



## 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. Water Treatment Facility Site Fencing Purchase
- B. 2009 Wastewater Collection System Maintenance Program
- C. Pressure Zone 15 Waterlines Replacement Project Construction Contract
- D. 36 Inch Connection to the 54 Inch Waterline at Pierce and 91<sup>st</sup> Streets Construction Contract
- E. Contract Manager/General Contractor Contract Award for City Park Aquatics Renovations
- F. Memorandum of Understanding re Adams County Regional Public Safety Training Center
- G. Second Reading Councillor's Bill No. 45 re Westminster Gateway Comprehensive Land Use Plan Amendment
- H. Second Reading Councillor's Bill No. 46 re Acquisition of Water Rights
- I. Second Reading Councillor's Bill No. 47 re WMC Amendments re Home Occupation & Massage Therapist Licenses
- J. Second Reading Councillor's Bill No. 49 re POST Fund Bond Interest Earnings Supplemental Appropriation

### 9. Appointments and Resignations

### 10. Public Hearings and Other New Business

- A. Resolution No. 59 re City of Westminster 2009 Legislative Policy Statement
- B. Resolution No. 60 re Service Commitment Award Extension for the Valley View Estates – Eliot St. Duplexes PUD
- C. Councillor's Bill No. 50 re Church Ranch Hotel Company LLC Business Assistance Agreement Amendment
- D. Councillor's Bill No. 51 re Democratic National Convention Supplemental Appropriation
- E. Councillor's Bill No. 52 re Pension Plan Amendments

### 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

**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 24, 2008 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

CONSIDERATION OF MINUTES

Councillor Kaiser moved, seconded by Dittman, to approve the minutes of the regular meeting of November 17, 2008, as distributed. The motion passed unanimously.

CITY MANAGER'S REPORT

Mr. McFall reported that all City facilities would be closed in observance of Thanksgiving on November 27. The Recreation Centers would reopen on November 28, but other City facilities would remain closed that day. Additionally, he advised that the City Council would meet in executive session immediately following adjournment of this meeting. The executive session would be convened to obtain direction from Council regarding a proposed Economic Development Assistance Agreement with the Hyatt Place Hotel pursuant to Westminster Municipal Code Section 1-11-3(C)(7) and Colorado Revised Statutes Section 24-6-402(4)(e).

CITY COUNCIL COMMENTS

Councillor Briggs reported that it had been an honor to witness the recent swearing in of Kathy Novak, Mayor of the City of Thornton, as President of the National League of Cities. He then asked Council to join him in presenting the "Rascal" award to Mayor Pro Tem Dittman for his outstanding acting as the lead villain in the History of Westminster performed at the Westminster Grange.

Mayor McNally reminded everyone of Christmas tree lighting ceremonies scheduled during the first week of December at Fire Station 1 and City Hall and encouraged participation. The question and answer community exchange Council had hosted at the West View Recreation Center on November 18 was well attended. Answers to the questions were now posted on the City's website.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: accept the October 2008 Financial Report; authorize the purchase of one 2008 Ford MEDTEC ambulance from Front Range Fire Apparatus in an amount not to exceed \$118,500 with the trade-in of a 2003 Ford Road Rescue ambulance; authorize the City Manager to execute purchase orders through the Utilities Operations Division with Dana Kepner and HD Supply for the purchase of materials for use by the Utilities Operations Construction Crew and Field Crew for a total cost of \$171,146; approve the allocation of Community Development Block Grant and HOME funds in 2009; and authorize the City Manger to execute an intergovernmental agreement with the Urban Drainage and Flood control District for the Big Dry Creek Major Drainageway Planning the Flood Hazard Area Delineation update.

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

PUBLIC HEARING ON HISTORIC LANDMARK DESIGNATION FOR RED & WHITE GROCERY STORE

At 7:06 p.m., the Mayor opened a public hearing to consider an application to designate the Red & White Grocery Store, 3947-3949 West 73<sup>rd</sup> Avenue, as a local historic landmark. Vicky Bunsen, Community Development Program Coordinator, reviewed the application and provided background information to demonstrate that the structure qualified for local historic landmark designation. Having been built in 1908, the 100-year old structure exemplified the economic and social heritage of the community and represented an association with notable persons in the history of Westminster. Notice of this public hearing had been published, the property posted, and the application reviewed by the Historic Landmark Board, as required by the Westminster Municipal Code. The agenda memorandum and attachments were entered into the record.

Mayor McNally invited public comment. Mr. McFall entered a letter of support that had been received from Chris Meschuck. No others wished to testify. The Mayor closed the hearing at 7:17 p.m.

RESOLUTION NO. 55 DESIGNATING RED & WHITE GROCERY STORE LOCAL HISTORIC LANDMARK

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Lindsey, the Council voted unanimously at roll call to adopt Resolution No. 55 designating the Red & White Grocery Store, 3947-3949 West 73<sup>rd</sup> Avenue, as a local historic landmark pursuant to Section 11-13-7 of the Westminster Municipal Code.

RESOLUTION NO. 56 ALLOWING LOCAL REVIEW OF STATE INCOME TAX CREDITS

It was moved by Councillor Winter, seconded by Mayor Pro Tem Dittman, to pass Resolution No. 56 allowing local review of state income tax credit applications for qualified rehabilitation costs incurred by owners of landmarked historic homes and business properties. At roll call, the motion passed unanimously.

RESOLUTION NO. 57 RE SPRING 2009 ADAMS COUNTY OPEN SPACE GRANT APPLICATION

Councillor Lindsey moved, seconded by Councillor Kaiser, to adopt Resolution No. 57 authorizing the Department of Parks, Recreation and Libraries to pursue a grant with Adams County Open Space during the 2009 spring cycle for the development of Westminster Center Park located at 92<sup>nd</sup> Avenue and City Center Drive. On roll call vote, the motion passed with all Council members casting affirmative votes.

RESOLUTION NO. 58 RE 2009 JEFFERSON COUNTY JOINT VENTURE GRANT APPLICATION

It was moved by Councillor Briggs and seconded by Mayor Pro Tem Dittman to adopt Resolution No. 58 authorizing the Department of Parks, Recreation & Libraries to apply for a Jefferson County Joint Venture Grant for the 2009 funding cycle in the amount of \$300,000 for the Westminster City Park Recreation Center Aquatics Renovation. The motion passed unanimously on roll call vote.

COUNCILLOR'S BILL NO. 48 TO REDEEM 2002 WATER WASTEWATER VARIABLE RATE BONDS

Councillor Major moved to pass Councillor's Bill No. 48 as an emergency ordinance providing for a supplemental appropriation of funds to the 2008 budget of the Utility Reserve and Water funds and to authorize the purchase of all outstanding 2002 Water Wastewater Variable Rate Revenue Bonds. The motion was seconded by Councillor Winter and passed unanimously on roll call vote.

POST FUNDS TRANSFERRED TO WEDA FOR 2004 AND 2005 OPEN SPACE PROPERTY PURCHASES

It was moved by Mayor Pro Tem Dittman and seconded by Councillor Major to authorize the transfer of \$584,466 to the Westminster Economic Development Authority Fund from the Parks, Open Space and Trails Fund for property purchased by the Authority in 2004 and 2005. At roll call, the motion was unanimously approved.

COUNCILLOR’S BILL NO. 49 RE SUPPLEMENTAL APPROPRIATION TO POST BUDGET

Upon a motion by Mayor Pro Tem Dittman, seconded by Councillor Major, the Council voted unanimously at roll call to pass Councillor’s Bill No. 49 on first reading to provide for a supplemental appropriation in the amount of \$399,002 to the 2008 Parks Open Space Trails Budget.

ADJOURNMENT

There being no further business to come before the City Council, the Mayor adjourned the meeting at 7:21 p.m.

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Water Treatment Facility Site Fencing Purchase

**Prepared By:** Mike Happe, Water Resources & Treatment Manager  
Tom Settle, Water Treatment Superintendent  
Tim Woodard, Wastewater Treatment Superintendent

**Recommended City Council Action**

Authorize the City Manager to execute a contract with Greater Western Fence & Supply, Inc. in the amount of \$210,960 for the fencing of the Northwest Water Treatment Facility (Northwest WTF), Semper Water Treatment Facility Clearwell (Semper Clearwell) and Reclaimed Water Treatment Facilities (Reclaimed WTF).

**Summary Statement**

- The sites at the Northwest WTF, Semper Clearwell and Reclaimed WTF do not currently have perimeter fencing for security.
- The fencing material will be a straight-picket ornamental iron product that will blend architecturally with the neighborhoods at each site, while providing the necessary security.
- Formal bids were solicited from three vendors for the materials and installation. The lowest bid meets the material and installation requirements and is being recommended for purchase.
- Each of the sites' fencing budgets was approved in the 2008 capital improvement program as follows: the 2007 Reclaimed WTF Security Fencing Project was approved for \$78,000, the 2008 Semper Clearwell Site Fencing Project was approved for \$75,000 and the 2008 Northwest WTF Site Fencing Project was approved for \$75,000 for a total available budget of \$228,000.

**Expenditure Required:** \$ 210,960

**Source of Funds:** Utility Fund - SWTF RWTF Security Fencing CIP, 2008 SWTF Clearwell Site Fencing CIP and the 2008 NWTF Site Fencing CIP

**Policy Issue**

Should the City proceed with the installation of security fencing at the three water treatment facility (WTF) sites?

**Alternative**

Reject all bids and continue to operate the WTFs without security fencing. Staff does not recommend this alternative because it leaves the WTFs without a secure perimeter.

**Background Information**

The sites at the Northwest Water Treatment Facility, Semper Water Treatment Facility Clearwell and Reclaimed Water Treatment Facilities do not currently have perimeter fencing for security. All three were identified as needing perimeter fencing as part of a vulnerability assessment done in 2003 as required by the U.S. Environmental Protection Agency under mandate of the Bio-Terrorism Act. These projects were approved as part of the 2007 Capital Improvement Projects budget.

Since these sites are located in newer or developing neighborhoods of the City and a more visually pleasing fence design was desired, options for fencing materials were explored beyond the typical six foot chain link-style fence with barbed wire topping. The fencing material will be a straight-picket ornamental iron product that will blend architecturally with the neighborhoods at each site, while providing the necessary security at equal or better levels to a chain link fabric. The cost of chain link was only 5% lower than the ornamental iron for all three sites in preliminary material bids.

The City routinely uses Fence Consulting Services, Inc. for fencing needs at facilities or in the open space areas. Their services were utilized to identify material options, pros and cons of each and to develop budgetary planning numbers. Once the material was selected, formal bids were solicited from three vendors for the materials and installation. The lowest bid meets the material and installation requirements and is being recommended for purchase. The installation contract will be with Greater Western Fence & Supply, Inc.

The final bids are summarized in the table below.

<u>Vendor</u>	<u>Northwest WTF</u>	<u>Semper Clearwell</u>	<u>Reclaim WTF</u>	<u>Total Cost</u>
Greater Western	\$72,615	\$71,200	\$67,145	\$210,960
R&P Fence	\$77,365	\$75,855	\$70,205	\$223,425
Elite Fence	\$80,890	\$79,310	\$74,795	\$234,995

This project helps achieve the City Council’s Strategic Plan Goal of “Financially Sustainable City Government” by contributing to the objective of “Well-maintained City Infrastructure and Facilities.” It also contributes to the City achieving “Safe and Secure Community” by ensuring the security of all of the water treatment facility sites.

Respectfully submitted,

J. Brent McFall  
City Manager



## Agenda Item 8 B

WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
December 8, 2008



**SUBJECT:** 2009 Wastewater Collection System Maintenance Program

**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 a contract for 2009, with options for two additional one-year renewals (2010 and 2011), for the Wastewater Collection System Maintenance Program with the low bidder Quality Pipe Services, Inc. in the amount of \$513,726, and authorize a 10 percent contingency of \$51,373 for a total budget of \$565,099.

### Summary Statement

- Funds (\$735,000) have been approved and allocated in the 2009 Utilities Division Operating Budget for the wastewater collection system maintenance contract.
- On November 19, 2008 a formal bid opening was held at City Hall with three contractors submitting bids on the annual wastewater collection system maintenance contract. Bids were received from Quality Pipe Services, Inc.; Guildner Pipeline Maintenance, Inc; and Ace Pipe Cleaning, Inc. Quality Pipe Services Inc. was determined to be the low bidder for this maintenance contract.
- The low bid contractor, Quality Pipe Services, Inc. is our current wastewater system maintenance contractor. They were awarded the 2008 maintenance contract as the low bid contractor last year. Staff has been very satisfied with the quality of work and response provided by Quality Pipe Services over the past year.

**Expenditure Required:** \$565,099

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



**Policy Issue**

Should the City enter into a contract with Quality Pipe Services Inc. for the wastewater collection system maintenance contract to be completed throughout 2009?

**Alternative**

Prepare bid documents and project specifications and re-advertise the 2009 maintenance contract for additional bid submittals, or add FTE's to the Utilities Division along with the required sewer maintenance equipment to perform this work in-house. These alternatives are not recommended as the bid from Quality Pipe Services is a good bid that meets all of the City's specifications and is the most cost effective approach to accomplishing this work.

**Background Information**

Over the past ten years the Utilities Division has utilized an outside maintenance contractor to perform the wastewater collection system maintenance program on an annual basis. One-third of the City is scheduled to be cleaned each year, along with selected "hotspots," where more frequent maintenance is required. During this time period Utilities Division Staff has competitively bid this project at various times to ensure the most efficient and effective means of completing the yearly wastewater maintenance program.

In late 2007, Staff was able to consider various vendors that submitted bids for the 2008 maintenance contract because of the additional competition in the sewer maintenance field that resulted in very competitive prices. These same advantages in the marketplace were in-place this year and the City again received very cost effective bids for the 2009 maintenance program. The three bids received were from Quality Pipe Services Inc. for \$513,726; Guildner Pipeline Maintenance, Inc. for \$581,006; Ace Pipe Cleaning Inc. for \$1,467,910. Quality Pipe Services, Inc. was awarded the 2008 sewer maintenance contract for the City. Staff has been very satisfied with the operations and expertise of this company, and their willingness to respond to any concerns in a timely manner throughout the past year. The contract sum for renewal periods 2010 and 2011 shall be negotiated and agreed upon by both parties. Any adjustments shall not exceed the annual percent of the change of the Denver-Boulder Consumer Price Index (CPI) for all urban consumers.

The area of scheduled maintenance to be completed in 2009 is the southern portion of the City in the Little Dry Creek basin area. The contract includes 725,000 feet of sanitary sewer line high-pressure cleaning and television inspection, grease trap and interceptor inspections, new subdivision sewer line inspection and customer service inspections. This area is approximately one-third of the total pipeline footage in the three wastewater collection system maintenance areas that encompass the entire City.

This annual wastewater system maintenance contract helps to 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

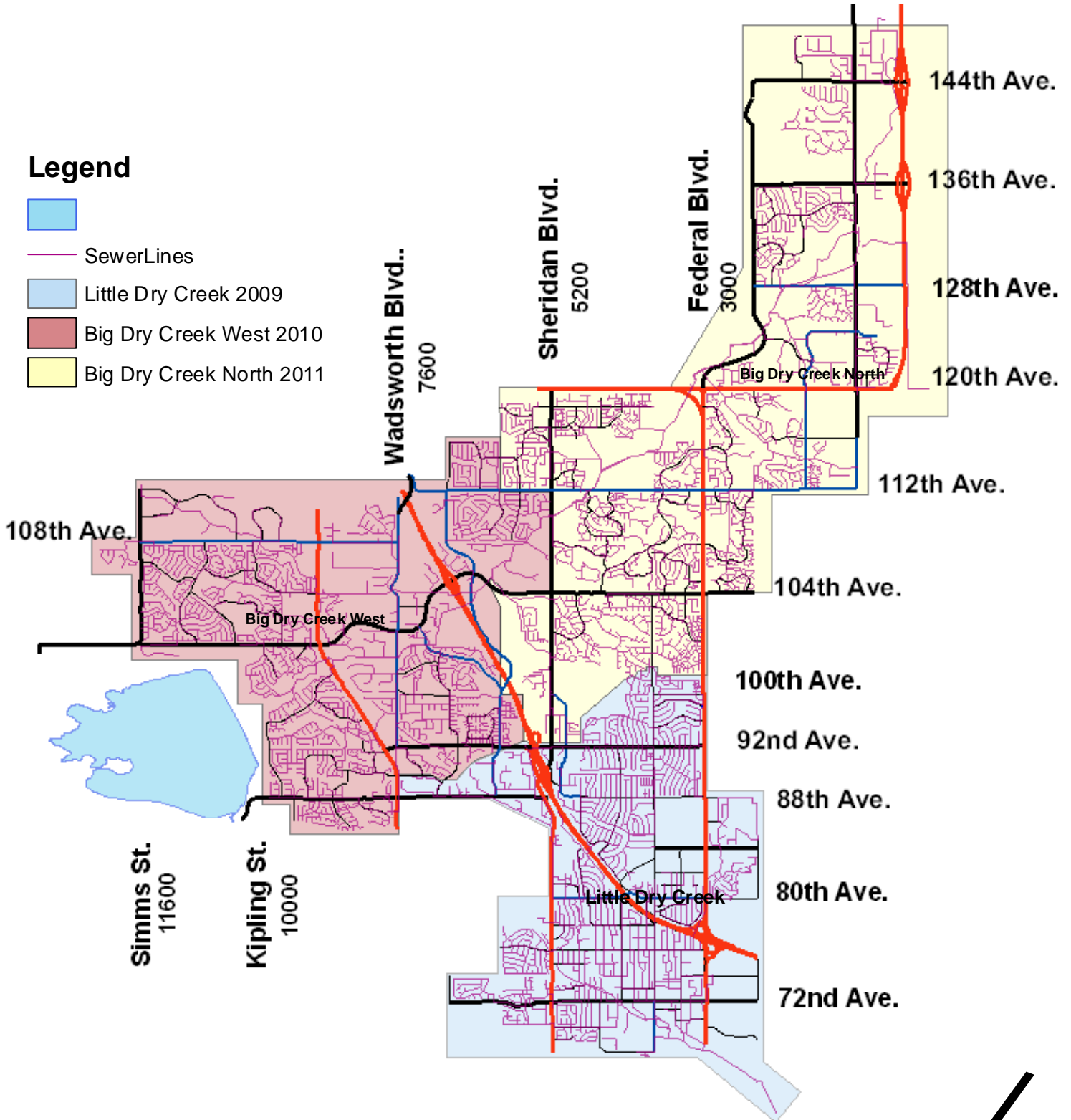
Attachment: Map 2009 Wastewater Collection Maintenance Program



# 2009 Wastewater Collection Maintenance Program

## Legend

-  SewerLines
-  Little Dry Creek 2009
-  Big Dry Creek West 2010
-  Big Dry Creek North 2011





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Pressure Zone 15 Waterlines Replacement Project Construction Contract

**Prepared By:** Stephanie Bleiker, Senior Engineer, P.E.

**Recommended City Council Action**

Authorize the City Manager to execute a design-build contract with the low bidder BT Construction Company in the amount of \$909,091 for construction of the Owens Street Waterlines Replacement Project, and authorize a construction contingency in the amount of \$90,909 for a total construction budget of \$1,000,000.

**Summary Statement**

- This project is located in the future Water Pressure Zone 15, which is located in the Countryside subdivision where there has been a history of frequent waterline breaks on the existing ductile iron waterline. The frequent waterline breaks have become an issue for the residents who live in the area as well as for the City utility crews who repair and maintain the waterlines.
- The new waterline will be constructed of polyvinylchloride (PVC) pipe. It will extend from 100<sup>th</sup> Avenue on Owens Street northward to Robb Drive. Four lateral waterlines on cul-de-sac streets that intersect Owens Street will also be replaced with PVC pipe. The work will amount to approximately 4,600 feet of new PVC waterline pipe.
- The City received five qualified bids on November 20, 2008. BT Construction Company presented the lowest responsible bid in the amount of \$909,091.
- Adequate funds were budgeted and are available for the Pressure Zone 15 Waterlines Replacement Project.

**Expenditure Required:** \$1,000,000

**Source of Funds:** Utility Fund Capital Improvements  
– Pressure Zone 15 Water System Improvements

**Policy Issue**

Should City Council authorize a contract with BT Construction Company to replace the Pressure Zone 15 waterline?

**Alternatives**

The City could choose from the following alternatives:

1. Construct the Pressure Zone 15 Waterlines Replacement Project at a later date that would potentially cause further disruption to residents since this waterline has a history of repeated water breaks.
2. Award the contract to another bidder. This would increase the project costs since the low bidder is responsible and qualified to perform this work.
3. Re-bid the project as currently designed; however, the cost proposal received is within the Engineer’s estimated range.

Staff does not recommend any of these alternatives.

**Background Information**

The waterlines in the Countryside subdivision were installed approximately 25 years ago. Ductile iron pipe was the standard waterline pipe material at that time. Due to the corrosive nature of the soils in the area and subsequent damage to the pipe material, most of the waterlines in the subdivision have either already been replaced or have been identified as pipelines in need of replacement with more resilient pipe material. PVC pipe material is better suited for the native corrosive soils located in the Countryside subdivision.

The waterline replacement work will involve approximately 3,700 feet of 12-inch PVC pipe; 400 feet of 8-inch pipe; and 550 feet of 6-inch and 4-inch diameter pipe (see project site map attached). The existing waterline in Owens Street consists of 6-inch and 8-inch diameter pipe. The new waterline pipe in Owens Street will be 12-inch diameter pipe. There will also be an approximate 200-foot section of new waterline installed between 100<sup>th</sup> Avenue and 100<sup>th</sup> Drive where no waterline currently exists. Staff believes that these improvements will also contribute to the overall quality of the City’s water distribution system in the area.

In conjunction with the pipe replacement work, existing fire hydrant assemblies will be replaced with new updated fire hydrant assemblies. The subdivision will have a net increase in the overall number of fire hydrants providing hydrants at closer intervals. The increased number of hydrants will bring the hydrant distribution in line with present-day fire department standards.

This pipeline work will precede the future water system pressure zone enhancements as recommended by the 2006 URS Water Master Plan. Due to the extensive number of water breaks on this line, it is important to replace the pipe prior to any future pressure increases to the water system in this area.

The City received five qualified construction bids on November 20, 2008. The following is a summary of the bids received:

<u>Contractor Name</u>	<u>Base Bid Amount</u>
BT Construction Company	\$909,091
Twin Peaks Utilities and Infrastructure, Inc.	\$940,962
T. Lowell	\$1,041,612
Northern Colorado Constructors	\$1,080,819
J-2 Construction Company	\$1,361,041
Engineer’s Estimate	\$981,814

After thoroughly reviewing the bids and checking references, Staff is recommending the award to BT Construction Company who has successfully completed several projects of this type for the City and was the lowest responsible bidder.

The approximate breakdown of current funding for the project is as follows:

	<b>Item</b>	<b>Amount</b>
	Construction	\$909,091
	Construction Contingency	\$90,909
	Total	\$1,000,000

The construction contract with BT Construction Company will mark the end of the design and bidding phase of the project. J&T Consulting Inc. is providing the design and construction phase services under contract to BT Construction Company. The waterline construction is anticipated to be completed by April 30, 2009, with construction closeout completed by May 31, 2009.

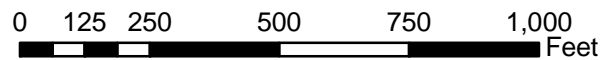
The timely completion of Owens Street Waterlines Replacement Project will assist the City in meeting the City Council's Strategic Plan goals of providing a "Safe and Secure Community" and "Vibrant Neighborhoods." With the new waterlines in place, the residents living in the subdivision will have an enhanced water distribution system with improved fire hydrant coverage. They will also experience fewer disruptions to their water service and less frequent intermittent construction activities in their neighborhoods.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment: Project Site Map

# Owens Street Waterlines Replacement Project





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** 36 Inch Connection to the 54 Inch Waterline at Pierce and 91<sup>st</sup> Streets  
Construction Contract

**Prepared By:** Dan Strietelmeier, P.E., Senior Engineer

**Recommended City Council Action**

Authorize the City Manager to execute a contract to the low bidder Garney Companies Inc. in the amount of \$136,375 for construction services related to the 36 inch connection to the 54 inch waterline in Pierce Street and authorize a ten percent construction contingency in the amount of \$13,638 for a total construction budget of \$150,013.

**Summary Statement**

- The Utility System Infrastructure Master Plan identified the need for several improvements to the potable water distribution system to improve pressure, supply and redundancy within the system.
- The 2009 Southern Pressure Zone One Water Transmission Pipeline project will include the construction of a new pipeline to move water from the pressure zone around the Semper Water Treatment Facility to the pressure zone serving the southern portion of Westminster.
- The initial phase 2009 Southern Pressure Zone One pipeline will be the construction of the connection of a 36 inch pipeline segment and valve to the existing 54 inch waterline that runs under Pierce Street near the Semper Water Treatment Facility. (See attached map)
- This connection to the 54 inch was bid separately due to the long lead time required for valves, the critical timing required for this connection, and the need for specialty work on the 54 inch pipeline. The 54 inch pipeline, one of the City's major water mains, can only be off line for a short duration and all connections must be back in service by March 1, 2009.
- The City requested bids from five prequalified bidders on November 12, 2008 and received three bids on November 21, 2008. Garney Companies Inc. presented the lowest responsible bid in the amount of \$136,375.
- The design of this connection was completed as part of the design of the Southern Pressure Zone 1 Water Transmission project. Construction will be initiated in January 2009 and completed by March 1, 2009.
- Adequate funding is available in the 2009 CIP for this portion of the project.

**Expenditure Required:** \$150,013

**Source of Funds** Utility Fund Capital Improvement Program  
– Southern Pressure Zone One Water Transmission Pipeline

**Policy Issue**

Should City Council award the contract for construction to Garney Companies Inc.?

**Alternatives**

The City could choose from the following alternatives:

1. Award the contract to another bidder. This would unnecessarily increase the project costs since the low bidder is responsible and qualified to perform this work.
2. Re-bid the project as currently designed; however, qualified bids were received through a competitive process.
3. Bid the project with the next phase of the Southern Zone 1 Water Transmission pipeline, which would not allow the connection to the 54 inch during the lower demand season.

Staff does not recommend any of these alternatives.

**Background Information**

The 2006 Utility System Infrastructure Master Plan recommended supplementing the potable water supply to the southern portion of Westminster with a large diameter transmission pipeline extending from the Semper High Service Pump Station (HSPS) at 91<sup>st</sup> Avenue and Pierce Street to the end of the England Pipeline near 88<sup>th</sup> Avenue and Sheridan Boulevard. This pipeline would provide a second larger diameter supply line directly from the Semper HSPS to the southern portion of pressure zone one. During periods of high demand, pressures in the southern portion of pressure zone one are lower than what is acceptable for the long term. The Southern Pressure Zone One Water Transmission Pipeline design phase is nearly complete and is planned for construction in 2009.

The 36 inch connection to the 54 inch waterline is a complex project due to the importance of this large diameter waterline, which is a major component of the City's water distribution system. The 54 inch line can be isolated only for a short time, and only during periods of low water demand in the winter. The contractor will have strict deadlines to adhere to in regard to how long the 54 inch can be off line, and the new connection will need to be completed and valved off by March 1, 2009 to avoid any possibility of high water demands. The 54 inch pipeline is the City's primary transmission main that feeds from the Semper Water Treatment Facility. The bidders were pre-qualified due to the specialized nature of the work that includes tying into a 54 inch mortar lined pipeline and the timing of completion.

The City received bids from three prequalified bidders on November 21, 2008. The bids were evaluated by Burns & McDonnell, the project engineer. Based on these evaluations, it was determined that Garney Companies Inc. provided the most comprehensive and responsive bid that addressed all of the project requirements.

The following is a summary of the bids received:

<u>Contractor</u>	<u>Bid Amount (1)</u>
Garney Companies Inc.	\$136,375
Twin Peaks Utilities and Infrastructure	\$145,300
BTC Construction	\$167,245

(1) The bid amounts include allowances for asphalt, fill material, utility relocation and trench dewatering as the size of trench will be determined by the contractor during construction means and methods evaluation.



Garney Companies Inc. will serve as the general contractor. Burns & McDonnell completed the design and will provide construction management services. Funding for Burns & McDonnell’s design was from the Water Pressure Zones Enhancements project. Construction of the 36 inch Connection to the 54 inch Waterline will be funded from the 2009 Southern Pressure Zone Water Transmission Pipeline budget. A summary of the project budget is presented below.

36 Inch Connection to 54 Inch Waterline Budget

Item

Construction	\$136,375
Construction Contingency (10%)	\$13,638
Misc. Costs (Permit Fees)	\$1,500
Street Cut Impact Fees	\$500
Total	\$152,013
2009 Authorized Budget	\$5,700,000

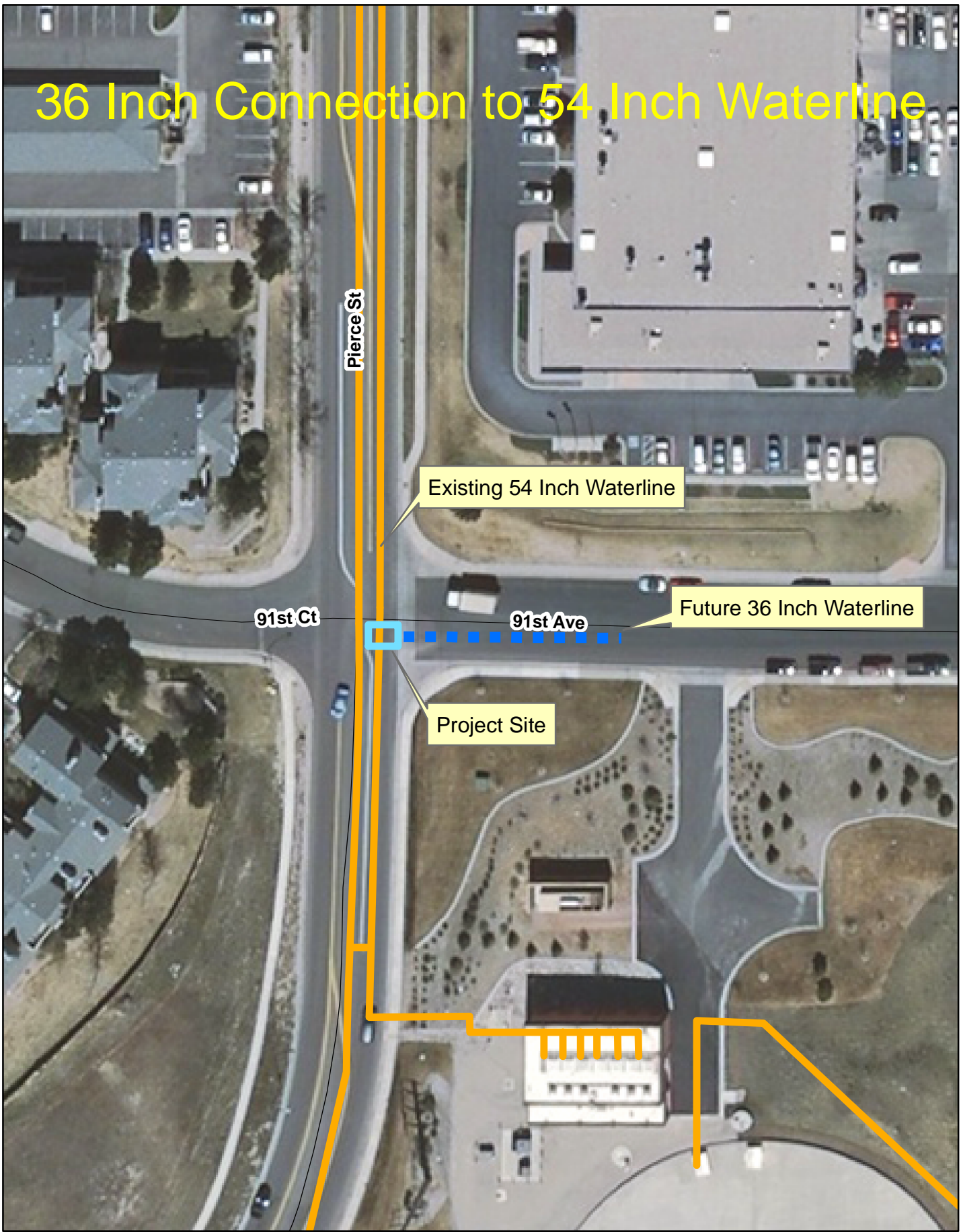
This project helps achieve the City Council’s Strategic Plan Goal “Financially Sustainable City Government” by contributing to the objective of a well-maintained City infrastructure and facilities. The project also will help maintain a “Beautiful City” by supplying and distributing water for irrigation of Parks, Open Spaces and common areas, and maintain a Safe and Secure Community by providing redundancy and adequate fire flows in the water distribution system.

Respectfully submitted,

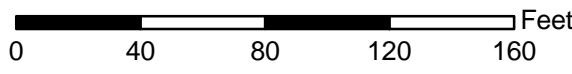
J. Brent McFall  
City Manager

Attachment: Street Map

# 36 Inch Connection to 54 Inch Waterline



City of Westminster





## Agenda Item 8 E

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Contract Manager/General Contractor Contract Award for City Park Aquatics Renovations

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

**Recommended City Council Action**

Authorize the City Manager to execute a contract with the lowest bidder, Adolfson and Peterson Construction, to provide Contract Manager/General Contractor (CM/GC) services for the City Park Recreation Center Aquatics Renovation for a preconstruction fee of 0.5% and a construction management fee of 3% of the cost of construction.

**Summary Statement**

- On November 12, 2007, Councillor's Bill No. 62 was passed approving the sale of up to \$20 million in 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, including the renovation of the aquatics area at City Park Recreation Center, funded at \$3.5 million.
- On January 28, 2008, Council approved a contract with Sink Combs Dethlefs for design of the City Park Recreation Center renovation.
- In the fall of 2008 Staff, working with Sink Combs Dethlefs, determined that a CM/GC contract would be the best construction method for this project.
- Proposals were sought from four qualified construction companies, and Adolfson and Peterson Construction was determined to be the best qualified for this project.
- Staff will come back to Council for approval of a Contract Amendment with a Guaranteed Maximum Price (GMP) for this project in early 2009.
- The total project costs have not yet been finalized.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the City proceed with a CM/GC contract for the City Park Recreation Center aquatics enhancements?

**Alternatives**

1. City Council could reject Staff’s recommendation to use a CM/GC project delivery method and have staff pursue a design/build or competitive bid delivery method. Staff does not recommend this because the CM/GC allows the City to bring in the contractor at an earlier stage to provide constructability reviews, value engineering, and a fast-tracked project with an earlier completion.
2. City Council could suspend the project. Staff does not recommend this alternative due to the many commitments made to the public and the continued escalation of costs if the project is delayed.

**Background Information**

Staff has been working with the project architect, Sink Combs Dethlefs, on the design of the City Park Recreation Center aquatics and locker room renovation design since early 2008. As the direction of the project began to become more defined and preliminary cost estimates were completed, Staff began to discuss the benefits of a CM/GC method for project delivery. This method was chosen because it brings the contractor into the project earlier in the design process, which allows for the integration of value engineering and constructability and means/methods review throughout the final design stages. The CM/GC method also enables the project to be fast tracked allowing for the potential of an earlier completion, which would allow the City Park Recreation Center fully open to the public and generating revenue sooner.

CM/GC proposals were sought from four construction firms experienced in aquatics projects. Three firms submitted proposals and on October 24, 2008, all three firms were interviewed. Through the interview process, Staff determined Adolfson and Peterson Construction (A&P) to be the most qualified for this project. Additionally, A&P submitted the lowest overall fees for preconstruction and construction. The comparison is as follows:

	Preconstruction Services	Construction Fee
Adolfson & Peterson Construction	0.5%*	3%*
JHL Constructors, Inc.	\$15,000	3.75%*
Saunders Construction	\$15,000	4.0%*

\*Percentages are based on construction fees.

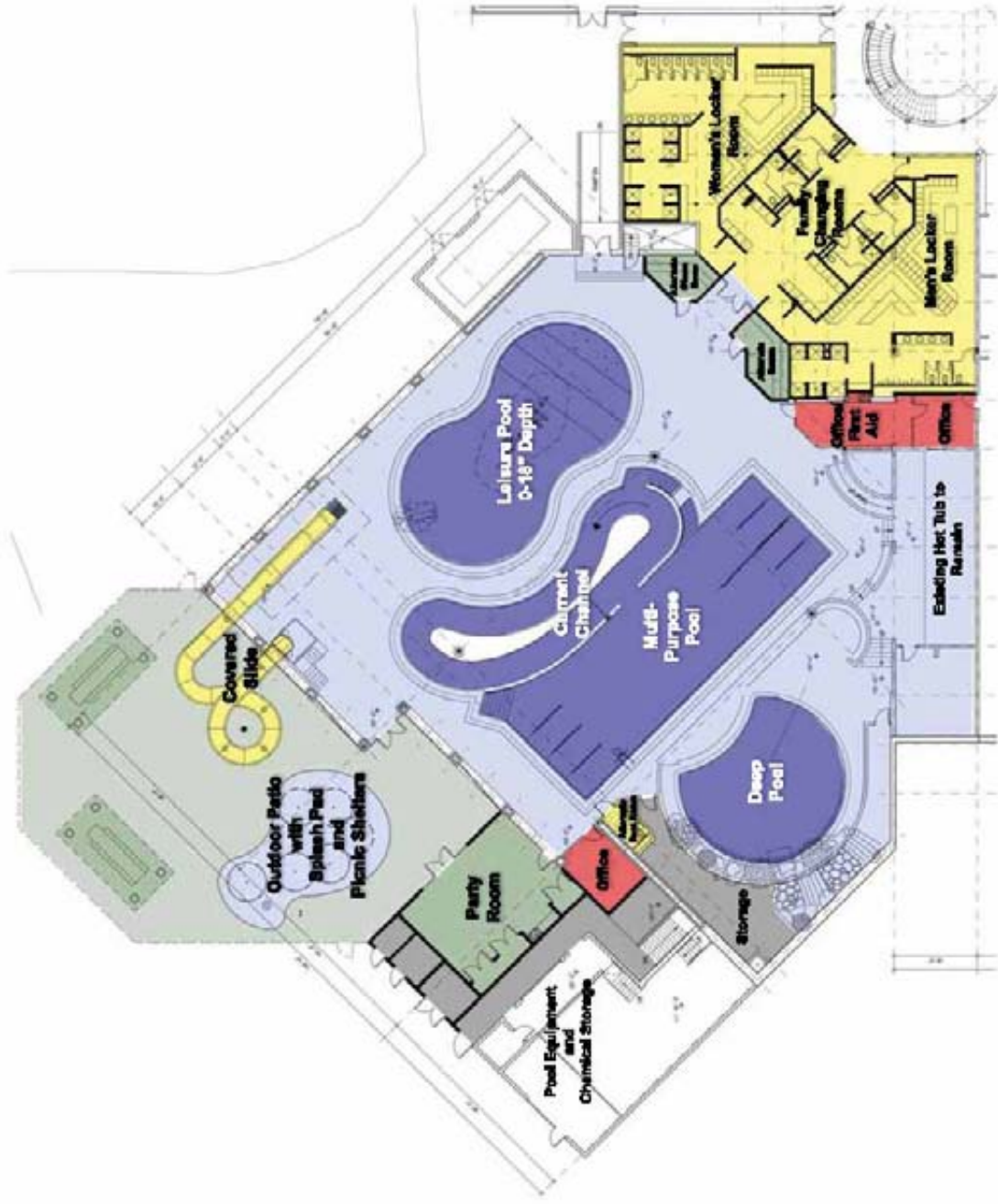
Staff anticipates finalizing the project budget and final design in early 2009 and will come to Council to amend this contract to include a Guaranteed Maximum Price for construction. Construction is anticipated to begin in early spring with a 9 to 12-month construction period.

This project supports the City Council Strategic Plan Goals of “Financially Sustainable City Government Providing Exceptional Services” and “Beautiful City and Environmentally Sensitive City.”

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment



Westminster City Park Recreation Center  
**AQUATIC RENOVATION AND ADDITION**

Design Concept





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Memorandum of Understanding re Adams County Regional Public Safety Training Center

**Prepared By:** Lee Birk, Police Chief  
Mike Cressman, Deputy Chief of Police

**Recommended City Council Action**

Authorize the City Manager to sign a Memorandum of Understanding (MOU) between Adams County, Adams County Sheriff's Office (ACSO), the City of Westminster, and several other municipal and county governments (collectively known as the "Executive Principals").

**Summary Statement**

- Adequate and quality training is imperative to the successful mission of the Westminster Police Department and the City of Westminster.
- Two high profile and high risk training needs that the Police department must address annually are emergency vehicle operations and use of firearms.
- For decades, the Westminster Police Department, along with multiple other Adams County Law Enforcement agencies, has used the Adams County Firearms Range for firearms training. The Douglas County Sheriff's office range is used for certain SWAT and rifle trainings due to the fact that rifle ranges and facilities are not available at the Adams County Range. The current Adams County Range will be closing in 2010.
- The Colorado State Patrol has an emergency vehicle driving track in Golden, located on Table Mountain, that is used by numerous law enforcement agencies throughout the state as well as private entities. The limited availability of driving tracks statewide, and the ever increasing demand for access to driving tracks, has made access to the facility a challenge. This is also the only emergency vehicle "high speed" driving track available in the State.
- Adams County has taken the initiative to purchase land in the county for the development of a new law enforcement training site. The Sheriff's Office has solicited their historic firing range partners and other area law enforcement agencies to partner with them in exploring the feasibility of constructing a regional public safety training facility.
- Adams County and ACSO are requesting an MOU be signed by the interested parties for the purpose of facilitating non-binding discussions leading to a formal Intergovernmental Agreement describing in specific terms the costs, conditions and procedures for access and charges associated with the Adams County Regional Public Safety Training Center.
- This MOU does not commit the City to any financial participation.
- The City Attorney's office has reviewed the attached MOU.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

## **Policy Issue**

Should the City of Westminster enter into an MOU with Adams County, Adams County Sheriff's Office, and the other Executive Principles in order to facilitate non-binding discussions between the parties in working toward the creation of a formal Intergovernmental Agreement describing in specific terms the costs, conditions and procedures for access and charges associated with the Adams County Regional Public Safety Training Center?

## **Alternative**

Elect not to sign the MOU and decline participation in this project as an Executive Principle. If this option is selected and alternative training sites are not available, use of the Adams County Regional Public Safety Training Center may be available but at a much higher user fee and only if space is available.

## **Background Information**

Nationally, firing ranges and high speed driving tracks are under increasing pressure from urban sprawl and encroachment of homes that generate safety, environmental, and noise concerns and complaints. Consequently numerous facilities are being closed and new sites face numerous development and permitting challenges. In addition to the upcoming closure of the existing Adams County range, Denver and Aurora are facing the closure of existing training facilities.

Over the years, the Adams County Range has been increasingly encroached upon. For some time now, the agencies utilizing the range have understood that the facility will be closing and in 2008, ACSO informed users that the facility will indeed close permanently in 2010. This has caused the ACSO and multiple other agencies concerns over the availability of other facilities to conduct future firearms training.

The Westminster Police Department has also been facing a growing problem regarding the availability of the Colorado State Patrol Driving Track in Golden. It is the only high speed pursuit driving track in the area and the demand for its use is significant. The department training coordinator must attempt to schedule dates for training a year in advance and even with that, it is difficult to find and coordinate dates that fit with the department's needs.

In response to these growing concerns, the ACSO has taken the initial steps in an attempt to solve the problem. Earlier this year, Adams County purchased 399 acres of land in rural Adams County (120th Avenue, North to 128th Avenue; between Gun Club Road, and Harvest Mile Road), at an expense of over \$4 million. The plan is to build a law enforcement training facility on this site. The Sheriff's Office has approached law enforcement agencies in Adams and nearby counties to determine what interest there is in partnering with this project. Eleven "Executive Partners," including the Westminster Police Department, have tentatively been identified based on preliminary interest.

Adams County has hired Interact Business Group to develop a strategic business plan. They visited several state of the art training centers throughout the United States and gathered design, operations and lessons learned information. Numerous business models and funding strategies have been and are being reviewed and explored. While many details are yet to be worked out and finalized, and an IGA will need to eventually be drafted and adopted, the model envisions that the Executive Partners would contribute to and share in the upfront infrastructure costs. In return, the Executive Partners would have access to priority scheduling over non-partners. Along with prime time access, it would also ensure access if demand exceeds availability. Also, the Executive Partners would be a member of the Governing and Oversight Board and would also pay significantly reduced user fee rates versus non-partners.

Beginning in 2009, the Westminster Police Department will begin using the Broomfield Police Department range for routine weapons qualification. Consequently, the police department anticipates limited usage of the new Adams County Range in the immediate future but, nonetheless, believes that participation in the new Adams County Training Center makes good sense long term for a number of reasons.

- The need for the driving track is immediate and will likely increase with growing pressure on the Colorado State Patrol track.
- If, in fact, we do not use or have limited use of the new Adams County range, we will pay no or limited users fees for the range because the user fees will be tied to actual usage.
- Since the department has not utilized the Broomfield Range yet, it is possible that the department will find it inadequate for our needs.
- Broomfield may eventually rescind access and usage of their range facility at some point due to demand and scheduling concerns, and they are certainly not immune to mounting public pressure on ranges from urban growth and sprawl.
- While the initial Training Center plans provide only for range and driving facilities, the eventual build out envisions numerous other facilities such as scenario villages, shoot houses, K9 training areas, bomb disposal/training areas, and classrooms that will likely be of interest to the department for training purposes.

This project is at a point where Adams County is requesting a more concrete idea of the level of commitment from the Executive Principles in working towards a viable IGA concerning the construction and use of the new regional training facility. The attached MOU is a non-binding attempt to facilitate the needed discussions between the Executive Principles and a good faith effort in moving toward that goal. If, ultimately, a decision were made to enter into an IGA as an Executive Partner, it is believed funds would be available in the City's Public Safety Capital Reserve Account.

Respectively submitted,

J. Brent McFall  
City Manager

Attachment: Memo of Understanding



## **MEMORANDUM OF UNDERSTANDING ADAMS COUNTY REGIONAL PUBLIC SAFETY TRAINING CENTER**

This Memorandum Of Understanding (MOU) is entered into between Adams County, the Adams County Sheriff's Office (Adams) and several government agencies collectively known as the "Executive Principals." The purpose of this MOU is to facilitate non-binding discussions between Adams and the Executive Principals concerning the opportunity and feasibility of conducting law enforcement training classes at the Adams County Regional Public Safety Training Center (Training Center).

*Adams and the Executive Principals enter into this MOU with the following understanding:*

1. Adams County has purchased nearly 400 acres of land near Gun Club Road and 128<sup>th</sup> Avenue. Adams County is planning to build and operate a training center on 339 acres at this location.
2. The Adams County Sheriff intends to manage the training center and conduct their law enforcement training classes there.
3. The Executive Principals have expressed an interest in using the training center for law enforcement training classes.
4. Agencies known as Executive Principals will enjoy the benefits listed below:
  - 4.1. Priority access to the training center
  - 4.2. Discounted user fees
  - 4.3. A position on the training center Advisory Board
5. Adams and the Executive Principals agree that training is a critical element for law enforcement personnel. Therefore, building a modern, safe and efficient training center is essential to meeting these training objectives.
6. Adams and the Executive Principals will work towards the creation of a formal agreement describing in specific terms the costs, conditions, and procedures for access and charges associated with the Adams County Regional Public Safety Training Center.

---

**MEMORANDUM OF UNDERSTANDING  
ADAMS COUNTY REGIONAL PUBLIC SAFETY TRAINING CENTER**

Wednesday October 29, 2008

The MOU implies that the signatories will strive to reach, to the best of their ability, the objectives stated in the MOU within 90 days.

On behalf of the organization I represent, I sign this MOU with the understanding and desire to contribute to the further development of a formal agreement.

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Department, Name, and Title Date

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Department, Name, and Title Date

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Department, Name, and Title Date

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Department, Name, and Title Date

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Department, Name, and Title Date

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Department, Name, and Title Date

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**MEMORANDUM OF UNDERSTANDING  
ADAMS COUNTY REGIONAL PUBLIC SAFETY TRAINING CENTER**

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Department, Name, and Title Date

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Department, Name, and Title Date

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**MEMORANDUM OF UNDERSTANDING  
ADAMS COUNTY REGIONAL PUBLIC SAFETY TRAINING CENTER**



**WESTMINSTER**  
**COLORADO**

**Agenda Item 8 G**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Second Reading of Councillor’s Bill No. 45 re the Westminster Gateway Comprehensive Land Use Plan Amendment

**Prepared By:** Max Ruppeck, Senior Projects Manager

**Recommended City Council Action**

Pass Councillor’s Bill No. 45 on second reading amending the Comprehensive Land Use Plan for the Westminster Gateway development changing the designation of the northern portion of the property from Public/Quasi Public to Retail Commercial, and other parcels of the property from Retail Commercial to City Owned Open Space, and from City Owned Open Space to Retail Commercial. This recommendation is based on a finding that the proposed amendment will be in the public good and that:

- a) There is justification for the proposed change and the Plan is in need of revision as proposed; and
- b) The amendment is in conformance with the overall purpose and intent and the goals and policies of the Plan; and
- c) The proposed amendment is compatible with existing and planned surrounding land uses; and
- d) The proposed amendment would not result in excessive detrimental impacts to the City’s existing or planned infrastructure systems.

**Summary Statement**

- The proposed development consists of 5.5 acres located at the southwest corner of US 36 and Church Ranch Boulevard.
- The developer, Resolute Investment, is proposing retail commercial, office and/or hotel.
- Buildings will range in height from 40 ft. for retail uses to 140 ft. for office or hotel uses.
- Access to the development will be provided from Church Ranch Boulevard at Reed Street and a private drive.
- The northern part of the site was used until recently as an RTD park-n-ride. When the park-n-ride was relocated, RTD conveyed the site to the City which has it under contract to sell to Resolute Investment.
- This Councillor’s Bill was approved on first reading by City Council on November 17, 2008.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachments

- Comprehensive Land Use Plan Ordinance
- Exhibit A – Legal Descriptions
- Exhibit B - Map

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **45**

SERIES OF 2008

INTRODUCED BY COUNCILLOR'S  
**Dittman - Major**

**A BILL  
FOR AN ORDINANCE AMENDING THE WESTMINSTER  
COMPREHENSIVE LAND USE PLAN IN THE AREA  
OF THE WESTMINSTER GATEWAY ODP**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

a. That an application for an amendment to the Westminster Comprehensive Land Use Plan has been submitted to the City for its approval pursuant to §11-4-16(D), W.M.C., owners of the properties described in attached Exhibit A, incorporated herein by reference, requesting a change in the land use designations from Open Space to Retail Commercial for two parcels together comprising less than one acre, and from Retail Commercial to Open Space for an approximately one acre parcel, and from Public/Quasi-Public to Retail Commercial for an approximately 4 acre parcel, generally located at the southwest corner of US 36 and Church Ranch Boulevard, all as shown on the map attached as Exhibit B, incorporated herein by reference

b. That such application has been referred to the Planning Commission, which body held a public hearing thereon on October 28, 2008, after notice complying with §11-4-16(B), W.M.C. and has recommended approval of the requested amendments.

c. That notice of the public hearing before Council has been provided in compliance with §11-4-16(B), W.M.C. and the City Clerk has certified that the required notices to property owners were sent pursuant to §11-4-16(D), W.M.C..

d. That Council, having considered the recommendations of the Planning Commission, has completed a public hearing and has accepted and considered oral and written testimony on the requested amendments.

e. That the owners have met their burden of proving that the requested amendment will further the public good and will be in compliance with the overall purpose and intent of the Comprehensive Land Use Plan, particularly Goals A2: *Retain areas for commercial and industrial development as significant revenues or employment generators on the remaining developable land* and F1: *Continue to promote redevelopment of targeted areas as a pathway to economic revitalization and improved physical conditions.*

Section 2. The City Council approves the requested amendments and authorizes City Staff to make the necessary changes to the map and text of the Westminster Comprehensive Land Use Plan to change the designation of the property more particularly described on attached Exhibit A to the land use designations as depicted on the map attached as Exhibit B.

Section 3. 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 4. This ordinance shall take effect upon its passage after second reading.

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 17<sup>th</sup> day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 8<sup>th</sup> day of December, 2008.

ATTEST:

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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

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

## EXHIBIT A

### CLUP Change #1 - from Open Space to Retail Commercial

#### Parcel D

A PARCEL OF LAND BEING A PORTION OF TRACT "A" AS SHOWN IN THE RECORDED PLAT OF "CHURCH RANCH AMOCO" RECORDED AT RECEPTION NO. 2005021540, BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
**COMMENCING** AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;  
THENCE S 57° 07' 16" W, A DISTANCE OF 530.91 FEET TO THE ARC OF A NON-TANGENT CURVE TO THE RIGHT AND THE **POINT OF BEGINNING**;  
THENCE 148.65 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 34° 04' 02", AND A CHORD WHICH BEARS N 71° 12' 23" W, A DISTANCE OF 146.47 FEET;  
THENCE N 54° 10' 22" W, A DISTANCE OF 18.67 FEET;  
THENCE S 89° 54' 28" E, A DISTANCE OF 51.68 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE LEFT;  
THENCE 116.37 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 133.50 FEET, A CENTRAL ANGLE OF 49° 56' 45", AND A CHORD WHICH BEARS N 65° 08' 55" E, A DISTANCE OF 112.72 FEET;  
THENCE S 00° 05' 32" W A DISTANCE OF 105.40 FEET TO THE **POINT OF BEGINNING**;  
CONTAINING 7,411 SQ. FT. 0.170 ACRES, MORE OR LESS.

## CLUP Change #2 - from Open Space to Retail Commercial

### Tract C

A TRACT OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 13 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. F0800645, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHWEST CORNER OF SAID SECTION 13, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE S 89° 38' 38" E, A DISTANCE OF 26.90 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 182.64 FEET;

THENCE N 89° 17' 46" W, A DISTANCE OF 17.98 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 89.25 FEET;

THENCE N 88° 45' 44" W, A DISTANCE OF 8.92 FEET;

THENCE N 00° 42' 14" E, A DISTANCE OF 192.66 FEET;

THENCE N 00° 42' 12" E, A DISTANCE OF 78.99 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 5,707 SQ. FT. OR 0.131 ACRES, MORE OR LESS.



## CLUP Change #3 - from Retail Commercial to Open Space

### Tract D

A TRACT OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 14, BEING A PORTION OF LOT 1, CHAMBERLAIN SUBDIVISION (RECEPTION NO. F2121485), ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTHEAST CORNER OF SAID SECTION 14, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE S 00° 42' 13" W, A DISTANCE OF 271.65 FEET TO THE **POINT OF BEGINNING**;

THENCE S 00° 42' 14" W, A DISTANCE OF 91.35 FEET;

THENCE S 88° 52' 14" W, A DISTANCE OF 441.63 FEET;

THENCE N 00° 05' 32" E, A DISTANCE OF 83.47 FEET;

THENCE S 89° 51' 50" E, A DISTANCE OF 334.91 FEET;

THENCE N 78° 57' 13" E, A DISTANCE OF 92.58 FEET;

THENCE S 88° 45' 44" E, A DISTANCE OF 16.76 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 35,840 SQ. FT. OR 0.822 ACRES, MORE OR LESS.

## CLUP Change #4 - from Public/Quasi-Public to Retail Commercial

### Tract B

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11, THE SOUTHWEST QUARTER OF SECTION 12, AND THE NORTHEAST QUARTER OF SECTION 14 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. F0321025, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET; SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE S 00° 42' 12" W, A DISTANCE OF 78.99 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 60.24 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 43° 08' 25", A CHORD BEARING N 58° 57' 24" W, A DISTANCE OF 58.82 FEET;

THENCE 30.41 FEET ALONG THE ARC OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 52° 48' 11", A CHORD BEARING N 63° 47' 17" W, A DISTANCE OF 29.35 FEET;

THENCE S 89° 48' 41" W TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 251.02 FEET;

THENCE N 42° 05' 19" W, A DISTANCE OF 66.46 FEET;

THENCE N 36° 22' 57" E, A DISTANCE OF 25.52 FEET;

THENCE N 89° 48' 21" E, A DISTANCE OF 245.66 FEET;

THENCE N 74° 29' 34" E, A DISTANCE OF 66.26 FEET AND NON-TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 27.52 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 19° 42' 38", A CHORD BEARING N 50° 22' 40" E, A DISTANCE OF 27.39 FEET;

THENCE S 50° 17' 03" E NON-TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 71.13 FEET;

THENCE S 00° 42' 14" W, A DISTANCE OF 24.08 FEET TO THE NORTH LINE OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6<sup>TH</sup> P.M.;

THENCE N 89° 38' 38" W, A DISTANCE OF 26.90 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 29,353 SQ. FT. OR 0.673 ACRES, MORE OR LESS.

And,

## Tract F

A TRACT OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 BEING A PORTION OF THAT PARTICULAR PARCEL OF LAND DESCRIBED IN RECEPTION NO. 2007109822, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 11 BEARS S 88° 52' 48" W A DISTANCE OF 2714.05 FEET;

THENCE N 36° 20' 37" W, A DISTANCE OF 411.06 FEET TO THE **POINT OF BEGINNING**;

THENCE S 60° 03' 45" W, A DISTANCE OF 131.54 FEET AND TANGENT TO THE FOLLOWING DESCRIBED CURVE;

THENCE 266.06 FEET, ALONG THE ARC OF SAID TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1591.50 FEET, A CENTRAL ANGLE OF 09° 34' 43", A CHORD BEARING S 55° 16' 24" W, A DISTANCE OF 265.75 FEET;

THENCE 40.95 FEET, ALONG THE ARC OF NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 71° 05' 47", A CHORD BEARING N 16° 03' 52" E, A DISTANCE OF 38.37 FEET;

THENCE 238.09 FEET, ALONG THE ARC OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 1613.50 FEET, A CENTRAL ANGLE OF 08° 27' 16", A CHORD BEARING N 55° 50' 07" E, A DISTANCE OF 237.87 FEET;

THENCE N 60° 03' 45" E, TANGENT TO THE PREVIOUSLY DESCRIBED CURVE, A DISTANCE OF 124.37 FEET;

THENCE S 47° 59' 55" E, A DISTANCE OF 23.14 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 8,520 SQ. FT. OR 0.195 ACRES, MORE OR LESS.

And,

## Parcel A

A PARCEL OF LAND LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 11 AND THE SOUTHWEST QUARTER OF SECTION 12, ALL IN TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE SOUTHEAST CORNER OF SAID SECTION 11, WHENCE THE SOUTHWEST CORNER OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 11 BEARS S 88° 52' 48" W A

DISTANCE OF 2714.05 FEET;

THENCE N 44° 39' 59" E, A DISTANCE OF 88.04 FEET TO A POINT ON THE ARC OF A NONTANGENT

CURVE TO THE LEFT AND THE **POINT OF BEGINNING**;

THENCE 122.71 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 80.00 FEET, A CENTRAL ANGLE OF 87° 52' 52", AND A CHORD WHICH

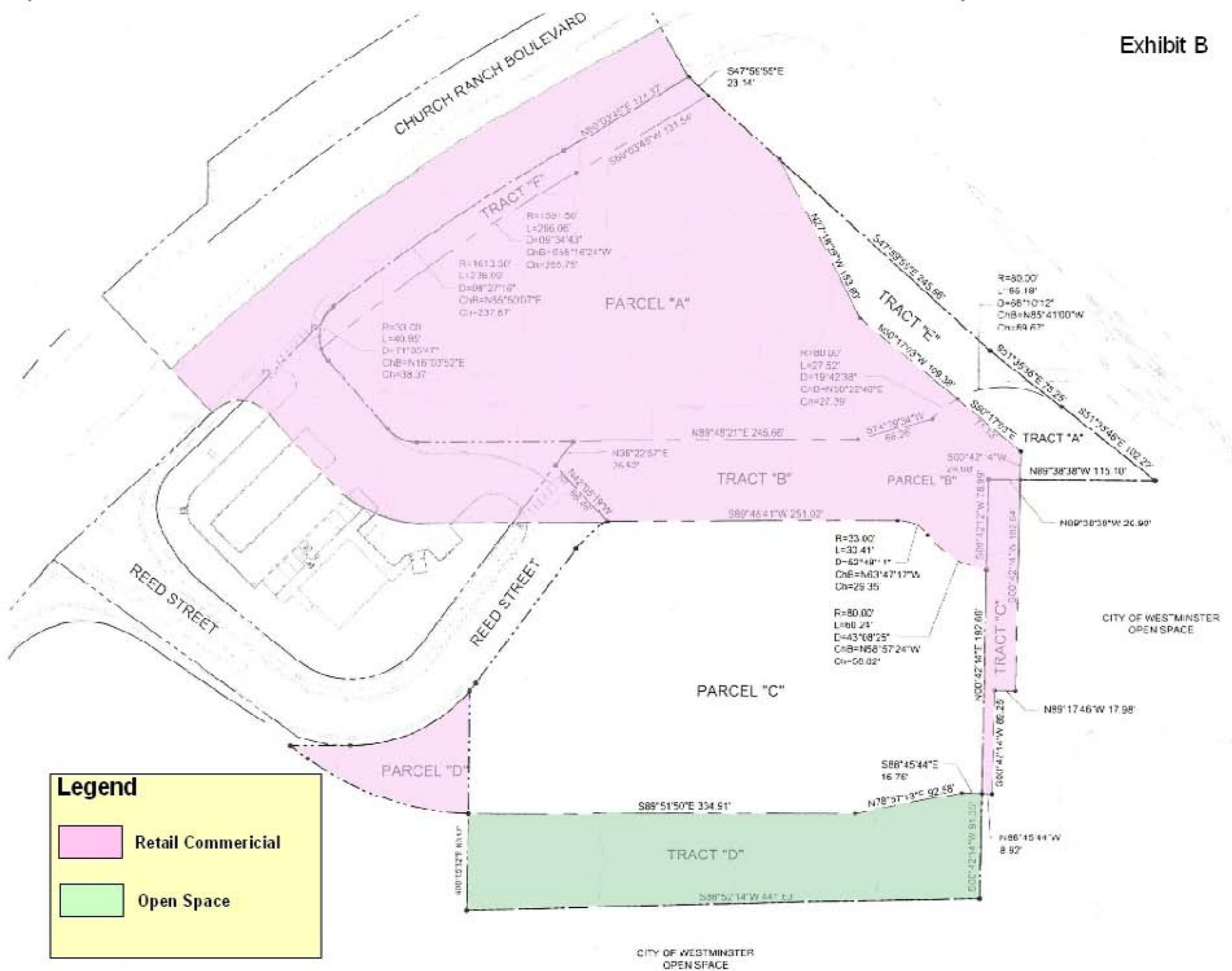
BEARS S 84° 27' 42" W, A DISTANCE OF 111.03 FEET;  
THENCE S 74° 29' 34" W, A DISTANCE OF 66.26 FEET;  
THENCE S 89° 48' 21" W, A DISTANCE OF 380.63 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE RIGHT;  
THENCE 28.26 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 49° 03' 28", AND A CHORD WHICH BEARS N 65° 40' 09" W, A DISTANCE OF 27.40 FEET;  
THENCE N 41° 08' 39" W, A DISTANCE OF 78.57 FEET TO THE POINT OF A NON-TANGENT CURVE TO THE RIGHT;  
THENCE 53.43 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 33.00 FEET, A CENTRAL ANGLE OF 92° 45' 41", A CHORD WHICH BEARS N 05° 13' 55" E, A DISTANCE OF 47.78 FEET;  
THENCE 238.09 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1613.50 FEET, A CENTRAL ANGLE OF 08° 27' 16", AND A CHORD WHICH BEARS N 55° 50' 07" E, A DISTANCE OF 237.87 FEET;  
THENCE N 60° 03' 45" E, A DISTANCE OF 124.37 FEET;  
THENCE S 47° 59' 55" E, A DISTANCE OF 351.72 FEET;  
THENCE S 51° 35' 36" E, A DISTANCE OF 78.25 FEET TO THE **POINT OF BEGINNING**.  
CONTAINING 115,335 SQ. FT. 2.65 ACRES, MORE OR LESS.

And,

The Southern half of Church Ranch Boulevard adjacent to Tract F.

And,

A portion of the previously vacated Reed St. as shown on the Church Ranch Amoco Final Plat Reception Number 2005051540, identified as former Reed Street.



**Legend**

- Retail Commercial
- Open Space



**WESTMINSTER  
COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Second Reading on Councillor’s Bill No. 46 re Acquisition of Water Rights

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

**Recommended City Council Action**

Pass Councillor’s Bill No. 46 on second reading authorizing an amendment to Title 15 of the City Code regarding the Acquisition of Water Rights.

**Summary Statement**

- Water rights acquisition is critically important for the City to meet the water demand of the City at buildout.
- In 1977, Resolution No. 19 was adopted to allow the City Manager to consummate water purchases without specific prior approval by City Council. This authority has given the City an advantage in a very competitive water market by allowing Staff to more quickly negotiate and purchase water rights.
- This Resolution outlined conditions including reporting such purchases to Council, proper prior investigation into the value and benefit of such water right and negotiation to acquire the rights in the most beneficial manner.
- Resolution No. 19 refers to certain sections of City Charter that have subsequently been superseded by Charter amendments and more recently adopted purchasing regulations, and is therefore out-of-date.
- The City Attorney’s Office and Water Resources Staff have prepared an Ordinance to adopt a new section 15-1-12, titled Acquisition of Water Rights granting the same authorities and responsibilities covered in Resolution No. 19.
- This Councillor’s Bill was passed on first reading on November 17, 2008.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **46**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

**Winter - Dittman**

**A BILL  
FOR AN ORDINANCE PROVIDING FOR THE ACQUISITION OF WATER RIGHTS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1: Title 15, Chapter 1, W.M.C., is hereby amended BY THE ADDITION OF THE FOLLOWING NEW SECTION:

**15-1-12: ACQUISITION OF WATER RIGHTS:**

NOTWITHSTANDING ANY OTHER REQUIREMENTS OF THIS CHAPTER, THE CITY MANAGER IS AUTHORIZED TO ACQUIRE WATER RIGHTS, THROUGH DIRECT PURCHASE OR OTHERWISE, WITHOUT SPECIFIC COUNCIL PRE-AUTHORIZATION PRIOR TO SUCH PURCHASE, PROVIDED THAT THE CITY MANAGER:

(A) ASCERTAINS THE VALUE AND BENEFIT OF SUCH WATER RIGHTS BY MEANS OF AN APPROPRIATE ENGINEERING STUDY, IF NECESSARY, AND

(B) DETERMINES THAT AN EXPEDITED ACQUISITION OF SUCH RIGHTS IS NECESSARY TO PRESERVE THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF WESTMINSTER, AND

(C) FINDS THAT ADEQUATE FUNDS HAVE PREVIOUSLY BEEN APPROPRIATED FOR SUCH ACQUISITION, AND

(D) PROVIDES A WRITTEN REPORT TO THE CITY COUNCIL ADVISING THE COUNCIL OF ANY SUCH PURCHASE WITHIN TWENTY (20) DAYS OF THE ACQUISITION.

Section 2: This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 17th day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2008.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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



# Agenda Item 8 I

## WESTMINSTER C O L O R A D O

### Agenda Memorandum

City Council Meeting  
December 8, 2008



**SUBJECT:** Second Reading of Councillor’s Bill No. 47 re Amendments to Title V of the Westminster Municipal Code Concerning Home Occupation and Massage Therapist Licenses

**Prepared By:** Linda Yeager, City Clerk  
Eugene Mei, Assistant City Attorney

### Recommended City Council Action

Pass Councillor’s Bill No. 47 on second reading amending Title V of the Westminster Municipal Code concerning home occupation and massage therapist licenses.

### Summary Statement

- Staff is recommending two changes to Title V of the Municipal Code. Both changes relate to the licensing of businesses within the City. These proposed changes are the elimination of a renewal requirement for home occupation licenses and the removal of the requirement for City licensure of massage therapists. Both proposed amendments will result in considerable savings of Staff time and resources.
- Home Occupation Licenses: As part of the 2009/2010 Budget development process, City Council evaluated staff recommendations for changes to their operations and areas where they could better maximize the City’s limited resources by reallocating staff time and funds. One of the potential changes identified was the elimination of the annual renewal requirement for home occupation licenses. Council agreed that this change would have little impact on home businesses and would reduce costs for the City
- Massage Therapist Licenses: Effective April 1, 2009, the State of Colorado will be the sole licensing authority for massage therapists pursuant to SB 08-219, i.e., the legislation explicitly pre-empts local jurisdiction from regulating massage therapists. Accordingly, Councillor’s Bill No. 47 amends the Westminster Municipal Code (W.M.C.) to remove the local massage therapist licensing requirement from W.M.C. 5-15 Massage Parlors.
- Councillor’s Bill No. 47 was passed on first reading on November 17, 2008.

**Expenditure Required:** \$0

**Source of Funds:** N/A

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment



BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **47**

SERIES OF 2008

INTRODUCED BY COUNCILLORS  
**Major - Linsley**

**A BILL  
FOR AN ORDINANCE AMENDING THE WESTMINSTER MUNICIPAL CODE  
CONCERNING HOME OCCUPATION AND MASSAGE PARLOR LICENSES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 5-3-3, subsections (B) and (C), W.M.C., are hereby AMENDED to read as follows:

**5-3-3: LICENSE APPLICATION AND ADMINISTRATION:**

~~(B) All home occupation licenses issued pursuant to this Chapter shall expire on December 31<sup>st</sup> of the year issued. An application for renewal of a home occupation license shall be filed with the City Clerk. In the event a suspension or revocation proceeding is pending when a license renewal application is filed, the application shall not be acted upon until the decision is issued. Renewal of a license may be denied as provided below.~~

~~(C)~~ All licenses shall specify the name of the licensee, the business address, AND the nature of the business, ~~the term of the license, and the date upon which it expires.~~ Every license granted under the provisions of this Chapter shall be posted in a conspicuous place at the place of business ~~for the full term of the license. Licenses shall be removed upon expiration.~~ It shall be the duty of each licensee to show the license at any reasonable time when requested to do so by any City official.

Section 2. Section 5-3-5, subsections (A), (B), (C), and (D), W.M.C., are hereby AMENDED to read as follows:

**5-3-5: LICENSE DENIAL, CANCELLATION, SUSPENSION OR REVOCATION:**

(A) A license may be denied, cancelled, ~~denied renewal,~~ suspended or revoked for any violation of the provisions of this Chapter, or for any reason set forth in Chapter 1 of this Title. Grounds for such action may also include:

(1) Nonconformance of the premises to the requirements of this Code;

(2) Nonconformance of the occupation or of the applicant or licensee with the limitations specified in Section 11-4-10 of this Code.

(B) Any of the following circumstances may be considered cause for denial of a license:

~~(1) The required fees have not been paid.~~

~~(2) The application is incomplete or contains false, misleading or fraudulent statements.~~

~~(3) Nonconformance of the business, premises, building or land use with this Code.~~

The applicant may appeal a denial to the Special Permit and License Board, unless the reason for the denial is an incomplete application, OR nonconformance with provisions of this Code such as zoning or the building code, ~~or failure to pay required fees.~~ The reason for the denial of the application shall be provided to the applicant in writing.

(C) A license may be denied, cancelled, ~~denied-renewal~~, suspended or revoked for any violation of the provisions of this Chapter for any reason set forth in Chapter 1 of this Title or on the grounds that the health, safety or welfare of the community may be endangered by the continued operation of the license.

(D) A license may be cancelled, ~~denied-renewal~~, suspended or revoked after the licensee has been given notice and hearing. The notice shall set forth the reasons for the proposed action, in writing, and shall be given by personal delivery to the applicant or mailed to the address contained in the license, postage prepaid, or as provided in Chapter 1 of this Title. Said notice shall be given no less than ten (10) days prior to a hearing to be scheduled before the Special Permit and License Board.

Section 3. Section 5-3-6, W.M.C., is hereby AMENDED to read as follows:

**5-3-6: PENALTY:** It shall be unlawful for any person to violate a provision of this Chapter. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code and may also be subject to civil remedies provided by Chapter 4 of Title ~~IX~~ VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

Section 4. Section 5-15-2, subsections (A), (D) and (F), W.M.C., are hereby AMENDED to read as follows:

**5-15-2: DEFINITIONS:** As used in this Chapter, the following shall mean:

(A) "License" means a grant of a license to operate a massage parlor ~~or to render services as a massage therapist.~~

(D) "Massage Therapy" means a method of treating the body for remedial or hygienic purposes by a massage therapist ~~licensed pursuant to this Chapter~~, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.

(F) "Massage therapist" means ~~aN INDIVIDUAL REGISTERED BY THE STATE OF COLORADO TO ENGAGE IN THE PRACTICE OF MASSAGE THERAPY PURSUANT TO TITLE 12, ARTICLE 35.5, COLORADO REVISED STATUTES. person who has graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred hours of training in massage therapy. For the purposes of this subsection (F), a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools. A massage therapist shall provide proof of meeting the requirements as defined in this subsection (F) and shall further meet all applicable licensing requirements of the City.~~

Section 5. Section 5-15-3, subsection (A), W.M.C., is hereby AMENDED to read as follows:

**5-15-3: LICENSE REQUIRED; STATE STATUTES:**

(A) It shall be unlawful for any person to operate a massage parlor ~~or to render massage therapy services for compensation~~ within the City of Westminster without first obtaining a license therefore pursuant to this Chapter.

Section 6. Section 5-15-4, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

**5-15-4: LICENSE APPLICATION:**

(A) The applicant for a license to operate a massage parlor ~~or to render massage therapy services for compensation~~ shall submit a verified application to the City Clerk on forms provided by the City Clerk. The application to operate a massage parlor shall include complete plans and specifications for the

interior of the premises to be licensed, a copy of the lease or other evidence of the applicant's right to possession of the premises, information regarding the zoning of the location of the premises, ~~the fees required by this Chapter,~~ and any other information which is required by state statute. ~~Applications to render services as a massage therapist shall include proof of certification as a massage therapist as defined by Section 5-15-2(F), the fees required by this Chapter, and any other information required by applicable law.~~

(B) The application for a license to operate a massage parlor shall be reviewed by the City Manager, who, within ten (10) days after receipt of the application and after such additional investigation as he may deem necessary, shall schedule a public hearing before the Special Permit and License Board not less than thirty (30) days from the date of the application. ~~An application to render services as a massage therapist shall be reviewed by the City Manager and a license issued if the applicant qualifies as a massage therapist pursuant to Section 5-15-2(F), and a criminal history check reveals no drug or prostitution related convictions. The City Manager may deny a license to render services as a massage therapist if the applicant has committed prior violations of this Chapter.~~

Section 7. Section 5-15-5, subsection (C), W.M.C., is hereby DELETED IN ITS ENTIRETY:

**5-15-5: FEES:**

~~(C) The fee for a license to render services as a massage therapist shall be five dollars (\$5), payable at the time of filing the application.~~

Section 8. Section 5-15-10, subsection (A), W.M.C., is hereby AMENDED to read as follows:

**5-15-10: PROHIBITED ACTS:**

(A) It shall be unlawful for any person:

- (1) To operate a massage parlor without holding a validly issued license;
- (2) To work in or upon the licensed premises of a massage parlor without obtaining and carrying a valid identity card pursuant to Section 5-15-9;
- (3) To render massage therapy services for compensation without VALID REGISTRATION PURSUANT TO TITLE 12, ARTICLE 35.5, COLORADO REVISED STATUTES ~~obtaining and carrying a license issued pursuant to this Chapter.~~
- (4) To perform other massage services within the City.
- (5) To obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen (18) years of age, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (6) To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen (18) years, unless such person is accompanied by his parent or has a physician's prescription for massage services;
- (7) To permit any person under the age of eighteen (18) years to be employed as an employee in a massage parlor. If any person who, in fact, is not eighteen (18) years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article unless the person employing such person knew or should have known that the proof of age was fraudulent.

(8) To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches with each letter a minimum of one-half (1/2) inch in height, which shall read as follows:

**WARNING**

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES. FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

(9) To possess, consume or dispense or to allow the possession, consumption or dispensation of alcoholic beverages, drugs or narcotics upon the premises. This subparagraph shall not apply to the use of drugs or narcotics which have been prescribed by a licensed physician.

Section 9. Section 5-15-11, subsection (A), is hereby AMENDED to read as follows:

**5-15-11: PENALTY:**

(A) It shall be unlawful for any person to violate a provision of this Chapter. A violation of this Chapter shall be a criminal offense. Violators shall be subject to the penalties provided by Section 1-8-1 of this Code, including imprisonment, and may also be subject to civil remedies provided by Chapter 4 of Title ~~IX~~ VIII of this Code. A separate offense shall be deemed committed upon each day such person is in violation of this Chapter.

Section 10. This ordinance shall take effect on December 31, 2008.

Section 11. 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 17th day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8th day of December, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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



## Agenda Item 8 J

WESTMINSTER  
COLORADO

Agenda Memorandum

City Council Meeting  
December 8, 2008



**SUBJECT:** Second Reading of Councillor's Bill No. 49 re Parks, Open Space and Trails (POST) Fund Bond Interest Earnings Supplemental Appropriation

**Prepared By:** Heather Cronenberg, Open Space Coordinator  
Barbara Opie, Budget and Special Projects Manager

### Recommended City Council Action

Pass Councillors Bill No. 49 on second reading providing for a supplemental appropriation in the amount of \$399,002 to the 2008 Parks, Open Space and Trails (POST) budget.

### Summary Statement

- City Council action is requested to pass the attached Councillors Bill on second reading providing for a supplemental appropriation in the amount of \$399,002 to the 2008 Parks, Open Space and Trails (POST) budget.
- Please note that on first reading the agenda memo regarding Councillor's Bill No. 49, the Recommended City Council Action stated that the funds should be appropriated to the 2008 General Capital Improvement Fund (GCIF) budget in the amount of \$399,002 rather than the correct location - the POST budget. However, the Agenda Memorandum Background section and the attached ordinance accurately reflected appropriating \$399,002 of interest earnings to the Parks, Open Space and Trails (POST) Fund. The ordinance published in the City's official newspaper after first reading also correctly noted that the funds should be appropriated to the POST Fund. The Recommended City Council Action statement above is correct and Staff apologizes for any confusion this might have caused.
- This Councillor's Bill was passed on first reading on November 24, 2008.

**Expenditure Required:** \$ 399,002

**Source of Funds:** POST Fund – Interest Earnings

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **49**

SERIES OF 2008

INTRODUCED BY COUNCILLORS  
**Dittman - Major**

**A BILL**

**FOR AN ORDINANCE AMENDING THE 2008 BUDGETS OF THE PARKS OPEN SPACE AND TRAILS (POST) FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2008 ESTIMATED REVENUES IN THE FUNDS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the POST Fund initially appropriated by Ordinance No. 3316 is hereby increased by \$399,002. This appropriation is due to the receipt of interest earnings.

Section 2. The \$399,002 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10 G&H, dated November 24, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

POST Fund	<u>\$399,002</u>
Total	<u>\$399,002</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 24<sup>th</sup> day of November, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 8<sup>th</sup> day of December, 2008

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Resolution No. 59 re City of Westminster 2009 Legislative Policy Statement

**Prepared By:** Matt Lutkus, Deputy City Manager  
Phil Jones, Management Analyst

**Recommended City Council Action**

Adopt Resolution No. 59 establishing the City of Westminster 2009 Legislative Policy Statement.

**Summary Statement**

- In 2007, City Council adopted the City of Westminster's 2008 Legislative Policy Statement establishing a policy document that allows Staff to work with City Council to take a position on certain legislation of interest to the City. The 2009 Legislative Policy Statement is essentially the same as the 2008 document with only minor modifications to the sections on Water and Police.
- The Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster and states the City's policy principles on these issues. Staff will continue to utilize the proposed Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests.
- Adopting the Legislative Policy Statement will allow Staff and Council to move quickly when taking a position on proposed legislation and bills at the Statehouse, making the City's position even more effective.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

## **Policy Issue**

Should City Council support the proposed City of Westminster 2009 Legislative Policy Statement?

## **Alternative**

Do not adopt the proposed City of Westminster 2009 Legislative Policy Statement. This is not recommended, as the adoption of a Legislative Policy Statement is an important component of the City of Westminster's legislative program.

## **Background Information**

In 2007, City Council adopted the first City of Westminster Legislative Policy Statement. The goal of the Policy Statement is to identify general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. These issues could have been addressed in the past at the legislature, or they could be issues that are anticipated in the future. The 2009 proposed Legislative Policy Statement is consistent with City Council's Strategic Plan Goals and Objectives. Staff's goal for this proposed document is to be broad but yet as inclusive as possible to capture important issues to the City.

The changes to the document are minimal and include the addition of, "Supports legislation that protects water supplies from the costly and environmental impacts of aquatic nuisance species. An infestation of these species would adversely affect the City's ability to provide basic water services to its residents," in the Water Resources and Treatment Section.

Additions to the Police section include:

- "Supports legislation that requires reasonable and practical preservation of DNA and other evidence.
- Supports legislation that sets new standards for the collection of 9-1-1 service charges to support growing demand for new equipment based on technology improvements.
- Supports legislation to provide for criminal asset forfeitures to be returned to local law enforcement agencies to be used to fund law enforcement activities.
- Supports legislation that protects senior citizens from criminal exploitation.
- Supports legislation that protects society against identity theft.
- Supports legislation that protects juveniles from sexual predators on the internet.
- Opposes legislation that inappropriately transfers immigration and illegal alien enforcement responsibilities from the Federal government to local government and diverts local law enforcement resources from other priorities.
- Opposes legislation that will change District Attorneys' right to direct file (charge juveniles as adults).

Staff will continue utilize this year's proposed Legislative Policy Statement as a guiding policy when reviewing and analyzing bills introduced in the General Assembly that have an impact on the City's interests. When significant legislation is identified, Staff will provide City Council with a brief summary of legislation of substance and official City positions that are consistent with the principles of the adopted Legislative Policy Statement. If Council does not express any concerns with the positions that Staff has taken on specific bills, Staff will communicate these positions to the City's lobbyist and update the City's legislative scorecard to communicate the City's positions to the public. If a majority of City Council expresses concerns about a specific position that Staff is presenting, discussion on the item will be scheduled for a subsequent meeting.



As State legislation can have a significant impact on the City of Westminster and its citizens, the proposed City of Westminster 2009 Legislative Policy Statement supports all five of City Council's Strategic Plan Goals.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

RESOLUTION

RESOLUTION NO. **59**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

---

**ADOPTION OF CITY OF WESTMINSTER  
2009 LEGISLATIVE POLICY STATEMENT**

WHEREAS, the City of Westminster follows legislative activity in the Colorado General Assembly very closely in order to monitor any significant impacts on the City and its citizens; and

WHEREAS, due to the fast-paced nature of the State legislative process and the ever-changing language of numerous bills of substance, it is critical that the City of Westminster maintains an effective and responsive system for taking and communicating official City positions on relevant legislation; and

WHEREAS, an integral part of this system is the adoption of a City of Westminster 2009 Legislative Policy Statement, which identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues; and

WHEREAS, Staff will utilize the City of Westminster 2009 Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests; and

WHEREAS, the City of Westminster 2009 Legislative Policy Statement incorporates the City Council's Strategic Plan Goals and Objectives.

NOW, THEREFORE, the City Council of the City of Westminster hereby adopts the attached City of Westminster 2009 Legislative Policy Statement.

PASSED AND ADOPTED this 8<sup>th</sup> day of December, 2008.

ATTEST:

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Mayor

---

City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office



WESTMINSTER

**CITY OF WESTMINSTER 2009  
LEGISLATIVE POLICY STATEMENT**

**ADOPTED DECEMBER 8, 2008**

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<b><u>FIRE AND EMERGENCY MEDICAL SERVICES</u></b>	<b><u>12</u></b>

## **OVERVIEW**

The City of Westminster 2009 Legislative Policy Statement identifies general legislative issues of interest to the City of Westminster along with the City's policy principles on these issues. The following policy statements are necessarily broad and are not intended to be all-inclusive. Staff will utilize the 2009 Legislative Policy Statement as a guiding policy when reviewing and analyzing bills that have an impact on the City's interests. The City of Westminster will take official City positions on a limited number of significant bills. The City will have discretion in determining which specific bills to take official City positions on, and official City positions are not automatically assumed on bills simply due to their congruence with the policy statements contained within this document. When significant legislation is identified, Staff will provide City Council with a brief summary of legislation of substance and official City positions that are consistent with the principles of the 2009 Legislative Policy Statement. If Council does not express any concerns with the positions, Staff will communicate these positions to the City's lobbyist and update the City's legislative scorecard to communicate the City's positions to the public. The City will continue to contact legislators regarding official City positions on specific bills throughout the legislative session.

The City of Westminster welcomes the opportunity to discuss the City's legislative positions with legislators. In addition to specific communication on specific bills, this 2009 Legislative Policy Statement provides a reference tool and guideline for legislators to use when considering legislation that may impact the City of Westminster. For more information on the City's legislative program, please contact Matt Lutkus, Deputy City Manager, at 303-658-2152 or Phil Jones, Management Analyst, at 303-658-2007.

## **CITY OF WESTMINSTER STRATEGIC PLAN**

Every April, the City of Westminster City Council reviews and recommits the City organization to a five-year Strategic Plan. The 2008-2013 Strategic Plan identifies the City's underlying principles on which decisions are based and includes goals to be achieved through 2013. Each goal is further defined by a set of objectives and short-term actions to be taken to achieve the associated goal. The Strategic Plan reinforces long-term planning for both operating (day-to-day operations and services) and capital (long-term investment projects such as road construction, water distribution and sewer maintenance) programs. As a statement of City Council's goals and vision for the City, the Strategic Plan helps Staff successfully plan City projects and budgets to achieve this vision and associated goals. Accordingly, the City of Westminster 2009 Legislative Policy Statement is intended to be consistent with and to support City Council's Strategic Plan Goals and Objectives.

Therefore, the City of Westminster:

- Supports legislation that is consistent with and supports the achievement of the City's Strategic Plan Goals and Objectives.
- Opposes legislation that runs counter to or prevents the achievement of the City's Strategic Plan Goals and Objectives.

The following is a summary of the five major goals and corresponding objectives that are identified in the City's 2008-2013 Strategic Plan.

# City of Westminster Strategic Plan 2008-2013 Goals and Objectives

---

## **SAFE AND SECURE COMMUNITY**

- Citizens are safe anywhere in the city
- Public Safety Departments: well equipped and fully staffed with quality personnel
- Timely response to emergency calls
- Citizens taking responsibility for their own and community safety and well-being
- Manage disaster mitigation, preparedness, response and recovery



## **FINANCIALLY SUSTAINABLE CITY GOVERNMENT PROVIDING EXCEPTIONAL SERVICES**

- Revenues to support defined city services and service levels as a mature city
- Well-maintained city infrastructure and facilities
- Effective cost containment/control measures for living within revenues and budget
- Maintain sufficient reserves: general fund and utilities funds
- Balance between core services and quality of life services
- Provide efficient, cost-effective internal and external services
- Secure and develop long-term water supply



## **VIBRANT NEIGHBORHOODS AND COMMERCIAL AREAS**

- Revitalize Westminster Mall and area
- Develop Transit Oriented Development around commuter rail stations
- Maintain and improve neighborhood infrastructure and housing
- Preserve and restore historic assets
- Rehabilitate deteriorating commercial areas
- Develop Westminster as a cultural art community



## **STRONG, BALANCED LOCAL ECONOMY**

- Healthy retail base, increasing sales tax receipts
- Attract new targeted businesses, focusing on primary employers and higher paying jobs
- Business-oriented mixed use development along I-25 corridor and US 36 corridor
- Retain and expand current businesses
- Multi-modal transportation system that provides access to shopping, to employment centers
- Be a great place for small and/or local businesses



## **BEAUTIFUL AND ENVIRONMENTALLY SENSITIVE CITY**

- Increase green space (parks, open space, etc.)
- Well-designed and maintained private developments and buildings
- Develop and maintain attractive streetscapes and landscaped medians
- Have energy efficient, environmentally sensitive city operations
- Increase public and cultural arts



***Mission statement: We deliver exceptional value and quality of life through SPIRIT.***

## **HOME RULE AND LOCAL CONTROL**

The City of Westminster believes strongly in the principles of home rule authority and local control. Article XX of the Colorado Constitution grants home rule municipalities such as Westminster “the full right of self-government in local and municipal matters.” The City of Westminster believes that home rule authority increases the effectiveness and efficiency of local government services, thereby enhancing the quality of life in the community and the value provided to local taxpayers.

Therefore, the City of Westminster:

- Encourages State legislators to respect and support home rule and Colorado’s tradition of local control.
- Supports legislative efforts to strengthen home rule authority of municipal governments.
- Opposes legislation that attempts to weaken municipal home rule authority and flexibility.
- Opposes legislation that mandates state intervention in matters of local concern, especially when that intervention unnecessarily or adversely affects the City’s ability to manage these matters pursuant to its home rule authority.

## **STATE AND FEDERAL MANDATES**

Programs and regulations mandated by the State or Federal government have the potential to stretch the financial resources of the City of Westminster. If additional costs brought about by these mandated programs or regulations are not paid by the State or Federal government, they can have a direct negative impact on the City budget. This can prevent the City of Westminster from meeting the needs of residents and achieving the City’s strategic priorities.

Therefore, the City of Westminster:

- Supports the TABOR Constitutional requirement for the Colorado General Assembly to reimburse municipalities for the cost of State mandates and to make this requirement clear in State fiscal notes prepared for the General Assembly.
- Opposes unfunded State and Federal mandates that impose unfair financial burdens on municipalities and their citizens.

## **GOVERNMENTAL IMMUNITY**

The City of Westminster recognizes that the complexity and diversity of City operations and services required to meet the needs of citizens may expose the City, its officers, and employees to liability for damage and injury. The City strongly believes that public officers and employees need to be assured that municipal liability will not impair the lawful and proper provision of necessary services to the public.

Therefore, the City of Westminster:

- Supports legislation that protects the interests of municipalities, their officers, and their employees in the lawful and proper performance of their duties and responsibilities.
- Supports legislation that discourages baseless and frivolous claims and demands made against municipalities, their officers, and their employees.
- Supports the availability of public liability insurance at reasonable costs and the ability of municipalities to reduce these costs through self-insurance.
- Opposes legislation that expands or increases municipal liability, or, conversely, further limits municipal immunity.

## **SALES AND USE TAX**

The City of Westminster levies, administers and collects its own sales and use taxes under its home rule authority. Sales and use tax revenue is the primary source of funding for City of Westminster services and operations, comprising over 60% of general fund revenues. Appropriate actions at Federal, State and local levels should preserve or enhance this critical local revenue.

Therefore, the City of Westminster:

- Supports legislation that maintains local control over base, rates, collections and administration of sales and use taxes.
- Supports legislation that allows state and local governments to require businesses to collect state and local sales and use taxes on remote sales.
- Supports voluntary, cooperative efforts among Colorado municipalities to standardize sales and use tax practices and utilization of technology for the convenience of taxpayers, the business community, and municipalities.
- Opposes legislation that preempts local authority to impose and collect sales and use taxes.
- Opposes legislation that grants jurisdictions other than the State, cities, and counties the authority to impose sales or use taxes.

## **GENERAL FINANCE**

The City of Westminster is a full-service community. While sales and use tax revenue comprises the primary funding source for general government services, the City's wide variety of services are also funded through a balanced array of other taxes, user fees, and other financing sources. Consequently, the City of Westminster is impacted by State and Federal financial policies.

Therefore, the City of Westminster:

- Supports the continuation of existing local government financing methods and the addition of new methods for local government to support the provision of municipal services to citizens.
- Supports equitable sharing with municipalities of existing and future State revenues derived from traditional State-collected, locally shared revenues, such as the cigarette tax, Highway Users Tax Fund, and the lottery.
- Opposes State-granted exemptions or other State actions that erode municipal sales taxes, use taxes, property taxes, and other revenue sources unless the State provides adequate replacement revenues.
- Opposes State-mandated reductions to the current property tax structure without specific revenue replacement provisions.



## **LAND USE, DEVELOPMENT, AND REVITALIZATION**

The City of Westminster works constantly to achieve its Strategic Plan Goal of “Vibrant Neighborhoods and Commercial Areas.” The City feels that local control in regard to land use planning contributes greatly to the achievement of this goal and the overall quality of life in the City of Westminster. In addition, one of the City’s Strategic Plan Objectives is to “develop and implement revitalization plans.” In order for redevelopment and revitalization efforts to succeed, the City feels very strongly that appropriate urban renewal tools need to be preserved and strengthened.

Therefore, the City of Westminster:

- Supports legislation that removes barriers to local land use planning and land development regulation.
- Supports appropriate legislation that facilitates the creation of Transit-Oriented Developments (TOD).
- Supports legislation to enable cooperative urban renewal projects between multiple jurisdictions.
- Supports appropriate legislation that encourages and facilitates historic preservation and rehabilitation.
- Opposes legislation that prescribes comprehensive land use and other community planning at the State level.
- Opposes legislation that would inappropriately limit local government authority to impose growth impact fees.
- Opposes legislation that would unreasonably restrict the use of eminent domain for redevelopment projects.

## **ECONOMIC DEVELOPMENT**

The City of Westminster strives to develop and maintain a “Strong, Balanced Local Economy” per its Strategic Plan. Whether it is maintaining a healthy retail base or retaining and expanding targeted businesses and primary employers, the City recognizes the importance that a healthy economic climate has to the overall quality of life in Westminster.

Therefore, the City of Westminster:

- Supports the development of a statewide economic development strategy that addresses issues of business climate and economic direction at the State level but allows for local control of economic development.
- Supports appropriate State tax policies and incentive programs, including enterprise zones, business incentive agreements, or other legislative initiatives, which encourage business expansion and retention through primary job creation, investment in capital equipment, and employer facility development.

## **WATER RESOURCES AND TREATMENT**

Since the 1950’s, the City of Westminster has invested substantial public funds into the creation and protection of an independent water supply. Westminster has an obligation to provide the highest quality water and wastewater services in a financially sound, reliable, safe, and environmentally acceptable manner. The City supports legislative measures to further this goal.

Therefore, the City of Westminster:

- Supports legislation that reasonably limits liability exposure and protects investment in water and wastewater facilities and operations.

- Supports legislation that maintains the authority delegated to the State to administer Federally mandated water and wastewater environmental regulatory programs.
- Supports water quality legislation that results in cost effective water quality control regulations and measurable water quality benefits.
- Supports the Constitutional doctrine of prior appropriation and the Constitutional priority given to domestic water use.
- Supports legislation and policies to ensure junior well depletions are fully replaced so that senior water rights are fully protected.
- Supports legislation that protects water rights as private property, and preserves the right to purchase and to change the use of water rights within the State.
- Supports appropriate water conservation efforts and sustainable water resources management practices by all users.
- Supports sufficient appropriations and adequate fee-based revenue to permit the State to continue water resources administration, protection, development and conservation.
- Supports continued Federal and State funding for water and wastewater treatment infrastructure to reduce local costs and expedite construction of necessary treatment, distribution, and collection facilities to comply with Federal and State mandates.
- Supports legislation that provides adequate Federal and State funding for mandated programs under the Safe Drinking Water and Clean Water Acts, including funding for protection of critical infrastructure while providing an equitable distribution of program costs between State general fund monies and user fees.
- Supports legislation and regulations that promote the appropriate and beneficial use of reclaimed water.
- Supports legislation and regulations that promote the beneficial use of biosolids.
- Supports the State's participation in Federal endangered species cooperative agreements and recovery programs and urges continued funding as appropriate.
- Supports legislation that protects water supplies from the costly and environmental impacts of aquatic nuisance species. An infestation of these species would adversely affect the City's ability to provide basic water services to its residents.

## **TRANSPORTATION**

The City of Westminster believes that the movement of goods and people is vital to the continued economic success of the State of Colorado and to the maintenance of the high quality of life that Coloradans enjoy. In order to preserve these, the State Legislature must be willing to invest in the maintenance and expansion of the State's transportation network including roads, bridges, and mass transit. With the current shortfall in transportation dollars for the Colorado Department of Transportation, municipal and county governments have taken on greater construction, maintenance, and financial responsibilities. For example, the two new interchanges on I-25 at 144<sup>th</sup> Avenue and 136<sup>th</sup> Avenue were built and paid for entirely by the Cities of Westminster and Thornton. If appropriate, The City of Westminster has demonstrated that it is willing to partner on projects, but is against efforts to pass along additional State roadway construction or maintenance responsibilities to local governments without increased and adequate funds to meet these additional responsibilities.

Therefore, the City of Westminster:

- Supports an appropriate State-wide transportation plan that not only funds repair and maintenance needs, but also commits to network and mobility improvements and expansions, including actions that address congestion relief in the Denver metropolitan area.
- Supports legislation to enhance transportation funding equity within the State.
- Supports legislation and regulatory action that maintains or increases the level of funding provided by the State or passed through the State by the Federal government to transportation activities at the local level.

- Supports State and Federal assistance and funding with the planned U.S. 36 expansion.
- Supports additional funding alternatives to construct structured parking near existing and proposed FasTracks rail stations.
- Opposes legislation to transfer maintenance responsibility of State-owned roads to municipalities without adequate short and long-term funding to meet these additional responsibilities.

## **TELECOMMUNICATIONS**

The City of Westminster recognizes the importance of telecommunications services to economic development and the quality of life in the City. The City of Westminster supports increased competition in the cable and video market and has taken steps in preparation to work with companies who are interested in providing video service in our community. However, the City's view is that statewide franchising should not override the City's authority to ensure the best possible service to its citizens and to regulate the use of public right-of-way.

Therefore, the City of Westminster:

- Supports the retention of municipal franchising and regulatory authority over cable television systems.
- Supports legislation that preserves municipal control and autonomy over public rights-of-way and other assets, along with the right of local governments to receive fair and reasonable compensation for their use.
- Supports the ability of municipalities to require "reasonable" build-out for potential new video providers per the Federal Communications Commission's executive order.
- Opposes State or Federal restrictions on municipal franchising, regulatory, and taxing authority over telecommunications systems.

## **WORKERS' COMPENSATION**

The City of Westminster recognizes that the Colorado Workers' Compensation Act was developed as a no-fault system established "to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike." The City self-insures its Workers' Compensation program to ensure the most cost effective, efficient delivery of these benefits to employees. The City is concerned about any legislation that will erode the ability of an employer to control their claim costs and inhibits an employer's ability to get competitive quotes from the market for quality insurance coverage.

Therefore, the City of Westminster:

- Supports legislation that maintains the spirit of the Colorado Workers' Compensation Act, for the protection of both Colorado employers and employees.
- Opposes legislation that creates presumptive eligibility coverage within the law.
- Opposes legislation that increases insurance premium costs to employers.
- Opposes legislation that adds administrative burdens or taxes to self-insurance programs.
- Opposes legislation that promotes litigation.

## **HUMAN RESOURCES**

Employees are the City of Westminster's most important resource. The City is an equal opportunity employer and works to ensure excellent and fair salaries and benefits for employees, along with growth and development opportunities. Like with most other organizations, the City of Westminster's budget is continuously pressured by increasing compensation and benefit costs. The City constantly balances fair compensation and benefits with responsible expenditures of tax dollars.

Therefore, the City of Westminster:

- Supports legislation that maintains or reduces the employer and employee Fire and Police Pension Association (FPPA) pension and retiree health insurance costs.
- Opposes any legislation that interferes with a municipality's ability to determine the terms and conditions of municipal employment.
- Opposes legislation that mandates collective bargaining rights for public employees.
- Opposes legislation that requires mandatory participation or participation rates in employment or benefit programs.
- Opposes mandated Social Security coverage for public employees, mandated benefit levels or funding standards for municipal employee pension plans, or other unreasonable burdens or restrictions in connection with the administration of municipal employee benefit plans.
- Opposes legislation that reduces current State funding of death and disability benefits for emergency services personnel or legislation that shifts the funding of this State responsibility to local governments.

## **OPEN SPACE**

As stated in the City's Strategic Plan, Westminster works to maintain and develop a "Beautiful and Environmentally Sensitive City." Increasing and preserving open space is a high priority in the City of Westminster. As build-out approaches, the City is striving to achieve its goal of maintaining 15% of the City's land area as open space. Open space, along with trails, contribute greatly to the quality of life in the City of Westminster.

Therefore, the City of Westminster:

- Supports maintaining funding, and adding funding where appropriate, to State and Federal land conservation programs that will help to increase the amount of open space within the City, thereby helping to achieve the goal of "Beautiful City."
- Supports legislation that generally enables and empowers the use of conservation easements.
- Supports legislation that provides further incentives to preserve open space.

## **ENVIRONMENT**

For the City of Westminster, the environment is a priority as is shown in the City's programs and services that secure clean air, water, and land. Westminster is one of the most environmentally-friendly cities in the area and has signed the U.S. Conference of Mayors Climate Protection Agreement. The City of Westminster recognizes the importance of working cooperatively with other governmental entities to implement and manage efficient, cost-effective, and scientifically-based environmental control programs. It is the intent of the City to meet or exceed compliance with all applicable environmental laws and regulations. However, the City does not support State or Federal programs that place a severe financial burden on municipalities.

Therefore, the City of Westminster:

- Supports appropriate legislation and regulations that promote pollution prevention.
- Supports legislation and regulations that provide incentives for green building and sustainable design without imposing unfunded mandates.
- Supports energy conservation efforts and appropriate legislation that accelerates the development of clean, economical energy resources and fuel-efficient technologies such as wind and solar energy, waste to energy, fuel cells, and other appropriate and effective technologies.
- Supports reasonable legislation and regulations that increase the fuel efficiency of motor vehicles.
- Opposes legislation or standards that weaken current air quality standards or regulations.
- Supports legislation that limits liability for waste cleanup costs under Federal law where the municipality demonstrates due care and absence of fault in connection with waste disposal at a site and provides an early and fair means of settlement for municipalities named as liable parties at waste cleanup sites.
- Opposes legislation that limits the ability of local government to regulate the activities of private waste or recycling collectors or to provide waste or recycling collection or processing services to citizens.

## **PUBLIC SAFETY**

“Safe and Secure Community” is one of the top goals identified in the City of Westminster’s Strategic Plan. The City works diligently towards keeping citizens safe anywhere in the City. The City of Westminster recognizes the critical importance of maintaining public order, providing a safe environment, and protecting the lives and property of the citizens of Westminster. The role of the Police Department in the City of Westminster is to enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons. The Westminster Fire Department works to minimize injuries and property losses due to fire, to provide quality emergency medical care and transport services, and to provide other services including fire inspections and emergency preparedness planning. Finally, the City of Westminster’s Municipal Court works to ensure that justice is carried out fairly and effectively.

Therefore, the City of Westminster:

## **POLICE**

- Supports legislation that facilitates the eviction of public nuisance tenants.
- Supports legislation that facilitates the use of a TASER as a safe and effective tool for law enforcement.
- Supports legislation that ensures flexibility for municipalities when implementing Federal and State criminal justice programs.
- Supports legislation providing enhanced sentences for criminal offenses committed by proven members of gangs.
- Supports legislation that enhances the integration of local and State criminal justice agency information systems in order to increase the efficiency and information sharing capacity of law enforcement agencies.
- Supports legislation that maintains and strengthens the provision of community-based mediation and other alternative dispute resolution services.
- Supports legislation that provides resources and support to victims of domestic violence.
- Supports legislation to make not wearing a seatbelt while operating a motor vehicle a primary offense.
- Supports legislation that requires reasonable and practical preservation of DNA and other evidence.

- Supports legislation to provide for criminal asset forfeitures to be returned to local law enforcement agencies to be used to fund law enforcement activities.
- Supports legislation that protects senior citizens from criminal exploitation.
- Supports legislation that protects society against identity theft.
- Supports legislation that protects juveniles from sexual predators on the internet.
- Opposes legislation that inappropriately transfers immigration and illegal alien enforcement responsibilities from the Federal government to local government and diverts local law enforcement resources from other priorities.
- Opposes legislation that will change district attorneys' right to direct file (charge juveniles as adults).
- Opposes legislation that compromises officers' and the public's safety.
- Opposes legislation that requires criminal justice agencies to pay fees to obtain financial disclosure information from banking institutions.

## **MUNICIPAL COURT**

- Opposes legislation that limits the authority of municipalities to enforce their own ordinances in municipal courts.
- Opposes imposition of State surcharges on municipal court fines for the purpose of funding State programs.

## **FIRE AND EMERGENCY MEDICAL SERVICES**

- Supports legislation that assists in the development of interoperable communication systems for public safety.
- Supports legislation to require the installation of appropriate fire protection systems in structures to enhance life safety and property protection.
- Supports legislation that strengthens the City's ability to prohibit the use and sale of fireworks, along with legislation that allows counties and fire districts to prohibit and otherwise control fireworks.
- Opposes legislation that restricts the City from adopting local strategies and regulations for safely addressing hazardous materials or legislation that restricts the City's ability to review and approve the location of facilities that use or store hazardous materials or hazardous waste.



WESTMINSTER  
COLORADO

Agenda Item 10 B

Agenda Memorandum

City Council Meeting  
December 8, 2008



**SUBJECT:** Resolution No. 60 re Service Commitment Award Extension for the Valley View Estates – Eliot Street Duplexes Planned Unit Development

**Prepared By:** Walter Patrick, Planner I

**Recommended City Council Action**

Adopt Resolution No. 60 extending the existing Category B-2 Service Commitment award to the Valley View Estates – Eliot Street Duplexes single family attached residential project. This is based on the finding that the need for an extension was the result of the downturn in the housing market that is beyond the control of the developer.

**Summary Statement**

- The 1.67 acre site is just east of Federal Boulevard at the northeast corner of Eliot Street and 104<sup>th</sup> Avenue.
- If a building permit is not issued by December 21, 2008, approval of the existing Service Commitments award for this project will expire. As a building permit will not be issued within this time period the project owner is requesting an extension of these Service Commitments. The attached Resolution would grant this extension request until December 31, 2009.
- Attached is the request from the property owner requesting an extension of the Service Commitments for this development.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Policy Issue**

Should the City Council adopt the attached Resolution extending the Service Commitment award through December 31, 2009?

**Alternative**

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

**Background Information**

Nature of Request

Service Commitments were awarded for this project in April 2004. A total of 7 Service Commitments were made available for this single family attached project in the B-2 category.

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

Per City Council Resolution 24 of 2004 “The project must be issued at least one building permit within one year of Official Development Plan approval, or the entire Service Commitment award for the project shall expire.” The Official Development Plan was approved in December 2007. A building permit has not been issued and the owner/applicant has requested an extension of the Service Commitment allocation that would permit the developer to commence construction of the first building in 2009 and the remainder in 2010.

The developer has indicated that the need for a Service Commitment extension is the result of a depressed housing market which was an unforeseeable circumstance beyond the reasonable control of the developer.

Location

The site is just east of Federal Boulevard at Eliot Street and 104<sup>th</sup> Avenue. (Please see attached vicinity map). To the north is Valley View Park. To the east is Meadowlark Subdivision and to the south, across 104<sup>th</sup> Avenue, is the City of Federal Heights. To the west, across Eliot Street, are automobile dealerships.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments

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



RESOLUTION

RESOLUTION NO. **60**

INTRODUCED BY COUNCILLORS

SERIES OF 2008

**CATEGORY B-2 SERVICE COMMITMENT AWARD EXTENSION FOR THE SAVORY FARM ESTATES PLANNED UNIT DEVELOPMENT**

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

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

WHEREAS, Category B-2 is the category that is appropriate for the Valley View Estates – Eliot Street Duplexes Planned Unit Development; and

WHEREAS, Resolution No. 24, Series 2004 establishes that 7 Service Commitments awarded to the Valley View Estates – Eliot Street Duplexes residential project shall expire unless at least one building permit is issued for the project within one year of Official Development Plan approval; and

WHEREAS, the Valley View Estates – Eliot Street Duplexes residential project has obtained Preliminary and Official Development Plan approval; and

WHEREAS, the project owner does not anticipate receiving a first building permit by the end of the one-year deadline and is requesting a Service Commitment extension extending the first building permit deadline to December 31, 2009; and

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

WHEREAS, the Service Commitment award extension for the Valley View Estates – Eliot Street Duplexes residential project is the result of an unusual and unforeseeable circumstance beyond the reasonable control of the developer, and is needed to avoid undue hardship that would otherwise result if the extension were not granted; and

WHEREAS, the Valley View Estates – Eliot Street Duplexes Preliminary and Official Development Plan contains 5 single family attached residential lots (duplexes) for a total of 10 units. One single family attached unit is equal to 0.7 Service Commitments.

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

1. A Category B-2 Service Commitment award is hereby extended to the Valley View Estates – Eliot Street Duplexes project at Eliot Street and 104<sup>th</sup> Avenue, as follows:

**Table 1**

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>TOTAL</b>
<b>Original</b>	4.9	2.1	0	n/a	n/a	n/a	n/a	<b>7</b>
<b>Proposed</b>	-	-	-	-	0	.7	6.3	<b>7</b>

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

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

- d) Each Service Commitment award is conditional upon City approval of the project listed above and does not guarantee City approval of any project, proposed density, and proposed number of units.
- e) The City of Westminster shall not be required to approve any Comprehensive Land Use Plan amendment, Preliminary Development Plan or amendment, Official Development Plan or amendment, or rezoning action necessary for development of the property involved in this extension of service commitment award, nor shall any other binding effect be interpreted or construed to occur by the City as part of the extension of Service Commitment award.
- f) Any and all projects that do not receive City approval are not entitled to the Service Commitment awards, and the Service Commitments shall be returned to the water supply figures.
- g) The Growth Management Program does not permit City Staff to review any new residential development plans until Service Commitments have been awarded to the project. During the competition process the City Staff does not conduct any formal or technical reviews of any sketch plans submitted by applicants. It should be expected that significant changes to any such plans will be required once the City's development review process begins for any project.
- h) Future year awards are effective as of January 1 of the specified year and cannot be drawn prior to that date. If fewer Service Commitments are needed for a project in any given year, the unused amount in that year will be carried over to the following year(s) provided the Service Commitments have not expired.
- i) In order to demonstrate continued progress on a project, the following deadline and expiration provision applies:
  - a. The project must be issued at least one building permit by December 31, 2009, or the entire Service Commitment award for the project shall expire.
  - b. Following the issuance of the first building permit for the project, all remaining Service Commitments for a project shall expire if no building permit is issued for the project during any consecutive 12-month period.
- j) If Service Commitments are allowed to expire, or if the applicant chooses not to pursue the development, the Service Commitment award shall be returned to the water supply figures. The award recipient shall lose all entitlement to the Service Commitment award under those conditions.
- k) This award resolution shall supersede all previous Service Commitment award resolutions for the specified project location.

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

PASSED and ADOPTED this 8th day of December 2008.

ATTEST:

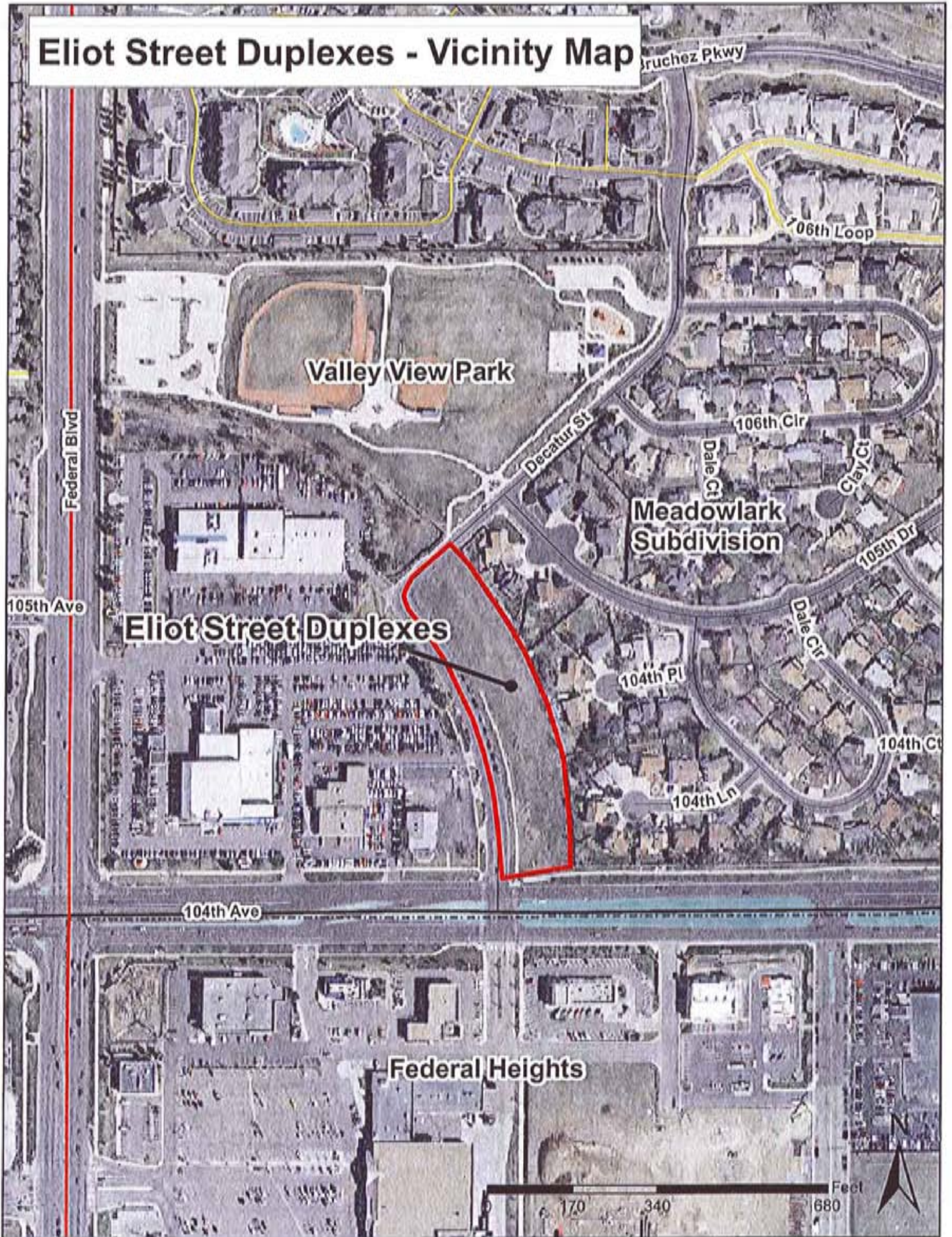
\_\_\_\_\_  
Mayor

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

APPROVED AS TO LEGAL FORM:

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

# Eliot Street Duplexes - Vicinity Map



October 14, 2008

Extension Request To:  
Walter Patrick  
City of Westminster

Walter,

Due to current economic factors in the real estate market and construction business, we would like to ask that the City of Westminster extend our Service Commitments for the Elliot Street Development by one year in hopes of seeing some improvement in conditions before we begin a project of this size.

Thank you for your consideration and please give me a call should you need further information or if you need anything else from me.

Sincerely:

By: Robert Franel  
Robert Franel  
Eliot Street Development  
303-477-9168

Date: 10-14-08



## Agenda Item 10 C

**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Councillor's Bill No. 50 re Amendment to the Church Ranch Hotel Company LLC Business Assistance Agreement to Facilitate the Hyatt Place Hotel

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

**Recommended City Council Action**

Pass Councillor's Bill No. 50 on first reading authorizing the City Manager to execute and implement the Amendment to the Church Ranch Hotel Company LLC Business Assistance Agreement in substantially the same form as the attached amended agreement to facilitate the development of the Hyatt Place Hotel.

**Summary Statements**

- The Hyatt Place is being built as part of the Spring Hill Suites and proposed Marriott full service hotel development.
- The 115 room hotel will be built simultaneously with the Marriott Hotel.
- There is an existing Business Assistance Agreement with Church Ranch Hotel Company, originally signed in September 1998 for a 240 to 260 full service Marriott expandable to 350 rooms plus a 10,000 square foot conference center.
- In 1999, the agreement was amended to allow for the 150 to 160 room Spring Hill Suites hotel as part of the project.
- Assistance for the Hyatt Place Hotel is being requested by the developer because of the higher image of the hotel brand and the intense competition in the market place.
- Using rebates of Building Permit Fees and Use Tax, the 7% Accommodations Tax and the proposed self imposed 2% Conference Center fee; staff is recommending a 60% rebate for 15 years. The rebate will be approximately \$3,454,380.
- The assistance package is based on the performance of this hotel; assistance will be paid only as revenue is generated from this project.
- This project is projected to produce in excess of \$2.2 million net new revenues to the City.

**Expenditure Required:** Approximately \$3,454,380

**Source of Funds:** Funds will come exclusively from rebates of Accommodation and Use taxes as well as permit fees collected from the project.

**Policy Issue**

Does Council desire to amend an existing Business Assistance Agreement to attract a high quality hotel?

**Alternatives**

Do Nothing: One alternative to offering the business assistance package is to offer nothing to this company. The City may lose the project if assistance is not provided.

Provide Less: Another alternative is to provide less assistance than what is recommended. The recommended assistance package is the amount that Staff is comfortable recommending in order to help this deal to move forward.

Provide More: A third alternative would be to provide a greater amount of assistance than recommended. It is staff’s opinion that additional assistance is not needed.

**Background Information**

In 1998, The Church Ranch Hotel Company negotiated an assistance package (EDA) for a full service Marriott hotel in Church Ranch Corporate Center. Subsequent amendments have been made to the original Church Ranch Hotel agreement to allow for the Spring Hill Suites and to allow the Marriott to extend out the construction commencement date until March 1, 2009.

As the developers began planning for the Marriott, they determined that a third hotel could be sited with the project. Originally a Marriott Fairfield Inn and Suites was proposed. Staff’s response to the proposal was less than enthusiastic. It was also clarified that no additional hotel on the site would be supported unless the full service Marriott was built. The developers came back with a proposal to build the more expensive, higher end Hyatt Place Hotel simultaneously with the full service Marriott.

In the interim the announcement of the Conoco Phillips project and other growth along the US36 corridor has spurred a lot of interest in the extended stay hotel product. Over a dozen hotel proposals on the US36 corridor have been announced. A number of new hotels will be built and Staff believes that the City needs to be sure to capture some of that new market.

The Etkin Johnson Group and White Lodging have teamed up, completed the planning, and have secured the financing to build both the Hyatt Place Hotel and full service Marriott Hotel adjacent to the Spring Hill Suites. Assistance is needed to help absorb the difference in cost between the Fairfield and Hyatt Place.

Total tax and fee revenue from the Hyatt Place over 15 years is estimated to be \$5,757,300.

**Business Assistance**

Staff proposes the following assistance for the project:

	<u>Approximate Value</u>
<u>60% rebate Building Permit Fees</u> ( $\$58,300 \times 60\%$ )	\$34,980
<u>60% rebate of Use Tax on Construction</u> ( $\$164,000 \times 60\%$ )	\$98,400
<u>60% rebate of Accommodations Tax and Conference Center Fee</u> For no longer than 15 years (60 quarterly installments) ( $5,535,000 \times 60\%$ )	\$3,321,000
<b>Total Proposed Assistance Package</b>	<b>\$3,454,380</b>

Justification for this assistance is as follows:

- The Hyatt Place Hotel is a significant upgrade over the Marriott Fairfield originally proposed.
- Even with the assistance package the City is still projected to generate the following over 15 years
  - \$1,722,000 occupancy tax for the Community Enhancement Fund
  - \$492,000 conference center fee for general City use
- The Hyatt Place Hotel along with the new Marriott Hotel will generate additional customer base for the nearby restaurants at The Shops at Walnut Creek and the Westminster Promenade.
- This development will come out of the ground before other planned hotels in the corridor, capturing tax dollars that easily could go to other cities and potential precluding some of the competing hotel projects from being built.
- The hotels will provide overflow space for the Westin Hotel and its Convention Center, which is now going to the Omni Hotel in Broomfield.

### **Conclusion**

This assistance package is larger and for a longer period than what the City usually approves at approximately \$3,454,380 over 15 years; however, the overall project development cost is much greater as well at approximately \$16 million. Furthermore, the length of time for the agreement and the percentage amounts of the agreement are comparable or less than what was done for the Westin Hotel project. The City's investment is reliant on hotel performance – assistance will be rebated only as revenue is generated. The City's risk on this investment is minimal while creating a significant projected long term cash flow to the City.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments: Ordinance  
Agreement

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **50**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE CHURCH RANCH  
HOTEL COMPANY LLC BUSINESS ASSISTANCE AGREEMENT TO FACILITATE THE  
HYATT PLACE HOTEL**

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 generate additional tax revenue and remain competitive with other local governments in offering assistance for new businesses; and

WHEREAS, the Hyatt Place Hotel plans to build adjacent to the Marriott Hotel and Spring Hill Suites; and

WHEREAS, a proposed amended agreement between the City and Church Ranch Hotel Company, LLC 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 amendment of the Church Ranch Hotel Company, LLC Business Assistance agreement 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 December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of December, 2008.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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



**2008 THE AMENDED AND RESTATED  
BUSINESS ASSISTANCE AGREEMENT BETWEEN  
THE CITY OF WESTMINSTER AND CHURCH RANCH HOTEL COMPANY I LLC  
AND CHURCH RANCH HOTEL COMPANY II LLC  
FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION  
OF A FULL-SERVICE MARRIOTT HOTEL, AND A MARRIOTT SUITES HOTEL, AND A  
HYATT PLACE HOTEL.**

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ ~~January, 2005~~ by and between the CITY OF WESTMINSTER, a Colorado home-rule municipality ("City"), CHURCH RANCH HOTEL COMPANY I LLC, a Colorado limited liability company ("CRHC I"), RLJ II – S WESTMINSTER, L.L.C., a Delaware Limited Liability Company ("RLP"), and CHURCH RANCH HOTEL COMPANY III, II-LLC, a Colorado limited liability company ("CRHC III").

**WHEREAS**, City is a Colorado home-rule municipality with all the authority granted to home-rule municipalities pursuant to Colorado Constitution Article XX, Section 6, and its City Charter adopted pursuant thereto;

**WHEREAS**, CRHC I, and Church Ranch Hotel Company II, L.L.C. ("CRHC II") are Colorado limited liability companies with whom the City has ~~previously~~ entered into certain prior agreements for the development and construction by CRHC I of a 240 to 260 room, expandable to 350 rooms, first class full service Marriott hotel and an approximately 10,000 gross square foot conference center in Church Ranch Corporate Center ("Marriott Hotel") and the development and construction by CRHC II of a 164 room Marriott suites hotel in Church Ranch Corporate Center ("Marriott Suites-Hotel"), both to be located south and east of Church Ranch Boulevard and north of 103<sup>rd</sup> Avenue, said prior agreements are dated September 28, 1998, September 13, 1999, November 15, 2000 and July 3, 2003 (collectively the "Prior Agreements");

**WHEREAS**, CRHC III is a Colorado limited liability company and the developer of a proposed Hyatt Place Hotel in Church Ranch Corporate Center ("Hyatt Place Hotel").

**WHEREAS**, the Marriott Hotel, Hyatt Place Hotel, and the Marriott Suites Hotel will be referred to collectively as "Projects";

**WHEREAS**, CRHC II has completed construction of the Marriott Suites Hotel and the parties hereto mutually agree that the obligations of CRHC II relative to said construction of the Suites Hotel have been satisfied;

**WHEREAS**, CRHC II previously assigned its rights and CRHC II have ongoing obligations under the Prior Agreements to RLJ pursuant to that certain Assignment and Assumption this Agreement dated July 26, 2006; and

**WHEREAS**, the parties hereto to the Prior Agreements now desire to replace the Prior Agreements and the parties hereto mutually agree that this Agreement replaces the Prior Agreements for any and all purposes.

NOW THEREFORE, in consideration of the above premises and the promises and covenants set forth below, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City, CRHC I, RLJ, and CRHC III agree as set forth below:

## I. DEVELOPER'S OBLIGATIONS

1.1 CRHC I shall develop and cause the Marriott Hotel to be constructed, equipped, and furnished per the Hotel Official Development Plan ("Hotel ODP") as defined in Section 1.1.1. The City and CRHC I agree that the hotel franchisor shall be Marriott, or an equivalent full service, first-class hotel as described in Exhibit A attached hereto and by this reference incorporated herein. The Marriott Hotel shall be designed, constructed, operated, managed and maintained in a manner consistent with how first-class, full-service hotels and first-class conference facilities are designed, constructed, operated, managed and maintained.

1.1.1 CRHC I and CRHC III have ~~has~~ the right to request an amendment to the First Amendment to the Official Development Plan, Church Ranch Home Place, Filing No. 9 recorded at Reception No. F1265044 on June 28, 2001 (the "Hotel ODP") per the City ODP process.

1.1.2 CRHC II has previously constructed, equipped and furnished and opened for business a 164 room Marriott SpringHill Suites Hotel ("Marriott Suites Hotel") per the Hotel ODP. The Marriott Suites Hotel is now owned by RLJ CRHC II.

1.1.3 In the event CRHC I desires to amend the Hotel ODP then the City and CRHC I shall work together on the positioning of the Marriott Hotel in a manner consistent with maintaining the continuity of the area. The Marriott Hotel to be constructed by CRHC I shall be built as a fully integrated facility, and the Marriott Hotel shall be owned by CRHC I or an affiliate thereof. The Marriott Hotel shall include an attached restaurant or a restaurant in a separate building as specified in the Hotel ODP and as mutually agreed upon by City and CRHC I.

1.1.4 ~~CRHC III.2~~ The Hotel shall develop and cause to be constructed, equipped, and furnished and opened for business a 115-room Hyatt Place Hotel. The Hyatt Place Hotel shall be designed, constructed, operated, managed, and maintained in the same a-manner comparable consistent with how first-class, full-service hotels and first-class conference facilities are designed, constructed, operated, managed, and maintained.

1.2 ~~CRHC and~~ CRHC I, RLJ, and CRHC III are responsible for all capital improvements, repairs and maintenance for the Projects. The initial operations manager of the Marriott Hotel and the Marriott Suites Projects shall be White Lodging Services Corporation. The initial operations manager of the Hyatt Place Hotel shall be White Lodging Services Corporation.

1.3 As part of the management and operation of the Projects, ~~CRHC and CRHC I, RLJ, and CRHC I II~~ shall remit to City, City's accommodations tax at the then current rate, as well as a separate Conference Center Fee in an amount equal to two percent (2%) of the Marriott Hotel's, the Marriott Suites', and the Hyatt Place Suites Hotel's room rate charged to and collected from their respective ~~guests by the hotel franchisees~~. The Conference Center Fee shall be collected only for the duration of the Business Assistance Rebate contained in Section 2.6 below.

1.4 CRHC I, RLJ, and CRHC III shall at their expense, as provided in this Agreement, obtain all entitlements necessary for the development and construction of the Projects, subject to the terms contained elsewhere herein.

1.5 The responsibility for paying all property taxes, other taxes, annual fees, and fees and taxes levied, by the state, county, or other taxing authority for the Projects shall be the exclusive responsibility of CRHC I, ~~RLJ~~, and CRHC III or the successors or transferees thereof.

1.6 CRHC ~~and CRHC I, RLJ, and CRHC III~~ shall be responsible for providing, at their expense, all normal site improvements and utilities, including water, sewer, electric, gas, telephone, cable TV, optic and/or data transmission lines, and the parking areas and landscaping for the Projects.

1.7 CRHC I and CRHC III will be responsible for paying the City's customary domestic water and sanitary sewer tap fees ("Tap Fees") ~~for the Hotel based upon the City sewer and water tap fee schedule current as of the date of building permit application for the Hotel.~~ If a separate restaurant is built ~~in a building separate from the Hotel and/or~~ needs additional sewer or water taps, such cost shall also be borne solely by CRHC I and CRHC III. ~~CRHC - CRHC II~~ has paid the applicable water and sewer tap fees for the Suites Hotel.

1.8 CRHC I and CRHC III will design the ~~Hotel building interior and exterior of their respective buildings based on a first-class full-service hotel.~~ The ~~Hotel design of CRHC I's and CRHC III's buildings and interiors shall be consistent with the level of quality and detail incorporated in the Westin Westminster Hotel located at 10600 Westminster Boulevard .~~

1.8.1 The approved Hotel ODP has satisfied the requirements under this Agreement for design and materials for the ~~Marriott Suites Hotel.~~ Prior to application for ~~their respective the Hotel building permits,~~ CRHC I and CRHC III shall be required to meet all applicable design and construction standards of the City and pay all applicable fees in effect at the time of application pursuant to this Agreement. If necessary, CRHC I and CRHC III shall submit an application for an amendment to the approved Hotel ODP ~~for the Hotel~~ as required to incorporate such applicable new or updated City design and construction standards.

1.9 CRHC II has constructed the ~~Marriott Suites Hotel~~ and the City issued a certificate of occupancy for the ~~Marriott Suites Hotel~~ on April 22, 2002.

## II. CITY OBLIGATIONS

2.1 For and in consideration of CRHC I's ~~CRHC's~~ development, construction, furnishing, and equipping of the ~~Marriott Hotel,~~ City has conveyed on December 27, 2000 by warranty deed as recorded at Reception No. FH162592 to CRHC I Lot 1 and Tract B Church Ranch Home Place - Filing No. 9 to be utilized as a portion of the site for the ~~Marriott Hotel~~ ("City Parcel"). City has paid the assessment for the 104<sup>th</sup> Avenue Special Improvement District with respect to the City Parcel only. CRHC I shall be responsible for paying any other property taxes due on the City Parcel. City has provided CRHC I an ALTA title insurance policy on the City Parcel.

2.1.1 The ~~site for the Projects~~ ~~Hotel Project Site~~ consists of the City Parcel, less the 27.50 feet of right-of-way for Church Ranch Blvd. as dedicated by Final Plat, Church Ranch Home Place - Filing No. 9 as recorded November 7, 2008, ~~March 14, 2004~~ at Reception No. ~~2008102962FH499958~~ (the "Final Plat") and Lot 2 of the Final Plat. The ~~Marriott Hotel~~ site is defined on the Hotel ODP and Final Plat.

2.1.2 CRHC I has acquired Lot 2 of the ~~Marriott Hotel~~ site ("CRHC I Parcel") from Church Ranch Land Co. LLC ("CRLC").

2.1.3 The deed for the City Parcel contains a possibility of reverter subject to exercise upon fifteen (15) days prior notice to CRHC I in the event CRHC I fails to commence construction of the Marriott Hotel, on or before March 1, 2009. At the option of CRHC I, the deed for the CRHC I Parcel transferred from Church Ranch Land Co. CRLC may also include a possibility of reverter in substantially the same form as that contained in the deed for the City Parcel.

2.1.4 CRHC II has acquired the site for the Marriott Suites Suite Hotel ("Suites Hotel Site") from Church Ranch Land Co. CRLC. The Suites Hotel Site is defined as Lot 3 and Tract A per the Final Plat.

2.2 CRHC I and CRHC III shall design and build at their ~~its~~ expense the onsite improvements required for their respective Projects, ~~the Hotel~~. City staff will review and approve the onsite improvements in an expedient manner, as mutually agreed, consistent with normal city policy, procedures, and practices. These improvements shall include, but not be limited to, all onsite walkway improvements for the Marriott Hotel and the Hyatt Place Hotel, including, without limitation, sidewalks, circulation roads, ~~the Hotel~~ parking lot paving and lighting, curb cuts, landscaping, storm water facilities (including water quality), and water, sewer, natural gas, electric and telephone utilities for servicing the Hotels, ~~Hotel~~ including public common areas.

2.3 CRHC I and CRHC III shall also be responsible, at their ~~its~~ cost, for constructing, or causing to be constructed, all reasonably necessary off-site improvements for their respective projects ~~the Hotel~~, pursuant to normal City code requirements and policies. ~~As of the date of this Agreement there are no off-site improvements required as part of the Hotel~~. In addition, CRHC I, CRHC II, and CRHC III have no obligation to reimburse or pay back the City or any other party for public improvements installed adjacent to or in the proximity of the City Parcel, the CRHC I Parcel, ~~or the~~ ~~and~~ Suites Hotel Site.

2.4 City staff shall assist CRHC I and CRHC III in obtaining all approvals and entitlements necessary for construction of their respective projects ~~the Hotel~~ consistent with normal City standard practices, policies and procedures.

2.5 Other than the Tap Fees for the Marriott Hotel and Hyatt Place Hotel as specified in Section 1.7, the payment of which is the sole responsibility of CRHC I and CRHC III, the City shall waive or rebate the following:

(A) ~~During~~ during the construction period of the Marriott Hotel for CRHC I, or its ~~their~~ assigns, the City shall waive any and all one-time fees and assessments normally charged by City as a condition to building permit issuance for the Marriott Hotel, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees and building material use taxes and the like. Any third party construction or other plan review and approval fees, if any, shall be split by City and CRHC I with each paying one-half thereof; and -

(B) During the construction of the Hyatt Place Hotel for CRHC III, or its assigns, the City shall rebate sixty percent (60%) of any one-time fees and assessments normally charged by the City as a condition to building permit issuance for the Hyatt Place Hotel, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees, and building material use taxes and the like. This rebate shall be added to and paid in the same manner as the Hyatt Place Rebate provided for in paragraph 2.6.1(C) below.

2.5.1 City agrees that no other fee, assessment, or charge shall be levied against the Projects other than as set forth in this Agreement. However, nothing in this Agreement shall be construed as prohibiting City from assessing, levying or increasing any fees, charges or taxes against the Marriott Hotel, the Hyatt Place Hotel, or the Marriott Suites Hotel to the extent such fees, charges or taxes are assessed and paid by all like businesses in the City.

2.5.2 Nothing in this Section 2.5 shall be construed as exempting CRHC I, RLJ, or CRHC III from the responsibility to pay normal annual taxes such as property tax, business license, and applicable federal, state and county fees and taxes.

2.6 For and in consideration of CRHC I's, RLJ's, CRHC's and CRHC III's construction, furnishing and equipping of the Projects, and the overall economic and financial benefits to the community at large as a result of locating such facilities within the City of Westminster, City shall provide CRHC I, RLJ, and CRHC III the following business assistance rebates. ~~It is a "Business Assistance Rebate."~~

2.6.1

(A) ~~A business assistance rebate~~~~The Business Assistance Rebate~~ shall be paid by City to CRHC ~~or CRHC II~~ in quarterly installments equal to the sum of (i) those revenues attributable to City's seven percent (7%) accommodations tax from the Marriott Hotel operation and the Suite Hotel operation for the preceding quarter, plus (ii) those revenues attributable to the two percent (2%) Conference Center Fee for the previous quarter, plus (iii) those revenues attributable to City's Sales and Use Tax at the then current rate generated by the Marriott Hotel Projects (including food and beverage taxes) for the previous quarter, exclusive of (a) City's parks, open space and trails tax at 0.25% ("Open Space Tax") and (b) City's public safety tax at 0.6% ("Public Safety Tax") and (c) any future voter approved sales or use tax, the use of which is restricted by the voters to specific, limited purposes (the "Marriott Hotel Rebate").

(B) A business assistance rebate shall be paid by City to RLJ in quarterly installments equal to the sum of (i) those revenues attributable to the City's seven percent (7%) accommodations tax from the Marriott Suites operation for the preceding quarter, plus (ii) those revenues attributable to the two percent (2%) Conference Center fee for the previous quarter plus (iii) those revenues attributable to the City's Sales and Use Tax at the then current rate generated by the Marriott Suites (including food and beverage) for the previous quarter, exclusive of (a) City's parks, open space and trails tax at 0.25% ("Open Space Tax") and (b) City's public safety tax at 0.6% ("Public Safety Tax") and (c) any future voter approved sales or use tax, the use of which is restricted by the voters to specific, limited purposes (the "Marriott Suites Rebate")

(C) A business assistance rebate shall be paid by the City to CRHC III in quarterly installments equal to the sum of (i) sixty percent (60%) of those revenues attributable to the City's seven percent (7%) accommodations tax from the Hyatt Place Hotel operation for the preceding quarter, plus (ii) sixty percent (60%) of those revenues attributable to the two percent (2%) Conference Center fee for the previous quarter (the "Hyatt Place Rebate").

2.6.1.1 ~~At~~—As such time as the aggregate amount of the quarterly installments of the Marriott Hotel Rebate equals ~~\$Business Assistance Rebates equals \$9,800,000 present value for the Hotel~~, using a discount rate of eight percent (8%) per annum, or upon City's rebate of sixty (60) quarterly installments, ~~for the Marriott Hotel Rebate then the Business Assistance Rebates for the Hotel shall cease. The first quarterly installment of the Marriott Hotel Rebate Business Assistance Rebate for the~~

~~Hotel~~ shall be made within fifteen (15) days after the last day of the first quarter after the Marriott Hotel receives a certificate of occupancy.

2.6.1.2 At such time as the aggregate amount of the quarterly installments of the Marriott Suites Business Assistance Rebates equals \$3,275,000 present value ~~for the Suite Hotel~~, using a discount rate of eight percent (8%) per annum, or upon City's rebate of sixty (60) quarterly installments, the Marriott Suites Rebate shall cease.

2.6.1.3 Upon City's rebate of sixty (60) quarterly installments for the Hyatt Place Rebate, ~~Suites Hotel~~ then the Hyatt Place Rebate shall cease. The first quarterly installment of ~~Business Assistance Rebates~~ for the Hyatt Place Rebate shall be made within fifteen (15) days after the last day of the first quarter after the Hyatt Place Hotel receives a certificate of occupancy. ~~Suites Hotel shall cease.~~

2.6.2 In the event the first rebate is prorated for either the Marriott Hotel, ~~the Marriott or Suites, or the Hyatt Place Hotel~~, the last payment shall include the additional days not included in the first rebate to provide sixty (60) full quarterly installments. The business assistance rebates for the Marriott Hotel, the Marriott Suites, and the Hyatt Place Business Assistance Rebates for the Hotel and Suites Hotel are independent and shall be calculated and paid separately ~~for the Hotel and for the Suites Hotel~~ as noted hereinabove.

2.6.3 City's obligations pursuant to this Section 2.6 shall be subject to annual appropriation consistent with the requirements of Colorado Constitutional Amendment X, Section 20, provided, however, that the City agrees to exercise its best efforts and utmost good faith in making funds available to meet its obligation under Section 2.6.

2.6.4 City warrants and represents that no other person or entity has any right, title or claim against the specific rebate items included in the business assistance rebates ~~Business Assistance Rebate~~ specified in this Agreement other than sales and use tax bond covenants.

2.6.5 ~~Subordination.~~—For the purpose of protecting the City's bonding capacity and credit worthiness, it should be known that 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. This Section 2.6.5 however does not refer to or include the revenue generated by these Projects from Accommodation Tax or the Conference Center Tax.

2.6.6 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 City Charter and the City Municipal Code.

### III. FURTHER AGREEMENTS AND COMMITMENTS

3.1 City, CRHC I, RLJ, and CRHC III agree to exercise utmost good faith in negotiating and completing such additional or further agreements that may be required to accomplish the ultimate goal of the parties of realizing the construction and commencement of the operation of the Projects contemplated by this Agreement. City, CRHC I, RLJ, and CRHC III hereby assume the mutual duty of "agreeing to agree" on such further agreements or actions that may be necessary to realize their overriding objective in executing this Agreement. Any omission or ambiguity in this Agreement shall not be considered cause for non-performance of the parties of this Agreement.

3.2 Without in any way limiting the foregoing, City, CRHC I, RLJ, and CRHC III specifically agree to cooperate in resolving the following matters to the extent necessary.

3.2.1 Providing information and assistance as reasonably required by CRHC's and CRHC I's, RLJ's, and CRHC III's lender(s) to the extent such assistance does not result in added costs or obligations for City or release CRHC I, RLJ, and CRHC III from obligations in this Agreement.

3.2.2 The City, CRHC I and CRHC II have entered into a Golf Course Marketing Agreement dated March 25, 2003 for the Marriott Hotel and Suites Hotel.

3.3 Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be construed as creating a joint venture or partnership relationship between City, CRHC I, RLJ, and CRHC III and the liabilities and responsibilities of the parties shall be the independent liabilities and responsibilities of the party charged with such liability or responsibility.

3.4 Any notice required hereunder shall be sent certified mail, return receipt requested, with faxed copies to any current address given by one party to the other or at:

CITY: \_\_\_\_\_ RLJ: City

~~CRHC II:~~

**City of Westminster**  
Attn: City Manager  
4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031  
Fax: (303) 430-1809

~~**Church Ranch Hotel Company II LLC**  
Attn: Managing Member  
c/o Etkin Johnson Group  
1512 Larimer Street, Suite 325  
Denver, Colorado 80202  
Fax: (303) 629-5451~~

CRHC I:

CRHC III:

**Church Ranch Hotel Company I LLC**  
Attn: Managing Member  
c/o Etkin Johnson Group  
1512 Larimer Street, Suite 325  
Denver, Colorado 80202  
Fax: (303) 629-5451

3.5 City Manager is authorized, consistent with City Charter and Ordinances, to enter into any further agreements, give all consents, enter into estoppel letters, amendments or the like, and do all things necessary hereunder that are consistent with this Agreement.

3.6 City staff, CRHC I and CRHC III shall work together for adequate and appropriate signage for the Projects, including signage typical for comparable first-class hotel projects in the City as allowed under City Code.

3.7 The execution of this Agreement by CRHC I, RLJ, and CRHC III and City as indicated in the signatory blocks below constitutes a representation by the respective parties that the Agreement has been duly authorized and approved by the City Council of the City of Westminster on behalf of City, and by CRHC I, RLJ, and CRHC III in accordance with and under the authority of their respective CRHC's and CRHC-IPs limited liability company agreements and state law.

3.8 Except as provided otherwise in this Agreement, anywhere in this Agreement it provides that it is the responsibility of CRHC I, RLJ, and CRHC III, it shall be at the sole cost and expense of CRHC I, RLJ, and CRHC III, and anywhere in this Agreement it provides that it is the responsibility of City, it shall be the sole cost and expense of City.

3.9 This Agreement is severable and assignable to another legal entity subject to City's reasonable consent which will not be withheld as long as evidence satisfactory to the City in its reasonable discretion is provided that demonstrates that the successor entity has the financial wherewithal, experience and expertise to carry out the Projects and the obligations under this Agreement. However, any assignment or transfer of this Agreement other than as defined herein shall require City's approval, which shall not be unreasonably withheld. The rights and obligations hereunder shall inure to the benefit and detriment of any transferees, assigns or beneficiaries.

3.10 Except as otherwise provided in this Agreement, the City agrees that this Agreement is not cancelable by the City.

3.10.1 ~~\_\_\_\_\_ A. This Assistance Agreement shall terminate and become void and of no force or effect upon the City as to the Marriott Hotel and the Hyatt Place Hotel only if CRHC I and CRHC III fails to commence construction of the Marriott Hotel and the Hyatt Place Hotel on or before March 1, 2009, or, CRHC I and CRHC III have not completed construction and initiated operations of the Marriott Hotel and Hyatt Place Hotel by March 31, 2011; or in the event CRHC I or CRHC III, at any time prior to completing their respective Projects, make the Hotel, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator, or liquidator of CRHC of all or a substantial part of their respective its-assets; or, a petition of relief is filed by either CRHC I or CRHC III under federal bankruptcy, insolvency, or similar laws; or, a petition in a proceeding under any bankruptcy, insolvency, or similar laws is filed against either CRHC I or CRHC III and not dismissed within sixty (60) days.~~

3.10.2 B. This Agreement shall remain in full force and effect with respect to the Suites Hotel in this event of any termination of this Agreement pursuant to 3.10.1, above, including, but not limited to the Marriott Suites Business Assistance Rebate for the Suites Hotel in the aggregate amount of \$3,275,000 present value per Section 2.6. However, if CRHC I fails to commence construction of the Marriott Hotel on or before March 1, 2009, CRHC I agrees to (1) transfer to City its interest in Lot 1, Lot 2 and Tract B of the Final Plat free and clear of liens and encumbrances, except for current property taxes and the existing lien in favor of Key Bank or its successor on Lot 2 with a release price not to exceed \$4.00 per square foot and CRHC I agrees to hold harmless and indemnify the City from any liens and encumbrances in excess of the \$4.00 per square foot owed to Key Bank, or its successor on Lot 2 and (2) transfer to City its interest in any and all plans, specifications or drawings for the Marriott Hotel. If CRHC I breaches the obligation to not encumber Lot 1, Lot 2 and Tract B beyond



the limits specified hereinabove and if CRHC I is required to transfer Lot 1, Lot 2 and Tract B to the City pursuant to this Agreement, then in that event the City has in addition to the remedies provided in Section 4 below the right to discontinue the ~~Marriott Suites Business Assistance Rebate~~ payments to CRHC II on the Suites Hotel for the period of time required to reimburse the City for the amount of the encumbrance CRHC I placed on Lot 1, Lot 2 and Tract B in excess of the limits specified hereinabove.

~~3.10.3~~ CRHC I has paid or ~~in addition~~, CRHC agrees to pay the City additional applicable non-refundable extension fees upon City Council approval of this Agreement per the following schedule:

- i. Initial extension payment, \$25,000.00 paid to City by CRHC I on July 17, 2003.
- ii. Second extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2005. Upon payment of this second extension payment the total of \$75,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if construction of the Marriott Hotel commences before March 1, 2006.
- iii. Third extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2006. Upon payment of this third extension payment the total of \$125,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2007.
- iv. Fourth extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2007. Upon payment of this fourth extension payment the total of \$175,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2008.
- v. Fifth extension payment of \$50,000.00 due and payable to City by CRHC I on March 1, 2008. Upon payment of this fifth extension payment the total of \$225,000.00 shall be non-refundable but shall be applied as a credit to the Tap Fees due and payable by CRHC I pursuant to this Agreement if the construction of the Marriott Hotel commences before March 1, 2009.

~~E~~ In the event CRHC I has not commenced construction of the Marriott Hotel on or before March 1, 2009 then the extension payments made to the City by CRHC I shall be forfeited by CRHC I to the City and CRHC I shall have no further right nor benefit of the extension payments and the City has the right to full use of the extension payments for whatever purpose the City deems appropriate.

~~3.10.4 D~~ For purposes of this Agreement, commencement of construction of the Marriott Hotel and Hyatt Place Hotel shall be defined as (i) payment of necessary fees pursuant to this Agreement, including but not limited to Tap Fees, (ii) obtaining necessary construction permits and (iii) mobilization of the general contractor on the ~~Hotel Project Site~~.

~~3.10.5 E~~ CRHC I agrees that it will not grant additional security interests in Lot 1, Lot 2 or Tract B securing any additional debt except for a security interest for financing for the actual construction of the Marriott Hotel, which security interest shall not attach until construction is ready to commence and a building permit has been issued for the Marriott Hotel without the prior written consent of the City.

CRHC I agrees to provide the City an ownership and encumbrance report evidencing CRHC I compliance with this Section prior to requesting any extension herein provided for hereinabove.

3.11 In the event CRHC I ceases business operations of the Marriott Hotel within three (3) years after the issuance of a certificate of occupancy by the City for the Marriott Hotel, for a period of three months or longer except in the case of force majeure, then in such event, CRHC I shall pay to the City the total amount of fees and taxes that were due and payable by CRHC I to the City, but were rebated or waived by the City, as well as reimburse the City for all funds provided to CRHC I pursuant to the Agreement. The same refund provisions shall apply to CRHC III on the Hyatt Place Hotel in the event CRHC III ceases business operations on the Hyatt Place Hotel within three (3) years after the issuance of a certificate of occupancy by the City for the Hyatt Place Hotel, for a period of three (3) months or longer, except in the case of force majeure. These same refund provisions shall apply to RLJ/CRHC-H on the Suites Hotel in the event RLJ/CRHC-H ceases business operations of the Marriott Suites Hotel prior to April 1, 2009, for a period of three months or longer except in the case of force majeure.

#### IV. REMEDIES

4.1 In the event of a dispute concerning this Agreement, the parties agree to first attempt to negotiate a resolution of their differences. In the event of an inability to resolve their difference through negotiation, the parties agree to retain the services of a qualified professional mediator acceptable to all parties and to enter into mediation in good faith in an attempt to resolve the dispute.

4.2 In the event the parties are unable to agree upon the meaning or interpretation of any term or condition of this Agreement, the parties agree that a court of competent jurisdiction may declare the rights, duties and obligations of the parties in a declaratory judgment action and that such court may further impose upon the parties any fair and reasonable provision the court may deem appropriate to accomplish the overall objective of this parties as set forth in this Agreement. Further, in the event of such a declaratory judgment action, it is the intent of the parties that the court may receive parol evidence for the purpose of deciding such rights, obligations and duties of the parties in the event of an ambiguity.

4.3 The parties hereby waive and agree not to seek any damages from the other in connection with the enforcement of this Agreement if specific performance provides an adequate remedy. The parties may setoff any amounts due the other for any undisputed amounts. An arbitrator or court may grant setoff as an available remedy hereunder. The rights, obligations and duties of the parties may be enforced through the declaratory action referred to in Section 4.2 above, or by way of specific performance. The parties recognize that time is of the essence, and accordingly the parties shall seek any expedited proceedings to which they may be entitled. However, if any party is required to bring an action to enforce or have its rights declared under this Agreement, the prevailing party in such litigation shall be entitled to the recovery of its reasonable costs and attorney's fees. CRHC I, RLJ, and CRHC III I have the right to withdraw from this Agreement with no further obligations to the City including but not limited to the repayment of any business assistance rebate~~Business Assistance Rebate~~ payments which have been received if City commitments are not satisfied as agreed in this Agreement.

4.4 ~~CRHC's, CRHC I's, RLJ's, H's and City's~~ obligations under this Agreement shall be deemed covenants running with the land and shall be binding upon and enforceable against the transferees, successors, assigns and purchasers of any item contained herein. For the purposes of creating constructive notice of this provision of this Agreement, a memorandum of this Agreement shall be recorded in the real estate records of the Jefferson County Clerk and Recorder's Office.

4.5 The Agreement replaces and supercedes all previous agreements and understandings and sets forth the agreement of the parties. There are no representations or warranties other than as contained herein. The documents to be entered into between the parties in the future shall become part and incorporated into this Agreement.

4.6 The Prior Agreements by and between City, CRHC I and CRHC II shall be deemed replaced by this Agreement upon the execution hereof by all parties.

4.7 References herein to any party to this Agreement includes their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

**CITY OF WESTMINSTER,**  
a Colorado home-rule municipality

**CHURCH RANCH HOTEL**  
COMPANY I LLC, a Colorado limited liability company

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

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Michele Kelley, City Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**RLJ-S WESTMINSTER, LLC, a**  
a Delaware Limited Liability Company company

**CHURCH RANCH HOTEL COMPANY,**  
II LLC, a Colorado limited liability company

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

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

By: \_\_\_\_\_  
Bruce H. Etkin, Manager

ATTEST:

ATTEST:

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

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

Title: \_\_\_\_\_

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

**EXHIBIT A**  
**Acceptable Hotel Franchisors**  
(attached to and made a part of the Agreement)

| Hotel:

Marriott is the currently approved hotel franchise for the proposed Hotel. In the event that it becomes necessary for CRHC to select an alternate full-service hotel franchise for the Hotel, the following full-service hotels could be built as part of this Agreement if they are determined by HVS or alternate similar caliber consultant at the time the alternate franchisor is selected by CRHC and submitted to City to be a first-class, full-service hotel:

Marriott

Hilton

Wyndham

Sheraton

Crowne Plaza

Hyatt

Suites Hotel:

Marriott SpringHill Suites is the currently approved Suite Hotel franchise for the Suites Hotel.



## Agenda Item 10 D

**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
December 8, 2008



**SUBJECT:** Councillor's Bill No. 51 re Democratic National Convention Supplemental Appropriation

**Prepared By:** Lee Birk, Chief of Police

#### Recommended City Council Action

Pass Councillor's Bill No. 51 on first reading appropriating funds received from the City and County of Denver in the amount of \$184,000 for the City of Westminster Police Department's participation at the Democratic National Convention (DNC).

#### Summary Statement

- On July 28, 2008, City Council approved an Intergovernmental Agreement (IGA) with the City and County of Denver allowing the City of Westminster Police Department to provide police services and assistance to the City and County of Denver during the Democratic National Convention (DNC).
- The City and County of Denver received a Federal Convention Security Grant of \$50 million to cover the security related costs that were used to reimburse participating and assisting jurisdictions. Under the terms of the IGA with the City and County of Denver, Denver would reimburse Westminster for every hour that a Westminster officer was assigned to DNC-related duties.
- These funds fully reimburse the City of Westminster for all costs incurred during the DNC.

**Expenditure Required:** \$184,000

**Source of Funds:** Reimbursement by the City of Denver from the Federal Convention Security Grant

**Policy Issue**

Should the Democratic National Convention reimbursement funds be appropriated to the Police Department General Fund Overtime and Uniform and Equipment budgets?

**Alternative**

The alternative would be to not amend the 2008 Police Department General Fund budget and utilize the Democratic National Convention reimbursement for other purposes. Staff does not recommend this alternative as the Police Department has already incurred these DNC related expenses and covered them in their current budget in anticipation of receipt and appropriation of the funds.

**Background Information**

For the operational time period at the DNC (August 22-29, 2008), 46 officers (one Commander, five Sergeants, and 40 officers) were deployed to the venue sites of the DNC. This included the Pepsi Center and the last minute move to Invesco Field for Senator Obama’s official acceptance speech. Officers assigned to the venue sites worked 14 to 17 hour days for six days in a row. In addition to the staffing for the DNC, riot gear, uniforms, and other miscellaneous equipment was purchased to ensure that the officers were properly equipped for their assignments.

At the conclusion of the DNC event, the Police Department submitted a report to the Denver Police Department for the hours worked by Westminster officers. A total of \$174,000 has been received to date and the remaining \$10,000 is anticipated to be received by year-end from Denver. Staff is recommending that these funds be applied to the Westminster Police Department Patrol Services Division’s overtime and uniform and equipment accounts to cover the costs incurred through the IGA.

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

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Federal Grants	1000.40610.0000	\$64,877	<u>\$184,000</u>	\$248,877
Total Change to Revenues			<u>\$184,000</u>	

**EXPENSES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Salaries – OT – Patrol Svcs	10020500.60400.0349	\$303,589	\$161,000	\$464,589
Unif & Equip-Spec Ops	10020500.61000.0347	126,790	<u>\$23,000</u>	149,790
Total Change to Expenses			<u>\$184,000</u>	

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **51**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2008 appropriation for the General Fund initially appropriated by Ordinance No. 3316 is hereby increased by \$184,000. This appropriation is due to the receipt of federal grant funds.

Section 2. The \$184,000 increase shall be allocated to City Revenue and Expense accounts as described in the City Council Agenda Item 10D, dated December 8, 2008 (a copy of which may be obtained from the City Clerk) increasing City fund budgets as follows:

General Fund	<u>\$184,000</u>
Total	<u>\$184,000</u>

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

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

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

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8<sup>th</sup> day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22<sup>nd</sup> day of December, 2008

ATTEST:

\_\_\_\_\_  
Mayor

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



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
December 8, 2008



**SUBJECT:** Councillor's Bill No. 52 re Pension Plan Amendments

**Prepared By:** Kim McDaniel, Retirement Administrator

**Recommended City Council Action**

Pass Councillor's Bill No. 52 on first reading amending the Westminster Municipal Code concerning the General Employee and Police Pension Plans in order to comply with changes required by applicable federal pension laws and U.S. Treasury regulations.

**Summary Statement**

- During 2006, the U.S. Congress passed the Pension Protection Act of 2006 (PPA). The PPA includes several provisions that are beneficial to defined contribution plans. In order for plan participants in the City of Westminster Police and General Employee Pension Plans to receive the full benefit of the changes allowed by the PPA, these provisions must be affirmatively adopted by the Plans.
- The IRS requires qualified pension plan documents to be amended for changes in federal pension laws and filed with the IRS in order to retain their tax-qualified status. The initial cycle as applied to the General Employee and Police Pension Plans ends on January 31, 2009.
- Pension staff received Council approval on September 8, 2008 to hire Brownstein Hyatt Farber Schreck, LLP to (i) revise the pension plan documents to reflect federal pension law requirements and (ii) prepare and submit legal documents to the IRS in order to obtain favorable letters of determination with respect to the amendments. It is anticipated that the pension plans will be filed with the IRS on January 9, 2009.
- Staff recommends that Council approve the changes to the Pension Ordinance as submitted by Brownstein Hyatt Farber Schreck, LLP so the amended plan documents can be submitted to the IRS in a timely manner for favorable letters of determination.
- The changes proposed are primarily technical clarifications and not substantial in nature.

**Expenditure Required:** \$0

**Source of Funds:** N/A



**Policy Issue**

Should Council approve the changes as proposed by Brownstein Hyatt Farber Schreck, LLP to amend the pension plan documents to comply with applicable federal pension laws and related IRS regulations?

**Alternatives**

1. Do not approve the proposed amendments. Staff does not recommend this option. If the amendments are not passed and the plan documents are not filed with the IRS by January 31, 2009, the plans may lose their federal tax exempt status and, as a result, the participants may be taxed on the benefit amounts thereunder, even though not yet payable.
2. If more time is needed to review the amendments, Council could request that the IRS filings be delayed from January 9, 2009 (the currently scheduled filing date) to January 31, 2009. If more time than that is needed, the City has two alternatives: (a) if, as anticipated, the IRS issues guidance by January 31, 2009, the City may be able to elect to file under "cycle E", which will have a January 31, 2011 deadline or (b) the plans' ongoing tax exempt status may be secured by filing through the IRS's voluntary correction program (estimated filing fee per plan of \$5,000).

**Background Information**

The Pension Plans' most recent determination letter from the IRS is dated April 7, 2005 and is based on the Plans as amended and restated effective July 2003. Since that time, the federal pension laws have been amended several times, including the most recently enacted PPA of 2006. While much of the PPA was directed at revamping traditional defined benefit plans, the PPA did make available a number of provisions that benefit defined contribution plans like the City of Westminster General Employee and Police Pension Plans. Additionally, the PPA made permanent many provisions of the Economic Growth and Tax Relief Reconciliation Act Of 2001 (EGTRRA) that were due to sunset in 2010, including increased contribution limits and the Saver's Credit.

From time to time since July 2003, City Council has adopted amendments to the Plans in response to federal pension law changes and the IRS-established deadlines for adopting such amendments. Most recently, on June 25, 2007, City Council approved the proposed amendments to implement several provisions from the PPA.

Effective 2006, the IRS requires qualified pension plan documents be amended for changes in federal pension laws and filed every five years with the IRS in order to retain their tax-qualified status. The initial cycle as applied to the General Employee and Police Pension Plans ends on January 31, 2009. Those plans that do not timely and properly amend their plan documents and submit the amended documents to the IRS by the applicable IRS filing deadline potentially could lose their "tax-qualified" status.

On September 8, 2008, City Council approved the hiring of Brownstein Hyatt Farber Schreck., LLP to review the plan documents for any additional necessary amendments and file the correct legal documents with the IRS. The attached amendments were prepared by Brownstein Hyatt Farber Schreck, LLP based on their pension law experience. The proposed amendments are recommended clarification of terms and are not substantial in nature. Staff believes the proposed changes can be relied on as necessary and acceptable.

Respectfully submitted,

J. Brent McFall  
City Manager  
Attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. **52**

SERIES OF 2008

INTRODUCED BY COUNCILLORS

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**A BILL  
FOR AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF TITLE 14  
OF THE WESTMINSTER MUNICIPAL CODE CONCERNING  
POLICE AND GENERAL EMPLOYEE PENSION PLANS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-1-1, subsections (A) and (C), W.M.C., are hereby AMENDED to read as follows:

**14-1-1: NAME AND PURPOSE OF PLAN; HISTORY:**

(A) The City of Westminster (THE "CITY" OR THE "EMPLOYER") does hereby establish its Police Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under CODE Section 401(a) ~~of the Federal Internal Revenue Code~~ and the Trust created pursuant to the Plan is intended to be exempt under CODE Section 501(a) ~~of such Code~~ and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the ~~Federal Internal Revenue Code~~ after the enactment of the Employee Retirement Income Security Act of 1984, 1974, except to the extent that changes to the Code apply to governmental plans.

(C) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became Participants in the FPPA defined benefit system. Assets in the retirement medical savings account (RMSA) in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section 14-1-7(C)(4) ~~of this Plan.~~

Section 2. Section 14-1-2, subsections (C), (E), (H), (I) and (V), W.M.C., are hereby AMENDED to read as follows:

**14-1-2: DEFINITIONS:** When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(C) "CITY" The City of Westminster, Colorado. THE CITY MAY ALSO BE REFERENCED IN THIS PLAN AS THE "EMPLOYER."

(E) "COMPENSATION" The base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE'S) budgeted for their positions. FOR PURPOSES OF DETERMINING THE COMPENSATION APPLICABLE TO THE LIMITATIONS ON ANNUAL CONTRIBUTIONS IN SECTION 14-1-5, COMPENSATION SHALL BE AS DEFINED IN SECTION 14-1-5(B)(5).

(H) "ELIGIBLE RETIRED PUBLIC SAFETY OFFICER" A Police Officer who is separated from service with the City as a public safety officer by reason of disability or is separated from service with the City as a public safety officer and separated from service after normal retirement age AS DEFINED IN SECTION 14-1-6(A)(1).

(I) "EMPLOYEE" Any person who fills ~~an~~ A CITY-authorized position of Police Officer as defined in this Chapter that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(V) "TRUST FUND" The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the TRUST Fund and all increases in fair market value.

Section 3. Section 14-1-3, subsections (A)(3), (A)(4)(a), (A)(4)(d), and (B)(2), W.M.C., are hereby AMENDED to read as follows:

### **14-1-3: PARTICIPATION OF EMPLOYEES:**

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant: No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive employer contributions, on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay period of Contribution: The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment WITH THE CITY shall terminate for any reason unless such Participant is employed BY THE CITY on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of or earnings on his undistributed interest in the Plan, after termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service: For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this WESTMINSTER MUNICIPAL Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such employee is still employed AS AN EMPLOYEE on such date and has not severed his employment (as provided in subsection (d) of this Section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended, pursuant to Section 1-24-10(V) of this WESTMINSTER MUNICIPAL Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to

release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment WITH THE CITY shall be considered as a break in continuity of service; subsequent reemployment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment WITH THE CITY or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

Section 4. Section 14-1-4, subsections (C)(1)(b), (C)(1)(c), (D), (E)(1) and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS:**

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%), or the percentage at least equal to the OASDI tax rate. During any period in which the contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this Plan by each contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this Plan for a Participant to less than two percent (2%) of that contributing Participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in CODE Section 414(h) ~~of the Internal Revenue Service Code~~ and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to his employment WITH THE CITY, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the Plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions:

(a) Subject to the provisions of Section 14-1-5(B), each Contributing Participant may elect to contribute to the Trust Fund an amount that when combined with the mandatory contributions required in paragraph (1) of this Subsection does not exceed the amount described in Section 14-1-5(B)(1).

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund must be contributed through payroll deductions. A contributing Participant may have the option of increasing, decreasing, or terminating his voluntary contribution at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-1-12(A), shall not be considered voluntary contributions.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan each pay period.

(D) Retirement Medical Savings Accounts:

(1) Each Participant shall have the option of designating up to TWENTY-FIVE PERCENT (25%) of his or her combined mandatory and City contributions to be used for future medical expenses as provided for in CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~. Contributions to the medical savings accounts will not be taxed at separation from service nor upon use for medical expenses after separation from service. The retirement medical savings accounts will be subject to the rules and requirements as issued by the City Manager.

(2) Contributions designated for future health benefits under CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~ as described in Subsection 0(D)(1) of this Section shall be maintained in separate accounts.

(E) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the CITY'S employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation in whole or in part, of the Trust Fund.

(F) Contributions for periods of qualified military service. The employer shall make all contributions to the Plan required by CODE Section 414(U) ~~of the code~~ which are attributable to periods of qualified military service. In addition, the employer shall allow any Participant to make elective MANDATORY EMPLOYEE CONTRIBUTIONS AND VOLUNTARY contributions for periods of qualified military service ~~and the employer shall make any matching contributions based upon such contributions at the rate at which such elective contributions of the employee would have been made during the applicable period of qualified military service, each as required by Section 414(U) of the code~~ AS REQUIRED BY CODE SECTION 414(U). The employer may elect to make additional contributions based upon such qualified military service based upon employer contributions made during the applicable period, provided such election by the employer is made on a non-discriminatory basis applicable to all similarly situated employees who have qualified military service. Any contributions made under this Subsection shall be subject to the provisions of CODE Section 414(U) ~~of the code~~ and the provisions of this Plan shall be applied considering any such contributions as having been made during the plan year to which the

contributions relate. For the purposes of this Section, "qualified military service" means service in the uniformed services of the United States (as defined in Chapter 43 of Title 38, OF THE United States Code) by any individual if such individual is entitled to re-employment rights with respect to such service.

Section 5. Section 14-1-5, subsections (B)(1), (B)(3), (B)(5), (C), (E), and (H), W.M.C., are hereby AMENDED to read as follows:

**14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:**

(B) Limitations on Allocations.

(1) General Rule: In no event may a Participant receive an allocation for any PLAN year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of one hundred percent (100%) of his or her compensation for such year or \$40,000, provided such figure shall be adjusted as provided in code section 415(D). For limitation years beginning before January 1, 2002, the foregoing percentage limitation is 25% and the foregoing dollar limitation is ~~\$3,000~~\$30,000, as adjusted pursuant to code section 415(D). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this Subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the Plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000, subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this Subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, ~~roll-over~~ ROLLOVER contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

(5) Compensation: For the purposes of applying the limitations of this Subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under ~~Federal Internal Revenue Service~~ Code Sections 125, 132(f)(4), 402(g)(3), 457, 401(k), or 403(b). The ~~annual compensation~~ “ANNUAL COMPENSATION” of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed ~~two hundred thousand dollars~~ (\$200,000), as adjusted for cost-of-living increases in accordance with CODE Section 401(A)(17)(b) ~~of the code~~. For LIMITATION years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is ~~one hundred fifty thousand dollars~~ (\$150,000). ~~Annual compensation~~ “ANNUAL COMPENSATION” means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(C) Allocation of Earnings, Losses, Charges and Changes in Fair Market Value of the Net Assets of the Trust Fund. Earnings and losses of the Trust Fund and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee at least quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants. Third party and administrative charges shall be allocated in the ratio that the total dollar value of the interest of each such Participant in the trust fund bears to the aggregate dollar value of all of such INTERESTS OF ALL SUCH Participants or equally to all Participants.

(E) Evaluation Dates. The regular evaluation dates of the Trust Fund shall be at least the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City, THE STATE and the Participants for that quarter. If an event described in Section 14-1-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

(H) Investment of Participant's Account. A Participant's account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in ~~their~~ HIS account among the investment options in a manner determined by the plan custodian and subject to such provisions as the plan administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

Section 6. Section 14-1-6, W.M.C., is hereby AMENDED to read as follows:

**14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:**

(A) Retirement Date.

(1) Normal Retirement: The normal retirement age for each Participant shall be AGE fifty-five (55); and, on the last day of the month in which HE ATTAINS HIS NORMAL RETIREMENT AGE ~~his fifty-fifth birthday occurs~~, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a Contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may voluntarily retire. Until actual retirement, a Contributing Participant shall continue to participate in the Plan.

(B) Beneficiaries.

(1) Designation of Beneficiaries: Each Participant shall have the right to designate ~~a Beneficiary~~ ONE or MORE Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. ANY BENEFICIARY DESIGNATION SHALL BE EFFECTIVE WHEN RECEIVED BY THE BOARD.

(2) Determination of a Beneficiary when there is no designated Beneficiary: If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to ~~his~~ THE PARTICIPANT'S surviving spouse, if any, or if none, then to the personal representative of ~~his~~ THE PARTICIPANT'S estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of ~~his~~ THE PARTICIPANT'S death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies: The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-1-8(A).

Section 7. Section 14-1-7, W.M.C., is hereby AMENDED to read as follows:

**14-1-7: DISTRIBUTION FROM TRUST FUND:**

(A) When Interests Become Distributable and Effect Thereof. When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest IN THE PLAN shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to THE Board. For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests.

(1) Insurance: If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance by informing the Board of his election. If said election is not exercised within thirty (30) days after the PARTICIPANT'S termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments UNDER THE PLAN.

(2) Election to Defer Benefits: A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (F) of this Section. No election to change the method of payment may be made more than once every six months once payments have commenced.



(3) Distribution of ~~Contributions~~ PARTICIPANT'S ACCOUNTS: Any other provision of this Subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board.

(4) Benefits payable from the 401(h) account:

(a) Benefits are payable from the retirement medical savings account only upon retirement, separation of service, death or total disability.

(b) Benefits payable from a 401(h) account shall include only payments or reimbursements for medical care {as defined in Code section 213(d)(1)}.

(c) Medical care payments shall only be paid pursuant to a reimbursement application.

(d) No refunds of contributions shall be made. All contributions remain in the 401(h) account until used for medical care payments.

(e) Reimbursements may not be made for any expense for which the retired Participant or his or her spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.

(f) In order to receive benefits from the 401(h) account, the retired Participant must agree to provide appropriate documentation of the MEDICAL CARE expenditure.

(D) Transfers Between Qualified Plans:

(1) In General. The trustee and the plan custodian, upon their mutual agreement, are authorized to receive and add to the interest of any Participant the Participant's vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this Plan and Trust, concerning employer contributions. The trustee is also authorized, at the direction of the plan custodian and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer ~~satisfied~~ SATISFIES the requirements under law for such transfers.

(2) For Distributions Made On or After January 1, 1993. Notwithstanding any provision of the ~~p~~Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) For Distributions Made After December 31, 2001. An eligible retirement plan, AS DEFINED IN SUBSECTION (4) BELOW, shall also mean an annuity contract described in CODE section 403(b) ~~of the code~~ and an eligible plan under CODE section 457(b) ~~of the code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in CODE section 414(p) ~~of the code~~. The Plan shall be permitted to accept rollovers from any type of eligible retirement plan except to the extent limited in THIS Section 14-2-7.

(4) Definitions.

(a) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (I) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or

joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (II) any distribution to the extent such distribution is required under CODE section 401(a)(9) ~~of the code~~; (III) any hardship distribution as described in CODE section 401(k)(2)(b)(I)(iv) ~~of the code~~ (applicable only to distributions after December 31, 1999); and (IV) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in CODE section 408(a) or (b) ~~of the code~~, or to a qualified defined contribution plan described in CODE section 401(a) or 403(a) ~~of the code~~ that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. The Plan shall ~~not~~ accept a rollover of after-tax employee contributions ~~unless specifically elected in the adoption agreement or a supplement thereto.~~

(b) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in CODE section 408(a) ~~of the code~~, an individual retirement annuity described in CODE section 408(b) ~~of the code~~, an annuity plan described in CODE section 403(a) ~~of the code~~, or a qualified trust described in CODE section 401(a) ~~of the code~~, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in CODE section 414(p) ~~of the code~~, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(E) Withdrawals While Employed: A Participant who has attained age sixty-two (62) may elect to begin distributions from the Trust Fund according to the rules described in ~~the~~ THIS Section 14-1-7 if the Participant's current annual base salary at the time of election is at least twenty-five percent (25%) less than the Participant's highest annual base salary.

(F) Required Distribution Commencement Date: Distribution of a Participant's interest IN THE PLAN must begin no later than the April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one half (70 1/2) or the year the Participant retires.

(G) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof.

(2) Qualified Domestic Relations Order: Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or alternate payee pursuant to a qualified domestic relations order setting forth the agreement of the parties with respect to the division of benefits pursuant to Colorado Revised Statutes, Section 14-10-113. A lump sum distribution will be made pursuant to such an order within one hundred and twenty (120) days

after the date on which a certified court order approving such an agreement permitting such a distribution has been submitted to and received by the Board.

The Board shall establish such reasonable procedures as are necessary to determine the compliance of a domestic relations order with the requirements of Colorado Revised Statutes, Section 14-10-113 and to administer distributions under such qualified orders. Such procedures may be at the discretion of the Board, including standardized forms to be used for such marital agreements and orders. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall ~~not~~ have NO rights to vote in elections held pursuant to this Plan.

(H) Manner of Distribution: A Participant's interest IN THE PLAN may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary by the distribution of the total balance of his PLAN account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. ~~The~~ THIS maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six (6) months.

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) Limitation on Duration of Payments:

(1) No distribution shall be made over a period exceeding the joint life expectancy of the Participant and his beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this Subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

(2) Notwithstanding anything in ~~the~~ THIS Chapter to the contrary, all distributions from the plan shall conform to the final regulations issued under ~~Internal Revenue~~ Code Section 401(A)(9), including the incidental death benefit provisions of ~~Internal Revenue~~ Code Section 401(A)(9)(G).

(J) Withdrawals: EXCEPT AS PROVIDED IN SECTION 14-1-7(E), A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

(K) Special Rules for Distributions after the Participant's Death:

(1) Distributions Commencing Prior to Death: If distribution of a Participant's interest IN THE PLAN has commenced prior to the Participant's death in accordance with Subsection (I) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death: If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries: If a Participant should die after receiving some part, but not all, of his PLAN account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this Subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this Subsection to the recipient determined pursuant to Section 14-1-6.

(4) Distribution to IRA of Nonspouse Beneficiary: A Participant's nonspouse beneficiary may elect payment of ~~any~~ THE portion of the deceased Participant's account TO WHICH HE IS ENTITLED in a direct trustee to trustee transfer to an individual retirement account or annuity described in CODE Section 402(C)(8)(B)(I) or (II) ~~of the code~~ that is established to receive the plan distribution on behalf of the beneficiary. For purposes of this Section, a trust maintained for the benefit of one or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date as defined in Section 14-1-7(F), the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of CODE Section 402(C)(11) ~~of this Code~~ apply to distributions under this Section.

(L) Payment for Qualified Health Insurance Premiums: A Participant who has separated from service as a public safety officer with the City due to disability for attainment of normal retirement age, AS DEFINED IN SECTION 14-1-6(a), may elect to have amounts not yet paid from the plan paid directly to a provider of an accident or health insurance plan or a qualified long term insurance contract to cover the cost of up to \$3,000 per year of "qualified health insurance premiums" for the Participant and the Participant's spouse and dependents, in accordance with CODE Section 402(L) ~~of the code~~. The requirements of CODE Section 402(L) ~~of the code~~ apply to payments under this Section.

Section 8. Section 14-1-8, subsection (A)(3), W.M.C., is hereby AMENDED to read as follows:

#### **14-1-8: INSURANCE COMPANY CONTRACTS:**

(A) Insurance or Annuity Contracts:

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the

Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) After December 31, 1996, the City shall not purchase any NEW group insurance or annuity contracts for pension Participants.

Section 9. Section 14-1-9, subsections (A), (B), (D), and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-9: POLICE PENSION BOARD:**

(A) Appointment of Board:

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants, elected by a majority of the voting Participants. One of the three elected members ~~must~~ SHALL be an unclassified employee as defined in the CITY'S Personnel Rules and Regulations. The trustee shall serve as Chairperson of the Board.

(2) The three (3) MEMBERS to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the trustee. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, TO SUPPLY OMISSIONS AND TO RESOLVE INCONSISTENCIES AND AMBIGUITIES ARISING UNDER THE PLAN. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon IT in this Chapter. The Board may employ for the Trust Fund an ~~Investment Advisor~~ "INVESTMENT ADVISOR" and may rely on such INVESTMENT Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such INVESTMENT Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such INVESTMENT Advisor or for any acts or omissions made upon the direction or recommendation of such INVESTMENT Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investments offered, the Board shall provide the opportunity to Participants to make options as to investments. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may remove or phase out an investment option if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board,

the plan administrator nor the City shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment optionS.

(D) Matters Affecting Board Members: In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote AS A MEMBER OF THE BOARD in the determination of such matter ~~as a member of the Board~~, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(F) Records of the Board: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all PLAN benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-1-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

Section 10. Section 14-1-10, subsections (D)(2) and (G)(4), W.M.C., are hereby AMENDED to read as follows:

#### **14-1-10: POWERS AND DUTIES OF THE TRUSTEE:**

(D) Advice of Board or Counsel:

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and THE TRUSTEE shall be fully protected from any responsibility with respect to any action taken or omitted by ~~them~~ THE TRUSTEE in good faith pursuant to the advice of such counsel.

(G) Resignation and Removal of Trustee: The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate CO-Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

Section 11. Section 14-1-11, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-1-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN: (2464)**

(C) Distribution of Trust Fund on Termination of Plan. If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright, IN A LUMP SUM CASH PAYMENT, his entire interest in the Trust Fund.

(D) Amendments to THE Plan.

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

- (a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;
- (b) Decrease any Participant's share of this Plan;
- (c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees; or
- (d) Fail to comply with State statutes for voting for Police Pension Plans.

(2) Notwithstanding anything herein to the contrary, ~~however~~, this Chapter may be amended, if necessary, without requiring the approval of the plan Participants to conform to the provisions and requirements of the ~~Federal Internal Revenue~~ Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

Section 12. Section 14-1-12, subsections (A), (B) and (F), W.M.C., are hereby AMENDED to read as follows:

**14-1-12: MISCELLANEOUS: (2464 3319)**

(A) Benefits to be Provided Solely from the Trust Fund. All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility ~~therefor~~ THEREFOR.

(B) Notices from Participants to be Filed with Plan Administrator, THE BOARD OR THE TRUSTEE. Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice ~~therefor~~ THEREFOR signed by the Participant on a form furnished by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS MAY BE APPLICABLE, for such purpose and filed with the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE, which shall not be effective until received by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE.

(F) Plan for Exclusive Benefit of Participants; Reversion Prohibited. This Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributeD to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

Section 13. Section 14-2-1, subsections (A), (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-2-1: NAME AND PURPOSE OF PLAN; HISTORY:** (2464 3319)

(A) The City of Westminster (THE "CITY" OR THE "EMPLOYER") does hereby establish its General Employee Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as Participants and their Beneficiaries. The Plan is intended to qualify under CODE Section 401(a) ~~of the Federal Internal Revenue Code~~ and the Trust created pursuant to the Plan is intended to be exempt under CODE Section 501(a) ~~of such Code~~ and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the ~~Federal Internal Revenue Code~~ after the enactment of the Employee Retirement Income Security Act of ~~1984~~ 1974, except to the extent that changes to the Code apply to governmental plans.

(C) Prior Coverage Under Other City Funded Pension Plans. Any employee who was formerly a Participant in the Employee's Pension Plan and Trust Agreement or the Police and Fire Pension Plan shall automatically have his interest in such plan, whether held by investment agents, the trustee, or the City, transferred to this Plan upon becoming eligible to be a Participant in this Plan. Upon transfer of the employee's interest without a break in municipal service, the employee ~~has~~ SHALL HAVE the same Participant status as the employee ~~has~~ HAD under the other plan.

(D) On September 1, 2004, the City transferred the assets of the Firefighter's Pension Plan to the Fire and Police Pension Association of Colorado defined benefit system and the Firefighter's Pension Plan was terminated. Participants in the Firefighter's Pension Plan became Participants in the FPPA defined benefit system. Assets in the retirement medical savings account (RMSA) in the Firefighter's Pension Plan were transferred to the General Employee's Pension Plan for use as defined in Section ~~14-2-7(e)(4)~~ ~~of this Plan~~ 14-2-7(C)(4).

Section 14. Section 14-2-2, subsections (C), (E), (G), (K), and (R), W.M.C., are hereby AMENDED to read as follows:

**14-2-2: DEFINITIONS:** (2464 3319) When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural.

(C) "CITY" The City of Westminster, Colorado. THE CITY MAY ALSO BE REFERENCED IN THIS PLAN AS THE "EMPLOYER."

(E) "COMPENSATION" The base pay of a Participant for services rendered to the City, excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan or a salary reduction plan or pre-tax medical plan. Compensation for part-time employees is the pay earned for the amount of full time equivalents (FTE's) budgeted for their positions. FOR PURPOSES OF DETERMINING THE COMPENSATION APPLICABLE TO THE LIMITATIONS ON ANNUAL CONTRIBUTIONS IN SECTION 14-2-5, COMPENSATION SHALL BE AS DEFINED IN SECTION 14-2-5(B)(5).



(G) "EMPLOYEE" Any person who fills ~~an~~ A CITY-authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers ~~as defined in this Chapter~~, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(K) "PARTICIPANT" Any contributing PARTICIPANT or inactive Participant.

(R) "TRUST FUND" The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the TRUST fund and all increases in fair market value.

Section 15. Section 14-2-3, subsections (A)(2), (A)(3), (A)(4) and (B)(2), W.M.C., are hereby AMENDED to read as follows:

**14-2-3: PARTICIPATION OF EMPLOYEES: (2464 3319)**

(A) Participants.

(1) Contributing Participant. Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant. No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive ~~employer~~ CITY contributions on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay Period of Contribution. The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment BY THE CITY shall terminate for any reason unless such Participant is employed BY THE CITY on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of OR earnings on his undistributed interest in the Plan, after termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service. For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this WESTMINSTER MUNICIPAL Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) calendar months of service with the City and has attained the age of eighteen (18), provided such employee is still employed AS AN EMPLOYEE on such date and has not severed his employment (as provided in subsection (d) of this Section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended pursuant to Section 1-24-10~~(v)~~(V) of this Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment WITH THE CITY shall be considered as a break in continuity of service; subsequent re-employment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this Section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment WITH THE CITY or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

Section 16. Section 14-2-4, subsections (A)(1), (B)(1)(b), (B)(1)(c), (C), (D)(1), and (E), W.M.C., are hereby AMENDED to read as follows:

**14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS** (2464 3319 3360)

(A) Contributions by the City.

(1) Determination of Contribution by the City. On ~~or~~ AND after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's compensation for that pay period, provided that during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to this Plan for each Participant shall be offset by the amount of the old age survivors and disability insurance ("OASDI") portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and Method of Payment of Contribution by the City. The contributions of the City shall be made every pay period and shall be credited to the Plan each pay period.

(B) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions.

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods commencing January 1, 1997, eight percent (8%) and for the pay periods commencing January 1, 1998, and thereafter, ten percent (10%) or the percentage at least equal to the OASDI Tax Rate. During any period in which the contributing Participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this Plan by each contributing Participant shall be offset by the OASDI taxes paid by the Participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this plan for a Participant to less than two percent (2%) of that contributing Participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as employer, as provided in CODE Section 414(h) ~~of the Internal Revenue Service Code~~ and the Participant's gross income shall be reduced by the amount of the contributionS picked up by the City.

(c) Each Participant, as a condition to his employment WITH THE CITY, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the plan custodian, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions.

(a) Subject to the provisions of Section 14-2-5(B) each Contributing Participant may elect to contribute to the Trust Fund an amount that when combined with the mandatory contributions required in paragraph (1) of this Subsection does not exceed the amount described in Section 14-2-5(B)(1).

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund must be contributed through payroll deductions. A Contributing Participant may have the option of increasing, decreasing, or terminating his voluntary contribution at any time. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-2-12(A) ~~of this Code~~, shall not be considered voluntary contributions.

(3) Payment of Participant Contributions. The contributions of the employee shall be withheld every pay period and shall be credited to the Plan each pay period.

(C) Retirement Medical Savings AccountS.

(1) Each Participant shall have the option of designating up to TWENTY-FIVE PERCENT (25%) of his or her combined mandatory and City contributionS to be used for future medical expenses as provided for in CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~. Contributions to the medical savings accountS will not be taxed at separation from service nor upon use for medical ~~purposes~~ EXPENSES after separation from service. The retirement medical savings accounts will be subject to the rules and requirements issued by the City Manager.

(2) Contributions designated for future health ~~costs~~ BENEFITS under CODE Section 401(h) ~~of the Federal Internal Revenue Service Code~~ as described in Subsection C(1) of this Section shall be maintained in separate accounts.

(D) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the CITY'S employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

(E) Contributions for Periods of Qualified Military Service. The employer shall make all contributions to the Plan required by CODE Section 414(u) ~~of the Code~~ which are attributable to periods of qualified military service. In addition, the employer shall allow any Participant to make ~~elective~~ MANDATORY EMPLOYEE CONTRIBUTIONS AND VOLUNTARY contributions for periods of qualified military service ~~and the employer shall make any matching contributions based upon such contributions at the rate at which such elective contributions of the employee would have been made during the applicable period of qualified military service, each~~ as required by CODE Section 414(u) ~~of the Code~~. The employer may elect to make additional contributions based upon such qualified military service based upon employer contributions made during the applicable period, provided such election by the employer is made on a non-discriminatory basis applicable to all similarly situated employees who have qualified military service. Any contributions made under this Subsection shall be subject to the provisions of Section 414(u) of the Code and the provisions of this Plan shall be applied considering any such contributions as having been made during the plan year to which the contributions relate. For the purposes of this Section, "qualified military service" means service in the uniformed services of the United States (as defined in Chapter 43 of Title 38 OF THE United States Code) by any individual if such individual is entitled to re-employment rights with respect to such service.

Section 17. Section 14-2-5, subsections (B)(1), (B)(2), (B)(5) and (H), W.M.C., are hereby AMENDED to read as follows:

**14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS: (2464 3319)**

(B) Limitations on Allocations.

(1) General Rule. In no event may a Participant receive an allocation for any PLAN year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of one hundred percent (100%) of his or her compensation for such year or \$40,000, provided such figure shall be adjusted as provided in Code Section 415(d). For limitation years beginning before January 1, 2002, the foregoing percentage limitation is 25% and the foregoing dollar limitation is \$30,000, as adjusted pursuant to Code Section 415(d). For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this Subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations. For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and non-deductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the non-deductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. Except that, for the plan years beginning on or after January 1, 1994, allocations may not be based on compensation in excess of the annual limitation of \$150,000-00, subject to adjustment as provided for by law or regulation, for the account of any individual Participant. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts. Any amount not mentioned in paragraph (2) of this Subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess. In the event an allocation would otherwise exceed the limitations of this Section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this Section.

If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this Plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the employer.

(5) Compensation. For the purposes of applying the limitations of this Subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, provided that for limitation years beginning after December 31, 1997, compensation for the purposes of this Section shall not be reduced by voluntary salary deferrals or reductions for a Participant under a plan established under ~~Federal Internal Revenue Service~~ Code Sections 125, 132(f)(4), 402(g)(3), 457, 401(k), or 403(b). The ~~annual compensation~~ “ANNUAL COMPENSATION” of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed ~~two hundred thousand dollars~~ (\$200,000), as adjusted for cost-of-living increases in accordance with CODE Section 401(a)(17)(b) ~~of the Code~~. For LIMITATION years beginning prior to January 1, 2002, the dollar amount in the foregoing sentence is ~~one hundred fifty thousand dollars~~ (\$150,000). ~~Annual compensation~~ “ANNUAL COMPENSATION” means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(H) Investment of Participant’s Account. A Participant’s account shall be invested in the investment options in accordance with the investment elections specified by the Participant. A Participant may change the investment of contributions and may reallocate amounts in ~~their~~ HIS account among the investment options in a manner determined by the plan custodian and subject to such provisions as the plan administrator may adopt. Allocation of assets among investment options is solely the responsibility of each Participant. The fact that an investment option is available for investment to Participants under the Plan shall not be construed as a recommendation for investment in that investment option.

Section 18. Section 14-2-6, subsections (A)(1), (B)(1) and (B)(2), W.M.C., are hereby AMENDED to read as follows:

**14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY: (2464 3319 3390)**

(A) Retirement Date.

(1) Normal retirement. The normal retirement age for each Participant shall be AGE sixty (60); and, on the last day of the month in which ~~his sixtieth birthday occurs~~ HE ATTAINS HIS NORMAL RETIREMENT AGE, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may voluntarily retire. Until actual retirement, a contributing Participant shall continue to participate in the Plan.

(B) Beneficiaries.

(1) Designation of Beneficiaries. Each Participant shall have the right to designate ~~a Beneficiary~~ ONE or MORE Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation. ANY BENEFICIARY DESIGNATION SHALL BE EFFECTIVE WHEN RECEIVED BY THE BOARD.

(2) Determination of a Beneficiary when there is no designated Beneficiary. If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to ~~his~~ THE PARTICIPANT'S surviving spouse, if any; or, if none, then to the personal representative of ~~his~~ THE PARTICIPANT'S estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after ~~his~~ THE PARTICIPANT'S death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of his death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies. The Beneficiary of any insurance on a Participant's life shall be determined and designated as provided in Section 14-2-8(A).

Section 19. Section 14-2-7, subsections (A) through (D), (F), and (H) through (K), W.M.C., are hereby AMENDED to read as follows:

**14-2-7: DISTRIBUTION FROM TRUST FUND (2464 3319 3390)**

(A) When Interests Become Distributable and Effect Thereof. When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest IN THE PLAN shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to THE Board. For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests.

(1) Insurance. If there has been an investment in life insurance for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance by informing the Board of his election. If said election is not exercised within thirty (30) days after the PARTICIPANT'S termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments UNDER THE PLAN.

(2) Election to Defer Benefits. A Participant may elect to defer the commencement of distribution of his or her benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this Section. No election to change the method of payment may be made more than once every six months once payments have commenced.

(3) Distribution of ~~Contributions~~ PARTICIPANT'S ACCOUNTS. Any other provision of this Subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board.

(4) Benefits payable from the 401(h) account.

(a) Benefits are payable from the retirement medical savings account only upon retirement, separation of service, death or total disability.

(b) Benefits payable from a 401(h) account shall include only payments or reimbursements for medical care [as defined in Code Section 213(d)(1)].

- (c) Medical care payments shall only be paid pursuant to a reimbursement application.
- (d) No refunds of contributions shall be made. All contributions remain in the 401(h) account until used for medical care payments.
- (e) Reimbursements may not be made for any expense for which the retired Participant or his or her spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.
- (f) In order to receive benefits from the 401(h) account, the retired Participant must agree to provide appropriate documentation of the MEDICAL CARE expenditure.

(D) Transfers Between Qualified Plans.

(1) In General. The trustee and the plan custodian, upon their mutual agreement, are authorized to receive and add to the interest of any Participant the Participant's vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event, the assets so received shall be fully vested and shall be held in a separate account and shall be administered and distributed pursuant to the provisions of this Plan and trust concerning employer contributions. The trustee is also authorized, at the direction of the plan custodian and at the request of the Participant, to transfer such Participant's vested interest which has become distributable under Subsection (A) hereof, directly to another qualified plan or an individual retirement account for the benefit of such Participant, provided such transfer satisfies the requirements under law for such transfers.

(2) For Distributions Made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) For Distributions Made after December 31, 2001. An eligible retirement plan, AS DEFINED IN SUBSECTION 4, BELOW, shall also mean an annuity contract described in CODE Section 403(b) ~~of the Code~~ and an eligible plan under CODE Section 457(b) ~~of the Code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in CODE Section 414(p) ~~of the Code~~. The Plan shall be permitted to accept rollovers from any type of eligible retirement plan except to the extent limited in THIS Section 14-2-7.

(4) Definitions.

(a) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (I) any distribution that is one of a series of substantially equal period payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (II) any distribution to the extent such distribution is required under CODE Section 401(a)(9) ~~of the Code~~; (III) any hardship distribution as described in CODE Section 401(k)(2)(b)(I)(iv) ~~of the Code~~ (applicable only to distributions after December 31, 1999); and (IV) the portion of any distribution that is not ~~included~~ INCLUDABLE in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not ~~included~~ INCLUDABLE in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in CODE Section 408(a) or (b) ~~of the Code~~, or to a qualified defined contribution plan described in CODE Section 401(a) or 403(a) ~~of the Code~~ that agrees to separately account for amounts so transferred,

including separately accounting for the portion of such distribution which is ~~includible~~ INCLUDABLE in gross income and the portion of such distribution which is not so ~~includible~~ INCLUDABLE. The Plan shall ~~not~~ accept a rollover of after-tax employee contributions ~~unless specifically elected in the adoption agreement or a supplement thereto.~~

(b) Eligible Retirement Plan. An eligible retirement plan is an individual retirement account described in CODE Section 408(a) ~~of the Code~~, an individual retirement annuity described in CODE Section 408(b) ~~of the Code~~, an annuity plan described in CODE Section 403(a) ~~of the Code~~, or a qualified trust described in CODE Section 401(a) ~~of the Code~~, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in CODE Section 414(p) ~~of the Code~~, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(F) Required Distribution Commencement Date. Distribution of a Participant's interest IN THE PLAN must begin no later than the April 1 of the calendar year following the later of the year the Participant attains the age of seventy and one half (70 1/2) or the year the Participant retires.

(H) Manner of Distribution. A Participant's interest IN THE PLAN may be distributed by one or more of the following methods:

(1) Lump Sum Distribution. The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary by the distribution of the total balance of his PLAN account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments. The Participant's interest IN THE PLAN may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed the joint life expectancy of the Participant and his beneficiary (or until the account is exhausted) and not in installment frequency greater than monthly. This maximum period shall be determined under the applicable IRS Tables at the time the initial monthly installment payment becomes payable. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. In no instance shall any changes in this type of distribution be allowed more than once every six months.

(3) Other Methods. Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(I) Limitation on Duration of Payments.

(1) No distribution shall be made over a period exceeding the joint life expectancy of the Participant and his beneficiary. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this Subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.



(2) Notwithstanding anything in this Chapter to the contrary, all distributions from the Plan shall conform to the final regulations issued under ~~Internal Revenue~~ Code Section 401(A)(9), including the incidental death benefit provisions of ~~Internal Revenue~~ Code Section 401(A)(9)(G).

(J) Withdrawals. EXCEPT AS PROVIDED IN SECTION 14-2-7(E), A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

(K) Special Rules for Distributions after the Participant's Death.

(1) Distributions Commencing Prior to Death. If distribution of a Participant's interest IN THE PLAN has commenced prior to the Participant's death in accordance with subsection (I) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death. If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries. If a Participant should die after receiving some part, but not all, of his PLAN account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this Subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this Subsection to the recipient determined pursuant to Section 14-2-6.

(4) Distribution to IRA of Nonspouse Beneficiary: A Participant's nonspouse beneficiary may elect payment of ~~any~~ THE portion of the deceased Participant's account TO WHICH HE IS ENTITLED in a direct trustee to trustee transfer to an individual retirement account or annuity described in CODE Section 402(C)(8)(B)(I) or (II) ~~of the code~~ that is established to receive the Plan distribution on behalf of the beneficiary ~~on behalf of the beneficiary~~. For purposes of this Section, a trust maintained for the benefit of one or more designated beneficiaries may be the beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's required beginning date as defined in Section 14-2-7(F), the required minimum distribution in the year of death may not be transferred according to this Section. The requirements of CODE Section 402(C)(11) ~~of the code~~ apply to distributions under this Section.

Section 20. Section 14-2-8, subsection (A)(3), W.M.C., is hereby AMENDED to read as follows:

**14-2-8: INSURANCE COMPANY CONTRACTS: (2464)**

(A) Insurance or Annuity Contracts.

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from

time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) After December 31, 1996, the City shall not purchase any new group insurance OR ANNUITY contracts ~~or annuities~~ for pension Participants.

Section 21. Section 14-2-9, subsections (A), (B)(1), (D), and (F), W.M.C., are hereby AMENDED to read as follows:

**14-2-9: GENERAL EMPLOYEE PENSION BOARD: (2464 3199)**

(A) Appointment of Board.

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants elected by a majority of the voting Participants. One of the three elected members shall be an unclassified employee as defined in the CITY'S Personnel Rules and Regulations. In no case shall more than one elected member be from the same department. The trustee shall serve as Chairperson of the Board.

(2) The three (3) MEMBERS to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the trustee. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board. The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution, TO SUPPLY OMISSIONS AND TO RESOLVE INCONSISTENCIES AND AMBIGUITIES ARISING UNDER THE PLAN. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon it in this Chapter. The Board may employ for the Trust Fund an ~~Investment Advisor~~ "INVESTMENT ADVISOR" and may rely on such INVESTMENT Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such INVESTMENT Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such INVESTMENT Advisor or for any acts or omissions made upon the direction or recommendation of such INVESTMENT Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of their interest in the Trust Fund in forms of investmentS offered, the Board shall provide the opportunity to Participants to make options as to investmentS. The Board shall adopt various investment options for the investment of contributions by the Participant and shall monitor and evaluate the appropriateness of the investment options offered by the Plan. The Board may

remove or phase out an investment option if the investment option has failed to meet the established evaluation criteria or for other good cause as determined by the Board. Neither the Trustee, the Board, the plan administrator nor the City shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment optionS.

(D) Matters Affecting Board Members. In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote AS A MEMBER OF THE BOARD in the determination of such matter ~~as a member of the Board~~, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(F) Records of the Board. The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all PLAN benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-2-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

Section 22. Section 14-2-10, subsections (D)(2) and (G)(4), W.M.C., are hereby AMENDED to read as follows:

**14-2-10: POWERS AND DUTIES OF THE TRUSTEE: (2464 3199)**

(D) Advice of Board or Counsel.

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and THE TRUSTEE shall be fully protected from any responsibility with respect to any action taken or omitted by ~~them~~ THE TRUSTEE in good faith pursuant to the advice of such counsel.

(G) Resignation and Removal of Trustee. The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-Trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate CO-Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

Section 23. Section 14-2-11, subsections (C) and (D), W.M.C., are hereby AMENDED to read as follows:

**14-2-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN (2464)**

(C) Distribution of Trust Fund on Termination of Plan. If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright, IN A LUMP SUM CASH PAYMENT, his entire interest in the Trust Fund.

(D) Amendments to the Plan.

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

- (a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;
- (b) Decrease ~~the~~ ANY Participant's share of this Plan; or
- (c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(2) Notwithstanding anything herein to the contrary, ~~however~~, this Chapter may be amended, if necessary, without requiring the approval of the plan Participants to conform to the provisions and requirements of the ~~Federal Internal Revenue Code~~ or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

Section 24. Section 14-2-12, subsections (A) and (B), W.M.C., are hereby AMENDED to read as follows:

**14-2-12: MISCELLANEOUS (2464 3319)**

(A) Benefits to be Provided Solely from the Trust Fund. All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility ~~therefore~~ THEREFOR.

(B) Notices from Participants to be Filed with Plan Administrator, THE BOARD OR THE TRUSTEE. Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice ~~therefore~~ THEREFOR signed by the Participant on a form furnished by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS MAY BE APPLICABLE, for such purpose and filed with the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE, which shall not be effective until received by the Plan Administrator, THE BOARD OR THE TRUSTEE, AS APPLICABLE.

Section 25. The City Clerk is hereby authorized to make all necessary changes to Chapters 1 and 2 of Title 14, W.M.C., in order to neutralize any gender specific references therein.

Section 26. This ordinance shall take effect upon its passage after second reading.

Section 27. 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 8th day of December, 2008.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22<sup>nd</sup> day of December, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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

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