



## 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
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. Revised Employment Agreement with J. Brent McFall
  - B. Revised Employment Agreement with Martin R. McCullough
  - C. 2007 Construction Crew Utility Material
  - D. 2008 Traffic Signal Maintenance Contract
  - E. Special Legal Counsel in Employment Matters
  - F. Contract for Professional Document Management Consultant
  - G. Contract for Owner's Representation Services for MSC Facility Renovation
  - H. Second Reading Councillor's Bill No. 57 re ERA with Cadence Capital Investments LLC
  - I. Second Reading Councillor's Bill No. 58 re EDA with McKesson Information Solutions
  - J. Second Reading Councillor's Bill No. 59 re Municipal Judge Salary
  - K. Second Reading Councillor's Bill No. 60 re W.M.C. Modifications to Chapter 24 of Title I Personnel Management
  - L. Second Reading Councillor's Bill No. 61 re W.M.C. Modifications to Chapter 11 of Title VIII Stormwater Quality
9. Appointments and Resignations
10. Public Hearings and Other New Business
  - A. Resolution No. 41 re IGA with the State re Historic Preservation Grant for Semper Farmhouse Exterior Restoration
  - B. Councillor's Bill No. 62 re Series 2007D POST Special Purpose Sales and Use Tax Revenue Bonds
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
13. Adjournment

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY MEETING (separate agenda)

New Council Agenda

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

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

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, NOVEMBER 12, 2007 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

Members of Boy Scout Troop 212 presented the colors and led the Council, Staff, and audience in the Pledge of Allegiance.

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call. J. Brent McFall, City Manager, Martin McCullough, City Attorney, and Linda Yeager, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Kaiser, to approve the minutes of the regular meeting of October 22, 2007, as presented. The motion passed unanimously.

CITY MANAGER'S REPORT

On behalf of the Staff, Mr. McFall thanked Mayor Pro Tem Kauffman and Councillor Price for their years of dedicated service to the City and its residents. He reviewed the schedules for tonight's meetings, noting that at the conclusion of the seated Council's meeting, a Westminster Economic Development Authority meeting would be conducted. Upon adjournment of that meeting, a reception for outgoing and incoming Council members would be held in the lobby and at 8:00 p.m., the first meeting of the new City Council would convene, at which time new Councillor's would be sworn in and the Mayor Pro Tem elected. Of note on the agenda of this meeting was the scheduled passage of an emergency ordinance to formally authorize the sale of Series 2007D POST (Parks, Open Space, and Trails) Special Purpose Sales and Use Tax Revenue Bonds. This was the culmination of the 2006 voter-approved extension of the POST sales/use tax and would produce \$12 million for acquisition of more open space in the City and \$8 million for park and recreation facility development.

CITY COUNCIL COMMENTS

Councillors Major, Kaiser, Dittman, Lindsey, and Mayor McNally voiced their appreciation of the qualities that Councillor Price and Mayor Pro Kauffman had brought to City Council and of the knowledge they had shared.

Councillor Kaiser reported having attended the dedication of the new gym facility at Holy Trinity, stating it should be a real asset to the community for years to come.

Mayor McNally reported having attended the American Legion's first annual Veterans' Day celebration. She thanked all veterans for their service to the country in protection of our freedom.

CITIZEN COMMUNICATION

Larry Dean Valente, 3755 West 81<sup>st</sup> Avenue, thanked Councillor Price and Mayor Pro Tem Kauffman for the time they had served on City Council. Secondly, he opposed the raises proposed for the City Manager and the City Attorney, stating that he disagreed with granting them bonuses and raises larger than those that the balance of City employees would receive.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the Mayor to execute a revised employment agreement with J. Brent McFall for his services as City Manager for 2008 with an effective date of December 1, 2007, and automatic renewal for 2009 unless terminated by City

Council; authorize the Mayor to execute a revised employment agreement with Martin R. McCullough for his services as City Attorney for 2008 with an effective date of January 1, 2008, and an automatic renewal for 2009 unless terminated by City Council; authorize the City Manager to execute purchase orders with various vendors for the purchase of materials for use by the Utilities Operations Construction Crews and Field Crews from Dana Kepner, HD Supply, and Mountain States for a total cost of \$157,019; authorize the City Manager to execute a contract with Sturgeon Electric, Inc. in the amount of \$209,454 for traffic signal maintenance for calendar year 2008; authorize the City Manager to enter into an agreement with Mr. Preston Oade for special legal counsel services in an amount not to exceed \$5,000 for work related to personnel matters for a 12-month period commencing October 1, 2007, through September 30, 2008; based on the recommendation of the City Manager, find that the public interest would best be served by accepting the proposal of Graham Information Management Associates for professional document management consulting services to develop City-wide document management policies and standards, authorize the City Manager to execute a contract in an amount not to exceed \$65,000, authorize the creation of the Records Management capital project, moving \$35,000 from the Optical Imaging capital project, and authorize the transfer of \$30,000 to be transferred with the third quarter supplemental appropriation from the General Fund Central Charges budget into the General Capital Improvement Fund's Records Management capital project; authorize the City Manager to execute a contract with J&T Consulting, Inc. in the amount of \$135,878 for owner's representation services on the Municipal Service Center Facility Renovation project, and authorize a 10 percent contingency of \$13,600 for a total budget of \$149,478; final passage of Councillor's Bill No. 57 authorizing the City Manager to execute and implement the Economic Redevelopment Agreement between the City, the Westminster Economic Development Authority, and Cadence Capital Investment LLC; final passage of Councillor's Bill No. 58 authorizing the City Manager to execute and implement the Economic Development Agreement for McKesson Information Solutions; final passage of Councillor's Bill No. 59 amending the salary for the Municipal Judge for 2008; final passage of Councillor's Bill No. 60 amending the Westminster Municipal Code, Chapter 14 of Title 1, concerning Personnel Management; and final passage of Councillor's Bill No. 61 repealing and reenacting Chapter 11 of Title VIII of the Westminster Municipal Code concerning stormwater quality.

Mayor McNally asked if any member of Council wished to remove an item from the consent agenda for discussion purposes or separate vote. There was no request.

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

#### RESOLUTION NO. 41 RE IGA WITH STATE FOR SEMPER FARMHOUSE PRESERVATION GRANT

It was moved by Mayor Pro Tem Kauffman, seconded by Councillor Dittman, to adopt Resolution No. 41 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the Semper Farmhouse Exterior Restoration. At roll call, the motion passed unanimously.

#### COUNCILLOR'S BILL NO. 62 RE SERIES 2007D POST BONDS

Citing a conflict of interest due to employment, Mayor McNally recused herself from consideration of this item, and thanked the City Manager and the management team for the outstanding job of managing the City that yielded an excellent bond rating and saved the residents of Westminster significant money in issuing bonds. She passed the gavel to Mayor Pro Tem Kauffman and left Council Chambers.

It was moved by Councillor Price and seconded by Councillor Major to pass Councillor's Bill No. 62 as an emergency ordinance, approving the sale of up to \$20 million Parks, Open Space, and Trails (POST) Special Purpose Sales and Use Tax Revenue Bonds to fund Open Space land purchases and to fund improvements to parks and recreation facilities, and direct the Mayor Pro Tem, Finance Director and City Clerk to sign necessary documents on behalf of the City. The motion passed on a 6:1 vote with Mayor McNally abstaining.

MAYOR’S FAREWELL COMMENTS TO OUTGOING COUNCIL MEMBERS

Mayor McNally thanked the Kauffman and Price families for the sacrifices they have made by supporting Mayor Pro Tem Kauffman and Councillor Price during their terms on City Council. Serving on Council would not be possible without the love and support of family members. Mayor McNally turned to Mayor Pro Tem Kauffman and to Councillor Price and thanked them for the service each had given to the City and the community. They had made valued contributions to City Council and their optimism was greatly appreciated.

PARTING COMMENTS FROM MAYOR PRO TEM KAUFFMAN AND COUNCILLOR PRICE

Mayor Pro Tem Kauffman thanked the citizens for the trust and honor bestowed upon him in electing him to City Council. He appreciated his peers on City Council, the support of City Staff, and the patience and love of his family. He cited accomplishments that had been achieved by Council during his terms of office and was proud to have contributed to the community.

Councillor Price thanked past and present Councillors from whom she had learned a lot and credited City Staff with outstanding performance. It had been her privilege to serve on City Council and an experience she would never forget.

ADJOURNMENT

There was no further business to come before the City Council, and the Mayor adjourned the meeting at 7:29 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**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 2008 with an effective date of December 1, 2007, and automatic renewal for 2009 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, 2007. The agreement will be automatically renewed for 2009 unless it is terminated by City Council no later than October 31, 2008.
- Under the proposed revised agreement, Mr. McFall's combined salary and deferred compensation will be \$199,214, which reflects a five percent increase over his annual compensation for 2007. The agreement also provides for a one-time bonus of \$10,000 payable in 2007 and the elimination of the wording in the termination/severance section that essentially could require that the City Manager maintain his employment with the City for up to twelve months after he receives a notice of termination from City Council.
- 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 the severance/termination section and the change in the effective date for the contract.

**Expenditure Required:** \$10,000 – 2007  
\$199,214, 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 continue essentially the same employment agreement with J. Brent McFall for 2008?

**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 both the International City County Management Association and the Colorado City/County Managers' Association and also continues to be active with the Jefferson and Adams County/City Managers' groups. Mr. McFall is a recipient of the Edwin O. Stene Award for Managerial Excellence by University of Kansas City Managers' Alumni in recognition of his outstanding accomplishments over thirty years as chief executive in five cities.

The past twelve months have seen a number of significant accomplishments in which Mr. McFall played a key role. In the areas of finance and budgeting, voters approved an extension on the City Open Space Tax, debt refinancing resulted in savings of over \$3.24 million, the Utility Bond rating was upgraded to AA+ while the sales tax bond rating of AA was affirmed, revised utility rates and financial policies were adopted that will help ensure long-term sustainability of the City utility infrastructure and the City continued to operate within a balanced budget despite continuing lean finances.

Development and redevelopment-related accomplishments included the successful opening of Shops at Walnut Creek, the acquisition and demolition of unfinished structures in Holly Park, the opening of the 136<sup>th</sup> Avenue Wal-Mart, the completion of the first phase of The Orchard at Town Center, the completion of the 144<sup>th</sup> Avenue and I-25 interchange, the completion of Huron improvements north of 128<sup>th</sup> Avenue, the beginning of construction of roadway improvements at 72<sup>nd</sup> and Sheridan, and the start of redevelopment of the Northgate Shopping Center. Other accomplishments included the acquisition of the Metzger Farm jointly with the City and County of Broomfield, relocation of the Church Ranch Park 'n Ride, resolution of use tax issues with both Adams 12 and Jefferson County School Districts, initial construction on the Armed Forces Tribute Garden and Big Dry Creek Park, the leasing of the former Police Department building to the State Department of Corrections and the upgrade of the Fire Department ISO rating from 4 to 3. During the year, the City was the recipient of the National Recreation and Park Association Gold Medal Award, the Digital Cities Award, the Government Finance Officers' Association Award for Financial Reporting and recognition by the Center for Performance Measurement.

Mr. McFall continues to champion the key values comprising the acronym SPIRIT (Service, Pride, Integrity, Responsibility, Innovation and Teamwork) in the management of the organization and its day-to-day operations. Other initiatives that Mr. McFall continues to emphasize are the strategic approach to short- and long-term planning and the use of a comprehensive performance measurement system that assists in department decision-making and promotes organizational accountability.

City Council met with Mr. McFall on September 24 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 2006 with exception of the effective dates of the agreement, the level of compensation and the change in the termination/severance section (3A). The latter change relates to the deletion of a provision whereby the Council has the option of continuing to have the City Manager employed by the organization after giving a twelve month notice of termination. Given the circumstances that would be involved in any involuntary termination, it was deemed as impractical to have the dismissed employee working for the City for twelve months after a termination notice was given. The agreement provides for a severance payment equal to twelve months base pay in the event of an involuntary termination during the term of the contract.

The revised agreement will provide for a combined salary and deferred compensation of \$199,214, including City-paid deferred compensation. This amount is \$9,486 or 5% higher than his total salary and deferred compensation for 2007. 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 2007 in recognition of Mr. McFall's significant accomplishments during the past twelve months.

Funds are available in the 2007 / 2008 Budget to provide for the salary and fringe benefits 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 2007, 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 2008 and 2009. EMPLOYEE agrees to remain in the exclusive employ of CITY and EMPLOYEE will serve as City Manager from January 1, 2008 through December 31, 2009. 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, 2008, but shall be automatically renewed through December 31, 2009, unless terminated on or before October 31, 2008.

### 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 \$199,214 effective January 1, 2008. 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 2007, the EMPLOYEE shall be given a \$10,000 bonus payable no later than December 14, 2007.

### 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 \$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 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, 2007, and if automatically renewed shall be in effect through December 31, 2009.
- 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 12th day of November 2007.

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

ATTEST:

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

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

APPROVED AS TO FORM:

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**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 2008 with an effective date of January 1, 2008 and an automatic renewal for 2009 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 January 1, 2008. The Agreement will be automatically renewed for 2009 unless it is terminated by City Council no later than October 31, 2008.
- The continuation of this employment agreement reflects Council's positive appraisal of Mr. McCullough's work performance during 2007.
- Under the proposed revised Agreement, Mr. McCullough's compensation will be \$158,046, which represents a 6.5 percent increase over his annual compensation for 2007. 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. 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 and the change in the effective dates for the contract.

**Expenditure Required:** \$158,046 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 continue essentially the same employment agreement with Martin McCullough for 2008?

**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. During 2004, Mr. McCullough was designated a Fellow In Local Government Law by the International Municipal Lawyers' Association.

During the past year, the City Attorney's offices accomplished several important goals on behalf of the City. The City prevailed on all claims brought by Westminster Park Corporation and Wells Fargo Bank to prevent the acquisition of the Holly Park Townhome project by the Westminster Economic Development Authority. All the legal details necessary to allow the commencement of construction of the Orchard Town Center, the Wal-Mart SuperCenter and the Shoenberg Farms development were completed. In the personnel area, no grievances, personnel board hearings, or lawsuits were experienced. Six sales/use tax protests were resolved, netting over \$560,000 in revenue. The City Prosecutor's Office continued to experience an extremely high volume of cases. During the past 12 months, the prosecutors had 11,500 defendant contacts. The number of jury trials increased dramatically from 22 in 2006, to 33 in 2007.

City Council met with Mr. McCullough for his annual performance and salary review on October 8. The City Attorney's employment agreement includes the changes in the agreement requested by City Council as a result of that meeting. The proposed contract between Mr. McCullough and the City will be renewed automatically unless terminated by Council prior to October 31, 2008.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

## EMPLOYMENT AGREEMENT

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

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, 2007, the CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto a combined annual salary and deferred compensation of \$158,046. The EMPLOYEE may elect to receive a portion of his compensation in the form of a lump sum amount of deferred compensation up to the then current maximum allowed by law. The EMPLOYEE'S base salary shall be payable in installments at the same time as other employees of the CITY are paid.

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



SECTION 5. HOURS OF WORK:

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

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

SECTION 6. 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 7. 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 8. 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 9. 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 10. 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 11. GENERAL PROVISIONS:

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

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

C. This agreement becomes effective on January 1, 2008, and if automatically renewed, shall be in effect through December 31, 2009.

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 12<sup>th</sup> day of November, 2007.

ATTEST:

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

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

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** 2007 Construction Crew Utility Material

**Prepared By:** Richard A. Clark, P.E., Utilities Operations Manager  
Andy Mead, Utilities Operations Coordinator

**Recommended City Council Action**

Authorize the City Manager to execute purchase orders with various vendors for the purchase of materials for use by the Utilities Operations Construction Crews and Field Crews from Dana Kepner, HD Supply, and Mountain States for a total cost of \$157,019.

**Summary Statement**

- This request consists of the purchase of eight individual lots of related waterworks materials.
- Formal bids for these materials were issued and a bid opening took place on October 18, 2007. A total of three vendors provided bids on this purchase.
- Dana Kepner was the lowest bidder on three lots totaling \$61,132, Mountain States was low bid on one lot totaling \$4,134, and HD Supply was the lowest bidder on four lots totaling \$91,753.
- Adequate funds were budgeted in the Utilities Operations budget for this expense.

**Expenditure Required:** \$157,019

**Source of Funds:** Utility Fund - Utilities Operations Division Operating Budget

**Policy Issue**

Should the City spend Utility Fund monies to purchase materials for water main replacements as specified in the contract/project documents?

**Alternative**

Purchase materials only on an as-needed basis and negotiate prices for each purchase individually. This would take a large amount of staff time and likely increase the prices for each piece of material purchased. Also, this option would require City Council action for each expenditure that exceeds \$50,000. This option is not recommended since the City requested and received bids for these materials and would most likely get higher unit costs if purchased on an as-needed basis.

**Background Information**

The Construction Crew Utility Material Purchase is an annual purchase of commonly used waterworks materials for use by the Utilities Operations Division’s construction crew for the installation of the four miles of replacement water mains installed annually.

The Construction Crew Utility Material Purchase was advertised on the Internet site “Demand Star” with bids being opened on October 18, 2007. As written, each lot was a separate purchase and a bidder could submit pricing for any or all lots of material. Delivery is to be immediate and in one shipment.

The results of the submitted bids are as follows (numbers in bold indicate low bid):

<b>Lot Description</b>	<b>Dana Kepner</b>	<b>HD Supply</b>	<b>Mountain States</b>
Mechanical Joint Fittings	\$15,571	<b>\$13,272</b>	\$17,632
Mechanical Joint Restraints	<b>\$9,102</b>	\$10,435	\$10,395
Fire Hydrants	<b>\$51,080</b>	<i>Withdrew bid *</i>	\$59,940
Valves	\$55,568	<b>\$53,854</b>	\$54,185
Brass/Copper	\$15,630	<b>\$12,685</b>	\$15,571
Miscellaneous	\$13,352	<b>\$11,941</b>	\$18,456
Water Main Repair Clamps	\$4,198	\$5,117	<b>\$4,134</b>
Fire Hydrant Parts	<b>\$949</b>	\$1400	\$1,072

\* *Note that Lot 3 “Fire Hydrants” indicates a bid withdrawn by HD Supply. A company representative called after the bid opening and indicated an error on their bid by quoting on Mueller brand fire hydrants, which we do not use. Since the bid opening had already taken place, staff agreed to withdraw this lot bid from HD Supply and award the lot #3 bid to Dana Kepner, which was the lowest remaining bid for these items.*

These purchases help achieve the City Council’s Strategic Plan Goals of “Financially Sustainable City Government, Safe and Secure Community and Vibrant Neighborhoods and Commercial Areas” by meeting the following objectives:

- Well-maintained City infrastructure and facilities
- Citizens are safe anywhere in the City
- Maintain and improve neighborhood infrastructure and housing

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 D

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** 2008 Traffic Signal Maintenance Contract

**Prepared By:** Greg Olson, Transportation Systems Coordinator

**Recommended City Council Action**

Authorize the City Manager to execute a contract with Sturgeon Electric, Inc. in the amount of \$209,545 for traffic signal maintenance for calendar year 2008.

**Summary Statement**

- The City utilizes the services of a private contractor to perform maintenance of the City's traffic signals. The current contract expires on December 31, 2007.
- A total of three bids were received on November 1, 2007 for the contract for signal maintenance in 2008. City Council action is requested to award the 2008 traffic signal maintenance contract to the lowest bidder, Sturgeon Electric, Inc.
- The contract amount is within the amount budgeted in the 2008 operating budget of the Department of Community Development for traffic signal maintenance activities.

**Expenditure Required:** \$209,545

**Source of Funds:** 2008 General Fund -  
Department of Community Development Operating Budget

**Policy Issue**

Should the City continue the practice of outsourcing traffic signal maintenance to a private contractor?

**Alternative**

One alternative is to not enlist the full-time services of a private contractor. This alternative would require the City to hire a minimum of one full-time employee and invest in the equipment necessary to perform basic traffic signal maintenance. The part time services of a contractor would still be required to perform assistance for major emergencies and repairs and share with the after-hours maintenance responsibility. Staff is currently investigating the feasibility of performing in-house traffic signal maintenance and will continue with that investigation. City Staff does not recommend performing the traffic signal maintenance “in-house.”

**Background Information**

The City utilizes the services of a traffic signal maintenance contractor to perform maintenance on traffic signals at 95 intersections and on 8 pedestrian crossing signals (total of 103 installations). The 2007 traffic signal maintenance contract, which was awarded to Sturgeon Electric, Inc. in November 2006, expires December 31, 2007.

City Staff requested and received formal bids from three qualified contractors for the 2008 traffic signal maintenance. The results of the November 1<sup>st</sup> bid opening are as follows:

Contractor	Bid Amount
Sturgeon Electric, Inc.	\$209,545
Integrated Electric, Inc.	\$217,295
W. L. Contractors, Inc.	\$217,808

The low bidder, Sturgeon Electric, Inc., is the City’s current traffic signal maintenance contractor. City Staff believes that in 2008, Sturgeon Electric will be able to provide the high level of service that the City expects for traffic signal maintenance activities.

The 2008 bid documents utilize a conservative, estimated annual amount of labor, equipment hours, and materials for performance of all traffic signal maintenance functions. There are two general categories of work activities that provide the basis for the estimated hours of equipment and labor unit prices in the traffic signal maintenance contract: annual preventive (routine) maintenance and additional traffic signal (occasional) maintenance.

**Annual preventive maintenance:** The first section of the contract addresses annual preventive maintenance at each of the traffic signal locations. The components of annual preventive maintenance include the following:

1. Clean signal controller cabinets and components.
2. Check all field wiring for inadequacies (i.e., proper grounding etc.).
3. Check critical controller settings (i.e., amber time) with a stopwatch to insure adequate operation.
4. Check for adequate power levels in the communications cable, which links the signals in the computerized signal system.

5. Check and calibrate vehicle loop detectors to insure proper operation. (Vehicle loop detectors are wires embedded in the roadway that detect the presence of a vehicle and trigger a change in the traffic signal.)
6. Check signal heads, signal poles and associated hardware for damage and make repairs as necessary.
7. Check and record incoming voltage at all intersections to prevent excessive wear on the signal control equipment.
8. Inspect each signal location quarterly.
9. "Troubleshoot" and maintain the computerized signal system components to insure proper operation.
10. Maintain emergency vehicle preemption equipment (Opticom) to insure proper operation. (Emergency vehicle preemption equipment consists of an electric component, which preempts the traffic signal to allow a green signal indicator for fire equipment.)
11. Based on the activities listed above, provide the City with a prioritized list of items in need of repair.

**Additional Traffic Signal Maintenance Items:** The remaining section of the contract reflects estimated labor, equipment, and materials costs for additional traffic signal maintenance items. Additional traffic signal maintenance items include emergency trouble calls, unscheduled maintenance items and an estimated cost for loop detector replacements. The contract assures the City that the contractor will be available to perform emergency or other repairs as required. It is necessary that the City have a contractor available seven days a week, 24 hours a day to respond to any emergency signal work that may arise.

The bid documents were based on a conservative, estimated amount of labor, equipment, and materials so that each bidder could provide unit prices based upon the same assumption. Staff typically estimates on the low side the number of labor and equipment hours that will be necessary so that the contractor will not rely on a higher workload than may be experienced.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**

**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Special Legal Counsel in Employment Matters

**Prepared By:** Leslie C. Annand, Assistant City Attorney

**Recommended City Council Action**

Authorize the City Manager to enter into an agreement with Mr. Preston Oade for special legal counsel services in an amount not to exceed \$5,000 for work related to personnel matters for a 12-month period commencing October 1, 2007, through September 30, 2008.

**Summary Statement**

- Staff is recommending that the City Council authorize the City Manager to execute a legal services agreement with Mr. Preston Oade of Holme Roberts & Owen for assistance with personnel matters.
- Mr. Oade is an experienced attorney specializing in employment law.
- The City Charter requires approval by City Council of all outside contracts for legal services.

**Expenditure Required:** Not to exceed \$5,000

**Source of Funds:** General Fund - CAO Professional Services Account



**Policy Issue**

Should the City retain special legal counsel to provide employment law expertise on as-needed basis?

**Alternative**

City Council could elect not to retain this type of special legal counsel assistance or seek such assistance from another source.

**Background Information**

Mr. Oade is an experienced attorney specializing in employment law and employment litigation. Mr. Oade has participated in over 100 jury trials in state and federal courts in Colorado, Michigan, Montana, North Carolina, and Wyoming, and is listed in the Best Lawyers in America under Labor and Employment Law in Colorado. Mr. Oade's expertise will assist City Staff in being prepared for any potential legal claims.

Under the proposed agreement, the City will be paying Mr. Oade \$385 per hour. This rate is consistent with rates charged by other experienced attorneys who specialize in employment law.

The City Charter requires City Council approval of all outside legal counsel agreements. City Council previously approved a similar arrangement for specialized legal consulting with Mr. Dee Wisor of Sherman & Howard for public finance and tax law issues and with Ms. Barbara Banks for general real estate issues. Often, only relatively brief consultations are required, and these type of arrangements afford the opportunity to obtain the necessary advice without holding up progress resolving the legal issues at hand.

Respectfully submitted,

J. Brent McFall  
City Manager



WESTMINSTER

COLORADO

Agenda Memorandum

City Council Meeting  
November 12, 2007



**SUBJECT:** Contract for Professional Document Management Consultant

**Prepared By:** Linda Yeager, City Clerk

**Recommended City Council Action**

Based on the recommendation of the City Manager, find that the public interest would best be served by accepting the proposal from Graham Information Management Associates for professional document management consulting services to develop City-wide document management policies and standards; authorize the City Manager to execute a contract in an amount not to exceed \$65,000; authorize the creation of the Records Management capital project, moving \$35,000 from the Optical Imaging capital project; and authorize the transfer of \$30,000 to be transferred with the third quarter supplemental appropriation from the General Fund Central Charges budget into the General Capital Improvement Fund's Records Management capital project.

**Summary Statement**

- To further enhance the City's ability to respond in a timely and accurate manner to Open Records requests and discovery obligations when they occur, as well as to manage the City's documents uniformly, Staff recommends that customized City-wide retention schedules, policies, and standards be developed to address the disposition of all public records in a comprehensive manner.
- The scope of this project is complex and the work to be done needs to be accomplished in a timely manner to protect the City's best interests. Staff can assist in the development of the schedules, policies, and standards under the guidance of a professional consultant who is knowledgeable of statutory records retention/destruction requirements and of all media that should be included in document management policies and standards.
- Letters of Interest were sent to vendors describing the scope of services and seeking proposals. Four proposals were received and three vendors were interviewed by the Ad Hoc Records Management Committee. One vendor withdrew their proposal after being interviewed. Of the two remaining proposals, the in-state vendor was determined best qualified, most knowledgeable of the project work, and immediately available to begin work after the contract is approved.

**Expenditure Required:** \$65,000

**Source of Funds:** \$35,000 – General Capital Improvement Fund – Optical Imaging Project Budget  
\$30,000 – General Fund – Central Charges Budget

**Policy Issue**

Should the City retain a consultant to provide customized retention schedules and City-wide policies and standards for the management of all public documents of the City?

**Alternatives**

1. Council could direct Staff to develop the needed schedules, policies, and standards internally without the expertise of a professional consultant.
2. Council could decide that the Colorado Model Retention Schedules currently adopted by the City is sufficient and take no action to customize the schedules or to develop a comprehensive document management program for implementation City-wide.

Neither of these alternatives is recommended. In addition to Open Records requests, recent Federal Supreme Court rulings have made all forms of electronic records (imaged records, email, Voice Over Internet messaging, audio and video tapes, etc.) discoverable in litigation. The scope of work in this project needs to be completed as quickly as possible. Per City Charter, the City Clerk is the official custodian of all public records. Staffing resources in the Clerk’s office do not include a records manager and workload precludes the internal development of these needed policies and standards in a timely manner. Additionally, Staff has found that the current City-wide records management policies and practices are not adequate. Each department maintains separate filing systems, and duplication of records (wasting physical and electronic space) is common. Gathering information to respond to a request is costly and ineffective. Staff believes the City’s investment in professional assistance to accomplish this project will result in a document management program that protects and preserves the City’s history, adheres to statutory requirements regarding the retention and disposition of records uniformly, and confidently produces authentic copies of all requested documents when needed.

**Background Information**

In response to concerns raised by the City Attorney’s Office regarding the City ability to access and provide high quality copies of scanned documents, an ad hoc committee was formed to study the problem and recommend solutions. Research included meeting with the State Archivist, contacting other Colorado municipalities to obtain examples of their policies, and discussing options with certified records managers.

Realizing that each Colorado municipality contacted had identical problems and lacked organization-wide policies to address the management of documents regardless of media, the ad hoc committee determined that the scope and complexity of this project needed to be guided by a certified records manager with professional document management program development skills.

A notice describing the scope of work and requesting proposals was mailed to six vendors. Four of those vendors submitted proposals. The proposals were reviewed and three vendors were selected to be interviewed.

<u>Company</u>	<u>Fee</u>
Records Management Solutions Sherwood, Arkansas	4 days/\$2,500 5 days, \$3,100
Circuit Rider Fort Collins, Colorado	\$70/hr – 20 hrs/mo 2007 \$75/hr – 30 hrs/mo 2008
Access Sciences Houston, Texas	\$72,000
Graham Information Management Assocs. Golden, Colorado	\$65,000

Following the interviews, one proposal was withdrawn because the consultant is currently under contract to prepare a comprehensive records management program for the City of Greeley and realized she did not have sufficient time to dedicate to our project and adhere to our project work schedule. Of the two remaining proposals, the in-state vendor was not only determined the best qualified to meet the City's needs, but also the most knowledgeable of the work to be accomplished. Graham Information Management Associates includes two certified records managers who will work as a team to develop the policies, procedures, standards and schedules described in the scope of work. Both have extensive document management consulting experience in the private and public sector, and one has specific municipal experience as a former City Clerk of Aurora. They can begin the project immediately and expect to complete work in six to eight months, concluding with training of each department's designated records keeper, who will then be qualified to teach others about the overall program. Individual departmental records keepers will form a user's group that meets routinely to discuss problems and to recommend annual updates to the records management program that might be needed to address new records series and/or media.

If approved, the scope of work includes preparation of a customized retention schedule designed specifically for Westminster, development of City-wide policies and procedures pertaining to records management and retention, email and electronic records management, records destruction holds and hold releases, protection of confidential records and personal information privacy, destruction and archiving of original and electronic records, quality control standards to ensure authenticity, preservation of historic records, document indexing parameters and methodologies, uniform naming conventions, and a staff training program. The estimated time to complete the project is six to eight months.

Funds for this contract are available in the Optical Imaging project (\$35,000) in the General Capital Improvement Fund and in the Professional Services account (\$30,000) in the General Fund Central Charges budget. Staff recommends creating a new separate capital account for this project since the scope is significantly broader than the Optical Imaging project. Staff will bring back as part of the third quarter supplemental appropriation agenda memorandum in December the official action required to move the \$30,000 from the General Fund to the General Capital Improvement Fund. Per City Charter, an ordinance is required to move moneys across funds.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Contract for Owner's Representation Services for MSC Facility Renovation

**Prepared By:** Mike Wong, Senior Engineer  
Abel Moreno, Capital Projects and Budget Manager

**Recommended City Council Action**

Authorize the City Manager to execute a contract with J&T Consulting, Inc. in the amount of \$135,878 for owner's representation services on the Municipal Service Center Facility Renovation project, and authorize a 10 percent contingency of \$13,600 for a total budget of \$149,478.

**Summary Statement**

- The Municipal Service Center (MSC) is an aging facility that is in need of renovation in order to accommodate current and future operational needs of the City's Public Works and Utilities Department and Building Operations and Maintenance Division.
- The City entered into an Agreement for architectural services with Fisher Associates in January 2006.
- Project construction documents are being finalized by architect Fisher Associates, and a guaranteed maximum price (GMP) is being prepared by the contract manager/general contractor (CM/GC) JHL Constructors.
- Due to the complexity of the renovation project, Staff is recommending retaining a firm to provide the owner's representation services during construction.
- The scope of work for the owner's representation services includes assisting Staff in review of final design, value engineering, contract administration, and project close-out.
- City Staff presented the architectural master plan and funding strategy for the MSC to City Council at the December 4, 2006 Study Session.
- City Council authorized \$11.2 million for the total project budget. The expenditure for the owner's representation services is included in the total budget.

**Expenditure Required:** \$149,478

**Source of Funds:** Utility Fund CIP – MSC Facility Renovation

**Policy Issue**

Should the City execute a contract with J&T Consulting, Inc. for the Owner’s Representation Services?

**Alternatives**

The City could choose from the following alternatives:

1. Reject Staff’s recommendation to enter a contract with J&T Consulting, Inc. and have Staff manage the more complex technical and administrative contractual obligations. This will be challenging since Staff is also responsible for managing a broad range of other City Utility Fund capital projects.
2. Reject the owner’s representation services proposals and advertise another Request for Proposals to solicit other qualified firms. Staff does not recommend this option since the cost proposal received from J&T Consulting, Inc. is competitive and the firm is familiar with the City’s policies and procedures.

**Background Information**

The Municipal Services Center was initially constructed in the mid 1970s and was last renovated and expanded in 1984. The MSC provides administrative office space for approximately 100 Staff, is used for storage of City owned vehicles, snow plows, maintenance materials, and is the City’s primary fueling station for the City’s fleet. Over the years, demand for municipal services has out grown the MSC site in its current layout and condition.

The proposed MSC Facility Renovation includes remodeling the existing Operations and Administration Buildings, addition of a heated vehicle storage building for the fully equipped tandem trucks and a sand and salt storage facility, redesign of the maintenance material storage yard, improvement to traffic circulations, storm drainage control, and general landscape of the site.

In January 2006, the City entered into a contract with Fisher Associates for the architectural and engineering design. The initial scope of work was the renovation of the Operations Building and some minor modifications to the Administration Building. In July 2006, the scope of the work was expanded to include a master plan study of the MSC site and recommendations for improvements for current Staff needs as well as to meet future growth. The maximum total project cost has been set at \$11.2 million. In May 2007, Staff retained JHL Constructors as the CM/GC for the renovation project. JHL Constructors’ responsibilities include value engineering, constructability, and provision of a guaranteed maximum price for the City’s consideration.

Through a formal process, a Request for Proposals for owner’s representation services was sent to five pre-qualified consulting firms on September 21, and a mandatory pre-proposal conference was held on October 3, 2007 for discussion and clarification of the project. Subsequently, two proposals were received by the City of Westminster on October 16, 2007. Upon evaluation, Staff is recommending J&T Consulting, Inc. as the firm for the owner’s representation services based on qualifications and cost consideration. The following is a summary of the proposals and proposed cost:

<u>Engineering Firms</u>	<u>Lump Sum Bid</u>
J&T Consulting, Inc.	\$135,878
URS Corporation	\$314,886

J&T Consulting, Inc. is a qualified consulting firm based in Westminster that is familiar with the City's policies and procedures. J&T Consulting, Inc. is providing similar services for the City as it renovates and expands the Big Dry Creek Wastewater Treatment Facility using the CM/GC construction contracting method. J&T Consulting, Inc. has also assisted the City in managing several other capital projects.

Staff will be returning to two future City Council meetings recommending the appropriation of funds from the City's Utility Fund Capital Project Reserve (two readings) and the award of construction to JHL Constructors if a mutually agreed upon guaranteed maximum price can be negotiated. JHL Constructors was previously selected from a competitive Request for Proposals process that the City conducted in April/May 2007.

This project helps achieve the City Council's Strategic Plan Goals of "Safe and Secure Community" by improving security to the City's primary staging area for Fleet, Street, and Utilities operations functions; "Financially Sustainable City Government" by contributing to the objective of well-maintained City Infrastructure and Facilities; and "Beautiful City" for enhancing the beauty of this facility.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Second Reading Councillor’s Bill No. 57 re Economic Redevelopment Agreement with Cadence Capital Investments LLC

**Prepared By:** Susan Grafton, Economic Development Manager

**Recommend City Council Action**

Adopt Councillor’s Bill No. 57 on second reading authorizing the City Manager to execute and implement the Economic Redevelopment Agreement between the City of Westminster, the Westminster Economic Development Authority and Cadence Capital Investment LLC.

**Summary Statement**

- This Councillor’s Bill was passed on first reading on October 8, 2007.
- Minor modifications have been made since first reading to the Economic Redevelopment Agreement (Exhibit A) concerning how the garage would be relocated and to assure coordination between Cadence and City Staff.
- None of the changes affected the economics of the assistance originally presented.
- Cadence Capital Investment LLC (Cadence) desires to construct a 61,800 square foot retail center at the northwest corner of 72<sup>nd</sup> Avenue and Sheridan Boulevard on the former Shoenberg dairy farm property.
- Cadence needs to move the farm garage to allow improved access to the retail center that they are constructing.
- In the Option to Purchase Agreement, between the Teppers, Cadence and the City, executed on January 11, 2007, Cadence agreed to move certain buildings, and the City agreed to reimburse costs relative to the building relocation.
- An Economic Redevelopment Agreement (ERA) is necessary to facilitate the reimbursement of costs relative to relocation of the Shoenberg farm garage.
- Staff is requesting that the City and Westminster Economic Development Authority’s (WEDA) approve the proposed \$130,000 ERA for Cadence.
- It is estimated that the City’s portion will be \$81,862 and WEDA’s portion will be \$48,138.

**Expenditure Required:** Not to exceed - \$81,862

**Source of Funds:** The ERA with Cadence will be funded through the rebate of building permit fees, construction use tax, and sales tax generated from the new Shoenberg retail center.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachments



BY AUTHORITY

ORDINANCE NO. **3387**

COUNCILLOR'S BILL NO. **57**

SERIES OF 2007

INTRODUCED BY COUNCILLORS  
**Major - Dittman**

**A BILL**

**FOR AN ORDINANCE AUTHORIZING AN ECONOMIC REDEVELOPMENT AGREEMENT WITH CADENCE CAPITAL INVESTMENTS TO AID IN THE PRESERVATION OF THE HISTORIC SHOENBERG FARM AT THE NORTHWEST CORNER OF 72<sup>ND</sup> AVENUE AND SHERIDAN BOULEVARD IN WESTMINSTER**

WHEREAS, City of Westminster has indicated its desire to improve and redevelop the northwest corner of 72<sup>nd</sup> Avenue and Sheridan Boulevard, within the South Sheridan Urban Renewal Area; and

WHEREAS, Cadence Capital Investment has agreed to assist the City in preserving the historic Shoenberg Dairy Farm buildings; and

WHEREAS, a proposed three-party Economic Redevelopment Agreement between the City of Westminster, Westminster Economic Development Authority, and Cadence Capital Investment is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a three-party Economic Redevelopment Agreement with the Westminster Economic Development Authority and Cadence Capital Investment in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement, to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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

EXHIBIT A

**ECONOMIC REDEVELOPMENT AGREEMENT BETWEEN THE WESTMINSTER  
ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF WESTMINSTER AND  
CADENCE CAPITAL INVESTMENTS**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **CITY OF WESTMINSTER**, a Colorado home rule city (“City”), the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, an urban renewal authority organized and existing pursuant to provisions of Part 1, Article 25, Title 31, C.R.S. (“WEDA”), and **CADENCE CAPITAL INVESTMENTS LLC**, a Colorado limited liability company (“Cadence”).

In consideration of the mutual promises set forth below, the City, WEDA and Cadence agree as follows:

1. Cadence Responsibilities and Conditions of Rebates

- a. Pursuant to the Agreement Concerning Shoenberg Farm Buildings, dated January 11, 2007, Cadence has advanced \$30,000 to the City for performing a Historic Structures Assessment (HSA) pursuant to Colorado State Historical Fund Standards.
- b. Cadence agrees to complete the following requirements for moving the Shoenberg Farm garage:
  1. Design and engineer a new foundation pursuant to the professional engineer’s recommendations in a soils report, which new foundation must be approved by the City’s Chief Building Official. The location shall be as approved on the ODP, with the garage door facing west.
  2. The garage, including its second story, must be transferred to the new foundation in a manner and by a contractor to be approved by the City as follows:
    - a. The Developer shall retain a qualified structural moving contractor which is to be pre-approved along with the Scope of Work in the reasonable discretion of the City’s Community Development Programs Coordinator (CDPC).
    - b. The move shall be completed within 90 days after the move is physically started. Reasonable extensions of time shall be granted by the City for good cause including adverse weather conditions. Lack of diligence or time to pursue the project shall not be considered good cause.
    - c. Cadence agrees to provide at least 4 days advance notice to the City’s CDPC by e-mail or phone by calling 303-882-7641 with respect to any actions onsite relative to the new foundation and/or the actual relocation of the garage. The advance notice is required to allow the City’s building inspector, the City’s CDPD and Cadence’s structural engineer (JVA) to be on-site during the garage move, the foundation construction, and other significant contractor actions that may impact the structural integrity of the garage.
    - d. No upgrades, interior finish, exterior paint, or work necessary to bring the buildings up to current code or render them otherwise habitable is required. Existing access stairs to the second floor shall be securely reattached to the garage on the same side of the garage that the stairs were located in the original location.
    - e. If the garage structure is damaged during the move, due to Cadence or the contractor not following the specific steps of the Ryberg Construction letter submitted to the City October 15, 2007 and approved by the City in a letter from Vicky Bunsen dated October 18, 2007, Cadence shall cause its contractor to repair the damage or submit a claim to the contractor’s surety or insurer. No further action or salvage activity will be undertaken without consensus between Cadence and the City; but, in no event will this result in an increased Scope of Work as contemplated herein.
    - f. All required permits, for moving the building, including foundation and moving permits, shall be obtained prior to pouring the new foundation or transferring the garage from the existing to the new location in accordance with the terms of this Agreement. Permits are to be issued for the purposes outlined in this agreement and are not intended to cover permits required to make the building useable or habitable as outlined in the Farm Agreement.

- c. Upon Cadence's submittal of receipts evidencing the cost of moving the farm garage, Cadence shall be paid 50% of all costs of the new foundation and moving the farm garage, up to a maximum reimbursement of \$100,000, in the form of the rebates as described in this Agreement.
2. Rebate Amount  
The "Rebate Amount" is \$30,000 plus 50% of the costs, up to a maximum of \$100,000, of relocating the garage. The actual dollar amount to be rebated will be dependent on the actual costs incurred by Cadence to relocate the garage. However, in no case shall the total rebate amount exceed \$130,000.
3. Building Permit Fee Rebate  
The City shall rebate to Cadence 100% of the building related fees paid (excluding water and sewer tap fees) for the Shoenberg Farm retail center required under W.M.C. Section 11-10-3 (E).
4. Use Tax Rebate – Construction  
The City shall rebate to Cadence 100% of the building use tax paid on the construction materials, resulting from construction of the new Shoenberg Farm retail center, required under W.M.C. Section 4-2-9 and 4-2-3 (excludes the City's .25% Open Space Tax and .6% Public Safety Tax).
5. Sales Tax Rebate  
WEDA shall rebate 50% of the Sales Tax increment collected from the Shoenberg Farm retail center per year. The Sales Tax Rebate shall equal the Rebate Amount, less the actual amount rebated per Paragraphs 3 and 4 above. Such rebate shall be payable exclusively from sales tax increment revenues from the Shoenberg Farm retail center and attributable to the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax).
6. Payment of Rebates  
a. The City shall rebate the Building Permit Fees and Construction Use Tax. The rebates will be paid to Cadence by the city in quarterly installments from revenue actually collected and received by the City from development of the Shoenberg Farm retail center. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.  
b. WEDA shall pay the Sales Tax Rebate in annual installments from incremental sales tax revenue actually collected and received by the City and transferred to WEDA from the City. The payment of each annual installment shall be made on or before March 31st. Payments will be submitted electronically to Cadence's designated financial institution.
7. Entire Agreement  
This instrument shall constitute the entire agreement between the City, WEDA and Cadence and supersedes any prior agreements concerning the funding of the Historic Structures Assessment and the moving of the farm garage between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. In the event of sale, staff may assign the business assistance package to Cadence's successor.
8. Subordination.  
WEDA's and the City's obligations pursuant to this Agreement are subordinate to the City's and WEDA's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and property tax revenues in excess of the sales and property tax revenues necessary to meet such existing or future bond indebtedness. The City and WEDA shall meet obligations under this Agreement only after the City and WEDA have satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City or WEDA.

9. Governing Law: Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code and Urban Renewal Statutes. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.

CADENCE CAPITAL INVESTMENT LLC

WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_

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

ATTEST:

ATTEST:

\_\_\_\_\_  
Title

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

CITY OF WESTMINSTER

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

ATTEST:

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

APPROVED AS TO LEGAL FORM:

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



## Agenda Item 8 I

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Second Reading Councillor's Bill No. 58 re Economic Development Agreement with McKesson Information Solutions

**Prepared By:** Susan F. Grafton, Economic Development Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 58 on second reading authorizing the City Manager to execute and implement the Economic Development Agreement for McKesson Information Solutions.

**Summary Statement**

- This Councillor's Bill was passed on first reading on October 22, 2007.
- McKesson Information Solutions (MIS) is a subsidiary of McKesson International, a provider of a variety of health care services.
- The company is leasing 125,000 square feet in Westmoor Technology Park located northeast of 108<sup>th</sup> Avenue and Simms Street.
- Their employment at move-in is expected to be about 600 people, with average salaries between \$85,000 and \$91,400.
- The proposed assistance is based on the City's desire to fill existing office space and to attract basic employers to Westminster. The Economic Development Agreement (EDA) totals \$157,897, which includes \$15,247 in permit fee rebates, \$29,250 in construction use tax rebates and \$113,400 in equipment use tax rebates.
- Should MIS relocate outside of Westminster within 5 years of approval of this EDA, the assistance would have to be paid back to the City by the company.
- MIS also considered sites in Louisville and Broomfield.

**Expenditure Required:** \$157,897 (Rebates)

**Source of Funds:** The EDA with MIS will be funded through revenue received from permit fees, construction use tax, and use tax on furniture, fixtures, and equipment at move-in.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

BY AUTHORITY

ORDINANCE NO. **3388**

COUNCILLOR'S BILL NO. **58**

SERIES OF 2007

INTRODUCED BY COUNCILLORS  
**Price - Major**

**A BILL  
FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT  
WITH MCKESSON INFORMATION SOLUTIONS**

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

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

WHEREAS, McKesson Information Solutions (MIS) plans to lease 125,000 square feet in Westmoor Technology Park in Westminster; and

WHEREAS, a proposed Economic Development Agreement between the City and MIS is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

**THE CITY OF WESTMINSTER ORDAINS:**

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with MIS in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22<sup>nd</sup> day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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

**ECONOMIC DEVELOPMENT AGREEMENT FOR  
MCKESSON INFORMATION SOLUTIONS IN THE CITY OF WESTMINSTER**

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, between the CITY OF WESTMINSTER (the "City"), and the MCKESSON INFORMATION SOLUTIONS LLC, a Delaware limited liability company ("MIS").

WHEREAS, the City wishes to provide assistance to MIS to aid in the relocation of this company in the City; and

WHEREAS, MIS plans to lease and furnish 125,000 square feet of office space in Westmoor Technology Park, thus providing primary job growth within the City; and

WHEREAS, City Council finds the execution of this Economic Development Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and MIS agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to MIS 60% of the building permit fees, that are collected from MIS or its chosen contractor otherwise required under W.M.C. Section 11-10-3 (E). This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$15,247.

2. Use Tax Rebate- Construction. The City shall rebate to MIS 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on the construction materials, collected from MIS or its chosen contractor that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The rebate will be approximately \$29,250.

3. Sales & Use Tax Rebate- Furniture and Fixtures. The City will rebate 60% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased during the period three months prior and three months after MIS obtains a final Certificate of Occupancy for their new facility. This rebate will be approximately \$113,400.

4. Payments of Rebates. The rebates to MIS by the City shall be paid in quarterly installments from revenue actually collected and received by the City in connection with the move by MIS into the new facility. Payments of each quarterly installment shall be paid to MIS by the City within twenty (20) days following the end of each calendar quarter. All payments by the City shall be submitted by check payable to McKesson Information Solutions LLC and sent to McKesson Corporation, One Post Street, 34<sup>th</sup> Floor, San Francisco, California 94104; Attention: Glen Hallford, Tax Department.

5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and MIS and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.

6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if MIS has not moved into the Westmoor offices by August 1, 2008 or should MIS not comply with the City regulations or code following written notice of non-compliance from the City.

7. Business Termination. In the event MIS ceases business operations within the City at any time prior to January 31, 2013, then MIS shall pay to the City the total amount of fees and taxes that were paid by or for MIS to the City and were subsequently rebated by the City to MIS pursuant to this Agreement.

8. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

9. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.

10. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this Agreement shall be in the District Court for Jefferson County, Colorado.

**MCKESSON INFORMATION SOLUTIONS**

**CITY OF WESTMINSTER**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

ATTEST:

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

APPROVED AS TO LEGAL FORM:

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

**Adopted by Ordinance No. 3388**





## Agenda Item 8 J

WESTMINSTER  
COLORADO

### Agenda Memorandum

City Council Meeting  
November 12, 2007



**SUBJECT:** Second Reading Councillor's Bill No. 59 re Municipal Judge Salary

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

### Recommended City Council Action

Pass Councillor's Bill No. 59 on second reading amending the salary for the Municipal Judge for 2008.

### Summary Statement

- City Council previously approved a revised employment agreement with John A. Stipech for services as Presiding Judge for a one-year period beginning January 1, 2008. The agreement will automatically be renewed for 2009 unless it is terminated by City Council no later than October 31, 2008.
- Judge Stipech's 2008 combined salary and deferred compensation will be \$121,603, which represents a five percent increase over his annual compensation for 2007. 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 2008.
- The City Charter requires that the Presiding Judge's salary be approved by ordinance.
- This Councillor's Bill was passed on first reading on October 22, 2007.

**Expenditure Required:** \$121,603 plus the cost of fringe benefits as described in the attached employment agreement

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

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3389**

COUNCILLOR'S BILL NO. **59**

SERIES OF 2007

INTRODUCED BY COUNCILLORS  
**Dittman - Major**

**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:

~~\$115,812~~ \$121,603 per annum payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation.

Section 2. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect on January 1, 2008.

Section 4. 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 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Second Reading Councillor's Bill No. 60 re Municipal Code Modifications to Chapter 24 of Title I Personnel Management

**Prepared By:** Debbie Mitchell, Human Resources Manager  
Matt Lutkus, Deputy City Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 60 on second reading amending the Westminster Municipal Code, Chapter 24 of Title 1, concerning Personnel Management.

**Summary Statement**

- Staff is proposing a number of changes to the Personnel Management chapter in the Westminster Municipal Code. These changes will reduce the City Code directives regarding personnel management to those required in the City Charter. The sections being removed from the Code will continue to be included in the Personnel Policies and Rules promulgated by the City Manager. This change will streamline the process for making personnel policy changes, allowing for most changes to be made administratively by the City Manager. The Personnel Management Chapter of the Municipal Code contains less than 50% of the personnel policies reflected in the Personnel Policies and Rules document used to guide day-to-day personnel management.
- These recommended changes were reviewed in Council Study Session on October 15, 2007.
- City Council action is requested to pass the attached Councillor's Bill on second reading.
- This Councillor's Bill was passed on first reading on October 22, 2007.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO. **3390**

COUNCILLOR'S BILL NO. **60**

SERIES OF 2007

INTRODUCED BY COUNCILLORS  
**Major - Dittman**

**A BILL  
FOR AN ORDINANCE AMENDING CHAPTER 24 OF TITLE I,  
WESTMINSTER MUNICIPAL CODE,  
CONCERNING PERSONNEL MANAGEMENT**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The index for Chapter 24 of Title I, W.M.C., is hereby AMENDED to read as follows:

**CHAPTER 24**

**PERSONNEL MANAGEMENT**

- 1-24-1: DEFINITIONS**
- 1-24-2: GENERAL PROVISIONS-PRINCIPLES AND IMPLEMENTATION**
- ~~**1-24-3: ADMINISTRATION**~~
- ~~**1-24-4: COMPENSATION AND BENEFITS**~~
- ~~**1-24-5: EMPLOYEE CONDUCT AND DISCIPLINE**~~
- ~~**1-24-6 3: GRIEVANCES AND APPEALS**~~
- ~~**1-24-7: SUBSTANCE ABUSE POLICY**~~

Section 2. Section 1-24-1, W.M.C., is hereby AMENDED to read as follows:

**1-24-1: DEFINITIONS:** For the purposes of this chapter, the following words and terms, unless the context clearly states otherwise, shall have the meaning indicated below. (2248 2603 2922 3317)

ADMINISTRATIVE OFFICER: THE ADMINISTRATIVE OFFICERS OF THE CITY SHALL BE THE CITY MANAGER, CITY ATTORNEY, CITY CLERK AND FINANCE DIRECTOR, AND SUCH ADDITIONAL ADMINISTRATIVE OFFICERS AS MAY BE CREATED BY CITY COUNCIL. THE ADDITIONAL ADMINISTRATIVE OFFICERS SHALL BE THOSE EMPLOYEES SERVING IN CLASSIFICATIONS LISTED AS "ADMINISTRATIVE OFFICERS" IN THE PAY AND CLASSIFICATION PLAN APPROVED BY CITY COUNCIL RESOLUTION.

Appeal: The action taken by an employee in order to have the employee's suspension, demotion or dismissal reviewed by the Personnel Board and the City Manager.

~~Appointing Authority: A Division Manager or higher level position who has the authority to make original appointments or recommend such appointments.~~

Board: The Personnel Board.

~~Charter: The home rule charter of the City of Westminster.~~

~~City Code: The City of Westminster Municipal Code.~~

Class: A position or group of positions, which are sufficiently similar with respect to skill, effort and responsibility, that they may be properly designated by the same title, and equitably compensated from the same range of pay under substantially the same employment conditions.

~~Compensatory Time: Leave hours earned for hours worked beyond the scheduled work day, scheduled work period or beyond the work period designated for Fair Labor Standards Act compliance.~~

~~Continuous Municipal Service: Uninterrupted length of service in a position or positions designated as receiving general leave, medical and dental insurance and other fringe benefits.~~

~~Corrective Action: The verbal counseling or verbal reprimand of an employee for the purpose of communicating deficiencies in the employee's conduct or performance.~~

~~Council: The City Council of Westminster, Colorado.~~

~~Demotion: The movement of an employee from a position in one class to a position in another class, having a lower maximum salary rate than the original class, or the movement of an employee to a lower salary in the same class.~~

Department Head: An individual who is regularly responsible for directing and managing the overall operations of a City department as authorized by the Charter or City Code, and who has been designated as a department head by the City Manager. The City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER and the City Attorney shall assume duties assigned to department heads in this Chapter for carrying out those actions involving positions, which report directly to them.

~~Disciplinary Action: A written reprimand, suspension, demotion, dismissal, or any other documented action taken in a disciplinary manner involving an employee, but not including a corrective action.~~

Division Manager: An individual appointed by the department head to manage a work group designated as a division within the department. For purposes of this Chapter, the City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER, department head or the City Attorney shall assume the responsibilities assigned to division manager when the employee in question reports to a department head, the City Attorney, DEPUTY CITY MANAGER, ASSISTANT CITY MANAGER, or the City Manager.

Employee: A person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay which has been approved by the Human Resources Manager. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, HOURLY, instructor, indexed, intern, special project, short term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City.

~~Employee – Administrative Officer: A full time or part time employee holding a position that is specifically designated as a department head or division manager in the City's administrative officer pay plan. Employees in this category are at will employees.~~

Employee - eExempt: An employee who is eExempt from the overtime provisions of the fFair hLabor sStandards aAct. Reference to eExempt employees WHEN CAPITALIZED refers to those employees whose positions are listed in the eExempt employee pay schedule in the eCity pPay pPlan. ~~All employees in the exempt employee pay schedule are exempt from overtime provisions of the Fair Labor Standards Act with the exception of the classification of administrative secretary and legal secretary. These two classifications are eligible for overtime after they have utilized the administrative leave they receive as part of the exempt employee benefit package.~~

~~Employee – Hourly Non benefited: An employee appointed to provide services on an hourly basis in specifically designated areas and work an intermittent schedule with no defined number of hours or benefit eligibility.~~

~~Employee – Indexed: An employee appointed to serve for a limited period of time indexed to a particular workload level below which the employee position shall be terminated.~~

~~Employee – Instructor: An employee who has received an appointment for specific instructional activities conducted on behalf of the City. Instructor's work is part time, scheduled work and there is no time limit to the amount of time an employee may hold a position in this capacity.~~

~~Employee – Intern: An employee appointed to a position in an intern capacity for a period of up to two years.~~

Employee – Non-exempt: An employee who is entitled to overtime pay or compensatory leave time under circumstances specified by the Fair Labor Standards Act. Reference to non-exempt employees refers to those employees whose positions are listed in the non-exempt employee pay schedule in the City pay plan.

Employee - Part-Time Regular: An employee who has been appointed to a part-time authorized non-exempt or exempt position to work less than forty (40) hours during a seven-day period on a regular basis, and who has successfully completed the initial probationary period.

~~Employee – Probationary: An individual who has been appointed to an authorized position in the municipal service, but who has not yet completed the probationary period.~~

Employee - Regular: An employee who has been appointed to a full-time authorized non-exempt or exempt position in the municipal service, and who has successfully completed the initial probationary period.

~~Employee – Seasonal: An employee who has received an appointment for a specified period of time, normally on a seasonal basis or for a specific activity for a designated season.~~

~~Employee – Short Term Disability: An employee who is appointed to this category is receiving short term disability pay and has an authorized medical professional certification that they are unable to return to work.~~

~~Employee – Special Projects: An employee who has received a temporary appointment for a specified project, period of time not to exceed one year.~~

~~Employee – Substitute: An employee who has received an appointment to a position part time, occasional work on a “substitute” as needed, or on-call basis, to fill in for absences and staffing shortages. There is no limit to the length of time an employee may hold a position in this capacity.~~

~~Employee – Temporary: An employee who has received an appointment for a period of time not to exceed one year who is not serving in a temporary benefited position.~~

~~Employee – Temporary Benefited Indexed: An employee appointed to serve for a temporary period of time indexed to a particular workload level, funding source or other criteria established by City Council.~~

~~Employee – Temporary Benefited:~~

~~An employee who has received an appointment for a period of time not to exceed one year, who is serving in a temporary benefited position.~~

~~Employee – Temporary Intern:~~

~~An employee who has received an appointment to a temporary position in an Intern capacity for a period of up to three years.~~

~~Employee – Temporary Special Project:~~

~~An employee who has received an appointment to a temporary position for a specified project.~~

~~Employee – Emergency:~~

~~An employee who has received an appointment to a position during an emergency situation, to prevent undue delay or serious interferences with the provision of necessary public services.~~

Employee Provisional:

~~An employee who has received a temporary appointment to a position, due to a vacancy or extended absence of the incumbent.~~

Examination: ~~A written, oral, physical, or skill test, or a combination of these tests specifically used to assist in evaluating an applicant's qualifications for a particular position, including a promotional examination in which admission to the examination is limited to employees who meet the qualifications set forth in the job specifications.~~

Fringe Benefit: ~~Any form of compensation in addition to the base salary as adopted by Council. General leave, health and life insurance, uniforms, cleaning allowance, educational reimbursement, safety shoes, and other benefits shall be considered as fringe benefits.~~

Grievance: ~~A disagreement regarding the meaning, interpretation, application, or alleged violation of this Chapter, THESE policies and rules adopted hereunder, departmental policies, and rules or any other administrative policies of the City, WHICH HAS BEEN FORMALLY PRESENTED FOR REVIEW PURSUANT TO SECTION 1-24-3 OF THIS CHAPTER.~~

Holiday: ~~The period between 12:01 a.m. and the following midnight of the date on which a designated holiday falls.~~

Job Description: ~~The written description of a class, including the title, a statement of the nature of the work, examples of duties and responsibilities, and the requirements that are necessary—ESSENTIAL and/or desirable for the satisfactory performance of the duties of the class.~~

Job Title: ~~The title assigned to any particular class, and used for reference to that class.~~

Lateral Transfer: ~~The movement of an employee from one position to another for which the employee is qualified.~~

Layoff: ~~The separation of an employee from the municipal service, which has been made necessary by lack of work or funds or other reasons not related to fault, delinquency, or misconduct on the part of the employee. This term shall include those separations initially expected to be temporary as well as those resulting from the elimination of a position.~~

Original Appointment: ~~The appointment of a person to a position in the municipal service.~~

Position: ~~A group of current duties and responsibilities requiring the full-time, temporary, or part-time services of one employee.~~

Probationary Period: ~~A working test period following an original appointment, a promotion, a lateral transfer or a demotion during which a regular employee is required to demonstrate the ability to satisfactorily perform and learn in the assigned position.~~

Promotion: ~~The movement of an employee from a position of one class to a position of another class having greater or increased responsibilities and pay.~~

Reclassification: ~~The official determination by the City Manager that a position be assigned to a class different from the one to which it was previously assigned.~~

Reemployment List: ~~A list of persons who have been regular employees in a particular class, and who are entitled to have their names certified for appointment to a position in that class.~~

Relative: ~~The employee's spouse, child, stepchild, grandchild, parent, grandparent, sibling, half sibling, or any of these relationships arising through adoption.~~

Separation: ~~The voluntary or involuntary severing of an employee's employment with the City.~~

Supervisor: Any individual having authority, in the interest of the City, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or having responsibility to direct them, or to adjust their grievances, or effectively having the authority to recommend such action, if the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

Suspension: The temporary separation of an employee from performing his or her regularly assigned duties with or without pay for disciplinary reasons, or pending the outcome of an investigation involving the employee.

~~Vacation Leave: General leave that is taken from normal working hours for vacation or leisure purposes.~~

Section 3. Section 1-24-2, W.M.C., is hereby AMENDED to read as follows:

**1-24-2: GENERAL PROVISIONS PRINCIPLES AND IMPLEMENTATION: (2248 2922)**

(A) Intent of Chapter: IN ENACTING THIS CHAPTER, It is the intent of the City Council ~~that this Chapter shall~~ TO provide for a professional and impartial personnel management system in accordance with the provisions of the City Charter. This Chapter supersedes any previously distributed ordinances, resolutions, rules, policies and employee handbooks. The language of this Chapter is not intended to create, nor is it to be construed to constitute, a contract between the City of Westminster and any one or all of its employees. ~~Employees have the right to terminate employment at any time for any reason and the City retains the right to terminate employment at any time for the reasons specified in this Chapter.~~

(B) Persons Covered by Chapter: This Chapter applies to all positions and employees in the ~~civil service system as instituted by the City Charter~~ CITY. In addition, unless specifically noted otherwise, it shall also apply to ~~Administration~~ ADMINISTRATIVE Officers and other categories of municipal employment where not inconsistent with provisions of the Charter or other ordinances.

(C) Administrative Regulations: The City Manager shall have the authority to establish such policies and rules deemed necessary for the efficient and orderly administration of the personnel management system. Such authority may be delegated to department heads, division managers and supervisors as deemed appropriate by the City Manager. THE CITY MANAGER WILL PROVIDE CITY COUNCIL WITH A QUARTERLY REPORT IF ANY SUBSTANTIVE CHANGES ARE MADE TO ADMINISTRATIVE PERSONNEL POLICIES IN THE PREVIOUS QUARTER. All such policies and rules must be in writing and be consistent and compatible with this Chapter and the Charter, AND, AT A MINIMUM, INCLUDE THE FOLLOWING:

1. CLASSIFICATION PLAN: A CLASSIFICATION PLAN RESULTING FROM AN ANALYSIS AND EVALUATION OF ALL POSITIONS IN THE MUNICIPAL SERVICE SHALL BE DEVELOPED BY THE CITY MANAGER, OR HIS/HER DESIGNEE, AND MAINTAINED BY THE HUMAN RESOURCES MANAGER. IT SHALL CONSIST OF A LISTING WHICH GROUPS ALL POSITIONS IN CLASSES, BASED ON THE SKILL, EFFORT, RESPONSIBILITY, AND QUALIFICATIONS THAT ARE NECESSARY OR DESIRABLE FOR THE SATISFACTORY PERFORMANCE OF THE DUTIES OF THE CLASS. THE CLASSIFICATION PLAN SHALL INCLUDE TITLES AND WRITTEN JOB DESCRIPTIONS FOR ALL THE VARIOUS CLASSES OF POSITIONS. EACH CLASS SHALL INCLUDE ALL POSITIONS IN THE MUNICIPAL SERVICE, WHICH ARE SUFFICIENTLY SIMILAR WITH RESPECT TO DUTIES, RESPONSIBILITIES, AND AUTHORITY, SO THAT THE SAME DESCRIPTIVE TITLE MAY BE USED TO DESIGNATE EACH POSITION ALLOCATED TO THE CLASS. COUNCIL APPROVAL OF THE JOB TITLES AND PAY RANGES IN THE PAY PLAN SHALL CONSTITUTE APPROVAL OF THE CLASSIFICATION PLAN.
2. PREPARATION, ADOPTION AND AMENDMENT OF PAY PLAN: A CITYWIDE COMPENSATION PLAN, WHICH SHALL CONSIST OF MINIMUM AND MAXIMUM RATES OF PAY FOR EACH CLASS OR POSITION SHALL BE DEVELOPED AND MAINTAINED BY THE HUMAN RESOURCES MANAGER, AS THE REPRESENTATIVE OF THE CITY MANAGER. SALARY RANGES SHALL BE RELATED DIRECTLY TO



THE POSITION CLASSIFICATION PLAN, AND SHALL BE DETERMINED WITH DUE REGARD TO RANGE OF PAY FOR OTHER CLASSES, REQUISITE QUALIFICATIONS, PREVAILING RATE OF PAY FOR LIKE WORK IN OTHER PUBLIC AND PRIVATE ORGANIZATIONS, RECRUITING EXPERIENCE, WORKING CONDITIONS, SUGGESTIONS OF DEPARTMENT HEADS, MAINTENANCE OF OTHER BENEFITS RECEIVED BY EMPLOYEES, THE FINANCIAL POLICY OF THE CITY, AND OTHER ECONOMIC CONSIDERATIONS. IN ADDITION, THE HUMAN RESOURCES MANAGER SHALL DEVELOP, MAINTAIN AND UPDATE A SET OF SALARY COMPLEMENTS WHICH SHALL BE DESIGNED TO ASSIST IN ATTRACTING AND RETAINING QUALIFIED EMPLOYEES. THE PAY PLAN SHALL BE SUBMITTED TO COUNCIL BY THE CITY MANAGER FOR ADOPTION ON AN ANNUAL BASIS IN ORDER TO MAINTAIN THE COMPETITIVE NATURE OF THE CITY'S PERSONNEL PROGRAM.

3. EMPLOYEE POLITICAL ACTIVITY: ACTIVE PARTICIPATION BY EMPLOYEES IN THE MUNICIPAL POLITICS OF THE CITY OF WESTMINSTER SHALL BE RESTRICTED. IT SHALL BE THE POLICY OF THE CITY, HOWEVER, NOT TO DENY TO EMPLOYEES AND OFFICIALS THE RIGHTS TO ENGAGE IN THEIR NORMAL RIGHTS AND RESPONSIBILITIES AS CITIZENS.

- (D) 4. Nondiscrimination: No action affecting the employment status of any employee or applicant for a position in the municipal service, including examination, appointment, promotion, demotion, suspension, or removal shall be taken or withheld by reason of race, color, sex, national origin, political, or religious affiliation, age, disability or ~~Vietnam~~-MILITARY veteran status.

Section 4. Sections 1-24-3, 1-24-4, and 1-24-5, W.M.C., are hereby DELETED IN THEIR ENTIRETY.

Section 5. Section 1-24-6, W.M.C., is hereby AMENDED to read as follows:

**~~1-24-6~~ 1-24-3: GRIEVANCES AND APPEALS:** (2248 2603 2648 2922)

(A) General: Supervisory and administrative personnel shall strive to anticipate, and thereby eliminate, the cause of most misunderstandings, problems, complaints, or grievances. To the extent that they occur, the employee is encouraged to promptly seek the employee's immediate supervisor's assistance. Supervisory personnel shall not interfere with or discriminate against or make reprisals against any employee who files a grievance. The City strongly encourages the use of non-adversarial dispute resolution techniques to resolve grievances in a manner that is satisfactory to all affected parties. SUPERVISORY AND ADMINISTRATIVE PERSONNEL ARE STRONGLY ADVISED TO SEEK THE ADVICE AND SUPPORT OF THE HUMAN RESOURCES DIVISION AND CITY ATTORNEY'S OFFICE AT THE EARLIEST POSSIBLE TIME AFTER LEARNING OF A PROBLEM TO DEVELOP A MEANS TO COOPERATIVELY RESOLVE THE ISSUES. DEVELOPING THE LEAST ADVERSARIAL PATH TO RESOLUTION, BEFORE CONFLICT ESCALATES FURTHER, IS THE GOAL. WHILE ALTERNATIVE MEANS TO RESOLVE PERSONNEL ISSUES MAY BE DEVELOPED EITHER PRIOR TO THE FILING OF A FORMAL GRIEVANCE OR DURING THE INVESTIGATION AND FORMAL PROCESSING OF A GRIEVANCE, THE EARLIER THE BETTER. EMPLOYEES, TOO, ARE ENCOURAGED TO SUGGEST ALTERNATIVE MEANS OF RESOLVING DISPUTES WITHOUT COMPROMISING THEIR RIGHTS TO THE FORMAL PROCESS.

(B) GRIEVANCE: A GRIEVANCE IS A DISAGREEMENT REGARDING THE MEANING, INTERPRETATION, APPLICATION, OR ALLEGED VIOLATION OF THE PERSONNEL POLICIES AND RULES, DEPARTMENTAL POLICIES AND RULES, OR ANY OTHER ADMINISTRATIVE POLICIES OF THE CITY. WHEN DISPUTED, THE HUMAN RESOURCES MANAGER WILL DETERMINE WHETHER THE ACTION OR ALLEGED ACTION IS GRIEVABLE.

(B)(C) Filing a Grievance: Any employee with a grievance must file a written complaint with the employee's division manager (or the party who took the action being grieved if that party is of higher

rank) with a copy to the Human Resources Manager within fourteen (14) calendar days following the grieved action. The division or department manager shall try to resolve the matter within ten (10) calendar days from the receipt of the written grievance. If the employee is not satisfied that the difference has been resolved after action by the division manager, the employee may within ten (10) calendar days of receipt of the grievance response file the grievance with the department head (if not already reviewed by the department head). The department head shall try to resolve the matter within ten (10) calendar days of receipt of the grievance. The deadlines in this paragraph (b) may be extended with the mutual consent of the parties.

If the employee is not satisfied that the difference has been resolved after action by the department head, the employee may pursue the following procedure:

1. Actions other than suspension, demotion or dismissal. Within ten (10) calendar days after receipt of the department head's response, the employee may ask the Human Resources Manager in writing to investigate the grievance. If the department head has taken no action within ten (10) calendar days after receipt of the written grievance, the employee may request in writing that the Human Resources Manager investigate the grieved action. The Human Resources Manager shall, within twenty-one calendar days, investigate the grievance and consult with the employee and then make recommendations to the City Manager or the City Manager's designee who shall decide on the grievance within ten (10) calendar days. The City Manager's or the City Manager's designee's decision shall be final in all instances. The deadlines in this paragraph (1) may be extended with the mutual consent of the parties or because of an inability to do a complete investigation in the time allowed.

2. Suspension, demotion or dismissal. Within fourteen (14) calendar days after receipt of the department head's response, the employee may file an appeal to the Personnel Board or, if the department head has taken no action within ten (10) calendar days of receipt of the written grievance, the employee may file a written appeal to the Personnel Board within twenty-one calendar days after the department head's receipt of the written grievance.

3. FAILURE TO FILE. An employee loses any right to file a grievance or appeal with the Human Resources Manager or to file an appeal to the Board if the employee fails to file a written grievance within the time lines defined above. No organization or individual has the right to file a grievance on the employee's behalf and legal representatives shall not be permitted to attend any meeting with the grieved employee held for the purpose of investigating the grievance prior to the time an appeal has been filed pursuant to subsection (D) of this section.

4. Grievances Related to Disabilities. If an employee has, in the employee's view, suffered discrimination in violation of state or federal law based on a past or current disability, whether real or perceived, or association with an individual with a disability, the employee may file a grievance pursuant to this subsection ~~(B)~~ (C). A RECORD OF THE GRIEVANCE AND THE ACTION TAKEN TO RESOLVE IT SHALL BE MAINTAINED. This procedure is not a prerequisite to the pursuit of other legal remedies authorized by federal law. A disability-related grievance alleging a violation of federal laws protecting individuals with disabilities may be filed at any time.

~~(C)~~(D) Appeal: Only suspensions, demotions, or dismissals for disciplinary reasons can be appealed to the Personnel Board and only after all administrative remedies through the grievance procedure have been exhausted. Only regular ~~full~~-FULL-time employees and regular part-time benefited employees in authorized positions are eligible to appeal to the Board. Administrative officers have no appeal rights beyond the grievance process to the City Manager.

~~(D)~~(E) Filing an Appeal: The employee must file an appeal and request a hearing, in writing, setting forth the reasons for appeal in detail with the Human Resources Manager as set forth in subsection ~~(B)~~(C) of this section. The appeal must specify the grounds for appeal and shall contain a detailed statement of facts in support of the appeal. ANYONE CONSIDERING FILING AN APPEAL MAY CONTACT HUMAN RESOURCES FOR A COMPLETE COPY OF THE PERSONNEL BOARD RULES.

(F) FORWARDING AN APPEAL: The Human Resources Manager shall immediately forward copies of the written appeal to each member of the Board. The Human Resources Manager has the authority to

return to the employee for correction any appeal that fails to conform to this provision regarding specifying grounds for appeal and containing detailed statement of facts in support of the appeal.

~~(E)~~(G) Appeal Procedure: Upon receipt of the appeal from the Human Resources Manager, the Board shall schedule a hearing on the appeal. Once the Board meets to hear the appeal, it may take the time necessary to obtain all the information deemed appropriate and in so doing the Board is not restricted to any particular time frame to conclude the hearing.

~~(F)~~(H) Subpoenas: The chairperson of the Board may issue a subpoena stating the title of the proceeding before the Board and commanding each person to whom it is directed to attend and give testimony at a hearing on an appeal before the Board at the time and place specified therein.

~~(G)~~(I) Findings and Decision: It is the interpretation of the City Council that the Charter of the City of Westminster establishes a personnel grievance process in which the Personnel Board has the responsibility of determining the facts of an appeal and determining when disciplinary action should be reconsidered and in such cases, the City Manager has the responsibility of reconsidering the disciplinary action and making the final disciplinary decision based on the facts determined by the Board. At the conclusion of the hearing, the Board shall send a written decision to the City Manager, which concludes that:

1. The action appealed was without justification and should be reconsidered. The Board may recommend that the appellant be restored to previous status and receive compensation for the period of the suspension, termination, or reduction in grade; ~~or~~
2. The action appealed was justified and should be confirmed; or
3. The action appealed was partially justified and should be reconsidered. The Board may recommend that the discipline be reduced under the conditions the Board deems proper.

The Board's decision shall contain findings of evidentiary fact on all material issues of fact and conclusions regarding the issues of law or discretion presented by the appeal.

~~(H)~~(J) Notice of Findings and Decision; Transcript: The Board shall report its findings and decision to the City Manager, the parties and their attorneys within thirty (30) days after the conclusion of the hearing. Notice shall be sent in the manner specified in subsection ~~(H)~~ (I) of this Section. The City shall make a record of the testimony and proceedings at an appeal hearing. Either the City or the employee may request a transcription of the testimony and proceedings at an appeal hearing. If the employee requests a hearing transcription, it shall be prepared at the employee's expense.

~~(I)~~(K) Decision of the City Manager:

1. When the Board has concluded that the discipline was justified, the City Manager shall confirm the decision of the Board;-
2. When the Board has concluded that the action appealed was without justification or was partially justified, the City Manager shall reconsider the suspension, demotion or discharge and either reinstate the employee, impose a lesser penalty, or confirm the original suspension, demotion or discharge; OR
3. When reconsidering a suspension, demotion or discharge, the City Manager shall be bound by the Board's findings of evidentiary fact. The City Manager may accept or reject the Board's findings of ultimate fact or conclusions and may accept or reject the Board's recommendation regarding discipline.

~~(J)~~(L) Administrative Procedure Jurisdictional: No employee may bring an appeal before the Board until the employee has received the written notice of the final action taken or contemplated by the department head. The filing of an appeal under any of the procedures described in this section shall not constitute grounds for delaying the administrative action against which the appeal is made.

~~(K)~~(M) Appeal from Decision of City Manager: The employee may appeal any action of the City Manager resulting in suspension, demotion or dismissal to the District Court.

~~(L)~~(N) Right to Legal Counsel: The employee may only be represented by a person who is licensed to practice law in the State of Colorado. ~~If the employee chooses to not be represented by legal counsel, the appointing authority shall not be represented by legal counsel. If the employee retains legal counsel, appointing authority shall be represented by the City Attorney.~~

~~(M)~~(O) Rules of Procedure: The Board may adopt additional rules of procedure to supplement the procedures outlined in this section.

Section 6. Section 1-24-7, W.M.C., is hereby DELETED IN ITS ENTIRETY.

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

Section 8. 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 22<sup>nd</sup> day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
November 12, 2007



**SUBJECT:** Second Reading Councillor’s Bill No. 61 re Municipal Code Modifications to Chapter 11 of Title VIII Stormwater Quality

**Prepared By:** John Burke, Senior Engineer

**Recommended City Council Action**

Pass Councillor’s Bill No. 61 on second reading repealing and re-enacting Chapter 11 of Title VIII of the Westminster Municipal Code concerning stormwater quality.

**Summary Statement**

- In 2003, the City was required by the Federal Environmental Protection Agency to apply for a National Pollutant Discharge Elimination System (NPDES) permit through the Colorado Department of Public Health and Environment. This is a five-year permit, up for renewal in 2008.
- The City is required by this permit to minimize the amount of pollutants that enter into our channels, streams and lakes. There are six program areas with specific measurable goals that the City must address and include in an annual report. These include: 1) Public Education and Outreach, 2) Public Participation and Involvement, 3) Illicit Discharge Detection and Elimination, 4) Construction Site Runoff Control, 5) Post-Construction Site Runoff Control and 6) Pollution Prevention and Good Housekeeping.
- One of the specific requirements of the illicit discharge detection and elimination and post-construction site runoff control program areas is to update the City’s stormwater quality ordinance to include enforcement mechanisms for water quality violations. The City’s current stormwater quality ordinance does not provide this enforcement mechanism.
- This proposed ordinance will provide these enforcement mechanisms to protect and enhance the quality of water discharged into the City of Westminster’s storm drainage system.
- City Council action is requested to pass the attached Councillor’s Bill on second reading.
- This Councillor’s Bill was passed on first reading on October 22, 2007.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO. **3391**

COUNCILLOR'S BILL NO. **61**

SERIES OF 2007

INTRODUCED BY COUNCILLORS  
**Lindsey - Price**

**A BILL**

**FOR AN ORDINANCE REPEALING AND REENACTING CHAPTER 11 OF TITLE VIII OF  
THE WESTMINSTER MUNICIPAL CODE CONCERNING STORMWATER QUALITY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 11 of Title VIII, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

**CHAPTER 11**

**STORMWATER QUALITY**

- 8-11-1: PURPOSE AND POLICY
- 8-11-2: GENERAL REQUIREMENTS
- 8-11-3: DEFINITIONS
- 8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES
- 8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS
- 8-11-6: STORMWATER MANAGEMENT PLAN
- 8-11-7: MAINTENANCE REQUIREMENTS
- 8-11-8: ILLICIT DISCHARGES
- 8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES
- 8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES
- 8-11-11: JUDICIAL ENFORCEMENT REMEDIES
- 8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION

**8-11-1: PURPOSE AND POLICY:** (2335) The purpose of this Chapter is to establish procedures to protect and enhance the quality of water discharged into the City's storm drainage system by:

- (A) Requiring measures that prevent erosion and the loss of sediment and other pollutants from construction sites.
- (B) Requiring protection of soil surfaces before, during and after construction.
- (C) Establishing stormwater quality design requirements for the development and redevelopment of property.
- (D) Requiring the use of temporary and permanent Best Management Practices (BMP's) to achieve a reduction in the pollutant loading of stormwater runoff.
- (E) Establishing maintenance requirements for developers, builders, business owners and landowners.
- (F) Prohibition of illicit discharges into the City's storm sewer system.
- (G) Establishment of remediation and enforcement procedures.

**8-11-2: GENERAL REQUIREMENTS:**

(A) Any person who undertakes or causes to be undertaken any activity, which involves disturbance of the surface of land shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters.

(B) All temporary erosion control facilities and all permanent facilities intended to control erosion of any earth disturbance operation shall be installed before any earth disturbance operations take place.

(C) Any earth disturbances shall be conducted in such a manner to effectively reduce soil erosion and resulting sedimentation, and should not exceed the erosion expected to occur for the site in its totally undeveloped state.

(D) All persons engaged in earth disturbances shall design, implement, and maintain acceptable soil erosion and sedimentation control measures, in conformance with the erosion control technical standards adopted by the City.

(E) All earth disturbances shall be designed, constructed and completed in such a manner so that the exposed area of any disturbed land shall be limited to the shortest possible period of time.

(F) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth disturbance.

(G) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the earth disturbance area shall be designed to limit the water flow to a non-erosive velocity as defined in the City's "Storm Drainage Design and Technical Criteria Manual".

(H) Temporary soil erosion control facilities shall be removed once final stabilization has been achieved.

(I) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area shall be completed within fourteen (14) calendar days after final grading, the final earth disturbance has been completed or in accordance with a City-approved phasing plan. When it is not possible to permanently stabilize a disturbed area after an earth disturbance has been completed or where significant earth disturbance activity ceases, temporary soil erosion control measures shall be implemented within fourteen (14) calendar days. All temporary soil erosion control measures shall be maintained until final stabilization is achieved.

**8-11-3: DEFINITIONS:** Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the following meanings:

(A) "**Applicant**" means a landowner or agent of a landowner who has filed an application for a grading and erosion control permit.

(B) "**Best Management Practices (BMPs)**" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal separate storm sewer system (MS4). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(C) "**Builder**" means a person undertakes construction activities.

(D) "**Business Owner**" means a person who owns title to a commercial property.

(E) "**City Inspector**" means the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this chapter.

(F) **“City Manager”** as used in this ordinance refers to the City Manager or the Manager’s appointed designee.

(G) **“Compliance Date”** means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a stormwater quality standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable stormwater quality standard.

(H) **“Compliance Order”** means an administrative order that directs a user to comply with the provisions of this chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

(I) **“Compliance Schedule or Schedule of Compliance”** means an enforceable schedule specifying a date or dates by which user must comply with a stormwater quality standard, a stormwater quality requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

(J) **“Construction Activities”** means clearing, grading, excavation, and other ground disturbance activities. Construction does not include routine maintenance performed by public agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of facility.

(K) **“Construction Site Operator”** means a person who has been designated by the developer to perform routine inspections of BMPs and who is responsible for ensuring that the structural integrity of the BMPs are maintained and that the BMPs perform as designed.

(L) **“Critical BMPs”** means those BMPs such as, but not limited to, sediment ponds and dewatering structures, silt fence, wattles, vehicle tracking pads, inlet filters, that are installed to keep sediment and pollutants from leaving a construction site and discharging into receiving waters of the United States.

(M) **“Developer”** means a person who undertakes land disturbance activities.

(N) **“Development”** means any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term “development” does not include the maintenance of stormwater runoff facilities.

(O) **“Disturbed Area”** means that area of the land’s surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses.

(P) **“Drainageway (Waterway)”** means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(Q) **“Final Stabilization”** is reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

(R) **“Homeowners Association (HOA)”** means the entity responsible for management and maintenance of those elements of a residential subdivision owned in common by its homeowners.

(S) **“Illicit Discharge”** means any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of stormwater runoff, or the exceptions listed in section 8-11-8(A) of this Code.



(T) **“Land Disturbance Activity”** means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

(U) **“Landowner”** means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

(V) **“Land Disturbance Permit”** means a permit issued by the City to conduct any land disturbance activity equal to or greater than one acre, earthwork involving moving more than two hundred (200) cubic yards or if grading occurs on a property that has a slope in excess of eight percent (8%).

(W) **“MS4”** means a municipal separate storm sewer system.

(X) **“Municipal Separate Storm Sewer System”** means a conveyance or system of conveyances (including but not limited to, roads with drainage system, municipal streets, inlets/catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to state waters;

2. Designed or used for collecting or conveying stormwater;

3. Which is not a combined sewer; and

4. Which is not part of a Publicly Owned Treatment Works (POTW).

(Y) **“Non-critical BMPs”** means those BMPs such as, but not limited to, silt fence, wattles, diversions, vehicle tracking pads, inlet filters, that are installed to minimize the impacts of construction by nonstructural and structural devices within the subject construction site.

(Z) **“Official Development Plan (ODP)”** means the planning document, approved by the Westminster City Council, that identifies improvements and other responsibilities associated with the development and/or redevelopment of parcel(s) of land.

(AA) **“Permanent BMPs”** means those BMPs such as, but not limited to, a vegetated swale, wetland, water quality structure, to be installed and regularly maintained in order to ensure long term water quality benefits.

(BB) **“Receiving Waters”** means a river, lake, stream, drainage ditch or other watercourse.

(CC) **“Sediment/Erosion Control Plan”** means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities

(DD) **“Stop Work Order”** means an order issued by the City which requires that all construction activity on a site be stopped.

(EE) **“Stormwater”** means precipitation-induced surface runoff.

(FF) **“Stormwater Construction Permit”** means a permit issued by the Colorado Department of Public Health & Environment Water Quality Control Division. This program is referred to as the Colorado Discharge Permit System, or CDPS, and regulates stormwater discharges from construction

activities under the CDPS general permit for stormwater discharges associated with construction activities.

(GG) **“Stormwater Runoff”** means that part of snowfall, rainfall or other precipitation that is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into a watercourse or body of water.

(HH) **“Surety”** means a Letter of Credit or cash in the amount of 115% of the cost of constructing or installing all items associated with the Land Disturbance Permit. The surety will guarantee the completion of all terms and conditions of the Land Disturbance Permit as well as payment of any fines and interest assessed due to non-compliance with any section of the Land Disturbance Permit or this ordinance.

(II) **“Temporary BMPs”** means those temporary BMPs such as, but not limited to, silt fence, wattles, vehicle tracking pads, inlet filters, diversions, sediment ponds and dewatering structures, to be installed and regularly maintained until the site is sufficiently stabilized.

(JJ) **“Urban Drainage and Flood Control District” or “UDFCD”** means the District created by section 32-11-101, et seq., C.R.S.

(KK) **“Vegetative Cover”** means grasses, shrubs, bushes, trees, ground cover and other plants.

**8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES:** (2335) The City hereby requires the implementation of structural or non-structural measures to reduce or maintain the quality of stormwater on a temporary or permanent basis. Such measures will be designed and installed based on guidelines presented in VOLUME 3 - BEST MANAGEMENT PRACTICES, URBAN STORM DRAINAGE CRITERIA manual, published by the Urban Drainage and Flood Control District.

**8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS:** The Land Disturbance Permit is available from the Engineering Division in the Department of Community Development. See Section 11-7-7 of the Westminster Municipal Code for specific regulations. Surety must also be provided before a Land Disturbance Permit will be issued.

**8-11-6: STORMWATER MANAGEMENT PLAN:** (2335) Every development, redevelopment or construction project that requires a land disturbance permit requires the preparation of a stormwater management plan to include temporary and permanent Best Management Practices (BMP’s) designed to reduce the pollutant loading on the system. Any stormwater management plan prepared for a property in the City pursuant to the laws and regulations of the State of Colorado shall be submitted to the City for review and approval.

**8-11-7: MAINTENANCE REQUIREMENTS:** Developers, builders, business owners, homeowners associations and landowners shall be responsible for ensuring that all BMPs identified on the approved construction drawings, Official Development Plan and the Land Disturbance Permit application are properly installed, maintained and are in good working order as hereafter provided.

(A) Developers shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed are being properly maintained and are in good working order;
2. The site is fully developed and final stabilization has been reached;
3. Any deficiencies noted by the City prior to the expiration of the warranty period for public improvements have been corrected;
4. When individual lots have been sold to a Builder, the Developer shall explain the stormwater runoff quality requirements with the Builder at time of closing.

(B) Builders shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer and/or owner are being properly maintained and are in good working order;
2. Final stabilization as completed by the Developer is maintained or repaired if damaged by the Builder;
3. Any temporary and/or permanent BMPs necessary for the building site(s) have been properly installed, maintained and remain in good working order until the property has been sold to a business, land or landowner; and
4. Stormwater runoff quality requirements of individual site(s) are explained to the purchaser at time of closing.

(C) Business owners, homeowners associations and landowners shall be responsible for ensuring that:

1. Any temporary BMPs installed prior to lot purchase from developer, owner, and/or builder are properly maintained and remain in good working order until the lot is stabilized;
2. Final stabilization has been achieved and maintained;
3. If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and around the perimeter of the site where needed to prevent sediment from moving off-site and maintained until final stabilization has been achieved on the property; and
4. Permanent stormwater runoff quality measures constructed or installed on their property as shown on the approved Official Development Plan and/or construction plans are properly maintained.

(D) All temporary stormwater runoff quality control measures shall be removed within fourteen (14) calendar days after final stabilization has been achieved and the temporary measures are no longer needed.

(E) Should any developer, builder, business owner, homeowners association or landowner fail to adequately maintain the permanent stormwater runoff quality control measures or fail to remove the temporary measures, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code.

(F) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

#### **8-11-8: ILLICIT DISCHARGES:**

(A) **Prohibition of Illegal Discharges:** It is unlawful and constitutes a public nuisance for any person to discharge or cause to be discharged or spilled any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for: return flows from irrigation, de-chlorinated water from swimming pools, water from fire hydrants including water used for fire fighting, discharges from potable water sources, air conditioning condensation, uncontaminated groundwater and other water determined by the City Manager or designee to be non-contaminated and acceptable for return to the storm drainage system and receiving waters. Nothing contained herein shall be construed to relieve

any person discharging or causing to be discharged or allowing to be discharged water into the storm drainage system from any liability for damage caused by the volume or quality of water thus discharged.

**(B) Prohibition of Illicit Connections:**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**(C) Enforcement:** Should any person discharge or cause to be discharged or spilled or maintain a condition upon any property that may result in the discharge of any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for the exceptions listed in section 8-11-8 (A) above, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code. Alternatively, the City may make a demand on the surety to pay for these expenses.

**8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES:**

**(A) City Inspector:** If a City inspector, or any other authorized City representative determines that eroded soils are leaving a disturbed area, the City inspector or authorized representative may, in writing, direct the business owner, landowner or such owner's agents or representatives on the site to repair, replace and/or install any sediment and/or erosion controls that were proposed for the site, or require additional sediment and/or erosion controls be installed if deemed necessary by the City inspector or authorized representative to minimize said sediment from migrating off-site, including the issuance of stop work orders and/or suspension or revocation of any permit. It shall be unlawful for any business or landowner or such owner's agents or representatives to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site.

**(B) Right of Entry:**

1. The City inspector, or any other authorized City representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any land disturbance permit or order issued hereunder. Users shall allow the City inspector or authorized representative ready access to all parts of the premises for the purposes of inspection, whether announced or unannounced, sampling, records examination and copying, and the performance of any additional duties.

2. If the City inspector or authorized representative has been refused access to the property and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City inspector or authorized representative may seek issuance of a search warrant from the Municipal Court.

**(C) Compliance Orders.** Whenever the City determines that any activity is occurring that is not in compliance with a Land Disturbance Permit and/or the requirements of this chapter, the City may issue a written compliance order to the construction site operator. The schedule shall contain specific actions the construction site operator must complete, including dates for the completion of the actions. It shall be unlawful for any construction site operator to fail to comply with any compliance order requirement.

(D) **Suspension and Revocation of Permit.** The City may suspend or revoke a construction site Land Disturbance Permit for violation of any provision of this chapter, violation of the permit, and/or misrepresentations by the permittee or the permittee's agents, employees, or independent contractors.

(E) **Stop Work Orders.** Whenever the City determines that any activity is occurring which is not in compliance with an approved permit and/or the requirements of this ordinance, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

(F) **Violations and Penalties.** It shall be unlawful for any person to violate any provision of a construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City. Any person violating any provision of the construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City, shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Chapter 8 of Title I of this Code.

(G) The remedies provided by this Section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

#### **8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES:**

(A) **Notification of Violation:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may serve upon that user a written Notice of Violation. The Notice of Violation may include specific required actions and may require the user to submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(B) **Consent Orders:** The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-11-10(D) and 8-11-10(E) of this ordinance and shall be judicially enforceable.

(C) **Show Cause Hearing:** The City Manager may order a user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, to appear before the City Manager or designated representative and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days prior to the hearing. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) **Compliance Orders:** When The City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may issue an order to the user responsible for the discharge, directing that the user come into compliance within a specified time. If the user does

not come into compliance within the time provided, storm sewer service may be discontinued unless adequate Best Management Practices are installed and properly maintained. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and best management practices designed to minimize the amount of pollutants discharged to the storm sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) **Cease and Desist Orders:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, or that the user's past violations are likely to recur, the City Manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and
2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) **Administrative Fines:**

1. When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may fine such user in an amount not to exceed \$1000.00 per violation per day.

2. Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title I, Westminster Municipal Code, entitled "Penalties and Interest," as it may be amended from time to time. The City may also collect unpaid fines and interest by placing a demand on the surety provided with the Land Disturbance Permit.

3. Users desiring to dispute such fines must file a written request for the City Manager to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City Manager may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

4. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(G) **Emergency Suspensions:** The City Manager may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons, or which presents, or may present, an endangerment to the environment.

1. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City Manager may take such steps as deemed necessary, including immediate severance of the storm sewer connection, to prevent or minimize damage to the receiving waters, or endangerment to any individuals. The City Manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed.

2. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution

and the measures taken to prevent any future occurrence, to the City Manager prior to the date of any show cause or termination hearing under Sections 8-11-10(C) of this Code.

(H) Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section.

#### **8-11-11: JUDICIAL ENFORCEMENT REMEDIES:**

(A) **Injunctive Relief:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the land disturbance permit, order, or other requirement imposed by this ordinance on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) **Civil Penalties:**

1. A user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a maximum civil penalty of \$1000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

2. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

3. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

4. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(C) **Criminal Prosecution:**

1. A user who willfully or negligently violates any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

2. A user who willfully or negligently introduces any substance into the MS4 which causes personal injury or property damage shall be subject to the penalty provisions of State law. This penalty shall be in addition to any other civil cause of action for personal injury or property damage available under State law.

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, land disturbance permit, or order issued hereunder shall, upon conviction, be punished by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

(D) **Remedies Nonexclusive:** The remedies provided for in this ordinance are not exclusive. The City Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of stormwater quality violations will generally be in accordance with the City's enforcement response plan. However, the City Manager may take other action against any user when the circumstances warrant. Further, the City Manager is empowered to take more than one enforcement action against any noncompliant user.

**8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION:**

(A) **Liability Insurance:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to comply with any provision of this ordinance, a previous land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the MS4 caused by their illicit discharge.

(B) **Payment of Outstanding Fees and Penalties:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous land disturbance permit, or order issued hereunder.

(C) **Water Supply Severance:** Whenever a user has violated or continues to violate any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(D) **Public Nuisances:** A violation of any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the Westminster Municipal Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22nd day of October, 2007.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of November, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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





## Agenda Item 10 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
November 12, 2007



**SUBJECT:** Resolution No. 41 re Intergovernmental Agreement with the State of Colorado re Historic Preservation Grant For Semper Farmhouse Exterior Restoration

**Prepared By:** Vicky Bunsen, Community Development Programs Coordinator

#### Recommended City Council Action

Adopt Resolution No. 41 authorizing the City Manager to execute an intergovernmental agreement with the State of Colorado concerning the use of State Historical Fund grant funds awarded to the City of Westminster for the Semper Farmhouse Exterior Restoration.

#### Summary Statement

- The City has applied for and has been awarded a grant from the State Historical Fund (SHF) for the Semper Farmhouse Exterior Restoration project.
- The grant application proposed a City contribution of \$45,000 (using 2008 Community Development Block Grant funds) and the SHF awarded \$132,349 for a project cost of \$178,776.
- The State of Colorado requires intergovernmental agreements (IGAs) to be executed before funds are disbursed to regulate the use and accounting of the funds.

**Expenditure Required:** \$178,776

**Source of Funds:** 2008 - Community Development Block Grant - \$46,427  
2008 - State Historical Fund Grant - \$132,349

## **Policy Issue**

Should the City Council authorize an IGA with the State of Colorado concerning the use of State Historical Fund grant money awarded for a City of Westminster historic preservation project?

## **Alternative**

Do not enter into an IGA with the State of Colorado and decline the grant money awarded by the State Historical Fund for the City historic preservation project. This alternative is not recommended because the funding supports preservation projects that could not otherwise be completed without the grant money.

## **Background Information**

Since 2002 and including the grant described in this memo, the City has received a total of \$376,363 in grants from the State Historical Fund and the Colorado Historical Society Certified Local Government program. These grants have funded archeological and structure assessments, the exterior restoration of the Westminster Grange Hall, the Wesley Chapel Cemetery preservation plan, and reconnaissance and intensive historical resource surveys throughout the City.

The State Historical Fund has now awarded the City \$132,349, to be combined with \$45,000 in matching funds, to pay for the exterior restoration of the farmhouse at the Charles and Julia Semper Farm, a local historical landmark located at 9215 Pierce Street (the North West corner of 92<sup>nd</sup> Avenue and Pierce St.). Using this funding, construction drawings will be prepared this winter, with a construction contract put out for bid in the spring of 2008. The project is expected to be completed during the summer.

The Charles and Julia Semper Farm (also known as the Allison Farm) was acquired by the City as open space in 1989. The Sempers homesteaded in 1880, established the town of Semper (incorporated in 1886), established the first school in the area and generally made way for a steady stream of immigrant pioneer families that established the agricultural heritage of northern Jefferson County. The Semper Farmhouse is the only known remaining residence from the town of Semper. The only other known physical remnant of the built environment of the village of Semper is the stacked lumber Wick Silo at West 90<sup>th</sup> Avenue and Wadsworth Boulevard.

The goal of the proposed farmhouse rehabilitation is to continue the overall plan to restore and interpret the Semper Farm for the enjoyment and education of the public. The City's efforts at the Semper Farm began about five years ago with a concept plan that described restoration of the historic buildings, including the farmhouse, small barn and an outhouse, developing an interpretation plan, and increasing public access to the property by establishing limited parking and a community garden. Since that time, the historical significance of the property has been researched, the buildings and several site features were designated as a local historical landmark, and a site plan was prepared to guide improvements and interpretation. In 2006, City crews graded a crusher fines parking area and community garden at the east end of the property. Local residents worked with Denver Urban Gardens to build the Allison Community Garden at Semper Farm. Grant applications have been written by volunteers to fund projects such as the historic apple orchard rehabilitation, a shade structure for the garden, and tools and gardening materials. School classes and community groups visit and ask for guided tours.

The stabilization and exterior restoration of the farmhouse will accomplish a major step in demonstrating the original environment of the farm – a simple farmhouse in a wooded area, irrigation canals to the south, ditch lateral to the west, apple orchard to the east. Re-establishing this visual element in the four-acre rural enclave will tell the story of the Sempers' homestead. Following the completion of the exterior restoration in 2008, City staff will continue to work on funding and concepts for restoration of the interior of the house, restoration of outbuildings, and interpretation of the historical and biological assets of the site.

**SUBJECT:** Resolution re IGA with the State of Colorado re Historic Preservation Grant Page 3

The City will be reimbursed for expenses after they are incurred. As a result, these funds will be requested for appropriation in future supplemental appropriations.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **41**

INTRODUCED BY COUNCILLORS

SERIES OF 2007

**A RESOLUTION  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF  
COLORADO CONCERNING THE USE OF  
GRANTS FOR HISTORIC PRESERVATION PURPOSES**

WHEREAS, the City of Westminster has been awarded the following grant from the State Historical Fund of the Colorado Historical Society in support of historic preservation projects within the City:

Semper Farmhouse Exterior Restoration	SHF Project #2008-01-035	\$132,349
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WHEREAS, the State of Colorado requires Intergovernmental Agreements (IGAs) to be executed before funds are disbursed, which agreements regulate the use of funds and accounting for the grant award.

NOW, THEREFORE, the City Council of the City of Westminster resolves that the City Manager is authorized to execute and carry out the provisions of the IGA with the State of Colorado concerning the use of grants for historic preservation purposes awarded to the City.

PASSED AND ADOPTED this 12th day of November, 2007.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



**WESTMINSTER**

**COLORADO**  
**Agenda Memorandum**

City Council Meeting  
November 12, 2007



**SUBJECT:** Councillor's Bill No. 62 re Series 2007D Parks, Open Space, and Trails Special Purpose Sales and Use Tax Revenue Bonds in the amount not to exceed \$20,000,000

**Prepared By:** Tammy Hitchens, Finance Director  
Bob Smith, Treasury Manager

**Recommended City Council Action**

Pass Councillor's Bill No. 62 as an emergency ordinance, approving the sale of up to \$20,000,000 Parks, Open Space, and Trails (POST) Special Purpose Sales and Use Tax Revenue Bonds to fund Open Space land purchases and to fund improvements to parks and recreation facilities, and direct the Mayor Pro Tem, Finance Director and City Clerk to sign necessary documents on behalf of the City.

**Summary Statement**

- On November 7, 2006, Westminster voters approved two ballot initiatives to:
  1. Extend the 0.25% POST Sales and Use Tax until December 31, 2032, and;
  2. Authorize the City to issue up to \$20,000,000 in POST Sales and Use Tax Revenue Bonds without any new taxes or tax rate increases for the purpose of acquiring, developing enhancing and maintaining open space and parkland throughout the City, developing, enhancing, and maintaining and extending trails throughout the City, and developing, enhancing and maintaining recreational facilities in the City.
- Standard and Poor's and Fitch Ratings have assigned their AA- / A+ ratings respectively to the City's 2007D POST bonds, the same ratings they had assigned to previous City of Westminster POST bond issues.
- Staff reviewed this proposed bond issuance with City Council at the November 5<sup>th</sup> Study Session.

**Expenditure Required:** Approximately \$200,000 in Bond Costs

**Source of Funds:** All fees are included in the POST 2007D issue; no additional funds need to be budgeted.

## **Policy Issue**

Should the City issue up to \$20,000,000 in POST Sales and Use Tax Revenue Bonds?

## **Alternatives**

1. Do not issue the bonds. This option is not recommended. Voters approved the issuance of the revenue bonds in November 2006. Additionally, the City has many projects in the five-year capital plan that will require debt financing to complete. Some of the projects have been initiated after Council approved a reimbursement resolution to use funds in the GCIF to start projects to meet citizen needs in anticipation of reimbursing the GCIF with the proceeds of the bond issue.
2. Delay the issuance of the bonds. This option is not recommended. Staff has identified many projects that need to be accomplished to improve the existing recreation facilities, supplement the trail system in the City, and acquire additional open space to meet the City's goal of 15% of its area being comprised of open space. As costs to complete these projects will only increase in the future, and the financial capacity exists to borrow additional funds, issuing the new bonds is an effective way to complete these projects now to minimize future outlays for these projects.

## **Background Information**

The 0.25% Parks, Open Space and Trails Tax was initially approved by Westminster voters in November 1985. Since that time voters have extended the expiration date of the tax four times, most recently in November 2006 when voters approved an extension of the sunset date for the POST Tax to December 31, 2032.

In 1997 and 1999 the City issued a total of \$26,000,000 of debt for Parks, Open Space and Trails (POST) projects. Revenues from the 0.25% POST Tax, in part, have been used to pay the debt service on this debt. To reduce future annual debt service related to the POST bonds issued in 1997 and 1999, the City refunded these bonds in March 2007. This refunding saved the City \$576,382. After debt service payments are made on December 1, 2007, the only debt outstanding will be \$13,680,000 of the POST Series 2007B bonds.

During the November 2006 election Westminster voters also authorized the City to issue up to \$20,000,000 of "no new tax" debt for the purposes of acquiring, maintaining, enhancing, and extending the City's open space and park lands, trails, and recreation facilities.

In order to issue additional POST bonds, covenants for the outstanding POST 2007B bonds require that in the 12 month period prior to issuing additional bonds, the POST Tax revenue pledged to any outstanding and proposed additional POST bonds must be at a minimum 1.5 times the maximum annual debt service of the outstanding bonds and proposed additional bonds. With the issuance of the additional \$20,000,000 of POST bonds, a total of \$33,680,000 POST bonds would be outstanding at the end of 2007. Staff estimates that maximum annual debt service on all bonds will be \$2,922,113. POST Tax revenue for the past 12 months (October 2006 through September 2007) was \$4,864,130. That results in pledged revenue to debt service coverage ratio of 1.66 times, which exceeds the minimum requirement of 1.5 times.

With the opening of new retail development in the North Huron and South Sheridan Urban Renewal Areas in 2008, POST Tax revenues, which are not pledged revenue under the terms of the tax increment financing bonds that the Westminster Economic Development Authority has issued, are expected to grow an average of 3.6% per year over the next five years. This will result in a gradual increase of the coverage ratio for the POST bonds to about the 2.00 times level, well above the minimum required 1.5 times.

**SUBJECT:** Councillor's Bill re POST Special Purpose Sales and Use Tax Revenue Bonds Page 3

Proceeds of proposed POST Series 2007D bonds will be used to finance various park, recreation, and trail projects around the City. In addition these funds would be used to acquire new open space land that will help the City achieve its goal of having open space land make up 15% of its total area. Some of these projects are already under way. In June 2007, Council approved a reimbursement resolution that permitted City staff to proceed with several capital projects using funds from the General Capital Improvement Fund with the intent to reimburse those expenditures from bond proceeds.

Staff reviewed information concerning the issuance of the POST Series 2007D bonds with Council at the November 5 study session.

The proceeds of the sale of this new security will be appropriated in a separate City Council action in early 2008, after the bond closing is held and the City has received the funds resulting from the sale of the bonds.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments -  
Ordinance  
Purchase Agreement  
Agent Agreement  
Disclosure  
Statement

BY AUTHORITY

ORDINANCE NO. **3392**

COUNCILLOR'S BILL NO. **62**

SERIES OF 2007

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AUTHORIZING THE ISSUANCE OF  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS  
(POST PROJECT), SERIES 2007D, OF THE CITY OF  
WESTMINSTER, COLORADO, PROVIDING OTHER DETAILS  
IN CONNECTION THEREWITH; AND DECLARING AN  
EMERGENCY.**

**THE CITY OF WESTMINSTER ORDAINS:**

**Section 1. Definitions.** As used herein, unless the context clearly indicates otherwise, the following terms shall have the respective meanings set forth below:

**Ballot Issue:** the ballot issue approved by the registered electors of the City at the Election, set forth in Recital K hereof, pursuant to which the Bonds will be issued.

**Beneficial Owner:** any Person for which a Participant acquires an interest in the Bonds.

**Bond Fund:** offsetting revenue and expense accounts within the General Debt Service Fund of the City, designated as "2007D Special Purpose Sales and Use Tax Revenue Bonds" created by the provisions of this Bond Ordinance.

**Bond Insurance Policy:** the financial guaranty insurance policy or municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds.

**Bond Insurer:** means the provider of any financial guaranty insurance policy or municipal bond insurance policy, or any successor thereto, if set forth in the Sale Certificate.

**Bond Ordinance:** this Bond Ordinance which authorizes the issuance of the Bonds.

**Bond Purchase Agreement:** the agreement between the City and the Underwriter, concerning the purchase of the Bonds by the Underwriter.

**Bonds:** the City's Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D, as authorized by this Bond Ordinance.

**Cede:** Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of DTC with respect to the Bonds.

**Charter:** the home rule charter of the City adopted in accordance with Article XX of the Colorado Constitution.

**City:** the City of Westminster, Adams and Jefferson Counties, Colorado.

**Code:** the Internal Revenue Code of 1986, as in effect on the date of delivery of the Bonds.

**Combined Average Annual Principal and Interest Requirements:** with regard to any two or more particular issues of bonds or other obligations, the aggregate of all future payments of principal of and interest on all of said issues (excluding redemption premiums) to become due from the date of computation to the date of maturity of the latest maturing obligation of any of said issues, divided by the number of years between said dates; provided further that such computation shall assume the redemption and payment of bonds or other obligations subject to mandatory redemption, but shall be made without regard to optional redemption.

**Combined Maximum Annual Principal and Interest Requirements:** with regard to any two or more particular issues of bonds or other obligations, the maximum annual payment of principal of and interest on all of said issues (excluding redemption premiums) to become due from the date of computation to the date of maturity of the latest maturing obligation of any of said issues; provided that such computation shall assume the redemption and payment of bonds or other obligations subject to



mandatory redemption, but shall be made without regard to optional redemption or any other assumed amortization.

Continuing Disclosure Certificate: the undertaking executed by officers of the City simultaneous with the delivery of the Bonds which enables the Underwriter to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Council: the City Council of the City of Westminster, Colorado.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented to the date hereof.

Depository: any securities depository as the City may provide and appoint to act as securities depository for the Bonds in accordance with the guidelines of the Securities and Exchange Commission.

DTC: the Depository Trust Company, New York, New York, and its successors and assigns.

Election: the election held within the City on November 7, 2006, at which the voters of the City approved the Ballot Issue.

Event of Default: any one or more of the events set forth in Section 22 of this Bond Ordinance.

Federal Securities: direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee.

Finance Director: the Finance Director of the City.

General Debt Service Fund: the "General Debt Service Fund" heretofore established as a governmental fund of the City.

Insurance Trustee: the commercial bank, if any, appointed by the Bond Insurer to act as insurance trustee under the Bond Insurance Policy.

Letter of Representations: the letter of representations from the City to DTC to induce DTC to accept the Bonds as eligible for deposit at DTC.

Open Space Fund: the "Open Space Fund" heretofore established as a governmental fund of the City.

Owners: the Beneficial Owners and the Registered Owners; provided however, that for purposes of Sections 22 and 23 hereof and, to the extent provided in any ordinance authorizing the Series 1997 Bonds, the Series 1999 Bonds, Series 2007B Bonds and any Parity Lien Bonds, any bond insurer which is not in default in its obligations under its bond insurance policy insuring payment of the Series 1997 Bonds, the Series 1999 Bonds, the Series 2007B Bonds or any Parity Lien Bonds shall be deemed the Owner thereof.

Parity Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City in accordance with the provisions hereof, having a lien on the Pledged Revenue which is on a parity with the lien of the Bonds.

Participant: any broker-dealer, bank, or other financial institution from time to time for which DTC or other Depository holds the Bonds.

Paying Agent: American National Bank, in Denver, Colorado or its successor, which shall perform the function of paying agent as set forth in this Bond Ordinance.

Paying Agent Agreement: the Registrar and Paying Agent Agreement dated as of the date of delivery of the Bonds, between the City and the Registrar and Paying Agent.

Permitted Investments: any investment or deposit permitted for the City under the Charter and the laws of the State and approved by the Bond Insurer; provided that investment of moneys pursuant to this Bond Ordinance shall be subject to the tax covenants and provisions of Section 19(f) hereof.

Person: any natural person, firm, partnership, association, corporation, trust, public body, or other entity.

Pledged Revenue: 6.49% of the revenue derived from the Sales and Use Tax, after deducting all costs of administering and collecting the Sales and Use Tax.

Preliminary Official Statement: the Preliminary Official Statement prepared in connection with the issuance of the Bonds.

Project: the issuance of the Bonds to provide funds for the purposes set forth in the Ballot Issue and for the payment of the costs of issuance of the Bonds.

Record Date: the fifteenth (15th) day of the calendar month next preceding each interest payment date of the Bonds.

Registered Owner: the registered owner of any Bond, as shown by the registration books maintained by the Registrar on behalf of the City.

Registrar: American National Bank, in Denver, Colorado or its successor, which shall perform the registration and transfer functions of bond registrar as set forth in this Bond Ordinance.

Required Reserve: the amount of the Reserve Fund required by Section 19(e) hereof.

Reserve Fund: offsetting revenue and expense accounts within the General Debt Service Fund of the City, designated as the “Special Purpose Sales and Use Tax Revenue Bonds Reserve,” created by the provisions of Section 19(e) of this Bond Ordinance.

Sale Certificate: the certificate executed by the City Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth (i) the rates of interest on the Bonds, (ii) the conditions on which and the prices at which the Bonds may be called for redemption; (iii) the existence and amount of any capitalized interest or reserve fund; (iv) the price at which the Bonds will be sold; (v) the principal amount of the Bonds; (vi) the amount of principal of the Bonds maturing on each date; (vii) the dates on which principal and interest will be paid and the first interest payment date; (viii) whether the Bonds will be secured by a municipal bond insurance policy or financial guaranty insurance policy; and (ix) any other matters which may be determined by the City Manager or the Finance Director pursuant to Section 11-57-205 of the Supplemental Act.

Sales and Use Tax: the sales and use tax of the City, as imposed by Title IV in effect as of the date hereof. The term “Sales and Use Tax” does not include any increases in the rate of sale and use taxes from the present rate of 3.85%, nor does it include any other excise taxes which may now or hereafter be imposed by the City, whether contained in Title IV or any other Chapter or ordinance of the City.

Sales and Use Tax Fund: the “Sales and Use Tax Special Revenue Fund” heretofore established as a governmental fund of the City.

Series 1997 Bonds: the City’s Special Purpose Sales and Use Tax Revenue Bonds, Series 1997B, dated March 1, 1997.

Series 1999 Bonds: the City’s Special Purpose Sales and Use Tax Revenue Bonds, Series 1999 dated as of October 1, 1999.

Series 2007B Bonds: the City’s Special Purpose Sales and Use Tax Revenue Refunding Bonds (POST Project), Series 2007B, dated as of March 6, 2007.

Special Record Date: a special date fixed to determine the names and addresses of Registered Owners of Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest.

Subordinate Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City in accordance with the provisions hereof, having a lien on the Pledged Revenue which is subordinate or junior to the lien of the Bonds.

Supplemental Act: the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

Term Bonds : The Bonds that are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

Title IV: Chapters 1 and 2 of Title IV of the Municipal Code of the City governing the imposition, collection, distribution, and enforcement of the Sales and Use Tax, and any successor or other ordinance pertaining to the Sales and Use Tax.

Underwriter: Stifel, Nicolaus & Company, Incorporated, Denver, Colorado, the original purchaser of the Bonds, or its successor.

## **Section 2.     Recitals.**

A.     This Bond Ordinance shall be known as and may be cited by the short title “2007D Special Purpose Sales and Use Tax Bond Ordinance.”

B. The City is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Colorado Constitution and the Charter.

C. Pursuant to Section 10.2 of the Charter and Title IV of the City's Municipal Code, the City has heretofore imposed and is collecting a sales and use tax upon the sale or use of tangible personal property and certain services.

D. Pursuant to said Title IV, for transactions consummated or contracts entered into on or after January 1, 2004, but prior to January 1, 2033, the rate of the sales and use tax shall be three and eighty-five hundredths percent (3.85%), and for transactions consummated or contracts entered into prior to January 1, 1986, or on or after January 1, 2033, the rate of the sales and use tax shall be three and sixty-hundredths percent (3.60%).

E. Pursuant to said Title IV, six and forty-nine hundredths percent (6.49%) of all sales and use taxes collected at the rate of three and eighty-five hundredths percent (3.85%) shall be distributed to the City's Open Space Fund.

F. Pursuant to Chapter XI of the Charter, the Council has the power to issue, without the vote of the qualified electors of the City, revenue bonds for any public purpose payable in whole or in part from the available proceeds of sales and use taxes which may be imposed pursuant to Chapter X of the Charter.

G. Pursuant to Chapter XI of the Charter and an election question approved at the November 5, 1996 election, the City has heretofore duly authorized, sold, issued, and delivered to the purchasers thereof the Series 1997 Bonds and the Series 1999 Bonds payable solely from certain sales and use tax and other excise tax revenues to be derived by the City.

H. Pursuant to an Escrow Agreement dated March 6, 2007, Series 1997 Bonds in the aggregate principal amount of \$13,865,000 were defeased using proceeds of the Series 2007B Bonds and are no longer outstanding under the terms of the ordinance authorizing the Series 1997 Bonds.

I. The Series 1997 Bonds outstanding as of the date of this Bond Ordinance in the principal amount of \$1,055,000 will be paid upon maturity on December 1, 2007, leaving none of the Series 1997 Bonds outstanding on the date of the issuance of the Bonds.

J. Article X, Section 20 of the Colorado Constitution requires voter approval in advance for the creation of certain multiple-fiscal year direct or indirect debt or other financial obligations.

K. At the Election, the registered electors of the City approved the Ballot Issue as follows:

SHALL THE CITY OF WESTMINSTER DEBT BE INCREASED \$20 MILLION WITH A REPAYMENT COST OF \$41.9 MILLION (MAXIMUM TOTAL PRINCIPAL AND INTEREST) WITHOUT ANY NEW TAXES OR TAX RATE INCREASES FOR THE PURPOSE OF:

- ACQUIRING, DEVELOPING, ENHANCING, AND MAINTAINING OPEN SPACE AND PARKLAND THROUGHOUT THE CITY,
- DEVELOPING, ENHANCING, MAINTAINING AND EXTENDING TRAILS THROUGHOUT THE CITY,
- DEVELOPING, ENHANCING AND MAINTAINING RECREATIONAL FACILITIES IN THE CITY

TO BE REPAID FROM THE CURRENT 1/4 OF 1 PERCENT SALES AND USE TAX INCLUDING THE EXTENSION TO DECEMBER 31, 2032, AND ANY OTHER AVAILABLE REVENUES; AND SHALL THE CITY CONTINUE TO LEVY UNTIL DECEMBER 31, 2032, THE 1/4 OF 1 PERCENT SALES AND USE TAX CURRENTLY PROVIDED FOR BY CITY CODE SECTION 4-2-3 AND USE SUCH REVENUES FOR THE ACQUISITION, DEVELOPMENT, ENHANCEMENT, AND MAINTENANCE OF OPEN SPACE AND PARKLAND AND FOR THE DEVELOPMENT, ENHANCEMENT, AND MAINTENANCE OF PARKS, RECREATIONAL FACILITIES AND TRAILS; AND SHALL THE PROCEEDS OF SUCH DEBT, SUCH TAXES, ANY GRANTS RECEIVED BY THE CITY FOR PARKS, OPEN SPACE AND TRAILS, AND ANY INVESTMENT INCOME THEREFROM BE EXCLUDED FROM THE SPENDING AND THE REVENUE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

L. The maximum annual repayment cost set forth in the notice mailed to electors relating to the Ballot Issue was \$2,200,000.

M. The City has not previously issued any of the debt authorized by the Ballot Issue.

N. The City has determined that it is necessary to finance the costs of the Project, and that it is in the best interests of the City and the inhabitants thereof that the Bonds be issued for such purpose.

O. The Bonds shall be issued with such terms that they meet the requirements of the Ballot Issue.

P. The Bonds shall have an irrevocable and first lien, but not necessarily an exclusive such lien, on the Pledged Revenue, as set forth herein.

Q. Other than the Series 1999 Bonds and the Series 2007B Bonds, there will be no liens on the Pledged Revenue on the date of the issuance of the Bonds so that the Pledged Revenue may be pledged lawfully and irrevocably for the payment of the Bonds.

R. The City has received a proposal in the form of a Bond Purchase Agreement from the Underwriter concerning the purchase of the Bonds.

S. The Council has determined that the Bonds shall be sold to the Underwriter in accordance with its proposal, and that such sale is to the best advantage of the City.

T. There are on file with the City Clerk the forms of the following documents: (i) the form of the Bond Purchase Agreement; (ii) the form of the Paying Agent Agreement; (iii) the Preliminary Official Statement; and (iv) the form of the Continuing Disclosure Certificate.

U. It is necessary to provide for the form of the Bonds, the Bond details, the payment of the Bonds, and other provisions relating to the authorization, issuance, and sale of the Bonds.

V. Except for the Mayor who has disclosed a potential conflict of interest and abstained from voting on this Bond Ordinance, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the issuance of the Bonds.

**Section 3. Authorization.** In accordance with the Constitution of the State of Colorado; the Charter; and all other laws of the State of Colorado thereunto enabling, and pursuant to the provisions of this Bond Ordinance, the City hereby authorizes, for the purpose of paying the costs of the Project, the issuance of its “Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D,” in the maximum aggregate principal amount of not to exceed \$20,000,000. Section 11-57-204 of the Supplemental Act provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to the Bonds. The Council hereby elects to apply all of the Supplemental Act to the Bonds. The Bonds are issued under the authority of the Supplemental Act and shall so recite as provided in Section 9 hereof. Pursuant to Section 11-57-210, C.R.S., such recital conclusively imparts full compliance with all the provisions of said sections, and the Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Either the City Manager or the Finance Director is hereby independently authorized and directed to execute and deliver the Sale Certificate and to make and approve the final determinations contained therein, subject to the parameters and restrictions of this Bond Ordinance. Either the City Manager or the Finance Director is hereby authorized to determine if obtaining municipal bond insurance or financial guaranty insurance is in the best interest of the City, and if so, to select a Bond Insurer to issue a municipal bond insurance policy or financial guaranty insurance policy, execute a commitment relating to the same, and execute any related documents or agreements required by such commitment. If it is determined that the Bonds will be sold without a municipal bond insurance policy or financial guaranty insurance policy, all references herein to Bond Insurer, Bond Insurance Policy and Insurance Trustee are of no force and effect.

**Section 4. Special Obligations.** All of the Bonds, together with the interest thereon and any premium due in connection therewith, and any payments due to the Bond Insurer under the Bond Insurance Policy shall be payable only out of the Bond Fund, into which the City covenants to deposit the Pledged Revenue in amounts sufficient to pay promptly, when due, the principal of, premium, if any, and interest on the Bonds. The Bonds shall constitute an irrevocable and first lien upon the Pledged Revenue to the extent provided herein, but not necessarily an exclusive such lien, and the Pledged Revenue is hereby pledged to the payment of the Bonds as provided herein. Neither the Bond Insurer nor Owners may look to any general or other revenue of the City, including without limitation the proceeds of ad

valorem taxes, for the payment of the principal of, premium, if any, and interest on the Bonds, or any payments due to the Bond Insurer under the Bond Insurance Policy. The Bonds and any payments under the Bond Insurance Policy shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter, or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

**Section 5. Bond Details.** The Bonds shall be issued only as fully registered Bonds, without coupons, in the denomination of \$5,000 each or any integral multiple thereof. Unless the City shall otherwise direct, the registered Bonds of each series shall be numbered separately from 1 upward, with the number of each Bond preceded by “R-“ and such other series designation as the Registrar deems necessary.

The Bonds shall be dated as of the date of their delivery to the Underwriter. The Bonds shall mature, bear interest from their dated date to maturity and be sold, all as provided in the Sale Certificate; provided that (i) the aggregate principal amount of the Bonds shall not exceed \$20,000,000; (ii) the maximum net effective interest rate of the Bonds shall not exceed 6.0%; (iii) the Bonds shall mature no later than December 1, 2031; (iv) the purchase price of the Bonds, shall not be less than 98.5%; (v) the Bonds may be sold with or without a provision for redemption at the option of the City prior to maturity; (vi) the optional redemption price, if any shall not exceed 100% of the principal amount of the Bonds so redeemed; (vii) the maximum total repayment cost shall not exceed \$41,900,000; (viii) the maximum annual repayment cost shall not exceed \$2,200,000. Interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate.

**Section 6. Payment of Bonds; Paying Agent and Registrar.** The principal of and premium, if any, on each Bond is payable in lawful money of the United States of America to the Registered Owner of such Bond upon maturity and presentation of the Bond, at the principal office of the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the interest rate borne by said Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the Registered Owner thereof by check or draft mailed by the Paying Agent, on or before each interest payment date, to the Registered Owner thereof at his or her address as it last appears on the registration records kept by the Registrar on the Record Date; but any such interest not so timely paid shall cease to be payable to the person who is the Registered Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Registered Owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Registrar whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Registered Owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such Registered Owner as shown on the Registrar’s registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the Registered Owner of such Bond and the Paying Agent; provided, however, that the City shall not be required to make funds available to the Paying Agent prior to the payment dates stated in this Bond Ordinance. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which the principal office of the Paying Agent or Registrar is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Registrar is authorized or required by law to remain closed.

The principal of, premium, if any, and interest on the Bonds shall be paid in accordance with the terms of the Letter of Representations.

**Section 7. Book-Entry System.** The Bonds shall be initially issued in the form of a single, certificated, fully registered Bond for each maturity bearing the same interest rate. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Registrar in the name of Cede.

With respect to Bonds registered in the name of Cede or held by a Depository, the City, the Registrar, and the Paying Agent shall have no responsibility or obligation to any Participant or Beneficial Owner including, without limitation, any responsibility or obligation with respect to: (i) the accuracy of the records of the Depository or any Participant concerning any ownership interest in the Bonds; (ii) the delivery to any Participant, Beneficial Owner, or Person other than the Registered Owner, of any notice concerning the Bonds, including notice of redemption; (iii) the payment to any Participant, Beneficial Owner, or Person other than the Registered Owner, of the principal of, premium if any, and interest on the Bonds. The City, the Registrar, and the Paying Agent may treat the Registered Owner of a Bond as the absolute owner of such Bond for the purpose of payment of the principal of, premium if any, and interest with respect to such Bond, for purposes of giving notices of redemption and other matters with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, premium if any, and interest on the Bonds only to or upon the order of the Registered Owners, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the payment of the same. No Person, other than a Registered Owner, shall receive a certificated Bond evidencing the obligations of the City pursuant to this Bond Ordinance.

DTC may determine to discontinue providing its service as Depository with respect to the Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Additionally, the Finance Director may terminate the services of DTC if she determines, in her sole and absolute discretion, that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book entry transfers through DTC is not in the best interests of the Beneficial Owners or the City. Such termination shall be effected by written notice of the same from the City to DTC and to the Registrar and Paying Agent. Upon the termination of the services of DTC, a substitute Depository which is willing and able to undertake the system of book-entry transfers upon reasonable and customary terms may be engaged by the City or, if the Finance Director determines in her sole and absolute discretion that it is in the best interests of the Beneficial Owners or the City that the Beneficial Owners be able to obtain certificated Bonds, the Bonds shall no longer be restricted to being registered in the name of Cede or other nominee of a Depository but shall be registered in whatever name or names the Beneficial Owners shall designate at that time, and fully registered Bond certificates shall be delivered to the Beneficial Owners.

**Section 8. Prior Redemption.**

(a) Optional Prior Redemption. The Bonds designated in the Sale Certificate, if any, will be subject to redemption at the option of the City from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the City may determine (giving proportionate weight to Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Bond Ordinance.

The Registrar shall not be required to give notice of any such optional redemption unless it has received written instructions from the City in regard thereto at least sixty days prior to such redemption date.

(b) Mandatory Redemption. The Term Bonds, if any, are subject to mandatory sinking fund redemption, at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before thirty (30) days prior to each sinking fund installment date, the Registrar shall, without any notice or instruction from the City, proceed to call the Term Bonds (or any Term Bond

or Term Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next December 1, and give notice of such call without other instruction or notice from the City.

At its option, to be exercised on or before the sixtieth (60<sup>th</sup>) day next preceding each such sinking fund redemption date, the City may (a) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds of the same maturity subject to mandatory sinking fund redemption on such date, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the City on such sinking fund redemption date and the principal amount of Term Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The City will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the City to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph.

(c) Notice. Notice of redemption shall be given by the Registrar in the name of the City by sending a copy of such official notice by first-class, postage prepaid mail, not more than sixty nor less than thirty days prior to the redemption date to the Bond Insurer and each Registered Owner at his address as it last appears on the registration books kept by the Registrar; but neither failure to give such notice nor any defect therein shall affect the redemption of any Bond. Such notice shall identify the Bonds to be so redeemed (if less than all are to be redeemed) and the redemption date, and shall further state that on such redemption date there will become and be due and payable upon each Bond so to be redeemed, at the Paying Agent, the principal amount thereof, any redemption premium, and accrued interest to the redemption date and that from and after such date interest will cease to accrue. Prior to any redemption date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be promptly canceled by the Paying Agent and such canceled Bonds shall be delivered by the Paying Agent or Registrar to the City if requested by the City, and shall not be reissued.

(d) Partial Redemption. In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof of the same maturity in the amount of the unpaid principal.

(e) Conditional Call Provision. Notwithstanding the provisions of this section, any notice of optional redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

**Section 9. Form and Execution of Bonds.** The Bonds shall be signed with the facsimile or manual signature of the Mayor Pro Tem, sealed with a facsimile or manual impression of the seal of the City, countersigned by the facsimile or manual signature of the Finance Director, and attested

by the facsimile or manual signature of the City Clerk. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Underwriter, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized representative of the Registrar, but it shall not be necessary that the same representative sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Bond Ordinance, the Registrar shall be deemed to have assented to the provisions of this Bond Ordinance.

The Bonds shall be in substantially the following form:

[Form of Bond]

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

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No. R-\_\_\_\_\_

\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF COLORADO  
COUNTIES OF ADAMS AND JEFFERSON  
CITY OF WESTMINSTER  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BOND, SERIES 2007D

INTEREST RATE

MATURITY DATE  
December 1, 20\_\_

DATED DATE  
Date of Delivery

CUSIP

REGISTERED OWNER: CEDE & COMPANY

PRINCIPAL AMOUNT:

DOLLARS

The City of Westminster, in the Counties of Adams and Jefferson and the State of Colorado, for value received, hereby promises to pay from the special fund hereafter designated, but not otherwise, to the Registered Owner named above, or registered assigns, on the maturity date specified above or on the date of prior redemption, the principal amount specified above. This bond will bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the date of this bond. This bond is one of an authorized series issued pursuant to an ordinance of the City Council of the City adopted on November 12, 2007 (the "Bond Ordinance"). This bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Bond Ordinance. To the extent not defined herein, terms used in this bond shall have the same meanings as set forth in the Bond Ordinance.

This Bond is one of a series aggregating [PAR AMOUNT] dollars (\$\_\_\_\_\_) par value, all of like date, tenor, and effect except as to number, principal amount, interest rate, and date of maturity, issued by the City Council of the City of Westminster, in the Counties of Adams and Jefferson and the State of Colorado, for the purpose of paying the costs of certain park, open space, trail and



recreational improvements in the City, in accordance with the Constitution of the State of Colorado, the Charter of the City, Title 11, Article 57, Part 2, C.R.S. and all other laws of the State of Colorado thereunto enabling, and pursuant to the Bond Ordinance duly adopted prior to the issuance of this Bond. Pursuant to Section 11-57-210, C.R.S., this recital conclusively imparts full compliance with all of the provisions and limitations of said sections and this bond shall be incontestable for any cause whatsoever after its delivery for value.

The principal of, premium, if any, and interest on this Bond are payable only out of a special fund of the City created in full conformity with law and designated as "2007D Special Purpose Sales and Use Tax Revenue Bonds" (the "Bond Fund"), into which the City covenants and agrees to credit, from certain sales and use tax proceeds defined hereafter as the "Pledged Revenue," and other legally available revenues, amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when the same become due and payable, all as is more particularly set forth in the authorizing Bond Ordinance. The Pledged Revenue consists only of 6.49% of the revenue derived from the City's existing 3.85% sales and use tax, after deducting all costs of administering and collecting the sales and use tax. In the authorizing Bond Ordinance, the City has covenanted that it will not amend or repeal the ordinance imposing the sales and use tax in any way which would materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund. The Bonds of this issue constitute an irrevocable and first lien upon the Pledged Revenue to the extent provided in the Bond Ordinance, but not necessarily an exclusive such lien. Subject to expressed conditions, obligations in addition to the Bonds of this issue may be issued and made payable from the Pledged Revenue having a lien thereon subordinate and junior to the lien of the Bonds of this issue or, subject to additional expressed conditions, having a lien on the Pledged Revenue on a parity with the lien of the Bonds of this issue, in accordance with the provisions of said Bond Ordinance.

THIS BOND DOES NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER, OR STATUTORY PROVISION OR LIMITATION, AND SHALL NOT BE CONSIDERED OR HELD TO BE A GENERAL OBLIGATION OF THE CITY.

It is hereby recited, certified, and warranted that all the requirements of law have been complied with fully by the proper officers of the City in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the constitution and laws of the State, with the Charter of the City, and with the Bond Ordinance; and that this Bond does not contravene any constitutional, statutory, or Charter limitation.

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

IN TESTIMONY WHEREOF, the City Council of the City of Westminster, Colorado, has caused this Bond to be signed by the manual or facsimile signature of the Mayor Pro Tem, sealed with a facsimile of the seal of the City, countersigned with the manual or facsimile signature of the Finance Director, and attested by the manual or facsimile signature of the City Clerk, all as of the December 11, 2007.

CITY OF WESTMINSTER, COLORADO

( S E A L )

(Manual or Facsimile Signature)

Mayor Pro Tem

ATTESTED:

COUNTERSIGNED:

By: (Manual or Facsimile Signature)  
City Clerk

By: (Manual or Facsimile Signature)  
Finance Director

[End Form of Bond]

[Form of Registrar's Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

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

Date of Registration and Authentication: \_\_\_\_\_

AMERICAN NATIONAL BANK,  
in Denver, Colorado, as Registrar

By: \_\_\_\_\_  
Authorized Officer or Employee

[End Form of Registrar's Certificate of Authentication]

[Form of Transfer]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

\_\_\_\_\_

Social Security or Federal Employer  
Identification Number of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint attorney, to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature of Registered Owner:

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NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

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(Bank, Trust Company, or Firm)

[End Form of Transfer]

### STATEMENT OF INSURANCE

[TO BE INSERTED IF BOND INSURANCE IS OBTAINED]

**Section 10. Authentication.** No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Bond Ordinance unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Bond Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Registrar, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder.

**Section 11. Delivery of Bonds.** Upon the adoption of this Bond Ordinance, the City shall execute the Bonds and deliver them to the Registrar, and the Registrar shall authenticate the Bonds and deliver them to the Underwriter, as directed by the City, and in accordance with the Bond Purchase Agreement and the Letter of Representations.

**Section 12. Registration, Transfer and Exchange of Bonds.**

(a) Records for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bond at the Registrar, with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney, the Registrar shall enter such transfer in the registration records and shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the same maturity and interest rate of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the Registered Owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with exchanges or transfers of Bonds which charges (as well as any tax or other governmental charge required to be paid with respect to such transfer) shall be paid by the Registered Owner requesting such exchange or transfer.

(b) The Registrar shall not be required (1) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period beginning at the opening of business fifteen days preceding the mailing of notice calling any Bonds for prior redemption as herein provided and ending at

the close of business on the day of such mailing or (2) to transfer or exchange all or a portion of a Bond after the mailing of notice calling such Bond or portion thereof for prior redemption except for the unredeemed portion of Bonds redeemed in part.

(c) Except as herein provided with respect to Record Dates and Special Record Dates for the payment of interest, the person in whose name any Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; and payment of either principal or interest on any Bond shall be made only to upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

(d) The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in the custody of the Registrar pending use as herein provided.

(e) Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the City.

**Section 13. Destruction of Bonds.** Whenever any outstanding Bond shall be delivered to the Registrar for cancellation pursuant to this Bond Ordinance, and upon payment of the principal amount and interest represented thereby, or whenever any outstanding Bond shall be delivered to the Registrar for transfer pursuant to the provisions hereof, such Bond shall be canceled and destroyed by the Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Registrar to the City. In the event a Bond is registered in the name of a Depository, cancellation may consist of the notation thereof on the registration books of the Registrar. The Registrar shall notify the Depository of all Bonds, or portions thereof, canceled in accordance with this Section.

**Section 14. Lost Bonds.** Any Bond that is lost, stolen, destroyed, or mutilated may be replaced or paid by the Registrar in accordance with and subject to the limitations of applicable law. The applicant for any such replacement Bond shall post such security, pay such costs, and present such proof of ownership and loss as may be required by applicable law, or in the absence of specific requirements, as may be required by the Registrar.

**Section 15. Disposition and Investment of Bond Proceeds.** The Bonds shall be issued and sold for the purposes of paying the costs of the Project. Accrued interest on the Bonds shall be deposited to the Bond Fund. All other Bond proceeds shall be deposited to such fund or account as the Finance Director determines and applied to pay the costs of the Project. Neither the Underwriter nor any subsequent owners of the Bonds shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the sale thereof.

**Section 16. Creation of Fund and Accounts.** There are hereby created and established the following funds and accounts which shall be established as book accounts and maintained in accordance with this Bond Ordinance:

- (a) the Bond Fund; and
- (b) the Reserve Fund pursuant to Section 19(e).

In accordance with generally accepted accounting principles, for the purpose of accounting for the moneys provided for in this Bond Ordinance the Finance Director may create

offsetting revenue and expense accounts not inconsistent with the provisions hereof, all as may be determined by the Finance Director.

**Section 17. Payment of Principal and Interest; Attachment of Lien.** The City shall credit to the Sales and Use Tax Fund all revenue derived from the Sales and Use Tax immediately upon receipt. Thereafter, the City shall transfer the Pledged Revenue to the Open Space Fund to be applied in the following order of priority:

FIRST: To the credit of the Bond Fund the amounts required by Section 18 hereof, and to the credit of any other fund or account established for the Series 1999 Bonds, the Series 2007B Bonds or hereafter established for the payment of the principal of, premium if any, and interest on Parity Lien Bonds, in the amounts required by the ordinance or other enactment authorizing issuance of the Series 1999 Bonds, the Series 2007B Bonds, and the Parity Lien Bonds.

SECOND: To the credit of any sinking fund, reserve fund, or similar fund or account established in connection with the Series 1999 Bonds, the Series 2007B Bonds, the Bonds or any Parity Lien Bonds, in the amounts required by this Bond Ordinance or the ordinance or other enactment authorizing issuance of the Series 1999 Bonds, the Series 2007B Bonds, and the Parity Lien Bonds.

THIRD: To the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on Subordinate Lien Bonds, including any sinking fund, reserve fund, or similar fund or account established therefor, in the amounts required by the ordinance or other enactment authorizing issuance of the Subordinate Lien Bonds.

FOURTH: To the credit of any other fund as may be designated by the City, to be used for any lawful purpose, any Pledged Revenue remaining after the payments and accumulations set forth in Section 17 FIRST through THIRD hereof.

The lien of the Bonds on the Pledged Revenue shall attach immediately upon receipt of any Sales and Use Tax proceeds, shall remain in effect so long as such Pledged Revenue is credited to the Open Space Fund or the Bond Fund or the Reserve Fund, and shall be extinguished with respect to any Pledged Revenue not required to be credited to the Bond Fund pursuant to Section 18 hereof or the Reserve Fund pursuant to Section 19(e) hereof and which is transferred to other funds of the City for other purposes.

**Section 18. Bond Fund.** The City shall credit to the Bond Fund from the Pledged Revenue, or other legally available moneys, in substantially equal monthly installments of the total principal to become due and interest to accrue on the Bonds on the next principal payment date and interest payment date, respectively. Notwithstanding the foregoing, the City shall credit to the Bond Fund from the Pledged Revenue an amount which, when combined with other legally available moneys credited thereto, will be sufficient to pay when due the principal of and interest on the Bonds.

Moneys credited to the Bond Fund may be invested Permitted Investments. Except to the extent otherwise required by Section 19(f) hereof, any investment income earned on amounts credited to the Bond Fund shall be credited to the Bond Fund, and for purposes of making the deposits required by this Section, any investment income so credited to the Bond Fund shall be deemed the credit of Pledged Revenue to the Bond Fund.

**Section 19. Additional Covenants of the City.** The City hereby irrevocably covenants and agrees with each and every Registered Owner and Beneficial Owner, that so long as any of said Bonds remain outstanding:

(a) It will not amend or repeal Title IV in any way that would materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund. Nothing shall prevent the City from amending said Title IV in order to increase the rate of tax above that currently imposed by said Title IV, or to make certain changes in the administration, collection, or enforcement of such Sales or Use Tax, provided that such changes do not materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund.

(b) It will administer, enforce, and collect, or cause to be administered, enforced, and collected, the Sales and Use Tax authorized by Title IV, and shall take such reasonable, necessary action to collect delinquent payments in accordance with law.

(c) It will keep or cause to be kept such books and records showing the proceeds of the Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governments, and any Owner shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Sales and Use Tax. The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The City will permit the Bond Insurer to have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(d) It will, at least once a year, cause an audit of the records relating to the collection and receipts of the Sales and Use Tax revenues. Such audit may be made part of and included within the general audit of the City, and made at the same time as such audit. While the Bond Insurance Policy is in effect, the Bond Insurer shall receive, as soon as practicable after the filing thereof, a copy of the City's annual audited financial statements and annual budget.

(e) In the event the City does not receive Pledged Revenue in any fiscal year in an amount at least equal to 150% of the Combined Average Annual Principal and Interest Requirements for the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and any Parity Lien Bonds, the City shall establish and maintain a reserve fund solely for the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and the Parity Lien Bonds (the "Reserve Fund"), in an amount equal to the lesser of (i) 10% of the outstanding aggregate principal amount of the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and the Parity Lien Bonds; (ii) 125% of the Combined Average Annual Principal and Interest Requirements, or the maximum principal and interest due on the Bonds and Parity Lien Bonds in any fiscal year (the "Required Reserve"). The City shall accumulate the Required Reserve in the Reserve Fund by twelve equal monthly deposits. The City shall make the initial deposit into the Reserve Fund of Pledged Revenue within 90 days after the end of the fiscal year in which such deficiency occurs. Such Reserve Fund shall not be released after it has been established. Draws on the Reserve Fund must be replenished within one year. Investments purchased with funds on deposit in the Reserve Fund shall have an average aggregate weighted term to maturity not greater than five years.

(f) It will not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, any other funds of the City or the facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as in effect on the date of delivery of the Bonds (the "Code"), (ii) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 55(b)(2) of the Code, except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose the exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenants under the Code and State law have been met.

(g) It will comply with the provisions of the Continuing Disclosure Certificate to be executed by City officers and delivered in connection with the delivery of the Bonds.

(h) It will provide such additional information as the Bond Insurer may reasonably request from time to time.

(i) The Bond Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner of the Bonds.

## **Section 20. Additional Bonds.**

(a) No additional bonds, notes, interim securities, or other obligations shall be issued payable from the Pledged Revenue and having a lien thereon which is superior to the lien of the Bonds.

(b) The City may issue Parity Lien Bonds if:

(i) No Event of Default has occurred and is continuing.

(ii) The City is then current in the accumulation of all amounts required to be then accumulated in the Bond Fund as required by this Bond Ordinance.

(iii) The Pledged Revenue for the twelve (12) month period immediately preceding the date of issuance of such Parity Lien Bonds is sufficient to pay an amount representing not less than 150% of the Combined Maximum Annual Principal and Interest Requirements of the Series 1999 Bonds, the Series 2007B Bonds, the Bonds, any Parity Lien Bonds, and the Parity Lien Bonds proposed to be issued.

(iv) To the extent the Reserve Fund has been established, a deposit is made to the Reserve Fund so that the balance therein on the date of delivery of the Parity Lien Bonds equals the Required Reserve.

(c) A written certificate signed by the Finance Director that the requirements of Section 20(b) hereof are met shall conclusively determine the right of the City to authorize, issue, sell, and deliver Parity Lien Bonds.

(d) So long as no Event of Default shall have occurred and be continuing, nothing herein shall prevent the City from issuing Subordinate Lien Bonds.

## **Section 21. Delegated Powers; Authorization to Execute Collateral Documents.**

The officers of the City and the members of the Council be, and hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing: the execution and delivery of the Letter of Representations, the Bond Purchase Agreement, the Paying Agent Agreement, the Continuing Disclosure Certificate, the printing of the Bonds; the procuring of municipal bond insurance or financial guaranty bond insurance, if in the best interests of the City; entering into and executing appropriate agreements with The Depository Trust Company as to its services hereunder; the printing, distribution and execution of the Official Statement for the Bonds in substantially the form of the Preliminary Official Statement now before the Council, but with such amendments, additions and deletions as are in accordance with facts and not inconsistent herewith; and the execution of such certificates as may be required by the Underwriter, including, but not limited to, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes. The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

The form, terms and provisions of the Bond Purchase Agreement, the Paying Agent Agreement and the Continuing Disclosure Certificate are hereby approved, and the City shall enter into and perform its obligations under the Bond Purchase Agreement, the Paying Agent Agreement and the

Continuing Disclosure Certificate in the forms of such documents presented to the Council at this meeting, with only such changes therein as are required by the circumstances and are not inconsistent herewith.

The City Manager or the Finance Director are hereby independently authorized to make the final pricing determinations as authorized in Section 3 hereof subject to the parameters set forth in Section 5 hereof and execute the Bond Purchase Agreement and Sale Certificate relating to same. Additionally, the City Manager or the Finance Director are independently authorized to execute and deliver any documents necessary to obtain a municipal bond insurance policy or a financial guaranty insurance policy to secure the payment of the principal of and interest on the Bonds

**Section 22. Events of Default.** It is an Event of Default if:

- (a) Payment of the principal of or premium due on any Bond is not made by the City when due at maturity or upon prior redemption;
- (b) Payment of the interest on any Bond is not made by the City when due; or
- (c) The City defaults in the punctual performance of its covenants hereunder for sixty (60) days after written notice shall have been given by the Owners of not less than 25% of the outstanding principal amount of the Bonds.

**Section 23. Remedies.** Upon the happening of any Event of Default, any Owner, or a trustee therefor, may protect and enforce the rights of such Owner by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the Council to act as if it were the trust of an express trust, or any combination of such remedies. All proceedings shall be maintained for the benefit of the Owners; provided however, that any action brought pursuant to an Event of Default under Section 22(c) hereof may be brought only upon the written consent of the Owner or Owners of not less than 25% of the outstanding principal amount of the Bonds. All proceedings shall be maintained for the equal benefit and protection of all Owners. The failure of any Owner to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right which may exist under applicable law, and the exercise of any right by any Owner shall not be deemed a waiver of any other right. If any remedial action is discontinued, the Owners shall be restored to their positions prior to taking such action.

**Section 24. Amendment.**

(a) The City may, without the consent of, or notice to the Owners of the Bonds, but with the prior written consent of the Bond Insurer, so long as the Bond Insurer is not in default of its payment obligations under the Bond Insurance Policy, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

- (i) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Bond Ordinance, or to make any provisions with respect to matters arising under this Bond Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the Owners of the Bonds;
- (ii) to subject to the lien of this Bond Ordinance additional revenues, properties or collateral;
- (iii) to grant or confer upon the Paying Agent or Registrar for the benefit of the Owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Owners of the Bonds; or
- (iv) to qualify this Bond Ordinance under the Trust Indenture Act of 1939.



(b) Exclusive of the amendatory ordinances permitted by paragraph (a) of this Section, this Bond Ordinance may be amended or supplemented by ordinance adopted by the Council in accordance with the law, without receipt by the City of any additional consideration but with the prior written consent of the Owners of at least 66% in aggregate principal amount of the Bonds outstanding at the time of the adoption of such amendatory or supplemental ordinance.

(c) Written consent of the Owners of all of the Bonds adversely affected thereby is required for any ordinance that shall have the effect of permitting:

(i) An extension of the maturity of any of the Bonds authorized by this Bond Ordinance; or

(ii) A reduction in the principal amount of any of the Bonds, the rate of interest thereon, or the prior redemption premium thereon; or

(iii) The creation of a lien upon or pledge of the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

(iv) A reduction of the principal amount of the Bonds required for consent to such amendatory or supplemental ordinance; or

(v) The establishment of priorities as between outstanding Series 1999 Bonds, Series 2007B Bonds, any Parity Lien Bonds and the Bonds or the establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

(vi) The modification of or otherwise affecting the rights of the Owners of less than all of the Bonds then outstanding.

Copies of any waiver, modification or amendment to this Bond Ordinance shall be delivered to any entity then maintaining a rating on the Bonds at least 15 days prior to its execution or adoption.

**Section 25. Notices to and Reports to Bond Insurer.** The Paying Agent and Registrar shall give the Bond Insurer copies of any notice to be given by it to the Owners of Bonds, including, without limitation, notice of any redemption of or defeasance of Bonds, and notices required pursuant to the Continuing Disclosure Certificate. The City shall give to the Bond Insurer any certificate delivered by the City pursuant to this Ordinance relating to the security for the Bonds. Notwithstanding any other provision of this Ordinance, the Paying Agent shall promptly notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest as required hereunder and promptly upon the occurrence of any other Event of Default hereunder. The Paying Agent shall also notify the Bond Insurer of the City's failure to provide the Paying Agent with any notice, certificate or other item required to be given to the Paying Agent hereunder.

**Section 26. Rights of the Bond Insurer Suspended Upon Default Under Bond Insurance Policy.** Notwithstanding any other provision hereof, any rights granted to or conferred upon the Bond Insurer hereunder shall be in effect only so long as the Bond Insurer is not in default in its payment obligation under the Bond Insurance Policy, and upon any such default by the Bond Insurer, its rights hereunder shall be suspended (except to the extent of subrogation for any payments under the Bond Insurance Policy theretofore made by the Bond Insurer); provided, however, that such rights shall be reinstated when the Bond Insurer has cured such default under the Bond Insurance Policy.

**Section 27. Bond Insurer As Third Party Beneficiary.** To the extent that this Bond Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy, or claim under or by reason of this Bond Ordinance, the Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**Section 28. Parties Interested Herein.** Nothing in this Bond Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any Person, other than the City, the Bond Insurer, the Registrar, the Paying Agent, and the Owners of the Bonds, any right,

remedy or claim under or by reason of this Bond Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Bond Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer, the Registrar, the Paying Agent, and the Owners of the Bonds.

**Section 29. Successor Registrar or Paying Agent.** American National Bank, in Denver, Colorado is hereby appointed as Registrar and Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the City shall determine to remove the Registrar or Paying Agent, the City may, upon notice mailed to the Bond Insurer and each Registered Owner of Bonds at the address last shown on the registration records, appoint a successor Registrar or Paying Agent. No resignation or removal of the Registrar or Paying Agent may take effect until a successor, acceptable to the Bond Insurer and approved by the Bond Insurer in writing, is appointed by the City and has accepted such appointment. Every such successor Paying Agent shall be either the City or a bank or trust company having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$10,000,000. The Registrar and Paying Agent may be removed at any time at the request of the Bond Insurer for any breach of trust set forth herein.

**Section 30. Defeasance.** When all principal, premium, if any, and interest in connection with a Bond have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and said Bond shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. There shall be deemed to be such due payment of a Bond when the City has placed in escrow and in trust with a commercial bank located within or without the State of Colorado, and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be initially invested) to meet all requirements of principal, premium, if any, and interest with respect to said Bond as the same become due at final maturity or upon designated prior redemption dates. The Federal Securities shall become due at or prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow, or the Federal Securities shall be subject to redemption at the option of the holder thereof to assure such availability as so needed to meet such schedule.

In the event that there is a defeasance of only part of the Bonds, the Registrar shall, if requested by the City, institute a system to preserve the identity of the individual Bonds or portions thereof so defeased, regardless of changes in Bond numbers attributable to transfers and exchanges of Bonds and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the City in connection with such system.

Notwithstanding anything herein to the contrary, in the event that the principal and or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not considered paid by the City, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

**Section 31. Costs and Expenses.** All costs and expenses incurred in connection with the issuance and payment of the Bonds, including without limitation the Underwriter's discount, the premium due in connection with the Bond Insurance Policy, and all expenses related to issuing the Bonds, shall be paid either from the proceeds of the Bonds or from legally available moneys of the City, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

**Section 32. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Bond Ordinance, relating to the authorization, sale, issuance, and delivery of the Bonds, and the qualification of the Bonds for book-entry with DTC, are hereby ratified, approved, and confirmed.

**Section 33. Approval of the Bond Purchase Agreement.** The Council does hereby accept and approve the Bond Purchase Agreement as submitted by the Underwriter, and the Bonds shall be sold to the Underwriter upon the terms, conditions, and provisions as set forth in the Bond Purchase Agreement.

**Section 34. Approval of Official Statement.** The Council hereby approves the Preliminary Official Statement, in the form presented at this meeting. The Council hereby authorizes and directs the Finance Director to approve on behalf of the City a final Official Statement containing any updated information regarding items described in the Preliminary Official Statement which become known to the City prior to the date of delivery of the Bonds. Copies of said Preliminary Official Statement and final Official Statement are hereby authorized to be distributed by the Underwriter to all interested persons in connection with the sale of the Bonds. The Preliminary Official Statement is hereby deemed to be final as of its date within the meaning of Rule 15c2-12(b)(I) of the U.S. Securities and Exchange Commission. The execution of a final Official Statement by an officer of the City shall be conclusively deemed to evidence the approval of the form and contents thereof by the City.

**Section 35. No Recourse against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal or interest on the Bonds. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

**Section 36. Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the City in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Bond Ordinance, shall be commenced more than thirty days after the authorization of the Bonds.

**Section 37. Pecuniary Interest.** The Mayor is an employee of the Underwriter. The Mayor has disclosed this and abstained from voting on this Bond Ordinance. Pursuant to Section 5.12(c) of the Charter, the Council determines that the best interests of the City are served by entering into the Bond Purchase Agreement and that obtaining comparative prices is not feasible in this case.

**Section 38. Bond Ordinance Irrepealable.** After any of the Bonds have been issued, this Bond Ordinance shall constitute an irrevocable contract between the City and the Owners, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged as herein provided.

**Section 39. Severability.** If any section, paragraph, clause, or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Bond Ordinance, the intent being that the same are severable.

**Section 40. Repealer.** All orders, ordinances, resolutions, bylaws, and regulations of the City, or parts thereof, inconsistent with this Bond Ordinance are hereby repealed to the extent only of such inconsistency.

**Section 41. Holidays.** If the date for making any payment or the last date for performing any act or exercising any right, as provided in this Bond Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made, act performed or right

exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Bond Ordinance, and no interest shall accrue for the period after such nominal date.

**Section 42. Declaration of Emergency.** In order to complete the issuance and sale of the Bonds while favorable market conditions exist to effect the Project, it is hereby declared that an emergency exists and that this Bond Ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This Bond Ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

**Section 43. Effective Date, Recording and Authentication.** This Bond Ordinance shall be in full force and effect immediately upon enactment following final passage. This Bond Ordinance shall be recorded in the City Book of Ordinances kept for that purpose, and shall be authenticated by the signatures of the Mayor Pro Tem and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE on November 12, 2007.

( S E A L )

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Mayor Pro Tem

ATTESTED:

---

City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney

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

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

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council (the "Council") of the City at a regular meeting of the Council held at the City Hall on November 12, 2007.

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

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

Name	"Yes"	"No"	Absent	Abstain
Chris Dittman				
Mark Kaiser				
Tim Kauffman				
Mary Lindsey				
Scott Major				
Nancy McNally				
JoAnn Price				

4. That notice of the meeting of November 12, 2007, in the form, attached hereto as Exhibit A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

5. That the ordinance was published in full after adoption in Westminster Window, a newspaper of general circulation within the City on \_\_\_\_\_, 2007. The affidavit of publication is attached hereto as Exhibit B.

N WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2007.

(SEAL)

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

EXHIBIT A

(Attach Notice of November 12, 2007 Meeting )

EXHIBIT B

(Attach Affidavit of Publication)

§ \_\_\_\_\_  
**CITY OF WESTMINSTER, COLORADO**  
**SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS**  
**(POST PROJECT)**  
**SERIES 2007D**

**BOND PURCHASE AGREEMENT**

City Council  
City of Westminster  
Westminster, Colorado

Ladies and Gentlemen:

1. Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) hereby offers to enter into this Bond Purchase Agreement (this “Agreement”) with City of Westminster, Colorado (the “City”). This offer is made subject to the City’s execution of this Agreement and delivery of it to the Underwriter on the Date of this Agreement. Upon the City’s acceptance of this offer, this Agreement shall be binding upon the Underwriter and the City, subject to the further provisions hereof. Capitalized terms not otherwise defined herein shall have the meanings set forth for such terms in paragraph 10 below or in the Ordinance of the City finally adopted on November 12, 2007, authorizing the issuance of the Bonds (the “Bond Ordinance”).

2. Subject to the further provisions hereof, the Underwriter agrees to purchase from the City, and the City agrees to sell and deliver to the Underwriter, all of the City of Westminster, Colorado, Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D (the “Bonds”), at the Purchase Price. The Bonds will mature, bear interest and be sold at the prices indicated in Exhibit A hereto.

3. The City shall deliver the duly issued and executed Bonds to The Depository Trust Company in New York, New York, prior to, and the Underwriter shall deliver the Purchase Price to the City in federal funds by, 9:00 a.m., Denver Time, on the Closing Date, or at such other place and time as shall be mutually agreed upon by the City and the Underwriter. (Such deliveries are referred to as the “Closing.”) The documents to support the Closing will be held and may be examined at the offices of Sherman & Howard LLC in Denver, Colorado at the same time on the Closing Date.

4. The City shall cooperate with, and shall take all actions reasonably requested by, the Underwriter to facilitate the Underwriter’s offer and sale of the Bonds to third parties, including but not limited to (i) the preparation of the Preliminary Official Statement relating to the Bonds dated November \_\_, 2007, and any supplements or amendments thereto that the Underwriter reasonably determines are necessary (the “Preliminary Official Statement”) and the final Official Statement relating to the Bonds to be dated prior to the date of the Closing and any supplements or amendments thereto that the Underwriter reasonably determines are necessary (the “Official Statement”) and (ii) all actions necessary under the securities or “blue sky” laws of the jurisdictions specified by the Underwriter to enable it to offer and sell the Bonds in or to residents of such jurisdictions. In addition, in order to facilitate compliance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (“Rule 15c2-12”), the City (A) has certified, and hereby affirms its certification, that the Preliminary Official Statement is “final” as of its date as required by Rule 15c2-12, (B) hereby authorizes and ratifies the distribution of the Preliminary Official Statement to any potential customers (as defined in Rule 15c2-12) until the Official Statement is available, (C) hereby agrees to make available to the Underwriter, within seven business days of the Date of this Agreement, as many copies of the Official Statement as the Underwriter deems sufficient for purposes of complying with Rule 15c2-12, (D) hereby authorizes and approves the distribution and use of the Official Statement in connection with the offering and sale of the Bonds and (E) hereby agrees to enter into a written agreement or contract, constituting an undertaking (the “Continuing Disclosure Undertaking”) to provide ongoing disclosure about the City, for the benefit

of the owners of the Bonds on or before the date of delivery of the Bonds as required by Rule 15c2-12, which Undertaking shall be in the form attached as Appendix B to the Preliminary Official Statement, with such changes as may be agreed to in writing by the Underwriter.

5. The Underwriter's obligation to purchase the Bonds shall be subject to the Underwriter's receipt of each of the following in form and substance satisfactory to the Underwriter:

- (a) Certified copies of the Bond Ordinance;
- (b) An executed copy of the Escrow Agreement and the Continuing Disclosure Undertaking;
- (c) The unqualified approving opinion or opinions of Sherman & Howard LLC, Bond Counsel and a letter from said firm as to their participation in the preparation of, and as to certain material set forth in, the Official Statement, and regarding the legal defeasance of the Refunded Bonds;
- (d) A letter from Kutak Rock LLP as to their participation in the preparation of, and as to the material set forth in, the Official Statement;
- (e) Certificates of the City as to (i) the facts necessary to support the opinions referred to in clauses (c) and (d) above, (ii) the accuracy of the Preliminary Official Statement and the Official Statement, (iii) litigation affecting the City and (iv) such other matters as are customary with respect to the issuance of obligations such as the Bonds or as the Underwriter may reasonably request;
- (f) Evidence that there has been issued and duly delivered a standard form of financial guaranty insurance policy issued by Ambac Assurance Corporation insuring the payment of the principal of and interest on the Bonds when due;
- (g) Evidence that the Bonds have been rated "AAA" by Standard & Poor's ("S&P") and by Fitch Ratings ("Fitch") and evidence that the Bonds have underlying ratings of "\_\_\_" by S&P and "\_\_\_" by Fitch; and
- (h) Such additional agreements, documents, instruments, opinions and certificates as the Underwriter may reasonably request.

6. The Underwriter's obligation to purchase the Bonds also shall be subject to the Underwriter's right, in its absolute discretion, to elect to terminate this Agreement by written notice to the City if at any time after the Date of this Agreement and prior to the Closing:

- (a) Any event shall have occurred, or information becomes known, which, in the Underwriter's opinion, makes untrue, in any material respect, any statement or information contained in the Official Statement or the Preliminary Official Statement (except as modified by the Official Statement), or has the effect that the Official Statement or the Preliminary Official Statement (except as modified by the Official Statement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;
- (b) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange;
- (c) The United States shall have become engaged in hostilities, whether or not a war shall have been declared, or there shall have occurred an escalation of any hostilities involving the armed forces of any country, or any other national emergency or other national calamity relating to the effective operation of government or of the financial community shall have occurred, which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds;
- (d) There shall have occurred a general suspension or material limitation of trading on The New York Stock Exchange or any other national securities exchange as the result of an event affecting the national economy, or minimum or maximum prices for trading shall have been



established on any exchange and be in force, or maximum ranges for prices for securities shall be in force on any such exchange;

(e) The New York Stock Exchange, any other national securities exchange or any governmental authority shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force or being enforced, or increase materially those now in force or being enforced, with respect to the extension of credit by, or charges to the net capital requirement of, or financial responsibility requirements of, the Underwriter;

(f) A general banking moratorium shall have been established by federal, New York or Colorado authorities;

(g) Any rating of any obligations of the City shall have been downgraded or withdrawn by any rating service, which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds;

(h) Legislation is adopted by either house of the United States Congress, or favorably reported for passage to either house of the United States Congress by any committee of such house to which such legislation has been referred for consideration, legislation is actively considered for enactment by the United States Congress, legislation is recommended to the United States Congress for passage by the President of the United States, a decision by a court of the United States or the United States Tax Court is rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency is made, with respect to federal taxation upon revenues or other income of the City or upon interest payable on obligations of the general character of the Bonds or which would change directly or indirectly the federal income tax consequences of interest on obligations of the general character of the Bonds in the hands of the owners thereof, which, in the Underwriter's opinion, materially adversely affects the market price of the Bonds; or

(i) Any change shall have occurred which, in the reasonable judgment of the Underwriter, makes unreasonable or unreliable any of the financing assumptions upon which payment of debt service on the Bonds is predicated.

7. The City shall pay or cause to be paid, from the proceeds from the sale of the Bonds or other funds available to it, the expenses incident to the issuance and sale of the Bonds (the "Costs of Issuance"), including but not limited to the Underwriter's Discount and expenses of the Underwriter otherwise agreed to be paid by the City, the fees and disbursements of Sherman & Howard LLC, Kutak Rock LLP and any other attorneys, accountants or other experts or consultants retained in connection with the issuance and sale of the Bonds (including but not limited to the City's independent accountants), fees and charges of any paying agent or other agent retained in connection with the payment of, or the administration of the payment of, the Bonds, fees to register the Bonds with The Depository Trust Company of New York, CUSIP fees, clearing and delivery fees, the costs of printing and distributing the Preliminary Official Statement and the Official Statement, the premium associated with the issuance of the financial guaranty insurance policy by Ambac Assurance Corporation, and any costs incurred in connection with the rating of the Bonds.

8. This Agreement may be executed in several counterparts, which together shall constitute one and the same instrument. Photostatic copies of executed counterparts hereof or copies of executed counterparts hereof transmitted by facsimile transmission shall be binding to the same effect as originally signed counterparts.

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

10. For purposes of this Agreement, the following terms have the meanings specified:

Date of this Agreement: November \_\_\_\_, 2007  
Aggregate Principal Amount: \$\_\_\_\_\_  
Original Issue Premium: \$\_\_\_\_\_  
Underwriter's Discount: (\$\_\_\_\_\_)  
Purchase Price (Aggregate Principal Amount,  
Plus Original Issue Premium,  
Minus Underwriter's Discount): \$\_\_\_\_\_

Closing Date: December 11, 2007  
Stifel, Nicolaus & Company, Incorporated

By \_\_\_\_\_  
Authorized Officer

ACCEPTED:

[CITY SEAL]

City of Westminster

By \_\_\_\_\_  
Finance Director

Date of Signature: November \_\_\_\_, 2007

Time of Signature: \_\_\_\_\_ a.m. / p.m.

[Signature Page to Bond Purchase Agreement]

**EXHIBIT A**

**ATTACH SCHEDULE**

(Schedule indicating maturity dates, interest rates and prices for Bonds)

**CITY OF WESTMINSTER, COLORADO  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS (POST PROJECT)  
SERIES 2007D**

**REGISTRAR AND PAYING AGENT AGREEMENT**

THIS AGREEMENT, dated as of December 11, 2007, is by and between the City of Westminster, Colorado (the "City") and American National Bank, in Denver, Colorado (the "Bank").

WITNESSETH:

WHEREAS, by Ordinance of the City Council of the City duly adopted on November 12, 2007 (the "Bond Ordinance"), the City has authorized the issuance of its Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D in the aggregate principal amount of \$20,000,000 (the "Bonds"); and

WHEREAS, it is mutually desirable to the City and the Bank that the Bank, through its Corporate Trust Department located in Denver, Colorado, act as Registrar and Paying Agent (as such terms are defined and used in the Bond Ordinance) for the Bonds; and

WHEREAS, it is mutually desirable that this agreement (the "Agreement") be entered into between the City and the Bank to provide for certain aspects of such Registrar and Paying Agent services.

NOW, THEREFORE, the City and the Bank, in consideration of the mutual covenants herein contained, agree as follows:

1. The Bank hereby accepts all duties and responsibilities of the Paying Agent as provided in the Bond Ordinance. The Bank shall cause the Bonds to be honored in accordance with their terms, provided that the City causes to be made available to the Bank all funds necessary in order to so honor the Bonds. Nothing in this Agreement shall require the Bank to pay or disburse any funds in excess of the amount then on deposit in the "2007D Principal and Interest Payment Account" provided for in Section 2 of this Agreement. Nothing in this Agreement shall require the City to pay or disburse any funds for payment of the principal of the Bonds or interest or redemption premium, if any, thereon except at the times and in the manner provided in the Bond Ordinance. In addition, the Bank hereby accepts all duties and responsibilities of the Registrar as provided in the Bond Ordinance, including without limitation, the authentication, transfer, exchange and replacement of the Bonds.

2. Not less than (a) one business day prior to each payment date, if funds are delivered by wire transfer, or (b) three business days prior to each payment date if funds are delivered by another method of payment, funds for the payment of the Bonds and interest thereon are to be deposited by the City with the Bank in an account designated "2007D Principal and Interest Payment Account." The funds so deposited shall be held and applied by the Bank through its Corporate Trust Department solely for the payment of principal of, interest on and redemption premium, if any, on the Bonds. From such funds, the Bank agrees to pay at the times and in the manner provided in the Bond Ordinance, the principal of, interest on and redemption premium, if any, on the Bonds.

3. The City shall pay to the Bank fees in accordance with its then existing fee schedule. Attached to this Agreement is the Bank's current fee schedule. No new fee schedule shall become effective until 30 days after the Bank has given the City notice thereof.

4. Unless waived by the Bank, the City agrees to provide the Bank with not less than 60 days notice of any prior redemption of the Bonds.

5. Any moneys held by the Bank for the owners of the Bonds remaining unclaimed for one year after principal of, interest and redemption premium, if any, on the respective Bonds with respect to which such moneys have been set aside has become due and payable shall, without further request by the City, be paid to the City.

6. The Bank agrees to annually notify the City, in writing, of the City's obligation to file its Annual Report (as such term is defined in the Continuing Disclosure Certificate dated December 11, 2007, relating to the issuance of the Bonds) at least 30 but not more than 60 days prior to the time when the Annual Report is required to be filed pursuant to the terms of the Continuing Disclosure Certificate.

7. At least 30 but not more than 60 days prior to December 11, 2012, December 11, 2017, December 11, 2022, December 11, 2027, and on the date on which the last Bond is discharged, the Bank will send written notice to the City stating that the City must: (i) compute the amount of rebatable arbitrage, if any, which is due the federal government pursuant to Sections 103 and 148(f) of the Internal Revenue Code of 1986, as amended, and (ii) pay such amount no later than sixty (60) days from December 11, 2012, December 11, 2017, December 11, 2022, December 11, 2027, and on the date on which the last Bond is discharged.

8. The Agreement may be terminated as provided in the Bond Ordinance.

9. In the event of any conflict between the provisions of this Agreement and the provisions of the Bond Ordinance, the provisions of the Bond Ordinance shall be controlling.

10. The rights of the City under this Agreement shall be deemed to be a contract made under and shall be construed in accordance with and governed by the laws of the State of Colorado. Jurisdiction and venue for any disputes related to this Agreement shall be in United States District Court for the District of Colorado.

11. The Bank qualifies as a "contractor" pursuant to §8-17.5-101(2), C.R.S. and the Bank hereby certifies that, as of the date hereof, the Bank does not knowingly employ or contract with an illegal alien, and the Bank has participated or attempted to participate in the "Basic Pilot Program" (as defined in §8-17.5-101(1), C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States. In compliance with §8-17.5-102(2), C.R.S., it is hereby agreed:

(a) The Bank shall not knowingly employ or contract with an illegal alien to perform work described in this Agreement (the "Banking Services") or enter into a contract with a subcontractor that fails to certify to the Bank that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the Banking Services.

(b) The Bank has confirmed or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the Basic Pilot Program or shall apply to participate in the Basic Pilot Program every three months until the Bank is accepted or until termination of this Agreement, whichever is earlier.

(c) The Bank shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing the Banking Services.

(d) If the Bank obtains actual knowledge that a subcontractor performing Banking Services knowingly employs or contracts with an illegal alien, the Bank shall be required to: (i) notify the subcontractor and the City within three days that the Bank has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (i) the subcontractor does not stop employing or contracting with the illegal alien; except that the Bank shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(e) The Bank shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such department is undertaking pursuant to §8-17.5-102(5) C.R.S.

IN WITNESS WHEREOF, the Bank and the City have caused this Agreement to be duly executed and delivered as of the day and year first above written.

CITY OF WESTMINSTER, COLORADO

(SEAL)

By: \_\_\_\_\_  
Mayor Pro Tem

ATTESTED:

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

AMERICAN NATIONAL BANK

By: \_\_\_\_\_  
Senior Vice President

EXHIBIT A

(Attach Fee Schedule)

**CITY OF WESTMINSTER, COLORADO  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS (POST PROJECT)  
SERIES 2007D**

**CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the City of Westminster, Colorado (the “City”) in connection with the issuance of the City of Westminster, Colorado, Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D dated as of December 11, 2007, in the aggregate principal amount of \$20,000,000 (the “2007D Bonds”). The 2007D Bonds are being issued pursuant to an ordinance adopted by the City Council of the City on November 12, 2007 (the “Ordinance”). The City covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the 2007D Bonds and in order to assist the Participating Underwriter in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission (the “SEC”).

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance or parenthetically defined herein, which apply to any capitalized terms used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“Dissemination Agent” shall mean, initially, the City, or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“Material Events” shall mean any of the events listed in Section 5 of this Disclosure Certificate.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“National Repositories” shall mean all of the Nationally Recognized Municipal Securities Information Repositories for purposes of the Rule, as recognized from time to time by the SEC and as currently listed on the Internet at the website [www.sec.gov/info/municipal/nrmsir.htm](http://www.sec.gov/info/municipal/nrmsir.htm).

“Participating Underwriter” shall mean the original underwriter of the 2007D Bonds required to comply with the Rule in connection with an offering of the 2007D Bonds.

“Repositories” shall mean the National Repositories and any State Repository.

“Repository Agent” shall mean any filing system approved by the SEC for transmission of filings under the Rule for submission to the Repositories, including without limitation the central post office known as DisclosureUSA, currently managed by the Municipal Advisory Council of Texas and located on the Internet at the website [www.DisclosureUSA.org](http://www.DisclosureUSA.org).

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State Repository” shall mean any public or private repository or entity designated by the State of Colorado as a state information depository for the purpose of the Rule. As of the date of this Disclosure Certificate, there is no State Repository.

SECTION 3. Provision of Annual Reports.

a. The City shall, or shall cause the Dissemination Agent to, not later than nine (9) months following the end of the City’s fiscal year of each year, commencing nine (9) months following the end of the City’s fiscal year ending December 31, 2007, provide to (i) the Repositories or (ii) a Repository Agent, an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than five (5) business days prior to said date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in

Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report.

b. If the City is unable to provide to the Repositories or the Repository Agent an Annual Report by the date required in subsection (a), the City shall send or cause to be sent a notice in substantially the form attached as Exhibit "A" to any of the following: (i) MSRB and the State Repository, if any; or (ii) the National Repositories and the State Repository, if any; or (iii) a Repository Agent.

The Dissemination Agent shall:

- (1) determine each year prior to the date for providing the Annual Report the name and address of the Repositories and any Repository Agent;
- (2) if the Dissemination Agent is other than the City, send written notice to the City at least 45 days prior to the date the Annual Report is due stating that the Annual Report is due as provided in Section 3(a) hereof; and
- (3) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided and listing all the entities to which it was provided.

SECTION 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

a. A copy of its annual financial statements prepared in accordance with generally accepted accounting principles audited by a firm of certified public accountants. If audited annual financial statements are not available by the time specified in Section 3(a) above, unaudited financial statements will be provided as part of the Annual Report and audited financial statements will be provided when and if available.

b. An update of the type of information identified in Exhibit "B" hereto, which is contained in the tables in the Official Statement with respect to the 2007D Bonds.

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues of the City or related public entities, which have been submitted to the Repositories or the SEC. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The City shall clearly identify each such document incorporated by reference.

SECTION 5. Reporting of Material Events. The City shall provide or cause to be provided, in a timely manner, notice of any of the following events with respect to the 2007D Bonds, if such event is material to any of the following: (i) the MSRB and the State Repository, if any; or (ii) the National Repositories and the State Repository, if any; or (iii) a Repository Agent:

- a. Principal and interest payment delinquencies;
- b. Non-payment related defaults;
- c. Unscheduled draws on debt service reserves reflecting financial difficulties;
- d. Unscheduled draws on credit enhancements reflecting financial difficulties;
- e. Substitution of credit or liquidity providers or their failure to perform;
- f. Adverse tax opinions or events affecting the tax-exempt status of the 2007D Bonds;
- g. Modifications to rights of bondholders;
- h. Bond calls;
- i. Defeasances;
- j. Release, substitution or sale of property securing repayment of the 2007D Bonds; or

k. Rating changes.

SECTION 6. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the earliest of: (i) the date of legal defeasance, prior redemption or payment in full of all of the 2007D Bonds; (ii) the date that the City shall no longer constitute an "obligated person" within the meaning of the Rule; or (iii) the date on which those portions of the Rule which require this written undertaking are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the 2007D Bonds.

SECTION 7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist the City in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate and may waive any provision of this Disclosure Certificate, without the consent of the holders and beneficial owners of the 2007D Bonds, if such amendment or waiver does not, in and of itself, cause the undertakings herein (or action of any Participating Underwriter in reliance on the undertakings herein) to violate the Rule, but taking into account any subsequent change in or official interpretation of the Rule. The City will provide notice of such amendment or waiver to the Repositories or Repository Agent.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Material Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

SECTION 10. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any holder or beneficial owner of the 2007D Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and the holders and beneficial owners from time to time of the 2007D Bonds, and shall create no rights in any other person or entity.

DATE: December 11, 2007.

CITY OF WESTMINSTER, COLORADO

By: \_\_\_\_\_  
Mayor Pro Tem



**EXHIBIT "A"**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: City of Westminster, Colorado

Name of Bond Issue: City of Westminster, Colorado, Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D, dated as of December 11, 2007, in the aggregate principal amount of \$20,000,000.

Date of Issuance: December 11, 2007.

CUSIP No. 960680\_\_

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Bonds as required by Section 19(g) of the Ordinance, adopted on November 12, 2007, and the Continuing Disclosure Certificate executed on December 11, 2007, by the City. The City anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_, \_\_\_\_\_

CITY OF WESTMINSTER, COLORADO

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

**EXHIBIT "B"**

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- X General Fund Budget Summary and Comparison
- XI Outstanding Revenue Obligations
- XII Outstanding Leases and Long-Term Contracts

NEW ISSUE  
BOOK-ENTRY ONLY

RATINGS: Fitch “AAA”  
Standard & Poor’s “AAA”  
INSURANCE: Ambac Assurance Corporation  
UNDERLYING RATINGS: Fitch “\_\_”  
Standard & Poor’s “\_\_”  
(See “MISCELLANEOUS—Ratings”)

*In the opinion of Sherman & Howard L.L.C., Bond Counsel, assuming continuous compliance with certain covenants described herein, interest on the Bonds is excluded from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds (the “Tax Code”), interest on the Bonds is excluded from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except that such interest is required to be included in calculating the “adjusted current earnings” adjustment applicable to corporations for purposes of computing the alternative minimum taxable income of corporations, and interest on the Bonds is excluded from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect on the date of delivery of the Bonds as described herein. See “TAX MATTERS.”*

KUTAK ROCK LLP  
DRAFT \_\_/\_\_/07

\$20,000,000\*  
CITY OF WESTMINSTER, COLORADO  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS (POST PROJECT)  
SERIES 2007D

Dated: Date of Delivery

Due: December 1 as shown below

The Bonds are issued in fully registered form in denominations of \$5,000 or integral multiples thereof. Interest on the Bonds, at the rates set forth below, is payable semi-annually on June 1 and December 1 each year, commencing on June 1, 2008. Capitalized terms used on this cover page are defined in the Introduction to this Official Statement. DTC will act as securities depository for the Bonds and payments of principal of and interest on the Bonds will be made by the Paying Agent, initially American National Bank, Denver, Colorado, directly to DTC, which will remit such payments to Participants for subsequent distribution to Beneficial Owners of the Bonds.

MATURITY SCHEDULE  
(CUSIP<sup>1c</sup> 960680)

Maturity Date (December 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP <sup>1</sup>	Maturity Date (December 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP <sup>1</sup>
2017	\$ 945,000				2025	\$1,370,000			
2018	990,000				2026	1,435,000			
2019	1,030,000				2027	1,505,000			
2020	1,080,000				2028	1,575,000			
2021	1,125,000				2029	1,655,000			
2022	1,180,000				2030	1,740,000			
2023	1,240,000				2031	1,825,000			
2024	1,305,000								

Payment of the principal of and interest on the Bonds when due will be insured by a financial guaranty insurance policy to be issued by Ambac Assurance Corporation simultaneously with the delivery of the Bonds.  
[Insurer LOGO]

The net proceeds from the sale of the Bonds will be used to refund certain of the City’s outstanding Series 1997B Bonds, and to pay costs of issuance on the Bonds.

The Bonds are revenue obligations of the City payable solely from and secured by an irrevocable and first lien, but not necessarily an exclusive such lien, on the net revenues derived from the City’s 0.25% Open Space Tax which is reserved for open space acquisition, parks, and recreation enhancements. The Bonds and any payments under the Bond Insurance Policy shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter, or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

The Bonds are subject to redemption prior to maturity as described herein.

**This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision and should consider carefully the information contained in the section entitled “RISK FACTORS.”**

The Bonds are offered when, as, and if issued, and accepted by the Underwriter named below, subject to the approval of legality and certain other matters by Sherman & Howard L.L.C., Denver, Colorado, as Bond Counsel. Certain matters will be passed upon by Kutak Rock LLP, Denver, Colorado, as Special Counsel to the City for purposes of assisting the City with the preparation of this Official Statement. James Capital Advisors, Inc., Denver, Colorado, is acting as financial advisor to the City with respect to this financing. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about December 11, 2007.

STIFEL, NICOLAUS  
This Official Statement is dated December \_\_, 2007.

\* Preliminary; subject to change.

<sup>1</sup> The City takes no responsibility for the accuracy of CUSIP numbers, which are included solely for the convenience of owners of the Bonds.

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This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**City of Westminster  
City Council**

Nancy McNally, Mayor  
Tim Kauffman, Mayor Pro Tem  
Chris Dittman  
Mark L. Kaiser  
Mary Lindsey  
Scott Major  
Jo Ann Price

**City Officials**

J. Brent McFall, City Manager  
Stephen P. Smithers, Assistant City Manager  
Tammy A. Hitchens, CPA, Finance Director  
Robert C. Smith, Treasury Manager  
Martin R. McCullough, Esq., City Attorney  
Linda Yeager, City Clerk

**Paying Agent**

American National Bank  
Denver, Colorado

**Underwriter**

Stifel, Nicolaus & Company, Incorporated  
Denver, Colorado

**City Financial Advisor**

James Capital Advisors, Inc.  
Denver, Colorado

**Bond Counsel**

Sherman & Howard L.L.C.  
Denver, Colorado

**Special Counsel**

Kutak Rock LLP  
Denver, Colorado

No dealer, salesman, or other person has been authorized to give any information or to make any representation, other than the information contained in this Official Statement, in connection with the offering of the Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the City or the Underwriter. The information in this Official Statement is subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the City or the Underwriter since the date hereof. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, their responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

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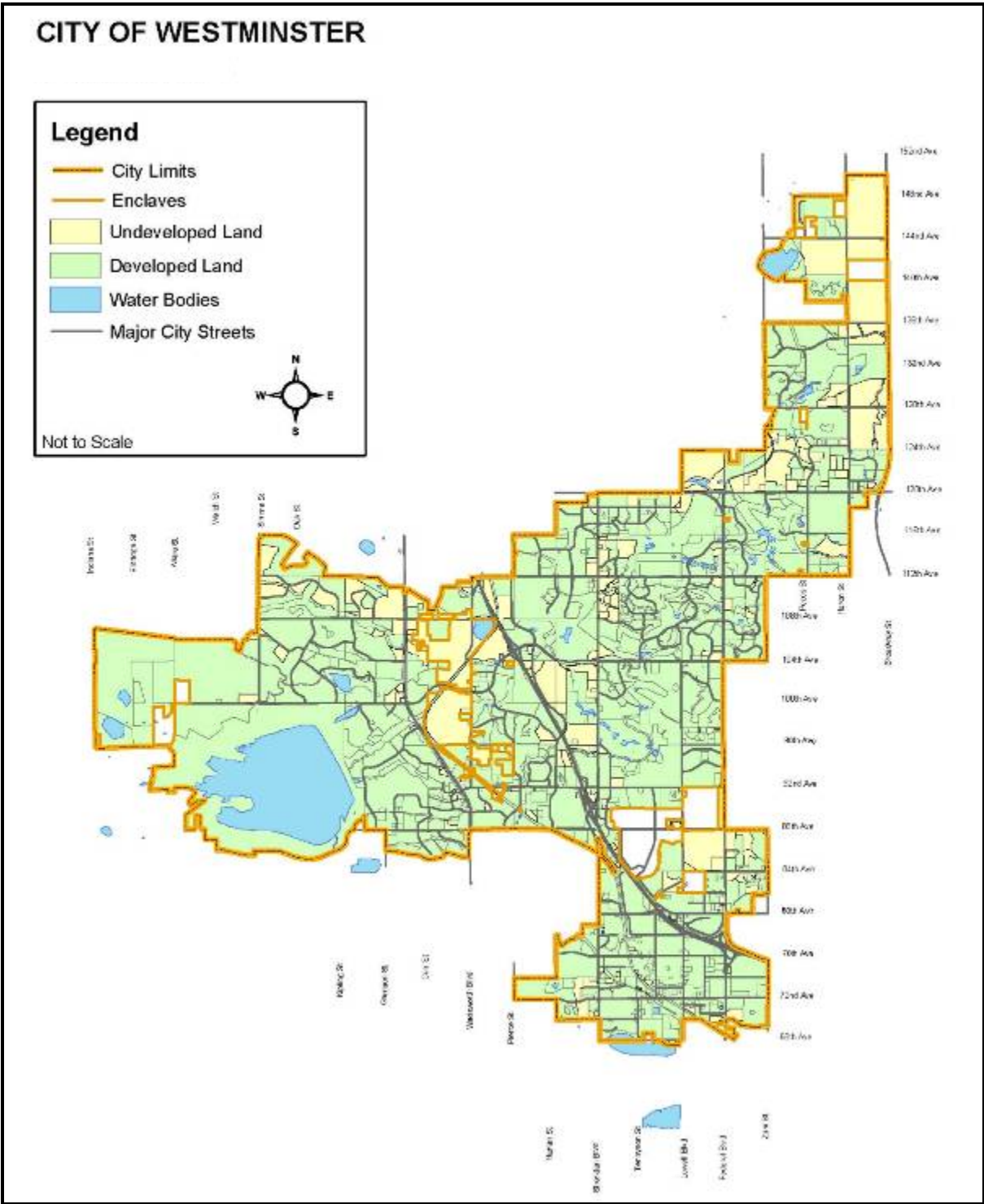
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Neither the Securities and Exchange Commission nor any securities regulatory authority of any state has approved or disapproved the Bonds or this Official Statement. Any representation to the contrary is unlawful.

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## CITY MAP



**INTRODUCTION**

This Official Statement is furnished to prospective purchasers of \$20,000,000\* Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D (the “Bonds”), issued by the City of Westminster, Colorado (the “City”). The offering of the Bonds is made only by way of this Official Statement, which supersedes any other information or materials used in connection with the offer or sale of the Bonds. This Official Statement speaks only as of its date, and the information contained herein is subject to change.

The following introductory material is only a brief description of, and is qualified by, the more complete information contained throughout this Official Statement. A full review should be made of the entire Official Statement and the documents summarized or described herein.

**Issuer** ..... The City of Westminster, Colorado, is a home rule city located approximately two miles from the northwestern boundary of the City and County of Denver in Adams and Jefferson Counties. The City encompasses approximately 33 square miles and, according to the Colorado Department of Regulatory Agencies, the City has a current estimated population of 107,363. See “THE CITY” and the preceding “CITY MAP.”

**Security** ..... The Bonds are special revenue obligations of the City payable solely from the revenues derived from the City’s 0.25% sales and use tax (the “Open Space Tax”) after deducting all costs of administering and collecting the Open Space Tax (the “Pledged Revenue”). The City’s Open Space Tax, which is deposited to the City’s Open Space Fund, expires on January 1, 2033, which extension was approved by the voters at the November 7, 2006 election. The Pledged Revenue does not include the City’s 3.0% sales and use tax, the 0.6% sales and use tax which is reserved for the City’s public safety related expenditures (the “Public Safety Tax”), or future increases in the rate of the sales and use tax, if any, or any other excise taxes which may now or hereafter be imposed by the City. The Public Safety Tax portion of the sales and use tax rate (0.6%) and the General Sales and Use Tax portion of the sales and use tax rate (3.0%) do not have sunset provisions. In the ordinance of the City providing for the issuance of the Bonds (the “Bond Ordinance”), the City has covenanted that it will not amend or repeal the ordinance imposing the sales and use tax in any way which would materially adversely affect the amount of Pledged Revenue which would be otherwise available for payment of the Bonds. The 3.0% portion of the sales and use tax is referred to herein as the General Sales and Use Tax. Chapters 1 and 2 of Title IV of the City’s Municipal Code (“Title IV”) govern the imposition, collection, distribution and enforcement of the sales and use tax. See “THE BONDS—Security for the Bonds” and “THE SALES AND USE TAX.”

The Bonds constitute an irrevocable and first lien upon the Pledged Revenue to the extent set forth hereafter, but not necessarily an exclusive such lien, and the Pledged Revenue is pledged to the payment of the

---

\* Preliminary; subject to change.

Bonds. The first lien of the Bonds on the Pledged Revenue is on a parity with the City’s Special Purpose Sales and Use Tax Revenue Bonds, Series 1997B (the “Series 1997B Bonds”), the City’s Special Purpose Sales and Use Tax Revenue Bonds, Series 1999 (the “Series 1999 Bonds”), and the City’s Special Purpose Sales and Use Tax Revenue Refunding Bonds, Series 2007B (the “Series 2007B Bonds”) (collectively the Series 1997B Bonds, the Series 1999 Bonds and the Series 2007B Bonds are referred to herein as the “Outstanding Parity Bonds”). The Outstanding Parity Bonds are currently outstanding in the aggregate principal amount of \$15,135,000.

The Bonds are issued in compliance and conformity with the parity lien bond requirements established in the ordinances authorizing the Outstanding Parity Bonds. The Bond Ordinance provides conditions for the issuance of one or more series of additional bonds, notes, interim securities or other obligations (a) having a lien on the Pledged Revenue which is on a parity with the lien of the Bonds (the “Parity Lien Bonds”) or (b) having a lien on the Pledged Revenue which is subordinate or junior to the lien of the Bonds (the “Subordinate Lien Bonds”). See “THE BONDS—Security for the Bonds” and “—Debt Service Coverage.”

No reserve fund will be funded for the Bonds upon the date of their issuance; however, the Bond Ordinance sets forth a test which requires the funding of a reserve fund for the Bonds, the Outstanding Parity Bonds, and Parity Lien Bonds, if any, if the debt service coverage requirement of such test is not met. See “THE BONDS—Security for the Bonds.”

**Bond Insurance** ..... Ambac Assurance Corporation (“Ambac Assurance” or the “Bond Insurer”) has committed to issue, on the date of issuance of the Bonds, a financial guaranty insurance policy (the “Financial Guaranty Insurance Policy”) insuring the payment of the principal of and interest on the Bonds when due. See “BOND INSURANCE.”

**Use of Bond Proceeds** ..... The net proceeds from the sale of the Bonds will be used to finance a portion of the acquisition and development of open space, parks, recreation and trails by the City and to pay costs of issuance on the Bonds. See “THE BONDS—Application of Bond Proceeds.”

**Payment Provisions**..... The Bonds mature and bear interest at the rates (computed on the basis of a 360-day year of twelve 30-day months) as set forth on the cover page hereof. Interest on the Bonds is payable semiannually on June 1 and December 1 each year, commencing on June 1, 2008. Payments to Beneficial Owners will be made as described in “APPENDIX E—Book-Entry-Only System.”

**Book-Entry-Only Registration**..... The Bonds will be issued in fully registered form and will be registered initially in the name of “Cede & Co.” as nominee for The Depository



Trust Company, New York, New York (“DTC”), a securities depository. Beneficial ownership interests in the Bonds may be acquired in principal denominations of \$5,000 or integral multiples thereof through brokers and dealers who are, or who act through, participants in the DTC system (the “Participants”). Such beneficial ownership interests will be recorded on the records of the Participants. Persons for which Participants acquire interests in the Bonds (the “Beneficial Owners”) will not receive certificates evidencing their interests in the Bonds so long as DTC or a successor securities depository acts as the securities depository with respect to the Bonds. See “APPENDIX E—Book-Entry-Only System” for a discussion of the operating procedures of the DTC system with respect to payments, registration, transfers, notices, and other matters. Except as otherwise provided in this Official Statement, the term “Owner” shall refer to the registered owner of any Bond, as shown by the registration books maintained by the Bond Registrar.

**Prior Redemption**..... The Bonds are subject to redemption prior to maturity as described herein. See “THE BONDS—Prior Redemption.”

**Registration and Denominations**..... The Bonds will be issued in denominations of \$5,000 or any integral multiple thereof.

**Tax Status** ..... In the opinion of Sherman & Howard L.L.C., Bond Counsel, assuming continuous compliance with certain covenants described herein, interest on the Bonds is excluded from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds (the “Tax Code”), interest on the Bonds is excluded from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except that such interest is required to be included in calculating the “adjusted current earnings” adjustment applicable to corporations for purposes of computing the alternative minimum taxable income of corporations, and interest on the Bonds is excluded from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect on the date of delivery of the Bonds as described herein. See “TAX MATTERS.”

**Undertaking to Provide Ongoing Disclosure**..... Pursuant to the requirements of Securities and Exchange Commission Rule 15c2-12 (17 CFR Part 240, § 240.15c2-12) (the “Rule”), the City has agreed for the benefit of the holders of the Bonds to provide certain financial information, other operating data and notices of material events after the Bonds are issued (the “Continuing Disclosure Certificate”). The form of the City’s Continuing Disclosure Certificate is attached as an appendix to this Official Statement. The City has not failed to comply with any prior undertaking under the Rule. A failure by the City to comply with the Continuing Disclosure Certificate will not constitute an event of default under the Bond Ordinance. Nevertheless, if such a failure occurs it must be reported in accordance with the Rule and must

be considered by any broker, dealer, or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market.

**Authority for**

**Issuance**..... The Bonds are issued in accordance with the Constitution of the State of Colorado; the City’s home rule charter (“Charter”); and all other laws of the State of Colorado thereunto enabling, and pursuant to the Bond Ordinance adopted by the Westminster City Council (the “Council”). At the November 7, 2006 election, City voters authorized the issuance of the Bonds to finance a portion of the acquisition and development of open space, parks, recreation and trails by the City.

**Delivery**

**Information**..... The Bonds are offered when, as, and if executed and delivered, and accepted by the Underwriter, subject to prior sale and the approving legal opinion of Bond Counsel. It is expected that the Bonds will be available for delivery on or about December 11, 2007, against payment therefor.

**Exchange and**

**Transfer** ..... While the Bonds remain in book-entry-only form, transfer of ownership by Beneficial Owners may be made as described under the caption “APPENDIX E—Book-Entry-Only System.” In the event that DTC ceases to act as securities depository for the Bonds, the Bond Ordinance provides for the transfer of Bonds by the Registrar pursuant to specified terms and provisions.

**Financial**

**Statements**..... Appended hereto are the audited general purpose financial statements of the City as of and for the year ended December 31, 2006, being the most recent audited financial statements available.

ALL OF THE SUMMARIES OF THE STATUTES, ORDINANCES, RESOLUTIONS, OPINIONS, CONTRACTS, AND AGREEMENTS DESCRIBED IN THIS OFFICIAL STATEMENT ARE SUBJECT TO THE ACTUAL PROVISIONS OF SUCH DOCUMENTS. The summaries do not purport to be complete statements of such provisions and reference is made to such documents, copies of which are either publicly available or available upon request and the payment of a reasonable copying, mailing, and handling charge from: City of Westminster Finance Department, 4800 W. 92nd Avenue, Westminster, Colorado 80031, telephone: 303.430.2400 extension 2043; or Stifel, Nicolaus & Company, Incorporated, 1125 Seventeenth Street, Suite 1600, Denver, Colorado 80202, telephone: 303.296.2300.

**THE BONDS**

**Prior Redemption**

*Optional Redemption.* The Bonds maturing on or before December 1, 20\_\_ are not subject to redemption prior to their respective maturity dates. The Bonds maturing on or after December 1, 20\_\_ are subject to redemption prior to maturity at the option of the District, in whole or in part, and if in part in such order of maturity as the District shall determine and by lot within any maturity in such manner as the Paying Agent shall determine, on December 1, 20\_\_ and on any date thereafter, at a redemption price

equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date.

**Redemption Procedures.** The portion of any Bond to be redeemed shall be in the principal amount of \$5,000, or any integral multiple thereof. In selecting Bonds for redemption, the Paying Agent shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of that Bond by \$5,000.

Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the District by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days nor less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with the Bond Resolution funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

**Application of Bond Proceeds**

**The Project.** Bond proceeds will be used to finance a portion of the acquisition and development of open space, parks, recreation and trails by the City.

**Application of Bond Proceeds.** The source and uses of the proceeds of the Bonds is as follows:

SOURCES

Bond proceeds.....	
Original issue premium.....	
City contribution .....	
Total.....	

USES

Deposit into Project Account .....	
Bond issuance costs, including bond insurance and underwriting discount <sup>1</sup> .....	
Total.....	

<sup>1</sup>See "Miscellaneous—Underwriting."

**Security for the Bonds**

**Special Revenue Obligations.** The Bonds are special revenue obligations of the City payable only out of the Bond Fund, into which the City covenants to deposit the Pledged Revenue in amounts sufficient to pay promptly, when due, the principal of, premium, if any, and interest on the Bonds. The Bonds constitute an irrevocable and first lien upon the Pledged Revenue to the extent set forth hereafter, but not necessarily an exclusive such lien, and the Pledged Revenue is pledged to the payment of the Bonds. Neither the Bond Insurer nor Owners may look to any general or other revenue of the City, including without limitation the proceeds of ad valorem taxes, for the payment of the principal of, premium, if any, and interest on the Bonds, or any payments due to the Bond Insurer under the Bond

Insurance Policy. The Bonds and any payments under the Bond Insurance Policy shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter, or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City. The Outstanding Parity Bonds, which will be outstanding on the date of issuance of the Bonds in the aggregate principal amount of \$15,135,000, have a lien on the Pledged Revenue which is on a parity with the lien of the Bonds.

***Creation of Funds.*** The Bond Ordinance creates and establishes the Bond Fund, which shall comprise offsetting revenue and expense accounts within the General Debt Service Fund of the City designated as the “2007D Special Purpose Sales and Use Tax Revenue Bonds.” Moneys in the Bond Fund shall be used solely for the purpose of paying the principal of, premium if any, and interest on the Bonds. The City shall credit to the Bond Fund from the Pledged Revenue, or other legally available moneys, substantially equal monthly installments of the total principal to become due and interest to accrue on the Bonds on the next principal payment date and interest payment date, respectively.

***Flow of Funds.*** The City has heretofore established the Sales and Use Tax Fund as a governmental fund of the City. The Bond Ordinance provides that the City shall credit to the Sales and Use Tax Fund all revenue derived from the City’s 3.85% Sales and Use Tax immediately upon receipt. After transferring 6.49 percent of such revenue (representing the .25% Open Space Tax) to the City’s Open Space Fund, the City must apply the Pledged Revenue in the following order of priority:

First, to the credit of the Bond Fund the amounts described above in “Creation of Funds”, and to the credit of any other fund or account hereafter established for the payment of the principal of, premium, if any, and interest on Parity Lien Bonds, in the amount required by the ordinance or other enactment authorizing issuance of the Parity Lien Bonds.

Second, to the credit of any sinking fund, reserve fund or similar fund or account established in connection with the Bonds or any Parity Lien Bonds, in the amounts required by the Bond Ordinance or the ordinance or other enactment authorizing issuance of the Parity Lien Bonds.

Third, to the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on Subordinate Lien Bonds, including any sinking fund, reserve fund or similar fund or account established therefore, in the amounts required by the ordinance or other enactment authorizing issuance of the Subordinate Lien Bonds.

Fourth, to the credit of any other fund as may be designated by the City, to be used for any lawful purpose, any Pledged Revenue remaining after the payments and accumulations set forth in First through Third above.

The lien of the Bonds on the Pledged Revenue attaches immediately upon receipt of any Sales and Use Tax proceeds, remains in effect so long as such Pledged Revenue is credited to the Open Space Fund or the Bond Fund or the Reserve Fund, and is extinguished with respect to any Pledged Revenue not required to be credited to the Bond Fund or the Reserve Fund and which is transferred to other funds of the City for other purposes.

***Additional Covenants of the City.*** The City irrevocably covenants and agrees in the Bond Ordinance that so long as any of the Bonds remain outstanding:

(a) It will not amend or repeal Title IV in any way that would materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund. Nothing shall prevent the City from amending Title IV in order to increase the rate of tax above that currently

imposed, or to make certain changes in the administration, collection or enforcement of such Sales and Use Tax, provided that such changes do not materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund (see "THE SALES AND USE TAX").

(b) It will administer, enforce and collect or cause to be administered, enforced and collected, the Sales and Use Tax authorized by Title IV, and will take reasonable, necessary action to collect delinquent payments in accordance with law.

(c) It will keep or cause to be kept such books and records showing the proceeds of the Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governments, and any Owner shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Sales and Use Tax. The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The City will permit the Bond Insurer to have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(d) It will, at least once a year, cause an audit of the records relating to the collection and receipts of the Sales and Use Tax revenues. Such audit may be made part of and included within the general audit of the City, and made at the same time as such audit. While the Bond Insurance Policy is in effect, the Bond Insurer shall receive, as soon as practicable after the filing thereof, a copy of the City's annual audited financial statements and annual budget.

(e) In the event the City does not receive Pledged Revenues in any fiscal year in an amount at least equal to 150% of the maximum annual principal and interest requirements for the Bonds and any Parity Lien Bonds, the City shall establish and maintain a reserve fund solely for the Bonds and Parity Lien Bonds (the "Reserve Fund"), in an amount equal to the lesser of 10% of the outstanding aggregate principal amount of said bonds, 125% of the combined average annual principal and interest requirements of said bonds, or the maximum principal and interest due on the Bonds and Parity Lien Bonds in any fiscal year (the "Required Reserve"). The City shall accumulate the Required Reserve in the Reserve Fund by 12 equal monthly deposits. The City shall make the initial deposit into the Reserve Fund of Pledged Revenues, within 90 days after the end of the fiscal year in which such deficiency occurs. Such Reserve Fund shall not be released after it has been established, and draws on the Reserve Fund must be replenished within one year. Investments purchased with funds on deposit in the Reserve Fund shall have an average aggregate weighted term to maturity not greater than five years.

(f) It will not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, any other funds of the City or the facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as in effect on the date of delivery of the Bonds (the "Code"), (ii) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 55(b)(2) of the Code, except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose the exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenants under the Code and State law have been met.

(g) It will comply with the provisions of the Continuing Disclosure Certificate to be executed by City officers and delivered in connection with the delivery of the Bonds.

(h) It will provide such additional information as the Bond Insurer may reasonably request from time to time.

(i) The Bond Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed an Event of Default under the Bond Ordinance; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner of the Bonds.

***Additional Obligations.*** The Bond Ordinance provides that no additional bonds, notes, interim securities or other obligations may be issued payable from the Pledged Revenue and having a lien thereon which is superior to the lien thereon of the Bonds.

The Bond Ordinance permits the City to issue Parity Lien Bonds if: (a) no Event of Default has occurred and is continuing; (b) the City is then current in the accumulation of all amounts required to be then accumulated in the Bond Fund as required by the Bond Ordinance; (c) the Pledged Revenue for the 12 month period immediately preceding the date of such Parity Lien Bonds is sufficient to pay an amount representing not less than 150% of the combined maximum annual principal and interest requirements for the Bonds, any Parity Lien Bonds and the Parity Lien Bonds proposed to be issued; and (d) to the extent that a Reserve Fund has been established, a deposit is made to the Reserve Fund so that the balance therein on the date of delivery of the Parity Lien Bonds equals the Required Reserve.

A written certificate signed by the City Finance Director that the foregoing requirements have been met shall conclusively determine the right of the City to authorize, issue, sell and deliver Parity Lien Bonds.

So long as no Event of Default under the Bond Ordinance shall have occurred and be continuing, the Bond Ordinance does not restrict the City from issuing Subordinate Lien Bonds.

***Bonds Not a Debt.*** The owners of the Bonds may not look to any general or other revenue of the City, including without limitation the proceeds of ad valorem taxes, for the payment of the debt service on the Bonds, and the Bonds do not constitute a debt or indebtedness of the City within the meaning of any constitutional, Charter or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

***Events of Default and Remedies.*** The Bond Ordinance provides that it is an "Event of Default" if: (a) payment of the principal of or redemption premium on any Bond is not made by the City when due at maturity or upon prior redemption; (b) payment of the interest on any Bond is not made by the City when due; or (c) the City defaults in the performance of its covenants in the Bond Ordinance for 60 days after written notice has been given by the Owners of not less than 25% of the outstanding principal amount of the Bonds. In determining whether an Event of Default has occurred due to the City's failure to pay any principal or interest on the Bonds when due, no effect shall be given to payments made to registered owners of the Bonds under the Bond Insurance Policy.

Upon the happening of an Event of Default, the Beneficial Owners or Registered Owners of any Bond, or a trustee therefor, may protect and enforce the rights such Owner by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the

appointment of a receiver (the consent to such appointment being granted pursuant to the terms of the Bond Ordinance), injunctive relief or requiring the Council to act as if it were the trustee of an express trust, or any combination of such remedies; provided however, that any action brought pursuant to the Event of Default enumerated “(c)” in the preceding paragraph may be brought only upon the written consent of the Owners of not less than 25% of the outstanding principal amount of the Bonds. All proceedings shall be maintained for the equal benefit and protection of all Bond owners. The failure of any Bond owner to proceed does not relieve the City or any person of any liability for failure to perform any duty under the Bond Ordinance. The foregoing rights are in addition to any other right, and the exercise of any right by any Bond owner shall not be deemed a waiver of any other right.

***Amendments to the Bond Ordinance.*** Within the limits of applicable law, any provision of the Bond Ordinance may be waived or modified by the written consent of the Registered Owners or Beneficial Owners of not less than 66% of the outstanding principal amount of the Bonds; except that the written consent of the Registered Owners or Beneficial Owners of 100% of the outstanding principal amount of the Bonds is required to: (a) extend the maturity of any Bond; (b) reduce the principal amount or interest rate of or the prior redemption premium on any Bond; (c) create a lien upon the Pledged Revenue ranking prior to the lien created by the Bond Ordinance; (d) reduce the principal amount of the Bonds required for consent to any waiver or modifications; (e) establish priorities between Bonds; or (f) modify or otherwise affect the rights of the Owners of less than all of the Bonds then outstanding. Any amendment or supplement to the Bond Ordinance shall be subject to the prior written consent of the Bond Insurer.

***Bond Ordinance Irrepealable.*** The Bond Ordinance provides that after any of the Bonds are issued, the Bond Ordinance shall constitute an irrevocable contract between the Bond owners and the City and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied and discharged as provided in the Bond Ordinance.

***Limitations on Remedies Available to Bondholders.*** In the event of a default in the payment of principal of or interest on the Bonds, there is no provision for acceleration of maturity of the principal of the Bonds. Consequently, remedies available to Bondholders may have to be enforced from year to year.

The enforceability of the rights and remedies of the owners of Bonds, and the obligations incurred by the City in issuing the Bonds, are subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors’ rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of Colorado and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

## **Debt Service Coverage**

The following table sets forth coverage factors which would have been provided by the Pledged Revenue for 2002-2006 (audited) for (a) the estimated average annual coverage (such factor representing the coverage provided for the estimated combined average annual debt service on the Bonds and the Outstanding Parity Bonds to the final maturity date of the Bonds (\$2,274,731) and (b) estimated maximum annual coverage (such factor representing the coverage provided for the estimated combined

maximum annual debt service on the Bonds and the Outstanding Parity Bonds, which occurs in 2010, to the final maturity date of the Bonds (\$2,922,112). The maximum annual coverage factor is used in the determination of the City’s ability to issue Parity Lien Bonds. See “THE BONDS—Security for the Bonds.” The debt service requirements for the Bonds and the Outstanding Parity Bonds are set forth in “Debt Service Requirements” hereafter.

**TABLE I**  
**Debt Service Coverage**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Collected Revenue	\$4,272,085	\$4,224,170	\$4,259,760	\$4,372,363	\$4,669,446
Administrative Expenses	\$(27,931)	\$(28,508)	\$(24,084)	\$(23,239)	\$(26,276)
Pledged Revenue	\$4,244,154	\$4,195,662	\$4,235,676	\$4,349,124	\$4,672,849
Average Annual Debt Service <sup>1</sup>	\$2,274,731	\$2,274,731	\$2,274,731	\$2,274,731	\$2,274,731
Maximum Annual Debt Service <sup>1</sup>	\$2,922,112	\$2,922,112	\$2,922,112	\$2,922,112	\$2,922,112
Average Annual Coverage Factor <sup>1</sup>	1.87x	1.84x	1.86x	1.91x	2.05x
Maximum Annual Coverage Factor <sup>1</sup>	1.45x	1.44x	1.45x	1.49x	1.60x

<sup>1</sup>See the following Table II for the debt service requirements for the Outstanding Parity Bonds and the Bonds. See “RISK FACTORS—Issuance of Additional Bonds”.

Source: City of Westminster Finance Department and the Underwriter

The receipt of Pledged Revenue is subject to the elastic nature of consumer spending. This causes sales tax revenue to increase along with the higher prices brought about by inflation, but also causes collections to be vulnerable to adverse economic conditions and reduced consumer confidence which would result in reduced spending. Such changes in economic conditions may cause actual sales tax collections to fluctuate. Accordingly, there can be no assurance that collections of sales tax revenue will continue at the levels stated above, or that coverage factors in future years will remain at such levels. See “THE SALES AND USE TAX.”



## Debt Service Requirements

Set forth in the following table is the debt service requirements for the Bonds and the City's Outstanding Parity Bonds. See the cover page of this Official Statement for the actual interest rates for each maturity of the Bonds.

**TABLE II**  
**Bond Debt Service Requirements\***

Year	Series 2007D Bonds <sup>1,*</sup>		Outstanding Parity Bonds <sup>1</sup>	Annual Total
	Principal	Interest		
2008	--	--	\$ 1,748,775	
2009	--	--	1,743,175	
2010	--	--	1,950,975	
2011	--	--	1,948,575	
2012	--	--	1,943,975	
2013	--	--	1,947,175	
2014	--	--	1,947,775	
2015	--	--	1,944,025	
2016	--	--	1,942,500	
2017	\$ 945,000	--	--	
2018	990,000	--	--	
2019	1,030,000	--	--	
2020	1,080,000	--	--	
2021	1,125,000	--	--	
2022	1,180,000	--	--	
2023	1,240,000	--	--	
2024	1,305,000	--	--	
2025	1,370,000	--	--	
2026	1,435,000	--	--	
2027	1,505,000	--	--	
2028	1,575,000	--	--	
2029	1,655,000	--	--	
2030	1,740,000	--	--	
2031	<u>1,825,000</u>	--	--	
Total	<u>\$20,000,000</u>	--	<u>\$17,116,950</u>	

\*Preliminary; subject to change.

<sup>1</sup>Includes both principal and interest.

Source: The Underwriter

## BOND INSURANCE

The following information is not complete and reference is made to Appendix D for a specimen of the financial guaranty insurance policy to be issued concurrently with the delivery of the Bonds by the Bond Insurer.

The Bond Insurer accepts no responsibility for the accuracy or completeness of this Official Statement or any other information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding the Bond Insurer and its affiliates set forth under this

heading. In addition, the Bond Insurer makes no representation regarding the Bonds or the advisability of investing in the Bonds.

### **Payment Pursuant to Financial Guaranty Insurance Policy**

Ambac Assurance Corporation (“Ambac Assurance”) has made a commitment to issue an insurance policy (the “Financial Guaranty Insurance Policy”) relating to the 2007 Certificates effective as of the date of issuance of the 2007 Certificates. Under the terms of the Financial Guaranty Insurance Policy, Ambac Assurance will pay to The Bank of New York, in New York, New York or any successor thereto (the “Insurance Trustee”) that portion of the principal of and interest on the 2007 Certificates that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Obligor (as such terms are defined in the Financial Guaranty Insurance Policy). Ambac Assurance will make such payments to the Insurance Trustee on the later of the date on which such principal and/or interest becomes Due for Payment or within one business day following the date on which Ambac Assurance shall have received notice of Nonpayment from the Trustee. The Financial Guaranty Insurance Policy coverage will extend for the term of the 2007 Certificates and, once issued, cannot be cancelled by Ambac Assurance.

The Financial Guaranty Insurance Policy will insure payment only on stated maturity dates and on mandatory sinking fund installment dates, in the case of principal, and on stated dates for payment, in the case of interest. If the 2007 Certificates become subject to mandatory redemption and insufficient funds are available for redemption of all Outstanding 2007 Certificates, Ambac Assurance will remain obligated to pay the principal of and interest on Outstanding 2007 Certificates on the originally scheduled interest and principal payment dates including mandatory sinking fund redemption dates. In the event of any acceleration of the principal of the 2007 Certificates, the insured payments will be made at such times and in such amounts as would have been made had there not been an acceleration, except to the extent that Ambac Assurance elects, in its sole discretion, to pay all or a portion of the accelerated principal and interest accrued thereon to the date of acceleration (to the extent unpaid by the Obligor). Upon payment of all such accelerated principal and interest accrued to the acceleration date, Ambac Assurance’s obligations under the Financial Guaranty Insurance Policy shall be fully discharged.

In the event the Trustee has notice that any payment of principal of or interest on a 2007 Certificate that has become Due for Payment and that is made to a registered owner by or on behalf of the Obligor has been deemed a preferential transfer and theretofore recovered from its registered owner pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court of competent jurisdiction, such registered owner will be entitled to payment from Ambac Assurance to the extent of such recovery if sufficient funds are not otherwise available.

The Financial Guaranty Insurance Policy does **not** insure any risk other than Nonpayment (as set forth in the Financial Guaranty Insurance Policy). Specifically, the Financial Guaranty Insurance Policy does not cover:

- (1.) payment on acceleration, as a result of a call for redemption (other than mandatory sinking fund redemption) or as a result of any other advancement of maturity;
- (2.) payment of any redemption, prepayment or acceleration premium; and
- (3.) nonpayment of principal or interest caused by the insolvency or negligence of any Trustee, Paying Agent or Registrar, if any.

If it becomes necessary to call upon the Financial Guaranty Insurance Policy, payment of principal requires surrender of the 2007 Certificates to the Insurance Trustee together with an appropriate instrument of assignment so as to permit ownership of such 2007 Certificates to be registered in the name of Ambac Assurance to the extent of the payment under the Financial Guaranty Insurance Policy. Payment of interest pursuant to the Financial Guaranty Insurance Policy requires proof of Registered Owner entitlement to interest payments and an appropriate assignment of the Registered Owner's right to payment to Ambac Assurance.

Upon payment of the insurance benefits, Ambac Assurance will become the owner of the 2007 Certificate, appurtenant coupon, if any, or right to payment of principal or interest on such 2007 Certificate and will be fully subrogated to the surrendering registered owner's right to payment.

### **Ambac Assurance Corporation**

Ambac Assurance is a Wisconsin domiciled stock insurance corporation regulated by the Office of the Commissioner of Insurance of the State of Wisconsin and licensed to do business in 50 states, the District of Columbia, the Territory of Guam, the Commonwealth of Puerto Rico and the U.S. Virgin Islands, with admitted assets of approximately \$10,391,000,000 (unaudited) and statutory capital of \$6,730,000,000 (unaudited) as of June 30, 2007. Statutory capital consists of Ambac Assurance's policyholders' surplus and statutory contingency reserve. Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch Ratings have each assigned a triple A financial strength rating to Ambac Assurance.

Ambac Assurance has obtained a ruling from the Internal Revenue Service to the effect that the insuring of an obligation by Ambac Assurance will not affect the treatment for federal income tax purposes of interest on such obligation and that insurance proceeds representing maturing interest paid by Ambac Assurance under policy provisions substantially identical to those contained in its Financial Guaranty Insurance Policy shall be treated for federal income tax purposes in the same manner as if such payments were made by the Obligor. No representation is made by Ambac Assurance regarding the federal income tax treatment of payments that are made by Ambac Assurance under the terms of the Financial Guaranty Insurance Policy due to non-appropriation of funds by the Obligor.

Ambac Assurance makes no representation regarding the 2007 Certificates or the advisability of investing in the 2007 Certificates and makes no representation regarding, nor has it participated in the preparation of, this Official Statement other than the information supplied by Ambac Assurance and presented under this caption "BOND INSURANCE."

### **Available Information**

The parent company of Ambac Assurance, Ambac Financial Group, Inc. (the "Company"), is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). These reports, proxy statements and other information can be read and copied at the SEC's public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The SEC maintains an internet site at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding companies that file electronically with the SEC, including the Company. These reports, proxy statements and other information can also be read at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

Copies of Ambac Assurance's financial statements prepared in accordance with statutory accounting standards are available from Ambac Assurance. The address of Ambac Assurance's administrative offices and its telephone number are One State Street Plaza, 19th Floor, New York, New York 10004 and (212) 668-0340.

### **Incorporation of Certain Documents by Reference**

The following documents filed by the Company with the SEC (File No. 1-10777) are incorporated by reference in this Official Statement:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005 and filed on March 1, 2007;
2. The Company's Current Report on Form 8-K dated April 25, 2007;
3. The Company's Quarterly Report on Form 10-Q for the fiscal quarterly period ended March 31, 2007 and filed on May 10, 2007;
4. The Company's Current Report on Form 8-K dated and filed July 25, 2007;
5. The Company's Current Report on Form 8-K dated and filed August 3, 2007; and
6. The Company's Quarterly Report on Form 10-Q for the fiscal quarterly period ended June 30, 2007 and filed on August 9, 2007.

All documents subsequently filed by the Company pursuant to the requirements of the Exchange Act after the date of this Official Statement will be available for inspection in the same manner as described above in "Available Information."

### **RISK FACTORS**

THE PURCHASE OF THE BONDS IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW WHICH, AMONG OTHERS, COULD AFFECT THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS, AND COULD ALSO AFFECT THE MARKET PRICE OF THE BONDS TO AN EXTENT THAT CANNOT BE DETERMINED.

### **Limited Obligations**

The Bonds do not constitute a lien upon any real or personal property of the City. Rather, the Bonds constitute an irrevocable but nonexclusive first lien upon the Pledged Revenue and the moneys on deposit from time to time in the Bond Fund. Therefore, the payment of the principal of and interest on the Bonds is dependent on the City's receipt of revenues from the Sales and Use Tax. Bondholders may not look to any general or other revenues of the City, including without limitation the proceeds of ad valorem taxes, for the payment of the principal of and interest on the Bonds, and the Bonds do not constitute a general obligation of the City.

## **Economic Factors**

Due to the character of the taxes which comprise the Pledged Revenue, the amount of Pledged Revenue collected by the City will be subject to various economic factors. The amount of sales tax revenues is dependent upon the level of sales of tangible personal property in the City and the amount of use tax revenues is principally dependant upon the use of construction materials within the City and purchase of automobiles by City residents. See “THE SALES AND USE TAX—Description of the Sales and Use Tax” for a complete description of said taxes. Therefore, changes in national and local economic conditions, the rates of employment and economic growth, the availability of consumer credit and the level of consumer spending, and the level of residential and commercial development, among other things, will directly affect the amount of Pledged Revenue. Further, the cyclical nature of such factors generally causes sales tax revenues to increase along with higher prices brought about by inflation, but also causes receipts to be vulnerable to adverse economic conditions and reduced consumer confidence which may result in reduced consumer spending. Future sales and use tax receipts may fluctuate from historical levels and affect the level of debt service coverage provided by the Pledged Revenue for the Bonds.

## **Concentration of Sales Tax Generators**

While the City has approximately 5,105 active business licenses outstanding for the collection of the Open Space Tax, the City’s ten largest generators of Open Space Tax revenues comprised approximately 31% of the City’s total sales tax receipts in 2006. While no one generator accounted for more than 7.0% of such amount, a significant portion of the generators are discount retailers and department stores. The closure of one or more of said generators or substantial reductions in retail sales by a few of generators, for whatever reason, could have a material, adverse effect on the amount of Pledged Revenues. See the caption “THE SALES AND USE TAX—History of General Sales and Use Tax Receipts” herein.

## **Sales Tax Not Collected on Sales Over the Internet**

The sales tax is currently not imposed on purchases made over the internet, as well as purchases made from catalogues unless the business has nexus in the City. The future level of taxable retail sales which occurs within the City may be affected by the future level of internet sales (also known as e-commerce). Such remote commerce vendors compete with local retail businesses and in the future could materially reduce the level taxable retail sales which otherwise would occur within the City. The use of the internet by consumers for their purchases is subject to various market factors as well as consumer behavior and preferences. The ultimate impact of internet sales on the level of taxable retail sales which occurs within the City cannot be determined at this time. Additionally, the increasing popularity of gift cards, the sales and resulting taxes from which are not realized until the gifted amounts are spent by the recipient, may impact monthly sales tax receipts in a manner which cannot be determined at this time.

## **Issuance of Additional Bonds**

The City has the right to issue additional bonds payable from the Pledged Revenue and secured by a lien on the Pledged Revenue on a parity with the lien of the Bonds; however, specific conditions and requirements which are set forth in an additional bonds test must be met by the City prior to the issuance of such Parity Lien Bonds. See “THE BONDS—Security for the Bonds” for the test for additional bonds. In calendar year 2006, the Pledged Revenue was \$4,672,849 and such amount would provide a coverage factor for the maximum annual debt service for the Bonds and Outstanding Parity Bonds of approximately 1.60 times. See “THE BONDS—Debt Service Coverage.” The issuance of Parity Lien

Bonds would dilute such coverage and, in the event of a decline in the Pledged Revenue, could ultimately affect the ability of the City to meet the debt service requirements on the Bonds. See “DEBT STRUCTURE—Required Elections.”

### **Enforceability of Bondholders’ Remedies Upon Default**

In the event of a default in the payment of principal of or interest on the Bonds, there is no provision for acceleration of maturity of the principal of the Bonds. Consequently, remedies available to registered owners and Beneficial Owners of the Bonds may have to be enforced from year to year. Moreover, there is no bond trustee or similar person or entity to monitor or enforce the provisions of the Bond Ordinance on behalf of the registered owners and Beneficial Owners of the Bonds, and therefore such registered owners and Beneficial Owners of the Bonds should be prepared to enforce such provisions themselves if the need to do so ever arises.

The remedies available to the owners of the Bonds upon a default are in many respects dependent upon judicial action, which is often subject to discretion and delay under existing constitutional law, statutory law and judicial decisions, including specifically the federal Bankruptcy Code. The legal opinions to be delivered concurrently with delivery of the Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization and insolvency or other similar laws affecting the rights of creditors generally, now or hereafter in effect; as to usual principles of equity which may limit the specific enforcement under State law of certain remedies; as to the exercise by the United States of America of the powers delegated to it by the federal Constitution; and as to the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State and its governmental bodies in the interest of serving an important public purpose.

### **Future Changes in Laws**

Various Colorado laws and constitutional provisions, apply to the imposition and collection of the Pledged Revenue and the financing of City operations in general. Other state and federal laws, constitutional provisions and regulations apply to the obligations created by the issuance of the Bonds. There is no assurance that there will not be any change in, interpretation of, or addition to the applicable laws, provisions and regulations which would have a material effect, directly or indirectly, on the affairs of the City.

## **THE SALES AND USE TAX**

The Pledged Revenue consists of the revenues derived from the City’s 0.25% Open Space Tax which is deposited to the City’s Open Space Fund, after deducting all costs of administering and collecting the Open Space Tax. The following information includes a description of the collection, administration and enforcement procedures for the Sales and Use Tax.

### **Description of the Sales and Use Tax**

*Generally.* The Sales Tax is levied on all sales of tangible personal property and taxable services as provided in Title IV, with specific exemptions. The Use Tax is levied upon the privilege of using, storing, distributing or otherwise consuming in the City any article of tangible personal property or taxable services purchased, leased or rented from sources inside or outside the City, with specific exemptions, on which the Sales Tax has not been paid. The transactions and items subject to the Tax are generally set forth below. Copies of Title IV may be obtained upon written request from the sources

listed in “MISCELLANEOUS—Additional Information” or at the City’s internet website [www.ci.westminster.co.us](http://www.ci.westminster.co.us).

The Sales and Use Tax is imposed on the purchaser, and the seller must collect and remit the Sales Tax to the City under the penalties for failure to do so as prescribed in Title IV. The Sales and Use Tax collections are distributed first for the costs of administration and collection of the Sales and Use Tax, next for the fulfillment of any sales and use tax bond covenants, and finally for any lawful purpose of the City.

***Transactions and Items Subject to Tax.*** The Sales Tax is levied on the “price” of the following: tangible personal property sold, leased or rented, whether or not such property has been included in a previous transaction; telecommunication services, except carrier access services and interstate private communications services, for all international, interstate and intrastate telecommunications service in the City; installation in the City of equipment required to receive or transmit telecommunication service; meals sold to the public or to employees; gas, electricity and steam furnished for domestic, commercial or industrial consumption; pay television; automotive vehicles sold, leased or rented in the City; services of an operator when furnished with the lease or rental of tangible personal property if such services are not separately stated; coin- and card-operated devices that dispense tangible personal property; and, rentals of storage space in the City.

The exemptions from the Sales Tax generally include the following: automotive vehicles sold to non residents of the City for registration outside the City; tangible personal property when the sales are to those who reside or do business outside the City and the articles purchased are delivered and used outside the City; prescription drugs, prosthetic devices and items dispensed pursuant to a written order of a licensed practitioner of the healing arts; cigarettes; direct sales, except of construction materials used in a project for which a building permit is required, to charitable organizations in the conduct of their regular exempt organizational functions and activities, and to the federal government, the state of Colorado and political subdivisions thereof in their governmental capacities only; construction materials used in construction projects undertaken and managed directly by the City; all sales the City is prohibited from taxing under the federal or State of Colorado constitution or laws; tangible personal property sold to a public utility or railroad doing business both inside and outside the City, for use in its business operations outside the City; motor fuel subject to a specified gasoline tax or special fuel tax; farm implements, and parts and accessories for the same; certain farm animals and feed and bedding for the same; farm closeout sales; all wholesale sales; tangible personal property sold to a person engaged in manufacturing or processing for sale when such property becomes a constituent part of the finished product; commercial packaging materials; napkins, straws or eating utensils sold to a retailer when specified conditions are met; newspapers; newsprint and printers’ ink; tangible personal property sold for rental or leasing inventory; labor sold with tangible personal property, if such labor is stated separately; construction materials, if a use tax has been paid or is required to be paid on such materials; tangible personal property sold through coin- and card-operated devices for a price of fifteen cents (15¢) or less; certain food and meals purchased with federal food stamps or with specified federal funds; access services; private communication services; modified or customized computer programs; garage sales, yard sales or estate sales in a residential area not exceeding a consecutive three day period, but not including sales conducted by a professional or compensated agent of the owner of the items to be sold; sales by a recognized youth group affiliated with a charitable organization or a governmental entity; transactions subject to the admissions or accommodations tax; insulin in all forms, including glucose, diabetic urine and blood testing kit and materials, and insulin measuring and injecting devices; and water sold by the City.

The Use Tax is levied on the “price” of the following: non-exempt tangible personal property purchased for use without payment of the Sales Tax and used, stored or consumed inside the City either personally or in conjunction with the rendering of a service; tangible personal property purchased at

wholesale or component parts purchased for manufacture which are subsequently used by the taxpayer; taxable services purchased without payment of the Sales Tax; the cost of meals given without charge to employees or others; and automotive vehicles required to be registered at an address inside the City on which municipal sales tax has not been paid.

The exemptions from the Use Tax include the exemptions set forth above for the Sales Tax in addition to the following: the storage of construction materials; tangible personal property which was purchased by a taxpayer on or after January 1, 1986 during a time when the taxpayer was located outside the City and was used by the taxpayer for a period of at least three years prior to the taxpayer's relocation to the City; tangible personal property which was purchased by a taxpayer during a time when the taxpayer was located outside the City and was first used inside the City on or after January 1, 1994 and was used by the taxpayer for at least six months prior to the taxpayer's relocation to the City; and automotive vehicles if the owner is or was, at the time of purchase, a non-resident of the City who purchased the vehicle for use outside the City and, if the vehicle was previously registered, titled and licensed outside the City.

***Assistance Agreements.*** From time to time, the City has entered into assistance agreements with the owners of proposed retail, office, and manufacturing facilities for purposes of securing the location of projects, advancing employment, expanding the tax base and expanding economic development within the City. Such agreements may, among other things, provide for the waiver or rebate of certain of the City's use tax revenues on construction materials or the use tax imposed upon tenants for limited periods of time and subject to stated conditions. The City has a number of agreements waiving City use tax outstanding from time to time and, while the City does not specifically account for the amount of use taxes which have historically been waived, the annual amount of such waivers when compared to the total amount of Pledged Revenues is not believed to be material by the City. Additionally, for purposes stated above, the City has entered into agreements wherein the sales tax collected by a sales tax generator is rebated back to said entity for defined periods and defined dollar amounts. In 2006, revenues subject to rebate pursuant to such agreements totaled approximately \$1,692,117. Currently, the aggregate amount of future sales, use, admission, and accommodations tax revenues subject to rebate pursuant to such agreements (which amount is calculated, in most instances, based upon various formulas which require the generation of new or additional revenues for the City) is approximately \$29,276,890 over a period which does not exceed 27 years. See "CITY FINANCIAL INFORMATION—Major Sources of General Fund Revenues" for a description of an agreement which comprises approximately one-half of said amount.

### **Manner of Collection and Administration**

The collection, administration and enforcement of the Sales and Use Tax is performed by the City Finance Director. Chapters 1 and 2 of Title IV and all rules and regulations promulgated thereunder, govern the collection, administration and enforcement of the Sales and Use Tax. The City Finance Director prescribes the forms and administration procedures for the ascertainment, assessment and collection of the Tax. Additionally, the Finance Director formulates and promulgates the appropriate regulations to effectuate the purpose of Title IV.

With specified exceptions, any person engaged in any enterprise in the City with the object of gain, benefit or advantage must first obtain a Sales and Use Tax license. Further, such retailers are liable and responsible for payment of the Tax and must file a return periodically as required by Title IV. All Sales Tax collected by a retailer is the property of the City and remains public money in the hands of the retailer, who holds the same in trust for the sole use and benefit of the City until paid by the City.



Every retailer not delinquent in the payment of the Sales Tax may deduct the lesser of 2.5% of the sum of the Sales Tax computed or \$100 to cover the retailer's expense of collection and remittance of the Tax. In addition, the counties deduct a 5% collection fee from the Tax on automobiles prior to remittance to the City. Consumers who have not paid the Sales Tax to a retailer must complete a Use Tax schedule of a return and pay any Tax due directly to the City.

After a Tax return is filed, it is examined by the City. The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the Tax. Additionally, the Finance Director may issue a subpoena to command a person to attend and give testimony or produce books, accounts and records. For the purpose of ascertaining the correct amount of Tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person. Any Tax deficiency or overpayment ascertained through an audit is computed by specified methods as the agent of the Finance Director deems appropriate.

A notice of assessment is issued by the City for any Tax deficiency, penalties or interest due as discussed below. The payment due date for the Tax due pursuant to a notice of assessment is 20 days after the date of the notice of assessment. Such notices may be protested by a taxpayer to whom it is issued and timely protests entitle a taxpayer to a hearing thereon. When a taxpayer has failed or refused to file a return, the Tax due may be assessed and collected at any time.

A penalty is levied by the City on any Tax deficiency. Such penalty is the greater of \$15 or 10% of the Tax deficiency. The penalty is 50% of the total Tax deficiency for any deficiency due to fraud or the intent to evade the Tax. Further, if three notices of assessment have been issued to a taxpayer within a 36-month period, a special penalty equal to the greater of \$25 or 15% of the Tax due is levied. Finally, the Finance Director is authorized to waive any penalty if the Finance Director finds good cause therefore. With the exception of specified periods of time wherein a timely protest is made, a monthly interest charge must be levied by the City on any tax deficiency, at a rate established by the State Commissioner of Banking.

### **History of Open Space Tax Receipts**

No forecasts, projections or similar reports or studies have been prepared by or for the City for inclusion in this Official Statement. The following table sets forth the City's annual Open Space Tax receipts, not including the General Sales and Use Tax or the Public Safety Tax.

**TABLE III**  
**History of City 0.25% Open Space Tax Receipts (Cash Basis)**

<b>Year</b>	<b>Sales Tax Collections</b>	<b>Use Tax Collections</b>	<b>Total Gross Sales and Use Tax Collections</b>	<b>Administration and Collection Costs</b>	<b>Pledged Revenue</b>	<b>Percent Change of Pledged Revenue</b>
2002	\$3,473,450	\$798,635	\$4,272,085	\$(27,931)	\$4,244,154	--
2003	3,402,255	821,915	4,224,170	(28,508)	4,195,662	(1.1)%
2004	3,503,724	756,036	4,259,760	(24,084)	4,235,676	1.0
2005	3,601,754	770,609	4,372,363	(23,239)	4,349,124	2.7
2006	3,862,063	837,372	4,699,435	(26,586)	4,672,849	7.4

Source: City of Westminster Finance Department

In 2006, the City experienced a 7.5% increase in Net Sales and Use Tax revenues as compared to 2005. The following table presents a comparison of the City's monthly Open Space Tax receipts for 2004-2007. Sales tax receipts generally lag retail sales by one month.

**TABLE IV**  
**Comparison of Monthly Receipts of 0.25% Open Space Tax (Cash Basis) <sup>1</sup>**

	<b>2004-2005 Current Month</b>	<b>2005-2006 Current Month</b>	<b>Current Month Percent Change from Prior Year</b>	<b>2006-2007 Current Month</b>	<b>Current Month Percent Change from Prior Year</b>
October	\$ 344,091	\$ 364,411	2.8%	\$ 413,421	(4.2)%
November	332,853	327,231	1.3	379,280	(6.7)
December	381,522	373,756	(2.1)	397,895	19.1
January	490,202	503,539	3.8	479,657	(4.7)
February	325,360	360,022	9.1	395,245	9.8
March	351,621	360,501	2.8	385,389	6.9
April	366,001	415,180	14.2	429,115	3.4
May	330,744	364,054	9.5	382,644	5.1
June	352,387	373,390	3.2	374,429	0.3
July	385,175	381,565	(5.8)	447,843	17.4
August	334,294	345,899	3.5	423,801	22.5
September	<u>371,181</u>	<u>404,687</u>	9.0	<u>386,893</u>	(4.4)
Total	<u>\$4,365,431</u>	<u>\$4,574,235</u>	4.8	<u>\$4,895,612</u>	7.0

<sup>1</sup>Figures presented on a cash basis. The City experiences a variety of differences in the remittance of sales and use taxes by licensed businesses which are not common when making short-term comparisons; therefore, significant increases or decreases reflected by comparison of collections for certain months from one calendar year to the next will not be representative of the aggregate financial trend which is experienced for the entire calendar year.

Source: City of Westminster Finance Department

The City's finance department reports that 5,105 businesses are licensed to remit Open Space Taxes to the City in 2007. As hereinafter described, 10 of these licensees accounted for approximately 31% of the City's Open Space Taxes in 2006. The discontinuation or substantial reduction in retail sales

by a significant number of these businesses for whatever reason, could have a material adverse effect on the Pledged Revenue.

**TABLE V**  
**Net Active Business Licenses Outstanding<sup>1</sup>**

<b>Year End</b>	<b>Licenses Outstanding</b>	<b>Percent Change</b>
2002	4,418	--
2003	4,682	5.98%
2004	4,839	3.35
2005	5,018	3.70
2006	5,099	1.61
2007 <sup>2</sup>	5,105	0.12

<sup>1</sup>Net of deletions.

<sup>2</sup>As of July 31, 2007.

Source: City of Westminster Finance Department

**TABLE VI**  
**City's Largest Generators by Category of 0.25% Open Space Tax Revenue – 2006**

<b>Business Type<sup>1</sup></b>	<b>Sales Tax Receipts</b>	<b>Percent of Total Collections<sup>2</sup></b>
Discount Retailer <sup>3</sup>	\$ 625,842	16.2%
Utility	239,840	6.2
Department Store <sup>4</sup>	151,410	3.9
Home Improvement <sup>5</sup>	130,599	3.4
Grocery Store	<u>65,745</u>	<u>1.7</u>
Total	<u>\$1,213,436</u>	<u>31.4%</u>

<sup>1</sup> Because of the confidential nature of the gross sales of the individual entities, Title IV provides that the identity of the vendors cannot be divulged. No individual vendor accounts for greater than 7.0% of the City's total Sales Tax collections.

<sup>2</sup> The total 0.25% Open Space Tax amount used in computing the above was \$3,862,070.

<sup>3</sup> Represents the aggregate receipts for four discount retailers.

<sup>4</sup> Represents the aggregate receipts for two department stores.

<sup>5</sup> Represents the aggregate receipts for two home improvement stores.

Source: City of Westminster Finance Department

## THE CITY

The City of Westminster is located in western Adams and northeastern Jefferson Counties, two miles from the northwestern boundary of the City and County of Denver. The City encompasses approximately 33 square miles and, according to the Colorado Department of Regulatory Agencies, the City's current estimated population is 107,363. Incorporated as a municipal corporation in 1911, the City became a home rule municipality in 1958 upon adoption of its Charter.

### City Powers

Pursuant to the Charter, the City has the power of local self government and home rule, as well as all municipal powers established by the constitution and laws of the State of Colorado. Among those powers, rights and liabilities specifically granted by the Charter are the following: perpetual succession;

to own, possess and hold real and personal property; to succeed to all rights and liabilities, to acquire all benefits and to assume payment of all bonds, obligations and indebtedness of the City; to sue and defend, plead and be impleaded in all courts and places and in all matters and proceedings; to purchase, receive, hold and enjoy, or sell and dispose of real and personal property; to acquire, hold and manage property outside City limits by gift, lease or purchase for park or recreation purposes and to adopt rules, regulations and schedules of charges for the use of such property; and to have and use a common seal. Pursuant to Chapter XIV of the Charter, the City has the power to fix from time to time such just and reasonable rates and other charges as may be deemed advisable for supplying the inhabitants of the City and others with such public utility services as the City may provide. In addition, the powers granted to municipalities by the constitution and laws of the State of Colorado include the powers relating to the assessment of property and the levy and collection of general taxes.

**Governing Body**

The City operates under a council manager form of government whereby, except as otherwise provided by the Charter or statute, the City Council exercises all powers conferred upon or possessed by the City and has the power and authority to adopt such laws, ordinances and resolutions as it deems proper in the exercise thereof, and the City Manager serves as the chief administrative officer of the City government. The Council consists of seven members, six councillors and the mayor, all of whom are elected from the City at large. The mayor is the presiding officer of the Council and has an equal voice and vote in all proceedings of the Council, but has no veto power. The mayor pro tem is appointed from the Council membership to serve in the event of absence or disability of the mayor. One City councillor serves in the additional capacity of representative to the Denver Regional Council of Governments.

Name	Principal Occupation	Years of Service	Term Expires
Nancy McNally <sup>1</sup>	Assistant Vice President and Office Manager	5	2009
Tim Kauffman	Business Executive	6	2007
Chris Dittman	Education—Retired	4	2007
Jo Ann Price	Real Estate Appraiser	3	2007
Mark Kaiser	Fleet, Tire Sales	1	2009
Mary Lindsey	Realtor	1	2009
Scott Major	Test Engineer	1	2009

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<sup>1</sup> Nancy McNally has abstained from voting on matters relating to the Bonds because she is an employee of the

## **Administration**

The council-manager form of government vests responsibility for City operations in the City Manager and City staff. The City Manager is appointed by the City Council and, pursuant to an employment contract, serves for an indefinite term at the pleasure of the Council. During his tenure in office, the City Manager must reside within the City's boundaries. The staff functions through the City's various departments which are under the direction of the City Manager. The following is a list of the administrative and management personnel most directly involved in the issuance of the Bonds, their duties within the City government and their background experience.

**City Manager.** The City Manager is the chief administrative officer of the City. He is responsible to the Council for all City affairs placed in his charge by the Charter or by law, including responsibility for the efficient operation of all administrative departments of the City government with the exception of those under the direction of the City Attorney and the municipal court. He is further required to perform such other duties as requested by the Council.

J. Brent McFall began as the City Manager on May 21, 2001. Prior to assuming his duties in Westminister, Mr. McFall was the Chief Administrative Officer of the City of Kent, Washington (a Seattle suburb with approximately 75,000 residents) since 1994. Mr. McFall also served as the City Manager in Federal Way, Washington and Emporia, Kansas, and as Chief Administrator in Merriam, Kansas. He received his bachelor's degree in personnel administration in 1974 and his master's degree in public administration in 1976, both from the University of Kansas. Mr. McFall was twice recognized by the Washington City Management Association with its Award for Excellence for progressive and innovative management, and in 2005 received the University of Kansas Edwin O. Stene Award for Managerial Excellence. His professional affiliations include active membership in the International City and County Managers' Association, and the Colorado City & County Management Association. Mr. McFall is a member of the Board of Directors of the Metro North Chamber of Commerce, and is on the Board of Directors of the Westminister Legacy Foundation.

**Assistant City Manager.** The Assistant City Manager is the second highest administrative officer of the City generally responsible for daily City operations. In the absence of the City Manager, he performs all duties of the City Manager. Specific responsibilities include production of the City's annual budget, developing and monitoring the capital improvement program, tracking and projecting City revenues, and managing special projects.

Stephen P. Smithers returned to the City as the Assistant City Manager in June 2000. He also has served the City in several roles from 1983 to 1989 as Management Intern, Management Assistant and as the Assistant to the City Manager. Prior to his current position with the City, he was Manager of Special Programs for the Colorado Municipal League. In addition, Mr. Smithers has served on the Public Utilities Commission E 911 Task Force, as a board member of the Colorado Association of Commerce and Industry's Business Council for Healthcare Competition, president of the Colorado Municipal Management Assistants' Association, served on the Advisory Committee for the Colorado Telecommunications Infrastructure Fund, and during 2005, served as Chairman of the US 36 Transportation Management Organization. His professional affiliations include the International City and County Managers' Association, Colorado City and County Management Association and the National League of Cities. Mr. Smithers holds a Bachelor of Arts degree from Boston University and a master's degree in public administration from the University of Colorado.

***Finance Director.*** The City Finance Director is the chief financial officer of the City and acts as the City Treasurer pursuant to the City Charter and Code. The responsibilities of the Finance Director include, but are not limited to, accounting and financial reporting, debt management, sales tax administration, revenue collection, investments, pension administration.

Tammy A. Hitchens, CPA, was appointed Finance Director in April 2005. Prior to her appointment as Finance Director, she served as the Accounting Manager for the City of Westminster for seven years. She also served the City as the Accounting Manager or Investment Officer from 1989 to 1995. Prior to returning to the City in 1998, she served as the Assistant Director of Budget and Finance for two and one-half years at Jefferson County School District in Colorado. She holds a Master of Science Degree in Finance from the University of Colorado and a Bachelor of Science degree in Business Administration—Accounting from the University of Northern Colorado. She is a Certified Public Accountant in the State of Colorado and a Certified Public Finance Officer. Ms. Hitchens is an active member of the Government Finance Officers Association of the United States and Canada (“GFOA”).

***Treasury Manager.*** The Treasury Manager reports to the Finance Director and the responsibilities of the Treasury Manager include, but are not limited to, revenue collection, all aspects of debt management, cash and portfolio management, utility billing and financial analysis.

Robert C. Smith was appointed as the Treasury Manager of the Finance Department in 2002. Prior to his appointment to the City of Westminster, Mr. Smith was a private financial consultant engaged on a wide range of corporate planning and treasury matters for two years, and a Treasury Manager for the Coors Brewing Company for 10 years. He holds a Bachelor of Arts degree in Economics from Earlham College and a Master’s in Business Administration in Finance from the John M. Olin School of Business at Washington University. Mr. Smith is an active member of the Government Finance Officers Association of the United States and Canada (“GFOA”).

***City Attorney.*** The Office of the City Attorney acts as the legal advisor to the City Council and the Authority and is responsible solely to the City Council pursuant to the City Charter. The City Attorney is appointed by the City Council for an indefinite period and serves at the pleasure of the City Council.

Martin R. McCullough was appointed City Attorney on February 10, 1986, after holding the position of acting City Attorney since September 1985. Mr. McCullough received his Juris Doctor degree in 1982 from the University of Houston in Houston, Texas. He is admitted to practice law in Texas and Colorado and is a member of the Colorado and Denver Bar Associations, and past president of the Metro City Attorney's Association and the Attorney's Section of the Colorado Municipal League. In 2004 he was designated a Fellow in Local Government Law by the International Municipal Lawyers Association.

### **Capital Improvement Program**

The projects budgeted in the General CIP are expected to be financed primarily with moneys from the General Fund, park development fees, Lottery funds, interest income, sales and use tax revenues available after payment of debt service on sales and use tax bonds, grants and revenue bonds or other obligations. The following table sets forth the pay-as-you-go portion of the City’s capital improvement programs.

**TABLE VII**  
**Five-Year General Capital Improvement Program**  
(In Thousands of Dollars)

	<b>2007 Adopted</b>	<b>2008 Adopted</b>	<b>2009 Recommended</b>	<b>2010 Recommended</b>	<b>2011 Recommended</b>
Streets and traffic	\$ 2,351	\$ 2,130	\$ 2,240	\$ 2,426	\$2,064
Non-Park and public safety	1,711	1,953	2,113	1,775	1,600
Park improvements	<u>4,083</u>	<u>4,351</u>	<u>4,018</u>	<u>4,047</u>	<u>4,004</u>
Total	<u>\$8,145</u>	<u>\$8,434</u>	<u>\$8,371</u>	<u>\$8,248</u>	<u>\$7,668</u>

Source: City of Westminster

### Services Provided by the City

Westminster is a full-service city, providing a broad range of municipal services to the community including police and fire protection; emergency medical and ambulance; water and wastewater utilities; parks, recreation and libraries; street maintenance and construction; cultural and general administrative services; and planning and community development.

## CITY FINANCIAL INFORMATION

### Accounting Policies and Financial Statements

The accounts of the City are organized on the basis of funds which are segregated for the purpose of accounting for the operation of specific activities or attaining certain objectives. Each fund is considered a separate accounting entity. The operations of each fund include its assets, liabilities, fund equity, revenues and expenditures or expenses, as appropriate. For a description of the various funds and account groups, see the City's financial statements appended hereto.

The City Charter requires that an independent audit shall be made of all City accounts at least annually, and more frequently if deemed necessary by the Council. The audited financial statements must be filed with the state auditor by July 31<sup>st</sup> of each year. Failure to comply with this requirement to file an audit report may result in the withholding of the City's property tax revenues by the county treasurers pending compliance.

The general purpose financial statements from the City's 2006 Comprehensive Annual Financial Report are appended hereto. Such financial statements are the most current audited financial information available for the City.

For the past 23 years, including 2005, Westminster has received the Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association. Such certificate is the highest form of recognition for excellence in state and local government financial reporting and is awarded to governmental entities whose comprehensive annual financial reports are judged to conform substantially to program standards. To receive the award, the report must be easily readable and understandable. It must include all funds and financial transactions during the fiscal year and it must go beyond the requirements of generally accepted accounting principles to provide the many users of government financial statements with a wide variety of information using standard formatting conventions. The City's 2006 Comprehensive Annual Financial Report has been submitted for consideration for the award.

## **Major Sources of General Fund Revenues**

The governmental fund utilized for the administration and operation of the City is the General Fund. The following are the major sources of revenue to such fund.

***Sales and Use Taxes.*** Sales and Use Tax revenues have represented the largest single source of revenue, in the form of transfers from the Sales and Use Tax Fund, in the City's General Fund over the past five years, comprising \$54,674,442 (62%) of total 2005 General Fund revenues and transfers in and comprising \$55,756,916 (64%) of total 2006 General Fund revenues and transfers in. Sales and Use Tax revenues are transferred to the General Fund from the City's Sales and Use Tax Fund after sufficient credits are made for the payment of the City's sales and use tax revenue bond obligations.

***Other Revenue Sources.*** The City also receives General Fund revenues from several additional sources including ad valorem property taxes, admissions taxes, franchise fees, licenses and permits, recreation fees, park development fees, fines and forfeits, interest income and fleet maintenance billings. Several intergovernmental revenue sources are also included in the General Fund; among these are State highway users' taxes, specific ownership taxes, motor vehicle registration fees, cigarette taxes, road and bridge revenues, library rebates, victim's assistance funding and revenues received from Hyland Hills Park and Recreation District pursuant to an agreement with said district.

In 1997, the City entered into an agreement with Inland Pacific Colorado, L.L.C., a Colorado Limited Liability Company ("Inland LLC") regarding the development and construction of the 367-room Westin Hotel and an adjoining conference center located within the Westminster Promenade. The City financially participated in the development by, among other things, constructing, equipping and furnishing a municipally owned conference center (which conference center was completed in March 2000 and contains approximately 44,000 square feet of net space and approximately 50,000 square feet of gross area) and providing Inland LLC with a business assistance rebate of \$13,750,000 payable solely from that portion of the City's accommodations tax, sales and use tax, and conference center fees attributable to the hotel and conference center operations. In 1998, the City entered into a lease agreement with Inland LLC pursuant to which the City agrees to lease the conference center, pavilion and equipment to Inland LLC for rent, over the initial 25-year term, of approximately \$40,000,000. Said lease agreement sets forth various provisions regarding the use and operation of the premises, maintenance and repair of the facility, insurance, assignment and subletting, and events of default by the parties.

## **Historical General Fund Operations**

Set forth in the following table is a comparative statement of revenues and expenditures of the City's General Fund, including the December 31 fund balance for each year. The following information should be read together with the general purpose financial statements and accompanying notes of the City appended hereto. Preceding years' audited financial statements of the City may be obtained from the sources designated in "MISCELLANEOUS—Additional Information."



**TABLE VIII**  
**Historical General Fund Revenues, Expenditures**  
**and Changes in Fund Balance**

	002	003	004	005	006	007 <sup>1</sup>
Revenues						
Property taxes	3,60 2,17 9	3,77 3,02 8	3,88 7,25 4	3,94 2,32 8	4,13 3,12 7	4,07 1,68 3
Business fees and other taxes	,183 ,267	,621 ,391	,950 ,630	,298 ,336	,300 ,682	,516 ,623
Licenses and permits	,971 ,068	,293 ,599	,321 ,833	,101 ,468	,616 ,662	,374 ,367
Intergovernmental	,007 ,730	,778 ,467	,907 ,730	,780 ,392	,202 ,571	,038 ,675
Recreation fees	,360 ,607	,352 ,397	,072 ,051	,311 ,991	,867 ,809	,610 ,847
Fines and forfeits	,714 ,040	,628 ,840	,978 ,450	,212 ,981	,475 ,564	,362 ,659
Interest	83,0 00	33,3 47	28,5 19	72,9 41	58,0 95	97,2 12
	<u>3,54</u> <u>2,83</u>	<u>4,44</u> <u>8,20</u>	<u>4,48</u> <u>0,89</u>	<u>5,24</u> <u>0,09</u>	<u>5,63</u> <u>6,83</u>	<u>5,09</u> <u>0,78</u>
Fleet maintenance billings and other	2 9	3 3	0 0	7 7	8 8	8 8
Total revenues	<u>24,9</u> <u>64,7</u> <u>30</u>	<u>26,4</u> <u>29,2</u> <u>72</u>	<u>26,9</u> <u>27,3</u> <u>57</u>	<u>28,3</u> <u>60,5</u> <u>34</u>	<u>31,1</u> <u>91,3</u> <u>48</u>	<u>21,6</u> <u>62,8</u> <u>54</u>
Expenditures						
General government	0,00 4,57 6	3,55 1,05 4	9,78 0,60 2	0,29 8,99 5	8,93 7,31 9	8,62 3,67 9
Public safety	1,12 7,82 2	0,87 6,68 4	4,05 3,41 6	7,31 6,61 8	8,16 2,15 5	6,70 3,11 0
Public works	,418	,208	,635	,644	,071	,045

	,668	,225	,754	,285	,716	,372
Community development	,434	,368	,377	,357	,913	,634
	,298	,849	,784	,104	,803	,283
Culture and recreation	<u>11.7</u>	<u>11.3</u>	<u>11.5</u>	<u>12.5</u>	<u>12.8</u>	<u>7.71</u>
	<u>75.6</u>	<u>46.6</u>	<u>60.4</u>	<u>08.6</u>	<u>68.4</u>	<u>7.67</u>
	<u>64</u>	<u>22</u>	<u>70</u>	<u>32</u>	<u>21</u>	<u>8</u>
Total expenditures	<u>62.7</u>	<u>65.3</u>	<u>76.4</u>	<u>81.1</u>	<u>80.9</u>	<u>79.7</u>
	<u>61.0</u>	<u>51.4</u>	<u>08.0</u>	<u>25.6</u>	<u>53.4</u>	<u>24.1</u>
	<u>28</u>	<u>34</u>	<u>26</u>	<u>34</u>	<u>14</u>	<u>22</u>
Excess of revenues over	37.7	38.9	49.4	52.7	49.7	58.0
(under) expenditures	96.2	22.1	80.6	65.1	62.0	61.2
	98)	62)	69)	00)	66)	68)
Other financing sources (uses)						
Operating transfers in	0.90	1.84	4.39	7.38	5.75	4.36
	2.00	9.65	3.71	6.50	6.91	7.38
	0	2	0	6	6	4
Operating transfers out	8.40	(37	3.22	8.25	6.36	7.74
	0.93	9.00	6.92	6.68	0.97	3.79
	1)	0)	5)	4)	7)	2)
Proceeds from Lease				<u>2.98</u>	<u>1</u>	<u>32.9</u>
	<u>35.4</u>	<u>250.</u>	<u>488.</u>	<u>4.41</u>	<u>25.7</u>	<u>44.9</u>
	<u>785</u>	<u>523</u>	<u>414</u>	<u>8</u>	<u>33</u>	<u>00</u>
	<u>32.8</u>	<u>41.7</u>	<u>51.6</u>	<u>52.1</u>	<u>49.5</u>	<u>59.5</u>
Total	<u>55.8</u>	<u>21.1</u>	<u>55.1</u>	<u>14.2</u>	<u>21.6</u>	<u>68.4</u>
	<u>54</u>	<u>75</u>	<u>99</u>	<u>40</u>	<u>72</u>	<u>92</u>
Excess of revenues and other sources over	4.94			650,		,507
(under) expenditures and other	0.44	,799	,174	860	240,	,224
(uses)	4)	,013	,530	)	394)	
Beginning Fund Balance	<u>18.4</u>	<u>13.4</u>	<u>16.2</u>	<u>18.4</u>	<u>17.7</u>	<u>17.5</u>
	<u>13.3</u>	<u>72.9</u>	<u>71.9</u>	<u>46.4</u>	<u>95.6</u>	<u>55.2</u>
	<u>86</u>	<u>42<sup>2</sup></u>	<u>55</u>	<u>85</u>	<u>25</u>	<u>31</u>
Ending Fund Balance	<u>13.7</u>	<u>16.2</u>	<u>18.4</u>	<u>17.7</u>	<u>17.5</u>	<u>19.0</u>
	<u>42.9</u>	<u>71.9</u>	<u>46.4</u>	<u>95.6</u>	<u>55.2</u>	<u>62.4</u>
	<u>42<sup>2</sup></u>	<u>55</u>	<u>85</u>	<u>25</u>	<u>31</u>	<u>55</u>

<sup>1</sup>Unaudited and unadjusted through July 31, 2007.

<sup>2</sup>The 2003 ending fund balance was restated to include \$157,626 in interest and \$682,000 in fee revenues related to an intergovernmental agreement.

**TABLE IX**  
**General Fund Balances 2002-2006**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Actual Expenditures	\$62,761,028	\$65,351,434	\$76,408,026	\$81,125,634	\$80,953,414
Total Fund Balance	\$13,472,942	\$16,271,955	\$18,446,485	\$17,795,625	\$17,555,231
Percent of Fund Balance to Expenditures	21.5%	24.9%	24.1%	21.9%	21.69%

Source: Westminster Finance Department

### **Budget Process**

The City of Westminster’s budget is a fiscal blueprint for service delivery. Per the City Charter, the City Council must adopt a balanced budget for the next fiscal year. The City’s budget is constructed on a calendar year as required by the City Charter. The voters approved a charter amendment in November 2000 that allows City Council to adopt a two-year budget; the City Council began officially implementing a two year budget with the adoption of the 2003/2004 Biennial Budget.

On or before September 15th of each year the City Manager must prepare and submit a recommended budget to the City Council. The recommended budget must provide detailed estimates of proposed expenditures for each City department, office and agency, and for the court for the ensuing fiscal year. In addition, the budget must set forth the corresponding actual expenditures for the last full fiscal year, the current fiscal year through September 1st and estimates of expenditures for the balance of the current fiscal year. The budget also must set forth all actual and anticipated revenues from sources other than taxes for the equivalent periods, and the estimated balance or deficit for the end of the current fiscal year. If required by the City Council, by resolution or ordinance, the City Manager shall submit to the City Council, simultaneously with his recommended budget, a schedule showing all recommended capital outlay expenditures during the following five fiscal years. Debt service requirements for the budget year must be stated separately. The Charter further requires the budget to set forth the amount to be raised from current and delinquent taxes and the amount to be raised from bond issues during the upcoming fiscal year which, together with any unappropriated revenue surplus and any revenues from other sources, will be necessary to meet the proposed expenditures. The budget must also contain such additional information as the Council may request.

A public hearing on the proposed budget must be held before its final adoption. Notice of the hearing must be published at least one week prior to its scheduled date, stating that the proposed budget is available for public inspection. The budget is to be adopted no later than the fourth Monday of October. On or before the last day of the current fiscal year, the Council shall appropriate by ordinance, based upon the budget as adopted, the moneys needed for municipal purposes during the next fiscal year. The City Council can adopt a budget for two (2) fiscal years instead of one (1) fiscal year, according to such procedures as City Council shall prescribe by ordinance. The City Council adopted the City’s 2007-2008 biennial budget in a timely manner pursuant to the above described procedure.

Subject to the restriction discussed below, the adopted budget must provide for a levy on real and personal property which will result in the collection of revenues in the amount necessary to be raised from ad valorem property taxes for municipal purposes. Following adoption of the budget, the Council certifies to the county assessors the amount to be levied on taxable property within the City for collection by the county treasurers.

At the end of each month during the fiscal year, the City Manager submits to the Council data comparing the estimated and actual revenues and appropriated expenditures to date. If accrued revenues are less than anticipated, the Council may reduce appropriations, except amounts required for debt and interest charges, as is necessary to keep expenditures within revenues.

With the exception of expenditures to be financed by the issuance of bonds or by special assessment, no expenditure may be made from City funds unless a specific appropriation has been made for such purpose. The City Council must approve all purchases and contracts in excess of \$50,000, with the City Manager having the authority to approve purchases and contracts in lesser amounts if funds have previously been budgeted to cover such expenses. In the case of an emergency or other unforeseeable event, money designated for contingencies may be transferred without additional appropriation by ordinance but does require the adoption of a resolution; the City Manager may order the transfer of funds within a departmental budget; or the Council may transfer any unencumbered appropriation balance, or any portion thereof, from one account or department (by motion) to another, and from one fund or agency (by ordinance) to another, at any time during the year. If the City receives revenues which were unanticipated at the time of adoption of the budget, the City Council may authorize, by ordinance, the expenditure thereof by adopting supplemental appropriations. The balance of any budget appropriation which has not been spent at the end of the year reverts to the fund from which the appropriation was made.

***General Fund Budget Summary and Comparison.*** The City implemented a two-year budget format in calendar year 2002. The budgets for 2007 and 2008 were adopted by City Council on October 23, 2006 and are compared in the following table.

**TABLE X**  
**General Fund Budget Summary and Comparison**

	2007 Budget (Adopted)	2008 Budget (Adopted) <sup>1</sup>
<i>Revenues</i>		
Property tax	\$ 4,204,787	\$ 4,356,546
Business tax	4,090,654	4,190,489
Admissions tax	506,000	517,000
Licenses	190,000	192,000
Building Permits	1,485,000	1,380,000
Intergovernmental	4,740,500	4,777,500
Recreation charges	5,611,336	5,731,166
Fines & forfeitures	2,311,250	2,353,275
Total reimbursement	55,000	55,000
Interest income	360,000	360,000
Contributions	5,000	5,000
General miscellaneous	<u>7,493,125</u>	<u>7,967,324</u>
Total Revenue	<u>31,052,652</u>	<u>31,885,300</u>
Transfer payments		
From Sales/Use Tax	55,760,254	57,243,969
From Utility Fund	<u>2,489,214</u>	<u>2,540,500</u>
Total Funds Available	<u>\$89,302,120</u>	<u>\$91,669,769</u>
<i>Expenditures</i>		
City Council	\$ 205,023	\$ 206,348
City Attorney	1,064,790	1,065,807
City Manager	1,121,996	1,126,326
Central Charges	21,268,702	23,363,038
General Services	5,030,427	5,078,192
Finance	1,806,674	1,806,204
Police	19,752,848	19,809,725
Fire	10,648,095	10,691,821
Community Development	4,594,371	4,570,622
Public Works & Utilities	7,418,362	7,209,602
Parks, Recreation, & Libraries	<u>13,867,983</u>	<u>14,168,087</u>
Total Operating	<u>86,779,271</u>	<u>89,095,772</u>
Transfer Payments	1,522,849	1,573,997
Contingency	<u>1,000,000</u>	<u>1,000,000</u>
Total Expenditures	<u>\$89,302,120</u>	<u>\$91,669,769</u>

<sup>1</sup> As adopted in October of 2006. The City utilizes a 2-year budget as described above in “—Budget Process.” In October of 2007, the City will be considering adoption of a revision to the 2008 Budget as well as adoption of its 2009 budget.

Source: Westminster Finance Department

### Retirement and Pension Matters

See Notes G, H and I to the City’s financial statements appended hereto for a discussion of the City’s pension plans.

## **Insurance Coverage**

The Council acts to protect the City against loss and liability by maintaining certain insurance coverages. The City is insured as a member of CIRSA, a property and liability insurance pool established for Colorado municipalities on January 1, 1982. CIRSA provides liability coverage, including errors and omissions; property coverage; and specific catastrophe coverage, which is renewable annually on January 1<sup>st</sup>. See Notes 4.A and 4.B to the City’s financial statements appended hereto for a discussion of CIRSA. The City Manager believes the City’s present insurance coverage to be adequate. However, there can be no assurance that the City will continue to maintain this level of coverage.

## **Deposit and Investment of City Funds**

State statutes set forth requirements for the deposit of City funds in eligible depositories and for the collateralization of such deposited funds. See also 2.A to the City’s financial statements appended hereto. The City also may invest available funds in accordance with applicable state statutes. The investment of the proceeds of this issue also is subject to the provisions of the Federal Tax Code. See “TAX MATTERS.”

## **DEBT STRUCTURE**

### **Required Elections**

Article X, Section 20 of the Colorado Constitution requires that, with certain exceptions, the City must have voter approval in advance for the creation of any multiple-fiscal year direct or indirect City debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years. Enterprises, as defined in Article X, Section 20, refundings at a lower interest rate, and obligations subject to annual appropriation are excluded from the application of said Section and the voter approval requirements established therein. For a discussion of Article X, Section 20 see “Constitutional Amendment Limiting Taxes and Spending.”

### **Revenue Bonds**

The City Council has the power to issue revenue bonds, subject to the election requirements described above in “Required Elections,” payable from the revenues derived from the operation of facilities to be acquired, constructed or improved with the proceeds of the bonds, or payable in whole or part from available proceeds of sales and use taxes. The City provides for the operation of certain of its services, such as water and wastewater, and certain of its recreational facilities as enterprises which are not subject to the provisions of Article X, Section 20, see “—Constitutional Amendment Limiting Taxes and Spending.” The following table sets forth the City’s outstanding revenue obligations upon issuance of the Bonds.

**TABLE XI**  
**Outstanding Revenue Obligations<sup>1</sup>**

Issue	Outstanding Principal	Principal Totals
<i>Sales and Use Tax Obligations</i>		
Sales and Use Tax Revenue Refunding and Improvement Bonds, Series 2001	\$ 7,125,000	
Sales and Use Tax Revenue Bonds (136 <sup>th</sup> Ave, & I 25 Project ), Series 2002	13,885,000	
Sales and Use Tax Revenue Refunding Bonds, Series 2007A	10,715,000	
Sales and Use Tax Revenue Refunding Bonds, Series 2007C	10,710,000	
Subtotal		\$42,435,000
Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 1997B	1,055,000	
Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 1999	400,000	
Special Purpose Sales and Use Tax Revenue Refunding Bonds (POST Project), Series 2007B	13,680,000	
Special Purpose Sales and Use Tax Revenue Bonds (POST Project) Series 2007D	20,000,000*	
Subtotal		35,135,000*
<i>Utility Fund Obligations</i>		
Water and Wastewater Revenue Refunding Bonds, Series 2001	14,050,000	
Variable Rate Demand Water and Wastewater Revenue Bonds, Series 2002	6,425,000	
Subtotal		20,475,000
Subordinate Water and Wastewater Revenue Bonds, Series 1997	8,716,814	
Subordinate Water and Wastewater Revenue Bonds, Series 1998	2,501,765	
Subordinate Water and Wastewater Revenue Bonds, Series 2000A	11,082,905	
Subordinate Water and Wastewater Revenue Bonds, Series 2005	14,555,000	
Subtotal		36,856,484
<i>Golf Course Fund Obligations</i>		
Golf Course Enterprise Revenue Bonds (Heritage Golf Course Project) Series 1998	<u>5,425,000</u>	
Subtotal		<u>5,425,000</u>
Total		<u>\$140,326,484*</u>

<sup>1</sup> As of November 2007.

\*Preliminary; subject to change.

Source: Westminster Finance Department

### **Leases and Long-Term Contracts**

The City Council has the authority to enter into installment or lease option contracts, subject to annual appropriation, for the purchase of property or capital equipment without prior electoral approval as described above in “—Required Elections.” The term of any such contract may not extend over a period greater than the estimated useful life of the property or equipment. The following table sets forth the City’s outstanding leases and long term contracts.

**TABLE XII**  
**Outstanding Leases and Long-Term Contracts<sup>1</sup>**  
**Issue**

<b>Issue</b>	<b>Outstanding Principal</b>
Certificates of Participation, Series 1998 (Various Capital Facilities)	\$ 2,045,000
Certificates of Participation, Series 1999 (Various Capital Facilities)	1,595,000
Certificates of Participation, Series 2001 (Public Safety Building)	16,070,000
Certificates of Participation, Series 2005 (144th Avenue & I-25 Project)	17,130,000
Refunding Certificates of Participation, Series 2007	<u>32,210,000</u>
Subtotal (for parity lien certificates secured by the same revenue source)	<u>69,050,000</u>
Joint Ventures	
Certificates of Participation, Series 1998 (Ice Centre) <sup>2</sup>	11,395,000
Certificates of Participation, Series 2006 (Metzger Property) <sup>3</sup>	4,920,000
Equipment Leases	<u>3,964,291</u>
Subtotal (other lease and long-term contracts)	<u>15,359,291</u>
Total (all outstanding leases and long-term contracts)	<u>\$89,329,291</u>

<sup>1</sup> As of August 2007.

<sup>2</sup> The City entered into an intergovernmental agreement with Hyland Hills Park and Recreation District to assist in financing and constructing a three sheet ice arena through the Westminster Building Authority and the issuance of certificates of participation.

<sup>3</sup> The City entered into an intergovernmental agreement with the City of Broomfield to create the Broomfield-Westminster Open Space Foundation (the "Foundation") to acquire, finance, own and operate approximately 150 acres of undeveloped land known as the Metzler Property through the issuance of financial obligations of the Foundation.

Source: Westminster Finance Department

### **General Obligation Debt**

"Debt" or "indebtedness" as used in this section means, generally, obligations backed by the City's full faith and credit and secured by the unlimited power of the City to levy ad valorem property taxes for the payment of bonds and the interest thereon. Any general obligation indebtedness of the City is subject to the election requirements described above in "—Required Elections." The City does not have any outstanding general obligation debt.

### **Other Financial Obligations**

Subject to the election requirements described above in "—Required Elections," the Council also has the power to issue special assessment bonds payable from assessments levied against specially benefited properties within special assessment districts. At this time, there are no special assessment bonds outstanding.

### **Moral Obligations**

The City has entered into moral obligations, which represent non binding declarations of the present intent of the City Council to replenish funds securing bond payments, with respect to \$6,460,000 of Tax Increment Adjustable Rate Revenue Bonds (Westminster Plaza Urban Renewal Project) issued by the Westminster Urban Renewal Authority in calendar year 1997, currently outstanding in the principal amount of \$5,930,000; \$68,300,000 of Tax Increment Adjustable Rate Revenue Bonds (North Huron Urban Renewal Project) issued by the Westminster Urban Renewal Authority in calendar year 2005 currently outstanding in the principal amount of \$68,300,000; \$38,455,000 of Tax Increment Adjustable



Rate Revenue Refunding Bonds (Mandalay Urban Renewal Project) issued by the Westminster Urban Renewal Authority in calendar year 2006 currently outstanding in the principal amount of \$38,455,000; \$8,320,000 of Tax Increment Adjustable Rate Revenue Refunding Bonds (South Sheridan Urban Renewal Project) issued by the Westminster Urban Renewal Authority in June 2007 currently outstanding in the principal amount of \$ 8,320,000 and the \$6,300,000 Golf Course Enterprise Revenue Bonds, Series 1998, currently outstanding in the principal amount of \$5,620,000 as referenced above. Payments, if any, required pursuant to such obligations are subject to annual appropriation by the City Council.

### **Constitutional TABOR Limiting Taxes and Spending**

**General.** A citizen initiated amendment which added Article X Section 20 to the State constitution was passed on November 3, 1992 (“TABOR”). TABOR applies to the State and any local governments (but excluding government owned enterprises as defined in the TABOR and certain other entities, including urban renewal authorities which satisfy certain legal conditions hereafter described), and among other things, provides significant restrictions regarding taxes, spending, revenue increases, and borrowing. The applicable limitations established pursuant to TABOR can be exceeded with prior voter approval.

With certain exceptions concerning general obligation bonds, pensions, final court judgments, and emergency taxes, TABOR requires local governments to obtain voter approval prior to the imposition of any new tax, tax rate increase, mill levy above that for the prior year, assessed valuation ratio increase, or extension of an expiring tax, or a tax policy change directly causing a net revenue gain to the local government.

Unless otherwise approved by the voters, TABOR also limits the annual percentage increases in both property tax revenue and local government “fiscal year spending,” with certain adjustments, to inflation (defined as the Denver Boulder consumer price index) in the prior calendar year plus “local growth.” Local growth is defined as the net percentage change in actual value of all real property in the local government from construction of improvements and additions to taxable real property less destruction of improvements and deletions to taxable real property. Fiscal year spending includes all the local government’s expenditures and reserve increases and excludes reserve transfers or expenditures, refunds made in the current or next fiscal year, gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, damage awards, and property sales. Any revenue collected in excess of the limit on spending and property tax revenue is required to be refunded during the next fiscal year.

**Enterprises.** Enterprises are excluded from the provisions of the Amendment. As defined in the Amendment, enterprise means a government owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

**De-Brucing.** At the election held on November 5, 2002, the City received voter approval to exempt all City revenues not previously exempted pursuant to voter approval, which moneys would otherwise be subject to the TABOR’s fiscal year spending limitation (which revenues are comprised primarily of non-tax revenues such as user-charged fees and state and local grant moneys).

## **LEGAL MATTERS**

### **Sovereign Immunity**

The Governmental Immunity Act, Title 24, Article 10, Part 1, C.R.S. (the “Act”), provides that, with certain specified exceptions, sovereign immunity acts as a bar to any action against a public entity, such as the City, for injuries which lie in tort or could lie in tort.

The Act provides that sovereign immunity does not apply to injuries occurring as a result of certain specified actions or conditions. In such instances, the public entity may be liable for injuries arising from an act or omission of the public entity, or an act or omission of its public employees, which are not willful and wanton, and which occur during the performance of their duties and within the scope of their employment. The maximum amounts that may be recovered under the Act, whether from one or more public entities and public employees, are as follows: (a) for any injury to one person in any single occurrence, the sum of \$150,000; (b) for an injury to two or more persons in any single occurrence, the sum of \$600,000; except in such instance, no person may recover in excess of \$150,000. Suits against both the City and a public employee do not increase such maximum amounts which may be recovered. For injuries occurring prior to July 1, 1986, sovereign immunity limits are deemed to be waived to the extent that the City’s insurance covers such injury. With regard to injuries occurring on and after such date, the City may, by resolution, increase any maximum amount that may be recovered from the City for the type of injury described in the resolution. The City has not adopted such a resolution to date. The City may not be held liable either directly or by indemnification for punitive or exemplary damages. In the event that the City is required to levy an ad valorem property tax to discharge a settlement or judgment, such tax may not exceed a total of ten mills per annum for all outstanding settlements or judgments.

The City may be subject to civil liability and may not be able to claim sovereign immunity for actions founded upon various federal laws. Examples of such civil liability include, but are not limited to, suits filed pursuant to 42 U.S.C. §1983 alleging the deprivation of federal constitutional or statutory rights of an individual. In addition, the City may be enjoined from engaging in anti competitive practices which violate the antitrust laws.

### **Pending and Threatened Litigation Involving the City**

The City Attorney is expected to render an opinion or deliver a certificate upon delivery of the Bonds stating that, to the best of his actual knowledge, there is no action, suit or proceeding now pending or threatened against the City that will materially and adversely affect the financial condition or operations of the City, or the City’s power to issue and deliver the Bonds, or to execute and perform the obligations of the City in the Bond Ordinance.

### **Legal Representation**

Legal matters incident to the authorization and issuance of the Bonds are subject to approval by Sherman & Howard L.L.C., Denver, Colorado, as Bond Counsel. In addition Kutak Rock LLP has been retained to advise the City concerning, and has assisted the City in the preparation of, this Official Statement. Certain legal matters will be passed upon for the City by Martin R. McCullough, Esq., as City Attorney.

The legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to legal issues expressly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of the

result indicated by that expression of professional judgment, or of the transaction on which the opinion is rendered, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

## **TAX MATTERS**

In the opinion of Bond Counsel, assuming continuous compliance with certain covenants described below, interest on the Bonds is excluded from gross income under federal income tax laws pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds (the "Tax Code"), interest on the Bonds is excluded from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except that such interest is required to be included in calculating the "adjusted current earnings" adjustment applicable to corporations for purposes of computing the alternative minimum taxable income of corporations as described below, and interest on the Bonds is excluded from Colorado taxable income and Colorado alternative minimum taxable income under Colorado income tax laws in effect on the date of delivery of the Bonds.

The Tax Code and Colorado law impose several requirements which must be met with respect to the Bonds in order for the interest thereon to be excluded from gross income, alternative minimum taxable income (except to the extent of the aforementioned adjustment applicable to corporations), Colorado taxable income and Colorado alternative minimum taxable income. Certain of these requirements must be met on a continuous basis throughout the term of the Bonds. These requirements include: (a) limitations as to the use of proceeds of the Bonds; (b) limitations on the extent to which proceeds of the Bonds may be invested in higher yielding investments; and (c) a provision, subject to certain limited exceptions, that requires all investment earnings on the proceeds of the Bonds above the yield on the Bonds to be paid to the United States Treasury. The City will covenant and represent in the Ordinance that it will take all steps to comply with the requirements of the Tax Code and Colorado law (in effect on the date of delivery of the Bonds) to the extent necessary to maintain the exclusion of interest on the Bonds from gross income and alternative minimum taxable income (except to the extent of the aforementioned adjustment applicable to corporations) under such federal income tax laws and Colorado taxable income and Colorado alternative minimum taxable income under such Colorado income tax laws. Bond Counsel's opinion as to the exclusion of interest on the Bonds from gross income, alternative minimum taxable income (to the extent described above), Colorado taxable income and Colorado alternative minimum taxable income is rendered in reliance on these covenants, and assumes continuous compliance therewith. The failure or inability of the City to comply with these requirements could cause the interest on the Bonds to be included in gross income, alternative minimum taxable income, Colorado taxable income or Colorado alternative minimum taxable income, or a combination thereof, from the date of issuance. Bond Counsel's opinion also is rendered in reliance upon certifications of the City and other certifications furnished to Bond Counsel. Bond Counsel has not undertaken to verify such certifications by independent investigation.

Section 55 of the Tax Code contains a 20% alternative minimum tax on the alternative minimum taxable income of corporations. Under the Tax Code, 75% of the excess of a corporation's "adjusted current earnings" over the corporation's alternative minimum taxable income (determined without regard to this adjustment and the alternative minimum tax net operating loss deduction) is included in the corporation's alternative minimum taxable income for purposes of the alternative minimum tax applicable to the corporation. "Adjusted current earnings" includes interest on the Bonds.

The Tax Code contains numerous provisions which may affect an investor's decision to purchase the Bonds. Owners of the Bonds should be aware that the ownership of tax-exempt obligations by particular persons and entities, including, without limitation, financial institutions, insurance companies, recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have

incurred or continued indebtedness to purchase or carry tax-exempt obligations, foreign corporations doing business in the United States and certain “subchapter S” corporations may result in adverse federal and Colorado tax consequences. Under section 3406 of the Tax Code, backup withholding may be imposed on payments on the Bonds made to any owner who fails to provide certain required information, including an accurate taxpayer identification number, to certain persons required to collect such information pursuant to the Tax Code. Backup withholding may also be applied if the owner underreports “reportable payments” (including interest and dividends) as defined in Section 3406, or fails to provide a certificate that the owner is not subject to backup withholding in circumstances where such a certificate is required by the Tax Code. Certain of the Bonds may be sold at a premium, representing a difference between the original offering price of those Bonds and the principal amount thereof payable at maturity. Under certain circumstances, an initial owner of such bonds (if any) may realize a taxable gain upon their disposition, even though such bonds are sold or redeemed for an amount equal to the owner’s acquisition cost. Bond Counsel’s opinion relates only to the exclusion of interest on the Bonds from gross income, alternative minimum taxable income, Colorado taxable income and Colorado alternative minimum taxable income as described above and will state that no opinion is expressed regarding other federal or Colorado tax consequences arising from the receipt or accrual of interest on or ownership of the Bonds. Owners of the Bonds should consult their own tax advisors as to the applicability of these consequences.

The opinions expressed by Bond Counsel are based on existing law as of the delivery date of the Bonds. No opinion is expressed as of any subsequent date nor is any opinion expressed with respect to pending or proposed legislation. Amendments to the federal or state tax laws may be pending now or could be proposed in the future that, if enacted into law, could adversely affect the value of the Bonds, the exclusion of interest on the Bonds from gross income or alternative minimum taxable income or both from the date of issuance of the Bonds or any other date, or that could result in other adverse tax consequences. In addition, future court actions or regulatory decisions could affect the market value of the Bonds. For example, the U.S. Supreme Court recently agreed to review a Kentucky state court decision on the issue of whether the U.S. Constitution precludes states from giving more favorable tax treatment to state and local government bonds issued within that state than the tax treatment given bonds issued outside that state. The outcome of this or any similar case cannot be predicted, but the ultimate result could be a change in the treatment for state tax purposes of obligations such as the Bonds, or a change in the market value of the Bonds. Owners of the Bonds are advised to consult with their own tax advisors with respect to such matters.

The Internal Revenue Service (the “Service”) has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether or not the Service will commence an audit of the Bonds. If an audit is commenced, the market value of the Bonds may be adversely affected. Under current audit procedures, the Service will treat the City as the taxpayer and the Owners may have no right to participate in such procedures. The City has covenanted in the Ordinance not to take any action that would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes or lose its exclusion from alternative minimum taxable income except to the extent described above for the owners thereof for federal income tax purposes. None of the City, the Underwriter, or Bond Counsel is responsible for paying or reimbursing any Registered Owner or Beneficial Owner for any audit or litigation costs relating to the Bonds.

## MISCELLANEOUS

### **Ratings**

Standard & Poor's Ratings Services, a Division of The McGraw Hill Companies, Inc. ("S&P") and Fitch Investors ("Fitch") have assigned the ratings to the Bonds shown on the cover page hereof, with the understanding that, upon delivery of the Bonds, the Policy will be issued by the Insurer. Such ratings reflect only the view of such rating agencies. Any explanations of the significance of such ratings should be obtained from S&P at 55 Water Street, New York, New York 10041 and from Fitch at One State Street Plaza, New York, New York 10004. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance such ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by the applicable rating agency if in the judgment of such rating agency circumstances so warrant. Any downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds.

The rating agencies have also assigned the underlying ratings shown on the cover page. The underlying ratings are reflective of the capacity of the City to fulfill its payment obligations under the Bond Ordinance, without giving effect to the additional security provided by the Policy.

### **Registration of Bonds**

Registration or qualification of the offer and sale of the Bonds (as distinguished from registration of the ownership of the Bonds) is not required under the federal Securities Act of 1933, as amended, the Colorado Securities Act, as amended, pursuant to an exemption from registration provided in said act. THE CITY ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE BONDS FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE BONDS MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.

### **Financial Advisor**

James Capital Advisors, Inc. ("James Capital") served as financial advisor to the City with respect to the sale of the Bonds. As the City's financial advisor, James Capital has assisted in the preparation of this Official Statement and in other matters relating to the planning, structuring, rating and issuance of the Bonds. In its role of financial advisor to the City, James Capital has not undertaken either to make an independent verification of or to assume responsibility for the accuracy or completeness of the information contained in the Official Statement and the Appendices hereto.

### **Interest of Certain Persons Named in this Official Statement**

The legal fees to be paid to Sherman & Howard L.L.C. and to Kutak Rock LLP are contingent upon the sale and delivery of the Bonds.

### **Underwriting**

The Bonds are being sold by the City at an underwriting discount of \$\_\_\_\_\_ to the Underwriter pursuant to a purchase contract. See "THE BONDS—Application of Bond Proceeds." Expenses associated with the issuance of the Bonds are being paid by the City from proceeds of the issue. The right of the Underwriter to receive compensation in connection with this issue is contingent upon the actual sale and delivery of the Bonds. The Underwriter has initially offered the Bonds to the public at the



**APPENDIX A**

**AUDITED GENERAL PURPOSE FINANCIAL STATEMENTS OF THE CITY  
AS OF AND FOR THE YEAR ENDED DECEMBER 31, 2006**

**APPENDIX B**

**CONTINUING DISCLOSURE CERTIFICATE**

[to be provided by Bond Counsel]

## APPENDIX C

### ECONOMIC AND DEMOGRAPHIC INFORMATION

The following information is provided to give prospective investors general information concerning selected economic and demographic conditions existing in the larger metropolitan area within which the City is located. The statistics presented below have been obtained from the referenced sources and represent the most current information available from such sources; however, certain of the information is released only after a significant amount of time has passed since the most recent date of the reported data and therefore, such information may not be indicative of economic and demographic conditions as they currently exist or conditions which may be experienced in the near future. Further, the reported data has not been adjusted to reflect economic trends, notably inflation. Finally, other economic and demographic information not presented herein may be available concerning the area in which the City is located and prospective investors may want to review such information prior to making their investment decision. *The following information is not to be relied upon as a representation or guarantee of the City or its officers, employees, or advisors.*

#### Population and Median Age

The following table sets forth the population of the City of Westminster, Adams County, Jefferson County and the Denver metropolitan statistical area (the “DMA”) which includes the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson.

<b>Population</b>					
<b>Year</b>	<b>City of Westminster</b>	<b>Percent Change</b>	<b>Adams County <sup>1</sup></b>	<b>Jefferson County</b>	<b>DMA</b>
1960	13,850	--	120,296	127,520	934,199
1970	19,634	41.8%	185,789	235,300	1,238,273
1980	50,211	155.7	245,944	371,753	1,618,461
1990	74,625	48.6	265,038	438,430	1,848,319
2000	100,940	35.3	363,857	527,056	2,400,570
2001	102,905	0.0	361,262	529,404	2,195,883
2002	104,011	3.0	375,380	530,821	2,236,522
2003	104,522	0.5	385,262	529,479	2,553,636
2004	105,177	0.6	394,257	532,723	2,592,441
2005	105,944	0.7	405,561	532,608	2,627,322
2006 <sup>2</sup>	107,363	1.3	unavailable	unavailable	unavailable

<sup>1</sup> The City of Westminster is located in both Adams and Jefferson Counties and therefore information for both counties is included herein as pertinent to the City.

<sup>2</sup> As provided by the City of Westminster.

Source: The 1960-2000 population figures were obtained from the U.S. Department of Commerce, Bureau of the Census; the 2001-2005 figures were obtained from the Division of Local Government, Demographic Division

According to the United States Census Bureau, Adams County’s median age in 1990 was 30.5 years as compared with 31.4 years in 2000. Westminster’s median age was 30.1 in 1990 compared with 32.6 for 2000. The State’s median age for the same period increased from 31.4 in 1990 to 34.3 years



in 2000, with the median age of the United States being 33.0 and 35.3 years in 1990 and 2000, respectively.

## Income

The following tables set forth historical median household effective buying income, the percentage of households by classification of effective buying income (“EBI”) levels, and per capita personal income for Adams County, Jefferson County, the Denver-Aurora-Boulder Consolidated Area, the State and the United States.

### Median Household Effective Buying Income <sup>1</sup>

	2002	2003	2004	2005	2006
Adams County	\$42,802	\$43,981	\$42,738	\$43,561	\$44,281
Jefferson County	54,470	50,830	51,688	52,289	53,236
CBSA <sup>1</sup>	48,397	46,613	47,567	48,539	49,100
Colorado	44,050	43,510	43,544	44,489	45,594
United States	38,365	38,035	38,201	39,324	40,529

Note: A household consists of all the people occupying a house, an apartment, room or group of rooms regarded as a housing unit according to the 2000 Census definitions. Members of the household need not be related.

<sup>1</sup> Historically the Survey of Buying Power reported data for the Denver-Boulder-Greeley consolidated metropolitan statistical area (“MSA”) which included the counties of Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, and Weld. Beginning with the 2004 Survey of Buying Power, data is now being reported for the newly defined core based statistical areas (“CBSA”) instead of MSA, which data is based on the census. The newly created Denver-Aurora-Boulder CBSA includes the counties of Adams, Arapahoe, Broomfield, Boulder, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, and Park, therefore; CBSA figures are not directly comparable to historical MSA data presented herein.

Source: “Survey of Buying Power,” *Sales & Marketing Management*, 2002-2006

### Percent of Households by Effective Buying Income Groups—2006

	Less Than \$15,000	\$15,000- \$24,999	\$25,000- \$49,999	\$50,000- \$74,999	\$75,000- \$99,999	\$100,000- \$149,999	\$150,000 or more
Adams County	9.1%	11.0%	38.2%	24.7%	11.0%	4.5%	1.5%
Jefferson County	6.5	8.4	31.1	25.7	15.5	9.1	3.7
CBSA-	8.7	9.8	32.7	23.8	13.5	7.8	3.7
Colorado	10.4	11.5	33.7	22.4	12.1	6.7	3.2
United States	14.1	13.5	34.2	20.3	9.7	5.7	2.5

Source: *Total Dimensions International, Inc.-Demographics USA* 2002-2006

**Per Capita Personal Income**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Adams County	\$27,464	\$27,605	\$27,438	\$28,119	\$29,001
Jefferson County	39,382	38,098	38,230	40,703	42,709
DMA	39,525	38,796	38,640	40,583	42,369
Colorado	34,481	34,014	34,059	35,810	37,510
United States	30,562	30,795	31,466	33,090	34,471

Source: State of Colorado, Division of Local Government, Demographic Section

**School Enrollment**

The following table presents a five year history of school enrollment for Adams County School District No. 12, Adams County School District No. 50 and Jefferson County School District R-1, the school districts serving the City.

**School Enrollment**

<b>Year</b>	<b>Adams County School District No. 12</b>	<b>Adams County School District No. 50</b>	<b>Jefferson County School District R-1</b>
2002/2003	33,522	11,012	87,925
2003/2004	34,869	10,562	87,180
2004/2005	36,430	10,671	86,877
2005/2006	36,994	10,049	85,043
2006/2007	37,433	10,683	84,790

Source: Colorado Department of Education, *State Trends in Colorado Public School Membership by School District* and individual school districts

## Building Activity

The following tables set forth building permit activity for the City of Westminster.

### Building Permit Activity in the City of Westminster

Year	Residential			Commercial	Valuation for All Permits
	Multi-Family Units	Single-Family Units	Total Residential Units		
2002	374	463	857	17	\$171,559,369
2003	16	497	513	31	182,245,326
2004	24	489	513	21	124,281,747
2005	87	183	270	30	151,800,465
2006	109	155	264	55	191,445,758
2007 <sup>1</sup>	1	101	102	28	110,813,870

<sup>1</sup>Building permits issued through August 27, 2007.

Source: City of Westminster Building Department

## Foreclosure Activity

The number of foreclosures filed in Adams County and in Jefferson County are set forth in the following table.

### History of Foreclosures

Year	Adams County	Percent Change	Jefferson County	Percent Change
2002	927	--	1,130	--
2003	1,899	4.9%	1,532	35.6%
2004	2,499	31.6	1,880	22.7
2005	3,281	31.3	2,120	12.8
2006	4,330	32.0	2,971	40.1
2007 <sup>1</sup>	3,190	--	1,981	--

<sup>1</sup>Foreclosures filed through June 30, 2007.

Source: Adams County and Jefferson County Public Trustees

## Employment

The following tables set forth employment statistics by industry and the most recent historical labor force estimates for Adams County and Jefferson County.

### Total Business Establishments and Employment—Adams County

Industry <sup>1</sup>	Third Quarter 2005		Third Quarter 2006		Quarterly Change	
	Units	Average Employment	Units	Average Employment	Units	Average Employment
Agriculture, forestry, fishing and hunting	49	1,518	48	1,610	1	92
Mining	29	248	35	242	6	(6)
Utilities	12	919	13	605	1	(314)
Construction	1,464	18,449	1,500	19,043	36	594
Manufacturing	501	14,200	508	14,187	7	(13)
Wholesale trade	968	13,721	987	14,377	19	656
Retail trade	1,001	15,947	1,007	16,169	6	222
Transportation and warehousing	487	13,773	484	13,550	(3)	(223)
Information	121	1,966	123	2,407	2	81
Finance and insurance	480	2,889	498	3,050	18	161
Real estate and rental and leasing	466	2,890	491	2,920	25	30
Professional and technical services	744	3,897	828	3,951	84	54
Management of companies and enterprises	53	1,425	59	1,582	6	157
Administrative and waste services	548	10,106	581	11,475	33	1,369
Educational services	89	1,491	103	1,664	14	173
Health care and social assistance	509	9,548	531	10,101	22	553
Arts, entertainment, and recreation	86	1,026	84	1,036	(2)	10
Accommodation and food services	627	11,079	637	11,545	10	466
Other services, except public administration	745	4,676	750	4,908	5	232
Non-classifiable	-- <sup>2</sup>	-- <sup>2</sup>	8	17	-- <sup>2</sup>	-- <sup>2</sup>
Government	<u>95</u>	<u>19,976</u>	<u>97</u>	<u>20,535</u>	<u>2</u>	<u>559</u>
Total	<u>9,076</u>	<u>149,748</u>	<u>9,372</u>	<u>154,613</u>	<u>296</u>	<u>4,865</u>

<sup>1</sup> Information provided herein reflects only those employers who are subject to state unemployment insurance law.

<sup>2</sup> Data suppressed.

Source: Colorado Department of Labor and Employment, Labor Market Information, ES-202

**Total Business Establishments and Employment—Jefferson County**

Industry <sup>1</sup>	Third Quarter 2005		Third Quarter 2006		Quarterly Change	
	Units	Average Employment	Units	Average Employment	Units	Average Employment
Agriculture, forestry, fishing and hunting	43	415	38	402	(5)	(13)
Mining	74	291	83	365	9	74
Utilities	38	825	40	871	2	46
Construction	2,461	16,017	2,405	15,804	(56)	(213)
Manufacturing	574	18,589	583	18,811	9	222
Wholesale trade	1,499	5,973	1,477	6,111	(22)	138
Retail trade	2,102	29,148	2,108	29,354	6	206
Transportation and warehousing	255	2,134	248	2,140	(7)	6
Information	328	4,129	336	4,451	8	322
Finance and insurance	1,375	8,400	1,395	8,357	20	(43)
Real estate and rental and leasing	966	4,243	992	4,037	26	(206)
Professional and technical services	3,245	15,470	3,477	16,042	232	572
Management of companies and enterprises	140	2,410	162	2,595	22	185
Administrative and waste services	1,110	15,442	1,137	19,519	27	4077
Educational services	234	2,338	246	2,350	12	12
Health care and social assistance	1,389	19,012	1,375	19,519	(14)	507
Arts, entertainment, and recreation	238	3,642	233	3,515	(5)	(127)
Accommodation and food services	1,101	20,186	1,104	20,986	3	800
Other services, except public administration	1,449	6,212	1,433	6,338	(16)	126
Non-classifiable	5	6	10	18	5	12
Government	161	32,113	162	31,945	1	(168)
Total	<u>18,787</u>	<u>207,002</u>	<u>19,044</u>	<u>208,163</u>	<u>257</u>	<u>1,161</u>

<sup>1</sup> Information provided herein reflects only those employers who are subject to state unemployment insurance law.  
Source: Colorado Department of Labor and Employment, Labor Market Information, ES-202

**Labor Force Estimates**

Year	Adams County		Jefferson County		DMSA		Colorado	
	Labor Force	Percent Unemployed	Labor Force	Percent Unemployed	Labor Force	Percent Unemployed	Labor Force	Percent Unemployed
2002	196,440	6.2%	309,536	5.3%	1,215,905	5.9%	2,437,413	5.7%
2003	201,891	7.1	310,080	5.6	1,252,299	6.3	2,477,874	6.0
2004	199,128	6.5	303,628	5.5	1,275,498	5.9	2,522,225	5.5
2005	202,472	5.8	308,500	5.0	1,306,362	5.2	2,547,895	5.1
2006	216,237	5.0	317,140	4.5	1,354,492	4.4	2,651,718	4.3
2007 <sup>1</sup>	216,370	4.5	313,777	3.7	1,354,271	4.0	2,650,775	3.9

<sup>1</sup> Labor force estimates through May 31, 2007.

Source: State of Colorado, Division of Employment and Training, Labor Market Information, Colorado Labor Force Review

The following table sets forth selected major employers within the City of Westminster. No independent investigation has been made of and there can be no representation as to the stability or financial condition of the entities listed below, or the likelihood that they will maintain their status as major employers in the City. Three school districts are represented within Westminster: Adams County School District No. 12, Adams County School District No. 50 and Jefferson County School District R-1. The breakdown of employees within facilities within Westminster is not readily available.

## City of Westminster-Selected Major Employers

Employer	Product or Service	Estimated Number of Employees <sup>1</sup>
Avaya	Business Communication Systems, Research & Development	1,860 <sup>2</sup>
City of Westminster	City Government	1,665
Ball Corporation	Packaging Operations, Research & Development, Aerospace	659
Centura Health/ St. Anthony North	Full Service Hospital	570
Access Distribution (GE Access)	Computer Systems & Networks Vendor	390
Tri State Generation	Electric Utility Wholesaler	355
Alliance Data Systems	Network Credit Authorization Services and Equipment	323
Kaiser Permanente	Health Care Provider	263
Corporate Express	Office Supplies Provider	263
LaFarge North America	Construction Materials	190
Finali	ECRM Solutions Service Provider	175
Global Healthcare Exchange	Supply Chain Solutions and Services Provider	140
Trimble Navigation	Satellite Navigation Equipment	132
Celestica Services, Inc.	Communications Systems Research and Development	107

<sup>1</sup>As of March 2006.

<sup>2</sup>As of January 2007.

Source: City of Westminster and individual employers

### APPENDIX D

#### SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY

### APPENDIX E

#### BOOK-ENTRY ONLY SYSTEM

#### **Book-Entry-Only System**

*The information in this section concerning DTC and DTC's book entry-only system has been obtained from sources that the City believes to be reliable, but the City and the Underwriter take no responsibility for the accuracy thereof.*

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered bond certificate will be issued for the Bonds, as set forth on the cover page hereof, in the aggregate principal amount of each maturity of the Bonds and deposited with DTC.

DTC, the world's largest securities depository, is a limited purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money

market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation, (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC. and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others both as U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants remain responsible for keeping accounts of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of the Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant on accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds are to be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or Paying Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners are governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other name as may be requested by an authorized representative of DTC) is the responsibility of the City or the Paying Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, bond certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

## **APPENDIX F**

### **FORM OF BOND COUNSEL OPINION**

[to be provided by Bond Counsel]



**A BILL FOR AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS (POST PROJECT), SERIES 2007D, OF THE CITY OF WESTMINSTER, COLORADO, PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.**

**THE CITY OF WESTMINSTER ORDAINS:**

**Section 1. Definitions.** As used herein, unless the context clearly indicates otherwise, the following terms shall have the respective meanings set forth below:

Ballot Issue: the ballot issue approved by the registered electors of the City at the Election, set forth in Recital K hereof, pursuant to which the Bonds will be issued.

Beneficial Owner: any Person for which a Participant acquires an interest in the Bonds.

Bond Fund: offsetting revenue and expense accounts within the General Debt Service Fund of the City, designated as "2007D Special Purpose Sales and Use Tax Revenue Bonds" created by the provisions of this Bond Ordinance.

Bond Insurance Policy: the financial guaranty insurance policy or municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds.

Bond Insurer: means the provider of any financial guaranty insurance policy or municipal bond insurance policy, or any successor thereto, if set forth in the Sale Certificate.

Bond Ordinance: this Bond Ordinance which authorizes the issuance of the Bonds.

Bond Purchase Agreement: the agreement between the City and the Underwriter, concerning the purchase of the Bonds by the Underwriter.

Bonds: the City's Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D, as authorized by this Bond Ordinance.

Cede: Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of DTC with respect to the Bonds.

Charter: the home rule charter of the City adopted in accordance with Article XX of the Colorado Constitution.

City: the City of Westminster, Adams and Jefferson Counties, Colorado.

Code: the Internal Revenue Code of 1986, as in effect on the date of delivery of the Bonds.

Combined Average Annual Principal and Interest Requirements: with regard to any two or more particular issues of bonds or other obligations, the aggregate of all future payments of principal of and interest on all of said issues (excluding redemption premiums) to become due from the date of computation to the date of maturity of the latest maturing obligation of any of said issues, divided by the number of years between said dates; provided further that such computation shall assume the redemption and payment of bonds or other obligations subject to mandatory redemption, but shall be made without regard to optional redemption.

Combined Maximum Annual Principal and Interest Requirements: with regard to any two or more particular issues of bonds or other obligations, the maximum annual payment of principal of and interest on all of said issues (excluding redemption premiums) to become due from the date of computation to the date of maturity of the latest maturing obligation of any of

said issues; provided that such computation shall assume the redemption and payment of bonds or other obligations subject to mandatory redemption, but shall be made without regard to optional redemption or any other assumed amortization.

Continuing Disclosure Certificate: the undertaking executed by officers of the City simultaneous with the delivery of the Bonds which enables the Underwriter to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Council: the City Council of the City of Westminster, Colorado.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented to the date hereof.

Depository: any securities depository as the City may provide and appoint to act as securities depository for the Bonds in accordance with the guidelines of the Securities and Exchange Commission.

DTC: the Depository Trust Company, New York, New York, and its successors and assigns.

Election: the election held within the City on November 7, 2006, at which the voters of the City approved the Ballot Issue.

Event of Default: any one or more of the events set forth in Section 22 of this Bond Ordinance.

Federal Securities: direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee.

Finance Director: the Finance Director of the City.

General Debt Service Fund: the "General Debt Service Fund" heretofore established as a governmental fund of the City.

Insurance Trustee: the commercial bank, if any, appointed by the Bond Insurer to act as insurance trustee under the Bond Insurance Policy.

Letter of Representations: the letter of representations from the City to DTC to induce DTC to accept the Bonds as eligible for deposit at DTC.

Open Space Fund: the "Open Space Fund" heretofore established as a governmental fund of the City.

Owners: the Beneficial Owners and the Registered Owners; provided however, that for purposes of Sections 22 and 23 hereof and, to the extent provided in any ordinance authorizing the Series 1997 Bonds, the Series 1999 Bonds, Series 2007B Bonds and any Parity Lien Bonds, any bond insurer which is not in default in its obligations under its bond insurance policy insuring payment of the Series 1997 Bonds, the Series 1999 Bonds, the Series 2007B Bonds or any Parity Lien Bonds shall be deemed the Owner thereof.

Parity Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City in accordance with the provisions hereof, having a lien on the Pledged Revenue which is on a parity with the lien of the Bonds.

Participant: any broker-dealer, bank, or other financial institution from time to time for which DTC or other Depository holds the Bonds.

Paying Agent: American National Bank, in Denver, Colorado or its successor, which shall perform the function of paying agent as set forth in this Bond Ordinance.

Paying Agent Agreement: the Registrar and Paying Agent Agreement dated as of the date of delivery of the Bonds, between the City and the Registrar and Paying Agent.

Permitted Investments: any investment or deposit permitted for the City under the Charter and the laws of the State and approved by the Bond Insurer; provided that investment of moneys pursuant to this Bond Ordinance shall be subject to the tax covenants and provisions of Section 19(f) hereof.

Person: any natural person, firm, partnership, association, corporation, trust, public body, or other entity.

Pledged Revenue: 6.49% of the revenue derived from the Sales and Use Tax, after deducting all costs of administering and collecting the Sales and Use Tax.

Preliminary Official Statement: the Preliminary Official Statement prepared in connection with the issuance of the Bonds.

Project: the issuance of the Bonds to provide funds for the purposes set forth in the Ballot Issue and for the payment of the costs of issuance of the Bonds.

Record Date: the fifteenth (15th) day of the calendar month next preceding each interest payment date of the Bonds.

Registered Owner: the registered owner of any Bond, as shown by the registration books maintained by the Registrar on behalf of the City.

Registrar: American National Bank, in Denver, Colorado or its successor, which shall perform the registration and transfer functions of bond registrar as set forth in this Bond Ordinance.

Required Reserve: the amount of the Reserve Fund required by Section 19(e) hereof.

Reserve Fund: offsetting revenue and expense accounts within the General Debt Service Fund of the City, designated as the "Special Purpose Sales and Use Tax Revenue Bonds Reserve," created by the provisions of Section 19(e) of this Bond Ordinance.

Sale Certificate: the certificate executed by the City Manager or the Finance Director dated on or before the date of delivery of the Bonds, setting forth (i) the rates of interest on the Bonds, (ii) the conditions on which and the prices at which the Bonds may be called for redemption; (iii) the existence and amount of any capitalized interest or reserve fund; (iv) the price at which the Bonds will be sold; (v) the principal amount of the Bonds; (vi) the amount of principal of the Bonds maturing on each date; (vii) the dates on which principal and interest will be paid and the first interest payment date; (viii) whether the Bonds will be secured by a municipal bond insurance policy or financial guaranty insurance policy; and (ix) any other matters which may be determined by the City Manager or the Finance Director pursuant to Section 11-57-205 of the Supplemental Act.

Sales and Use Tax: the sales and use tax of the City, as imposed by Title IV in effect as of the date hereof. The term "Sales and Use Tax" does not include any increases in the rate of sale and use taxes from the present rate of 3.85%, nor does it include any other excise taxes which may now or hereafter be imposed by the City, whether contained in Title IV or any other Chapter or ordinance of the City.

Sales and Use Tax Fund: the "Sales and Use Tax Special Revenue Fund" heretofore established as a governmental fund of the City.

Series 1997 Bonds: the City's Special Purpose Sales and Use Tax Revenue Bonds, Series 1997B, dated March 1, 1997.

Series 1999 Bonds: the City's Special Purpose Sales and Use Tax Revenue Bonds, Series 1999 dated as of October 1, 1999.

Series 2007B Bonds: the City's Special Purpose Sales and Use Tax Revenue Refunding Bonds (POST Project), Series 2007B, dated as of March 6, 2007.

Special Record Date: a special date fixed to determine the names and addresses of Registered Owners of Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest.

Subordinate Lien Bonds: one or more series of additional bonds, notes, interim securities, or other obligations issued by the City in accordance with the provisions hereof, having a lien on the Pledged Revenue which is subordinate or junior to the lien of the Bonds.

Supplemental Act: the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

Term Bonds : The Bonds that are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

Title IV: Chapters 1 and 2 of Title IV of the Municipal Code of the City governing the imposition, collection, distribution, and enforcement of the Sales and Use Tax, and any successor or other ordinance pertaining to the Sales and Use Tax.

Underwriter: Stifel, Nicolaus & Company, Incorporated, Denver, Colorado, the original purchaser of the Bonds, or its successor.

**Section 2. Recitals.**

A. This Bond Ordinance shall be known as and may be cited by the short title “2007D Special Purpose Sales and Use Tax Bond Ordinance.”

B. The City is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Colorado Constitution and the Charter.

C. Pursuant to Section 10.2 of the Charter and Title IV of the City’s Municipal Code, the City has heretofore imposed and is collecting a sales and use tax upon the sale or use of tangible personal property and certain services.

D. Pursuant to said Title IV, for transactions consummated or contracts entered into on or after January 1, 2004, but prior to January 1, 2033, the rate of the sales and use tax shall be three and eighty-five hundredths percent (3.85%), and for transactions consummated or contracts entered into prior to January 1, 1986, or on or after January 1, 2033, the rate of the sales and use tax shall be three and sixty-hundredths percent (3.60%).

E. Pursuant to said Title IV, six and forty-nine hundredths percent (6.49%) of all sales and use taxes collected at the rate of three and eighty-five hundredths percent (3.85%) shall be distributed to the City’s Open Space Fund.

F. Pursuant to Chapter XI of the Charter, the Council has the power to issue, without the vote of the qualified electors of the City, revenue bonds for any public purpose payable in whole or in part from the available proceeds of sales and use taxes which may be imposed pursuant to Chapter X of the Charter.

G. Pursuant to Chapter XI of the Charter and an election question approved at the November 5, 1996 election, the City has heretofore duly authorized, sold, issued, and delivered to the purchasers thereof the Series 1997 Bonds and the Series 1999 Bonds payable solely from certain sales and use tax and other excise tax revenues to be derived by the City.

H. Pursuant to an Escrow Agreement dated March 6, 2007, Series 1997 Bonds in the aggregate principal amount of \$13,865,000 were defeased using proceeds of the Series 2007B Bonds and are no longer outstanding under the terms of the ordinance authorizing the Series 1997 Bonds.

I. The Series 1997 Bonds outstanding as of the date of this Bond Ordinance in the principal amount of \$1,055,000 will be paid upon maturity on December 1, 2007, leaving none of the Series 1997 Bonds outstanding on the date of the issuance of the Bonds.

J. Article X, Section 20 of the Colorado Constitution requires voter approval in advance for the creation of certain multiple-fiscal year direct or indirect debt or other financial obligations.

K. At the Election, the registered electors of the City approved the Ballot Issue as follows:

SHALL THE CITY OF WESTMINSTER DEBT BE INCREASED \$20 MILLION WITH A REPAYMENT COST OF \$41.9 MILLION (MAXIMUM TOTAL PRINCIPAL AND INTEREST) WITHOUT ANY NEW TAXES OR TAX RATE INCREASES FOR THE PURPOSE OF:

- ACQUIRING, DEVELOPING, ENHANCING, AND MAINTAINING OPEN SPACE AND PARKLAND THROUGHOUT THE CITY,
- DEVELOPING, ENHANCING, MAINTAINING AND EXTENDING TRAILS THROUGHOUT THE CITY,

- DEVELOPING, ENHANCING AND MAINTAINING RECREATIONAL FACILITIES IN THE CITY

TO BE REPAID FROM THE CURRENT 1/4 OF 1 PERCENT SALES AND USE TAX INCLUDING THE EXTENSION TO DECEMBER 31, 2032, AND ANY OTHER AVAILABLE REVENUES; AND SHALL THE CITY CONTINUE TO LEVY UNTIL DECEMBER 31, 2032, THE 1/4 OF 1 PERCENT SALES AND USE TAX CURRENTLY PROVIDED FOR BY CITY CODE SECTION 4-2-3 AND USE SUCH REVENUES FOR THE ACQUISITION, DEVELOPMENT, ENHANCEMENT, AND MAINTENANCE OF OPEN SPACE AND PARKLAND AND FOR THE DEVELOPMENT, ENHANCEMENT, AND MAINTENANCE OF PARKS, RECREATIONAL FACILITIES AND TRAILS; AND SHALL THE PROCEEDS OF SUCH DEBT, SUCH TAXES, ANY GRANTS RECEIVED BY THE CITY FOR PARKS, OPEN SPACE AND TRAILS, AND ANY INVESTMENT INCOME THEREFROM BE EXCLUDED FROM THE SPENDING AND THE REVENUE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

L. The maximum annual repayment cost set forth in the notice mailed to electors relating to the Ballot Issue was \$2,200,000.

M. The City has not previously issued any of the debt authorized by the Ballot Issue.

N. The City has determined that it is necessary to finance the costs of the Project, and that it is in the best interests of the City and the inhabitants thereof that the Bonds be issued for such purpose.

O. The Bonds shall be issued with such terms that they meet the requirements of the Ballot Issue.

P. The Bonds shall have an irrevocable and first lien, but not necessarily an exclusive such lien, on the Pledged Revenue, as set forth herein.

Q. Other than the Series 1999 Bonds and the Series 2007B Bonds, there will be no liens on the Pledged Revenue on the date of the issuance of the Bonds so that the Pledged Revenue may be pledged lawfully and irrevocably for the payment of the Bonds.

R. The City has received a proposal in the form of a Bond Purchase Agreement from the Underwriter concerning the purchase of the Bonds.

S. The Council has determined that the Bonds shall be sold to the Underwriter in accordance with its proposal, and that such sale is to the best advantage of the City.

T. There are on file with the City Clerk the forms of the following documents: (i) the form of the Bond Purchase Agreement; (ii) the form of the Paying Agent Agreement; (iii) the Preliminary Official Statement; and (iv) the form of the Continuing Disclosure Certificate.

U. It is necessary to provide for the form of the Bonds, the Bond details, the payment of the Bonds, and other provisions relating to the authorization, issuance, and sale of the Bonds.

V. Except for the Mayor who has disclosed a potential conflict of interest and abstained from voting on this Bond Ordinance, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the issuance of the Bonds.

**Section 3. Authorization.** In accordance with the Constitution of the State of Colorado; the Charter; and all other laws of the State of Colorado thereunto enabling, and pursuant to the provisions of this Bond Ordinance, the City hereby authorizes, for the purpose of paying the costs of the Project, the issuance of its “Special Purpose Sales and Use Tax Revenue Bonds (POST Project), Series 2007D,” in the maximum aggregate principal amount of not to exceed \$20,000,000. Section 11-57-204 of the Supplemental Act provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to the Bonds. The Council hereby elects to apply all of the Supplemental Act to the Bonds. The Bonds are issued under the authority of the Supplemental Act and shall so

recite as provided in Section 9 hereof. Pursuant to Section 11-57-210, C.R.S., such recital conclusively imparts full compliance with all the provisions of said sections, and the Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Either the City Manager or the Finance Director is hereby independently authorized and directed to execute and deliver the Sale Certificate and to make and approve the final determinations contained therein, subject to the parameters and restrictions of this Bond Ordinance. Either the City Manager or the Finance Director is hereby authorized to determine if obtaining municipal bond insurance or financial guaranty insurance is in the best interest of the City, and if so, to select a Bond Insurer to issue a municipal bond insurance policy or financial guaranty insurance policy, execute a commitment relating to the same, and execute any related documents or agreements required by such commitment. If it is determined that the Bonds will be sold without a municipal bond insurance policy or financial guaranty insurance policy, all references herein to Bond Insurer, Bond Insurance Policy and Insurance Trustee are of no force and effect.

**Section 4. Special Obligations.** All of the Bonds, together with the interest thereon and any premium due in connection therewith, and any payments due to the Bond Insurer under the Bond Insurance Policy shall be payable only out of the Bond Fund, into which the City covenants to deposit the Pledged Revenue in amounts sufficient to pay promptly, when due, the principal of, premium, if any, and interest on the Bonds. The Bonds shall constitute an irrevocable and first lien upon the Pledged Revenue to the extent provided herein, but not necessarily an exclusive such lien, and the Pledged Revenue is hereby pledged to the payment of the Bonds as provided herein. Neither the Bond Insurer nor Owners may look to any general or other revenue of the City, including without limitation the proceeds of ad valorem taxes, for the payment of the principal of, premium, if any, and interest on the Bonds, or any payments due to the Bond Insurer under the Bond Insurance Policy. The Bonds and any payments under the Bond Insurance Policy shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional, Charter, or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City.

**Section 5. Bond Details.** The Bonds shall be issued only as fully registered Bonds, without coupons, in the denomination of \$5,000 each or any integral multiple thereof. Unless the City shall otherwise direct, the registered Bonds of each series shall be numbered separately from 1 upward, with the number of each Bond preceded by "R-" and such other series designation as the Registrar deems necessary.

The Bonds shall be dated as of the date of their delivery to the Underwriter. The Bonds shall mature, bear interest from their dated date to maturity and be sold, all as provided in the Sale Certificate; provided that (i) the aggregate principal amount of the Bonds shall not exceed \$20,000,000; (ii) the maximum net effective interest rate of the Bonds shall not exceed 6.0%; (iii) the Bonds shall mature no later than December 1, 2031; (iv) the purchase price of the Bonds, shall not be less than 98.5%; (v) the Bonds may be sold with or without a provision for redemption at the option of the City prior to maturity; (vi) the optional redemption price, if any shall not exceed 100% of the principal amount of the Bonds so redeemed; (vii) the maximum total repayment cost shall not exceed \$41,900,000; (viii) the maximum annual repayment cost shall not exceed \$2,200,000. Interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate.

**Section 6. Payment of Bonds; Paying Agent and Registrar.** The principal of and premium, if any, on each Bond is payable in lawful money of the United States of

America to the Registered Owner of such Bond upon maturity and presentation of the Bond, at the principal office of the Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the interest rate borne by said Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the Registered Owner thereof by check or draft mailed by the Paying Agent, on or before each interest payment date, to the Registered Owner thereof at his or her address as it last appears on the registration records kept by the Registrar on the Record Date; but any such interest not so timely paid shall cease to be payable to the person who is the Registered Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Registered Owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Registrar whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Registered Owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such Registered Owner as shown on the Registrar's registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the Registered Owner of such Bond and the Paying Agent; provided, however, that the City shall not be required to make funds available to the Paying Agent prior to the payment dates stated in this Bond Ordinance. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which the principal office of the Paying Agent or Registrar is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Registrar is authorized or required by law to remain closed.

The principal of, premium, if any, and interest on the Bonds shall be paid in accordance with the terms of the Letter of Representations.

**Section 7. Book-Entry System.** The Bonds shall be initially issued in the form of a single, certificated, fully registered Bond for each maturity bearing the same interest rate. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Registrar in the name of Cede.

With respect to Bonds registered in the name of Cede or held by a Depository, the City, the Registrar, and the Paying Agent shall have no responsibility or obligation to any Participant or Beneficial Owner including, without limitation, any responsibility or obligation with respect to: (i) the accuracy of the records of the Depository or any Participant concerning any ownership interest in the Bonds; (ii) the delivery to any Participant, Beneficial Owner, or Person other than the Registered Owner, of any notice concerning the Bonds, including notice of redemption; (iii) the payment to any Participant, Beneficial Owner, or Person other than the Registered Owner, of the principal of, premium if any, and interest on the Bonds. The City, the Registrar, and the Paying Agent may treat the Registered Owner of a Bond as the absolute owner of such Bond for the purpose of payment of the principal of, premium if any, and interest with respect to such Bond, for purposes of giving notices of redemption and other matters with respect to such Bond, and for all other purposes whatsoever. The Paying Agent shall pay all principal of, premium if any, and interest on the Bonds only to or upon the order of the Registered Owners, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the

payment of the same. No Person, other than a Registered Owner, shall receive a certificated Bond evidencing the obligations of the City pursuant to this Bond Ordinance.

DTC may determine to discontinue providing its service as Depository with respect to the Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Additionally, the Finance Director may terminate the services of DTC if she determines, in her sole and absolute discretion, that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book entry transfers through DTC is not in the best interests of the Beneficial Owners or the City. Such termination shall be effected by written notice of the same from the City to DTC and to the Registrar and Paying Agent. Upon the termination of the services of DTC, a substitute Depository which is willing and able to undertake the system of book-entry transfers upon reasonable and customary terms may be engaged by the City or, if the Finance Director determines in her sole and absolute discretion that it is in the best interests of the Beneficial Owners or the City that the Beneficial Owners be able to obtain certificated Bonds, the Bonds shall no longer be restricted to being registered in the name of Cede or other nominee of a Depository but shall be registered in whatever name or names the Beneficial Owners shall designate at that time, and fully registered Bond certificates shall be delivered to the Beneficial Owners.

#### **Section 8. Prior Redemption.**

(a) Optional Prior Redemption. The Bonds designated in the Sale Certificate, if any, will be subject to redemption at the option of the City from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the City may determine (giving proportionate weight to Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Bond Ordinance.

The Registrar shall not be required to give notice of any such optional redemption unless it has received written instructions from the City in regard thereto at least sixty days prior to such redemption date.

(b) Mandatory Redemption. The Term Bonds, if any, are subject to mandatory sinking fund redemption, at the times, in the amounts and at the prices provided in the Sale Certificate.

On or before thirty (30) days prior to each sinking fund installment date, the Registrar shall, without any notice or instruction from the City, proceed to call the Term Bonds (or any Term Bond or Term Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next December 1, and give notice of such call without other instruction or notice from the City.

At its option, to be exercised on or before the sixtieth (60<sup>th</sup>) day next preceding each such sinking fund redemption date, the City may (a) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds of the same maturity subject to mandatory sinking fund redemption on such date, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the City on such sinking fund redemption date and the principal amount of Term



Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The City will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the City to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph.

(c) Notice. Notice of redemption shall be given by the Registrar in the name of the City by sending a copy of such official notice by first-class, postage prepaid mail, not more than sixty nor less than thirty days prior to the redemption date to the Bond Insurer and each Registered Owner at his address as it last appears on the registration books kept by the Registrar; but neither failure to give such notice nor any defect therein shall affect the redemption of any Bond. Such notice shall identify the Bonds to be so redeemed (if less than all are to be redeemed) and the redemption date, and shall further state that on such redemption date there will become and be due and payable upon each Bond so to be redeemed, at the Paying Agent, the principal amount thereof, any redemption premium, and accrued interest to the redemption date and that from and after such date interest will cease to accrue. Prior to any redemption date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be promptly canceled by the Paying Agent and such canceled Bonds shall be delivered by the Paying Agent or Registrar to the City if requested by the City, and shall not be reissued.

(d) Partial Redemption. In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof of the same maturity in the amount of the unpaid principal.

(e) Conditional Call Provision. Notwithstanding the provisions of this section, any notice of optional redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

**Section 9. Form and Execution of Bonds.** The Bonds shall be signed with the facsimile or manual signature of the Mayor Pro Tem, sealed with a facsimile or manual impression of the seal of the City, countersigned by the facsimile or manual signature of the Finance Director, and attested by the facsimile or manual signature of the City Clerk. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Underwriter, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized representative of the Registrar, but it shall not be necessary that the same representative sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Bond Ordinance, the Registrar shall be deemed to have assented to the provisions of this Bond Ordinance.

The Bonds shall be in substantially the following form:

[Form of Bond]

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

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No. R-\_\_\_\_\_

\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF COLORADO  
COUNTIES OF ADAMS AND JEFFERSON  
CITY OF WESTMINSTER  
SPECIAL PURPOSE SALES AND USE TAX REVENUE BOND, SERIES 2007D

INTEREST RATE

MATURITY DATE

DATED DATE

CUSIP

December 1, 20\_\_

Date of Delivery

REGISTERED OWNER: CEDE & COMPANY

PRINCIPAL AMOUNT:

DOLLARS

The City of Westminster, in the Counties of Adams and Jefferson and the State of Colorado, for value received, hereby promises to pay from the special fund hereafter designated, but not otherwise, to the Registered Owner named above, or registered assigns, on the maturity date specified above or on the date of prior redemption, the principal amount specified above. This bond will bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the date of this bond. This bond is one of an authorized series issued pursuant to an ordinance of the City Council of the City adopted on November 12, 2007 (the "Bond Ordinance"). This bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Bond Ordinance. To the extent not defined herein, terms used in this bond shall have the same meanings as set forth in the Bond Ordinance.

This Bond is one of a series aggregating [PAR AMOUNT] dollars (\$\_\_\_\_\_) par value, all of like date, tenor, and effect except as to number, principal amount, interest rate, and date of maturity, issued by the City Council of the City of Westminster, in the Counties of Adams and Jefferson and the State of Colorado, for the purpose

of paying the costs of certain park, open space, trail and recreational improvements in the City, in accordance with the Constitution of the State of Colorado, the Charter of the City, Title 11, Article 57, Part 2, C.R.S. and all other laws of the State of Colorado thereunto enabling, and pursuant to the Bond Ordinance duly adopted prior to the issuance of this Bond. Pursuant to Section 11-57-210, C.R.S., this recital conclusively imparts full compliance with all of the provisions and limitations of said sections and this bond shall be incontestable for any cause whatsoever after its delivery for value.

The principal of, premium, if any, and interest on this Bond are payable only out of a special fund of the City created in full conformity with law and designated as "2007D Special Purpose Sales and Use Tax Revenue Bonds" (the "Bond Fund"), into which the City covenants and agrees to credit, from certain sales and use tax proceeds defined hereafter as the "Pledged Revenue," and other legally available revenues, amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when the same become due and payable, all as is more particularly set forth in the authorizing Bond Ordinance. The Pledged Revenue consists only of 6.49% of the revenue derived from the City's existing 3.85% sales and use tax, after deducting all costs of administering and collecting the sales and use tax. In the authorizing Bond Ordinance, the City has covenanted that it will not amend or repeal the ordinance imposing the sales and use tax in any way which would materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund. The Bonds of this issue constitute an irrevocable and first lien upon the Pledged Revenue to the extent provided in the Bond Ordinance, but not necessarily an exclusive such lien. Subject to expressed conditions, obligations in addition to the Bonds of this issue may be issued and made payable from the Pledged Revenue having a lien thereon subordinate and junior to the lien of the Bonds of this issue or, subject to additional expressed conditions, having a lien on the Pledged Revenue on a parity with the lien of the Bonds of this issue, in accordance with the provisions of said Bond Ordinance.

THIS BOND DOES NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL, CHARTER, OR STATUTORY PROVISION OR LIMITATION, AND SHALL NOT BE CONSIDERED OR HELD TO BE A GENERAL OBLIGATION OF THE CITY.

It is hereby recited, certified, and warranted that all the requirements of law have been complied with fully by the proper officers of the City in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the constitution and laws of the State, with the Charter of the City, and with the Bond Ordinance; and that this Bond does not contravene any constitutional, statutory, or Charter limitation.

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

IN TESTIMONY WHEREOF, the City Council of the City of Westminster, Colorado, has caused this Bond to be signed by the manual or facsimile signature of the Mayor Pro Tem, sealed with a facsimile of the seal of the City, countersigned with the manual or facsimile signature of the Finance Director, and attested by the manual or facsimile signature of the City Clerk, all as of the December 11, 2007.

CITY OF WESTMINSTER, COLORADO

( S E A L )

(Manual or Facsimile Signature)

Mayor Pro Tem

ATTESTED:

COUNTERSIGNED:

By: (Manual or Facsimile Signature)  
City Clerk

By: (Manual or Facsimile Signature)  
Finance Director

[End Form of Bond]

[Form of Registrar's Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

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

Date of Registration and Authentication: \_\_\_\_\_

AMERICAN NATIONAL BANK,  
in Denver, Colorado, as Registrar

By: \_\_\_\_\_  
Authorized Officer or Employee

[End Form of Registrar's Certificate of Authentication]

[Form of Transfer]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

\_\_\_\_\_

Social Security or Federal Employer  
Identification Number of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_

the within Bond and does hereby irrevocably constitute and appoint attorney, to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature of Registered Owner:

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, or Firm)

[End Form of Transfer]

### STATEMENT OF INSURANCE

[TO BE INSERTED IF BOND INSURANCE IS OBTAINED]

**Section 10. Authentication.** No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Bond Ordinance unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Bond Ordinance. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Registrar, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder.

**Section 11. Delivery of Bonds.** Upon the adoption of this Bond Ordinance, the City shall execute the Bonds and deliver them to the Registrar, and the Registrar shall authenticate the Bonds and deliver them to the Underwriter, as directed by the City, and in accordance with the Bond Purchase Agreement and the Letter of Representations.

**Section 12. Registration, Transfer and Exchange of Bonds.**

(a) Records for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bond at the Registrar, with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney, the Registrar shall enter such transfer in the registration records and shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the same maturity and interest rate of other authorized

denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the Registered Owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with exchanges or transfers of Bonds which charges (as well as any tax or other governmental charge required to be paid with respect to such transfer) shall be paid by the Registered Owner requesting such exchange or transfer.

(b) The Registrar shall not be required (1) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period beginning at the opening of business fifteen days preceding the mailing of notice calling any Bonds for prior redemption as herein provided and ending at the close of business on the day of such mailing or (2) to transfer or exchange all or a portion of a Bond after the mailing of notice calling such Bond or portion thereof for prior redemption except for the unredeemed portion of Bonds redeemed in part.

(c) Except as herein provided with respect to Record Dates and Special Record Dates for the payment of interest, the person in whose name any Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; and payment of either principal or interest on any Bond shall be made only to upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

(d) The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in the custody of the Registrar pending use as herein provided.

(e) Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the City.

**Section 13. Destruction of Bonds.** Whenever any outstanding Bond shall be delivered to the Registrar for cancellation pursuant to this Bond Ordinance, and upon payment of the principal amount and interest represented thereby, or whenever any outstanding Bond shall be delivered to the Registrar for transfer pursuant to the provisions hereof, such Bond shall be canceled and destroyed by the Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Registrar to the City. In the event a Bond is registered in the name of a Depository, cancellation may consist of the notation thereof on the registration books of the Registrar. The Registrar shall notify the Depository of all Bonds, or portions thereof, canceled in accordance with this Section.

**Section 14. Lost Bonds.** Any Bond that is lost, stolen, destroyed, or mutilated may be replaced or paid by the Registrar in accordance with and subject to the limitations of applicable law. The applicant for any such replacement Bond shall post such security, pay such costs, and present such proof of ownership and loss as may be required by applicable law, or in the absence of specific requirements, as may be required by the Registrar.

**Section 15. Disposition and Investment of Bond Proceeds.** The Bonds shall be issued and sold for the purposes of paying the costs of the Project. Accrued interest on the Bonds shall be deposited to the Bond Fund. All other Bond proceeds shall be deposited to such fund or account as the Finance Director determines and applied to pay the costs of the Project. Neither the Underwriter nor any subsequent owners of the Bonds shall be responsible for the

application or disposal by the City or any of its officers of the funds derived from the sale thereof.

**Section 16. Creation of Fund and Accounts.** There are hereby created and established the following funds and accounts which shall be established as book accounts and maintained in accordance with this Bond Ordinance:

- (a) the Bond Fund; and
- (b) the Reserve Fund pursuant to Section 19(e).

In accordance with generally accepted accounting principles, for the purpose of accounting for the moneys provided for in this Bond Ordinance the Finance Director may create offsetting revenue and expense accounts not inconsistent with the provisions hereof, all as may be determined by the Finance Director.

**Section 17. Payment of Principal and Interest; Attachment of Lien.** The City shall credit to the Sales and Use Tax Fund all revenue derived from the Sales and Use Tax immediately upon receipt. Thereafter, the City shall transfer the Pledged Revenue to the Open Space Fund to be applied in the following order of priority:

FIRST: To the credit of the Bond Fund the amounts required by Section 18 hereof, and to the credit of any other fund or account established for the Series 1999 Bonds, the Series 2007B Bonds or hereafter established for the payment of the principal of, premium if any, and interest on Parity Lien Bonds, in the amounts required by the ordinance or other enactment authorizing issuance of the Series 1999 Bonds, the Series 2007B Bonds, and the Parity Lien Bonds.

SECOND: To the credit of any sinking fund, reserve fund, or similar fund or account established in connection with the Series 1999 Bonds, the Series 2007B Bonds, the Bonds or any Parity Lien Bonds, in the amounts required by this Bond Ordinance or the ordinance or other enactment authorizing issuance of the Series 1999 Bonds, the Series 2007B Bonds, and the Parity Lien Bonds.

THIRD: To the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on Subordinate Lien Bonds, including any sinking fund, reserve fund, or similar fund or account established therefor, in the amounts required by the ordinance or other enactment authorizing issuance of the Subordinate Lien Bonds.

FOURTH: To the credit of any other fund as may be designated by the City, to be used for any lawful purpose, any Pledged Revenue remaining after the payments and accumulations set forth in Section 17 FIRST through THIRD hereof.

The lien of the Bonds on the Pledged Revenue shall attach immediately upon receipt of any Sales and Use Tax proceeds, shall remain in effect so long as such Pledged Revenue is credited to the Open Space Fund or the Bond Fund or the Reserve Fund, and shall be extinguished with respect to any Pledged Revenue not required to be credited to the Bond Fund pursuant to Section 18 hereof or the Reserve Fund pursuant to Section 19(e) hereof and which is transferred to other funds of the City for other purposes.

**Section 18. Bond Fund.** The City shall credit to the Bond Fund from the Pledged Revenue, or other legally available moneys, in substantially equal monthly installments

of the total principal to become due and interest to accrue on the Bonds on the next principal payment date and interest payment date, respectively. Notwithstanding the foregoing, the City shall credit to the Bond Fund from the Pledged Revenue an amount which, when combined with other legally available moneys credited thereto, will be sufficient to pay when due the principal of and interest on the Bonds.

Moneys credited to the Bond Fund may be invested Permitted Investments. Except to the extent otherwise required by Section 19(f) hereof, any investment income earned on amounts credited to the Bond Fund shall be credited to the Bond Fund, and for purposes of making the deposits required by this Section, any investment income so credited to the Bond Fund shall be deemed the credit of Pledged Revenue to the Bond Fund.

**Section 19. Additional Covenants of the City.** The City hereby irrevocably covenants and agrees with each and every Registered Owner and Beneficial Owner, that so long as any of said Bonds remain outstanding:

(a) It will not amend or repeal Title IV in any way that would materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund. Nothing shall prevent the City from amending said Title IV in order to increase the rate of tax above that currently imposed by said Title IV, or to make certain changes in the administration, collection, or enforcement of such Sales or Use Tax, provided that such changes do not materially adversely affect the amount of Pledged Revenue which would be otherwise available for credit to the Bond Fund.

(b) It will administer, enforce, and collect, or cause to be administered, enforced, and collected, the Sales and Use Tax authorized by Title IV, and shall take such reasonable, necessary action to collect delinquent payments in accordance with law.

(c) It will keep or cause to be kept such books and records showing the proceeds of the Sales and Use Tax, in which complete entries shall be made in accordance with generally accepted accounting principles, as applicable to governments, and any Owner shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Sales and Use Tax. The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the City. The City will permit the Bond Insurer to have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(d) It will, at least once a year, cause an audit of the records relating to the collection and receipts of the Sales and Use Tax revenues. Such audit may be made part of and included within the general audit of the City, and made at the same time as such audit. While the Bond Insurance Policy is in effect, the Bond Insurer shall receive, as soon as practicable after the filing thereof, a copy of the City's annual audited financial statements and annual budget.

(e) In the event the City does not receive Pledged Revenue in any fiscal year in an amount at least equal to 150% of the Combined Average Annual Principal and Interest Requirements for the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and any Parity Lien Bonds, the City shall establish and maintain a reserve fund solely for the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and the Parity Lien Bonds (the "Reserve Fund"), in an amount equal to the lesser of (i) 10% of the outstanding aggregate principal amount of the Series 1999 Bonds, the Series 2007B Bonds, the Bonds and the Parity Lien Bonds; (ii) 125% of the Combined Average Annual Principal and Interest Requirements, or the maximum principal and interest due on the Bonds and Parity Lien Bonds in any fiscal year (the "Required Reserve"). The City shall accumulate the Required Reserve in the Reserve Fund by twelve equal monthly



deposits. The City shall make the initial deposit into the Reserve Fund of Pledged Revenue within 90 days after the end of the fiscal year in which such deficiency occurs. Such Reserve Fund shall not be released after it has been established. Draws on the Reserve Fund must be replenished within one year. Investments purchased with funds on deposit in the Reserve Fund shall have an average aggregate weighted term to maturity not greater than five years.

(f) It will not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, any other funds of the City or the facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as in effect on the date of delivery of the Bonds (the "Code"), (ii) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 55(b)(2) of the Code, except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose the exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenants shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenants under the Code and State law have been met.

(g) It will comply with the provisions of the Continuing Disclosure Certificate to be executed by City officers and delivered in connection with the delivery of the Bonds.

(h) It will provide such additional information as the Bond Insurer may reasonably request from time to time.

(i) The Bond Insurer shall have the right to direct an accounting at the City's expense, and the City's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner of the Bonds.

## **Section 20. Additional Bonds.**

(a) No additional bonds, notes, interim securities, or other obligations shall be issued payable from the Pledged Revenue and having a lien thereon which is superior to the lien of the Bonds.

(b) The City may issue Parity Lien Bonds if:

(i) No Event of Default has occurred and is continuing.

(ii) The City is then current in the accumulation of all amounts required to be then accumulated in the Bond Fund as required by this Bond Ordinance.

(iii) The Pledged Revenue for the twelve (12) month period immediately preceding the date of issuance of such Parity Lien Bonds is sufficient to pay an amount representing not less than 150% of the Combined Maximum Annual Principal and Interest Requirements of the Series 1999 Bonds, the Series 2007B Bonds, the Bonds, any Parity Lien Bonds, and the Parity Lien Bonds proposed to be issued.

(iv) To the extent the Reserve Fund has been established, a deposit is made to the Reserve Fund so that the balance therein on the date of delivery of the Parity Lien Bonds equals the Required Reserve.

(c) A written certificate signed by the Finance Director that the requirements of Section 20(b) hereof are met shall conclusively determine the right of the City to authorize, issue, sell, and deliver Parity Lien Bonds.

(d) So long as no Event of Default shall have occurred and be continuing, nothing herein shall prevent the City from issuing Subordinate Lien Bonds.

**Section 21. Delegated Powers; Authorization to Execute Collateral Documents.** The officers of the City and the members of the Council be, and hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing: the execution and delivery of the Letter of Representations, the Bond Purchase Agreement, the Paying Agent Agreement, the Continuing Disclosure Certificate, the printing of the Bonds; the procuring of municipal bond insurance or financial guaranty bond insurance, if in the best interests of the City; entering into and executing appropriate agreements with The Depository Trust Company as to its services hereunder; the printing, distribution and execution of the Official Statement for the Bonds in substantially the form of the Preliminary Official Statement now before the Council, but with such amendments, additions and deletions as are in accordance with facts and not inconsistent herewith; and the execution of such certificates as may be required by the Underwriter, including, but not limited to, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes. The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

The form, terms and provisions of the Bond Purchase Agreement, the Paying Agent Agreement and the Continuing Disclosure Certificate are hereby approved, and the City shall enter into and perform its obligations under the Bond Purchase Agreement, the Paying Agent Agreement and the Continuing Disclosure Certificate in the forms of such documents presented to the Council at this meeting, with only such changes therein as are required by the circumstances and are not inconsistent herewith.

The City Manager or the Finance Director are hereby independently authorized to make the final pricing determinations as authorized in Section 3 hereof subject to the parameters set forth in Section 5 hereof and execute the Bond Purchase Agreement and Sale Certificate relating to same. Additionally, the City Manager or the Finance Director are independently authorized to execute and deliver any documents necessary to obtain a municipal bond insurance policy or a financial guaranty insurance policy to secure the payment of the principal of and interest on the Bonds

**Section 22. Events of Default.** It is an Event of Default if:

- (a) Payment of the principal of or premium due on any Bond is not made by the City when due at maturity or upon prior redemption;
- (b) Payment of the interest on any Bond is not made by the City when due; or
- (c) The City defaults in the punctual performance of its covenants hereunder for sixty (60) days after written notice shall have been given by the Owners of not less than 25% of the outstanding principal amount of the Bonds.

**Section 23. Remedies.** Upon the happening of any Event of Default, any Owner, or a trustee therefor, may protect and enforce the rights of such Owner by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the Council to act as if it were the trust of an express trust, or any

combination of such remedies. All proceedings shall be maintained for the benefit of the Owners; provided however, that any action brought pursuant to an Event of Default under Section 22(c) hereof may be brought only upon the written consent of the Owner or Owners of not less than 25% of the outstanding principal amount of the Bonds. All proceedings shall be maintained for the equal benefit and protection of all Owners. The failure of any Owner to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right which may exist under applicable law, and the exercise of any right by any Owner shall not be deemed a waiver of any other right. If any remedial action is discontinued, the Owners shall be restored to their positions prior to taking such action.

#### **Section 24. Amendment.**

(a) The City may, without the consent of, or notice to the Owners of the Bonds, but with the prior written consent of the Bond Insurer, so long as the Bond Insurer is not in default of its payment obligations under the Bond Insurance Policy, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(i) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Bond Ordinance, or to make any provisions with respect to matters arising under this Bond Ordinance or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the Owners of the Bonds;

(ii) to subject to the lien of this Bond Ordinance additional revenues, properties or collateral;

(iii) to grant or confer upon the Paying Agent or Registrar for the benefit of the Owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Owners of the Bonds; or

(iv) to qualify this Bond Ordinance under the Trust Indenture Act of 1939.

(b) Exclusive of the amendatory ordinances permitted by paragraph (a) of this Section, this Bond Ordinance may be amended or supplemented by ordinance adopted by the Council in accordance with the law, without receipt by the City of any additional consideration but with the prior written consent of the Owners of at least 66% in aggregate principal amount of the Bonds outstanding at the time of the adoption of such amendatory or supplemental ordinance.

(c) Written consent of the Owners of all of the Bonds adversely affected thereby is required for any ordinance that shall have the effect of permitting:

(i) An extension of the maturity of any of the Bonds authorized by this Bond Ordinance; or

(ii) A reduction in the principal amount of any of the Bonds, the rate of interest thereon, or the prior redemption premium thereon; or

(iii) The creation of a lien upon or pledge of the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

(iv) A reduction of the principal amount of the Bonds required for consent to such amendatory or supplemental ordinance; or

(v) The establishment of priorities as between outstanding Series 1999 Bonds, Series 2007B Bonds, any Parity Lien Bonds and the Bonds or the establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

(vi) The modification of or otherwise affecting the rights of the Owners of less than all of the Bonds then outstanding.

Copies of any waiver, modification or amendment to this Bond Ordinance shall be delivered to any entity then maintaining a rating on the Bonds at least 15 days prior to its execution or adoption.

**Section 25. Notices to and Reports to Bond Insurer.** The Paying Agent and Registrar shall give the Bond Insurer copies of any notice to be given by it to the Owners of Bonds, including, without limitation, notice of any redemption of or defeasance of Bonds, and notices required pursuant to the Continuing Disclosure Certificate. The City shall give to the Bond Insurer any certificate delivered by the City pursuant to this Ordinance relating to the security for the Bonds. Notwithstanding any other provision of this Ordinance, the Paying Agent shall promptly notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest as required hereunder and promptly upon the occurrence of any other Event of Default hereunder. The Paying Agent shall also notify the Bond Insurer of the City's failure to provide the Paying Agent with any notice, certificate or other item required to be given to the Paying Agent hereunder.

**Section 26. Rights of the Bond Insurer Suspended Upon Default Under Bond Insurance Policy.** Notwithstanding any other provision hereof, any rights granted to or conferred upon the Bond Insurer hereunder shall be in effect only so long as the Bond Insurer is not in default in its payment obligation under the Bond Insurance Policy, and upon any such default by the Bond Insurer, its rights hereunder shall be suspended (except to the extent of subrogation for any payments under the Bond Insurance Policy theretofore made by the Bond Insurer); provided, however, that such rights shall be reinstated when the Bond Insurer has cured such default under the Bond Insurance Policy.

**Section 27. Bond Insurer As Third Party Beneficiary.** To the extent that this Bond Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy, or claim under or by reason of this Bond Ordinance, the Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**Section 28. Parties Interested Herein.** Nothing in this Bond Ordinance expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any Person, other than the City, the Bond Insurer, the Registrar, the Paying Agent, and the Owners of the Bonds, any right, remedy or claim under or by reason of this Bond Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Bond Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer, the Registrar, the Paying Agent, and the Owners of the Bonds.

**Section 29. Successor Registrar or Paying Agent.** American National Bank, in Denver, Colorado is hereby appointed as Registrar and Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the City shall determine to remove the Registrar or Paying Agent, the City may, upon notice mailed to the Bond Insurer and each Registered Owner of Bonds at the address last shown on the registration records, appoint a successor Registrar or Paying Agent. No resignation or removal of the Registrar or Paying Agent may take effect until a successor, acceptable to the Bond Insurer and approved by the Bond Insurer in writing, is appointed by the City and has accepted such appointment. Every such successor Paying Agent shall be either the City or a bank or trust company having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated,

not less than \$10,000,000. The Registrar and Paying Agent may be removed at any time at the request of the Bond Insurer for any breach of trust set forth herein.

**Section 30. Defeasance.** When all principal, premium, if any, and interest in connection with a Bond have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and said Bond shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. There shall be deemed to be such due payment of a Bond when the City has placed in escrow and in trust with a commercial bank located within or without the State of Colorado, and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be initially invested) to meet all requirements of principal, premium, if any, and interest with respect to said Bond as the same become due at final maturity or upon designated prior redemption dates. The Federal Securities shall become due at or prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow, or the Federal Securities shall be subject to redemption at the option of the holder thereof to assure such availability as so needed to meet such schedule.

In the event that there is a defeasance of only part of the Bonds, the Registrar shall, if requested by the City, institute a system to preserve the identity of the individual Bonds or portions thereof so defeased, regardless of changes in Bond numbers attributable to transfers and exchanges of Bonds and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the City in connection with such system.

Notwithstanding anything herein to the contrary, in the event that the principal and or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not considered paid by the City, and the assignment and pledge of the Pledged Revenues and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

**Section 31. Costs and Expenses.** All costs and expenses incurred in connection with the issuance and payment of the Bonds, including without limitation the Underwriter's discount, the premium due in connection with the Bond Insurance Policy, and all expenses related to issuing the Bonds, shall be paid either from the proceeds of the Bonds or from legally available moneys of the City, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

**Section 32. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Bond Ordinance, relating to the authorization, sale, issuance, and delivery of the Bonds, and the qualification of the Bonds for book-entry with DTC, are hereby ratified, approved, and confirmed.

**Section 33. Approval of the Bond Purchase Agreement.** The Council does hereby accept and approve the Bond Purchase Agreement as submitted by the Underwriter, and the Bonds shall be sold to the Underwriter upon the terms, conditions, and provisions as set forth in the Bond Purchase Agreement.

**Section 34. Approval of Official Statement.** The Council hereby approves the Preliminary Official Statement, in the form presented at this meeting. The Council hereby authorizes and directs the Finance Director to approve on behalf of the City a final Official Statement containing any updated information regarding items described in the Preliminary

Official Statement which become known to the City prior to the date of delivery of the Bonds. Copies of said Preliminary Official Statement and final Official Statement are hereby authorized to be distributed by the Underwriter to all interested persons in connection with the sale of the Bonds. The Preliminary Official Statement is hereby deemed to be final as of its date within the meaning of Rule 15c2-12(b)(I) of the U.S. Securities and Exchange Commission. The execution of a final Official Statement by an officer of the City shall be conclusively deemed to evidence the approval of the form and contents thereof by the City.

**Section 35. No Recourse against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal or interest on the Bonds. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

**Section 36. Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the City in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Bond Ordinance, shall be commenced more than thirty days after the authorization of the Bonds.

**Section 37. Pecuniary Interest.** The Mayor is an employee of the Underwriter. The Mayor has disclosed this and abstained from voting on this Bond Ordinance. Pursuant to Section 5.12(c) of the Charter, the Council determines that the best interests of the City are served by entering into the Bond Purchase Agreement and that obtaining comparative prices is not feasible in this case.

**Section 38. Bond Ordinance Irrepealable.** After any of the Bonds have been issued, this Bond Ordinance shall constitute an irrevocable contract between the City and the Owners, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged as herein provided.

**Section 39. Severability.** If any section, paragraph, clause, or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Bond Ordinance, the intent being that the same are severable.

**Section 40. Repealer.** All orders, ordinances, resolutions, bylaws, and regulations of the City, or parts thereof, inconsistent with this Bond Ordinance are hereby repealed to the extent only of such inconsistency.

**Section 41. Holidays.** If the date for making any payment or the last date for performing any act or exercising any right, as provided in this Bond Ordinance, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made, act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Bond Ordinance, and no interest shall accrue for the period after such nominal date.

**Section 42. Declaration of Emergency.** In order to complete the issuance and sale of the Bonds while favorable market conditions exist to effect the Project, it is hereby

declared that an emergency exists and that this Bond Ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This Bond Ordinance is hereby declared, pursuant to Section 8.14 of the Charter, exempt from referendum.

**Section 43. Effective Date, Recording and Authentication.** This Bond Ordinance shall be in full force and effect immediately upon enactment following final passage. This Bond Ordinance shall be recorded in the City Book of Ordinances kept for that purpose, and shall be authenticated by the signatures of the Mayor Pro Tem and City Clerk, and published in accordance with law.

INTRODUCED, PASSED AND ADOPTED AS AN EMERGENCY  
ORDINANCE on November 12, 2007.



**WESTMINSTER  
COLORADO**

**NOVEMBER 12, 2007  
8:00 P.M.**

## **CITY COUNCIL AGENDA**

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

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 6) and Citizen Presentations (item 13) 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. **Swearing in of New Councillors**
2. **Selection of Mayor Pro Tem**
3. **Swearing in of Mayor Pro Tem**
4. **Presentations**
5. **Citizen Communication (5 minutes or less)**
6. **Report of City Officials**
  - A. **City Manager's Report**
7. **City Council Comments**

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

8. **Consent Agenda**
  - A. **Change the Date for Second City Council Meeting in December**
9. **Appointments and Resignations**
10. **Public Hearings and Other New Business**
11. **Old Business and Passage of Ordinances on Second Reading**
12. **Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
13. **Adjournment**



CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, NOVEMBER 12, 2007 AT 8:00 P.M.

SWEARING IN OF NEW COUNCILLORS:

Mayor McNally called the meeting to order and introduced newly elected City Councillors Chris Dittman, Bob Briggs, and Faith Winter.

Judge Ed Moss administered the Oath of Office to Chris Dittman; Judge Paul Basso administered the Oath of Office to Faith Winter; and Judge Phil Roan administered the Oath of Office to Bob Briggs.

The new Councillors took their seats on the dais and were welcomed by the City Manager and fellow Council members.

SELECTION OF MAYOR PRO TEM:

Mayor McNally called for written ballot for the selection of Mayor Pro Tem. The first ballot showed a majority vote for Chris Dittman. Mayor Pro Tem Dittman was sworn into office by Judge Ed Moss.

CONSENT AGENDA

The City Council considered a recommendation to change the date of the last regularly scheduled City Council meeting in December from December 24 to December 17, 2007.

Mayor McNally asked if anyone objected to consideration of this one item on the consent agenda. No Council member objected.

It was moved by Councillor Major and seconded by Councillor Lindsey to approve the consent agenda as presented. The motion passed unanimously.

ADJOURNMENT:

There being no further business to come before the newly seated City Council, the meeting was adjourned at 8:24 p.m.

ATTEST:

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City Clerk

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Mayor



## Agenda Item 8 A

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
November 12, 2007

**SUBJECT:** Change the Date for Second City Council Meeting in December

**Prepared By:** Linda Yeager, City Clerk

#### Recommended City Council Action

Change the date of the last regularly scheduled City Council meeting in December from December 24 to December 17.

#### Summary Statement

- Because the fourth Monday of December is Christmas Eve, it is suggested that Council reschedule the December 24 meeting to December 17.
- If approved, City Council will meet in study session on December 3 and in regular session on December 10 and 17.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

None identified

**Alternative**

Council could decide to conduct its last meeting in December on a different date.

**Background Information**

Historically, City Council has changed the date of the last meeting in December due to the fourth Monday's proximity to Christmas Day. Since study sessions and regular meetings normally are conducted on different Mondays of the month, changing the date of the last meeting in December to December 17 will eliminate the second study session of that month.

The public is aware that regular Council meetings and study sessions are held on Mondays, thus it makes sense to reschedule meetings to a different Monday of the month when conflicts arise.

Respectfully submitted,

J. Brent McFall  
City Manager

## Summary of Proceedings

Summary of proceedings of the City of Westminster City Council meeting of Monday, November 12, 2007. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the October 22, 2007 regular meeting were approved.

Council approved the following: revised employment agreement with J. Brent McFall; revised employment agreement with Martin R. McCullough; 2007 construction crew utility material; 2008 traffic signal maintenance contract; special legal counsel in employment matters; contract for professional document management consultant; contract for owner's representation services for MSC facility renovation; final passage of Councillor's Bill No. 57 re ERA with Cadence Capital Investments LLC; final passage of Councillor's Bill No. 58 re EDA with McKesson Information Solutions; final passage of Councillor's Bill No. 59 re Municipal Judge Salary; final passage of Councillor's Bill No. 60 re W.M.C. modifications to Chapter 24 of Title I Personnel Management; final passage of Councillor's Bill No. 61 re W.M.C. modifications to Chapter 11 of Title VIII Stormwater Quality.

Council adopted Resolution No. 41 re IGA with the State for historic preservation grant for Semper Farmhouse exterior restoration.

The following Councillor's Bill was passed as an emergency ordinance:

**A BILL FOR AN ORDINANCE AUTHORIZING THE ISSUANCE OF SPECIAL PURPOSE SALES AND USE TAX REVENUE BONDS (POST PROJECT), SERIES 2007D, OF THE CITY OF WESTMINSTER, COLORADO, PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.**

Purpose: Approving the issuance of up to \$20 million Parks, Open Space, and Trails (POST) Special Purpose Sales and Use Tax Revenue Bonds per voter approval of November 2006.

At 7:29 p.m., the meeting of the seated City Council adjourned.

At 8:02 p.m., the meeting reconvened to swear in new City Councillors and elect a Mayor Pro Tem.

Judge Ed Moss administered the Oath of Office to Chris Dittman; Judge Paul Basso administered the Oath of Office to Faith Winter, and Judge Phil Roan administered the Oath of Office to Bob Briggs.

By secret ballot, Council elected Chris Dittman the Mayor Pro Tem, and Judge Moss administered the Oath of Office to him.

Council approved changing the date of the second City Council meeting in December from December 24 to December 17.

The meeting adjourned at 8:24 p.m.

By order of the Westminster City Council  
Linda Yeager, MMC, City Clerk

Published in the Westminster Window on November 22, 2007

**A BILL FOR AN ORDINANCE AUTHORIZING AN ECONOMIC REDEVELOPMENT AGREEMENT WITH CADENCE CAPITAL INVESTMENTS TO AID IN THE PRESERVATION OF THE HISTORIC SHOENBERG FARM AT THE NORTHWEST CORNER OF 72<sup>ND</sup> AVENUE AND SHERIDAN BOULEVARD IN WESTMINSTER**

WHEREAS, City of Westminster has indicated its desire to improve and redevelop the northwest corner of 72<sup>nd</sup> Avenue and Sheridan Boulevard, within the South Sheridan Urban Renewal Area; and

WHEREAS, Cadence Capital Investment has agreed to assist the City in preserving the historic Shoenberg Dairy Farm buildings; and

WHEREAS, a proposed three-party Economic Redevelopment Agreement between the City of Westminster, Westminster Economic Development Authority, and Cadence Capital Investment is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into a three-party Economic Redevelopment Agreement with the Westminster Economic Development Authority and Cadence Capital Investment in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement, to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

EXHIBIT A

**ECONOMIC REDEVELOPMENT AGREEMENT BETWEEN THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF WESTMINSTER AND CADENCE CAPITAL INVESTMENTS**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **CITY OF WESTMINSTER**, a Colorado home rule city ("**City**"), the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, an urban renewal authority organized and existing pursuant to provisions of Part 1, Article 25, Title 31, C.R.S. ("**WEDA**"), and **CADENCE CAPITAL INVESTMENTS LLC**, a Colorado limited liability company ("**Cadence**").

In consideration of the mutual promises set forth below, the City, WEDA and Cadence agree as follows:

1. Cadence Responsibilities and Conditions of Rebates

a. Pursuant to the Agreement Concerning Shoenberg Farm Buildings, dated January 11, 2007, Cadence has advanced \$30,000 to the City for performing a Historic Structures Assessment (HSA) pursuant to Colorado State Historical Fund Standards.

b. Cadence agrees to complete the following requirements for moving the Shoenberg Farm garage:

1. Design and engineer a new foundation pursuant to the professional engineer's recommendations in a soils report, which new foundation must be approved by

the City's Chief Building Official. The location shall be as approved on the ODP, with the garage door facing west.

2. The garage, including its second story, must be transferred to the new foundation in a manner and by a contractor to be approved by the City as follows:
  - a. The Developer shall retain a qualified structural moving contractor which is to be pre-approved along with the Scope of Work in the reasonable discretion of the City's Community Development Programs Coordinator (CDPC).
  - b. The move shall be completed within 90 days after the move is physically started. Reasonable extensions of time shall be granted by the City for good cause including adverse weather conditions. Lack of diligence or time to pursue the project shall not be considered good cause.
  - c. Cadence agrees to provide at least 4 days advance notice to the City's CDPC by e-mail or phone by calling 303-882-7641 with respect to any actions onsite relative to the new foundation and/or the actual relocation of the garage. The advance notice is required to allow the City's building inspector, the City's CDPD and Cadence's structural engineer (JVA) to be on-site during the garage move, the foundation construction, and other significant contractor actions that may impact the structural integrity of the garage.
  - d. No upgrades, interior finish, exterior paint, or work necessary to bring the buildings up to current code or render them otherwise habitable is required. Existing access stairs to the second floor shall be securely reattached to the garage on the same side of the garage that the stairs were located in the original location.
  - e. If the garage structure is damaged during the move, due to Cadence or the contractor not following the specific steps of the Ryberg Construction letter submitted to the City October 15, 2007 and approved by the City in a letter from Vicky Bunsen dated October 18, 2007, Cadence shall cause its contractor to repair the damage or submit a claim to the contractor's surety or insurer. No further action or salvage activity will be undertaken without consensus between Cadence and the City; but, in no event will this result in an increased Scope of Work as contemplated herein.
  - f. All required permits, for moving the building, including foundation and moving permits, shall be obtained prior to pouring the new foundation or transferring the garage from the existing to the new location in accordance with the terms of this Agreement. Permits are to be issued for the purposes outlined in this agreement and are not intended to cover permits required to make the building useable or habitable as outlined in the Farm Agreement.
- c. Upon Cadence's submittal of receipts evidencing the cost of moving the farm garage, Cadence shall be paid 50% of all costs of the new foundation and moving the farm garage, up to a maximum reimbursement of \$100,000, in the form of the rebates as described in this Agreement.

2. Rebate Amount

The "Rebate Amount" is \$30,000 plus 50% of the costs, up to a maximum of \$100,000, of relocating the garage. The actual dollar amount to be rebated will be dependent on the actual costs incurred by Cadence to relocate the garage. However, in no case shall the total rebate amount exceed \$130,000.

3. Building Permit Fee Rebate

The City shall rebate to Cadence 100% of the building related fees paid (excluding water and sewer tap fees) for the Shoenberg Farm retail center required under W.M.C. Section 11-10-3 (E).

4. Use Tax Rebate – Construction

The City shall rebate to Cadence 100% of the building use tax paid on the construction materials, resulting from construction of the new Shoenberg Farm retail center, required under W.M.C. Section 4-2-9 and 4-2-3 (excludes the City's .25% Open Space Tax and .6% Public Safety Tax).

5. Sales Tax Rebate

WEDA shall rebate 50% of the Sales Tax increment collected from the Shoenberg Farm retail center per year. The Sales Tax Rebate shall equal the Rebate Amount, less the actual amount rebated per Paragraphs 3 and 4 above. Such rebate shall be payable exclusively from sales tax increment revenues from the Shoenberg Farm retail center and attributable to the imposition of the City's 3.0% general sales tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax).

6. Payment of Rebates

- a. The City shall rebate the Building Permit Fees and Construction Use Tax. The rebates will be paid to Cadence by the city in quarterly installments from revenue actually collected and received by the City from development of the Shoenberg Farm retail center. Payments of each quarterly installment shall be made within 20 days of the calendar quarter end and will be submitted electronically.

WEDA shall pay the Sales Tax Rebate in annual installments from incremental sales tax revenue actually collected and received by the City and transferred to WEDA from the City. The payment of each annual installment shall be made on or before March 31st. Payments will be submitted electronically to Cadence's designated financial institution.

7. Entire Agreement

This instrument shall constitute the entire agreement between the City, WEDA and Cadence and supersedes any prior agreements concerning the funding of the Historic Structures Assessment and the moving of the farm garage between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. In the event of sale, staff may assign the business assistance package to Cadence's successor.

8. Subordination.

WEDA's and the City's obligations pursuant to this Agreement are subordinate to the City's and WEDA's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and property tax revenues in excess of the sales and property tax revenues necessary to meet such existing or future bond indebtedness. The City and WEDA shall meet obligations under this Agreement only after the City and WEDA have satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City or WEDA.

9. Governing Law: Venue

This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code and Urban Renewal Statutes. In the event of a dispute concerning any provision of this agreement, the parties agree that prior to commencing any litigation, they shall first engage in a good faith the services of a mutually acceptable, qualified, and experience mediator, or panel of mediators for the purpose of resolving

such dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Jefferson County, Colorado.



**A BILL FOR AN ORDINANCE AUTHORIZING THE ECONOMIC DEVELOPMENT AGREEMENT WITH MCKESSON INFORMATION SOLUTIONS**

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

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

WHEREAS, McKesson Information Solutions (MIS) plans to lease 125,000 square feet in Westmoor Technology Park in Westminster; and

WHEREAS, a proposed Economic Development Agreement between the City and MIS is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988:

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Economic Development Agreement with MIS in substantially the same form as the one attached as Exhibit "A," and upon execution of the Agreement to fund and implement said Agreement.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22<sup>nd</sup> day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

**EXHIBIT A  
ECONOMIC DEVELOPMENT AGREEMENT FOR  
MCKESSON INFORMATION SOLUTIONS IN THE CITY OF WESTMINSTER**

THIS ECONOMIC DEVELOPMENT AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, between the CITY OF WESTMINSTER (the "City"), and the MCKESSON INFORMATION SOLUTIONS LLC, a Delaware limited liability company ("MIS").

WHEREAS, the City wishes to provide assistance to MIS to aid in the relocation of this company in the City; and

WHEREAS, MIS plans to lease and furnish 125,000 square feet of office space in Westmoor Technology Park, thus providing primary job growth within the City; and

WHEREAS, City Council finds the execution of this Economic Development Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City.

In consideration of the mutual promises set forth below, the City and MIS agree to the following:

1. Building Permit Fee Rebates. The City shall rebate to MIS 60% of the building permit fees, that are collected from MIS or its chosen contractor otherwise required under W.M.C. Section 11-10-3 (E). This rebate excludes water and sewer tap fees. The permit fee rebate will be approximately \$15,247.

2. Use Tax Rebate- Construction. The City shall rebate to MIS 60% of the Building Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) on the construction materials, collected from MIS or its chosen contractor that are otherwise required under W.M.C. Sections 4-2-9 and 4-2-3. The rebate will be approximately \$29,250.
3. Sales & Use Tax Rebate- Furniture and Fixtures. The City will rebate 60% of the General Sales and Use Tax (excludes the City's .25% Open Space Tax and .6% Public Safety Tax) collected on the furnishings and equipment purchased during the period three months prior and three months after MIS obtains a final Certificate of Occupancy for their new facility. This rebate will be approximately \$113,400.
4. Payments of Rebates. The rebates to MIS by the City shall be paid in quarterly installments from revenue actually collected and received by the City in connection with the move by MIS into the new facility. Payments of each quarterly installment shall be paid to MIS by the City within twenty (20) days following the end of each calendar quarter. All payments by the City shall be submitted by check payable to McKesson Information Solutions LLC and sent to McKesson Corporation, One Post Street, 34<sup>th</sup> Floor, San Francisco, California 94104; Attention: Glen Hallford, Tax Department.
5. Entire Agreement. This Agreement shall constitute the entire agreement between the City and MIS and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter.
6. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if MIS has not moved into the Westmoor offices by August 1, 2008 or should MIS not comply with the City regulations or code following written notice of non-compliance from the City.
7. Business Termination. In the event MIS ceases business operations within the City at any time prior to January 31, 2013, then MIS shall pay to the City the total amount of fees and taxes that were paid by or for MIS to the City and were subsequently rebated by the City to MIS pursuant to this Agreement.
8. Subordination. The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.
9. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council.
10. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Westminster City Charter and the Westminster Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute. The venue for any lawsuit concerning this Agreement shall be in the District Court for Jefferson County, Colorado.

**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:  
~~\$115,812~~ \$121,603 per annum payable bi-weekly inclusive of any amounts provided as City-paid deferred compensation.

Section 2. Severability: 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 deemed unenforceable shall not affect any of the remaining provisions.

Section 3. This ordinance shall take effect on January 1, 2008.

Section 4. 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 22nd day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 24 OF TITLE I, WESTMINSTER MUNICIPAL CODE, CONCERNING PERSONNEL MANAGEMENT**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The index for Chapter 24 of Title I, W.M.C., is hereby AMENDED to read as follows:

**CHAPTER 24  
PERSONNEL MANAGEMENT**

**1-24-1: DEFINITIONS**

**1-24-2: GENERAL PROVISIONS PRINCIPLES AND IMPLEMENTATION**

~~1-24-3: ADMINISTRATION~~

~~1-24-4: COMPENSATION AND BENEFITS~~

~~1-24-5: EMPLOYEE CONDUCT AND DISCIPLINE~~

**1-24-6 3: GRIEVANCES AND APPEALS**

~~1-24-7: SUBSTANCE ABUSE POLICY~~

Section 2. Section 1-24-1, W.M.C., is hereby AMENDED to read as follows:

**1-24-1: DEFINITIONS:** For the purposes of this chapter, the following words and terms, unless the context clearly states otherwise, shall have the meaning indicated below. (2248 2603 2922 3317)

ADMINISTRATIVE OFFICER: THE ADMINISTRATIVE OFFICERS OF THE CITY SHALL BE THE CITY MANAGER, CITY ATTORNEY, CITY CLERK AND FINANCE DIRECTOR, AND SUCH ADDITIONAL ADMINISTRATIVE OFFICERS AS MAY BE CREATED BY CITY COUNCIL. THE ADDITIONAL ADMINISTRATIVE OFFICERS SHALL BE THOSE EMPLOYEES SERVING IN CLASSIFICATIONS LISTED AS "ADMINISTRATIVE OFFICERS" IN THE PAY AND CLASSIFICATION PLAN APPROVED BY CITY COUNCIL RESOLUTION.

Appeal: The action taken by an employee in order to have the employee's suspension, demotion or dismissal reviewed by the Personnel Board and the City Manager.

~~Appointing Authority: A Division Manager or higher level position who has the authority to make original appointments or recommend such appointments.~~

Board: The Personnel Board.

~~Charter: The home rule charter of the City of Westminster.~~

~~City Code: The City of Westminster Municipal Code.~~

Class: A position or group of positions, which are sufficiently similar with respect to skill, effort and responsibility, that they may be properly designated by the same title, and equitably compensated from the same range of pay under substantially the same employment conditions.

~~Compensatory Time: Leave hours earned for hours worked beyond the scheduled work day, scheduled work period or beyond the work period designated for Fair Labor Standards Act compliance.~~

~~Continuous Municipal Service: Uninterrupted length of service in a position or positions designated as receiving general leave, medical and dental insurance and other fringe benefits.~~

~~Corrective Action: The verbal counseling or verbal reprimand of an employee for the purpose of communicating deficiencies in the employee's conduct or performance.~~

Council: The City Council of Westminster, Colorado.

Demotion: The movement of an employee from a position in one class to a position in another class, having a lower maximum salary rate than the original class, or the movement of an employee to a lower salary in the same class.

Department Head: An individual who is regularly responsible for directing and managing the overall operations of a City department as authorized by the Charter or City Code, and who has been designated as a department head by the City Manager. The City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER and the City Attorney shall assume duties assigned to department heads in this Chapter for carrying out those actions involving positions, which report directly to them.

~~Disciplinary Action: A written reprimand, suspension, demotion, dismissal, or any other documented action taken in a disciplinary manner involving an employee, but not including a corrective action.~~

Division Manager: An individual appointed by the department head to manage a work group designated as a division within the department. For purposes of this Chapter, the City Manager, ASSISTANT CITY MANAGER, DEPUTY CITY MANAGER, department head or the City Attorney shall assume the responsibilities assigned to division manager when the employee in question reports to a department head, the City Attorney, DEPUTY CITY MANAGER, ASSISTANT CITY MANAGER, or the City Manager.

Employee: A person who receives monetary compensation from the City in return for present services or work performed on a non-contractual basis, or who is on a leave of absence without pay which has been approved by the Human Resources Manager. This definition shall include all full-time and part-time regular, administrative officers, temporary, provisional, seasonal, substitute, HOURLY, instructor, indexed, intern, special project, short term disability and emergency employees. This definition shall exclude elected municipal officials, volunteer firefighters, all other volunteer personnel, and retirees from the City.

~~Employee - Administrative Officer: A full time or part time employee holding a position that is specifically designated as a department head or division manager in the City's administrative officer pay plan. Employees in this category are at will employees.~~

Employee - eExempt: An employee who is eExempt from the overtime provisions of the fFair lLabor sStandards aAct. Reference to eExempt employees WHEN CAPITALIZED refers to those employees whose positions are listed in the eExempt employee pay schedule in the eCity pPay pPlan. All employees in the exempt employee pay schedule are exempt from overtime provisions of the Fair Labor Standards Act with the exception of the classification of administrative secretary and legal secretary. These two classifications are eligible for overtime after they have utilized the administrative leave they receive as part of the exempt employee benefit package.

~~Employee - Hourly Non-benefited: An employee appointed to provide services on an hourly basis in specifically designated areas and work an intermittent schedule with no defined number of hours or benefit eligibility.~~

~~Employee - Indexed: An employee appointed to serve for a limited period of time indexed to a particular workload level below which the employee position shall be terminated.~~

~~Employee - Instructor: An employee who has received an appointment for specific instructional activities conducted on behalf of the City. Instructor's work is part time, scheduled work and there is no time limit to the amount of time an employee may hold a position in this capacity.~~

~~Employee - Intern: An employee appointed to a position in an intern capacity for a period of up to two years.~~

Employee - Non-exempt: An employee who is entitled to overtime pay or compensatory leave time under circumstances specified by the Fair Labor Standards Act. Reference to non-exempt employees refers to those employees whose positions are listed in the non-exempt employee pay schedule in the City pay plan.

Employee - Part-Time Regular: An employee who has been appointed to a part-time authorized nNon-exempt or eExempt position to work less than forty (40) hours during a seven-day period on a regular basis, and who has successfully completed the initial probationary period.

~~Employee – Probationary: An individual who has been appointed to an authorized position in the municipal service, but who has not yet completed the probationary period.~~

~~Employee - Regular: An employee who has been appointed to a full-time authorized non-exempt or exempt position in the municipal service, and who has successfully completed the initial probationary period.~~

~~Employee – Seasonal: An employee who has received an appointment for a specified period of time, normally on a seasonal basis or for a specific activity for a designated season.~~

~~Employee – Short Term Disability: An employee who is appointed to this category is receiving short term disability pay and has an authorized medical professional certification that they are unable to return to work.~~

~~Employee – Special Projects: An employee who has received a temporary appointment for a specified project, period of time not to exceed one year.~~

~~Employee – Substitute: An employee who has received an appointment to a position part-time, occasional work on a “substitute” as needed, or on-call basis, to fill in for absences and staffing shortages. There is no limit to the length of time an employee may hold a position in this capacity.~~

~~Employee – Temporary: An employee who has received an appointment for a period of time not to exceed one year who is not serving in a temporary benefited position.~~

~~Employee – Temporary – Benefited – Indexed: An employee appointed to serve for a temporary period of time indexed to a particular workload level, funding source or other criteria established by City Council.~~

~~Employee – Temporary – Benefited:~~

~~An employee who has received an appointment for a period of time not to exceed one year, who is serving in a temporary benefited position.~~

~~Employee – Temporary – Intern:~~

~~An employee who has received an appointment to a temporary position in an Intern capacity for a period of up to three years.~~

~~Employee – Temporary – Special Project:~~

~~An employee who has received an appointment to a temporary position for a specified project.~~

~~Employee – Emergency:~~

~~An employee who has received an appointment to a position during an emergency situation, to prevent undue delay or serious interferences with the provision of necessary public services.~~

~~Employee – Provisional:~~

~~An employee who has received a temporary appointment to a position, due to a vacancy or extended absence of the incumbent.~~

~~Examination: A written, oral, physical, or skill test, or a combination of these tests specifically used to assist in evaluating an applicant's qualifications for a particular position, including a promotional examination in which admission to the examination is limited to employees who meet the qualifications set forth in the job specifications.~~

~~Fringe Benefit: Any form of compensation in addition to the base salary as adopted by Council. General leave, health and life insurance, uniforms, cleaning allowance, educational reimbursement, safety shoes, and other benefits shall be considered as fringe benefits.~~

~~Grievance: A disagreement regarding the meaning, interpretation, application, or alleged violation of this Chapter, THESE policies and rules adopted hereunder, departmental policies, and rules or any other administrative policies of the City, WHICH HAS BEEN FORMALLY PRESENTED FOR REVIEW PURSUANT TO SECTION 1-24-3 OF THIS CHAPTER.~~

~~Holiday: The period between 12:01 a.m. and the following midnight of the date on which a designated holiday falls.~~

Job Description: The written description of a class, including the title, a statement of the nature of the work, examples of duties and responsibilities, and the requirements that are ~~necessary~~ ESSENTIAL and/or desirable for the satisfactory performance of the duties of the class.

Job Title: The title assigned to any particular class, and used for reference to that class.

Lateral Transfer: ~~The movement of an employee from one position to another for which the employee is qualified.~~

Layoff: ~~The separation of an employee from the municipal service, which has been made necessary by lack of work or funds or other reasons not related to fault, delinquency, or misconduct on the part of the employee. This term shall include those separations initially expected to be temporary as well as those resulting from the elimination of a position.~~

Original Appointment: The appointment of a person to a position in the municipal service.

Position: A group of current duties and responsibilities requiring the full-time, temporary, or part-time services of one employee.

Probationary Period: ~~A working test period following an original appointment, a promotion, a lateral transfer or a demotion during which a regular employee is required to demonstrate the ability to satisfactorily perform and learn in the assigned position.~~

Promotion: ~~The movement of an employee from a position of one class to a position of another class having greater or increased responsibilities and pay.~~

Reclassification: ~~The official determination by the City Manager that a position be assigned to a class different from the one to which it was previously assigned.~~

Reemployment List: ~~A list of persons who have been regular employees in a particular class, and who are entitled to have their names certified for appointment to a position in that class.~~

Relative: ~~The employee's spouse, child, stepchild, grandchild, parent, grandparent, sibling, half sibling, or any of these relationships arising through adoption.~~

Separation: ~~The voluntary or involuntary severing of an employee's employment with the City.~~

Supervisor: Any individual having authority, in the interest of the City, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or having responsibility to direct them, or to adjust their grievances, or effectively having the authority to recommend such action, if the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

Suspension: The temporary separation of an employee from performing his or her regularly assigned duties with or without pay for disciplinary reasons, or pending the outcome of an investigation involving the employee.

Vacation Leave: ~~General leave that is taken from normal working hours for vacation or leisure purposes.~~

Section 3. Section 1-24-2, W.M.C., is hereby AMENDED to read as follows:

**1-24-2: GENERAL PROVISIONS PRINCIPLES AND IMPLEMENTATION:** (2248 2922)

(A) Intent of Chapter: IN ENACTING THIS CHAPTER, It is the intent of the City Council ~~that this Chapter shall~~ TO provide for a professional and impartial personnel management system in accordance with the provisions of the City Charter. This Chapter supersedes any previously distributed ordinances, resolutions, rules, policies and employee handbooks. The language of this Chapter is not intended to create, nor is it to be construed to constitute, a contract between the City of Westminster and any one or all of its employees. ~~Employees have the right to terminate employment at any time for any reason and the City retains the right to terminate employment at any time for the reasons specified in this Chapter.~~

(B) Persons Covered by Chapter: This Chapter applies to all positions and employees in the civil service system as instituted by the City Charter CITY. In addition, unless specifically noted otherwise, it shall also apply to ~~Administration~~ ADMINISTRATIVE Officers and other

categories of municipal employment where not inconsistent with provisions of the Charter or other ordinances.

(C) Administrative Regulations: The City Manager shall have the authority to establish such policies and rules deemed necessary for the efficient and orderly administration of the personnel management system. Such authority may be delegated to department heads, division managers and supervisors as deemed appropriate by the City Manager. THE CITY MANAGER WILL PROVIDE CITY COUNCIL WITH A QUARTERLY REPORT IF ANY SUBSTANTIVE CHANGES ARE MADE TO ADMINISTRATIVE PERSONNEL POLICIES IN THE PREVIOUS QUARTER. All such policies and rules must be in writing and be consistent and compatible with this Chapter and the Charter, AND, AT A MINIMUM, INCLUDE THE FOLLOWING:

1. CLASSIFICATION PLAN: A CLASSIFICATION PLAN RESULTING FROM AN ANALYSIS AND EVALUATION OF ALL POSITIONS IN THE MUNICIPAL SERVICE SHALL BE DEVELOPED BY THE CITY MANAGER, OR HIS/HER DESIGNEE, AND MAINTAINED BY THE HUMAN RESOURCES MANAGER. IT SHALL CONSIST OF A LISTING WHICH GROUPS ALL POSITIONS IN CLASSES, BASED ON THE SKILL, EFFORT, RESPONSIBILITY, AND QUALIFICATIONS THAT ARE NECESSARY OR DESIRABLE FOR THE SATISFACTORY PERFORMANCE OF THE DUTIES OF THE CLASS. THE CLASSIFICATION PLAN SHALL INCLUDE TITLES AND WRITTEN JOB DESCRIPTIONS FOR ALL THE VARIOUS CLASSES OF POSITIONS. EACH CLASS SHALL INCLUDE ALL POSITIONS IN THE MUNICIPAL SERVICE, WHICH ARE SUFFICIENTLY SIMILAR WITH RESPECT TO DUTIES, RESPONSIBILITIES, AND AUTHORITY, SO THAT THE SAME DESCRIPTIVE TITLE MAY BE USED TO DESIGNATE EACH POSITION ALLOCATED TO THE CLASS. COUNCIL APPROVAL OF THE JOB TITLES AND PAY RANGES IN THE PAY PLAN SHALL CONSTITUTE APPROVAL OF THE CLASSIFICATION PLAN.
2. PREPARATION, ADOPTION AND AMENDMENT OF PAY PLAN: A CITYWIDE COMPENSATION PLAN, WHICH SHALL CONSIST OF MINIMUM AND MAXIMUM RATES OF PAY FOR EACH CLASS OR POSITION SHALL BE DEVELOPED AND MAINTAINED BY THE HUMAN RESOURCES MANAGER, AS THE REPRESENTATIVE OF THE CITY MANAGER. SALARY RANGES SHALL BE RELATED DIRECTLY TO THE POSITION CLASSIFICATION PLAN, AND SHALL BE DETERMINED WITH DUE REGARD TO RANGE OF PAY FOR OTHER CLASSES, REQUISITE QUALIFICATIONS, PREVAILING RATE OF PAY FOR LIKE WORK IN OTHER PUBLIC AND PRIVATE ORGANIZATIONS, RECRUITING EXPERIENCE, WORKING CONDITIONS, SUGGESTIONS OF DEPARTMENT HEADS, MAINTENANCE OF OTHER BENEFITS RECEIVED BY EMPLOYEES, THE FINANCIAL POLICY OF THE CITY, AND OTHER ECONOMIC CONSIDERATIONS. IN ADDITION, THE HUMAN RESOURCES MANAGER SHALL DEVELOP, MAINTAIN AND UPDATE A SET OF SALARY COMPLEMENTS WHICH SHALL BE DESIGNED TO ASSIST IN ATTRACTING AND RETAINING QUALIFIED EMPLOYEES. THE PAY PLAN SHALL BE SUBMITTED TO COUNCIL BY THE CITY MANAGER FOR ADOPTION ON AN ANNUAL BASIS IN ORDER TO MAINTAIN THE COMPETITIVE NATURE OF THE CITY'S PERSONNEL PROGRAM.
3. EMPLOYEE POLITICAL ACTIVITY: ACTIVE PARTICIPATION BY EMPLOYEES IN THE MUNICIPAL POLITICS OF THE CITY OF WESTMINSTER SHALL BE RESTRICTED. IT SHALL BE THE POLICY OF THE CITY,



HOWEVER, NOT TO DENY TO EMPLOYEES AND OFFICIALS THE RIGHTS TO ENGAGE IN THEIR NORMAL RIGHTS AND RESPONSIBILITIES AS CITIZENS.

- (D) 4. Nondiscrimination: No action affecting the employment status of any employee or applicant for a position in the municipal service, including examination, appointment, promotion, demotion, suspension, or removal shall be taken or withheld by reason of race, color, sex, national origin, political, or religious affiliation, age, disability or ~~Vietnam~~-MILITARY veteran status.

Section 4. Sections 1-24-3, 1-24-4, and 1-24-5, W.M.C., are hereby DELETED IN THEIR ENTIRETY.

Section 5. Section 1-24-6, W.M.C., is hereby AMENDED to read as follows:

**~~1-24-6~~ 1-24-3: GRIEVANCES AND APPEALS:** (2248 2603 2648 2922)

(A) General: Supervisory and administrative personnel shall strive to anticipate, and thereby eliminate, the cause of most misunderstandings, problems, complaints, or grievances. To the extent that they occur, the employee is encouraged to promptly seek the employee's immediate supervisor's assistance. Supervisory personnel shall not interfere with or discriminate against or make reprisals against any employee who files a grievance. The City strongly encourages the use of non-adversarial dispute resolution techniques to resolve grievances in a manner that is satisfactory to all affected parties. SUPERVISORY AND ADMINISTRATIVE PERSONNEL ARE STRONGLY ADVISED TO SEEK THE ADVICE AND SUPPORT OF THE HUMAN RESOURCES DIVISION AND CITY ATTORNEY'S OFFICE AT THE EARLIEST POSSIBLE TIME AFTER LEARNING OF A PROBLEM TO DEVELOP A MEANS TO COOPERATIVELY RESOLVE THE ISSUES. DEVELOPING THE LEAST ADVERSARIAL PATH TO RESOLUTION, BEFORE CONFLICT ESCALATES FURTHER, IS THE GOAL. WHILE ALTERNATIVE MEANS TO RESOLVE PERSONNEL ISSUES MAY BE DEVELOPED EITHER PRIOR TO THE FILING OF A FORMAL GRIEVANCE OR DURING THE INVESTIGATION AND FORMAL PROCESSING OF A GRIEVANCE, THE EARLIER THE BETTER. EMPLOYEES, TOO, ARE ENCOURAGED TO SUGGEST ALTERNATIVE MEANS OF RESOLVING DISPUTES WITHOUT COMPROMISING THEIR RIGHTS TO THE FORMAL PROCESS.

(B) GRIEVANCE: A GRIEVANCE IS A DISAGREEMENT REGARDING THE MEANING, INTERPRETATION, APPLICATION, OR ALLEGED VIOLATION OF THE PERSONNEL POLICIES AND RULES, DEPARTMENTAL POLICIES AND RULES, OR ANY OTHER ADMINISTRATIVE POLICIES OF THE CITY. WHEN DISPUTED, THE HUMAN RESOURCES MANAGER WILL DETERMINE WHETHER THE ACTION OR ALLEGED ACTION IS GRIEVABLE.

~~(B)~~(C) Filing a Grievance: Any employee with a grievance must file a written complaint with the employee's division manager (or the party who took the action being grieved if that party is of higher rank) with a copy to the Human Resources Manager within fourteen (14) calendar days following the grieved action. The division or department manager shall try to resolve the matter within ten (10) calendar days from the receipt of the written grievance. If the employee is not satisfied that the difference has been resolved after action by the division manager, the employee may within ten (10) calendar days of receipt of the grievance response file the grievance with the department head (if not already reviewed by the department head). The department head shall try to resolve the matter within ten (10) calendar days of receipt of the grievance. The deadlines in this paragraph (b) may be extended with the mutual consent of the parties.

If the employee is not satisfied that the difference has been resolved after action by the department head, the employee may pursue the following procedure:

1. Actions other than suspension, demotion or dismissal. Within ten (10) calendar days after receipt of the department head's response, the employee may ask the Human Resources Manager in writing to investigate the grievance. If the department head has taken no action

within ten (10) calendar days after receipt of the written grievance, the employee may request in writing that the Human Resources Manager investigate the grieved action. The Human Resources Manager shall, within twenty-one calendar days, investigate the grievance and consult with the employee and then make recommendations to the City Manager or the City Manager's designee who shall decide on the grievance within ten (10) calendar days. The City Manager's or the City Manager's designee's decision shall be final in all instances. The deadlines in this paragraph (1) may be extended with the mutual consent of the parties or because of an inability to do a complete investigation in the time allowed.

2. Suspension, demotion or dismissal. Within fourteen (14) calendar days after receipt of the department head's response, the employee may file an appeal to the Personnel Board or, if the department head has taken no action within ten (10) calendar days of receipt of the written grievance, the employee may file a written appeal to the Personnel Board within twenty-one calendar days after the department head's receipt of the written grievance.

3. FAILURE TO FILE. An employee loses any right to file a grievance or appeal with the Human Resources Manager or to file an appeal to the Board if the employee fails to file a written grievance within the time lines defined above. No organization or individual has the right to file a grievance on the employee's behalf and legal representatives shall not be permitted to attend any meeting with the grieved employee held for the purpose of investigating the grievance prior to the time an appeal has been filed pursuant to subsection (D) of this section.

4. Grievances Related to Disabilities. If an employee has, in the employee's view, suffered discrimination in violation of state or federal law based on a past or current disability, whether real or perceived, or association with an individual with a disability, the employee may file a grievance pursuant to this subsection ~~(B)~~ (C). A RECORD OF THE GRIEVANCE AND THE ACTION TAKEN TO RESOLVE IT SHALL BE MAINTAINED. This procedure is not a prerequisite to the pursuit of other legal remedies authorized by federal law. A disability-related grievance alleging a violation of federal laws protecting individuals with disabilities may be filed at any time.

~~(C)~~(D) Appeal: Only suspensions, demotions, or dismissals for disciplinary reasons can be appealed to the Personnel Board and only after all administrative remedies through the grievance procedure have been exhausted. Only regular ~~full~~-FULL-time employees and regular part-time benefited employees in authorized positions are eligible to appeal to the Board. Administrative officers have no appeal rights beyond the grievance process to the City Manager.

~~(D)~~(E) Filing an Appeal: The employee must file an appeal and request a hearing, in writing, setting forth the reasons for appeal in detail with the Human Resources Manager as set forth in subsection ~~(B)~~(C) of this section. The appeal must specify the grounds for appeal and shall contain a detailed statement of facts in support of the appeal. ANYONE CONSIDERING FILING AN APPEAL MAY CONTACT HUMAN RESOURCES FOR A COMPLETE COPY OF THE PERSONNEL BOARD RULES.

(F) FORWARDING AN APPEAL: The Human Resources Manager shall immediately forward copies of the written appeal to each member of the Board. The Human Resources Manager has the authority to return to the employee for correction any appeal that fails to conform to this provision regarding specifying grounds for appeal and containing detailed statement of facts in support of the appeal.

~~(E)~~(G) Appeal Procedure: Upon receipt of the appeal from the Human Resources Manager, the Board shall schedule a hearing on the appeal. Once the Board meets to hear the appeal, it may take the time necessary to obtain all the information deemed appropriate and in so doing the Board is not restricted to any particular time frame to conclude the hearing.

~~(F)~~(H) Subpoenas: The chairperson of the Board may issue a subpoena stating the title of the proceeding before the Board and commanding each person to whom it is directed to attend and give testimony at a hearing on an appeal before the Board at the time and place specified therein.

~~(G)~~(I) Findings and Decision: It is the interpretation of the City Council that the Charter of the City of Westminster establishes a personnel grievance process in which the Personnel Board has the responsibility of determining the facts of an appeal and determining when disciplinary action should be reconsidered and in such cases, the City Manager has the responsibility of reconsidering the disciplinary action and making the final disciplinary decision based on the facts determined by the Board. At the conclusion of the hearing, the Board shall send a written decision to the City Manager, which concludes that:

1. The action appealed was without justification and should be reconsidered. The Board may recommend that the appellant be restored to previous status and receive compensation for the period of the suspension, termination, or reduction in grade; ~~or~~
2. The action appealed was justified and should be confirmed; or
3. The action appealed was partially justified and should be reconsidered. The Board may recommend that the discipline be reduced under the conditions the Board deems proper.

The Board's decision shall contain findings of evidentiary fact on all material issues of fact and conclusions regarding the issues of law or discretion presented by the appeal.

~~(H)~~(J) Notice of Findings and Decision; Transcript: The Board shall report its findings and decision to the City Manager, the parties and their attorneys within thirty (30) days after the conclusion of the hearing. Notice shall be sent in the manner specified in subsection ~~(H)~~ (I) of this Section. The City shall make a record of the testimony and proceedings at an appeal hearing. Either the City or the employee may request a transcription of the testimony and proceedings at an appeal hearing. If the employee requests a hearing transcription, it shall be prepared at the employee's expense.

~~(I)~~(K) Decision of the City Manager:

1. When the Board has concluded that the discipline was justified, the City Manager shall confirm the decision of the Board;:-
2. When the Board has concluded that the action appealed was without justification or was partially justified, the City Manager shall reconsider the suspension, demotion or discharge and either reinstate the employee, impose a lesser penalty, or confirm the original suspension, demotion or discharge; OR
3. When reconsidering a suspension, demotion or discharge, the City Manager shall be bound by the Board's findings of evidentiary fact. The City Manager may accept or reject the Board's findings of ultimate fact or conclusions and may accept or reject the Board's recommendation regarding discipline.

~~(J)~~(L) Administrative Procedure Jurisdictional: No employee may bring an appeal before the Board until the employee has received the written notice of the final action taken or contemplated by the department head. The filing of an appeal under any of the procedures described in this section shall not constitute grounds for delaying the administrative action against which the appeal is made.

~~(K)~~(M) Appeal from Decision of City Manager: The employee may appeal any action of the City Manager resulting in suspension, demotion or dismissal to the District Court.

~~(L)~~(N) Right to Legal Counsel: The employee may only be represented by a person who is licensed to practice law in the State of Colorado. ~~If the employee chooses to not be represented by legal counsel, the appointing authority shall not be represented by legal counsel. If the employee retains legal counsel, appointing authority shall be represented by the City Attorney.~~

~~(M)~~(O) Rules of Procedure: The Board may adopt additional rules of procedure to supplement the procedures outlined in this section.

Section 6. Section 1-24-7, W.M.C., is hereby DELETED IN ITS ENTIRETY.

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

Section 8. 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 22<sup>nd</sup> day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12th day of November, 2007.

**Lindsey - Price**

**A BILL FOR AN ORDINANCE REPEALING AND REENACTING CHAPTER 11 OF TITLE VIII OF THE WESTMINSTER MUNICIPAL CODE CONCERNING STORMWATER QUALITY**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Chapter 11 of Title VIII, W.M.C., is hereby REPEALED AND REENACTED to read as follows:

**CHAPTER 11  
STORMWATER QUALITY**

8-11-1: PURPOSE AND POLICY

8-11-2: GENERAL REQUIREMENTS

8-11-3: DEFINITIONS

8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES

8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS

8-11-6: STORMWATER MANAGEMENT PLAN

8-11-7: MAINTENANCE REQUIREMENTS

8-11-8: ILLICIT DISCHARGES

8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES

8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES

8-11-11: JUDICIAL ENFORCEMENT REMEDIES

8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION

**8-11-1: PURPOSE AND POLICY:** (2335) The purpose of this Chapter is to establish procedures to protect and enhance the quality of water discharged into the City's storm drainage system by:

(A) Requiring measures that prevent erosion and the loss of sediment and other pollutants from construction sites.

(B) Requiring protection of soil surfaces before, during and after construction.

(C) Establishing stormwater quality design requirements for the development and redevelopment of property.

(D) Requiring the use of temporary and permanent Best Management Practices (BMP's) to achieve a reduction in the pollutant loading of stormwater runoff.

(E) Establishing maintenance requirements for developers, builders, business owners and landowners.

(F) Prohibition of illicit discharges into the City's storm sewer system.

(G) Establishment of remediation and enforcement procedures.

**8-11-2: GENERAL REQUIREMENTS:**

(A) Any person who undertakes or causes to be undertaken any activity, which involves disturbance of the surface of land shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters.

(B) All temporary erosion control facilities and all permanent facilities intended to control erosion of any earth disturbance operation shall be installed before any earth disturbance operations take place.

(C) Any earth disturbances shall be conducted in such a manner to effectively reduce soil erosion and resulting sedimentation, and should not exceed the erosion expected to occur for the site in its totally undeveloped state.

(D) All persons engaged in earth disturbances shall design, implement, and maintain acceptable soil erosion and sedimentation control measures, in conformance with the erosion control technical standards adopted by the City.

(E) All earth disturbances shall be designed, constructed and completed in such a manner so that the exposed area of any disturbed land shall be limited to the shortest possible period of time.

(F) Sediment caused by accelerated soil erosion shall be removed from runoff water before it leaves the site of the earth disturbance.

(G) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the earth disturbance area shall be designed to limit the water flow to a non-erosive velocity as defined in the City's "Storm Drainage Design and Technical Criteria Manual".

(H) Temporary soil erosion control facilities shall be removed once final stabilization has been achieved.

(I) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area shall be completed within fourteen (14) calendar days after final grading, the final earth disturbance has been completed or in accordance with a City-approved phasing plan. When it is not possible to permanently stabilize a disturbed area after an earth disturbance has been completed or where significant earth disturbance activity ceases, temporary soil erosion control measures shall be implemented within fourteen (14) calendar days. All temporary soil erosion control measures shall be maintained until final stabilization is achieved.

**8-11-3: DEFINITIONS:** Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the following meanings:

(A) **"Applicant"** means a landowner or agent of a landowner who has filed an application for a grading and erosion control permit.

(B) **"Best Management Practices (BMPs)"** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal separate storm sewer system (MS4). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage of leaks, sludge or waste disposal, or drainage from raw material storage.

(C) **"Builder"** means a person undertakes construction activities.

(D) **"Business Owner"** means a person who owns title to a commercial property.

(E) **"City Inspector"** means the person or person(s) authorized by the City Manager to inspect a site for the purpose of determining compliance with the provisions of this chapter.

(F) **"City Manager"** as used in this ordinance refers to the City Manager or the Manager's appointed designee.

(G) **"Compliance Date"** means the final deadline by which a user is required to correct a violation of a prohibition or limitation or to meet a stormwater quality standard or requirement as specified in a compliance schedule, industrial discharge permit or federal, state or local regulation adopting an applicable stormwater quality standard.

(H) **"Compliance Order"** means an administrative order that directs a user to comply with the provisions of this chapter, or of a permit or administrative order issued hereunder, by a specific date. The order may include a compliance schedule involving specific actions to be completed within specific time periods.

(I) **"Compliance Schedule or Schedule of Compliance"** means an enforceable schedule specifying a date or dates by which user must comply with a stormwater quality standard, a stormwater quality requirement or a prohibition or limitation and which may include increments of progress to achieve such compliance.

(J) **"Construction Activities"** means clearing, grading, excavation, and other ground disturbance activities. Construction does not include routine maintenance performed by public

agencies, or their agents to maintain original line grade, hydraulic capacity, or original purpose of facility.

(K) “**Construction Site Operator**” means a person who has been designated by the developer to perform routine inspections of BMPs and who is responsible for ensuring that the structural integrity of the BMPs are maintained and that the BMPs perform as designed.

(L) “**Critical BMPs**” means those BMPs such as, but not limited to, sediment ponds and dewatering structures, silt fence, wattles, vehicle tracking pads, inlet filters, that are installed to keep sediment and pollutants from leaving a construction site and discharging into receiving waters of the United States.

(M) “**Developer**” means a person who undertakes land disturbance activities.

(N) “**Development**” means any activity, excavation or fill, alteration, subdivision, change in land use, or practice, undertaken by private or public entities that affect the discharge of stormwater runoff. The term “development” does not include the maintenance of stormwater runoff facilities.

(O) “**Disturbed Area**” means that area of the land’s surface disturbed by any work activity upon the property by means including but not limited to grading; excavating; stockpiling soil, fill or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned agricultural or the tillage of a parcel zoned PUD (planned unit development) within the area identified for agricultural uses.

(P) “**Drainageway (Waterway)**” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(Q) “**Final Stabilization**” is reached when all ground surface disturbing activities at the site have been completed, and uniform vegetative cover has been established with an individual plant density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

(R) “**Homeowners Association (HOA)**” means the entity responsible for management and maintenance of those elements of a residential subdivision owned in common by its homeowners.

(S) “**Illicit Discharge**” means any discharge to a municipal separate storm sewer system (MS4) that is not composed entirely of stormwater runoff, or the exceptions listed in section 8-11-8(A) of this Code.

(T) “**Land Disturbance Activity**” means any activity, which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

(U) “**Landowner**” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

(V) “**Land Disturbance Permit**” means a permit issued by the City to conduct any land disturbance activity equal to or greater than one acre, earthwork involving moving more than two hundred (200) cubic yards or if grading occurs on a property that has a slope in excess of eight percent (8%).

(W) “**MS4**” means a municipal separate storm sewer system.

(X) “**Municipal Separate Storm Sewer System**” means a conveyance or system of conveyances (including but not limited to, roads with drainage system, municipal streets, inlets/catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer

district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to state waters;

2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW).

(Y) **“Non-critical BMPs”** means those BMPs such as, but not limited to, silt fence, wattles, diversions, vehicle tracking pads, inlet filters, that are installed to minimize the impacts of construction by nonstructural and structural devices within the subject construction site.

(Z) **“Official Development Plan (ODP)”** means the planning document, approved by the Westminster City Council, that identifies improvements and other responsibilities associated with the development and/or redevelopment of parcel(s) of land.

(AA) **“Permanent BMPs”** means those BMPs such as, but not limited to, a vegetated swale, wetland, water quality structure, to be installed and regularly maintained in order to ensure long term water quality benefits.

(BB) **“Receiving Waters”** means a river, lake, stream, drainage ditch or other watercourse.

(CC) **“Sediment/Erosion Control Plan”** means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities

(DD) **“Stop Work Order”** means an order issued by the City which requires that all construction activity on a site be stopped.

(EE) **“Stormwater”** means precipitation-induced surface runoff.

(FF) **“Stormwater Construction Permit”** means a permit issued by the Colorado Department of Public Health & Environment Water Quality Control Division. This program is referred to as the Colorado Discharge Permit System, or CDPS, and regulates stormwater discharges from construction activities under the CDPS general permit for stormwater discharges associated with construction activities.

(GG) **“Stormwater Runoff”** means that part of snowfall, rainfall or other precipitation that is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into a watercourse or body of water.

(HH) **“Surety”** means a Letter of Credit or cash in the amount of 115% of the cost of constructing or installing all items associated with the Land Disturbance Permit. The surety will guarantee the completion of all terms and conditions of the Land Disturbance Permit as well as payment of any fines and interest assessed due to non-compliance with any section of the Land Disturbance Permit or this ordinance.

(II) **“Temporary BMPs”** means those temporary BMPs such as, but not limited to, silt fence, wattles, vehicle tracking pads, inlet filters, diversions, sediment ponds and dewatering structures, to be installed and regularly maintained until the site is sufficiently stabilized.

(JJ) **“Urban Drainage and Flood Control District” or “UDFCD”** means the District created by section 32-11-101, et seq., C.R.S.

(KK) **“Vegetative Cover”** means grasses, shrubs, bushes, trees, ground cover and other plants.

**8-11-4: ADOPTION OF STORMWATER QUALITY GUIDELINES:** (2335) The City hereby requires the implementation of structural or non-structural measures to reduce or maintain the quality of stormwater on a temporary or permanent basis. Such measures will be designed and installed based on guidelines presented in VOLUME 3 - BEST MANAGEMENT PRACTICES, URBAN STORM DRAINAGE CRITERIA manual, published by the Urban Drainage and Flood Control District.

**8-11-5: LAND DISTURBANCE PERMIT REQUIREMENTS:** The Land Disturbance Permit is available from the Engineering Division in the Department of Community Development. See Section 11-7-7 of the Westminster Municipal Code for specific regulations. Surety must also be provided before a Land Disturbance Permit will be issued.

**8-11-6: STORMWATER MANAGEMENT PLAN:** (2335) Every development, redevelopment or construction project that requires a land disturbance permit requires the



preparation of a stormwater management plan to include temporary and permanent Best Management Practices (BMP's) designed to reduce the pollutant loading on the system. Any stormwater management plan prepared for a property in the City pursuant to the laws and regulations of the State of Colorado shall be submitted to the City for review and approval.

**8-11-7: MAINTENANCE REQUIREMENTS:** Developers, builders, business owners, homeowners associations and landowners shall be responsible for ensuring that all BMPs identified on the approved construction drawings, Official Development Plan and the Land Disturbance Permit application are properly installed, maintained and are in good working order as hereafter provided.

(A) Developers shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed are being properly maintained and are in good working order;
2. The site is fully developed and final stabilization has been reached;
3. Any deficiencies noted by the City prior to the expiration of the warranty period for public improvements have been corrected;
4. When individual lots have been sold to a Builder, the Developer shall explain the stormwater runoff quality requirements with the Builder at time of closing.

(B) Builders shall be responsible for ensuring that:

1. Any temporary and/or permanent BMPs installed prior to lot purchase from developer and/or owner are being properly maintained and are in good working order;
2. Final stabilization as completed by the Developer is maintained or repaired if damaged by the Builder;
3. Any temporary and/or permanent BMPs necessary for the building site(s) have been properly installed, maintained and remain in good working order until the property has been sold to a business, land or landowner; and
4. Stormwater runoff quality requirements of individual site(s) are explained to the purchaser at time of closing.

(C) Business owners, homeowners associations and landowners shall be responsible for ensuring that:

1. Any temporary BMPs installed prior to lot purchase from developer, owner, and/or builder are properly maintained and remain in good working order until the lot is stabilized;
2. Final stabilization has been achieved and maintained;
3. If not installed prior to individual lot purchase, temporary and/or permanent BMPs will be installed within ten (10) days from date of purchase at the base of all gutter downspouts and around the perimeter of the site where needed to prevent sediment from moving off-site and maintained until final stabilization has been achieved on the property; and
4. Permanent stormwater runoff quality measures constructed or installed on their property as shown on the approved Official Development Plan and/or construction plans are properly maintained.

(D) All temporary stormwater runoff quality control measures shall be removed within fourteen (14) calendar days after final stabilization has been achieved and the temporary measures are no longer needed.

(E) Should any developer, builder, business owner, homeowners association or landowner fail to adequately maintain the permanent stormwater runoff quality control measures or fail to remove the temporary measures, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code.

(F) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly

retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**8-11-8: ILLICIT DISCHARGES:**

(A) **Prohibition of Illegal Discharges:** It is unlawful and constitutes a public nuisance for any person to discharge or cause to be discharged or spilled any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for: return flows from irrigation, de-chlorinated water from swimming pools, water from fire hydrants including water used for fire fighting, discharges from potable water sources, air conditioning condensation, uncontaminated groundwater and other water determined by the City Manager or designee to be non-contaminated and acceptable for return to the storm drainage system and receiving waters. Nothing contained herein shall be construed to relieve any person discharging or causing to be discharged or allowing to be discharged water into the storm drainage system from any liability for damage caused by the volume or quality of water thus discharged.

(B) **Prohibition of Illicit Connections:**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(C) **Enforcement:** Should any person discharge or cause to be discharged or spilled or maintain a condition upon any property that may result in the discharge of any substance other than naturally occurring stormwater runoff into the City's storm drainage system, except for the exceptions listed in section 8-11-8 (A) above, the City Manager or his representative may cause the necessary work to be performed at the expense of such responsible party, and the cost of such abatement shall be a first and prior lien on the property as provided by Title I, Chapter 31 of this Code, and may be assessed and collected pursuant to Section 8-4-5 of this Code. Alternatively, the City may make a demand on the surety to pay for these expenses.

**8-11-9: LAND DISTURBANCE PERMIT REMEDIATION PROCEDURES:**

**City Inspector:** If a City inspector, or any other authorized City representative determines that eroded soils are leaving a disturbed area, the City inspector or authorized representative may, in writing, direct the business owner, landowner or such owner's agents or representatives on the site to repair, replace and/or install any sediment and/or erosion controls that were proposed for the site, or require additional sediment and/or erosion controls be installed if deemed necessary by the City inspector or authorized representative to minimize said sediment from migrating off-site, including the issuance of stop work orders and/or suspension or revocation of any permit. It shall be unlawful for any business or landowner or such owner's agents or representatives to fail to take all necessary measures to comply with such written directive and take all measures necessary to prevent soil erosion from migrating off site.

(A) **Right of Entry:**

1. The City inspector, or any other authorized City representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance and any land disturbance permit or order issued hereunder. Users shall allow the City inspector or authorized representative ready access to all parts of the premises for the purposes of inspection, whether announced or unannounced, sampling, records examination and copying, and the performance of any additional duties.

2. If the City inspector or authorized representative has been refused access to the property and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and

sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City inspector or authorized representative may seek issuance of a search warrant from the Municipal Court.

(B) **Compliance Orders.** Whenever the City determines that any activity is occurring that is not in compliance with a Land Disturbance Permit and/or the requirements of this chapter, the City may issue a written compliance order to the construction site operator. The schedule shall contain specific actions the construction site operator must complete, including dates for the completion of the actions. It shall be unlawful for any construction site operator to fail to comply with any compliance order requirement.

(C) **Suspension and Revocation of Permit.** The City may suspend or revoke a construction site Land Disturbance Permit for violation of any provision of this chapter, violation of the permit, and/or misrepresentations by the permittee or the permittee's agents, employees, or independent contractors.

(D) **Stop Work Orders.** Whenever the City determines that any activity is occurring which is not in compliance with an approved permit and/or the requirements of this ordinance, the City can order such activity stopped upon service of written notice upon the person responsible for or conducting such activity. Such person shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate person cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any person to fail to comply with a stop work order.

(E) **Violations and Penalties.** It shall be unlawful for any person to violate any provision of a construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City. Any person violating any provision of the construction site Land Disturbance Permit and/or the requirements of this chapter, as adopted and modified by the City, shall be deemed guilty of a misdemeanor, and subject to the penalties as set forth in Chapter 8 of Title I of this Code.

(G) The remedies provided by this Section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

#### **8-11-10: ADMINISTRATIVE ENFORCEMENT REMEDIES:**

(A) **Notification of Violation:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may serve upon that user a written Notice of Violation. The Notice of Violation may include specific required actions and may require the user to submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City Manager to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(B) **Consent Orders:** The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 8-11-10(D) and 8-11-10(E) of this ordinance and shall be judicially enforceable.

(C) **Show Cause Hearing:** The City Manager may order a user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, to appear before the City

Manager or designated representative and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days prior to the hearing. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) **Compliance Orders:** When The City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may issue an order to the user responsible for the discharge, directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, storm sewer service may be discontinued unless adequate Best Management Practices are installed and properly maintained. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and best management practices designed to minimize the amount of pollutants discharged to the storm sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) **Cease and Desist Orders:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, or that the user's past violations are likely to recur, the City Manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and
2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) **Administrative Fines:**

1. When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may fine such user in an amount not to exceed \$1000.00 per violation per day.

2. Unpaid charges, fines, and penalties shall be assessed and accrue interest in accordance with the provisions of Chapter 8 of Title I, Westminster Municipal Code, entitled "Penalties and Interest," as it may be amended from time to time. The City may also collect unpaid fines and interest by placing a demand on the surety provided with the Land Disturbance Permit.

3. Users desiring to dispute such fines must file a written request for the City Manager to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City Manager may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

4. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(G) **Emergency Suspensions:** The City Manager may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons, or which presents, or may present, an endangerment to the environment.

1. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City Manager may take such steps as deemed necessary, including immediate severance of the storm sewer connection, to prevent or minimize damage to the receiving waters, or endangerment to any individuals. The City Manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed.

2. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City Manager prior to the date of any show cause or termination hearing under Sections 8-11-10(C) of this Code.

(H) Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section.

#### **8-11-11: JUDICIAL ENFORCEMENT REMEDIES:**

(A) **Injunctive Relief:** When the City Manager finds that a user has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, the City Manager may petition the District Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the land disturbance permit, order, or other requirement imposed by this ordinance on activities of the user. The City Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) **Civil Penalties:**

1. A user who has violated, or continues to violate, any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall be liable to the City for a maximum civil penalty of \$1000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

2. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

3. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

4. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(C) **Criminal Prosecution:**

1. A user who willfully or negligently violates any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

2. A user who willfully or negligently introduces any substance into the MS4 which causes personal injury or property damage shall be subject to the penalty provisions of State law. This penalty shall be in addition to any other civil cause of action for personal injury or property damage available under State law.

3. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained,

pursuant to this ordinance, land disturbance permit, or order issued hereunder shall, upon conviction, be punished by a fine of not more than \$1000.00 per violation, per day, or imprisonment for not more than one (1) year, or both.

(D) **Remedies Nonexclusive:** The remedies provided for in this ordinance are not exclusive. The City Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of stormwater quality violations will generally be in accordance with the City's enforcement response plan. However, the City Manager may take other action against any user when the circumstances warrant. Further, the City Manager is empowered to take more than one enforcement action against any noncompliant user.

**8-11-12: SUPPLEMENTAL ENFORCEMENT ACTION:**

(A) **Liability Insurance:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to comply with any provision of this ordinance, a previous land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the MS4 caused by their illicit discharge.

(B) **Payment of Outstanding Fees and Penalties:** The City Manager may decline to issue a certificate of occupancy or reissue a revoked land disturbance permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous land disturbance permit, or order issued hereunder.

(C) **Water Supply Severance:** Whenever a user has violated or continues to violate any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(D) **Public Nuisances:** A violation of any provision of this ordinance, a land disturbance permit, or order issued hereunder, or any other stormwater quality standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager. Any person(s) creating a public nuisance shall be subject to the provisions of the Westminster Municipal Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22nd day of October, 2007. PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 12<sup>th</sup> day of November, 2007.