattered Resources Survey and commission training. The grant was awarded to the City on January 9th, 2008, in the amount of \$28,966, with \$20,816 to be used for an intensive selective survey of at least 30 scattered residential and agricultural structures in the Jefferson County half of the City and \$8,150 to be used for Commission and Staff Training for six individuals at the NAPC Forum in New Orleans, LA in July, 2008, with any leftover funds to be allowed for use at the 2009 CPI Saving Places Conference. The funds are being appropriated into the Historic Preservation CIP account.

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Off Duty Fire Services	1000.41340.0013	\$2,210	\$555	\$2,765
Adams County Grants	1000.40640.0010	0	1,000	1,000
Police Dept. Training	1000.41360.0000	17,000	13,977	30,977
Contributions	1000.43100.0000	5,000	16,725	21,725
Federal Grants	1000.40610.0000	64,877	40,376	105,253
General	1000.43060.0000	475,977	<u>93,441</u>	569,418
Total Change to Revenues			<u>\$166,074</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Supplies – Prof Services	10020300.70200.0341	\$13,000	500	\$13,500
Supplies – EMS	10025260.70200.0546	6,830	555	7,385
Supplies – Fire Prevention	10025260.70200.0547	12,290	943	13,233
Career Development	10025260.61800.0000	41,142	1,717	42,859
Supplies – Inv Section	10020300.70200.0344	24,000	2,699	26,699
Salaries OT – EMS	10025260.60400.0546	71,750	3,740	75,490
Career Dev – Inv Section	10020300.61800.0344	23,700	3,749	27,449
Solid Waste Collection	10012390.67300.0702	23,610	5,000	28,610
Career Dev – Com Section	10020300.61800.0345	8,400	5,843	14,243
Career Dev – Training	10020300.61800.0612	16,000	13,977	29,977
Salaries OT – Inv Section	10020300.60400.0344	242,200	14,621	256,821
Salaries – OT Patrol	10020500.60400.0349	303,589	15,386	318,975
Spec Promotions	10030340.67600.0000	21,900	16,725	38,625
Salaries OT	10025260.60400.0000	241,599	<u>80,619</u>	322,218
Total Change to Expenses			<u>\$166,074</u>	

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

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
OS Grant ADCO	7501.40630.0010	\$5,122	(\$5,122)	\$0
Federal Grants	7501.40610.0000	0	1,901	1,901
State Grants	7500.40620.0000	104,623	<u>28,966</u>	133,589
Total Change to Revenues			<u>\$25,745</u>	

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Cheyenne Ridge Park	80775050746.80400.8888	\$20,000	(\$5,122)	14,878
CE – Streetscape Improv	80175050377.80400.8888	44,900	1,901	46,801
CD – Historical Grants	80675030428.80400.8888	67,927	<u>28,966</u>	96,893
Total Change to Expenses			<u>\$25,745</u>	

SUBJECT: Councillor's Bill re 2008 3rd Quarter Budget Supplemental Appropriation Page 5

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

Respectfully submitted,

J. Brent McFall
City Manager
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **41**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE GENERAL AND
GENERAL CAPITAL IMPROVEMENT FUNDS AND AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General and General Capital Improvement Funds, initially appropriated by Ordinance No. 3316 are hereby increased in aggregate by \$191,819. This appropriation is due to the receipt of donations, contributions, reimbursements, program revenues, and grants.

Section 2. The \$191,819 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10E dated October 27, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	\$166,074
General Capital Improvement Fund	<u>25,745</u>
Total	<u>\$191,819</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 27TH day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17TH day of November, 2008.

ATTEST:

Mayor

City Clerk



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Councillor's Bill No 42 re Concession Agreement with Benders Bar & Grill

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

Recommended City Council Action

Pass Councillor's Bill No. 42 on first reading approving a concession agreement between the City of Westminster, Hyland Hills Recreation District Enterprise and Benders Bar & Grill to operate a restaurant in the former Jackson's All-American Grill located in the Ice Centre at the Promenade.

Summary Statement

- In September 2008, Hyland Hills Park and Recreation District staff advertised for proposals from qualified concessionaires to take over the lease space of the former Jackson's All-American Grill located in the Ice Centre at the Promenade.
- Two qualified concessionaires submitted proposals and were interviewed by Hyland Hills Executive Director Greg Mastriona, Ice Centre Manager Bob Bebbber and Director of Parks, Recreation and Libraries Bill Walenczak.
- After careful review of each proposal, the interview team recommends signing a concession agreement with Benders Bar & Grill.
- Highlights of the concession agreement include:
 - a. An initial lease term of five years with two five-year options to renew. After five years, the lease rate will be renegotiated.
 - b. A starting lease rate of \$10 per square foot, with a ramp up to \$14 per square foot after two years and additional increases thereafter. (Jackson's was paying \$10 per square foot at the time of their closing.)
 - c. Once the gross revenues of the restaurant reach or exceed \$900,000, 2% additional revenues will be paid on all gross revenues. For example, if gross revenues for the year reach \$950,000, the Ice Centre will receive an additional revenue of $\$950,000 \times .02 = \$19,000$. However, at no time will the total lease payments exceed 10% of the gross revenues.
 - d. The lessee will also pay an additional 10% of the Ice Centre's total common area maintenance (CAM) fees to offset outside grounds maintenance costs. As a reference point, the total CAM fee in 2008 charged to the Ice Centre was \$69,213. Therefore, the lessee would have paid $\$69,213 \times 10\% = \$6,921$ in 2008 CAM fees.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to continue leasing space at the Ice Centre at the Promenade for a restaurant operation?

Alternatives

1. City Council could choose to recommend the other concession proposal be awarded this concession agreement. Staff does not recommend this as it is believed Benders Bar & Grill is the most qualified to operate a successful business at this location as well as offering a better financial package to the City and Hyland Hills.
2. City Council could reject both proposals and direct Staff to work with Hyland Hills' staff to resend the request for proposals (RFP) to identify other potential operators. Staff does not recommend this option because this RFP was already properly advertised.
3. City Council could choose to recommend a different use for the facility. This is not recommended because Ice Centre users have come to expect convenient restaurant service for the adult hockey teams, families who participate in figure skating and youth hockey and the many tournaments that are attracted to the Ice Centre.

Background Information

In 1998, Jackson's All-American Grill began restaurant operations in lease space in the Ice Centre. For several years the restaurant operated successfully. However, due to a weakening economy and declining sales, Jackson's was forced to go out of business. Unfortunately, Jackson's ownership also experienced staffing, customer service and quality control problems that also contributed to their decline.

On September 15, 2008, Staff provided City Council with a staff report updating the situation with Jackson's and plans to solicit proposals for a new concession operator. Two proposals were received from qualified operators:

- Benders Bar & Grill
- Icy Bru & BBQ

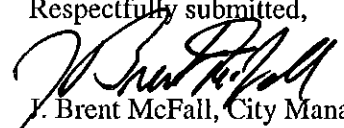
A revenue comparison of both proposals is attached for City Council review. Icy Bru & BBQ is owned by Jim and Kiki Dadiotis, who operate the restaurants at the City's Heritage Golf Course at Westmoor and the Legacy Ridge Golf Course. Interviews were held with both prospective operators and after careful consideration and analysis, it was decided to recommend Benders Bar & Grill for the concession lease agreement at the Ice Centre. Benders Bar & Grill is owned and operated by Mrs. Angela Palinckx. Mrs. Palinckx also owns the Village Bistro Restaurant located at the Country Club Village complex at 120th Avenue and Federal Boulevard. The Village Bistro has been in operation since 2006. Mrs. Palinckx and her husband also own The Wave car center at 92nd Avenue and Wadsworth Parkway. The family has lived in Westminster since 1984 and is dedicated to living and doing business in our community.

The business plan for Benders Bar & Grill is focused on serving an active client base provided by the Ice Centre, hockey and figure skating tournaments, convention business from The Westin and general Promenade visitors. The menu will be moderately priced and provide everything from pizza and burgers to complete dinners. The restaurant will also be open on weekends for breakfast.

The interview team recognizes the difficulty in starting a restaurant business with the current state of the economy and is pleased that two very qualified restaurant operators are willing to invest in the Ice Centre location. Therefore, Staff recommends City Council approval of the subject concession agreement.

This action promotes the City Council goals of "Vibrant Neighborhoods and Commercial Areas" and "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,


J. Brent McFall, City Manager
Attachments

Ice Centre at the Promenade Restaurant Lease Proposal Comparison

		Benders Bar & Grill	Icy Bru and BBQ	Variance
Term		5yr w/2 5yr renewals	10yr w/1 5yr renewal	
Price per Square Ft	Yr 1-2	\$10/sq ft (yr 1-2) \$ 60,000.00	\$10/sq ft for 10yrs \$ 60,000.00	
	Yr 3-4	\$14/sq ft (yr 3-4) \$ 84,000.00		
	Yr 5	\$15/sq ft (yr 5) \$ 90,000.00		
Total for 5 years guaranteed rent		\$ 378,000.00	\$ 300,000.00	\$78,000.00
Lessee Projected Gross Revenue				
	Yr 1	650,000	1,483,000	
	Yr 2	750,000	1,631,000	
	Yr 3	840,000	1,794,000	
	Yr 4	900,000	1,973,000	
Lessor Projected Gross Revenues				
	Yr 1	900,000	900,000	
	Yr 2	1,000,000	1,000,000	
	Yr 3	1,100,000	1,100,000	
	Yr 4	1,300,000	1,300,000	
	Yr 5	1,300,000	1,300,000	
Proposed Additional Revenue (Gross Sales % Based)				
		2% of all Revenues once reach \$900K**	5% of any Revenues over \$1,000K	
	Yr 1	\$ 18,000.00	\$ -	
	Yr 2	\$ 20,000.00	\$ -	
	Yr 3	\$ 22,000.00	\$ 5,000.00	
	Yr 4	\$ 26,000.00	\$ 15,000.00	
	Yr 5	\$ 26,000.00	\$ 15,000.00	
Total Additional Revenue		\$ 112,000.00	\$ 35,000.00	\$77,000.00
Cam Fee	per yr	\$ 12,360.00	\$ 12,360.00	
Total 5 year Cam Fees		\$ 61,800.00	\$ 61,800.00	
Total Payments to HH/CW 5 years		\$ 551,800.00	\$ 396,800.00	\$ 155,000.00

** Total Compensation
not to exceed 10% of
Gross Revenues
Annually

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **42**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE APPROVING AND RATIFYING A LEASE AGREEMENT FOR
CONCESSION OPERATION AT THE ICE CENTRE**

WHEREAS, the City and Hyland Hills Park and Recreation District (the "District") co-own the Ice Centre at 10710 Westminster Boulevard; and

WHEREAS, it is in the City's and the District's interest to maximize the income generated from such operation by collecting rental income from the concession operation space located in the Ice Centre.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1. Pursuant to City Charter Section 13.4, the Lease Agreement attached hereto as Exhibit A is hereby approved and ratified.

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

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The lease agreement attached hereto as Exhibit A shall be executed by the lessee prior to consideration of this ordinance 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 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney's Office

EXHIBIT A

DRAFT LEASE - NOT FOR SIGNATURE - NON-BINDING

This Lease, made and entered into this ___ day of _____, 2008, by and between HYLAND HILLS PARK AND RECREATION DISTRICT and the CITY OF WESTMINSTER, hereinafter collectively referred to as "Landlord" and Village Bistro and Wine Bar, Inc, d/b/a Benders Bar and Grill, a Colorado corporation, hereinafter referred to as "Tenant".

1. LEASED PREMISES:

Upon the terms, conditions, covenants, limitations and agreements, and at the rental and for the terms as hereinafter set forth, Landlord hereunto leases unto Tenant and Tenant hereby leases from Landlord the Leasehold Premises ("Premises"), containing approximately 6,000 square feet of floor area, at Landlord's ("Ice Centre"), 10710 Westminster Blvd., Jefferson County, Colorado, as more fully described in Exhibit A attached hereto.

2. TERM:

The term of this Lease and the right of Tenant to take possession and occupy the Premises, pursuant to this Lease, shall commence at 12:01 a.m. on the ___ day of _____, 2008, and, unless sooner terminated or later extended, as provided herein, shall expire at 12:00 a.m. on the 31st day of December, 2013.

3. USE OF PREMISES:

3.1 Tenant shall occupy, use and operate the Leasehold Premises as a top quality Concession operation for the sale and service of food and beverages, including alcoholic beverages, to the general public and patrons of the Premises at such prices and under such standards of operation as will assure prompt, courteous, and convenient services to the general public and patrons. The Concessionaire shall comply with all guidelines and standards that are contained in Exhibit "C," attached hereto and incorporated herein. Tenant acknowledges that Landlord has an existing contract with Pepsi Cola Metropolitan Bottling, Inc. ("Pepsi") dated February 22, 1999 (the "Pepsi Contract"), paragraph 2 of which limits the type of beverage products that may be sold at any of Landlord's facilities, including the Premises and Tenant agrees to the limitations set forth therein.

3.2 Tenant shall not:

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

b. Make any use or allow the Leasehold Premises or any part thereof to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by Landlord, for any purposes other than those hereinabove specified, nor for any purpose that shall constitute a public or private nuisance, shall be in

violation of any governmental laws, ordinances or regulations, shall be contrary to any restrictive covenants, agreements or limitations of record, or shall render the premises, or any part thereof, uninsurable with standard insurance at ordinary rates. Notwithstanding the foregoing, Landlord believes and understands that use of the Leased Premises for the Permitted Use will not invalidate or increase the rate of Landlord's insurance, and is not contrary to any restrictive covenants, agreements or limitations of record.

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

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

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

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

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

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

4. RENT AND SECURITY DEPOSIT:

4.1 Tenant shall pay to Landlord as minimum rent during the term of this Lease: \$5,000 per month, for the first two years of the Lease Term; \$7,000 per month for years three and four of the Lease Term; and, \$7,500 per month for year five of the Lease Term – all together with any additional rents as may hereinafter be reserved. Said rental, exclusive of any additional rents, shall be payable in advance, commencing on the rental commencement date of January 1, 2009, and on that same date of the month for every month of the rental term thereafter. Every such payment referenced above shall be payable at the office of Landlord, 1800 West 89th Avenue, Denver, Colorado 80260, without notice or demand whatsoever. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to terminate this Lease in the event Tenant is unable to obtain all licenses and permits necessary for Tenant to operate its business in the Premises, despite using reasonable efforts to obtain the same, within sixty (60) days after the date hereof.

4.2 Tenant shall pay to Landlord, upon execution of this Agreement, the sum of \$10,000.00 as a security deposit. Said security deposit will be returned, minus any amounts retained and applied to damages (ordinary wear and tear excepted), caused by Tenant, or rent owing to Landlord from Tenant, upon completion of all necessary repairs to the Premises or within ninety (90) days of termination of the this Lease, whichever comes earlier.

4.3 If during the first year of this Lease Agreement or any following year, Tenant shall have gross revenues in excess of \$900,000.00, Tenant shall pay to Landlord, as additional rent, two percent of all such gross revenues. However, for any year during which gross revenues exceed \$900,000, the total of such additional rent and monthly rental for each such year shall not exceed and shall be capped at ten percent (10%) of the said gross revenues. Such additional rent shall be due on the 1st day of February following the completion of the respective year. This and any other sums of money or charges to be paid by the Tenant, pursuant to the provisions of this Lease, shall also be designated as "additional rent". A failure to pay additional rent shall be treated in all events as the failure to pay rent.

4.4 If the payment of any rent, additional rent or any other monies payable under the terms of this Lease shall be more than ten (10) days in arrears, Tenant agrees, upon demand of Landlord, to make a late charge payment of five percent (5%) of the amount in arrears.

5. OCCUPANCY OF THE PREMISES:

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

6. PARKING:

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

7. UTILITIES:

Tenant shall pay all charges for, gas, electrical, telephone, cable and all other utilities serving the Premises and for trash removal for the Premises. In addition, Tenant shall pay to Landlord 10% of the Ice Centre's total expenses for common area maintenance and insurance, payable monthly; provided that common area expenses shall not include utilities, trash removal or any other expenses for which Tenant is billed directly or separately. Total charges will change year to year based on the actual cost of providing the common area maintenance services and snow removal. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to contribute to any costs incurred in connection with snow removal from the parking lots of the Ice Centre.

Landlord, not later than April 1 of each year of term of this Agreement, shall provide Tenant with an itemized statement of the Ice Centre's expenses for common area maintenance and insurance incurred by Landlord during the preceding calendar year. To the extent such accounting reveals that the total of Tenant's monthly payment exceed 10% of such expenses during the preceding calendar year, Landlord shall credit such overpayment against the next due monthly rental payments.

8. MAINTENANCE AND REPAIRS:

8.1 Except as covered by any maintenance agreement entered into by Landlord for Landlord owned equipment and furnishings pursuant to section 8.4, below, Tenant shall keep and maintain the Premises, including all Landlord owned equipment and furnishings and all sewer and water connections which exclusively serve the Premises, in good condition and repair at the sole expense of Tenant and, at the expiration of this Lease, Tenant shall surrender and deliver up the said Premises in as good order, condition and repair, loss by inevitable accident, Act of God and ordinary wear and tear excepted, as said Premises were accepted by Tenant at the commencement of this Lease. Landlord shall transfer and assign to Tenant any and all warranties on said sewer and water connections for the term of this lease.

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

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

8.4 Landlord shall enter into a maintenance agreement for all HVAC systems serving the premises and Tenant shall pay to Landlord, as additional monthly rent, an amount equal to 1/12 of the yearly cost of such agreement.

9. LIENS AND CLAIMS AGAINST LANDLORD:

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

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

10. INSURANCE:

10.1 Tenant shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to Landlord. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- a. Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability; Products Liability; Broad Form Property Damage including, but not limited to, coverage for any damage to any Landlord personal or real property due to fire or water related to Tenant's operations pursuant to this Agreement; and Personal Injury;
- b. Owned, hired, and non-owned automobile liability coverage with \$600,000 limit;
- c. Statutory workers' compensation on all employees;
- d. All risk insurance for full insurable replacement value of Landlord-owned equipment and personal property.

10.2 The required insurance policies shall be endorsed to include the City of Westminster and Hyland Hills Park and Recreation District as additional insureds as their interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City of Westminster and/or Hyland Hills Park and Recreation District, their respective elected officials, officers, employees, or others working on their behalf, or carried by or provided through any self-insurance pool of the City or Hyland Hills, shall be excess and not contributory insurance to that provided by Tenant. Each party to this Agreement agrees to waive subrogation on respective property insurance.

10.3 The Certificate of Insurance provided to Landlord shall be completed by Tenant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Landlord prior to the commencement of the Agreement. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Landlord. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Executive Director
Hyland Hills Park and Recreation District
1800 W. 89th Ave
Denver, Colorado 80260

A certified copy of any policy shall be provided to the Landlord upon its request.

10.4 The parties hereto understand and agree that the City of Westminster and Hyland Hills Park and Recreation District are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to them and their elected officials, officers, or employees.

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

11. DAMAGE BY FIRE OR OTHER CASUALTY:

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

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

12. ASSIGNMENT AND SUBLETTING:

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

services from the proposed assignee or sublessee. Any sum so received shall be deemed to have been received from Tenant.

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

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

13. SURRENDER OF LEASEHOLD PREMISES:

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

14. HOLDING OVER:

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

15. RENEWAL.

15.1 Landlord and Tenant shall meet, no later than 6 months prior to the termination of the Lease to discuss, in good faith, renewal thereof and any changes required to be made to this Lease.

15.2 Any renewal shall be subject to the discretion of Landlord and Landlord's determination of satisfactory performance by Tenant of the terms and conditions of this Lease, as well as mutual agreement between the parties regarding amendment of Section 4 regarding monthly rent to be paid by Tenant to Landlord.

15.3 This Lease may further be renewed for an additional renewal terms pursuant to the requirements and determinations set forth in subsections 15.1 and 15.2, above.

16. DEFAULTS BY LESSEE AND REMEDIES:

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

a. If the rent, additional rent, or any part thereof, as herein reserved, shall be unpaid when due.

b. If Tenant does not comply with any provision of this Lease which imposes an obligation upon Tenant.

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

d. If the Premises should be abandoned or vacated. Abandonment or vacation shall include the attempted removal of equipment, furniture and/or fixtures such as to degrade the ability of Tenant to carry on its business upon the Premises or cessation of a substantial portion of Tenant's normal business dealings at the Premises.

e. If Tenant should attempt to sell, assign, sublet or mortgage all or any part of either the Premises or the leasehold interest herein created without the prior written consent of Landlord having been first had and obtained.

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

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

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

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

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

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

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

a. Give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice or on any later date specified herein, upon which date Tenant's

right to use, occupancy and possession of the Premises shall cease and this Lease shall thereupon be terminated; or

b. Re-enter and take possession of the Premises or any part thereof and repossess the same as Landlord's former estate.

Should Landlord take such possession pursuant to the terms of this agreement, legal proceedings or pursuant to any notice provided by law or this Lease, Landlord may: (1) terminate this Lease at any time; or (2) from time to time without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises but reserving to Landlord the right at any time to elect to terminate this Lease as paragraph 16.2 (a) provides.

16.3 Unless Landlord shall have exercised its right to re-enter and take possession of the Premises pursuant to 16.2(b), in the event Landlord shall elect to terminate this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of such default and of Landlord's election so to terminate. If such default exists at the expiration of such twenty (20) day period, and Landlord shall not have waived the same by written instrument, this Lease, and the term hereof, together with any and all right, title and interest in the Premises as herein granted to Tenant, shall terminate on the date fixed in said notice with the same force and effect (except as to the continuance of Tenant's liability) as if the date fixed by notice were the expiration of the term originally granted herein.

16.4 In the event Landlord shall elect to retake the Premises without terminating this Lease, Landlord shall give Tenant twenty (20) days written notice of the existence and nature of any such default and of Landlord's election to retake under the terms hereof. If such default exists at the expiration of said twenty (20) day period, and Landlord shall not have waived the same by written instrument, Landlord may, without terminating this Lease, retake possession of the Premises.

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

a. The minimum rent and additional rent as herein provided which would be payable hereunder if such possession had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation all repossession costs, legal expenses and attorneys' fees and expenses of preparation for such reletting.

Tenant shall pay such current damages to Landlord on the days on which the fixed rent would have been payable hereunder if Landlord had not repossessed, and Landlord shall be entitled to receive the same from Tenant on each such day.

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

16.6 Tenant shall, at the expiration of the twenty (20) days notice periods set forth above and Tenant has not cured any default, immediately quit and surrender to Landlord the entire Premises, and Landlord may enter into or repossess the Premises either by force, summary proceedings, or otherwise. Tenant further agrees that, in the event of repossession by Landlord, Landlord may, without notice to Tenant, sell such of Tenant's inventory, furniture, fixtures or equipment as then remain upon the Premises in such manner and for such amount as Landlord may deem advisable. Thereafter, Landlord shall remit the proceeds of such sale, after deduction for the costs of the sale and any monies owed to Landlord by Tenant pursuant to the term of this Lease, to Tenant.

16.7 In the event of any default by Tenant pursuant to subparagraph 16.1d, above, or if Tenant violates the provisions of Section 17, below, and notwithstanding any other provision herein, Landlord shall have the right, at Landlord's sole option and without any necessity of notice (and without restricting or surrendering any of Landlord's other rights hereunder), and Tenant hereby agrees and consents thereto, to immediately take possession of the Premises and all equipment, inventory, contents, furniture and fixtures therein, of whatever kind or ownership, and to, within a reasonable time and in a reasonable manner, cause the same to be sold and the proceeds thereof applied to any monies owed to Landlord by Tenant pursuant to this Lease.

17. LESSEE'S BUSINESS OPERATIONS:

During the term of this Lease, and as the same may be extended or renewed, Tenant shall continuously conduct and carry on Tenant's business activities in the entire Premises.

18. IMPROVEMENTS TO LEASEHOLD PREMISES:

Tenant shall make no improvements to the Premises without the prior written consent of Landlord and only upon such terms and conditions as set forth by Landlord. All such improvements, however denominated, shall be and remain the property of Landlord unless

otherwise agreed to in writing between the parties hereto and may not be removed by Tenant at any time from the Premises, without the express written consent of Landlord.

19. SIGNAGE:

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

20. RELATIONSHIP OF PARTIES:

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

21. NOTICES:

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

Landlord:

Executive Director
Hyland Hills Park and Recreation District
1800 West 89th Avenue
Denver, Colorado 80260

Tenant:

22. PERMITS AND LICENSES:

22.1 Tenant shall procure, supply, and post, at its own expense, in places to be designated by the City, all permits and licenses necessary for the operation of the Concession and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

22.2 Tenant shall apply for a Hotel and Restaurant Liquor License, with Optional Premises within fifteen (15) business days after the date this Agreement is fully executed and shall maintain such license during the term of this Agreement. The Director will fully cooperate with Tenant in such application. Tenant shall pay all expenses necessary to obtain the liquor license. Nothing contained in this Agreement shall be construed to guarantee that the City of Westminster will approve the issuance of any license. In the event such license is denied, or in the event that such license is issued but later revoked or suspended BY THE LOCAL OR STATE LIQUOR LICENSING AUTHORITIES, such denial, suspension, or revocation may be deemed a material breach and event of default by Tenant, and Landlord may immediately terminate this Agreement. No transfer of the license shall be made without the approval of the City of Westminster and only as part of an assignment of this Agreement. Upon termination, the City of Westminster may designate a transferee of the liquor license. Tenant agrees to take all actions necessary to promptly transfer the existing license to the transferee.

23. ENTIRE AGREEMENT:

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

24. SEVERABILITY:

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

25. BINDING EFFECT:

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

26 WAIVER:

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

27. SURVIVAL CLAUSE:

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

28. PARAGRAPH HEADINGS:

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

29. ACKNOWLEDGMENT OF EXAMINATION:

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

30. ACCESS AND INSPECTION:

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

31. OTHER PAYMENT OBLIGATION:

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

32. RELATIONSHIP TO TRUSTEE:

32.1 The parties hereto acknowledge that pursuant to that certain Ground Lease Agreement ("Lease"), and that certain Lease Purchase and Sublease Agreement ("Sublease") dated 1998, both by and between the City of Westminster and the City of Westminster Building

Authority, the City has leased to the City of Westminster Building Authority the Ice Centre building and the improvements located therein and said Building Authority has subleased to the City said building and improvements.

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

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

a. This Agreement is subordinate to the Lease, Sublease and Indenture;

b. If a Termination Event occurs (as defined in said Sublease), Tenant, provided Tenant's occupancy is not disturbed, shall pay to the Trustee all rents payable under this Agreement and this Agreement will be assigned to the Trustee;

c. So long as Tenant is in compliance with the terms of this Agreement, neither the Trustee, Landlord, nor the Building Authority shall disturb Tenant's use of the Premises.

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

33. ATTORNEYS FEES:

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

34. DEFAULT BY LANDLORD:

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

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

a. Set off the reasonable cost of remedying the default against any Rent due, or;

b. Terminate this Lease and immediately surrender the Premises to Landlord.

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

36. CONSENT:

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

37. INDEMNIFICATION.

Tenant agrees to indemnify and hold harmless Landlord, its boards of directors, council, officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of Tenant's operation of the Premises and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Tenant, any contractor or subcontractor of Tenant, or any officer, director, shareholder, member, employee, representative, or agent of Tenant, or which arise out of any workers' compensation claim of any employee of Tenant or of any employee of any contractor or subcontractor of Tenant. Tenant agrees to investigate, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Tenant, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

LANDLORD:

HYLAND HILLS PARK AND RECREATION DISTRICT

Greg Mastriona, Executive Director

Approved as to legal form: _____
Richard Fuller, Administrative Counsel

CITY OF WESTMINSTER

Brent McFall, City Manager

Linda Yeager, City Clerk

Approved as to legal form:


City Attorney

TENANT:

By: _____

Name: _____

Its: _____



**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Councillor's Bill No. 43 re Water and Wastewater Rate Adjustments

Prepared By: Mike Happe, P.E., Water Resources and Treatment Manager
Christine Anderson Gray, Management Analyst

Recommended City Council Action

Pass Councillor's Bill No. 43 on first reading implementing water and sewer rate adjustments and meter service charges for 2009 and 2010.

Summary Statement

- In 2006, City Council adopted financial policies to provide a sustainable framework for the City's water and wastewater utilities.
- Water rates are recommended to be increased 3.00% in 2009 and 3.00% in 2010. Sewer rates are recommended to increase 4.50% in 2009 and 4.50% in 2010. The combined increase is 3.49% in 2009, and 3.49% in 2010 for the typical residential customer.
- The combined 2009 monthly average increase to a single-family home is \$1.70. The combined 2010 monthly average increase from 2009 to a single-family home is \$1.76.
- Monthly wastewater charges are based on the average volume of water consumed during the months of December, January and February. This time period is used because it reflects a more accurate use of indoor water use and therefore sewer flows.
- Single-family properties that use no water during this calculation period are currently charged the New Resident monthly charge that is based on an average use of 5,000 gallons (\$18.49 in 2008). If this charge is appealed to the City, Staff works with residents to determine an average volume using historical water usage.
- Residents whose homes are not occupied during the winter calculation months have voiced concern about the use of 5,000 gallons as the winter average for determining monthly wastewater charges. For single-family customers whose accounts show zero water use during December, January or February, Staff recommends setting the volume of usage to 2,000 gallons for each zero use month in that time period for the purpose of determining the average use for the year. This will assess an equitable wastewater charge to the customer in winter months when no water is consumed and will recover sufficient costs to maintain the wastewater treatment facility.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

1. Should the City adopt revised water and sewer rates for 2009 and 2010?
2. Should the City implement a revised structure for winter zero usage wastewater accounts?

Alternatives

1. Do not approve the 2009 and 2010 water and wastewater rate increases.

By not approving the water and sewer rate increases, the City will under-fund the utility infrastructure that stores, treats, and conveys water and wastewater. Under-funded and deteriorating infrastructure can lead to excessive maintenance costs, system unreliability, and reduce the City's flexibility in reacting and providing for new and changed land uses.

2. Provide partial increased water and wastewater rates for 2009 and 2010.

The City continues to face the critical need of repairing and replacing its water/wastewater infrastructure. The City's estimated replacement cost for its utility infrastructure is between \$800,000,000 and \$1,000,000,000. The current estimated replacement liability is over \$230,000,000. The City's current policy will, over ten years, include all replacement costs within rates, which will insure the sustainability of the water and wastewater infrastructure. By approving only a partial rate increase, the maintenance of the water and wastewater infrastructure will remain under-funded.

3. Do not implement a revised charge for single-family accounts with zero water usage during the winter average calculation months.

By not adopting a revised method of addressing those wastewater accounts that reflect zero water usage during the months of December, January and February, customer accounts will not be charged appropriately for wastewater services.

In order to provide system sustainability and rate equity, Staff does not recommend either Alternative 1, 2 or 3.

Background Information

Rates

Staff recommended the 2009 and 2010 water and wastewater rates in a Staff Report presented to City Council on July 21, 2008. These rates were determined using financial policies established by Council in 2006. These policies were enacted to provide a sustainable framework for the Utility's long term finances. The 2009 and 2010 water rates would increase 3.00% each year, and sewer rates would increase 4.50% each year. The continued goal is to ensure that rates are set to fully recover costs of providing service to our customers.

In 2009, if recommended increases are adopted, average monthly water rates for a single-family residence will increase \$0.91 and sewer rates will increase \$0.79 (for a total increase of \$1.70). This is a combined increase of 3.49%.

Smaller rate increases than those recommended increase the risk of not meeting the City's needs, resulting in less service reliability, increased maintenance costs, an ever increasing liability in infrastructure capital costs that would threaten sustainability, as well as create a deteriorated financial position for future debt financing. All of these could lead to excessive and inequitable costs for future users of the system.

City Council has adopted a policy of increasing rates annually. The 2009 rate increases would be effective January 1, 2009, and the 2010 rate increases would be effective January 1, 2010 and remain in effect through 2010.

Revised Sewer Rate Structure for Zero Wastewater Usage in Single-Family Accounts

Monthly wastewater usage amounts are calculated using an average volume of water use during the winter months of December, January and February. During this time there is little to no outdoor water use, which provides a better reflection of indoor water use. The average of these months is then used as the monthly sewer volume charge for the next year.

There are a number of single-family accounts that show zero wastewater use during these winter months due to reasons such as long term travel or unoccupied rental units. Per City Code, those accounts have been charged the New Resident monthly rate (\$18.49 per month in 2008), and customers have the option to appeal this charge. The minimum amount charged has then been determined on a case-by-case basis using an average of the customer's historical use when the home is occupied, which on average has been a use of approximately 2,500 gallons per month.

Due to customer concerns about this process, Staff has requested a more effective manner of determining a wastewater charge for zero usage months that is fair to the customer. If adopted, the volume charge for all accounts that reflect zero water usage in these winter months would be set to 2,000 gallons per month for the purpose of calculating the monthly sewer volume charge. If an account showed zero usage for all three of the determining months (December, January and February) this usage would result in a winter average use of 2,000 gallons per month, which would be the volume used for calculating the monthly sewer bill for the remainder of the year. For accounts reflecting zero usage in December, January and February, this charge would be \$7.72 per month for residential units, using the 2009 recommended rate of \$3.86 per thousand gallons. In a different example, if an account showed actual use of 10,000 gallons in December, but zero use in January and February, the winter average would be 4,666 gallons, which would result in a charge of \$17.75 (4,666 gallons times the proposed 2009 rate of \$3.86 per thousand gallons).

This revision to the wastewater rate structure would not affect those customers who do show actual water usage, as the actual volume would still be used for calculating the winter average amount.

The proposed 2009 and 2010 water and sewer rates:

1. Single-Family Residential Water Rates: Adjust the residential block rates as follows:
 - a. The first residential tier of \$2.09 per 1,000 gallons for the first 4,000 gallons per month would increase to \$2.15 per 1,000 gallons in 2009 and \$2.21 per 1,000 gallons in 2010.
 - b. The second residential tier of \$3.44 per 1,000 gallons for usage between 5,000 and 20,000 gallons per month would increase to \$3.54 per 1,000 gallons in 2009 and \$3.64 per 1,000 gallons in 2010.
 - c. The third residential tier of \$5.09 per 1,000 gallons for usage above 20,000 gallons per month would increase to \$5.24 per 1,000 gallons in 2009 and \$5.39 per 1,000 gallons in 2010.
2. Single-Family Meter Service Charge: Increase the residential Meter Service Charge from \$5.83 per month to \$6.00 per month in 2009 and \$6.18 per month in 2010.
3. Meter Service Charge for Non-Single-Family Residential: Increase the Meter Service Charge for all non-Single-Family Residential meters pro-rata based upon meter size by 3.00% in 2009 and 3.00% in 2010.
4. Commercial Water Rates: Adjust the commercial block rates as follows:
 - a. Increase the first commercial tier of \$4.27 per 1,000 gallons, for consumption at or below the commercial breakpoint, to \$4.39 per 1,000 gallons in 2009 and \$4.52 per 1,000 gallons in 2010.
 - b. Increase the second commercial tier of \$5.19 per 1,000 gallons, for consumption above the commercial breakpoint, to \$5.34 per 1,000 gallons in 2009 and \$5.50 in 2010. The breakpoint for commercial blocks is based upon meter size.

5. Residential Irrigation, Townhome, Condo, Public/Quasi-Public User and Residential Irrigation: Increase the current water rate for these customers of \$4.27 per 1,000 gallons to \$4.39 per 1,000 gallons in 2009 and \$4.52 per 1,000 gallons in 2010. In addition, townhome communities that apply for, and can prove at least 80% owner-occupancy, are entitled to receive a blended rate (currently \$3.53 per 1,000 gallons). The new blended rate would increase to \$3.63 in 2009 and \$3.73 in 2010.
6. Shaw Heights: Shaw Heights water users, per perpetual comprehensive agreement, are charged the corresponding in-City rates plus 10%.
7. Federal Heights: Based on an amended contract signed with Federal Heights in December 2007, the rates charged to Federal Heights will increase corresponding to the in-City rates.
8. Sewer Rates: Adjust residential and public sewer rates from \$3.70 to \$3.86 in 2009 and \$4.03 in 2010 per 1,000 gallons of average winter (January-March) water usage. Adjust commercial rates from \$4.13 to \$4.31 in 2009 and \$4.50 in 2010 per 1,000 gallons of average winter (January-March) water usage. In addition, the base sewer rate for accounts lacking any winter water consumption history would increase from \$18.49 to \$19.32 in 2009 and \$20.18 in 2010.
9. Based on the recommendation to implement a revised base charge for zero usage single-family accounts during the winter average calculation months of December, January and February, set zero usage months to a volume of 2,000 gallons.

Communication on the rate increase will emphasize the importance of quality and reliability in the water/wastewater system, and the role that rates play in achieving those goals. An ongoing focus will be placed on the value of the infrastructure (a \$1 billion asset) and the need for a long-term plan to preserve and enhance its value to residents. *The Water Matters* newsletter will be inserted in the November water bill, and the information will appear in the City Edition and on the website. Public Information Staff will provide complete information, simplified from technical language, to answer citizen questions about utility rates that might be raised with City Council or Staff.

Both of these proposals adhere to the City's Strategic Plan. Rate adjustments ensure a Financially Sustainable City Government, which provides exceptional services. These adjustments also contribute to a Beautiful and Environmentally Sensitive City. Finally, these adjustments allow for Vibrant Neighborhoods and Commercial Areas.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **43**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**A BILL
FOR AN ORDINANCE AMENDING SECTIONS 8-7-7 AND 8-8-5 OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING THE CITY'S WATER RATE SCHEDULE AND
SANITARY SEWER SERVICE AND INCREASING USER CHARGES**

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and
WHEREAS, the City Charter requires that the utility be self-supporting; and
WHEREAS, the last water rate increase and the last rate increase for sewer user charges took effect January, 2008; and

WHEREAS, costs to operate the Water and Wastewater Utility have increased; and
WHEREAS, since the Utility is operated as an enterprise exempt from the TABOR amendment, the City Council may set rates to adequately fund the operation of the enterprise; and
WHEREAS, the City wishes to minimize the need for large increases in the future; and
WHEREAS, water rates have been designed so as to encourage water conservation.

NOW, THEREFORE, THE CITY OF WESTMINSTER ORDAINS:

Section 1: Section 8-7-7, subsections (B), (C) and (D), W.M.C., is hereby AMENDED to read as follows:

8-7-7: WATER RATE SCHEDULE:

(B) RESIDENTIAL: ~~Three (3) dwelling units or less served by one meter primarily used for residential occupancy shall, in 2007, be charged a five dollar and sixty seven cent (\$5.67) per month meter service charge, and shall, in 2008, be charged a five dollar and eight three cent (\$5.83) per month meter service charge plus:~~

2007 Block Rate	2008 Block Rate	Monthly Consumption Rate
\$2.03 per 1,000 gallons	\$2.09 per 1,000 gallons	First 4,000 gallons
\$3.35 per 1,000 gallons	\$3.44 per 1,000 gallons	5,000 to 20,000 gallons
\$4.95 per 1,000 gallons	\$5.09 per 1,000 gallons	21,000 gallons and over

~~per unit. Unit consumption shall be determined by dividing the number of units using one meter.~~

THREE (3) DWELLING UNITS OR LESS SERVED BY ONE METER PRIMARILY USED FOR RESIDENTIAL OCCUPANCY SHALL, IN 2009, BE CHARGED A-SIX ZERO (\$6.00) CENT PER MONTH METER SERVICE CHARGE, AND SHALL, IN 2010, BE CHARGED A SIX DOLLAR AND EIGHTEEN (\$6.18) PER MONTH METER SERVICE CHARGE PLUS:

2009 BLOCK RATE	2010 BLOCK RATE	MONTHLY CONSUMPTION RANGE
\$2.15 PER 1,000 GALLONS	\$2.21 PER 1,000 GALLONS	FIRST 4,000 GALLONS
\$3.54 PER 1,000 GALLONS	\$3.64 PER 1,000 GALLONS	5,000 TO 20,000 GALLONS
\$5.24 PER 1,000 GALLONS	\$5.39 PER 1,000 GALLONS	21,000 GALLONS AND OVER

PER UNIT. UNIT CONSUMPTION SHALL BE DETERMINED BY DIVIDING THE NUMBER OF UNITS USING ONE METER.

(C) RESIDENTIAL IRRIGATION, TOWNHOME/CONDOMINIUM (CONSISTING OF FOUR UNITS OR MORE), PUBLIC/QUASI-PUBLIC USERS:

~~Shall, in 2007, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: four dollars and sixteen cents (\$4.16) per 1,000 gallons, and shall, in 2008, be charged a monthly meter service charge based on the meter size as listed in schedule A plus: four dollars and twenty seven cents (\$4.27) per 1,000 gallons.~~

~~Non-irrigation accounts for multiple residential units consisting of four (4) units or more that are not individually metered and that are classified as town homes or condominiums and can demonstrate that they are eighty percent (80%) owner occupied on a complex wide basis shall, in 2007, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: three dollars and forty four cents (\$3.44) per thousand (1,000) gallons, and shall, in 2008, be charged a monthly meter service charge based on the meter size as listed in Schedule A plus: three dollars and fifty three cents (\$3.53) per thousand gallons, for all water delivered through the meter. The Director of Finance is authorized to prescribe and accept such forms of documentation as the Director may deem sufficient to demonstrate an applicant's eligibility for the rate described in this paragraph. For purposes of this section, a town home or condominium is a residential unit physically attached to another residential unit and separately owned.~~

SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS FOUR DOLLARS AND THIRTY-NINE CENTS (\$4.39) per 1,000 gallons, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND FIFTY-TWO CENTS (\$4.52) PER 1,000 GALLONS.

NON-IRRIGATION ACCOUNTS FOR MULTIPLE RESIDENTIAL UNITS CONSISTING OF FOUR (4) UNITS OR MORE THAT ARE NOT INDIVIDUALLY METERED AND THAT ARE CLASSIFIED AS TOWN HOMES OR CONDOMINIUMS AND CAN DEMONSTRATE THAT THEY ARE EIGHTY PERCENT (80%) OWNER OCCUPIED ON A COMPLEX WIDE BASIS SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS: THREE DOLLARS AND SIXTY-THREE \$3.63) CENTS PER THOUSAND (1,000) GALLONS, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON THE METER SIZE AS LISTED IN SCHEDULE A PLUS THREE DOLLARS AND SEVENTY-THREE CENTS (\$3.73) PER THOUSAND GALLONS, FOR ALL WATER DELIVERED THROUGH THE METER. THE DIRECTOR OF FINANCE IS AUTHORIZED TO PRESCRIBE AND ACCEPT SUCH FORMS OF DOCUMENTATION AS THE DIRECTOR MAY DEEM SUFFICIENT TO DEMONSTRATE AN APPLICANT'S ELIGIBILITY FOR THE RATE DESCRIBED IN THIS PARAGRAPH. FOR PURPOSES OF THIS SECTION, A TOWN HOME OR CONDOMINIUM IS A RESIDENTIAL UNIT PHYSICALLY ATTACHED TO ANOTHER RESIDENTIAL UNIT AND SEPARATELY OWNED.

(D) COMMERCIAL: ~~Commercial users shall, in 2007, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: four dollars and sixteen cents (\$4.16) per 1,000 gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A, and shall, in 2008, be charged a monthly meter service charge based on meter size as listed in Schedule A plus: four dollars and twenty seven cents (\$4.27) per 1,000 gallons for the number of gallons used per monthly billing up to the breakpoint for the meter size listed in Schedule A. In 2007, commercial users shall be charged five dollars and five cents (\$5.05) per 1,000 gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A, and in 2008, five dollars and nineteen cents (\$5.19) per 1,000 gallons for all consumption exceeding the breakpoint on a monthly basis for the applicable meter size as listed in Schedule A.~~

Schedule A					
Meter Size Code	Meter Size	Number of Service Commitments	2007 Monthly Meter Service Charge	2008 Monthly Meter Service Charge	Breakpoint for Second Tier Based on Meter Size (Gallons)
1	5/8" X 3/4"	1	\$5.67	\$5.83	20,000
2	3/4" x 3/4"	1.5	\$8.99	\$9.24	30,000
3	1"	2.5	\$12.37	\$12.71	50,000
5	1-1/2"	5	\$19.52	\$20.05	100,000
6	2"	8	\$27.07	\$27.81	160,000
7	2" x 5/8"	8	\$27.07	\$27.81	160,000
8	3"	17.5	\$55.32	\$56.84	350,000
9	3" x 3/4"	17.5	\$55.32	\$56.84	350,000
10	4"	30	\$65.08	\$66.86	600,000
11	4" x 1"	30	\$65.08	\$66.86	600,000
12	6"	62.5	\$100.87	\$103.63	1,250,000
13	6" x 1-1/2"	62.5	\$100.87	\$103.63	1,250,000
14	6" x 3"	62.5	\$100.87	\$103.63	1,250,000
15	8"	90	\$163.99	\$168.48	1,800,000
18	10"	145	\$227.76	\$234.00	2,900,000
20	10" x 12" x 6"	215	\$282.43	\$290.17	4,300,000

COMMERCIAL USERS SHALL, IN 2009, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND THIRTY-NINE CENTS (\$4.39) PER 1,000 GALLONS FOR THE NUMBER OF GALLONS USED PER MONTHLY BILLING UP TO THE BREAKPOINT FOR THE METER SIZE LISTED IN SCHEDULE A, AND SHALL, IN 2010, BE CHARGED A MONTHLY METER SERVICE CHARGE BASED ON METER SIZE AS LISTED IN SCHEDULE A PLUS: FOUR DOLLARS AND FIFTY-TWO CENTS (\$4.52) PER 1,000 GALLONS FOR THE NUMBER OF GALLONS USED PER MONTHLY BILLING UP TO THE BREAKPOINT FOR THE METER SIZE LISTED IN SCHEDULE A. IN 2009, COMMERCIAL USERS SHALL BE CHARGED FIVE DOLLARS AND THIRTY-FOUR CENTS (\$5.34) PER 1,000 GALLONS FOR ALL CONSUMPTION EXCEEDING THE BREAKPOINT ON A MONTHLY BASIS FOR THE APPLICABLE METER SIZE AS LISTED IN SCHEDULE A, AND IN 2010, FIVE DOLLARS AND FIFTY CENTS (\$5.50) PER 1,000 GALLONS FOR ALL CONSUMPTION EXCEEDING THE BREAKPOINT ON A MONTHLY BASIS FOR THE APPLICABLE METER SIZE AS LISTED IN SCHEDULE A.

SCHEDULE A					
METER SIZE CODE	METER SIZE	NUMBER OF SERVICE COMMITMENTS	2009 MONTHLY METER SERVICE CHARGE	2010 MONTHLY METER SERVICE CHARGE	BREAKPOINT FOR SECOND TIER BASED ON METER SIZE (GALLONS)
1	5/8" X 3/4"	1	\$6.00	\$6.18	20,000
2	3/4" x 3/4"	1.5	\$9.51	\$9.79	30,000
3	1"	2.5	\$13.09	\$13.48	50,000
5	1-1/2"	5	\$20.65	\$21.26	100,000
6	2"	8	\$28.64	\$29.49	160,000
7	2" x 5/8"	8	\$28.64	\$29.49	160,000
8	3"	17.5	\$58.54	\$60.29	350,000
9	3" x 3/4"	17.5	\$58.54	\$60.29	350,000
10	4"	30	\$68.86	\$70.92	600,000
11	4" x 1"	30	\$68.86	\$70.92	600,000
12	6"	62.5	\$106.73	\$109.93	1,250,000
13	6" x 1-1/2"	62.5	\$106.73	\$109.93	1,250,000
14	6" x 3"	62.5	\$106.73	\$109.93	1,250,000
15	8"	90	\$173.53	\$178.73	1,800,000
18	10"	145	\$241.02	\$248.25	2,900,000
20	10" x 12" x 6"	215	\$298.87	\$307.83	4,300,000

Section 2: Section 8-8-5, subsection (D), is hereby AMENDED to read as follows:

8-8-5: SERVICE AND USER CHARGES:

(D) The rates for user charges hereinafter set forth are based generally upon the quantity and quality of sewage collected and they are subject to change periodically as circumstances require. The minimum monthly rate for use of the City of Westminster sanitary sewerage system by residential, including multiple unit residential, and public users shall, ~~in 2007, be a sum equal to three dollars and forty seven cents (\$3.47) per thousand (1,000) gallons, and shall, in 2008, be a sum equal to three dollars and seventy cents (\$3.70) per thousand gallons in 2009, IN 2009 BE A SUM EQUAL TO THREE DOLLARS AND EIGHTY-SIX CENTS (\$3.86) PER THOUSAND (1,000) GALLONS, AND SHALL, IN 2010, BE A SUM EQUAL TO FOUR DOLLARS AND THREE CENTS (\$4.03) PER THOUSAND GALLONS,~~ multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly rate for use of the City of Westminster's Sanitary Sewage System by multiple units and commercial users shall, ~~in 2007, be a sum equal to three dollars and eighty eight cents (\$3.88) per thousand (1,000) gallons, and shall, in 2008, be a sum equal to four dollars and thirteen cents (\$4.13) IN 2009, BE A SUM EQUAL TO FOUR DOLLARS AND THIRTY-ONE CENTS (\$4.31) per thousand (1,000) gallons, AND SHALL, IN 2010, BE A SUM EQUAL TO FOUR DOLLARS AND FIFTY CENTS (\$4.50),~~ multiplied by the average monthly water consumption per user billed during the months of January through March. The minimum monthly sewer charge for commercial users may be appealed to the Utility Billing Division for user charges resulting from the average monthly water billed during the period of January through March and may be adjusted if the water billed during the months of July through September is less. Commercial users shall be allowed to install a separate meter to record out of house use which consumption will not be assessed a sewer use charge. The meter readings actually taken prior to and closest to the specified time frame shall be used for purposes of accomplishing the required calculation. However, City Council may by Resolution adjust the period of time to be used to calculate said user charges when, in the opinion of the Council, climate conditions and water consumption patterns warrant such an adjustment. The monthly charge shall apply to an account that is billed for more than fifteen (15) days service. Any new occupant of a residential unit shall, ~~in 2007, be charged seventeen~~

~~dollars and thirty six cents (\$17.36), and shall, in 2008, be charged eighteen dollars and forty nine cents (\$18.49)~~ IN 2009, BE CHARGED NINETEEN DOLLARS AND THIRTY-TWO CENTS (\$19.32), AND SHALL, IN 2010, BE CHARGED TWENTY DOLLARS AND EIGHTEEN CENTS (\$20.18) sewer charge until an experience rate has been established. SINGLE-FAMILY Residential customers that, based upon occupancy patterns, register no water use during ~~at least two months~~ ANY MONTH of the annual calculation period shall be charged ~~the new occupant rate for any period the water account is active~~ BASED ON A MONTHLY MINIMUM VOLUME OF TWO THOUSAND GALLONS (2,000) PER EACH MONTH OF ZERO WATER USE. Individual reviews of indoor water consumption may be made on a case-by-case basis.

Residential users who appeal the initial sewer charge rate can have the rate adjusted to actual usage of the first four (4) months of occupancy. Any new multi-unit or commercial account shall be charged a rate based on water consumption of similar accounts in the Westminster or the Denver Metro area. Any account not receiving Westminster water will be based on actual consumption, if available or consumption of similar accounts.

Section 3. This ordinance shall be effective for any water charges billed after January 1, 2009.

Section 4. 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 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
October 27, 2008



SUBJECT: Councillor's Bill No. 44 re Lease of Open Space Property

Prepared By: Heather Cronenberg, Open Space Coordinator

Recommended City Council Action

Pass Councillor's Bill No. 44 on first reading authorizing the execution of a lease agreement in substantially the same form as the attached agreement for the Feldman property located at 12661 Pecos Street, currently in unincorporated Adams County.

Summary Statement

- City Council approved the purchase of the Feldman property at the September 8, 2008 meeting. The City plans to acquire the 4.46-acre Feldman property for open space on November 20, 2008.
- The City entered into a Purchase and Sale Agreement with Michelle and Patrick Feldman on October 16, 2008 to acquire the property. The terms of the negotiated purchase include leasing the property back to the current owners for up to eight months while the family relocates and cleans up the materials on the property. The Feldman's have agreed to pay the City \$1,000 in rent per month through the lease term while they reside on the property. Five months of lease payments will be paid up front at closing. The lease can be terminated with thirty (30) days notice from either party.
- Included in the City Council approval of the Feldman property purchase was the statement that Staff will present a proposed ordinance approving the lease of the property, per the City Charter requirements, prior to closing on this acquisition so the sellers can continue their current use of the property. The form of lease has been approved by the City Attorney's Office and by the sellers. The lease will not be executed until after the property closing has occurred.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council wish to authorize the execution of a lease for rental of the Feldman property?

Alternative

City Council could reject this lease approval request and direct Staff to change the terms of the purchase to not allow leasing of this property to the Feldmans. This alternative is not recommended as the seller negotiated the right to lease the property as a condition of the purchase.

Background Information

The City plans to purchase the 4.46-acre Feldman property for open space on November 20, 2008 as approved by City Council. The Seller negotiated as part of the purchase the right to lease back the property for up to eight months. The lease is based on leasing the property on a month-to-month basis and for both parties to terminate the lease with 30 days notice. During the term of the lease, the public will not have access on this site. However, the City will be receiving \$1,000 per month for the lease term that will be deposited into the Open Space fund and used to assist in purchasing open space properties.

The City Charter requires that leases be approved by City Council by ordinance. Staff is recommending approval by Council at this time so that the lease can be approved prior to the contractual closing.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **44**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

A BILL

**FOR AN ORDINANCE APPROVING A LEASE AGREEMENT FOR THE LEASE OF THE
PROPERTY LOCATED AT 12661 PECOS STREET, NORTHGLENN, CO 80234.**

WHEREAS, the City of Westminster will purchase the Feldman property located at 12661 Pecos Street, Northglenn, CO 80234; and

WHEREAS, Michelle and Patrick Feldman have requested that the City lease the property back to them on a month to month basis for up to eight months with the ability to terminate the lease with thirty (30) days notice; and

WHEREAS, the tenant has been screened and determined to be suitable for the property; and

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

WHEREAS, the City Charter requires such lease be approved by ordinance,

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The Lease Agreement between Michelle and Patrick Feldman and the City for the property located at 12661 Pecos Street, Northglenn, CO 80234, in substantially the form attached to this Ordinance, is approved.

Section 2. 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 27th day of October, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 17th day of November, 2008.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 20th day of November, 2008, between the **CITY OF WESTMINSTER**, a Colorado home rule municipality (the "City"), and Michelle and Patrick Feldman, whose address is 12661 Pecos Street, Northglenn, CO 80234, (the "Lessee").

WHEREAS, the City has purchased from the Lessee on this date the property located at 12661 Pecos Street, Northglenn, CO 80234 and described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, in conjunction with the sale of the Property to the City, Lessee has requested permission to remain on the Property for up to five months with the ability to extend the lease term pursuant to the terms of this Lease Agreement.

WITNESSETH that in consideration of the covenants and agreements by the Lessee hereinafter set forth, and for other good and valuable consideration, the City hereby leases unto the Lessee the Property situated in the County of Adams, State of Colorado at 12661 Pecos Street, Northglenn, CO 80234, subject to the following Terms and Conditions:

TERMS AND CONDITIONS OF LEASE

A. This lease will begin on November 20, 2008 and continue on a month-to-month basis for up to five (5) months provided however, that either party may terminate this lease for its convenience or for any reason upon written notice to the other at least thirty (30) days prior to the proposed date of termination.

B. In consideration of the lease of the Property, the Lessee covenants and agrees as follows:

1. Payment of Rent. Lessee agrees to pay the City as rent for the subject property \$5,000 total for five months up front at closing on the property. If the lease is extended past the initial five month term, rent will be paid at \$1,000 for each month that the Lessee resides on the property, to be paid in advance on or before the first day of each and every month throughout the term of the extended agreement. Payments may be mailed to the address of designated representative for the City whose address information is listed below.

2. Lawful Use. To use the Property for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Westminster.

3. Entry by City: To allow the City access at all times to enter onto the Property.

4. Occupancy. Not to permit the Property to be used for any purpose that would render the insurance thereon void or the insurance risk more hazardous.

5. Alterations; Modifications. Not to make any alterations to, or modifications in or upon the Property without first obtaining the City's written consent. All such alterations or modifications shall be done in conformance with all applicable laws, codes, regulations, and rules of the City and the State of Colorado. All such alterations or modifications shall be done at the Lessee's expense. Further, unless the parties otherwise agree in writing, the Lessee shall be obligated to restore the Property to the original condition as entered upon if requested to do so in writing by City.

6. Duty of Care. To exercise reasonable supervision of all guests at all times when they are in or upon the Property.

7. Damage by Lessee. To reimburse the City for any expense incurred by it in repairing any damage to the Property caused by Lessee, his employees or agents, or any person in his care.

8. Indemnity. To indemnify and hold harmless the City from and against any claim for personal injury or property damage resulting from any act or omission of Lessee or its agents, to carry liability insurance covering bodily injury and property damage in an appropriate amount and to make the City, its directors, officers, employees and agents additional named insured under its policy of liability insurance, and to provide the City with a copy of such insurance policy as evidence of coverage.

9. Subletting. To sublet no part of the Property, or assign this lease or any interest therein.

10. Nuisance. Not to permit any disorderly conduct or nuisance whatever about the Property or the Property, including the buildings and the building grounds, and to not annoy, disturb or interfere

with the City's or the public's use of the Property.

11. Surrender in Good Condition. At the expiration or termination of this lease to surrender and deliver up the Property in as good order and condition as when the same were entered upon, loss by fire, and ordinary wear excepted.

C. The City and the Lessee further covenant and agree that:

1. Maintenance by Lessee. Lessee shall be responsible for the total caretaking and maintenance of the exterior and interior of the Property and all items brought onto the Property by the Lessee.

2. Maintenance by the City. Lessee accepts the Property "as is" and acknowledges that the City shall have no obligation for maintenance or repair of the Property.

3. Emergency Repairs. Lessee agrees to perform all repairs of an emergency nature necessary to protect the Property from undue and avoidable injury or damage.

4. Utilities. All charges for water and water rents, for heating, and for lighting of the Property are to be paid by Lessee.

5. Telephone Charges. Lessee will be responsible for payment for all telephone installation and service charges.

6. Keys. The City will provide Lessee with a reasonable number of keys for interior and exterior doors of the buildings on the Property.

7. The City is Not Responsible for Lessee's Personal Property. The City shall have no responsibility or liability for any loss or damage to any personal property of the Lessee or any fixtures installed by the Lessee, whether Lessee has obtained insurance coverage or not.

8. Flammable, Hazardous Materials. Lessee shall store no flammable, toxic, dangerous, hazardous or obnoxious materials anywhere on the Property.

9. Live Animals. Lessee shall neither bring nor permit the bringing of any live animals into the Property, except pets to the extent permitted by the Westminster Municipal Code.

10. Untenantable Conditions. If the Property becomes so damaged by fire, flood, act of God or any other casualty not caused by the Lessee so as to render the Property untenantable, the Lessee may terminate this Lease without further obligation.

11. Vacancy of Property. If the Property is left vacant the City may, at its option, either retake possession of the Property, terminating the Lease and the City's and Lessee's obligations hereunder, or it may re-rent the Property.

12. Insolvency of Lessee. If the Lessee becomes insolvent, or is declared bankrupt, the City may terminate this Lease forthwith, and all rights of the Lessee hereunder shall thereupon terminate.

13. Peaceable Surrender. At the expiration of the term of this Lease, whether by passage of time or by act of the City as provided in this Lease Agreement, the Lessee shall surrender and deliver up the Property peaceably to the City, and if the Lessee shall remain in possession after termination of this lease, the Lessee shall be deemed guilty of a forcible detainer of the Property under the statute, and shall be subject to eviction and removal in accordance with state law.

14. Default. If default shall be made in any of the covenants or agreements contained in this Lease Agreement to be kept by Lessee, it shall be lawful, upon 30 days written notice, for the City to declare the term ended and to repossess the Property in accordance with state law.

15. No Waiver. No assent, express or implied, to any breach of any one or more of the covenants or agreements contained in this Lease Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

16. Designated Representatives. The following persons are hereby designated by the parties as the persons responsible for the implementation of this Lease. Should Notices need to be sent or problems arise concerning this Lease the parties agree to contact:

For the Lessee:

Michelle and Patrick Feldman
12661 Pecos Street
Northglenn, CO 80234

For the City of Westminster:

Heather Cronenberg, Open Space Coordinator
Department of Community Development
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031
303-658-2142

17. Insurance. The City will provide insurance against loss to the fixtures only due to fire or other casualty. The Lessee will be solely responsible for any loss to any personal property associated with the Property.

IN WITNESS WHEREOF the parties have executed this indenture the day and year first above written.

CITY OF WESTMINSTER

LESSEE:

By: _____
J. Brent McFall
City Manager

Michelle Feldman

Attest:

Patrick Feldman

By: _____
Linda Yeager
City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney's Office

Exhibit "A"

09/15/2008 1:00:31 PM mab VM

Commitment No.: 274-H0219576-036-JJ5

Attached Legal Description

That part of the North $\frac{1}{2}$ Northwest $\frac{1}{4}$ of Section 33, Township 1 South, Range 68 West of the 6th P.M., more particularly described as follows:

Commencing at the Northeast corner of said Northwest corner of said Northwest $\frac{1}{4}$; Thence South along the East line of said Northwest $\frac{1}{4}$, a distance of 404.82 feet to the True Point of Beginning,
Thence South along the East line of said Northwest $\frac{1}{4}$, a distance of 521.86 feet to a point which is 417.5 feet North of the South line of said North $\frac{1}{2}$ Northwest $\frac{1}{4}$;
Thence South $89^{\circ}59'$ West, a distance of 417.5 feet along a line which is 417.5 feet North of and parallel with the South line of said North $\frac{1}{2}$ Northwest $\frac{1}{4}$;
Thence North parallel with the East line of said Northwest $\frac{1}{4}$, a distance of 521.68 feet;
Thence North $89^{\circ}59'$ East, a distance of 417.5 feet to the True Point of Beginning, except the East 40 feet thereof,

County of Adams,
State of Colorado.