



CITY COUNCIL AGENDA

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

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

1. Pledge of Allegiance
2. Roll Call
3. Consideration of Minutes of Preceding Meetings
4. Report of City Officials
 - A. City Manager's Report
5. City Council Comments
6. Presentations
 - A. Turfgrass Manager of the Year Award
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. Computer Aided Dispatch and Records Management System Upgrade
 - B. Transfer of General Capital Improvement Funds to WEDA
 - C. City Park Maintenance Facility On-Site Fuel Dispensing System Contract Award
 - D. Standley Lake Water Quality Cost Sharing IGA
 - E. IGA with UDFCD re Little Dry Creek Bank Stabilization and Utility Protection Project
 - F. 2006 Wastewater Collection System Maintenance Contract Renewal
 - G. Construction Contract for Gregory Hill Tanks – Repair and Modification
9. Appointments and Resignations
10. Public Hearings and Other New Business
 - A. Resolution No. 53 re National Incident Management System
 - B. Resolution No. 54 re Service Commitment Allocations
 - C. Resolution No. 55 re Energy Performance and Financing Contracts – Lease-Purchase Agreement
 - D. Councillor's Bill No. 71 re Energy Performance and Financing Contracts – Appropriating Lease Proceeds
 - E. Energy Performance and Financing Contract with Siemens Building Technologies
11. Old Business and Passage of Ordinances on Second Reading
 - A. TABLED Second Reading CB No. 46 re Cellular Tower Leases for Countryside Recreation Center and the Hydropillar
12. Citizen Presentations (longer than 5 minutes) and Miscellaneous Business
 - A. City Council
 - B. Executive Session
 1. Business Assistance Package
 2. Discussion re Sale of Land (verbal)
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, DECEMBER 12, 2005 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major and Price were present at roll call. J. Brent McFall, City Manager, Jane Greenfield, Assistant City Attorney, and Carla Koeltzow, City Clerk, also were present.

CONSIDERATION OF MINUTES

Councillor Major moved, seconded by Dittman, to approve the minutes of the regular meeting of November 28, 2005. The motion passed unanimously.

CITY MANAGER COMMENTS

Mr. McFall recognized the City employees present, who were attending as part of the Westminster 303 training class. He reminded everyone that the next council meeting would be December 19th and not December 26th due to the Christmas holiday. He also reported that due to the cold weather last week, a water line broke in the pro shop at the Heritage Golf Course. The pro shop is closed due to water damage but nine holes of the golf course are still open.

Mr. McFall also advised that following this meeting, two executive sessions would be held—one session to address a business assistance package and one to discuss a land sale.

CITY COUNCIL COMMENTS

Councillor Dittman also recognized the City employees present as part of the City's training program.

Mayor Pro Tem Kauffman reported that he attended the Hyland Hills Recreation District's 50th anniversary event. He recognized the district for their great work and partnership with the City. He also attended the ground breaking for the Woodrow Wilson Charter School in Jefferson County.

Councillor Major commented that the City, Hyland Hills Recreation District and various school districts within the City, also have a good working partnership. He reported that he attended the National League of Cities conference in Charlotte. After listening to problems that other cities are dealing with, he came away with even a greater appreciation for the great City we live in and for the City's great Staff.

Councillor Kaiser again recognized the City employees present.

PRESENTATION

Park Crewleader Eric Pollock was presented with the Turfgrass Professional of the Year Award by Jim Mueller, a member of the Rocky Mountain Turfgrass Association's Board of Directors. Mr. Pollock commented that he was honored to receive the award and would share it with his staff.

CONSENT AGENDA

The following items were submitted for Council's consideration on the consent agenda: authorize the payment of \$63,000 to Intergraph Public Safety for software, services and training provided to the City of Westminster Police and Fire Departments for a Computer Aided Dispatch and Records Management System software upgrade; authorize the transfer of project savings totaling \$3,146,335 from the General Capital Improvement Fund Huron Street 129th/144th to Westminster Economic Development Authority (WEDA) to be used by WEDA for expenses incurred as part of the development of the North I-25 corridor that are not reimbursable expenses from WEDA bond proceeds; based on the report and recommendation of the City Manger, determine that the public interest will be best served by awarding a \$78,565 contract to Weston Solutions, Inc., to install an above-ground fuel dispensing system at the City Park Maintenance Facility, and authorize a project contingency of \$7,856; authorize the Mayor to sign an Intergovernmental Agreement with the Cities of Northglenn and Thornton for sharing of costs related to Standley Lake and Clear Creek water quality issues; authorize the City Manager to sign an Intergovernmental Agreement with the Urban Drainage and Flood Control District for the design and construction of a bank stabilization and utility protection project on Little Dry Creek upstream of Federal Boulevard; authorize the City Manager to execute a renewal of the current Wastewater Collection System Maintenance Contract for the 2006 calendar year in the amount of \$544,129 with a 10% contingency budget, bringing the total budget to \$598,541; authorize the City Manager to execute a contract with Superior Industrial Maintenance Co., Inc. in the amount of \$449,148 for completing all water tank rehabilitation work, and a contingency in the amount of \$51,917 for a total construction budget of \$501,065 and in addition, authorize a transfer of \$103,727 from the Water Capital Project Reserve Fund to the Gregory Hill Water Tank project account increasing the total project budget to \$571,711.

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

It was moved by Councillor Lindsey and seconded by Councillor Price to adopt the consent agenda as presented. The motion passed unanimously.

RESOLUTION NO. 53 RE NATIONAL INCIDENT MANAGEMENT SYSTEM

Councillor Price moved, seconded by Major to adopt Resolution No. 53 formally adopting the National Incident Management System (NIMS) as the standard for incident management in the City of Westminster. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 54 RE SERVICE COMMITMENT ALLOCATIONS

Mayor Pro Tem Kauffman moved, seconded by Dittman to adopt Resolution No. 54 allocating Service Commitments for the year 2006 to the various categories of the Growth Management Program including Service Commitments for residential competitions for new single-family detached, single-family attached, multi-family, senior housing, and traditional mixed use neighborhood developments. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 55 RE ENERGY PERFORMANCE AND FINANCING CONTRACTS

Councillor Dittman moved, seconded by Major to adopt Resolution No. 55 authorizing the City to enter into a lease-purchase agreement for the implementation of the energy performance contract for \$2,262,993, plus approximately \$592,723 in financing cost, to fund the energy and water savings conservation projects with All American Investment Group (AAIG), LLC, and authorizing the City Manager to sign the contract and all necessary documents. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 71 RE ENERGY PERFORMANCE AND FINANCING CONTRACTS

Councillor Dittman moved, seconded by Major to pass Councillor's Bill No. 71 as an emergency ordinance appropriating lease proceeds, including \$29,160 in interest earnings, for a total of \$2,292,153 in the General Fund for the energy performance contract lease proceeds. Upon roll call vote, the motion carried unanimously.

ENERGY PERFORMANCE AND FINANCING CONTRACT WITH SIEMENS BUILDING TECHNOLOGIES

Councillor Dittman moved, seconded by Major to authorize the City Manager to sign all necessary documents to enter into an energy performance contract with Siemens Building Technologies for energy and water conservation and other related improvements in City facilities and authorize the transfer of \$19,500 from the City Hall HVAC project savings, \$20,000 from the City Hall Space Allocation/Remodel project savings, and \$103,856 from the BO&M Major Maintenance project for work originally planned for 2006 that is addressed by the energy performance contract for a total increase of \$143,356 to the HVAC/Energy Audit project in the 2006 General Capital Improvement Fund. The motion carried unanimously.

ADJOURNMENT:

The meeting adjourned at 7:20 p.m.

ATTEST:

Mayor

City Clerk



Agenda Item 6 A

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Presentation of the Turfgrass Manager of the Year Award to Eric Pollock

Prepared By: Richard Dahl, Park Services Manager

Recommended City Council Action

Presentation of the Rocky Mountain Turfgrass Association's Turfgrass Professional of the Year Award to Park Crewleader Eric Pollock by Jim Mueller, a member of the Rocky Mountain Turfgrass Board of Directors.

Summary Statement

- The Rocky Mountain Turfgrass Association has awarded its Turfgrass Professional of the Year Award each year since 1983.
- This award is given to an individual who has made an outstanding contribution to the turfgrass industry. The qualifications include:
 - Nominee must be actively involved in the turfgrass industry
 - Nominee must have served in the industry for a minimum of five years
 - Individual must be of the utmost integrity professionally
 - Individual who has made the turfgrass industry better by being involved
 - Individual is a true leader in the industry
 - Nomination must be based on accomplishments within the past 18 months
- Eric Pollock's areas of responsibility for the City of Westminster include City Park, Christopher Fields, the Colorado Rapids training field and youth soccer complex, and several of the City's outlying athletic field park sites. Eric has done an outstanding job for the City over the years and has gained a reputation for the excellent year-round condition of our athletic fields. Eric's reputation has now become recognized throughout the Rocky Mountain region.
- Eric was named Turfgrass Professional of the Year at the Rocky Mountain Regional Turfgrass Association annual conference held December 7, 2005.
- Mayor Nancy McNally will present the award.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

None identified.

Alternative

None identified.

Background Information

Eric Pollock has spent his ten-year career as an employee with the Parks, Recreation and Libraries Department in charge of the City Park athletic field complex. Through his effort, professionalism, knowledge and dedication, Westminster City Park has gained a reputation as one of the best maintained sports fields in Colorado and was even awarded Soccer Field of the Year by the National Sports Turf Managers Association in 1999 and featured on the cover of their monthly magazine.

Eric's nomination as Turfgrass Professional of the Year keeps him in good company with previous winners who have represented Invesco Field (Broncos), the University of Colorado football stadium and Coors Field.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Item 8 A

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Computer Aided Dispatch and Records Management System Upgrade

Prepared By: Carol Workman, Senior Management Analyst

Recommended City Council Action

Authorize the payment of \$63,000 to Intergraph Public Safety (IPS) for software, services and training provided to the City of Westminster Police and Fire Departments for a software upgrade.

Summary Statement

- The Police and Fire Departments with the assistance of the Information Technology Department underwent a software upgrade to the existing Computer Aided Dispatch (CAD), Records Management (RMS) and Mobile Application Systems in March of 2005. The following upgrades, services and training were provided to the City during the upgrade from IPS:
 - Upgrade of the CAD System from version 7.8 to 7.9
 - Upgrade of the RMS System from 5.7 to 5.8
 - Upgrade the Fire RMS CADLink application
 - CAD interface upgrade to include mobile applications, E911 interface and other interfaces
 - Project Management Services
 - CAD user training
- This upgrade was implemented based on the recommendations set forth by IPS in that the City of Westminster maintains current software versions to receive annual software maintenance support through IPS. The cost of the upgrade will be shared by both the Police and Fire Departments.
- Funds were specifically budgeted and approved by City Council for this expense in 2005.

Expenditure Required: \$63,000

Source of Funds: 2005 General Fund - Police and Fire Departments' Operating Budgets

Policy Issue

Should the City of Westminster pay IPS for an upgrade that provided software, services and training to the Police and Fire Departments?

Alternative

There are no alternatives. The upgrade has been performed and IPS did provide the necessary services, software and training as outlined under the Scope of Work document.

Background Information

The IPS system was purchased in 2000. The system includes a CAD (Computer Aided Dispatch) system, Police RMS (records management system), Fire RMS (records management system), Mobile Application and various system interfaces to include E911 and Automatic Vehicle Locating. The system was designed to integrate all applications and components together to allow for a seamless transmission of data. Communications staff input "service events" into a database and in turn field units are able to receive those service events through their mobile data computers and consequently submit on line offense reports into the Police RMS. The Police RMS is a repository for police crime reports, arrest data, impounded evidence and stolen property. It allows for the department to generate monthly and annual crime statistics that are required to be reported to the Federal Bureau of Investigations. The Fire RMS component is used for tracking building inspections, EMS reporting and National Fire Incident Reporting (NFIRS).

This upgrade was implemented based on the recommendations set forth by IPS in that the City of Westminster maintains current software versions to receive annual software maintenance support through IPS.

Version upgrades are significant software modifications or additions to include security fixes and database application updates. During an upgrade all components of the system are updated with the most recent version to ensure that all applications will continue to operate with the new functionality and without error. Regular upgrades are based on the recommendation from the vendor IPS in that the City routinely upgrades the system applications to ensure that they are compliant with any State or Federal guidelines, that new functionality is released and that new fixes are affixed to the applications to prevent system errors. The Information Technology Department has also requested that departments keep current with any software applications to avoid any system problems.

The cost of the upgrade is shared by both the Police and Fire Departments with the Police Department paying \$52,500 of the cost and the Fire Department paying the remaining \$10,500.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Transfer of General Capital Improvement Funds to Westminster Economic Development Authority

Prepared By: Karen Creager, Accountant

Recommended City Council Action

Authorize the transfer of project savings totaling \$3,146,335 from the General Capital Improvement Fund (GCIP) Huron Street 129th/144th to Westminster Economic Development Authority (WEDA) to be used by WEDA for expenses incurred as part of the development of the North I-25 corridor that are not reimbursable expenses from WEDA bond proceeds.

Summary Statement

- On January 24, 2000 City Council approved the acquisition of the 135 acre parcel at North I-25 and approximately 144th Avenue and charged the purchase to the Utility Fund. At the time, the North I-25 Urban Renewal Area in WEDA was not established but the intent of the purchase was to preserve the site for business park uses. Now that the URA has been established and funds are available, WEDA can pay the Utility Fund for the land.
- Prior to the issuance of WEDA's North I-25 URA bonds, expenses were incurred in the Huron 129th/144th Avenue project that can be charged to the bond project in WEDA. Doing so frees up funds from the Huron 129th/144th pay-as-you-go funds to pay for expenses in WEDA that can not be paid from bond proceeds.
- General Capital Improvement Fund changes
 - Decrease budget for Huron Street 129th/144th capital project and increase budget for transfers to WEDA.

Expenditure Required: \$3,146,335

Source of Funds: General Capital Improvement Fund Project - Huron Street 129th/144th

Policy Issue

Does City Council support the transfer of funds from the Huron 129th/144th project to WEDA?

Alternative

The alternative would be to not transfer the funds to WEDA from GCIF and use the funds for other capital projects. Staff does not recommend this alternative as the bond project related expenses have already been transferred to the bond project and WEDA does not have other funding sources to cover the payment to Laramie Company and the payment to the Utility Fund for the land purchase.

Background Information

On December 13, 2004, the WEDA Board approved the Final Development Agreement (FDA) between the City, WEDA and Forest City. The agreement was executed on December 30, 2004. The project consisted of the development of a 215-acre parcel that included 80 acres owned by WEDA and 135 acres owned by the City. The 80 acre parcel was purchased by WEDA and financed by a loan from Zions Vectra Bank in the amount of \$9,000,000. This agreement was quite complicated and involved several transactions in 2005. As Finance Staff began reviewing the transactions, it was determined that several items were not properly reflected on the books. This agenda addresses those items that need correction on the City's books. In a separate meeting held by the WEDA Board directly following this Council meeting, the Board will be asked to approve these transactions and properly reflect the transactions on WEDA's books.

Additionally, WEDA entered into an agreement with The Laramie Company, LLC on December 13, 2004 for brokerage services related to the sale of the 135 acre parcel. Community Development Staff received approval to fund agreements with Laramie Company at the September 27, 2004 City Council meeting and used this approval to pay Laramie for the brokerage services. Finance Staff recently reviewed the payment and contract and feels that the WEDA board should ratify the contract and past payment made to Laramie Company of \$850,000 as the expense should be recorded on the books of WEDA and not the City. It was intended for this contract to be covered by the bonds issued for the North I-25 project. However, it was brought to Staff's attention that the payment can not be covered by bond proceeds due to the private use of the land.

On January 24, 2000 City Council approved the acquisition of the 135 acre parcel at North I-25 and approximately 144th Avenue and charged the purchase to the Utility Fund. At the time, the North I-25 URA was not established but the intent of the purchase was to preserve the site for business park uses. On December 13, 2004 City Council authorized the conveyance of the parcel to WEDA by Special Warranty Deed. Now that the URA has been established and funds are available, WEDA can pay the Utility Fund for the land. As with the Laramie payment, this purchase can not be funded from bond proceeds. However, there were costs associated with the North I-25 project that were previously expended by the City in the City's GCIF Huron 129th/144th Ave project that can be reimbursed under the bond reimbursement resolution from bond proceeds. This freed up funds in the project that can be transferred to WEDA to cover the cost of the payment to Laramie Company and the payment to the City's Utility Fund for the 135 acre parcel.

Respectfully submitted,

J. Brent McFall
City Manager



WESTMINSTER
COLORADO

Agenda Item 8 C

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: City Park Maintenance Facility On-Site Fuel Dispensing System Contract Award

Prepared By: Becky Eades, Landscape Architect II

Recommended City Council Action

Based on the report and recommendation of the City Manager, determine that the public interest will be best served by awarding a \$78,565 contract to Weston Solutions, Inc., to install an above-ground fuel dispensing system at the City Park Maintenance Facility (CPMF); and authorize a project contingency of \$7,856.

Summary Statement

- On August 8, 2005, City Council awarded a contract to Golden Triangle Construction, Inc. for the construction of the City Park Maintenance Facility (CPMF). The on-site fuel dispensing system was not included in the base bid.
- Concurrently with the award of the CPMF construction contract, Weston Solutions, Inc. went through the formal bid process for the replacement of the underground fuel dispensing system at the Municipal Service Center (MSC) with an above-ground system and was awarded the contract for this system.
- Staff recommends awarding the CPMF above-ground fuel dispensing system contract to Weston Solutions, Inc. to maintain continuity in fuel tracking software systems and other technical components of the dispensing system.

Expenditure Required: \$86,241

Source of Funds: General Capital Improvement Program Fund - City Park Maintenance Facility Account

Policy Issue

Should the City pursue a negotiated contract for services related to the installation of the above-ground fuel dispensing system at the City Park Maintenance Facility?

Alternative

City Council could choose not to award this contract to Weston Solutions, Inc. However, Weston Solutions, Inc. did prove themselves to be the most qualified to provide these services to the City through a formal bid process for the MSC fuel dispensing system. Additionally, it is imperative that the fuel tracking software be able to report directly to the main system located at Fleet Operations in order to track fuel usage by user and vehicle, determine vehicle service needs, detect possible mis-use of the system, and overall refill needs.

Background Information

Parks, Recreation and Libraries Staff have been working with General Services Staff to ensure that this project is compatible with the new system being installed at the MSC. On-site fueling has always been a component of the CPMF project. On-site fueling is necessary to eliminate the financial loss of travel time and fuel spent driving back to the MSC for fueling. In addition, on-site fueling will eliminate the danger associated with City Park maintenance staff having additional fuel tanks mounted in the bed of their City trucks for on-site equipment fueling.

On April 18, 2005, Staff presented the site plan and building plans to Council at a Study Session to request permission to proceed with the project and to go out to bid. Council directed Staff to proceed. On August 8, 2005 Council awarded the construction contract to Golden Triangle Construction, Inc. (GTC). GTC was the low bidder on the project. Construction of the CPMF is anticipated to be complete in early summer of 2006. The on-site fueling contract was anticipated to be awarded separately from the main construction contracts. Additional expenditures including site landscaping and irrigation, fencing, building furnishings will also be contracted for separately, following the City's purchasing ordinance to ensure the best possible pricing and the most qualified contractors.

This project supports City Council's Strategic Plan goal number 5, Beautiful City, specifically, objective 4, Expanded, Developed and Well-Maintained Parkland. The central location of the facility and fueling for City Vehicles and equipment, within the City will reduce travel times for maintenance crews, especially for City Park and Promenade maintenance crews who will now be housed on site, with all of their equipment.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

CITY PARK MAINTANCE FACILITY
LOCATION MAP

ADMIN AND SHOP BUILDING
STORAGE BUILDING
CITY VEHICLE PARKING
EMPLOYEE VEHICLE PARKING

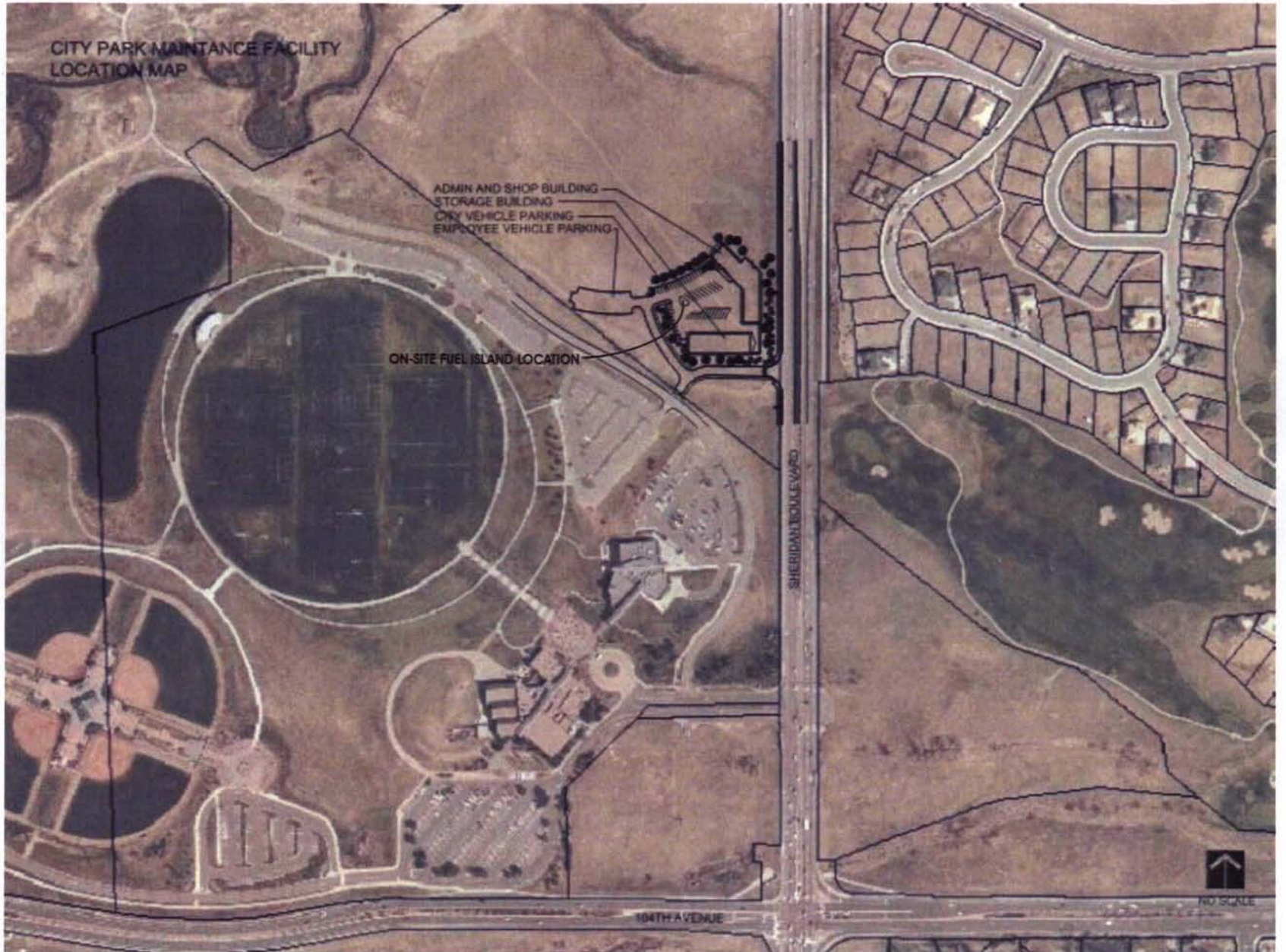
ON-SITE FUEL ISLAND LOCATION

SHERIDAN BOULEVARD

104TH AVENUE



NO SCALE





**WESTMINSTER
COLORADO**

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Standley Lake Water Quality Cost Sharing Intergovernmental Agreement

Prepared By: Mary Fabisiak, Water Quality Administrator

Recommended City Council Action

Authorize the Mayor to sign an Intergovernmental Agreement with the Cities of Northglenn and Thornton for sharing of costs related to Standley Lake and Clear Creek water quality issues.

Summary Statement

- The City of Westminster currently has a Water Quality Cost-sharing Intergovernmental Agreement (IGA) with the Cities of Northglenn and Thornton. This IGA provides the mechanism for jointly sharing the costs related to pursuing water quality protection efforts for the Standley Lake water supply.
- This IGA will expire in December 2005. It is recommended that the IGA be extended in order for Westminster, Thornton, and Northglenn to continue with work currently underway as part of the Clear Creek Watershed Management Agreement, and other Standley Lake monitoring and protection issues.
- The IGA calls for the appointment of one representative from each City to serve on a Water Quality Committee. The Committee will be formally charged with administration of the agreement, developing work schedules and budget needs for each budget year, and evaluation of the water quality monitoring programs. The IGA also details minimum communication requirements such as meeting frequency, data distribution, and handling of joint correspondence.
- Specific percentages are identified for calculating each City's share of the costs. The same percentages are to be used for sharing the in-kind workload of each City's laboratory operations in the monitoring programs.
- If approved, the IGA would authorize the respective City Managers or designees (in 2005, it was Water Quality Administrator Mary Fabisiak) to enter into contracts for legal and/or consulting services for these water quality efforts. This authorization would be in accordance with Charter and ordinance provisions for each of the Cities.
- This IGA does not vary in any substantive manner from the last IGA approved in 2000.
- The approved IGA would be in effect through December 31, 2010.

Expenditure Required: \$83,000 per year

Source of Funds: Utility Fund: 2006 Water Resources and Treatment Professional Services Account

Policy Issue

Should the City join efforts with other entities to accomplish water quality goals and in turn, tie the City's progress to other entities decisions?

Alternatives

Do not enter into the IGA and address cost sharing on an item-by-item basis. Staff does not recommend this as it would be cumbersome from an administrative standpoint and potentially require more staff time to negotiate cost sharing on an item by item basis with little to no benefit.

Do not enter into the IGA and Westminster can shoulder the majority of the cost of Standley Lake water quality protection efforts. Staff does not recommend this alternative as we have fostered a good working relationship among the Standley Lake Cities that saves staff time and costs by avoiding duplication of efforts. Westminster's costs for protecting Standley Lake would certainly escalate with this alternative.

Background Information

Standley Lake is the water supply for over 250,000 people in the Cities of Westminster, Northglenn, and Thornton. The water is transported through a pipeline to Westminster's two water treatment facilities, and to Northglenn and Thornton's water treatment facilities. It is beneficial for the Cities to pursue watershed protection for Standley Lake to protect and improve water quality and control drinking water treatment costs.

Westminster and Thornton have been cooperating on the Standley Lake Watershed Water Quality Monitoring Program for approximately twenty years. Northglenn has been participating in the joint monitoring for approximately fifteen years. The additional efforts required for participating in water quality protection efforts such as the RPS Landfill, Amax/Colorado School of Mines Research Institute (CSMRI) and the 1988 Colorado Water Quality Control Commission hearing regarding phosphorus standards for Clear Creek, necessitated the cost-sharing IGA's first with Thornton and eventually Northglenn. These IGA's were successful in providing a framework by which the Cities could work jointly on Standley Lake water quality efforts and share the expenses. The Cities have agreed that it is beneficial to renew these cost-sharing agreements due to continuing efforts necessary to protect the water quality in Standley Lake.

The Standley Lake Cities developed a management plan for Standley Lake. This includes commitments to operational and structural changes for the lake, which could reduce the in-lake contribution of nutrients that encourage algal growth. The Cities have agreed in the plan to identify and pursue the most cost effective structural controls for this purpose.

Development and growth pressures have accelerated in the Clear Creek and Standley Lake Basins. These pressures have and will continue to put additional strain on the water quality in Clear Creek and Standley Lake. This will require continued diligence on the part of the Cities to insure that Standley Lake is maintained as a high quality water supply.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

INTERGOVERNMENTAL AGREEMENT
AMONG THE CITIES OF NORTHGLENN, THORNTON, AND
WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO
STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

THIS AGREEMENT is entered into this _____ day of _____, 2005, among the CITY OF THORNTON, hereinafter referred to as "Thornton," the CITY OF NORTHGLENN, hereinafter referred to as "Northglenn," and the CITY OF WESTMINSTER, hereinafter referred to as "Westminster" (Thornton, Northglenn, and Westminster together are hereinafter referred to as "Cities").

I. RECITALS

- A. The Cities each own rights to store water in Standley Lake and other important water rights that are essential to providing a domestic water supply to the residents of the Cities.
- B. Protection of these water rights and the water quality of these sources of domestic drinking water are of paramount importance to the Cities.
- C. Article XIV, Section 18, of the Colorado Constitution, Part 2 of Article I of Title 29, C.R.S., and 29-20-105, C.R.S., permit and encourage local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized functions, services, or facilities.
- D. Pursuant to an Intergovernmental Agreement dated June 28, 1989, and renewed on August 24, 1995 and December 18, 2000, (Prior Water Quality Agreements) the Cities previously shared costs associated with water quality protection efforts involving Standley Lake and its tributaries, such as participation in the 1988 Colorado Water Quality Control Commission hearing regarding phosphorous standards for Clear Creek and the 1991 USGS Water Quality Study of Standley Lake.
- E. The Cities are each currently participating in the Standley Lake Watershed Monitoring Program to monitor the quality of water flowing into and within Standley Lake.
- F. It is beneficial for the Cities to pursue watershed protection for Standley Lake to protect and improve water quality and control drinking water treatment costs.
- G. It is beneficial and cost-effective for the Cities to mutually hire consultants and legal counsel, conduct water quality monitoring, implement water quality improvement projects, and to equitably share such costs related to water quality in Standley Lake and the Clear Creek Basin based on the cost sharing percentages outlined in Section II D of this Agreement.
- H. It is prudent for the Cities to execute a written agreement that sets forth the terms and guidelines for hiring consultants and legal counsel and sharing in the responsibility for the water quality monitoring programs.
- I. The Cities have developed the following Mission Statement. *To protect the quality of Standley Lake as a drinking water supply through the application of scientifically based and fiscally responsible management techniques. Optimize the health of Standley Lake and its watershed for current and future generations.*

II. AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, the Cities agree as follows:

- A. Cooperative Efforts
 - 1. The Cities agree that it is mutually beneficial to cooperate with each other in order to improve the water quality in the Standley Lake Watershed by addressing stormwater flows

into Standley Lake and environmental issues that may affect the water quality of the Standley Lake Watershed.

2. The Cities agree that it is mutually beneficial to continue joint participation in the Standley Lake Watershed Monitoring Program to assess the quality of water flowing into and within Standley Lake. Cooperative efforts may include costs for water quality monitoring, monitoring equipment, contract laboratory testing, legal services, consulting and engineering services, and capital, annual operating, and maintenance costs associated with water quality improvement projects.
3. The Cities agree to divide the staff workload of the Standley Lake Watershed Monitoring Program in the same percentages as the cost sharing percentages in Section II D 1. The Cities further agree that best efforts must be used to ensure that all monitoring data meets acceptable quality assurance / quality control (QA/QC) standards and has been submitted in a timely manner.
4. It is understood that each City's participation in any particular water quality effort is strictly voluntary. The cost sharing provisions of this Agreement are exercised only when all Cities mutually agree to participate in any particular water quality effort.

B. Representation

1. The City Managers will designate one representative to serve on a Water Quality Committee (Committee) which will be charged with administering the terms of the Agreement, developing work schedules, monitoring schedules, and budget needs for the next budget year, and evaluating the progress of the monitoring program. The Committee will meet quarterly, at a minimum, for the above stated purposes. The Committee will be represented at Standley Lake Operating Committee (SLOC) meetings, on a quarterly basis, to enhance communications concerning the operational and water quality aspects of Standley Lake and to provide technical support to SLOC and the Church Ditch Water Authority.
2. The Cities hereby authorize their City Managers or designees to enter into contracts for legal and / or consulting services pursuant to this Agreement in accordance with Charter and ordinance provisions of the Cities.

C. Consultants, Technical Experts, and Legal Representation

The Cities may mutually agree to hire consultants, technical experts, and/or legal counsel to provide additional expertise related to the water quality goals specified in Section II A. Prior to entering into any contract for consulting, technical, or legal services, the Committee shall approve in writing the scope and amount of such contracts, which amount shall be included within the approved budgets of the Cities.

D. Payment Terms

1. Participation in cost sharing for the Standley Lake Watershed Monitoring Program for legal and consulting fees and for water quality monitoring related to those goals listed in Section II A between the Cities shall be based on the following ratios which reflect share ownership and usage in Standley Lake:

City of Northglenn – 20%
City of Thornton - 35%
City of Westminster – 45%

2. As per Section 6 of the November 28, 1994, Standley Lake Park Intergovernmental Agreement (Park Agreement), Westminster agrees to contribute \$10,000 annually to be used for regular water quality testing and monitoring. The \$10,000 shall be deducted from the

total annual cost of water quality testing before the percentages in Section II.D.1, above, are calculated.

3. Legal counsel and technical experts or consultants hired by the Cities pursuant to this Agreement shall bill only one of the Cities. The Cities will agree, prior to contracting for legal or consulting services, which City to bill. The billed City will in turn calculate the percentages and bill the other Cities for their respective shares of the total billed legal/technical costs. These Cities will have (30) days in which to remit payment to the City originally billed. Legal counsel and technical experts shall follow the purchasing procedures of the billed City. The billed City will not be reimbursed for administrative costs.
4. Any of the Cities may request copies of invoices for review of itemized costs associated with any particular project prior to payment of said invoices.

E. General Provisions

1. This Agreement shall be effective upon execution of this Agreement by the parties and shall terminate on December 31, 2010. By November 1 of each year, the Cities' staffs will review this Agreement for any necessary changes. Any proposed changes must be mutually agreed to by all parties. Additionally, this Agreement may be prior terminated at any time for any reason by any party upon serving the other parties a thirty (30) day written notice of intent to terminate. The Agreement may also be terminated in the event that any party violates any of the terms of the Agreement and fails to cure the default within ten (10) days of receipt of written notice from the non-defaulting parties which specifies the nature of the default and its cure. Termination by any party shall not relieve that party of its share of costs already incurred or committed to by mutual agreement by the other parties pursuant to this Agreement.
2. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any prior, concurrent, subsequent breach of the same or any other of the terms or obligations of this Agreement. No waiver shall be effective unless made in writing.
3. This Agreement represents the entire and integrated Agreement between the parties and supersedes the Prior Water Quality Agreements. This Agreement may be amended only by a written instrument executed by the parties hereto.
4. If any clause, sentence, paragraph, or part of this Agreement or the application thereof to any party or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement or its application.
5. The Committee will prepare a work plan for the Standley lake Watershed Monitoring Program for the next fiscal year to be used by the Cities for budget planning. The plan may include, at a minimum:
 - Evaluation of sampling and testing schedules for all monitoring programs.
 - Assignment of sampling and laboratory testing for all monitoring programs, including adjustments from the previous year's program, in accordance with the participation ratios in Section II D. 1.
 - Hiring of a technical consultant to prepare an annual data summary report.
 - An estimate of legal/technical consultation costs, special studies that may be required, and costs that will be incurred as a result of current agreements during the upcoming year.

Any new work proposed for any given year that has not been previously agreed upon in the work plan, will required unanimous approval of the Cities in order to proceed. Work that can be completed within the approved budgets of the Cities can be approved by the Committee representatives. Work requiring additional funding must be submitted to the Cities for approval prior to proceeding.

6. The Cities must agree unanimously on the selection of legal counsel and technical experts or consultants to perform work related to this Agreement. Conflicts of interest will be given consideration as part of the selection process and may be the basis for not selecting any contractor/consultant. Any City may terminate its participation in any contract for legal services or consulting services, or request termination of the contractor/consultant's representation, if any City, at its sole discretion, determines there is a conflict of interest. Any confidential information obtained by any firm in the course of the joint representation shall remain confidential and not be used to the detriment of any City in any subsequent representation.
7. No documentation and/or correspondence prepared as a joint position by the cities or a consultant, technical expert, or legal counsel retained pursuant to this Agreement shall be distributed to third parties without prior approval from each City's designee. Each City can distribute independent documentation and/or correspondence stating their individual position, provided the documentation and/or correspondence does not imply joint concurrence or commitment by any of the signatory parties.
8. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities, and nothing contained in this Agreement shall be interpreted to give or allow any such claim or right of action to any other third person on such Agreement. It is the express intention of the Cities that any person other than the Cities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
9. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.
10. Notwithstanding any language in the Agreement, Farmer's Reservoir and Irrigation Company shall not be deemed to be a partner of the Cities and is not a party to this Agreement.
11. This Agreement does not authorize the Cities participation in any lawsuit.
12. Any notice that may be given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing via the United States postal service, postage prepaid, to the other Cities, and unless amended by written notice, to the following:

CITY OF THORNTON
Jack Ethredge
City Manager / Utilities Director
9500 Civic Center Drive
Thornton, CO 80229

CITY OF WESTMINSTER
J. Brent McFall
City Manager
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF NORTHGLENN
Phillip Nelson
City Manager
11701 Community Center Drive
Northglenn, CO 80233

13. This Agreement may not be assigned by any party without the written consent of the other parties.
14. Three originals of this Agreement shall be signed by the parties.
15. This Agreement shall in no way obligate the Cities to budget funds to be spent pursuant to this Agreement. If a court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately be converted to a one year contract, with automatic annual renewal through December 31, 2010, unless previously terminated.

IN WITNESS WHEREOF, the parties have hereto set their hand and seal on the dates indicated below.

ATTEST:

CITY OF THORNTON

City Clerk

Jack Ethredge, City Manager

APPROVED AS TO FORM:

City Attorney

Date

ATTEST:

CITY OF NORTHGLENN

City Clerk

Kathleen M. Novak, Mayor

Date

ATTEST:

CITY OF WESTMINSTER

City Clerk

J. Brent McFall, City Manager

Date



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Intergovernmental Agreement with Urban Drainage and Flood Control District for Little Dry Creek Bank Stabilization and Utility Protection Project

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement with the Urban Drainage and Flood Control District (UDFCD) for the design and construction of a bank stabilization and utility protection project on Little Dry Creek upstream of Federal Boulevard.

Summary Statement

- In accordance with the conditions of the Complaint and Consent Agreement with the United States Environmental Protection Agency (EPA), the City of Westminster is required to construct a Supplementary Environmental Project (SEP).
- City staff evaluated several sites that would satisfy the requirements for the SEP. Little Dry Creek upstream of Federal Boulevard is the selected alternative based upon the risk of a sanitary sewer line break and the erosion of the stream banks. This sanitary sewer system carries one-third of the City's wastewater and is currently exposed where it crosses Little Dry Creek.
- City staff was successful in securing maintenance funding from UDFCD to assist with financing this project. The total project cost (including contingency) is estimated to be \$200,000 with \$100,000 contributed by UDFCD (\$75,000 per this agreement and \$25,000 paid by UDFCD separately for engineering design).
- The construction will include concrete encasing the sanitary sewer lines, laying back the stream banks, riprap protecting the box culvert under Federal Boulevard and seeding the disturbed areas.
- UDFCD will manage the design and construction contracts for this project. The City of Westminster's participation will be paid directly to UDFCD for their disbursement. Any rebates or overages will be divided equally between the City and UDFCD.

Expenditure Required: \$100,000

Source of Funds: Utility Fund Capital Improvements - \$50,000
Storm Water Fund - \$50,000

Policy Issue

Should the City enter into this Intergovernmental Agreement with the Urban Drainage and Flood Control District?

Alternative

Since the proposed project has been federally mandated and the UDFCD is willing to participate in funding that project, City staff believes that there is no logical alternative to the recommendation.

Background Information

The City of Westminster was cited by the EPA for over-application of biosolids to 11 land application sites from 2002 to 2004. In accordance with the Complaint and Consent Agreement, the City has agreed to pay \$40,000 to the EPA and spend another \$75,000 on two environmental improvement projects. The first project is a biosolids workshop to be held in June of 2006. The second project consists of utility protection and bank stabilization on Little Dry Creek upstream of Federal Boulevard.

Staff evaluated various sites and determined the greatest benefit to the City is the protection of sewer lines upstream of Federal Boulevard at approximately 68th Avenue. There is a ten inch diameter steel encased sewer line that is approximately 12-inches above the channel bed as it crosses Little Dry Creek. Just upstream of this location, the top of a 24-inch diameter clay sanitary sewer line has been exposed by the degradation of the channel. This particular sewer line carries one-third of the City's wastewater.

Additionally, Crestview Water and Sanitation District has an eight inch diameter steel encased sanitary sewer line that crosses Little Dry Creek at the same location as a ten inch diameter Westminster sewer line. The top of this pipe has also been exposed due to channel degradation.

The City was successful in obtaining UDFCD maintenance funding to help finance the design and construction of this project. The Urban Drainage and Flood Control District was established by the Colorado legislature in 1969, for the purpose of assisting local governments in the Denver metropolitan area with multi-jurisdictional drainage and flood control problems.

Since the City of Westminster owns the two parcels of property where this work will take place, the acquisition of additional easements will not be necessary. Therefore, the estimated cost of the project will be \$200,000 to be evenly split between the City and the UDFCD.

Should this IGA be approved, construction will begin in the spring of 2006. Per the Final Order of the EPA, the City is required to complete this Supplementary Environmental Project by August 2006.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Agreement
- Vicinity Map

**AGREEMENT REGARDING
DESIGN AND CONSTRUCTION OF
MAINTENANCE IMPROVEMENTS TO
LITTLE DRY CREEK, CITY OF WESTMINSTER**

Agreement No. 05-11.01

THIS AGREEMENT, made this _____ day of _____, 2005, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES;"

WITNESSETH:

WHEREAS, the Colorado General Assembly in 1979 and 1983 amended 32-11-217(1)(C), Colorado Revised Statutes 1973 to authorize DISTRICT to levy up to four-tenth (.4) mill for the maintenance and preservation of floodways and floodplains within DISTRICT; and

WHEREAS, 32-11-203, Colorado Revised Statutes 1973, as amended in 1979 and 1983, further authorizes DISTRICT's Board of Directors to institute a systematic and uniform program of preventive maintenance for such floodways and floodplains within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors, pursuant to such authorization, adopted a budget for 2005 (Resolution No. 77, Series of 2004) which includes funds for preventive maintenance of drainage and flood control facilities within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors authorized the Executive Director to contract for those services necessary to implement the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors adopted a policy that sets forth DISTRICT policy regarding the maintenance of drainage and flood control facilities within DISTRICT (Resolution No. 41, Series of 1978); and

WHEREAS, CITY requested DISTRICT maintenance funds and DISTRICT included in the 2005 Maintenance Work Program a work item to participate in the design and construction of maintenance improvements; and

WHEREAS, PARTIES desire to proceed with design and construction of maintenance improvements to Little Dry Creek upstream of Federal Boulevard (hereinafter called "PROJECT").

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

PROJECT will consist of installation of two check structures, bank protection, protection of sanitary sewers, regrading, and revegetation.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS

A. Definition of PROJECT Costs. PARTIES agree that for the purposes of this Agreement PROJECT costs for Paragraph 2. SCOPE OF PROJECT shall consist of, and be limited to, engineering services; construction services; and construction related services for the drainage and flood control portions of PROJECT.

B. Estimated PROJECT Costs. The estimated costs associated with PROJECT as defined above are as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Engineering Services	\$ -0- *
2. Construction	175,000
Total	\$175,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

* DISTRICT has already encumbered \$25,000 for engineering services.

5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for elements of PROJECT as defined in Paragraphs 2 and 4 of this Agreement:

	Percentage <u>Share</u>	Maximum <u>Contribution</u>
DISTRICT	43%	\$ 75,000
CITY	57%	\$100,000
TOTAL	100%	\$175,000

Payment of each party's full share (CITY - \$100,000; DISTRICT - \$75,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT and will not require an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. MANAGEMENT OF DESIGN

- A. DISTRICT shall contract for and be responsible for the management, administration, and coordination of the engineering services for design. This will include final design, utility coordination, surveying, bid preparation, addendum preparation, bid opening, and recommendation of award.
- B. DISTRICT's contracting officer or representative shall be the only individual authorized to direct or redirect, by amendment(s) agreed to by PARTIES, the agreement for design of PROJECT.
- C. DISTRICT shall have the authority to meet with and guide the engineer in design matters related strictly to drainage and flood control. Any direction given to the engineer by DISTRICT regarding those matters must first have the concurrence of PARTIES.
- D. The contract documents must be reviewed and approved by all PARTIES before construction can begin. Any changes to the approved contract documents require the concurrence of PARTIES.
- E. The engineer shall be required to submit to PARTIES a design report including all hydrologic data, hydraulic calculations, design criteria, structural data and calculations, and other pertinent and appropriate design information, calculations, and criteria used and/or developed during the course of the design after all PARTIES review and approve final plans and specifications.
- F. PARTIES shall each receive at least one set of vellum reproducible plans and one set of construction specifications. An electronic copy of the plans and specifications shall also be provided.
- G. DISTRICT shall be responsible for acquisition of all local, state and federal permits as needed.
- H. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under this Agreement, such changes shall be rejected or approved in writing by the contracting officers. No design amendments shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

7. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT shall advertise for construction bids, conduct a bid opening, prepare construction contract documents, and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
 4. DISTRICT shall coordinate field surveying; staking; weekly inspection of work; testing; engineering; preparation of survey control points and explanatory sketches; revisions of contract plans; shop drawing review; preparation of reproducible record drawings; and final inspection as required to construct PROJECT. DISTRICT shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY as requested.
 5. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 6. DISTRICT shall review and approve contractor billings and prepare partial and final payments. DISTRICT shall remit payment to contractor based on approved billings.
 7. DISTRICT shall prepare and issue all written change or work orders to the contract documents.
 8. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 9. DISTRICT shall provide CITY a set of reproducible record drawings if requested.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

8. OWNERSHIP AND MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program. DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

9. TERM OF AGREEMENT

The term of the Agreement shall commence upon final execution by all PARTIES and shall terminate one year after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein.

10. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

11. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be the City Manager, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80030.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, CO 80211.
- C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- D. The contracting officers for PARTIES each agree to designate and assign a project representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives will have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

12. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

13. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

14. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

15. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

16. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

17. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

18. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

19. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of the proposed facilities and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

20. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

21. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

22. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
November 27, 2006



SUBJECT: 2007 Wastewater Collection System Maintenance Contract Renewal

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 renewal of the current Wastewater Collection System Maintenance Contract for the 2007 calendar year in the amount of \$577,235 with a 10% contingency budget, bringing the total budget to \$634,958.

Summary Statement

- Funds have been approved and allocated in the 2007 Utilities Division Operating Budget for the wastewater collection system maintenance contract. The contract for 2007 would be for \$577,235, plus a contingency of \$57,723 for a total of \$634,958. The total budgeted for this project in 2007 is \$670,000.
- In February 2005, City Council approved the current wastewater collection system maintenance contract with Ace Pipe Cleaning Inc., with the option of renewing the contract each of the next two years. The 2007 contract would be the second year in which the City exercised the renewal option.
- Staff has met with the current contractor, Ace Pipe Cleaning, concerning the possibility of extending this contract for an additional year. Ace Pipe Cleaning has indicated that their company would be willing to continue to perform maintenance activities in 2007 for the same unit costs as where charged in 2005.
- Given the positive experience working with Ace Pipe Cleaning on the wastewater collection system maintenance program and their willingness to keep the same unit pricing for next year, City staff is recommending the extension of the current contract for one additional year.

Expenditure Required: \$598,541

Source of Funds: Utility Fund - 2006 Utilities Division Operating Budget

SUBJECT: 2006 Wastewater Collection System Maintenance Contract Renewal
Page 2

Policy Issue

Should the City extend the current wastewater collection system maintenance contract with Ace Pipe Cleaning for 2006 services or open this project to outside competitive bids?

Alternative

Prepare bid documents and project specifications and advertise the 2006 maintenance contract for competitive bid submittals. Staff does not recommend this alternative. The 2005 maintenance contract was bid competitively and specifically was set up for renewal in 2006. Ace Pipe Cleaning provided a very low competitive bid and has not requested an increase over 2005, despite increases in fuel and other costs. Another round of bidding is unlikely to result in any savings to the City and could possibly increase the City's costs. The experience with Ace Pipe Cleaning has been a positive one and there are no changes (other than quantities) needed in the contract.

Background Information

In late 2004, Utilities Division staff prepared bid documents and specifications for the wastewater collection system maintenance program, which includes sewer system maintenance being completed in approximately one-third of the area in the city over a one year period. The overall program allows for maintenance to be done on the entire wastewater collection system in the city within a three year period.

The approved competitive bid for the 2005 Wastewater Collection System Maintenance program was awarded to Ace Pipe Cleaning Inc. in the amount of \$576,874. The contract with Ace Pipe Cleaning was approved by City Council early in 2005, with maintenance work commencing in February. As part of the maintenance contract, the city has the option of extending this contract an additional year and allowed price increases up to the annual CPI (consumer price index).

Staff has met with Ace Pipe Cleaning representatives concerning the possibility of extending the current contract an additional year. Through meetings, Ace Pipe Cleaning representatives indicated that their company would be willing to perform maintenance work in 2006 for the same unit pricing as in 2005. Staff has been satisfied with the work of Ace Pipe Cleaning this year. Since Ace Pipe Cleaning is willing to continue this work in 2006 for the same unit price, Staff is recommending City Council approve an extension of the current contract for the 2006 maintenance program.

The area of scheduled maintenance to be completed in 2006 is the southern portion of the City, in the Little Dry Creek basin. This area represents approximately one-third of the total sewer collection system.

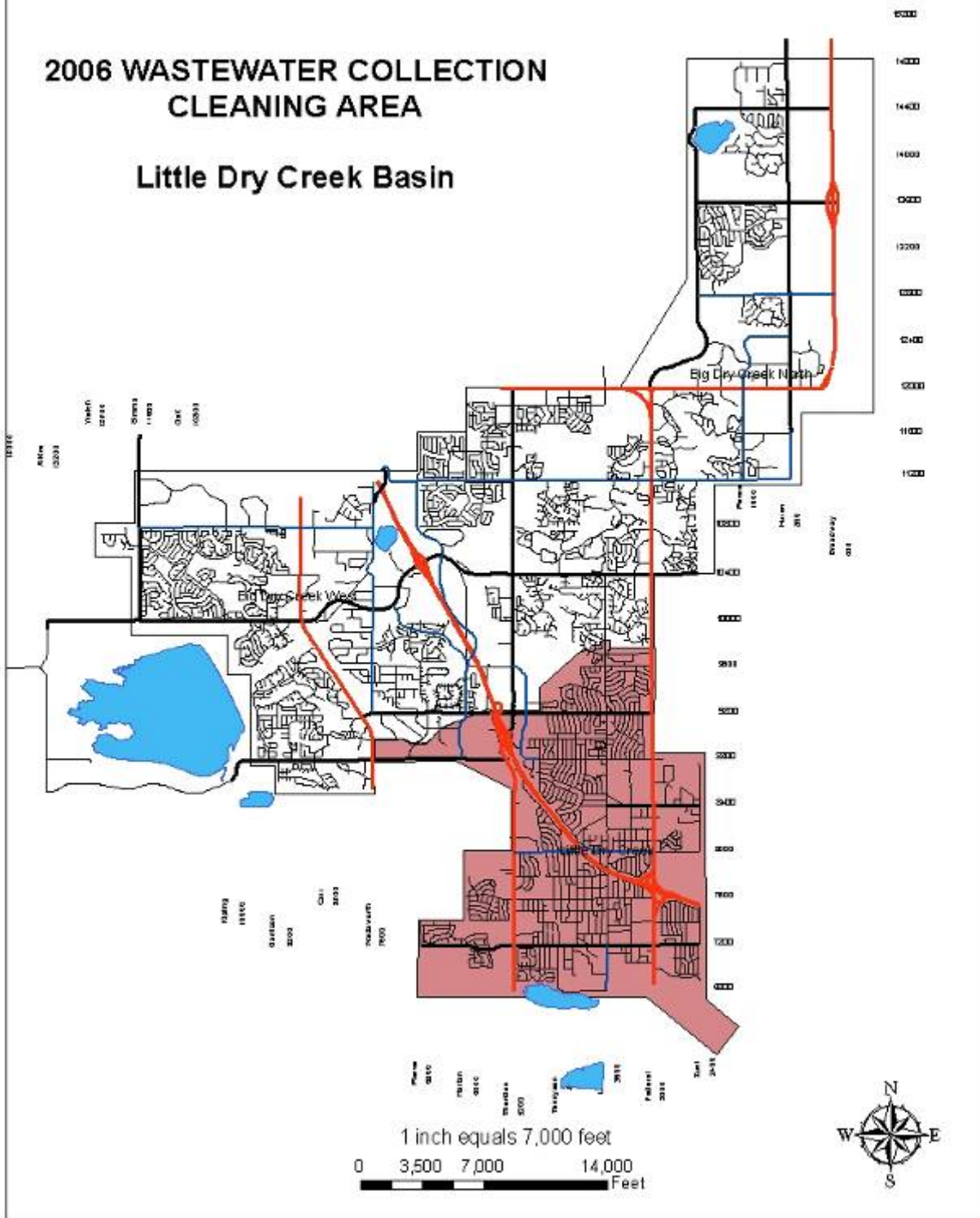
Respectfully submitted,

J. Brent McFall
City Manager

Attachments

2006 WASTEWATER COLLECTION CLEANING AREA

Little Dry Creek Basin



2006	Size	ITEM	2005 QUANTITY	Unit Price	2005 Extension	2006 QUANTITY	Unit Price	2006 Extension
Jet Cleaning								
Routine Jet Cleaning	6"-15"	1A	590,000	\$0.34	\$200,600.00	580,000	\$0.34	\$197,200.00
Hot Spots	6"-15"	1B	85,000	\$0.34	\$28,900.00	72,000	\$0.34	\$24,480.00
Root and Grease	6"-15"	1C	5,000	\$0.60	\$3,000.00	5,000	\$0.60	\$3,000.00
Customer Service	6"-15"	1D	18,000	\$0.35	\$6,300.00	18,000	\$0.35	\$6,300.00
Out Flow Manhole	EACH	1E	1,634	\$11.00	\$17,974.00	1,634	\$11.00	\$17,974.00
Wet Well Cleaning	EACH	1F	25	\$200.00	\$5,000.00	20	\$200.00	\$4,000.00
Time & Material	HOUR	1G	100	\$125.00	\$12,500.00	115	\$125.00	\$14,375.00
Subtotal					\$274,274.00			\$267,329.00
Television Inspection								
Routine TV Inspection	6"-15"	2A	590,000	\$0.35	\$206,500.00	580,000	\$0.35	\$203,000.00
Hot Spots	6"-15"	2B	30,000	\$0.40	\$12,000.00	48,000	\$0.40	\$19,200.00
Customer Service	6"-15"	2C	20,000	\$0.40	\$8,000.00	20,000	\$0.40	\$8,000.00
New Subdivision	6"-15"	2D	25,000	\$0.40	\$10,000.00	20,000	\$0.40	\$8,000.00
Time & Material	HOUR	2E	100	\$110.00	\$11,000.00	100	\$110.00	\$11,000.00
Subtotal					\$247,500.00			\$249,200.00
Grease Trap Inspection								
Quarterly Inspection	EACH	3A	1780	\$15.00	\$26,700.00	1780	\$15.00	\$26,700.00
Re-Inspection	EACH	3B	75	\$12.00	\$900.00	75	\$12.00	\$900.00
Subtotal					\$27,600.00			\$27,600.00
Total					\$549,374.00			\$544,129.00



Agenda Item 8 G

WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Approval of Construction Contract for Gregory Hill Tanks – Repair and Modification

Prepared By: Dan Carroll, PE, Senior Engineer, Public Works and Utilities

Recommended City Council Action

Authorize the City Manager to execute a contract with Superior Industrial Maintenance Co., Inc. in the amount of \$449,148 as the low bidder for completing all water tank rehabilitation work including total repainting of each tank's exterior shell, and a contingency in the amount of \$51,917 for a total construction budget of \$501,065. In addition, authorize a transfer of \$103,727 from the Water Capital Project Reserve Fund to the Gregory Hill Water Tank project account increasing the total project budget to \$571,711.

Summary Statement

- Council is being requested to approve a contract with Superior Industrial Maintenance Co., Inc. to complete the repairs and improvements to the two Gregory Hill Tanks located near 81st Avenue and Newton Street.
- Repairs and improvements include new shell manways, replacing roof hatches, replacing the cathodic protection system, replacing overflow pipes, repainting tank roofs and repainting the tank shells.
- Contract Documents were prepared by the City's Engineer, Tank Industry Consultants.
- City Council previously authorized a budget of \$467,984. In order to complete the expanded scope of work of tank painting and repairs, Staff is recommending a transfer of \$103,727 from the Water Capital Project Reserve to the tank project budget.

Expenditure Required: \$501,065

Source of Funds: Gregory Hill Tanks Repair and Modification Project funds from the Utility Fund Capital Improvement Funds

Policy Issue

Should the City execute a contract in the amount of \$449,148 with Superior Industrial Maintenance Co., Inc. for completing the Gregory Hill Tanks – Repair and Modifications?

Alternatives

The City could choose from the following alternatives:

1. Reject all bids and rebid the project. This alternative is unnecessary as the City received bids from four firms and the bids appear to be reasonable. If the City chooses to rebid the project there is no expectation that new bids would be less costly or that the City would receive more bids.
2. Reject Staff recommendation to execute a contract with Superior Industrial Maintenance Co., Inc. and choose not to complete the repairs and modifications. Delaying the repairs could increase future costs by inflation and increased repairs (increased wear and tear).
3. Reduce the scope of work for a reduced amount of exterior tank painting, thus reducing the contract cost. These tanks have not been repainted for at least 15 years and are in need of complete external painting.

Staff does not recommend any of these three alternatives.

Background Information

The Gregory Hill Tanks consist of two ground level steel tanks with a capacity of 2,000,000 gallons each and are located near 81st Avenue and Newton Street (See Location Map). Each is approximately 120-feet in diameter, 25-feet shell height with a steel roof. The East tank was constructed in 1955 and the West tank in 1960.

City Council authorized a contract with Tank Industry Consultants (TIC) to prepare bidding and Contract Documents for modifications and upgrades, including shell manways, replacing roof hatches, replacing cathodic protection system, replacing overflow pipes, repainting tank roofs and either partially or totally repainting the tank shells. Total repainting of the exteriors of each tank’s shell represents a change of scope to the original project (and thus the budget). The bid documents were prepared with the option to completely repaint each tank’s exterior shell (Items 4 and 5 in the table below). The bid documents also include a line item for up to 60 hours of additional unanticipated work by the Contractor during project completion (Item 3 in the table below). Advertisement for bids began on October 26, 2005 and ended on November 21 when the bids were publicly opened and read. Bids were received from 4 companies and are summarized as follows along with the Engineer’s estimate:

Bidder	Item	1	2	3	Amount Bid (Items 1-3)	Alternate 4	Alternate 5	Total (Items 1-5)
		Base Bid East Tank	Base Bid West Tank	Additional Work		Ext. Paint East All	Ext. Paint West All	
G&M Painting Riverview, MI		\$160,975	\$160,975	\$9,000	\$330,950	\$75,000	\$75,000	\$480,950
Superior Industrial Concord, NC		\$202,324	\$202,324	\$4,500	\$409,148	\$20,000	\$20,000	\$449,148
TMI Coatings, Inc. St. Paul, MN		\$209,000	\$209,000	\$6,000	\$424,000	\$30,000	\$30,000	\$484,000
Classic Protective Coatings Menomonie, WI		\$240,155	\$240,155	\$4,500	\$484,810	\$88,940	\$88,940	\$662,690
Engineer’s Estimate		\$170,000	\$164,000	\$6,000	\$340,000	\$50,000	\$50,000	\$440,000

The low bidder for Items 1-3 is G&M Painting at \$330,950; the low bidder for all work including total repainting of each tank’s exterior shell is Superior Industrial Maintenance Co., Inc. at \$449,148. Because total exterior painting is deemed necessary, Staff recommends that City Council authorize the City Manager to execute a contract with Superior Industrial Maintenance Co., Inc. in the amount of \$449,148 to complete all five of the bid items.

On May 23, 2004 City Council approved a project budget of \$467,984 which included funds for engineering, construction and contingencies. This original project budget contained \$397,338 for construction and contingencies, and would be exceeded by authorizing the recommended contract. Therefore an increase in the project budget is necessary to complete the expanded work and Staff is recommending that these funds be transferred from the Water Capital Project Reserve Fund. The project cost revisions are as follows:

	Original Budget	Revised Budget	Difference
Design / Engineering & Misc.	\$70,646	\$70,646	\$0
Construction	\$327,140	\$449,148	\$122,008
Contingency	\$70,198	\$51,917	(\$18,281)
TOTAL	\$467,984	\$571,711	\$103,727

Respectively submitted,

J. Brent McFall
City Manager

Attachment

CITY OF WESTMINSTER, COLORADO
GREGORY HILL TANKS
LOCATION MAP



1 inch equals 100 feet





WESTMINSTER
COLORADO

Agenda Item 10 A

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Resolution No. 53 re National Incident Management System

Prepared By: Michael Reddy, Emergency Management Coordinator

Recommended City Council Action

Adopt Resolution No. 53 formally adopting the National Incident Management System (NIMS) as the standard for incident management in the City of Westminster.

Summary Statement

- On February 28th 2003, President George W. Bush signed into effect Homeland Security Presidential Directive (HSPD) #5 which addressed the management of domestic incidents. The purpose of the Directive is to “Enhance the ability of the United States to manage domestic incidents by establishing a single comprehensive national incident management system.” All governmental entities, including local governments, are directed to:
 - Incorporate NIMS into existing training and exercise programs
 - Institutionalize the use of the Incident Command System (ICS)
 - Formally recognize the NIMS and adopt NIMS principles and policies
 - Establish a timeframe and strategy for full implementation of NIMS
- Formal adoption of NIMS is a requirement for the City to be considered for future federal Homeland Security and other federal funds.
- This requirement was discussed with City Council in further detail at the December 5th Study Session.

Expenditure Required: \$ 0

Source of Funds: N/A

Policy Issue

Does City Council want to formally acknowledge NIMS and adopt NIMS principles and policies thereby qualifying the City of Westminster to apply for future Homeland Security and other related federal funds?

Alternative

City Council could choose not to adopt NIMS via the attached resolution. Staff does not recommend this action as this would prevent the City from applying for Federal Homeland Security funding.

Background Information

Developed by the Secretary of Homeland Security at the request of the President, the National Incident Management System (NIMS) integrates effective practices in emergency preparedness and response into a comprehensive national framework for incident management. The NIMS will enable responders at all levels to work together more effectively to manage domestic incidents no matter what the cause, size or complexity. The benefits of the NIMS system include:

- Standardized organizational structures, processes and procedures;
- Standards for planning, training and exercising, and personnel qualification standards;
- Equipment acquisition and certification standards;
- Interoperable communications processes, procedures and systems;
- Information management systems; and
- Supporting technologies – voice and data communications systems, information systems, data display systems and specialized technologies.

The City's Emergency Plan and Management System (EPMS) presently complies with all NIMS requirements and City departments regularly train and exercise using the NIMS Incident Command System management principles and practices.

Respectfully submitted,

J. Brent McFall
City Manager

Attachment: Resolution

RESOLUTION

RESOLUTION NO. **53**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

WHEREAS, the President, in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS) that would provide a consistent nationwide approach for federal, state, local, and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity;

WHEREAS, the collective input and guidance from all federal, state, local, and tribal homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS;

WHEREAS, it is necessary and desirable that all federal, state, local and tribal emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management;

WHEREAS, to facilitate the most efficient and effective incident management it is critical that federal, state, local, and tribal organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters;

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the City's ability to utilize federal funding to enhance local and state agency readiness, maintain first responder safety, and streamline incident management processes;

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Westminster, including current emergency management plans, training and exercise programs; and

WHEREAS, the National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System.

NOW, THEREFORE, the City Council of the City of Westminster resolves that:

The City of Westminster, Colorado, does hereby establish the National Incident Management System (NIMS) as the City Standard for incident management.

PASSED AND ADOPTED this 12th day of December, 2005.

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney's Office



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Resolution No. 54 re Service Commitment Allocations

Prepared By: Shannon Sweeney, Planning Coordinator

Recommended City Council Action

Adopt Resolution No. 54 allocating Service Commitments for the year 2006 to the various categories of the Growth Management Program including Service Commitments for residential competitions for new single-family detached, single-family attached, multi-family, senior housing, and traditional mixed use neighborhood developments.

Summary Statement

- At the November 28, 2005 City Council Post Briefing, City Council directed Staff to draft a resolution to proceed with the recommended Service Commitment (SC) allocations for 2006 as detailed in the table in the Background Information section.
- The total potable water allocation of 1,563 SCs includes 82 SCs to be awarded on a competitive basis in 2006 to one new residential project in each of the five residential competition categories as shown below:
 - Category B-1 – Single-Family Detached (SFD) - 20 SCs (20 new units in 2006)
 - Category B-2 – Single-Family Attached (SFA) - 18 SCs (25 new units in 2006)
 - Category B-3 – Multi-Family (MF) - 13 SCs (25 new units in 2006)
 - Category B-4 – Traditional Mixed Use Neighborhood Development (TMUND) - 25 SCs (25-50 new units in 2006 depending on unit types)
 - Category E – Senior Housing - 6 SCs (15 new units in 2006)
- Per the Westminster Municipal Code amendment approved by City Council in June 2005, the total non-potable (reclaimed) allocation of 2,384 SCs matches the supply (rather than estimated demand) figure for the system.
- City water supplies and treatment capacity are more than adequate to meet these recommended new service commitments.

Expenditure Required: \$0

Source of Funds: N/A

Policy Issues

- Should the City allocate Service Commitments to the various Growth Management Program categories as detailed in this report?
- Should the City conduct competitions next year in each of the new residential categories as outlined in this report?

Alternatives

- Do not adopt the attached resolution allocating Service Commitments to the various Growth Management Program categories for use in 2006. These allocations are necessary on an annual basis to serve the needs of new development in the upcoming year. Because these allocations must be in place for any new development to proceed in 2006, this option would cause delays for new development (including City projects).
- Do not authorize new residential competitions next year. This option is not recommended as the residential competition process is the mechanism the City uses to allow a small number of new residential projects to proceed to the City's development review process. In addition, the Service Commitments (SCs) set aside for the competition process constitute only five percent of the total allocation for 2006 and there is adequate water available to serve this demand. If there are no applications submitted in some of the competition categories, or fewer SCs are needed as a result of the competitions, those SCs are returned to the City's water supply figures.

Background Information

The City's Growth Management Program within the Westminster Municipal Code was established in 1978 to aid the City in balancing growth with the City's ability to provide and expand services including water, water treatment, sewer, police, fire, parks and recreation, etc. At the end of each year, City Council allocates Service Commitments, the units of measure for required City services, to the various residential and non-residential categories established within the Program for use in the upcoming year. Prior to these allocations, City Staff complete projections of new development in the upcoming year and develop recommendations for City Council regarding Service Commitment allocations to serve the demand in the following year for all of the various Growth Management categories. With the exception of the new residential competition categories (Category B) and the reclaimed water category (Category R), these Service Commitment allocation recommendations have been based on estimated demand for new development. Category C (Non-Residential) sets aside Service Commitments for new commercial, office, and industrial projects. The City has water agreements in place for Federal Heights, the Standley Lake Water and Sanitation District, and Shaw Heights, and a small number of Service Commitments are allocated in Category D (Outside City Contracts) to accommodate contract requirements in those areas. Category F (Public and Contingency) reserves Service Commitments for new City projects and facilities such as park development, libraries, fire stations, etc.

The number of new residential subdivisions is managed through the competition process. "Active" residential (Categories A and L) refers to projects that are under construction, have previous binding agreements for Service Commitments with the City (such as Legacy Ridge), meet build-out and infill development criteria, are approved projects awarded in previous competitions, and new South Westminster residential projects. These projects are awarded on a first-come, first-served basis (up to any limits placed on the original competitive awards). New residential projects must compete for available Service Commitments through a competition process. Service Commitments for single-family detached projects are calculated at one Service Commitment per unit, 0.7/unit for single-family attached, 0.5/unit for multi-family and 0.35/unit for senior housing. This equates to the relative amounts of water used annually by each of these types of dwelling units.

The intent of the Service Commitment competitions is for a limited number of new residential projects to proceed to the City’s development review process. Each of the five competitions (Single-Family Detached, Single-Family Attached, Multi-Family, Senior Housing, and Traditional Mixed Use Neighborhood Development) is based on the City’s adopted residential design guidelines for that category, and all projects must meet all of the minimum requirements in the design guidelines. With the exception of the Traditional Mixed Use Neighborhood Development competition (judged by a jury), projects receive points by providing “incentive” items the applicants choose. These incentive items are listed and detailed in the guidelines.

The competitions typically begin in January each year, and depending on the number of projects submitted, Service Commitments are awarded to individual projects by City Council resolution in March or April. While the recommendation in this report is to award Service Commitments to one new residential project in each competition category, City Council would have the option of awarding to additional projects if desired through the competition awards next spring. The awards to individual projects through the competition process include any Service Commitments needed in subsequent years to build out each of the winning projects. As a result, it is not necessary for the winning projects to compete in multiple years in order to complete the same project.

Staff has been contacted by developers interested in the competition process next year and has received inquiries on eight different sites at this point. Because Service Commitments are awarded to new residential projects on a competitive basis and many developers do not want their possible competitors to know their plans in advance, Staff has not included a specific list of the potential sites for competition submittals.

As detailed in the November 28, 2005, City Council Post Briefing, Staff is recommending Service Commitment allocations as detailed in the table below. The total recommended allocation is 1,563 Service Commitments from the potable water supply and 2,384 Service Commitments from the reclaimed water system. Any Service Commitments allocated to any of the categories that are not awarded during the year are returned to the water supply figures for use in future years. According to figures the City’s Water Resources Staff, in the Department of Public Works and Utilities, are more than adequate Service Commitments in the potable water supply to accommodate the recommended allocations for 2006.

2006 SERVICE COMMITMENT ALLOCATIONS

<u>CATEGORY</u>	<u>DESCRIPTION</u>	<u>PROPOSED ALLOCATIONS</u>
	<u>Potable Water Supply</u>	
A and L	All Active and Legacy Ridge Residential	690
B-1	New Single-Family Detached	20
B-2	New Single-Family Attached	18
B-3	New Multi-Family	13
B-4	New Traditional Mixed Use Neighborhood (Residential)	25
C	Non-Residential	637
D	Outside City Contracts	25
E	Senior Housing	6
F	Public and Contingency	<u>130</u>
	Total Potable Water Supply	1563
	<u>Non-Potable</u>	
R	Reclaimed	<u>2384</u>
	Total Non-Potable (Reclaimed)	2384

SUBJECT: Resolution re Service Commitment Allocations

Page 2

Respectfully submitted,

J. Brent McFall
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **54**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

ALLOCATING SERVICE COMMITMENTS FOR THE YEAR 2006 PURSUANT TO THE CITY'S GROWTH MANAGEMENT PROGRAM AS SET FORTH IN CHAPTER 3, TITLE XI OF THE WESTMINSTER MUNICIPAL CODE

WHEREAS, the City of Westminster has adopted by Ordinance a Growth Management Program through 2010; and

WHEREAS, the City's Growth Management Program as set forth in Chapter 3, Title XI of the Westminster City Code calls for the periodic determination of the availability of Service Commitments and allocation of such Service Commitments among various categories of potential users; and

WHEREAS, the City Council of the City of Westminster has, with the aid of detailed factual reports and expert opinions from its Staff and consultants, examined the raw water supply, the sewage treatment capacity, the water treatment capacity, and other factors affecting the availability of Service Commitments; and

WHEREAS, the City Council of the City of Westminster has previously determined, in connection with its adoption of Chapter 3 of Title XI of the Westminster Municipal Code, that the City's ability to award Service Commitments is restricted; and

WHEREAS, the demand of different land uses on the City's ability to provide utilities and other services vary due to density and intensity of the particular use; and

WHEREAS, City Council has previously determined that the Comprehensive Land Use Plan shall assist the City in making future decisions concerning the desired mix of land uses at build-out of the City; and

WHEREAS, it is the intent of City Council to recognize the many factors influencing demand for new water and sewer service, while remaining cognizant of the large capital investments in land and public improvements made by developers with projects that are already started, and recognizing the efficiencies inherent in encouraging the completion of existing development projects that can use existing public capital facilities before approving new ones.

NOW, THEREFORE, be it resolved that the City Council of Westminster, in accordance with Sections 11-3-4 and 11-3-5 of the Official Code of the City of Westminster, the City Council hereby determines that:

1. Based on all of the information available to the City Council on this date, for the period beginning January 1, 2006 through December 31, 2006, the City can make available 690 Service Commitments ("SCs") to Categories A (A-1, A-2, and A-3) and L (L-1, L-2, and L-3), 20 SCs to Category B-1, 18 SCs to Category B-2, 13 SCs to Category B-3, 25 SCs to Category B-4, 637 SCs to Category C, 25 SCs to Category D, 6 SCs to Category E, 130 SCs to Category F, and 2,384 SCs to Category R without adverse effect on existing water users and without in any way endangering the health, safety, and welfare of the citizens of Westminster and of other persons dependent upon the operation of a safe and efficient public water and sanitation system by the City.
2. This Resolution supersedes and replaces all previous allocation resolutions by City Council.

PASSED AND ADOPTED this 12th day of December, 2005.

ATTEST:

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

Agenda Item 10 C-E

City Council Meeting
December 12, 2005



SUBJECT: Energy Performance and Financing Contracts

Prepared By: Jerry Cinkosky, Facilities Manager; Brian Grucelski, Maintenance Coordinator; Barbara Opie, Assistant to the City Manager; Bob Byerhof, Financial Analyst; Jane Greenfield, Assistant City Attorney II

Recommended City Council Action

1. Pass Resolution No. 55 authorizing the City to enter into a lease-purchase agreement for the implementation of the energy performance contract for \$2,262,993, plus approximately \$592,723 in financing cost, to fund the energy and water savings conservation projects with All American Investment Group (AAIG), LLC, and authorizing the City Manager to sign the contract and all necessary documents.
2. Pass Councillor's Bill No. 71 as an emergency ordinance appropriating lease proceeds, including \$29,160 in interest earnings, for a total of \$2,292,153 in the General Fund for the energy performance contract lease proceeds.
3. Authorize the City Manager to sign all necessary documents to enter into an energy performance contract with Siemens Building Technologies for energy and water conservation and other related improvements in City facilities and authorize the transfer of \$19,500 from the City Hall HVAC project savings, \$20,000 from the City Hall Space Allocation/Remodel project savings, and \$103,856 from the BO&M Major Maintenance project for work originally planned for 2006 that is addressed by the energy performance contract for a total increase of \$143,356 to the HVAC/Energy Audit project in the 2006 General Capital Improvement Fund.

Summary Statement

City Council's actions will permit the following:

- Fund the purchase, installation and calibration of more energy efficient and/or water conserving technologies and devices in 21 City facilities.
- Provide essential tools to improve the operations within these facilities, generate both energy and water conserving savings at a time when City finances are tight, minimize the effect of rising energy costs, and promote responsible water use.
- Allow the Building Operations and Maintenance Division to become more proactive versus reactive in providing facilities' maintenance services.
- Provide a single contractor to conduct these multi-facility energy and water renovations and improvements, improving accountability and increasing standardization, and enhancing and reducing costs for maintenance operations in the long term.
- The total cost of the project, including financing, is estimated to be \$2,946,718, inclusive of interest costs. The associated lease payments will be included in the 2007/2008 budgets with a portion of these payments funded from the guaranteed energy savings that these improvements generate. The net interest rate will be 3.79%, assuming the financing closes by December 30, 2005.
- The attached ordinance is being taken as an emergency action to appropriate the lease proceeds plus interest to purchase and install the equipment associated with this project. Because of the necessity to close the financing by December 30, 2005 and no Council meeting will be held on December 26 because of the holiday, in order to capture the financing rate of 3.79% pursuant to the lease-purchase agreement for this project with the AAIG, an appropriation of funds for these expenses is necessary to proceed with the projects in a expeditious manner.

Expenditure Required: Not to exceed \$2,946,718

Source of Funds: General Fund operating budget energy savings and lease proceeds; and General Capital Improvement Fund

Policy Issue

Does City Council want to proceed with an energy performance contract to implement energy saving and water conserving technologies and other enhancements in various City facilities?

Alternatives

- Do not proceed with an energy performance contract. This option is not recommended given that energy saving opportunities have been identified that will result in over \$170,000 in savings per year.
- City Council could direct Staff to revisit contract negotiations for an energy performance contract for a lesser scope than proposed. City Council could direct Staff to include equipment replacements/upgrades to only those facilities that produce energy savings to offset the expense. This is not recommended as several facilities have equipment that have surpassed their expected life and are being maintained with creative techniques and increasingly expensive maintenance costs.
- Instead of lease purchasing these energy and water conserving upgrades, the City could attempt to cash fund the entire project. This alternative is not recommended based on the current funding available. The Building Operations and Maintenance (BO&M) annual capital improvement appropriation ranges from \$200,000-\$300,000 per year, of which, a significant amount of funding goes towards addressing emergency fixes and minimizes proactive maintenance and repairs. If the BO&M funding were used for this project, it would take between 8 and 12.5 years to complete assuming no other repairs were necessary during this same time period. Conducting these energy savings and water conserving upgrades at this time will not only address the escalating energy costs and scarce water resources but also permit BO&M to address some much needed maintenance work to City facilities in a much more timely fashion.

Background Information

Staff began investigating energy saving opportunities in 2004, as energy costs at various facilities continued to escalate. Energy costs in Colorado are increasing and have begun to strain the City's budget. Over the past three years, natural gas costs have risen over 70% and electric rates have risen between 20% and 40% over the same period of time. Natural gas cost projections for 2006 may exceed what is currently budgeted, even with the modifications made with the 2006 amendment. With the likelihood of additional increases, Staff has been exploring options that will aid the City in becoming more efficient in its energy usage.

City Council identified the "City's Energy and Fuel Strategy" as a High Priority at their April 2005 goal setting retreat. Staff has been working with an energy consultant to capture energy savings through equipment enhancements and some minimal operational changes. The City entered into a contract in February 2005 with Siemens Building Technologies as the City's energy service company (ESCO) to look into energy-saving enhancements at each City owned facility.

The ESCO conducted an audit, assessing energy-consuming systems or facilities and proposed upgrades to reduce energy consumption. After Siemens completed the audit, Staff identified enhancements to implement, focusing on those options that had a high rate of return in potential savings and/or priority based on age and stability of existing equipment. Enhancements identified by Siemens include the installation of central controls, lighting and electrical upgrades, water conservation devices and HVAC upgrades. The upgrades Siemens identified would be paid for with the energy cost savings outlined (see Attachment A).

The project costs to install the energy saving equipment are being funded by entering into a financing agreement with a firm specializing in energy performance contracts. The energy performance contract with Siemens guarantees that the enhancements will result in energy savings covering the equipment and financing cost. If the energy savings fall short of the projections, Siemens must pay the difference to the City.

In addition to energy saving enhancements identified by Siemens, Staff recommends replacing certain key equipment that is beyond its useful life, due to its ongoing maintenance issues and difficulty in finding replacement parts. Although direct energy savings were not identified with these items, the City should benefit from enhanced operating efficiency since the aged equipment is prone to breakdown, which demands Staff resources that otherwise may be deployed elsewhere.

Staff has worked with Siemens since February, conducting an inventory assessment of City facilities and identifying opportunities for energy enhancements as well as evaluating antiquated equipment. Siemens concluded their audit in June and worked with Staff to identify projects to include and exclude from their potential scope of work. The following audit highlights were reported to City Council at the September 12 post City Council meeting.

Energy Audit Highlights

The audit addressed lighting, vending, water and mechanical systems in all facilities including the Semper Water Treatment Facility, but excluded utility pump stations and plants. The Big Dry Creek Wastewater Treatment Facility was excluded because of the current expansion and renovation. This facility will have new equipment with the latest energy saving technologies. The Northwest Water Treatment Facility was excluded because of the newness of the facility (opened in 2002). Utility pump stations were excluded because Staff has already taken a number of steps to manage energy consumption at the stations.

The attachment to this agenda memorandum lists the projects recommended for inclusion in the scope of work (Attachment A). It lists facilities, projected cost, projected energy and associated savings and projected payback period. Not every project listed necessarily has a payback period shown because its payback exceeds a 20 year timeframe; Siemens did not include the payback timeframe for projects exceeding 20 years since that would exceed the life expectancy of the equipment. The “energy savings” reflect real reductions projected in energy consumption (e.g. kilowatts used) for the specific item identified. The “associated savings” identified include hard dollar savings, such as supplies like light bulb and ballasts replacements, for the first three to five years of the project. Not included are those soft dollar savings such as staff time needed to replace light bulbs or ballasts, overtime expenses for staff to conduct emergency repairs on a HVAC system on the weekend, etc.

The lighting audit includes evaluation of bulbs (i.e., wattage and number of fixtures), ballasts (a ballast is a device in each light fixture that controls the electricity flow for bulbs), exit signs (changing from incandescent and fluorescent light to LED) and timers/sensors associated with lighting. One of the proposed enhancements in City Hall is to install occupancy sensors in most areas. This will allow the lights to be dimmed or turned off when an office or conference room is not in use. The technology associated with occupancy sensors has improved over the years and is more sensitive to motion than previous sensors. Lighting in the gymnasiums at West View and City Park Recreation Centers are proposed to be converted from metal halide fixtures to T-8 high bay fixtures (reducing wattage by approximately 2/3 while providing the same amount of light). The lighting retrofits are projected to save approximately \$92,000 per year.

Vending machine controls allow machines to be shut down during long periods of no use. They are activated by motion. These controls are proposed for the soda vending machines in various city facilities. The vending controls have automatic timers that allow the products to stay cool for long periods of time but without the machine running constantly to cool them (like a refrigerator does). For example, the timer may be set to turn on every two hours, thereby keeping the beverages cool but not requiring the machine to be operating non-stop for a 24-hour period. The savings on these vending machine controls are anticipated to be \$1,800 a year (for 24 machines within seven facilities).

Water saving measures evaluated include faucets, toilets, urinals, and showerheads. Modifications to the faucets include replacing current aerators with lower flow (1/2 gallon per minute) units. Many facilities' current toilets (3.5 gallons per flush) are proposed to be replaced with or retrofit toilets that use only 1.6 gallons per flush. Current urinals utilize 1.5 gallons per flush and are proposed to be replaced with urinals that use only 1.0 gallon per flush. Showerheads in the fire stations (currently run 4.5 gallons per minute or greater) are proposed to be replaced with 2.5 gallons per minute showerheads; the recreation facilities currently have low flow showerheads in place and no changes are proposed for these facilities' showerheads. The City has already upgraded irrigation controls in parks with computerized controls to maximize watering while minimizing waste. The plumbing changes discussed above are estimated to save approximately \$15,000 a year.

The mechanical modifications proposed comprise the bulk of the proposed project. They include roof top units (RTU's), building automation controls (the "brains" running the mechanical heating/cooling systems), thermostats, condensing units, boilers, interlock doors, air handling units (AHU's) and equipment run time optimization. City Park Recreation Center mechanical systems comprise approximately \$1.4 million of the total project. City Park Recreation Center opened in 1986 and has the same heating, ventilating and air conditioning (HVAC) system since it opened, nearly 20 years ago. The work needed on this facility's HVAC system is comparable to that completed in 2004 on City Hall (which had its HVAC system since 1988). The HVAC system at City Park Recreation Center is controlled by a computer system that will be obsolete by the end of 2006. Other mechanical improvements include installing interlock door switches with heating equipment in bay areas of the six fire stations throughout the City. These switches will disable the heat any time the bay doors are open, therefore not wasting energy during long periods of time when the doors may remain open. The doors at the stations are closed when the crew is on a call but may be opened during training or maintenance while the crew is in the station.

The audit encompassed other potential energy saving components that are not being recommended. Siemens reviewed these items but did not recommend them for inclusion in the final performance contract because the savings were not sufficient to offset the cost and/or the equipment was not in as significant deterioration as other equipment identified. The exception noted above is City Park Recreation Center, where the energy savings generated by other enhancements, such as the lighting retrofit, are proposed to help offset the HVAC improvements that are in great need of repair and upgrade.

Financing

The proposed scope of work outlined above is recommended to be paid for through an Energy Performance Contract (EPC). An EPC is structured to provide the funding stream to pay for energy saving improvements. Siemens guarantees that the City will reduce energy consumption to cover costs associated with the improvements as part of the EPC. If the City does not realize energy savings per the contract, Siemens will reimburse the City the monetary difference between realized savings versus projected savings per the contract or complete other replacement or upgrade work at City facilities not included within the original scope of this project. Projected energy savings are based on consumption (e.g., kilowatt usage), not actual cost of electricity, because the per unit cost of energy will likely increase during the contract period.

To fund the proposed scope of work's estimated total cost, the following methods were considered:

- 1) Cash fund a portion or the entire project;
- 2) Finance the project through the City's existing Master Lease; or
- 3) Finance the project through a vendor specializing in EPC's.

After City Council concurred with Staff's recommendation at the September 12th post City Council meeting to pursue a mix of cash using some savings identified in the Capital Improvement Program and borrowing through a vendor specializing in EPC's, a Request For Proposals (RFP) was released for financing bids. It was sent to four firms: All American Investment Group (AAIG), Citicapital, GE Capital Finance, and Siemens Finance. Proposals were received from AAIG and Siemens Finance. AAIG was selected due to the lower interest cost of 3.79%. The

financing agreement also incorporates provisions that allow the City to prepay the balance outstanding in part or entirety without penalty. This flexibility will allow the City to benefit from reduced interest costs if cash sources are identified in future years. The attached resolution with the Equipment Lease-Purchase Agreement is required by AAIG for their financing this project.

Of the total project cost of \$2,550,509, \$258,356 will be cash funded and \$2,262,993 will be financed over a 10-year term with AAIG. This financing term was chosen primarily to ensure that payments do not extend beyond the life expectancy of the equipment. Included within this cost is the standard performance bond, a labor and material payment bond, as well as an energy savings guarantee bond. The energy savings guarantee bond ensures that should the energy savings projects not generate the savings and for some unforeseen reason Siemens is unable to pay the City the difference as guaranteed, then the bond shall pay the amount Siemens owed the City. Staff does not anticipate either of these scenarios; however, the energy savings guarantee bond is an additional protection for the City (at a cost of \$2,800). The energy savings guarantee bond will apply only for three years, which is the anticipated period the City will utilize the measurement and verification discussed under the Performance Contracts section below to verify savings.

The cash funding (\$258,356) is proposed to be transferred from Capital Improvement Program (CIP) project accounts. City Council authorized \$115,000 with the amended 2006 Budget in the General Capital Improvement Fund for the HVAC/Energy Audit project (amended 10/24/05). The remaining \$143,356 is proposed as follows:

- \$19,500 proposed to be moved from the City Hall HVAC project savings (project to be closed);
- \$20,000 proposed to be moved from the City Hall Space Allocation/Remodel project savings (project to be closed); and
- \$103,856 proposed to be moved from the BO&M Major Maintenance project for work originally planned for 2006 addressed by the energy performance contract (i.e., \$110,000 was budgeted for HVAC upgrades at City Park Recreation Center and a boiler replacement at the Municipal Service Center Administration Building).

The total project budget is a guaranteed maximum price (GMP) project for \$2,550,509. The project budget includes a very small contingency (approximately 3%) within the GMP and does not include any additional contingency outside this project budget. Any savings in the GMP contingencies will be applied towards other City facilities projects.

An additional component not included within the current financing proposed for this project is Xcel Energy's Demand Side Management (DSM) rebates. Xcel Energy announced in mid-November that it will implement a new DSM rebate program effective January 1, 2006. Under this new program, initial calculations project that the City may be eligible for rebates from Xcel Energy for energy saving equipment improvements ranging from \$40,000-\$50,000. However, since information on the rebate program is still being released, these potential funds are not included within this current proposal. Siemens may assist the City in applying for DSM rebates; any rebates the City obtains shall be paid directly to the City. Staff will pursue possible rebates after more information is made available.

In reviewing the proposed scope of the project, City Council will see that some components do not have a payback time shown (please see Attachment A). This is due to the fact that these items do not generate significant energy savings to offset the cost of the work within a reasonable time frame. Staff is proposing that savings created by some equipment replacement (such as lighting) be utilized to help fund the replacement of other outdated equipment that do not have similar energy savings (i.e., less than a 20 year payback period). Energy savings alone will not pay for the current proposed scope of the project within the proposed 10-year payback period. The current proposed scope of work has an approximate 14.3 year payback period if the energy savings alone are to be used to cover the entire project. In order to get to a 10 year payback period, which Staff believes is more practical based on the potential useful life of some of the equipment included, some additional annual infusion of funding will be required to cover the costs associated with the project. In the payment schedule, this

annual contribution ranges from \$98,900-113,000 per year in addition to the projected annual energy savings. The energy savings projected have been updated since the September 12 Post City Council Meeting to reflect current energy rates, thus increasing the anticipated annual energy savings from \$107,081 to \$172,187 (or approximately \$1.8 million over the ten year period).

City Council will note that the Senior Center is included within the facilities to receive energy improvements. As this is a shared facility with Hyland Hills Parks and Recreation District, Staff will work with Hyland Hills in attempts to recover some of the costs associated with these improvements from Hyland Hills. However, due to the turn around time required and the fact that Hyland Hills had already approved their 2006 Budget, Staff did not pursue a contribution from Hyland Hills at this time but will do so for future years.

Staff believes that combining the projects identified in the proposed scope of work is financially and operationally efficient with the benefit of employing one general contractor to complete energy efficient and replacement equipment throughout multiple City facilities. The benefits of the proposed scope of work will enhance the City's customer service by lessening the amount of down time for mechanical equipment replacement/installation by contracting through one provider to do these significant improvements. In addition, replacing several HVAC units and boilers will enhance the reliability of equipment, thus reducing the negative impact of temperature control issues in facilities, especially at the recreation centers. Furthermore, the project is expected to reduce the number of emergency after hours service calls for the Building Operations and Maintenance Division (BO&M), which currently average once per week at recreation facilities on weekends and 2-3 times per week on weekdays for equipment failures primarily at the recreation facilities. The project will allow the City to catch up on some much needed facility investment and updating and allow BO&M to move from the reactive repairs it is consumed by currently and into a more proactive mode of operations and maintenance.

Staff's work on developing a comprehensive Facility Maintenance Plan for City facilities is complemented by the Energy Audit. The audit has provided an excellent opportunity to identify equipment needs and other potential improvements needed to be included in the Maintenance Plan. Additionally, the audit has served as an independent review of City facilities and provided valuable information for Staff.

Performance Contracts

Siemens has a proven track record with EPC's in Colorado and around the nation. They are currently working with the City of Arvada, Thompson Valley School District (Loveland), Canyon City School District, Red Rocks Community College, and Colorado Department of Human Services.

Colorado's state statutes govern how performance contracts may be designed and requirements on minimum amount of time for Measurement and Verification (M&V) and other components associated with EPC's. In entering an EPC, the City is required to keep Siemens on board for a minimum of three years for M&V in order to be able to enforce the energy savings guaranteed by Siemens. The City may continue to utilize Siemens for the full term of the financing (i.e., 10 years) for ongoing M&V but a minimum of three years is required per the state legislation. Staff will evaluate the merits of continuing beyond the three year review period prior to the conclusion of the third year of monitoring. The annual cost of M&V ranges between \$7,950 and \$10,373. Should the City discontinue annual M&V after the three year minimum required by the state, the City will expend \$66,565 less over the term of this project.

Staff has been working with John Canfield, who is a consultant provided by the Governor's Office of Energy Management and Conservation's Rebuild Colorado Program. He is the owner and president of Trident Energy Services, Inc, from Longmont. Mr. Canfield has provided valuable insight and guidance throughout this initiative's process relative to the intricacies of energy audits and performance contracts and was present at the September 12 Post Council Meeting. Mr. Canfield will continue assisting the City through the Governor's Office of Energy Management and Conservation during the M&V period of this project as part of the City's independent monitoring of the energy saving and water conserving results.

SUBJECT:

Energy Performance and Financing Contracts

Page 7

This action is being taken as an emergency ordinance to appropriate the lease proceeds plus interest to purchase and install the equipment associated with this project. Because of the necessity to close the financing by December 30, 2005 and no Council meeting will be held on December 26 because of the holiday, in order to capture the financing rate of 3.79% pursuant to the lease-purchase agreement for this project with the AAIG, an appropriation of funds for these expenses is necessary to proceed with the projects in a expeditious manner.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments

ATTACHMENT A

City of Westminster

Proposed Energy Performance Contract Projects

	Facility	Item	Implementation Price	Energy Savings	Associated Savings	Payback (yrs)
1	City Wide	Lighting Retrofits	\$576,067	\$91,932	\$15,012	5.4
2	City Wide	Water Retrofits	\$94,537	\$15,888	\$0	6.0
3	City Wide	Vending Miser	\$8,126	\$1,841	\$0	4.4
4	Fire Stations	Interlock Doors with Heat	\$14,992	\$2,072	\$0	7.2
5	Fire Stations	Replace RTU's	\$42,469	\$378	\$0	N/A
6	Municipal Court	Replace RTU's	\$56,946	\$1,470	\$0	N/A
7	Senior Center	Replace RTU's / Boxes / Ctrls.	\$165,146	\$782	\$0	N/A
8	Swim & Fitness	RTU's / Rewiring	\$39,836	\$115	\$0	N/A
9	Public Safety	Optimize MUA Runtimes	\$1,463	\$1,164	\$0	1.3
10	Public Safety	Hardwire T'stats	\$30,246	\$0	\$729	N/A
11	Public Safety	Boiler Temp Reset	\$1,223	\$271	\$0	4.5
12	MSC Admin	Replace Boiler	\$22,317	\$0	\$0	N/A
13	MSC Admin	Replace Condensing Unit	\$15,946	\$0	\$0	N/A
14	City Park Rec Ctr	Replace Boiler	\$196,169	\$5,909	\$0	N/A
15	City Park Rec Ctr	Replace AHU-2,3,4 / insul. Ref. pipe	\$277,131	\$2,900	\$0	N/A
16	City Park Rec Ctr	Replace AHU-1 with Ht. Rcvry Unit	\$266,244	\$18,133	\$0	N/A
17	City Park Rec Ctr	Retrofit AHU-5 with Heat Wheel	\$150,064	\$9,801	\$0	15.3
18	City Park Rec Ctr	Replace Ctrls. / Optimize Runtimes	\$159,570	\$1,787	\$0	N/A
19	City Park Rec Ctr	Replace VAV boxes / Add VFDs	\$108,875	\$0	\$0	N/A
20	City Park Rec Ctr	Replace RTU's	\$64,910	\$148	\$0	N/A
21	City Park Rec Ctr	Replace Pool Boilers	\$99,793	\$0	\$0	N/A
22	City Park Rec Ctr	Replace Domestic Water Heater	\$67,357	\$0	\$0	N/A
23	City Hall	Heat Pump Runtime Optimization	\$3,420	\$15,406	\$0	0.2
24	City Hall	MUA Runtime Optimization	\$1,549	\$2,190	\$0	0.7
25	Irving St. Library	Add Glycol to heat loop	\$25,432	\$0	\$0	N/A
Base Construction Costs			\$2,489,828	\$172,187	\$15,741	13.96

	Non Construction Items	Implementation Price	Energy Savings	Op Savings	Payback (yrs)
	Audit	\$41,000	\$0	\$0	N/A
	Bond	\$16,881	\$0	\$0	N/A
	Savings Guarantee Bond	\$2,800	\$0	\$0	N/A
Non Construction Subtotal		\$60,681	\$0	\$0	

Total Project Cost		\$2,550,509	\$172,187	\$15,741	14.3
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12/2/2005

Siemens Building Technologies, Inc

RESOLUTION

RESOLUTION NO. **55**

INTRODUCED BY COUNCILLORS

SERIES OF 2005

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO
A LEASE-PURCHASE AGREEMENT FOR THE IMPLEMENTATION
OF THE ENERGY PERFORMANCE CONTRACT**

WHEREAS, City of Westminster, CO (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Colorado, is authorized by the laws of the State of Colorado to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease-Purchase Agreement (the "*Agreement*") with All American Investment Group, LLC (the "*Lessor*") and that certain Escrow Agreement (the "*Escrow Agreement*") with the Lessor and CoBiz Bank, N.A., dba Colorado Business Bank, as Escrow Agent which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Escrow Agreement for the purchase, acquisition and leasing of the equipment therein described on the terms and conditions therein provided;

NOW THEREFORE, be it resolved that the City Council of the City of Westminster, hereby adopts the following:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the Escrow Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Lessee, the execution of such documents being conclusive evidence of such approval; and the City Manager of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and the Escrow Agreement and any related exhibits attached thereto, and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee are authorized to take all action necessary or reasonably required by the parties to the Agreement and the Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance Certificate contemplated in the Agreement, including appropriate arbitration certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Escrow Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 4. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

PASSED AND ADOPTED this 12th day of December, 2005.

ATTEST:

Mayor

The undersigned further certifies that the above resolution has not been repealed or amended.

Signature: _____
City Clerk

Name Printed: _____

Date: _____

BY AUTHORITY

ORDINANCE NO. **3256**

COUNCILLOR'S BILL NO. **71**

SERIES OF 2005

INTRODUCED BY COUNCILLORS
Dittman - Major

A BILL

FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$82,941,554 is hereby increased by \$2,262,993 which, when added to the fund balance as of the City Council action on December 12, 2005 will equal \$95,142,974. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This is an appropriation of a lease proceeds for the energy audit.

Section 2. The \$2,262.993 increase in the General Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Source	1000.46000.0225	\$721,425	<u>\$2,262,993</u>	\$2,984,418

Total Change to Revenues

\$2,262,993

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers to GCIF	10010900.79800.0750	\$3,989,406	<u>\$2,262,993</u>	\$6,252,399

Total Change to Expenses

\$2,262,993

Section 3. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$2,292,153 which, when added to the fund balance as of the City Council action on December 12, 2005 will equal \$36,115,481. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This is an appropriation of a lease and interest earnings proceeds for the energy audit.

Section 4. The \$2,292,153 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from General Fund	7500.45000.0100	\$3,976,000	<u>\$2,262,993</u>	\$6,238,993
Interest Earnings Pooled	7500.42510.0000	\$625,000	<u>\$29,160</u>	\$654,160

Total Change to Revenues \$2,292,153

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Appropriation Holding	80575012727.80400.8888	\$0	<u>\$2,292,153</u>	\$2,292,153

Total Change to Expenses \$2,292,153

Section 5. Notwithstanding any provision of C.R.S. 31-15-801, to the contrary, the lease purchase agreement, as approved by City Council pursuant to Resolution No. 55 shall be effective on December 12, 2005, as provided for by C.R.S. 31-1-102. It is the intent of the City Council that this lease purchase agreement shall not be subject to the procedural requirements of C.R.S. 31-15-801.

Section 6. That an emergency is declared to exist and this ordinance is immediately necessary for the preservation of the public peace, health and safety as the financing for this lease purchase agreement must be completed before December 30, 2005, in order to avoid increased costs to the City and the intervention of the holidays prevent the normally scheduled sequence of City Council meetings.

Section 7. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 8. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED, ADOPTED AS AN EMERGENCY ORDINANCE on the 12th day of December, 2005.

ATTEST:

Mayor

City Clerk

This Equipment Lease-Purchase Agreement is made and entered into as of December 12, 2005, between All American Investment Group, LLC, as Lessor, 730 17th Street, Suite 830, Denver, Colorado 80202, and City of Westminster, as Lessee, whose mailing address is 4800 West 92nd Avenue, Westminster, Colorado 80031.

For and in consideration of the mutual promises and agreements herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions:** Unless the context otherwise clearly requires, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

"Acceptance Certificate" means a certificate in substantially the form attached hereto as *Exhibit C* and which shall be delivered by Lessee to Lessor upon receipt and acceptance of the Equipment as provided in Paragraph 9 hereof.

"Additional Payments" means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of this Agreement.

"Agreement" means this Equipment Lease-Purchase Agreement, as supplemented and amended from time to time in accordance with Paragraph 31 hereof.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

"Dated Date" means the date hereinabove first written.

"Equipment" means (a) the equipment identified in *Exhibit A* hereto, (b) any property acquired in substitution, renewal, repair or replacement for or as additions, improvements, accessions and accumulations to any of such equipment and (c) any accessories, equipment, parts and appurtenances appertaining or attached to any of such equipment or from time to time incorporated therein or installed thereon.

"Escrow Fund" means the fund of that name established and administered pursuant to the Escrow Agreement.

"Escrow Agent" means CoBiz Bank, N.A., dba Colorado Business Bank, in its capacity as escrow agent under the Escrow Agreement, and its successors.

"Escrow Agreement" means the Escrow Agreement, dated as of the Dated Date, among Lessor, Lessee and Escrow Agent, relating to the Escrow Fund.

"Event of Default" is defined in Paragraph 24 hereof.

"Event of Nonappropriation" means a nonrenewal of the term of this Agreement by Lessee, determined by the failure or refusal of the governing body of Lessee to appropriate moneys sufficient to pay the Rental Payments and reasonably estimated Additional Payments for the next succeeding Renewal Term as provided herein.

"Fiscal Period" means the annual or biennial period used from time to time by Lessee for its financial accounting and budgeting purposes. Lessee's current Fiscal Period is set forth in *Exhibit A* attached hereto.

"Initial Term" means the period from the Dated Date to midnight of the last day of Lessee's current Fiscal Period.

"Legally Available Funds" means funds that the governing body of Lessee duly appropriates for the purpose of making Payments under this Agreement, and moneys held in the Escrow Fund.

"Lessee" means the entity referred to as Lessee in the first paragraph of this Agreement.

"Lessor" means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to the Equipment, the Escrow Fund or this Agreement (including Rental Payments) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

ESC-NBQ.DOC

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Payments" means the Rental Payments and the Additional Payments, collectively.

"Purchase Option Price" means the price determined pursuant to Paragraph 6 hereof at which Lessee may purchase from Lessor all of the Equipment on any Rental Payment date prior to the scheduled payment of all Rental Payments to be paid hereunder for the Equipment.

"Purchase Price" means the total cost of the Equipment, including all delivery charges, installation charges, legal fees, financing costs, recording and filing fees and other costs necessary to vest full, clear legal title to the Equipment in Lessee.

"Renewal Term" means each successive period, in addition to the Initial Term, that is coextensive with Lessee's Fiscal Period and for which Lessee has extended the term of this Agreement as provided in Paragraph 3 hereof.

"Rental Payments" means the amounts (allocable to a principal component and an interest component) payable by Lessee pursuant to Paragraph 4 hereof, as payments for the Purchase Price for the Equipment as set forth in *Exhibit B* attached hereto.

"State" means the State identified in *Exhibit A* attached hereto.

2. Agreement to Lease-Purchase Equipment: Lessee hereby agrees to acquire, purchase and lease all the Equipment from Lessor, and Lessor hereby agrees to sell, transfer and lease all the Equipment to Lessee, all on the terms and conditions set forth in this Agreement.

3. Term: The Initial Term shall commence as of the Dated Date and expire at midnight on the last day of Lessee's current Fiscal Period. Beginning at the expiration of the Initial Term, the term of this Agreement shall automatically be extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term in the number of Renewal Terms, each coextensive with Lessee's Fiscal Period, as are necessary for all Rental Payments identified on *Exhibit B* hereto to be paid in full, unless this Agreement is terminated as provided in Paragraph 25 hereof.

The term of this Agreement will expire upon the first to occur of (a) the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, (b) the day after the last scheduled Rental Payment shown on *Exhibit B* hereto is paid in full, as well as any and all other Additional Payments due under the Agreement are paid in full, (c) the day after the Purchase Option Price is paid in full pursuant to Paragraph 6 hereof, except as otherwise therein provided, or (d) at Lessor's option under Paragraph 24 hereof, after an Event of Default and a termination of Lessee's rights under this Agreement.

4. Rental Payments: Lessee hereby agrees to pay Rental Payments for the Equipment from and after the Dated Date (but only from Legally Available Funds) to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 hereof) in the amounts and on the dates specified in *Exhibit B* attached hereto. Rental Payments made by check will be accepted subject to collection.

Lessee's obligation to make Rental Payments and to pay any Additional Payments payable under this Agreement constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Lessee has not pledged its full faith and credit or its taxing power to make any Rental Payments or any Additional Payments under this Agreement, and Lessee shall not permit any person or entity (including the federal government) to guarantee any Rental Payments under this Agreement.

5. Agreement to Seek Appropriations; Notice of Event of Non-Appropriation: Lessee agrees that the officer at the City at any time charged with the responsibility of formulating budget proposals, shall and is hereby directed to do all things lawfully within his power (a) to include amounts to make Payments hereunder in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) to use best efforts to obtain and maintain funds from which Payments under this Agreement may be made. In the Event of Non-Appropriation this Agreement shall terminate, in whole, but not in part, as to all Equipment effective upon the last day of the Fiscal Year for which funds were appropriated.

Lessee hereby agrees to notify Lessor immediately (and in no case later than 30 days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Non-Appropriation.

6. Purchase Option; Partial Prepayment: Lessee is hereby granted the option to purchase the Equipment (in whole or in part), prior to the scheduled payment of the Rental Payments in full pursuant to this Agreement, on each Rental Payment date. Purchase in whole shall be at a price equal to any Rental Payments due, other amounts owed and the Purchase Option Price shown for the Rental Payment date on which such purchase is to be effective under the column titled "Purchase Option Price" on Exhibit B hereto, as such Exhibit B may be revised pursuant to Paragraph 36 (d) hereof. Purchase in part shall be applied per Paragraph 36 (d) hereof. To exercise the option granted under this Paragraph 6, Lessee shall give Lessor a written notice exercising such option and designating the Rental Payment date on which such purchase is to be effective and the applicable Purchase Option Price, which notice shall be delivered to Lessor at least thirty (30) days in advance of the proposed purchase date. The purchase option herein granted may be exercised by Lessee whether or not one or more Events of Default have occurred and are then continuing at the time of such exercise; *provided, however*, that the purchase of the Equipment upon the exercise of such option during the continuance of an Event of Default shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default or otherwise terminate the term of this Agreement notwithstanding anything in this Agreement to the contrary.

Immediately upon any such purchase in whole being made, Lessor shall execute all documents necessary to convey to Lessee and confirm in Lessee free and unencumbered title in and to the Equipment (including but not limited to bills of sale), but without warranties and in where-is, as-is" condition. Lessor shall further cooperate in providing for the filing of any necessary releases or other similar documents.

7. Essentiality: Lessee's present intention is to make Rental Payments and Additional Payments for the Initial Term and all Renewal Terms as long as it has Legally Available Funds. In that regard, Lessee represents that (a) the use and operation of the Equipment is essential to its proper, efficient and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee intends to use the Equipment through the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

8. Delivery and Installation: Lessee shall select the type, quantity and supplier of each item of Equipment designated in *Exhibit A* hereto, then cause the Equipment to be ordered, delivered and installed at the location specified on Exhibit A and pay any and all delivery and installation costs in connection therewith. Lessor shall have no liability for any delay in delivery or failure by the supplier to deliver any Equipment or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the supplier to pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment. As soon as practicable after receipt of the Equipment, Lessee shall furnish Lessor with an Acceptance Certificate. Execution of the Acceptance Certificate by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment shall constitute acceptance of the Equipment on behalf of Lessee. Regardless of whether Lessee has furnished an Acceptance Certificate pursuant to this Paragraph 8, by making a Rental Payment after its receipt of the Equipment pursuant to this Agreement, Lessee shall be deemed to have accepted the Equipment on the date of such Rental Payment for purposes of this Agreement. All Rental Payments paid prior to delivery of the Acceptance Certificate shall be credited to Rental Payments as they become due as shown on the Rental Payment Schedule attached as *Exhibit B* hereto.

Lessee understands and agrees that neither the manufacturer, seller or supplier of any Equipment, nor any salesman or other agent of any such manufacturer, seller or supplier, is an agent of Lessor. No salesman or agent of the manufacturer, seller or supplier of any Equipment is authorized to waive or alter any term or condition of this Agreement, and no representation as to Equipment or any other matter by the manufacturer, seller or supplier of any Equipment shall in any way affect Lessee's duty to pay the Rental Payments and perform its other obligations as set forth in this Agreement. Lessee hereby acknowledges that it has or will have selected the Equipment identified on *Exhibit A* hereto using its own criteria and not in reliance on any representations of Lessor.

9. Disclaimer of Warranties: Lessor, not being the manufacturer, seller or supplier of any of the equipment, nor a dealer in any of such equipment, has not made and does not make any warranty, representation or covenant, express or implied, as to any matter whatever, including but not limited to: the merchantability of the equipment or its fitness for any particular purpose, the design or condition of the equipment, the quality or capacity of the equipment, the workmanship in the equipment, compliance of the equipment with the requirement of any law, rule, specification or contract pertaining thereto, patent infringement or latent defects. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss, of any classification. Lessor shall have no obligation to install, erect, test, adjust, service or maintain any Equipment. Lessee shall look solely to the manufacturer, seller and/or supplier for any and all claims related to the Equipment. Lessee acquires, purchases and leases the Equipment "where-is, "as is" and "with all faults".

Lessor hereby acknowledges that the warranties of the manufacturer, seller and/or supplier of the Equipment, if any, are for the benefit of Lessee.

10. **Title to Equipment:** During the term of this Agreement, title to the Equipment shall be vested in Lessor.

11. **Tax Covenants; Tax Indemnity Payments:** Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the Lessor or its assigns thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to complete in a timely manner an information reporting return (either Form 8038-G or Form 8038-GC, as appropriate) in the form attached as *Exhibit D* hereto with respect to this Agreement as required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly Rental Payments under this Agreement, other than the Escrow Fund and a fund established to make Rental Payments that will not earn \$100,000 or more in one year. Lessee certifies and covenants to the owners from time to time of Lessor's interests in this Agreement that, so long as any Rental Payments remain unpaid hereunder, moneys on deposit in the Escrow Fund will not be used in a manner that will cause this Agreement to be classified as "arbitrage bonds" within the meaning of Section 148(a) of the Code.

If Lessee breaches the covenant contained in this Paragraph, the interest component of Rental Payments may become includible in gross income of the Lessor or its assigns thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of taxability and on each Rental Payment date thereafter to Lessor an additional amount determined by Lessor to compensate the Lessor for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

12. **This Section intentionally left blank.**

13. **Use of Equipment, Inspection and Reports:** During the term of this Agreement, Lessee shall be entitled to quiet enjoyment of the Equipment and may possess and use the Equipment in accordance with this Agreement, provided that Lessee is in compliance in all respects with the terms of this Agreement and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of this Agreement and at Lessor's request, Lessee shall provide Lessor, no later than ten days prior to the end of each Fiscal Period (commencing with the Lessee's current Fiscal Period), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Lessee's ability to continue the term of this Agreement for the next succeeding Renewal Term as may be reasonably requested by Lessor.

During the term of this Agreement, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Lessee as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Lessee's auditor.

14. **This Section intentionally left blank.**

15. **Risk of Loss:** All risk of loss, damage, theft or destruction to each item of Equipment shall be borne by Lessee. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee hereunder (including, but not limited to, the obligation to pay Rental Payments when due), all of which shall continue in full force and effect subject to the terms of this Agreement. If (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment or (ii) the payment in full of the then applicable Purchase Option Price. Any balance of Net Proceeds remaining after completion of such work or payment of such Purchase Option Price shall be paid promptly to Lessee. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Purchase Option Price in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Purchase Option Price in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

16. **Insurance:** In the event that Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of this Agreement keep the Equipment insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of Equipment in the amounts and for the coverage set forth in *Exhibit E* hereto, with carriers acceptable to Lessor, under a policy or policies containing a loss payable endorsement in favor of Lessor, and

affording to Lessor such additional protection as Lessor shall reasonably require. Lessee shall further, at its expense, maintain in effect throughout the term of this Agreement a policy or policies of comprehensive public liability and property damage insurance in the amounts and for the coverage set forth in *Exhibit E* hereto, with carriers satisfactory to Lessor. All such insurance shall name Lessor as an additional insured. The policies required hereby shall provide that they may not be canceled or materially altered without at least 30 days prior written notice to Lessor. Lessee shall deliver to Lessor copies or other evidence satisfactory to Lessor of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. Lessor shall have the right, on behalf of itself and Lessee, to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under said insurance policies. If Lessee is self-insured with respect to equipment such as the Equipment, Lessee shall maintain during the term of this Agreement an actuarially sound self-insurance program in form satisfactory to Lessor and shall provide evidence thereof in form and substance satisfactory to Lessor.

17. Maintenance and Repairs: Lessee shall use the Equipment in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment in good repair and working order, performing all maintenance and servicing necessary to maintain the value of the Equipment, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment which cannot be removed without materially damaging the functional capabilities or economic value of the Equipment.

18. Taxes: Unless Lessee has provided Lessor with evidence necessary to sustain an exemption therefrom, Lessee shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment, the Escrow Fund, the Rental Payments or the use, registration, rental, shipment, transportation, delivery, ownership or operation of the Equipment and on or relating to this Agreement; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

19. Lessor's Performance of Lessee's Obligations: If Lessee shall fail to duly and promptly perform any of its obligations hereunder, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment and Lessor's interests therein, including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor together with late charges as provided in Paragraph 20 below, and any reasonable legal fees incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

20. Late Charges: To the extent permitted by law, should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor hereunder (including, but not limited to, any amounts due as a result of Lessor's exercise of its rights under Paragraph 25 hereof) on the date on which such amount is due hereunder, then Lessee shall pay to Lessor late charges on such delinquent payment from the due date thereof until paid at the rate of 12% per annum or the highest rate permitted by law, whichever is less.

21. Indemnification: Lessee assumes liability for, agrees to and does hereby indemnify, protect and hold harmless Lessor and its agents, employees, officers, directors, parents, subsidiaries and stockholders from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, storage, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to accept the Equipment or otherwise to perform or comply with any conditions of this Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement. Lessee is an independent contractor and nothing contained herein shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor. Notwithstanding anything herein to the contrary, any indemnity amount payable by Lessee pursuant to this Paragraph 21 shall be payable solely from Legally Available Funds and only to the extent authorized by law.

22. No Offset; Unconditional Obligation: This Agreement is "triple net" and Lessee's obligation to pay all Rental Payments and Additional Payments hereunder shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of Lessee against Lessor hereunder or otherwise; nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, or lack of right, power or authority of Lessor to enter into this Agreement or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessor or Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental Payments and Additional Payments payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall expire or be terminated pursuant hereto (including upon the occurrence of an Event of Nonappropriation) or

until the Equipment has been returned to the possession of Lessor as herein provided (for all purposes of this Agreement any item of Equipment shall not be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Agreement or any of the items of Equipment except in accordance with the express terms hereof.

23. Representations and Warranties of Lessee: Lessee hereby represents and warrants to and agrees with Lessor that:

- (a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.
- (b) Lessee has been duly authorized by the City Council of Westminster to enter into the transactions contemplated by this Agreement and the Escrow Agreement and has been duly authorized to execute and deliver this Agreement and the Escrow Agreement and to carry out its obligations hereunder and thereunder. Attached hereto as *Exhibit F* is a full, true and correct copy of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Agreement and the Escrow Agreement. Attached hereto as *Exhibit G* is a full, true and correct copy of an Incumbency Certificate relating to the authority of the officers who have executed and delivered this Agreement and the Escrow Agreement on behalf of Lessee, and attached hereto as *Exhibit H* is a full, true and correct copy of an opinion of Lessor's legal counsel regarding the legal, valid and binding nature of this Agreement and the Escrow Agreement on Lessee and certain other related matters.
- (c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement and the Escrow Agreement.
- (d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Agreement or the Escrow Agreement or performing any of its obligations hereunder, except to the extent that such performance may be limited by Colo. Const. Art. X, Sec. 20, or bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, the Escrow Agreement or any other agreement or instrument to which Lessee is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement and the Escrow Agreement. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement and the Escrow Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained.
- (f) The payment of the Rental Payments or any portion thereof is not (under the terms of this Agreement, the Escrow Agreement or any underlying arrangement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Purchase Price for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.
- (g) The entering into and performance of this Agreement and the Escrow Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment or the Escrow Fund pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.
- (h) Lessee is acquiring the Equipment for use within its geographical boundaries.
- (i) The useful life of the Equipment will not be less than the stated full term of this Agreement.
- (j) Lessee has entered into this Agreement and the Escrow Agreement for the purpose of purchasing, acquiring and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The Purchase Price for the Equipment will be paid directly by Lessor from the Escrow Fund to the manufacturer, seller or supplier thereof, and no portion of the Purchase Price for the Equipment will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery of this Agreement.

(k) Lessee has made sufficient appropriations or has other Legally Available Funds to pay all Rental Payments due during the Initial Term.

24. Events of Default: Each of the following events constitutes an "Event of Default" hereunder:

(a) Lessee fails to pay in full the Rental Payment due on any date upon which such Rental Payment is due;

(b) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;

(c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property;

(d) any warranty, representation or statement that Lessee made in writing in connection with this Agreement is found to be incorrect or misleading in any material respect on the date made; or

(e) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon.

(f) if Lessor either (i) receives notice, in any form, from the Internal Revenue Service or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor, that Lessor may not exclude any Interest paid under any Lease from its Federal gross income.

25. Repossession and Lessor's Other Rights Upon Event of Default or Event of Nonappropriation: Immediately upon the occurrence of an Event of Default or immediately after the expiration of the Initial Term or any Renewal Term during which an Event of Nonappropriation occurs, Lessor may terminate this Agreement or Lessee's rights hereunder and in any such event repossess the Equipment, which Lessee hereby agrees to surrender to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make Payments or otherwise perform its obligations when required hereunder.

If Lessor is entitled to repossess the Equipment hereunder, Lessee shall permit Lessor or its agents to enter the premises where the Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer possession of the Equipment to Lessor.

Any termination of this Agreement at Lessor's option as provided in this Paragraph 25 shall take effect at the end of the Initial Term or the Renewal Term then in effect, unless Lessor (at its option) elects to terminate this Agreement on an earlier date.

Upon repossession, if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee, Lessee agrees, at Lessor's option, to: (a) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) or (b) pay to Lessor the reasonable costs of such repair and restoration.

If Lessor terminates this Agreement pursuant to this Paragraph 25 or an Event of Nonappropriation occurs and Lessee continues to use the Equipment after the Initial Term or any Renewal Term during which the Event of Default or Event of Nonappropriation occurs or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Term for which Lessee's governing body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall be entitled to bring such action at law or in equity to recover damages, which shall include but not be limited to reasonable attorney's fees, attributable to such holdover period for the Equipment that Lessee continues to use or to the remainder of such Renewal Term for which such appropriations have been made.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any right or remedy herein or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy herein provided or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder shall not preclude any other or further exercise of any right hereunder.

26. No Sale, Assignment or Other Disposition by Lessee: Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, the Escrow Agreement (including the Escrow Fund thereunder) or the Equipment, (b) remove the Equipment from its Equipment Location identified in *Exhibit A* hereto or (c) enter into any contract or agreement with respect to the use and operation of any of the Equipment by any person other than Lessee, without Lessor's prior written consent in each instance. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall take no action that may adversely affect the excludibility from gross income for federal income tax purposes of any portion of the interest component of the Rental Payments.

27. Assignment by Lessor: Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment or the Escrow Fund, this Agreement or the Escrow Agreement, including Lessor's

rights to receive the Rental Payments or any part thereof (in which event Lessee agrees to make all Rental Payments thereafter to the assignee designated by Lessor), to terminate this Agreement or Lessee's rights hereunder, to receive tax indemnity payments pursuant to Paragraph 11 hereof and to repossess the Equipment and exercise Lessor's other rights under Paragraph 25 hereof. Any such assignment, transfer or conveyance may be to a trustee for the benefit of owners of certificates of participation. No such assignment, transfer or conveyance shall be effective until Lessee's registration agent shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided, however*, that if such assignment is made to a bank or trust company as trustee or paying or escrow agent for owners of certificates of participation with respect to the Rental Payments payable hereunder, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee's registration agent until Lessee's registration agent shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee agrees, if so requested, to acknowledge each such assignment in writing within 15 days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

28. Costs: Lessee shall pay Lessor all costs and expenses, including reasonable attorney's fees and costs related to repossession of the Equipment (including, without limitation, the costs and expenses to deliver possession of the Equipment to such location as Lessor directs pursuant to Paragraph 25 hereof) and the exercise of remedies with respect to the Escrow Fund, incurred by Lessor in enforcing any of the terms, conditions or provisions of this Agreement and the Escrow Agreement.

29. Severability: If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, which shall be valid and enforceable to the fullest extent permitted by law.

30. Notices: All notices, reports and other documents provided for in this Agreement shall be deemed to have been given or made when delivered (including by facsimile transmission) or three days after being mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

31. Amendments: This Agreement, the Escrow Agreement and the Exhibits attached hereto constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter hereof. No term or provision of this Agreement may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert the serial number on *Exhibit A* hereto of any item of Equipment after delivery thereof.

32. Construction: This Agreement shall in all respects be governed by and construed in accordance with the laws of the State in which Lessee is located. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Agreement in each of its provisions.

33. Parties: The provisions of this Agreement shall be binding upon, and (subject to the limitations of Paragraph 26 hereof) shall inure to the benefit of, the assigns, representatives and successors of Lessor and Lessee. If more than one Lessee is named in this Agreement, the liability of each shall be joint and several.

34. Counterparts: This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same agreement.

35. Interest: If under applicable law any part of the Rental Payments is deemed or determined to be imputed interest, finance charges or time-price differential ("*Interest*"), Lessor and Lessee agree that the Rental Payments shall be deemed to be level payments of principal and Interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If the Interest exceeds such maximum, then at Lessor's option, if permitted by law, the Interest payable will be reduced to the legally permitted maximum amount of interest, and any excessive Interest will be used to reduce the principal amount of Lessee's obligation or be refunded to Lessee.

36. Escrow Agreement: (a) In order to provide financing for the costs to acquire the Equipment, Lessor and Lessee hereby agree to execute and deliver the Escrow Agreement, substantially in the form of *Exhibit I* hereto, on the date of execution and delivery of this Agreement.

(b) If an Event of Nonappropriation occurs prior to Lessee's acceptance of all the Equipment, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rental Payments in whole on the first business day of the month next succeeding the occurrence of such event plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Paragraph 36 shall first be paid from moneys in the Escrow Fund and then from Legally Available Funds and other moneys available for such purpose as a result of the exercise by Lessor of its rights and remedies under this Agreement. Any funds on deposit in the Escrow Fund on the prepayment date described in this subparagraph (b) in excess of the unpaid principal component of the Rental Payments to be prepaid plus accrued interest thereon to the prepayment date shall be paid promptly to Lessee.

(c) To the extent that Lessee has not accepted items of Equipment before the eighteen-month anniversary of the Dated Date, the amount then on deposit in the Escrow Fund shall be applied to prepay the unpaid principal component of the Rental Payments in part, in inverse order of Rental Payments, on the first business day of the next month plus accrued interest to the prepayment date; *provided, however*, that the amount to be prepaid by Lessee pursuant to this Paragraph 36 shall first be paid from moneys in the Escrow Fund and then from Legally Available Funds. Notwithstanding any such partial prepayment, this Agreement shall remain in full force and effect with respect to the portion of the Equipment accepted by Lessee during such eighteen-month period, and the portion of the principal component of Rental Payments remaining unpaid after such prepayment plus accrued interest thereon shall remain payable in accordance with the terms of this Agreement.

(d) Upon payment of a portion of the Purchase Option Price as provided herein, each Rental Payment thereafter (including the principal and interest components thereof) and the Purchase Option Price related to each Rental Payment date thereafter shall be reduced directly by the amount of the partial prepayment. Within 15 days after such Partial Prepayment Date Lessor shall provide to Lessee a revised *Exhibit B* to this Agreement, which shall take into account such payment of a portion of the Purchase Option Price and the corresponding reduction in the Rental Payments (including the principal and interest components thereof) and the Purchase Option Price thereafter and shall be and become thereafter *Exhibit B* to this Agreement. Notwithstanding any other provision of this Paragraph 36, this Agreement shall remain in full force and effect with respect to all or the portion of the Equipment accepted by Lessee as provided in this Agreement, and the portion of the principal component of Rental Payments remaining unpaid after the Partial Prepayment Date plus accrued interest thereon shall remain payable in accordance with the terms of this Agreement, including revised *Exhibit B* hereto which shall be binding and conclusive upon Lessor and Lessee (absent manifest error).

Lessee hereby acknowledges that it has read and understands this Agreement.

In Witness Whereof, Lessor and Lessee have each caused this Agreement to be duly executed and delivered as of the date first above written.

Lessee: City of Westminster

Signature: _____

Name Printed: _____

Title: _____

Date: _____

Attest:

Signature: _____

Name Printed: _____

Title: _____

Date: _____

Lessor: All American Investment Group, LLC

Signature: _____

Name Printed: _____

Title: _____

Date: _____

Attest:

Signature: _____

Name Printed: _____

Title: _____

Date: _____

LIST OF CLOSING DOCUMENTS

1. Equipment Lease-Purchase Agreement
2. Equipment Description and Location (Exhibit A)
3. Rental Payment Schedule (Exhibit B)
4. Acceptance Certificate (Exhibit C)
5. Form 8038G/GC (Exhibit D)
6. Insurance Coverage Requirements (Exhibit E)
7. Form of Authorizing Resolution (Exhibit F)
8. Incumbency Certificate of Lessee (Exhibit G)
9. Escrow Agreement (Exhibit I)
10. Payment Request Form (Exhibit A to the Escrow Agreement)
11. Lessee Invoice Information Form
12. Assignment Agreement (**IF APPLICABLE**)
13. Notice and Consent to Assignment
14. Escrow Disbursement Letter

**EXHIBIT A
EQUIPMENT DESCRIPTION AND LOCATION**

<u>1. Description of the Equipment</u>	<u>Location</u>
Lighting Retrofits	City Wide
Water Retrofits	City Wide
Vending Miser	City Wide
Interlock Doors with Heat	Fire Stations
Replace RTU's	Fire Stations
Replace RTU's	Municipal Court
Replace RTU's/Boxes/Ctrls.	Senior Center
RTU's Rewiring	Swim & Fitness
Optimize MUA Runtimes	Public Safety
Hardware T'stats	Public Safety
Boiler Temp Reset	Public Safety
Separate RTU's**	Westview Rec Center**
Replace Boiler**	MSC Admin**
Replace Condensing Unit**	MSC Admin**
Replace Boiler**	City Park Rec Center**
Replace AHU-2,3,4/insul. Ref. Pipe**	City Park Rec Center**
Replace A HU-1 with Ht. Rcvry Unit**	City Park Rec Center**
Replace AHU-5 with Ht. Rcvry Unit**	City Park Rec Center**
Replace Ctrls./Optimize Runtimes**	City Park Rec Center**
Automation Software**	City Park Rec Center**
Replace VAV boxes/Add VFDs**	City Park Rec Center**
Replace RTU's**	City Park Rec Center**
Replace Pool Boilers**	City Park Rec Center**
Replace Domestic Water Heater**	City Park Rec Center**
Heat Pump Runtime Optimization	City Hall
MUA Runtime Optimization	City Hall
Add Glycol to heat loop	Irving St. Library

A detailed list of the equipment from the Siemens Energy Management Contract is attached as Schedule A..

2. Serial Number(s) * (if available/applicable): _____

3. For purposes of the Agreement, "State" means the State of Colorado.

4. Lessee's current Fiscal Period extends from January 1 to December 31.

Lessee: City of Westminster

Signature: _____

Name Printed: _____

Title: _____

Date: _____

* Lessee authorizes Lessor to insert serial number of Equipment when determined by Lessor as provided in Paragraph 31 of the Agreement.

** Equipment measures to be used as collateral for UCC filings

**EXHIBIT B
RENTAL PAYMENT SCHEDULE**

The Rental Payments shall be made for the Equipment as follows:

	Payment Date	Payment Amount	Interest Amount	Principal Amount	Purchase Option Price*
1	1/15/2007	71,392.91	101,526.10	30,133.19	2,338,988.71
2	4/15/2007	71,392.91	23,097.51	48,295.40	2,289,727.41
3	7/15/2007	71,392.91	22,611.06	48,781.85	2,239,969.92
4	10/15/2007	71,392.91	22,119.70	49,273.21	2,189,711.24
5	1/15/2008	71,392.91	21,623.40	49,769.51	2,138,946.34
6	4/15/2008	71,392.91	21,122.10	50,270.81	2,087,670.12
7	7/15/2008	71,392.91	20,615.74	50,777.17	2,035,877.40
8	10/15/2008	71,392.91	20,104.29	51,288.62	1,983,563.01
9	1/15/2009	71,392.91	19,587.68	51,805.23	1,930,721.68
10	4/15/2009	71,392.91	19,065.88	52,327.03	1,877,348.11
11	7/15/2009	71,392.91	18,538.81	52,854.10	1,823,436.93
12	10/15/2009	71,392.91	18,006.44	53,386.47	1,768,982.73
13	1/15/2010	71,392.91	17,468.70	53,924.21	1,713,980.03
14	4/15/2010	71,392.91	16,925.55	54,467.36	1,658,423.32
15	7/15/2010	71,392.91	16,376.93	55,015.98	1,602,307.02
16	10/15/2010	71,392.91	15,822.78	55,570.13	1,545,625.49
17	1/15/2011	71,392.91	15,263.05	56,129.86	1,488,373.04
18	4/15/2011	71,392.91	14,697.68	56,695.23	1,430,543.90
19	7/15/2011	71,392.91	14,126.62	57,266.29	1,372,132.28
20	10/15/2011	71,392.91	13,549.81	57,843.10	1,313,132.32
21	1/15/2012	71,392.91	12,967.18	58,425.73	1,253,538.08
22	4/15/2012	71,392.91	12,378.69	59,014.22	1,193,343.57
23	7/15/2012	71,392.91	11,784.27	59,608.64	1,132,542.76
24	10/15/2012	71,392.91	11,183.86	60,209.05	1,071,129.53
25	1/15/2013	71,392.91	10,577.40	60,815.51	1,009,097.71
26	4/15/2013	71,392.91	9,964.84	61,428.07	946,441.08
27	7/15/2013	71,392.91	9,346.11	62,046.80	883,153.34
28	10/15/2013	71,392.91	8,721.14	62,671.77	819,228.14
29	1/15/2014	71,392.91	8,089.88	63,303.03	754,659.05
30	4/15/2014	71,392.91	7,452.26	63,940.65	689,439.58
31	7/15/2014	71,392.91	6,808.22	64,584.69	623,563.20
32	10/15/2014	71,392.91	6,157.69	65,235.22	557,023.28
33	1/15/2015	71,392.91	5,500.60	65,892.31	489,813.12
34	4/15/2015	71,392.91	4,836.90	66,556.01	421,925.99
35	7/15/2015	71,392.91	4,166.52	67,226.39	353,355.07
36	10/15/2015	71,392.91	3,489.38	67,903.53	284,093.47
37	1/15/2016	71,392.91	2,805.42	68,587.49	214,134.23
38	4/15/2016	71,392.91	2,114.58	69,278.33	143,470.33
39	7/15/2016	71,392.91	1,416.77	69,976.14	72,094.67
40	10/15/2016	71,392.91	711.86	70,681.05	0.00
Grand Totals		2,855,716.40	592,723.40	2,262,993.00	

Lessee: City of Westminster

Signature: _____
 Name Printed: _____
 Title: _____
 Date: _____

*Assumes all Rental Payments and Additional Payments otherwise due on that date have been paid.

ACCEPTANCE CERTIFICATE

Lessee: City of Westminster

Equipment Lease-Purchase Agreement ("*Agreement*") Dated: December 12, 2005

The Undersigned Acknowledges and Represents that:

1. The Equipment identified in *Exhibit A* to the above-referenced Agreement is delivered, installed, available for use and is placed in service as of the Final Acceptance Date indicated below.
2. Such Equipment is in good operating condition and repair and is accepted as satisfactory in all respects for purposes of the Agreement.

Acceptance Date: _____

Signature: _____

Name Typed or Printed: _____

Title: _____

EXHIBIT D

Agreement No. TE 1465

[Attach Form 8038-G or 8038-GC, as Appropriate]

**EXHIBIT E
INSURANCE COVERAGE REQUIREMENTS**

Agreement No. TE 1465

To Lessor: All American Investment Group, LLC
730 17th Street #830
Denver, CO 80202

From Lessee: City of Westminster
4800 West 92nd Avenue
Westminster, Colorado 80031

Subject: Insurance Coverage Requirements

1. In accordance with Paragraph 16 of the Equipment Lease-Purchase Agreement dated as of December 12, 2005 (the "Agreement"), by and between All American Investment Group, LLC, as Lessor (the "Lessor"), and City of Westminster, as Lessee (the "Lessee"), Lessee has instructed the insurance agent named below (please fill in name, address and telephone number)

Company: _____

Address: _____

Phone No.: _____

Contact: _____

to issue:

a. All Risk Physical Damage Insurance on the Equipment (as defined in the Agreement) evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming the Lessor and/or its Assignee, as loss payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance, naming the Lessor and/or its Assignee as Additional Insured, with the following minimum coverages:

\$500,000.00 per person

\$500,000.00 aggregate bodily injury liability

\$100,000.00 property damage liability

OR

2. Pursuant to Paragraph 16 of the Agreement, Lessee is self-insured for all risk, physical damage and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.

3. Proof of insurance coverage will be provided to Lessor or its Assignee prior to the time the Equipment is delivered to Lessee.

Lessee: City of Westminster

Signature: _____

Name Printed: _____

Title: _____

Date: _____

FORM OF AUTHORIZING RESOLUTION

WHEREAS, City of Westminster, CO (the "Lessee"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Colorado, is authorized by the laws of the State of Colorado to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease-Purchase Agreement (the "Agreement") with All American Investment Group, LLC (the "Lessor") and that certain Escrow Agreement (the "Escrow Agreement") with the Lessor and CoBiz Bank, N.A., dba Colorado Business Bank, as Escrow Agent which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the Escrow Agreement for the purchase, acquisition and leasing of the equipment therein described on the terms and conditions therein provided;

NOW THEREFORE, be it resolved that the City Council of the City of Westminster, hereby adopts the following:

Section 1. Approval of Documents. The form, terms and provisions of the Agreement and the Escrow Agreement are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Lessee, the execution of such documents being conclusive evidence of such approval; and the City Manager of the Lessee is hereby authorized and directed to execute, and the City Clerk of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and the Escrow Agreement and any related exhibits attached thereto, and the City Clerk of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Lessee are authorized to take all action necessary or reasonably required by the parties to the Agreement and the Escrow Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of the Acceptance Certificate contemplated in the Agreement, including appropriate arbitration certifications) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement and the Escrow Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Agreement, the Escrow Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement, the Escrow Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

Section 4. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

PASSED AND ADOPTED by the City Council this 12th day of December, 2005.

ATTEST:

Mayor

The undersigned further certifies that the above resolution has not been repealed or amended.

Signature: _____

City Clerk

Name Printed: _____

Date: _____

INCUMBENCY CERTIFICATE OF LESSEE

The undersigned, the duly authorized representatives of the named Lessee under that certain Equipment Lease-Purchase Agreement dated as of December 12, 2005 (the "Agreement"), with All American Investment Group, LLC, as Lessor, hereby certifies as follows in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement.

I hold the position noted under my signature, and I have all authority necessary to execute and deliver this Certificate. The following officers of the Lessee are duly elected or appointed, and the signatures above the respective names and titles are true and correct and, where required, have been filed with the appropriate officials of the State.

LESSEE: City of Westminster

Signature of Party to Execute Equipment Lease-Purchase Agreement

Signature of Party to Witness/Countersign Equipment Lease-Purchase Agreement

Name Printed

Name Printed

Title

Title

In Witness Whereof, I have executed and delivered this certificate as of this _____ day of

_____, 2005.

Signature of Secretary/Clerk

Name Printed

Title

Date

ESCROW AGREEMENT

For Equipment Lease-Purchase Agreement #TE 1465

All American Investment Group, LLC, a Limited Liability Company duly organized and existing under the laws of the State of Delaware (the "Lessor"), and City of Westminster, a body corporate and politic duly organized and existing under the laws of the State of Colorado (the "Lessee"), hereby deliver to CoBiz Bank, N.A., dba Colorado Business Bank, as escrow agent (the "Escrow Agent"), the sum of **\$2,262,993.00**, receipt of which the Escrow Agent hereby acknowledges, for deposit of **\$2,262,993.00** into the Escrow Fund (as hereinafter defined), to be held and disposed of by the Escrow Agent upon the terms and conditions hereinafter set forth to which the undersigned hereby agrees as follows:

1. The Escrow Agent hereby acknowledges receipt of a true and correct copy of an executed Equipment Lease-Purchase Agreement dated as of December 12, 2005 (the "Lease"), whereby the Lessor leases to the Lessee, and the Lessee leases from the Lessor, the equipment and other property described in *Exhibit A* attached thereto (the "Equipment"). From and after the Escrow Agent's receipt of a written notice from the Lessor that the Lessor has assigned its right, title and interest in the Lease to an assignee, and of any further assignments, all references to the "Lessor" herein shall mean and refer to such assignee or assignees.

2. There is hereby created and established with the Escrow Agent a special fund designated the **City of Westminster, CO Escrow Fund** (the "Escrow Fund") to be held by the Escrow Agent in the name of the Lessee separate and apart from all other funds of the Lessor, the Lessee or the Escrow Agent.

3. The Escrow Agent shall disburse funds from the Escrow Fund to the manufacturer, seller or supplier of items of Equipment (the "Vendor") upon receipt of a completed Payment Request Form from the Lessee, substantially in the form attached as *Exhibit A* hereto, executed by the Lessee and approved by the Lessor. Each Payment Request Form shall have attached thereto such bills, receipts, invoices or other documents acceptable to the Lessee and the Lessor evidencing the amount and purposes for which the disbursement is requested. The Lessee agrees to submit to the Lessor each Payment Request Form for approval by the Lessor and such other documents and certificates as the Lessor may reasonably request to evidence the proper expenditure of the moneys in the Escrow Fund for the purpose of paying costs to acquire the Equipment to be leased pursuant to the Lease. The Lessee is responsible for making any and all payments required that exceed the amount borrowed due to Equipment modifications and change orders authorized or ordered by the Lessee. The Escrow Agent assumes no responsibility for the expenditure of moneys paid out of the Escrow Fund pursuant to a Payment Request Form properly signed, approved by the Lessor and delivered to the Escrow Agent as provided herein. If an Event of Nonappropriation occurs under the Lease prior to the Lessee's acceptance of all the Equipment or to the extent that funds have not been disbursed from the Escrow Fund within the eighteen-month period identified in the Lease, funds then on deposit in the Escrow Fund shall be applied to the prepayment of Rental Payments under the Lease as provided therein.

4. To the extent permitted by law, and with such collateral or security as required by law, any moneys held as part of the Escrow Fund shall be promptly invested and reinvested by the Escrow Agent (so long as an Event of Default under the Lease has not occurred and is continuing or an Event of Nonappropriation under the Lease has not occurred) or the direction of the Lessor (if an Event of Default under the Lease has occurred and is continuing or an Event of Nonappropriation under the Lease has occurred) in any of the following investments:

(a) direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America, the guarantee of which constitutes the full faith and credit obligation of the United States of America ("*United States Government Obligations*");

(b) bonds, debentures, participation certificates or notes issued by, or obligations the prompt payment of principal and interest for which is guaranteed by, any of the following: Bank for Cooperatives, Federal Financing Bank, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal National Mortgage Association, Export-Import Bank of the United States, Student Loan Marketing Association, Farmers Home Administration, Federal Home Loan Mortgage Corporation or Government National Mortgage Association, or any other agency or corporation that has been or may hereafter be created by or pursuant to an Act of Congress of the United States as an agency or instrumentality thereof; or

(c) certificates of deposit, time deposits, bank repurchase agreements or any other interest-bearing banking arrangements with any banking institution (including the Escrow Agent or any bank with which the Escrow Agent is

affiliated) that is fully insured by the Federal Deposit Insurance Corporation, or any successor thereto, *provided* that such certificates of deposit or time deposits, bank repurchase agreements or other interest-bearing banking arrangements, if not fully insured by the Federal Deposit Insurance Corporation, or such successor, are either (i) issued by national or state banks having capital and surplus of at least \$100,000,000 or a rating of "A" or better by any nationally recognized securities rating organization or (ii) fully secured by United States Government Obligations. No investment shall be made in a security maturing later than the date on which the Lessee reasonably anticipates needing such funds for the payment of the costs to acquire the Equipment from the Escrow Fund. The Lessee shall notify the Escrow Agent from time to time as to the dates on which funds are needed for disbursement from the Escrow Fund and the estimated amount of each such disbursement, and the Escrow Agent may rely upon such information in connection with the investment or reinvestment of funds. Until further notice from the Lessee to the Escrow Agent, the schedule of disbursements attached as *Exhibit B* hereto (the "*Escrow Fund Draw Schedule*") shall constitute such notice from the Lessee upon which the Escrow Agent may rely for such purposes. Earnings and income realized from the investment and reinvestment of moneys in the Escrow Fund shall be applied as directed by the Lessee either to (1) payment of costs to acquire Equipment or (2) payment of the interest component of Rental Payments.

5. The Lessee hereby acknowledges and agrees that the Escrow Fund has been "**net funded**" in that the amount deposited into each such Fund on the date of execution of this Escrow Agreement will be sufficient to pay the total costs to acquire the Equipment only so long as amounts in those Funds are invested at least to the dates shown on the Escrow Fund Draw Schedule in investments designated by the Lessee on the date hereof and are not withdrawn from the Escrow Fund on any date earlier than those shown on the Escrow Fund Draw Schedule attached hereto. The Lessee hereby agrees not to submit a Payment Request Form pursuant to Paragraph 3 of this Escrow Agreement for disbursements from the Escrow Fund on any date earlier than those shown in the Escrow Fund Draw Schedule.

6. For purposes of this Escrow Agreement:

(a) The Escrow Agent shall not incur any liability in acting upon any Payment Request Form delivered hereunder and believed by the Escrow Agent to be genuine and to be signed and approved by the proper parties.

(b) The Lessee covenants to indemnify the Escrow Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Escrow Agent, arising out of or in connection with the acceptance or administration of this Escrow Agreement, but only from Legally Available Funds in the same manner as provided in the indemnification provisions of the Lease.

(c) The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of the Escrow Agent's duties hereunder and shall not be held to any liability for acting in accordance with advice so received.

(d) The Escrow Agent shall have a first lien on the moneys held by it hereunder for its compensation and for any costs, liability or expense or counsel fees it may incur.

(e) The Escrow Agent shall not be responsible for filing any UCC liens relating to the subject equipment being leased.

7. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, the Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing the Escrow Agent may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing the Escrow Agent shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to continue so to refrain and refuse so to act until:

(a) the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; or

(b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing signed by all of the persons interested.

8. (a) The fees for the usual services of the Escrow Agent under the terms of this Escrow Agreement are set forth in the schedule attached hereto as *Exhibit C*. In addition, the Escrow Agent shall be entitled to reimbursement for all out-of-pocket expenses reasonably incurred hereunder (including, without limitation, fees of counsel). A statement of the fees and out-of-pocket expenses owed to the Escrow Agent by the Lessee shall be mailed periodically to the Lessee at the mailing address set forth in the Lease.

(b) In the event that the fees charged and due the Escrow Agent remain unpaid for a period of one year, the Escrow Agent shall have the right, and is hereby authorized, in its sole and absolute discretion, and without liability to any person, to terminate all duties hereunder upon thirty (30) days written notice to the Lessee and the Lessor at their respective addresses.

(c) All fees and out-of-pocket expenses charged by the Escrow Agent shall be paid by the Lessee within thirty (30) days after receipt of the statement therefor as provided in subparagraph (a) of this Paragraph, hereof, but only from Legally Available Funds (as such term is defined in the Lease).

9. Within fifteen (15) days after the Escrow Agent's receipt of a written request from the Lessee or the Lessor for such information, the Escrow Agent shall provide to the requesting party a written summary of the receipts, disbursements and status of moneys and investments in the Escrow Fund.

10. (a) This Escrow Agreement may be modified or amended only with the written consent of all parties hereto. (b) The Escrow Agent may be removed at any time, by an instrument in writing executed by Lessor and Lessee should the Escrow Agent fail to perform their fiduciary responsibilities which shall be determined at the sole discretion of Lessor and Lessee. In the event of removal of the Escrow Agent, a successor Escrow Agent, which may be Lessor, shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of the Escrow Agent under this Escrow Agreement, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent. (c) The rights and obligations of the parties hereunder may be assigned upon written notice to the other parties. Subject to the foregoing, this Escrow Agreement inures to the benefit of, and is binding upon, the successors and assigns of the parties hereto.

11. This Escrow Agreement shall terminate on the earlier of eighteen (18) months from the commencement date, or when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

12. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Lessor, the Lessee or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

13. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

14. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

In Witness Whereof, the parties hereto have caused this Escrow Agreement to be duly executed

by their duly authorized officers on this _____ day of _____, 2005.

Escrow Agreement, Equipment Lease-Purchase Agreement # TE 1465

As Lessee: City of Westminster

Signature: _____

Name Printed: _____

Title: _____

Date: _____

As Lessor: All American Investment Group, LLC

Signature: _____

Name Printed: _____

Title: _____

Date: _____

As Escrow Agent: CoBiz Bank, N.A., dba Colorado Business Bank

Signature: _____

Name Printed: _____

Title: _____

Date: _____

**Exhibit A
to the Escrow Agreement
Payment Request Form No. _____**

Lessee: City of Westminster

Date:

Escrow Agreement ("Agreement") Dated: December 12, 2005

The Undersigned Acknowledges and Represents that:

In accordance with Paragraph 3 of the Agreement, the Lessee hereby authorizes and requests a disbursement from the Escrow Fund to pay the amounts to the payees identified herein for certain Equipment costs.

The Lessee hereby represents and warrants for all purposes that:

- 1. Pursuant to the invoice attached hereto, the amount to be disbursed is \$ 254,684.00
- 2. Payment is to be made to: Payee: Siemens Building Technologies

3. The amount to be disbursed constitutes the Purchase Price, or portion thereof, of the Equipment cost, said amount is required to be disbursed pursuant to a purchase contract entered into therefor by and on behalf of the Lessee, or was necessarily or reasonably incurred, and said amount is not being paid in advance of time, if any, fixed for any payment.

4. The Equipment relating to such Purchase Price, or portion thereof, has been delivered and accepted or the materials have been furnished for which disbursement is required.

5. No amount set forth in this Payment Request Form was included in any Payment Request Form previously submitted.

6. Acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with plans and specifications approved by the Lessee and in accordance with the terms and conditions of the purchase contract. Said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, but this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.

7. If the amount to be disbursed constitutes final payment for all of the Equipment, there is attached hereto an original of the Acceptance Certificate, *Exhibit C* to the Lease (as such term is defined in the Agreement), executed by an authorized officer of Lessee, pursuant to Paragraph 8 of the Equipment Lease-Purchase Agreement.

8. Each disbursement hereby requested has been incurred and is a proper charge against the Escrow Fund. No amount hereby requested to be disbursed will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the date of execution and delivery of the Lease.

Please forward this document and any correspondence relating to vendor payments to: All American Investment Group, LLC, Attn.: Cheri Cattoor, COO, 730 17th Street #830, Denver, CO 80202. Please call 800-899-9404 if you have any questions.

Lessee: City of Westminster

APPROVED:
Lessor: All American Investment Group, LLC

APPROVED:
Assignee: SunTrust Leasing Corporation

Signature

Signature

Signature

Name Printed

Name Printed

Name Printed

Title

Title

Title

Date

Date

Date

**Exhibit B
To Escrow Agreement
Escrow Fund Draw Schedule**

Anticipated Payment Date	Payment Amount
Day 0	\$254,684.00
Day 30	\$254,684.00
Day 60	\$254,684.00
Day 90	\$254,684.00
Day 120	\$254,684.00
Day 150	\$254,684.00
Day 180	\$254,684.00
Day 210	\$254,684.00
Day 270	\$254,684.00
Total:	\$2,292,156.00

LESSEE: City of Westminster

Signature: _____

Name Printed: _____

Title: _____

Date: _____

**Exhibit C
To Escrow Agreement**

[Attach Escrow Agent Fee Schedule]

\$0.00

LESSEE INVOICE INFORMATION

Lessee Name: **City of Westminster**

Purchasing Contact First M.I. Last

Phone Number Fax Number E-mail Address

Street Address and/or P.O. Box

City State Zip Code

Billing Contact First M.I. Last

Phone Number Fax Number E-mail Address

Purchase Order Number and/or Reference Number

Require Board Approval for Payments?: Yes _____ No _____

Board Meeting Date: _____

Require Signed Vouchers for Payments?: Yes _____ No _____
(Send vouchers with documents if possible)

Additional Information Needed on Invoices:

Summary of Proceedings

Summary of proceedings of the regular meeting of the Westminster City Council held Monday, December 12, 2005. Mayor McNally, Mayor Pro Tem Kauffman, and Councillors Dittman, Kaiser, Lindsey, Major, and Price were present at roll call.

The minutes of the November 28, 2005 regular meeting were approved.

Park Crewleader, Eric Pollock, was presented with the Rocky Mountain Turfgrass Association's Turfgrass Professional of the Year Award.

Council approved the following: Computer Aided Dispatch and Records Management System upgrade; the transfer of General Capital Improvement Funds to WEDA; City Park Maintenance Facility On-Site Fuel Dispensing System contract award; Standley Lake Water Quality Cost Sharing Intergovernmental Agreement; Intergovernmental Agreement with Urban Drainage and Flood Control District for Little Dry Creek Bank Stabilization and Utility Protection Project; 2006 Wastewater Collection System Maintenance contract renewal; the construction contract for the repair and modification of the Gregory Hill water tanks; and to enter into an energy performance contract with Siemens Building Technologies for energy and water conservation and other related improvements in City facilities.

Council adopted the following resolutions: Resolution No. 53 formally adopting the National Incident Management System; Resolution No. 54 allocating Service Commitments for the year 2006; and Resolution No. 55 authorizing the City to enter into a lease-purchase agreement for the implementation of the Energy Performance Contract.

The following Councillors' Bill was passed as an emergency ordinance:

A BILL FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND. Purpose: Appropriate Lease Proceeds from the Energy Performance Contract

At 7:20 p.m., the meeting was adjourned.

By order of the Westminster City Council
Carla Koeltzow, Deputy City Clerk

Published in the Westminster Window on December 22, 2005

Dittman - Major

A BILL FOR AN EMERGENCY ORDINANCE AMENDING THE 2005 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2005 ESTIMATED REVENUES IN THE FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2005 appropriation for the General Fund initially appropriated by Ordinance No. 3162 in the amount of \$82,941,554 is hereby increased by \$2,262,993 which, when added to the fund balance as of the City Council action on December 12, 2005 will equal \$95,142,974. The actual amount in the General Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This is an appropriation of a lease proceeds for the energy audit.

Section 2. The \$2,262.993 increase in the General Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Other Financing Source	1000.46000.0225	\$721,425	<u>\$2,262,993</u>	\$2,984,418

Total Change to Revenues \$2,262,993

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers to GCIF	10010900.79800.0750	\$3,989,406	<u>\$2,262,993</u>	\$6,252,399

Total Change to Expenses \$2,262,993

Section 3. The 2005 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 3162 in the amount of \$7,587,000 is hereby increased by \$2,292,153 which, when added to the fund balance as of the City Council action on December 12, 2005 will equal \$36,115,481. The actual amount in the General Capital Improvement Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This is an appropriation of a lease and interest earnings proceeds for the energy audit.

Section 4. The \$2,292,153 increase in the General Capital Improvement Fund shall be allocated to City revenue and expense accounts, which shall be amended as follows:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfer from General Fund	7500.45000.0100	\$3,976,000	<u>\$2,262,993</u>	\$6,238,993
Interest Earnings Pooled	7500.42510.0000	\$625,000	<u>\$29,160</u>	\$654,160

Total Change to Revenues \$2,292,153

EXPENSES

Description	Account Number	Current Budget	Amendment	Revised Budget
Appropriation Holding	80575012727.80400.8888	\$0	<u>\$2,292,153</u>	\$2,292,153

Total Change to Expenses \$2,292,153

Section 5. Notwithstanding any provision of C.R.S. 31-15-801, to the contrary, the lease purchase agreement, as approved by City Council pursuant to Resolution No. 55 shall be effective on December 12, 2005, as provided for by C.R.S. 31-1-102. It is the intent of the City Council that this lease purchase agreement shall not be subject to the procedural requirements of C.R.S. 31-15-801.

Section 6. That an emergency is declared to exist and this ordinance is immediately necessary for the preservation of the public peace, health and safety as the financing for this lease purchase agreement must be completed before December 30, 2005, in order to avoid increased costs to the City and the intervention of the holidays prevent the normally scheduled sequence of City Council meetings.

Section 7. – Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 8. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED, ADOPTED AS AN EMERGENCY ORDINANCE on the 12th day of December, 2005.



WESTMINSTER
COLORADO

Agenda Memorandum

City Council Meeting
December 12, 2005



SUBJECT: Intergovernmental Agreement with Urban Drainage and Flood Control District for Little Dry Creek Bank Stabilization and Utility Protection Project

Prepared By: John Burke, Senior Engineer

Recommended City Council Action

Authorize the City Manager to sign an Intergovernmental Agreement with the Urban Drainage and Flood Control District (UDFCD) for the design and construction of a bank stabilization and utility protection project on Little Dry Creek upstream of Federal Boulevard.

Summary Statement

- In accordance with the conditions of the Complaint and Consent Agreement with the United States Environmental Protection Agency (EPA), the City of Westminster is required to construct a Supplementary Environmental Project (SEP).
- City staff evaluated several sites that would satisfy the requirements for the SEP. Little Dry Creek upstream of Federal Boulevard is the selected alternative based upon the risk of a sanitary sewer line break and the erosion of the stream banks. This sanitary sewer system carries one-third of the City's wastewater and is currently exposed where it crosses Little Dry Creek.
- City staff was successful in securing maintenance funding from UDFCD to assist with financing this project. The total project cost (including contingency) is estimated to be \$200,000 with \$100,000 contributed by UDFCD (\$75,000 per this agreement and \$25,000 paid by UDFCD separately for engineering design).
- The construction will include concrete encasing the sanitary sewer lines, laying back the stream banks, riprap protecting the box culvert under Federal Boulevard and seeding the disturbed areas.
- UDFCD will manage the design and construction contracts for this project. The City of Westminster's participation will be paid directly to UDFCD for their disbursement. Any rebates or overages will be divided equally between the City and UDFCD.

Expenditure Required: \$100,000

Source of Funds: Utility Fund Capital Improvements - \$50,000
Storm Water Fund - \$50,000

Policy Issue

Should the City enter into this Intergovernmental Agreement with the Urban Drainage and Flood Control District?

Alternative

Since the proposed project has been federally mandated and the UDFCD is willing to participate in funding that project, City staff believes that there is no logical alternative to the recommendation.

Background Information

The City of Westminster was cited by the EPA for over-application of biosolids to 11 land application sites from 2002 to 2004. In accordance with the Complaint and Consent Agreement, the City has agreed to pay \$40,000 to the EPA and spend another \$75,000 on two environmental improvement projects. The first project is a biosolids workshop to be held in June of 2006. The second project consists of utility protection and bank stabilization on Little Dry Creek upstream of Federal Boulevard.

Staff evaluated various sites and determined the greatest benefit to the City is the protection of sewer lines upstream of Federal Boulevard at approximately 68th Avenue. There is a ten inch diameter steel encased sewer line that is approximately 12-inches above the channel bed as it crosses Little Dry Creek. Just upstream of this location, the top of a 24-inch diameter clay sanitary sewer line has been exposed by the degradation of the channel. This particular sewer line carries one-third of the City's wastewater.

Additionally, Crestview Water and Sanitation District has an eight inch diameter steel encased sanitary sewer line that crosses Little Dry Creek at the same location as a ten inch diameter Westminster sewer line. The top of this pipe has also been exposed due to channel degradation.

The City was successful in obtaining UDFCD maintenance funding to help finance the design and construction of this project. The Urban Drainage and Flood Control District was established by the Colorado legislature in 1969, for the purpose of assisting local governments in the Denver metropolitan area with multi-jurisdictional drainage and flood control problems.

Since the City of Westminster owns the two parcels of property where this work will take place, the acquisition of additional easements will not be necessary. Therefore, the estimated cost of the project will be \$200,000 to be evenly split between the City and the UDFCD.

Should this IGA be approved, construction will begin in the spring of 2006. Per the Final Order of the EPA, the City is required to complete this Supplementary Environmental Project by August 2006.

Respectfully submitted,

J. Brent McFall
City Manager

Attachments - Agreement
- Vicinity Map

**AGREEMENT REGARDING
DESIGN AND CONSTRUCTION OF
MAINTENANCE IMPROVEMENTS TO
LITTLE DRY CREEK, CITY OF WESTMINSTER**

Agreement No. 05-11.01

THIS AGREEMENT, made this _____ day of _____, 2005, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF WESTMINSTER (hereinafter called "CITY") and collectively known as "PARTIES;"

WITNESSETH:

WHEREAS, the Colorado General Assembly in 1979 and 1983 amended 32-11-217(1)(C), Colorado Revised Statutes 1973 to authorize DISTRICT to levy up to four-tenth (.4) mill for the maintenance and preservation of floodways and floodplains within DISTRICT; and

WHEREAS, 32-11-203, Colorado Revised Statutes 1973, as amended in 1979 and 1983, further authorizes DISTRICT's Board of Directors to institute a systematic and uniform program of preventive maintenance for such floodways and floodplains within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors, pursuant to such authorization, adopted a budget for 2005 (Resolution No. 77, Series of 2004) which includes funds for preventive maintenance of drainage and flood control facilities within DISTRICT; and

WHEREAS, DISTRICT's Board of Directors reviewed and authorized expenditures for the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors authorized the Executive Director to contract for those services necessary to implement the 2005 Maintenance Work Program (Resolution No. 89, Series of 2004); and

WHEREAS, DISTRICT's Board of Directors adopted a policy that sets forth DISTRICT policy regarding the maintenance of drainage and flood control facilities within DISTRICT (Resolution No. 41, Series of 1978); and

WHEREAS, CITY requested DISTRICT maintenance funds and DISTRICT included in the 2005 Maintenance Work Program a work item to participate in the design and construction of maintenance improvements; and

WHEREAS, PARTIES desire to proceed with design and construction of maintenance improvements to Little Dry Creek upstream of Federal Boulevard (hereinafter called "PROJECT").

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

PROJECT will consist of installation of two check structures, bank protection, protection of sanitary sewers, regrading, and revegetation.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of DISTRICT and the property therein.

4. PROJECT COSTS

A. Definition of PROJECT Costs. PARTIES agree that for the purposes of this Agreement PROJECT costs for Paragraph 2. SCOPE OF PROJECT shall consist of, and be limited to, engineering services; construction services; and construction related services for the drainage and flood control portions of PROJECT.

B. Estimated PROJECT Costs. The estimated costs associated with PROJECT as defined above are as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Engineering Services	\$ -0- *
2. Construction	175,000
Total	\$175,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

* DISTRICT has already encumbered \$25,000 for engineering services.

5. ALLOCATION OF COSTS AND FINANCIAL COMMITMENTS OF PARTIES

PARTIES shall each contribute the following percentages and maximum amounts for elements of PROJECT as defined in Paragraphs 2 and 4 of this Agreement:

	Percentage <u>Share</u>	Maximum <u>Contribution</u>
DISTRICT	43%	\$ 75,000
CITY	57%	\$100,000
TOTAL	100%	\$175,000

Payment of each party's full share (CITY - \$100,000; DISTRICT - \$75,000) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT and will not require an amendment to this Agreement.

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or dispersed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. MANAGEMENT OF DESIGN

- A. DISTRICT shall contract for and be responsible for the management, administration, and coordination of the engineering services for design. This will include final design, utility coordination, surveying, bid preparation, addendum preparation, bid opening, and recommendation of award.
- B. DISTRICT's contracting officer or representative shall be the only individual authorized to direct or redirect, by amendment(s) agreed to by PARTIES, the agreement for design of PROJECT.
- C. DISTRICT shall have the authority to meet with and guide the engineer in design matters related strictly to drainage and flood control. Any direction given to the engineer by DISTRICT regarding those matters must first have the concurrence of PARTIES.
- D. The contract documents must be reviewed and approved by all PARTIES before construction can begin. Any changes to the approved contract documents require the concurrence of PARTIES.
- E. The engineer shall be required to submit to PARTIES a design report including all hydrologic data, hydraulic calculations, design criteria, structural data and calculations, and other pertinent and appropriate design information, calculations, and criteria used and/or developed during the course of the design after all PARTIES review and approve final plans and specifications.
- F. PARTIES shall each receive at least one set of vellum reproducible plans and one set of construction specifications. An electronic copy of the plans and specifications shall also be provided.
- G. DISTRICT shall be responsible for acquisition of all local, state and federal permits as needed.
- H. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under this Agreement, such changes shall be rejected or approved in writing by the contracting officers. No design amendments shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

7. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the lowest acceptable bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT shall advertise for construction bids, conduct a bid opening, prepare construction contract documents, and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
 4. DISTRICT shall coordinate field surveying; staking; weekly inspection of work; testing; engineering; preparation of survey control points and explanatory sketches; revisions of contract plans; shop drawing review; preparation of reproducible record drawings; and final inspection as required to construct PROJECT. DISTRICT shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY as requested.
 5. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 6. DISTRICT shall review and approve contractor billings and prepare partial and final payments. DISTRICT shall remit payment to contractor based on approved billings.
 7. DISTRICT shall prepare and issue all written change or work orders to the contract documents.
 8. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 9. DISTRICT shall provide CITY a set of reproducible record drawings if requested.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the project fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES by amendment to this Agreement.

8. OWNERSHIP AND MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program. DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

9. TERM OF AGREEMENT

The term of the Agreement shall commence upon final execution by all PARTIES and shall terminate one year after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein.

10. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

11. CONTRACTING OFFICERS AND NOTICES

- A. The contracting officer for CITY shall be the City Manager, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80030.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, CO 80211.
- C. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by registered mail, postage prepaid and return receipt requested, addressed to PARTIES at the addresses set forth above or at such other address as either party may hereafter or from time to time designate by written notice to the other party given when personally delivered or mailed, and shall be considered received in the earlier of either the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed.
- D. The contracting officers for PARTIES each agree to designate and assign a project representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives will have the authority for all approvals, authorizations, notices or concurrences required under this Agreement or any amendments or addenda to this Agreement.

12. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments or modifications to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

13. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

14. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Denver, State of Colorado.

15. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

16. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

17. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

18. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) day's written notice by any of PARTIES, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon mutual agreement of all PARTIES and only upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions and subject to the maximum amount of each party's contribution as set forth herein.

19. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of the proposed facilities and what impact it may have on them. Technical and final design recommendations shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

20. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

21. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

22. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatures as of the date and year above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

Title Executive Director

Date _____

CITY OF WESTMINSTER

(SEAL)

By _____

ATTEST:

Title _____

Date _____