



WESTMINSTER
COLORADO

AGENDA

SPECIAL CITY COUNCIL MEETING

MONDAY, MARCH 19, 2001 AT 7:00 P.M.

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Purpose of Special Council Meeting**
 - A.** Promenade Office Building and Parking Structure Agreement
 - B.** IGA re Leyden Reservoir Property Purchase and Leyden Dam Improvements
 - C.** Councillor's Bill No. 7 re appropriating \$125,833 for Leyden Reservoir Dam Improvements
- 4. Adjournment**



WESTMINSTER

City of Westminster

Office of the Mayor

4800 West 92nd Avenue
Westminster, Colorado
80031-6387

303-430-2400

FAX 303-428-4564

March 12, 2001

Michele Kelley, City Clerk
City of Westminster
4800 West 92nd Avenue
Westminster, CO 80031

Dear Michele:

Please call a special meeting of the City Council for Monday, March 19, 2001 at 7:00 P.M. to be held at City Hall in the City Council Chambers for the following purpose:

Promenade Office Building and Parking Structure Agreement
and
IGA re Leyden Reservoir Property and Leyden Dam
Improvements

Sincerely,

Nancy M. Heil
Mayor



WESTMINSTER

City of Westminster
General Services
Department

City Clerk's Office

4800 West 92nd Avenue
Westminster, Colorado
80031-6387

303-430-2400

FAX 303-428-4564

March 14, 2001

To All Members of City Council:

A special meeting of the City Council has been set for Monday, March 19, 2001 at 7:00 P.M. to be held at City Hall Council Chambers for the following purpose:

Promenade Office Building and Parking
Structure Agreement

IGA re Leyden Reservoir Property and Leyden
Dam Improvements

Councillor's Bill re Leyden Dam improvements

Sincerely,

Michele Kelley, CMC
City Clerk

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE SPECIAL CITY COUNCIL MEETING
HELD ON MONDAY, MARCH 19, 2001 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE:

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

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro-Tem Dixon, Councillors Atchison, Hicks, Merkel, and Kauffman. Also present were William Christopher, City Manager; Jeff Betz, Assistant City Attorney; and Michele Kelley, City Clerk. Absent was Councillor Moss.

The Mayor stated the purpose of the Special Meeting is to consider an Agreement on the Promenade Office Building and Parking Structure, IGA re Leyden Reservoir Property Purchase, Leyden Dam Improvements and Councillor's Bill No. 7 appropriating \$125,833 for Leyden Reservoir Dam Improvements.

PROMENADE OFFICE BUILDING AND PARKING STRUCTURE AGREEMENT

A motion was made by Councillor Atchison and seconded by Councillor Merkel authorizing the City Manager to sign, in substantially the same form as the attached agreement, the amended Joint Development Agreement with Westminster Pavilion Development Company, LLC and further authorizing the City Manager to sign other such documents, agreements and letters necessary to achieve the office building and parking structure as proposed and within the framework of this agreement. Alan Miller, Special Projects Coordinator for the City of Westminster and Tim O'Byrne, Westminster Pavilion Development Company addressed Council. The motion carried unanimously.

IGA RE LEYDEN RESERVOIR PROPERTY PURCHASE AND LEYDEN DAM IMPROVEMENTS

A motion was made by Councillor Hicks and seconded by Councillor Merkel authorizing the Mayor to sign an Intergovernmental Agreement for the purchase of the Leyden Reservoir property from the Farmers' High Line Canal and Reservoir Company for \$800,000 for conveyance to Urban Drainage and Flood Control District, and sign an amendment to an existing Intergovernmental Agreement for contributing funds to the Leyden Reservoir Dam improvements in the amount of \$283,333 plus a 15% contingency of \$42,500. The motion carried with a dissenting vote by Councillor Atchison.

COUNCILLOR'S BILL NO. 7 APPROPRIATING \$125,833 FOR LEYDEN IMPROVEMENTS

A motion was made by Councillor Hicks and seconded by Councillor Merkel to pass Councillor's Bill No. 7 on first re appropriating \$125,833 in funds from the 2000 carryover funds from the General Fund to pay for improvements to Leyden Dam Reservoir. Upon roll call vote, the motion carried with a dissenting vote by Councillor Atchison.

ADJOURNMENT:

The meeting was adjourned at 7:22 P.M.

ATTEST

City Clerk

Mayor



WESTMINSTER
COLORADO

Agenda Memorandum

Date: March 19, 2001

Subject: Promenade Office Building and Parking Structure Agreement

Prepared by: Alan Miller, Special Projects Director
Marty McCullough, City Attorney

Introduction

City Council action is requested to authorize the City Manager to sign the attached amended joint development agreement between the City of Westminster and Westminster Pavilion Development Company, LLC (WPDC).

Summary

At the February 8th Study Session, City Council had the opportunity to review the major business points and financial aspects of a proposed agreement between the City and WPDC that would assist in the construction of the parking structure needed for both the Promenade Office Building and for overall Promenade use. City Staff has been working with the developers for over 10-months trying to achieve an approximate 200,000 square foot, six-story office building with an approximate 700-space, two-story parking structure to be located immediately behind the office building. Several aspects of the project have been proceeding on a concurrent basis.

The developer has been designing the office building and parking structure in order to develop realistic cost estimates for these structures. Bank financing is also being negotiated and finalized by the developers. A General Improvement District (GID) has been formed to help fund the construction of the two-story parking structure. The City has been negotiating with the developers to finalize how the business arrangement between the City, the GID and the developers would work based on the realities of construction costs, bank financing arrangements and other requirements. The developers are anxious to finalize an agreement with the City in order to be under construction with the office building and parking structure by this summer.

Because of the current high cost of construction, this project is economically challenging. This has put a lot of pressure on trying to find ways to fund the two-story parking structure. In the current suburban office market, parking structures are very atypical because lease rates cannot economically justify such structures. This is the reason the City formed the GID, in cooperation with the developers to provide a mechanism to help finance the parking structure. The framework of the package that has been tentatively agreed to between the City and the developers is as follows:

- The City is to be paid \$800,000 at the time of building permit approval for the approximate one-acre parcel of ground on which the office building will be located.
- The developer will complete the remaining improvements to the Promenade around the office building and relieve the City of its approximate \$400,000 construction cost obligation for these improvements.
- The developer would build a six-story, approximate 200,000-square foot office building according to Promenade Design Standards with the first floor fronting the Promenade to be designed and constructed for leasing to retail/restaurant tenants.

- The developer would build an estimated \$7.0 million, approximate 700-parking space, two-story parking structure on the City-owned, four-acre parcel. The City would own the parking structure.
- The developer would have an easement to lease the first-level parking spaces to office building tenants and retain any revenue derived from this parking.
- The City would contribute \$3.0 million toward the \$7.0 million estimated construction costs of the public two-story parking structure. The City would be repaid \$2.3 million of its \$3.0 million contribution to the parking structure through a GID that would levy an approximate 20-mill levy on the office building assessed valuation producing approximately \$191,000 per year to the City over the first 20-years. The City would be repaid the remaining \$700,000 of its contribution through a GID mill levy starting in year 20. This mill levy would be set to repay the City approximately \$2.0 million over the next 20 years. The \$2.0 million is the amount the \$700,000 would have grown to if it had been invested at 5.5 percent over the initial 20-year period.
- The GID Board of Directors through the GID would impose an additional approximate 12-mill levy above the City's 20-mill levy that would be used to help repay the developer's portion of their cost to build the \$7.0 million parking structure. This 12-mill levy over 20 years, would pay the developers approximately \$1.2 to \$1.5 million of their cost. After 20-years the developer would continue to receive revenue from a 12 to 20-mill levy, above what the GID would impose to repay the City, in order for the developer to help recover their remaining costs of constructing the parking structure.
- The GID would also impose an approximate two to four mills to cover the annual cost of operating and maintaining the parking structure.
- The parking facility would be open to all Promenade users at all times on the upper level. The lower level would be open to all Promenade users during evening and weekend hours when it is off peak for office building use.

The attached agreement, which is an amended joint development agreement, contains all of the above business points as previously discussed with City Council. There is also a provision that provides for the City adding another \$300,000 to the \$1.6 million already authorized to provide additional funding to complete the Lakeview Pavilion. The Lakeview Pavilion ended up costing over \$300,000 more than the \$1.6 million originally estimated and this \$300,000 will help make up that additional construction expense. This \$300,000 will be paid back to the City consistent with the original lease agreement, but at a rate of eight-percent interest over 10-years. City Staff concluded that this was a good business arrangement for the City since the Lakeview Pavilion will be a City facility and this small amount of additional funding to pay for the increased construction costs of the Pavilion will be paid back to the City at rates much higher than the City would normally achieve in its investments.

Policy Issue

Whether the construction of a six-story, 200,000 square foot office building on the Promenade is an important project for the City to encourage at this time.

Whether to further assist the construction of a two-story parking structure at Promenade East.

Whether to support this proposed agreement with the developers to provide for the construction of the office building and parking structure at this time.

Recommendation

Authorize the City Manager to sign, in substantially the same form as the attached agreement, the amended Joint Development Agreement with Westminster Pavilion Development Company, LLC and to further authorize the City Manager to sign other such documents, agreements and letters necessary to achieve the office building and parking structure as proposed and within the framework of this agreement.

Alternatives

The City could choose to not participate in assisting with the financing of this project at this time. Without City assistance, neither the office building or the parking garage will be feasible.

City Council could direct staff to negotiate a different contract than what is set forth in this memorandum. This could lead to significant delay in getting this project started, reducing the positive impacts projected to the Promenade overall.

Background Information

The City has been working on the Promenade project since 1996. It is now a relatively successful project still in its infancy and missing one major component in order to make it fiscally viable, which is the office building structure. The original development agreement between the City and Inland Pacific of Colorado (IPC) contemplated IPC building the office building structure, but did not require the construction of a parking facility to be funded solely by the developer. In the time that has elapsed since the original development agreement, it has become clear that a large parking structure is needed to accomplish all the original goals of the Promenade project. It provides added parking during the evening hours where maximum parking has been shown to be needed. It also provides sufficient parking during the daylight hours for the office users. A mixture of office users, restaurants, and entertainment provides the type of balance that the Promenade needs to maximize its economic viability. This is the basis on which City Staff has been negotiating an agreement with WPDC in trying to strike a reasonable balance between the City assisting the project and moving forward and the City being repaid its investments. As the agreement is proposed, the City is being repaid all of its investment in this project and is receiving a two-story parking structure. In addition, for the City being repaid directly all of its investments in the parking structure, the City will also benefit from increased tax revenues from the Promenade as a result of the office building being built. The financing agreement as proposed is very beneficial to the City and provides not only repayment of the City's investment but also provides for longer term fiscal diversity and economic health to the City through the viability of the Westminster Promenade project.

If the office building gets under construction by this summer, it is anticipated it would be completed in late summer or early fall of 2002.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE CITY OF WESTMINSTER, INLAND PACIFIC COLORADO, LLC, WESTMINSTER
PROMENADE DEVELOPMENT COMPANY, LLC, AND PROMENADE PARKING
GENERAL IMPROVEMENT DISTRICT**

FOR THE COOPERATIVE DEVELOPMENT AND CONSTRUCTION OF THE WESTMINSTER
PROMENADE EAST HOTEL, CONFERENCE CENTER, AND COMMERCIAL BUILDINGS

This Amended and Restated Agreement is made and entered into this _____ day of _____, 2001, by and between the **CITY OF WESTMINSTER**, a Colorado home-rule municipality (“City”), **INLAND PACIFIC COLORADO, L.L.C.**, a Colorado Limited Liability Company (“I.P.C.”), **WESTMINSTER PROMENADE DEVELOPMENT COMPANY, L.L.C.**, a Colorado limited liability company (“WPDC”), and **PROMENADE PARKING GENERAL IMPROVEMENT DISTRICT**, a Colorado public improvement district organized and existing pursuant to the provisions of C.R.S. Title 31, Chapter 25, Part 6 (“District”).

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

WHEREAS, the City has previously embarked on the development of a major pedestrian-oriented restaurant, retail, and entertainment center generally located at the northeast corner of the intersection of U.S. Highway 36 and 104th Avenue and commonly referred to as the Promenade (the “Promenade”);

WHEREAS, I.P.C. is a Colorado Limited Liability Company with whom the City has previously entered into a preliminary agreement of intent for the cooperative development and construction of a first-class, four-star, internationally recognized hotel and conference center and neighboring office and commercial buildings (the “Project”) to be located north and east of Westminster Boulevard, and north of 104th Avenue (“Promenade East”);

WHEREAS, the City and I.P.C. are parties to that certain Agreement for the Cooperative Development and Construction of the Westminster Promenade East Hotel, Conference Center, and Commercial Buildings dated April 28, 1997 (the “Original Agreement”);

WHEREAS, pursuant to that certain Assignment of Certain Terms of Business Assistance Agreement dated August 3, 1998, between IPC, WPDC, and the City (the “Assignment”), certain provisions of the Original Agreement were previously assigned to WPDC for the purpose of transferring to WPDC the rights and obligations relative to the development of the Phase Two Office Building.

WHEREAS, WPDC has notified the City of its intent to enter into an agreement with O’Byrne Witte, L.L.C. for the development of the Phase Two Office Building.

WHEREAS, the Parking District was duly organized pursuant to an election held on _____, at which time the electors authorized the District to undertake certain public improvements, including the construction of the Parking Facilities more specifically described in the Agreement, and the financing of the construction, operation and maintenance of said facilities through the issuance of debt and the imposition of property taxes for the repayment thereof; and

WHEREAS, the parties now wish to amend and restate the Original Agreement concerning the City’s financial participation in the Project and the respective obligations of the City, WPDC and I.P.C. in connection with the development and construction of the Project, and to amend and set forth in further detail the respective obligations of the City, WPDC and the District concerning the Phase Two Office Building and the Parking Facilities.

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

I. DEVELOPER'S OBLIGATIONS

I.P.C. shall develop and cause to be constructed, equipped, and furnished a first-class, four-star, internationally recognized, full-service 350-room hotel (the "Hotel") in the general location identified on the site plan dated January 20, 1997, prepared by Worthington and Associates and attached to this Agreement as Exhibit "A." The final location of the Hotel and the site plan will be determined between I.P.C. and the City as part of the Official Development Plan for the Hotel.

Formatted: Bullets and Numbering

City and I.P.C. shall work together on the siting of the Hotel in a manner consistent with maintaining the continuity of the Promenade extending uninterrupted to City Park from Westminster Boulevard. The Hotel, and the Conference Center to be constructed by I.P.C. pursuant to paragraph 1.2 below, shall be built as a fully integrated facility, and the Hotel shall be owned by I.P.C. The Hotel site may include a separate pad near the Hotel building for the construction of a first-class, upscale restaurant to be operated by the Hotel as an amenity for hotel guests. Such restaurant would serve as an alternative to building the same type restaurant within the Hotel.

Formatted: Bullets and Numbering

The Hotel design shall include a kitchen area large enough to serve both the Hotel and the Conference Center.

Formatted: Bullets and Numbering

I.P.C. shall, at City's expense, design, develop and cause to be constructed, equipped and furnished a first-class conference center within a separately owned space on the Hotel Site (the "Conference Center"). The design and construction of the facility shall be subject to the approval of the City and shall consider the potential future need to add a kitchen preparation area.

Formatted: Bullets and Numbering

The Conference Center will be owned by the City. Subject to paragraph 1.6 below, I.P.C. shall lease the Conference Center. The Conference Center shall be managed and operated by the Hotel operator consistent with Section 1.5. The Conference Center shall not be considered to be a fixture to the Hotel, but rather, a condominium-type facility at locations where the Conference Center overlaps the Hotel parcel. Any condominium-type area shall be conveyed to the City by deed and such other instruments as may be reasonably required by the City to evidence and protect the City's future ownership of the Conference Center facility as well as provide for real property tax assessment separate from the Hotel. This will include the necessary parking required for the Conference Center. This conveyance shall occur concurrently with the City's conveyance of land to I.P.C. per 2.1.2.

Formatted: Bullets and Numbering

I.P.C. shall convey to the City by Bill of Sale and such other instruments as the City may reasonably require, title to all equipment and furnishings purchased by I.P.C. on behalf of the City as part of the development of the Conference Center. I.P.C. shall endeavor to cause the transfer of title to such equipment and furnishings to be provided directly to the City whenever possible. This clause does not pertain to any equipment or furnishings that are leased, rented or the like by I.P.C. using funds other than the bond proceeds furnished by the City.

Formatted: Bullets and Numbering

I.P.C. shall be responsible for all normal operational, maintenance, and routine repair expenses for the Conference Center, including utilities and replacement of items due to normal wear and tear; provided, however, City shall be responsible for all other costs attendant thereto such as taxes, insurance, capital expenditures and improvements.

Formatted: Bullets and Numbering

1.3 I.P.C. shall develop and construct a mixed-use office building shown on the Site Plan for the Promenade East Project other than the Ice Arena and Hotel/Conference Center. The Phase Two

Building is intended to be located immediately west of the Hotel (“Phase Two Building”) in accordance with the Official Development Plan for this development.

1.3.1 The Phase Two Building shall be four (4) to six (6) stories, and provide minimum leaseable floor space of 150,000 square feet. The Phase Two Office Building shall be designed and constructed as Class A office facilities in accordance with the Official Development Plan for the Project and the Promenade East design guidelines.

1.3.2 Subject to section 1.3.2.1 below, that portion of the ground-floor level of the Phase Two Building with lease space facing the Promenade shall be configured to permit, facilitate, and encourage the leasing of this space to retail and restaurant uses with direct door access from the businesses to the Promenade. It is the intent of the parties that a majority of the ground floor space of the Phase Two Building which fronts the main pedestrian areas of the Promenade shall be leased to retail and restaurant uses

1.3.2.1 At all times, WPDC shall use its best efforts to market and lease the ground floor space which fronts the main pedestrian areas of the Promenade to retail and restaurant uses. In the event WPDC is unsuccessful, WPDC may lease such space to non-retail or restaurant uses if the proposed use and tenant is (1) allowed by the ODP and (2) of like quality, character and reputation to the other uses and tenants within the Promenade in the reasonable judgment of the City (“Other Permitted Uses”). Prior to entering into such a lease, WPDC shall notify the City of its intention to lease to a non-retail use.

1.3.3 Deleted.

1.3.4 Deleted.

1.3.5 WPDC shall design and construct adequate parking facilities and associated landscaping for the Phase Two Office Building (the “Parking Facilities”). The Parking Facilities shall be constructed on City land adjacent to the Phase Two Building site, operated and maintained by the Promenade Parking General Improvement District, and open to the public (“Public Parking Facilities”). Subject to the provisions of Section 1.3.5.4 below, the Parking Facilities shall include an elevated structure intended primarily for public parking, and covered, at-grade parking intended primarily for the tenants of the Phase Two Office Building. The Parking Facilities shall be included as part of the Official Development Plan for the overall Phase Two Building Project, and approval of the ODP shall be conclusive proof that the Phase Two Building meets all City requirements for the development of the project, including meeting all parking codes.

1.3.5.1. The District shall be responsible for the cost of designing and constructing the Parking Facilities. Upon (i) the issuance of a final Certificate of Occupancy for the Parking Facilities, or (ii) the expiration of eighteen (18) calendar months following the issuance of the building permit for the Parking Facilities, whichever comes first, WPDC shall convey the Parking Facilities by warranty bill of sale to the District, and the City shall convey to the District, by special warranty deed, the land on which the Parking Facilities have been constructed. If for any reason the Parking Facilities are not substantially completed within eighteen (18) calendar months from the date of issuance of the building permit, subject to the exercise of any rights of completion by WPDC’s lender for the Phase Two Office Building, the City and the District shall have the joint right to complete the Parking Facilities and WPDC agrees to take all necessary steps in order to permit the Parking Facilities to be completed and put into operation as contemplated by this Agreement, including but not limited to conveying the Parking Facilities to the City or the District as either may direct.

1.3.5.2 The City agrees to loan the District a total of \$3 million to be used exclusively to fund the cost of designing and constructing the Parking Facilities as follows: \$1.5

million upon building permit issuance; \$500,000 upon 50% completion; \$500,000 upon 75% completion; \$500,000 upon issuance of the final Certificate of Occupancy (the "City Loan"). All milestones shall be certified by the project architect.

1.3.5.3 WPDC agrees to loan the District the balance of the total cost of the design and construction of the Parking Facilities (the "WPDC Loan"). The repayment of the WPDC Loan shall be subordinate to the City Loan and the operation and maintenance expense of the Parking Facilities.

1.3.5.4. The District shall recover the total cost of the repayment of the City Loan and the WPDC Loan through an annual mill levy imposed against the Phase Two Office Building. The mill levy shall consist of four components.

1.3.5.4.1. The first component shall be a mill levy calculated to repay \$2.3 million in principal of the City Loan over a twenty (20) year period together with interest at a rate equal to 5.5% per annum, the imposition of which shall commence in the year 2001 or the year in which the first installment of the City Loan is funded, whichever is later.

1.3.5.4.2 The second component shall be a mill levy calculated to repay the balance of the City Loan equal to \$700,000 in principal, future-valued to include twenty (20) years of accrued interest at a rate of 5.5% per annum, together with interest equal to 5.5% per annum, the imposition of which shall commence in the year 2021, or 20 years following the imposition of the mill levy provided for in paragraph 1.3.5.4.1 above, whichever is later.

1.3.5.4.3 The third component shall be a mill levy calculated to repay the WPDC Loan over a twenty (20) year period, or such longer period as may be required to meet the condition set forth in paragraph 1.3.5.4.3.1 below, at a rate of interest equal to 8.5% per annum.

1.3.5.4.3.1 In no event shall the District's total mill levy exceed 32 mills without the approval of WPDC unless necessary to meet the District's obligations of repayment to the City pursuant to paragraphs 1.3.5.4.1 and 1.3.5.4.2 above or to meet the District's operation and maintenance expense. In the event the District in any given year is unable to meet its obligation of repayment to WPDC pursuant to this paragraph without setting a mill levy that exceeds 32 mills, and if WPDC has not consented in a timely fashion to a mill levy higher than 32 mills, the District's mill levy shall be capped at 32 mills or such amount as may be necessary to cover the District's obligations to the City pursuant to paragraphs 1.3.5.4.1 and 1.3.5.4.2 and its operation and maintenance expense, whichever is higher. In such event, the term of repayment of the WPDC Loan, and the mill levy therefore, shall be extended for such time as may be necessary to result in the repayment of the WPDC Loan at a rate of interest of 8.5% per annum until paid.

1.3.5.4.4 The fourth component shall be an amount sufficient to pay the annual expense of operating and maintaining the Parking Facilities.

1.3.5.5 The parties hereto agree that the repayment of the City Loan shall be an unlimited general obligation of the District, and that the District's obligation of repayment of the WPDC Loan shall at all times be considered to be subordinate to the District's obligation of repayment of the City Loan, which shall be on parity with the operation and maintenance expense of the District.

1.3.5.6 WPDC agrees to certify the total cost of design and construction of the Parking Facilities to the District not later than October 15, 2001. If for any reason the final cost of the project has not been determined by that time, the commencement of repayment of the WPDC Loan shall be deferred until the next tax year following the availability of such information.

1.3.5.7 Notwithstanding the other provisions hereof, the total payments made by the District pursuant to Sections 1.3.5.4.1 through 1.3.5.4.3 shall never exceed \$9,885,000 of principal, \$17,906,802 of aggregate principal and interest, and \$1,406,000 of annual principal and interest.

1.3.5.8 The City shall grant to WPDC a non-exclusive parking easement for all above grade parking spaces, and an exclusive parking easement for all covered parking spaces within the Public Parking Facilities in a form reasonably acceptable to WPDC's lender. WPDC may limit access to the covered parking spaces and may charge a fee for such spaces. WPDC shall allow access by the general public to the covered parking spaces at certain times as WPDC may reasonably determine do not interfere with the parking needs of the Phase Two Building and may charge a parking fee therefor. WPDC shall be entitled to keep the revenue from such fees or sums charged in leases or otherwise for the covered parking.

1.3.5.9 The City shall work in good faith with WPDC and WPDC's lender concerning rights of subrogation in the event of a default by WPDC under its loan agreement and any other reasonable and customary concerns the lender may have relative to the Public Parking Facilities Project.

1.4 The Official Development Plan(s) for the Hotel, Conference Center, Phase Two Building and any other building on the site shall incorporate the design theme and the design guidelines prepared by Communication Arts, as may be supplemented or amended. Provided, however, that the City and I.P.C. shall cooperate in value engineering and design and construction of the shells and exteriors of the Buildings to control costs while maintaining the building aesthetics and architectural goals of the Project.

1.5 The Hotel and Conference Center shall be operated, managed, and maintained in a manner consistent with how first-class, four-star, internationally recognized, full-service hotels and first-class conference centers are operated, managed, and maintained. I.P.C. is responsible for all capital improvements, repairs and major maintenance for the Hotel.

1.6 For and in consideration of the City's provision of financing for the Conference Center, and the revenues to be derived therefrom by I.P.C., I.P.C. shall lease the Conference Center for an initial term of twenty (20) years with a lease payment during the first twenty (20) years pursuant to the schedule entered into between the parties in the Conference Center Lease Agreement. The lease may be extended pursuant to paragraph 2.9.

1.6.1 I.P.C.'s lease payment obligations shall be paid in quarterly installments within ten (10) days after the last day of a regular calendar quarter. The first payment shall be calculated by determining a pro rata amount based on the number of days the Conference Center is open during the first quarter of operation.

1.6.2 In the event of I.P.C.'s failure to make any quarterly Lease Payments pursuant to this paragraph, I.P.C. shall have a right to cure such default within thirty (30) days after written notice thereof, and thereafter, the City shall have the right to setoff any amounts due I.P.C. under any portion of the Agreement. After the end of fifteen (15) years when rebates under the assistance agreement have been paid, the City shall have a lien against the gross revenue of the Conference Center until the lease payments have been satisfied.

1.7 As part of the management and operation of the Hotel and Conference Center, I.P.C. shall provide for the collection of the City's accommodations tax at the then current rate, as well as a Conference Center Fee in an amount equal to one percent (1%) of the Hotel's room rate charged to and collected from its guests. The Conference Center Fee represents a charge for the cost of constructing the associated Conference Center to be available for the use and convenience of the Hotel and its guests. The Conference Center Fee shall be collected until such time as the City's debt for the Conference Center is retired, however, in any event such collection period shall not extend

beyond twenty (20) years from the date of opening the Conference Center and shall be no shorter than the duration of the Business Assistance Rebate contained in paragraph 2.10 below.

1.8 In consideration of the City's contribution of the land for the Phase Two Building, WPDC shall pay the City \$800,000 on or before the issuance of the City's building permit for the Phase Two Office Building. Upon payment of such amount, the City shall provide a Warranty Deed free of any conditions, encumbrances or the like, subject to standard exceptions.

1.8.1 Deleted.

1.8.2 Deleted.

1.8.3 Deleted.

1.8.4 The City shall use \$300,000 of the \$800,000 received from **WPDC** to increase the financing being provided by the City to the Pavilion Banquet and Catering Facility pursuant to that certain Lease Agreement for the Lakeview Pavilion Banquet Center dated February 24, 2000 (the "Pavilion Lease Agreement"). The \$300,000 shall be made available to I.P.C. upon 50% completion of the Pavilion project, and shall be added to the City's second payment due under the Pavilion Lease Agreement. I.P.C. agrees to execute an amendment to the Pavilion Lease Agreement to provide for the repayment of the additional \$300,000 with interest at the rate of 8.0% per annum over a term of ten (10) years. These ten (10) annual payments shall be paid in quarterly installments but shall otherwise be subject to the terms and conditions of said Lease Agreement.

1.9 I.P.C. shall, with the cooperation and assistance of the City, obtain all entitlements necessary for the development and construction of the Hotel, Conference Center, and Phase Two Building, subject to the terms contained elsewhere herein.

1.10 The responsibility for paying all property taxes, other taxes, annual fees, and fees and taxes levied by the state, county, or other taxing authority for the Hotel and Phase Two Building shall be the exclusive responsibility of I.P.C. or the successors or transferees thereof. The responsibility for paying such taxes for the Conference Center, Pavilion and any other City or publicly owned improvement shall be the exclusive responsibility of the City.

1.11 I.P.C. shall be responsible for providing at its expense all site improvements and utilities, including water, sewer, electric, gas, telephone, cable TV, optic and/or data transmission lines, and the parking areas and landscaping for the Phase Two Building. I.P.C. shall also be responsible for providing at its expense electric, gas, telephone, cable TV, optic, and/or data transmission lines for the Hotel. WPDC shall also be responsible for completing all necessary improvements or restorations to the Promenade brick pavement and related components to the edge of the Phase Two Building and appurtenant improvements related to the Phase Two Building as shown on the Official Development Plan.

1.12 I.P.C. has fully satisfied all development fees and expenses owed to the City for the development of the Hotel and there are no other development fees or expenses due or owing.

1.13 I.P.C. and WPDC shall be responsible for a pro rata share of the Common Area Maintenance ("CAM") Charges allocable to the Hotel, the Phase Two Building, and any other buildings IPC or WPDC develops and owns, including the Lakeview Pavilion as provided for in the Declaration of Covenants, Conditions, Restrictions and Easements for Westminster Promenade East dated September 21, 1998 (the "Declaration"). However, capital repairs shall be included in CAM Charges, except for capital repairs to the lake other than those associated with the lake pumping and mechanical system, which shall be the responsibility of the City. Should I.P.C. or City not develop all of the buildings located in the Promenade East, any other user in the Promenade East project shall

pay its pro rata share of such costs. The CAM Charges shall be allocated in accordance with the provisions of the Declaration. In no event shall I.P.C. or WPDC have any obligations for any CAM or other charges for the Promenade West project or any other project other than the Promenade East project and the facilities listed herein.

II. CITY OBLIGATIONS

2.1 For and in consideration of I.P.C.'s development, construction, furnishing and equipping of the Hotel, the City shall convey to I.P.C. the site for the Hotel (the "Hotel Site"). The conveyance shall be in fee simple, with marketable and insured title free and clear of any liens or encumbrances, including but not limited to the then current and outstanding assessment for the 104th Avenue Special Improvement District, provided, however, a separately owned condominium space for the Conference Center shall be conveyed to the City as part of the conveyance of the Hotel Site, or by separate document, as the City may determine.

2.1.1 The Hotel Site is anticipated to consist of approximately twelve (12) acres of property to be apportioned from City-owned land within the Northpoint Planned Unit Development. The precise configuration and size of the Hotel Site shall be determined in conjunction with the adoption of the Official Development Plan for the Hotel and Conference Center.

2.1.2 The conveyance of the Hotel Site by the City to I.P.C. shall occur at such time as either (1) I.P.C. has satisfied all the standard requirements for obtaining a building permit for the Hotel, or (2) at such time as I.P.C. has obtained a conditional commitment for construction financing, with a final and only condition being the transfer of the property.

2.1.3 The deed for the Hotel Site shall contain a Possibility of Reverter subject to exercise within fifteen (15) days notice by the City of its right to automatic reversion in the event I.P.C. fails to commence construction of the Hotel and Conference Center, within six (6) months of delivery of the deed to I.P.C.

2.2 The City shall provide the financing, at its expense, for the Conference Center to be constructed by I.P.C. pursuant to paragraph 1.2 above.

2.2.1 The financing shall be provided through the issuance of taxable bonds or such other taxable financing as the City may deem appropriate. The City shall make all bond payments in a timely manner and shall not allow the bonds to go into default.

2.2.2 The City will act with all due diligence to assure that the financing of the Conference Center shall be available in a timely manner for I.P.C. to meet its construction obligations pursuant to this Agreement.

2.2.3 Pursuant to paragraph 1.2, the City shall own the Conference Center, and all equipment and furnishings associated with the Conference Center, unless such equipment or furnishings are leased or rented using funds other than the Conference Center financing.

2.2.4 The proceeds of the City's Conference Center financing shall be deposited in a separate City Conference Center construction account and timely released to I.P.C. to meet its payment obligations under its construction contract for the Conference Center.

2.3 Except as otherwise provided in this agreement, the City shall be responsible for designing and providing at its expense the onsite improvements for the Promenade East project anticipated as illustrated on Exhibit "B": to this Agreement, and as shown on the Official Development Plan for the Promenade East Development. These improvements shall include, but not be limited to, the proposed gathering place plaza, the buffer park between the residential properties located north of the

Promenade development, all onsite walkway improvements for the Project, including, without limitation, sidewalks, circulation roads, a lake, the Hotel and Conference Center parking lot paving and lighting, landscaping, stormwater facilities, and water and sewer utilities for servicing the Promenade public common areas and the Hotel and Conference Center.

2.4 All improvements to be constructed by the City pursuant to this paragraph shall be constructed to within a distance of approximately ten (10) feet from the exterior walls of the Hotel and Conference Center. It is the intent of the parties that the completion of the area between the walls of the Hotel and the improvements constructed by the City will be the responsibility of and paid by I.P.C. as part of the construction of the buildings. The cost of completing the improvements within the ten (10) foot area adjacent to the Conference Center shall be included as part of the financing for the Conference Center.

2.5 The City shall also be responsible, at its cost, for constructing, or causing to be constructed all reasonably necessary off-site improvements for the Promenade East Development.

2.6 The City shall be responsible for mass overlot grading the Promenade East project, in accordance with jointly approved grading plans (excluding Ice Arena site) prepared by the City, and at City's expense. The City shall also pay I.P.C. the cost of constructing a fully engineered and compacted pad for the Hotel/Conference Center building defined by the area within the exterior walls of the Hotel and Conference Center building plus the area extending ten (10) feet therefrom. In addition, the City will be responsible for providing necessary water and sewer utilities to a point within ten (10) feet of the Hotel/Conference Center, fully prepared for connection by the Hotel and Conference Center, with the exact location of the connection point to be identified by I.P.C.'s building architect.

2.7 The City shall assist I.P.C. and WPDC in obtaining all entitlements necessary for the construction of the Hotel, Conference Center, and Phase Two Building.

2.8 Except for water and sewer tap fees, the City shall rebate to I.P.C., WPDC or its designees, any and all one-time fees and assessments normally charged by the City as a condition to building permit issuance for the Hotel, Conference Center, and Phase Two Building, including, without limitation, design or plan review fees, impact fees, building permit fees, building inspection fees, submittal fees, and building material use taxes and the like within 30 days after invoice by I.P.C. or WPDC showing evidence of such payment. This section applies to all improvements, including initial tenant finishes or other improvements completed by I.P.C. or WPDC. Normal City fees and charges shall be paid for any improvements made by a Tenant or its contractor and not completed by WPDC or its contractor prior to the issuance of the final Certificate of Occupancy for the Phase Two Office Building.

2.8.1 Deleted.

2.8.2 The City agrees that no other fee, assessment, or charge shall be levied against the Hotel or Conference Center other than as set forth in this Agreement. However, nothing in this Agreement shall be construed as prohibiting the City from assessing, levying or increasing any fees or taxes against the Hotel, Conference Center, the Phase Two Building or any other development within the Promenade East Project, to the extent such fees, charges, or taxes are assessed and paid by all other like businesses in the City of Westminster.

2.8.3 Nothing in this paragraph shall be construed as exempting I.P.C. from the responsibility to pay normal annual taxes such as property tax, business license, and State and County fees and taxes.

2.9 The initial twenty (20) year lease as described in Section 1.6, shall include an option for I.P.C. to extend the lease for the Conference Center for an additional thirty (30) year period. The lease payment for years 21 through 50 shall be calculated as 5% of the total annual gross conference space income and food and beverage income derived from the Conference Center, with a minimum annual lease payment equal to Seven Hundred Fifty Thousand Dollars (\$750,000) per year. The City shall also require as part of this lease extension to have the use of the Conference Center for occasional City sponsored activities on a space available and mutually agreeable basis at meeting and ballroom rental discounted rates of at least 30%, excluding any food or beverage charges.

2.10 For and in consideration of I.P.C.'s construction, furnishing, and equipping of the Hotel and conference Center, and the overall economic and financial benefits to the community at large as a result of locating such facilities within the City of Westminster, the City shall provide I.P.C. a "Business Assistance Rebate."

2.10.1 The Business Assistance Rebate shall be paid in quarterly installments equal to the sum of (a) those revenues attributable to the City's accommodations tax from the Hotel operation for the preceding quarter, plus (b) those revenues attributable to the one percent (1%) Conference Center Fee for the previous quarter, plus (c) those revenues attributable to the City's Sales and Use Tax from the Hotel and Conference Center for the previous quarter exclusive of the City's Sales and Use Tax for parks, open space and trails and recreation.

2.10.2 At such time as the aggregate amount of the quarterly rebates equal \$13,750,000 present value, as of the date of the transfer of the Hotel parcel using a discount rate of eight percent (8%) per annum, or upon the City's rebate of sixty (60) quarterly installments, whichever occurs first, the quarterly payments shall cease. The first quarterly installment rebate shall be made within fifteen (15) days after the last day of the first quarter the Hotel and Conference Center opens for business. In the event the first rebate is prorated, the last payment shall include the additional days not included in the first rebate to provide 60 full quarterly installments.

2.10.3 The City's obligations pursuant to this paragraph shall be subject to annual appropriation consistent with the requirements of Colorado Constitutional Amendment X, Section 20, provided, however, that the City shall obtain a letter of credit or other form of guarantee reasonably acceptable to I.P.C. to secure the City's performance under this paragraph. The City shall be responsible for maintaining the guarantee for the benefit of I.P.C. in a legally valid form, but in no event shall the City be responsible for any default by the guarantee provider that is not attributable to an act or omission of the City.

2.10.4 The City warrants and represents that no other person or entity has any right, title or claim against the specific rebate items included in the Business Assistance Rebate other than sales and use tax bond covenants.

2.11 The City shall not provide any assistance, or allow to be built on any land owned by the City within the boundaries of the Promenade East or Promenade West portions of the Promenade Planned Unit Development, any hotel or motel or meeting facility excluding the Ice Arena meeting space used for Ice Arena users, that would directly compete with any such facilities in the Hotel and Conference Center. This includes the land currently owned by the City which has been previously identified for use as a conservatory or other public use. This restriction shall apply only during the time that an unpaid balance of the Business Assistance Rebate remains.

2.12 The City shall design and construct, or cause to be constructed all stormwater drainage facilities necessary to accommodate all stormwater flows from the Promenade East project, assume full development thereof in accordance with the ODP, and construct all necessary transmission and detention facilities to accommodate such flows from the Promenade in accordance with plans approved by the parties.

2.13 The City has previously conveyed the land to I.P.C. for the Phase Two Building as contemplated by paragraph 1.8 above. The deed to I.P.C. was subject to three (3) conditions subsequent, with the failure of any one condition resulting in the automatic reversion of title to the land to the City. A copy of said deed as recorded on August 2, 2000, along with certain extensions, are attached hereto as Exhibit "C" and are incorporated herein by this reference. The City acknowledges that conditions (1) and (2) have been previously satisfied. The City agrees that this Amended and Restated Agreement satisfies condition (3) and upon payment of the amount provided for by Section 1.8 above, the City shall provide WPDC an unconditional Warranty Deed, subject only to standard exceptions.

2.14 The parties shall be responsible for the CAM charges related to the Ice Arena, Pavilion and Conference Center as set forth in the Declaration of Covenants dated September 21, 1998. The City shall be solely responsible for any capital improvement costs, taxes, assessments, and major repairs for the lake excluding the lake pumps and mechanical systems, which repairs and maintenance shall be paid through CAM Charges.

III. FURTHER AGREEMENTS AND COMMITMENTS

3.1 The City and I.P.C. agree to exercise utmost good faith in negotiating and completing such additional or further agreements that may be required to accomplish the ultimate goal of the parties of realizing the construction and commencement of the operation of the Hotel and Conference Center contemplated by this Agreement, the construction and availability for leasing of the Phase Two Building, and the overall construction of the Promenade East improvements and development. The City and I.P.C. hereby assume the mutual duty of "agreeing to agree" on such further agreements or actions that may be necessary to realize their overriding objective in executing this Agreement. Any omission or ambiguity in this Agreement shall not be considered cause for non-performance of the parties of this Agreement.

3.2 Without in any way limiting the foregoing, the City and I.P.C. specifically agree to cooperate in resolving the following matters to the extent necessary:

3.2.1 Completing the lease agreement for the Conference Center, as described in this Agreement;

3.2.2 Providing appropriate agreements for the sharing of parking and access for the Hotel and Conference Center, and all other development within the Promenade Planned Unit Development;

3.2.3 Completing the documents necessary for creating the space and parcel for the Conference Center to be separately and independently owned by the City;

3.2.4 Cooperating in accomplishing the installation of all utilities for the Hotel, Conference Center, and Phase Two development in the most cost-efficient manner possible;

3.2.5 Enter into any agreements or modify any existing agreements reasonably required by I.P.C.'s lender; to the extent such documents do not result in added costs or obligations for the City or release I.P.C. from obligations in this agreement;

3.2.6 Negotiating and entering into an agreement to permit and facilitate the use of recreational facilities owned or operated by the City, by guests of the Hotel, including the City Park Recreation Center and the Legacy Ridge Golf Course;

3.2.7 Completing an agreement providing for the common area maintenance (CAM) within the Promenade East project in a manner consistent with how first class facilities are maintained.

3.3 The original design of the Hotel shall provide for future expansion capabilities up to an additional one-hundred (100) Hotel rooms, and 20,000 square feet of additional Conference Center space.

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

3.5 Deleted.

3.6 The City will undertake a Phase II environmental assessment of the property to be transferred hereunder by the City to I.P.C. within thirty (30) days of the approval of this agreement. The delivery of a favorable Phase Two report to I.P.C. shall be condition precedent to the rights, obligations, and duties of I.P.C. and City under this agreement.

3.7 The parties acknowledge the importance of the coordination and timely completion of the improvements listed herein. Accordingly, the City and I.P.C. agree to enter into a joint construction and development agreement that provides for the use of I.P.C.'s contractor to be the general contractor for the construction of all of the City's obligations under this agreement, other than the Conference Center which is covered in Section 1.2., provided, however, that I.P.C.'s contractor shall obtain competitive bids or quotes for all work completed for the City and that the contractor's fee is customary and usual for the Denver metro area. If the City requests I.P.C. to manage and be responsible for a portion or all of the Promenade East onsite improvements, other than the Conference Center, then I.P.C. is entitled to receive a 5% fee based on the cost of construction of what they manage. The joint construction and development agreement shall also contain a schedule of completion for all of the identified improvements.

3.7.1 Following the execution of this Amended and Restated Agreement, WPDC agrees to complete the improvements identified on the ODP for the Phase Two Office Building and the Lakeview Pavilion.

3.8 Except as provided otherwise in this Agreement, the rights and obligations Of the parties with respect to the Hotel and Conference Center, are independent and severable from those rights and obligations of the parties with respect to the Phase Two Building, and any default or claim involving the one project shall not impact or affect the other. The parties acknowledge that the two units will be owned and administered by two separate new companies.

3.9 With respect to the Phase Two Building, I.P.C. may transfer any right or obligation under this agreement. I.P.C. may also sell or transfer any property or building within the Phase Two Building Project without the consent of the City.

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

City:

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

I.P.C. and WPDC

Inland Pacific Colorado, L.L.C.
Westminster Promenade Development Company, L.L.C.
Attn: Managing Member
5004 W. 92nd, PMB 205
Westminster, Colorado 80031
Fax: (303) 410-5055

With a copy to:

Stoel Rives, LLP
Mr. Thomas Nicolai
900 S.W. 5th Avenue, Suite 2300
Portland, Oregon 97204

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

3.12 City and I.P.C. shall work together for adequate signage for the Hotel and Phase Two Building, including the maximum allowable signage package under the code, and allow typical hotel signage on the Hotel building.

3.13 The execution of this Agreement by I.P.C. and the City as indicated in the signatory blocks below constitutes a representation by the respective parties that the Agreement has been duly authorized and approved by ordinance of the City Council of the City of Westminster on behalf of the City, and by I.P.C. in accordance with and under the authority of I.P.C.'s Limited Liability Company Agreement and state law.

3.14 Except as provided otherwise in this Agreement, anywhere in this Agreement it provides that it is the responsibility of I.P.C., it shall be at the sole cost and expense of I.P.C., and anywhere in this Agreement it provides that it is the responsibility of the City, it shall be at the sole cost and expense of the City.

3.15 This Agreement is severable and assignable to a legal entity in which I.P.C. is a Managing Member or General Partner with notice to and subject to the City's reasonable consent. However, any assignment or transfer of this agreement other than as defined herein shall require the City's approval, which shall not be unreasonably withheld. The rights and obligations hereunder shall inure to the benefit and detriment of any transferees, assigns or beneficiaries.

3.16 Neither WPDC nor its successors shall sell or otherwise transfer the Phase Two Office Building to a tax-exempt use or ownership.

3.17 Section 11-57-204 of the Supplemental Public Securities Act provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Board hereby elects to apply all of the Supplemental Public Securities Act to this Agreement.

IV. REMEDIES

4.1 In the event of a dispute concerning this Agreement, the parties agree to first attempt to negotiate a resolution of their differences. In the event of an inability to resolve their difference through negotiation, the parties agree to retain the services of a qualified professional mediator

acceptable to both parties and to enter into mediation in good faith in an attempt to resolve the dispute.

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

4.3 The parties hereby waive and agree not to seek any damages from the other in connection with the enforcement of this Agreement if specific performance provides an adequate remedy. The parties may setoff any amounts due the other for any amounts hereunder for any undisputed amounts. An arbitrator or court may grant setoff as an available remedy hereunder. The rights, obligations, and duties of the parties may be enforced through the declaratory action referred to in paragraph 4.2 above, or by way of specific performance. The parties recognize that time is of the essence, and accordingly the parties shall seek any expedited proceedings to which they may be entitled. However, if either party is required to bring an action to enforce or have its rights declared under this Agreement, the prevailing party in such litigation shall be entitled to the recovery of its reasonable costs and attorney's fees.

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

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

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

CITY OF WESTMINSTER

INLAND PACIFIC COLORADO, L.L.C.

By: _____
William Christopher
Its: City Manager

By: _____
Its: _____

ATTEST:

ATTEST:

Michele Kelley, City Clerk

By: _____
Its: _____

**WESTMINSTER PROMENADE
DEVELOPMENT COMPANY, LLC**

**PROMENADE PARKING GARAGE
GENERAL IMPROVEMENT
DISTRICT**

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

ATTEST:

By: _____
Its: _____

By: _____
Its: _____



WESTMINSTER COLORADO

Agenda Memorandum

Date: March 19, 2001

Subject: Purchase of Leyden Reservoir Property from the Farmers' High Line Canal and Reservoir Company and Contribution of Funds for Leyden Dam Improvements

Prepared by: Dan Strietelmeier, Senior Water Resources Engineer

Introduction

City Council action is requested to authorize the Mayor to sign an Intergovernmental Agreement for the purchase of the Leyden Reservoir property from the Farmers' High Line Canal and Reservoir Company for \$800,000 for conveyance to Urban Drainage and Flood Control District, and sign an amendment to an existing Intergovernmental Agreement for contributing funds to the Leyden Reservoir Dam improvements in the amount of \$283,333 plus a 15% contingency of \$42,500, for a total expenditure of \$1,125,833. Funds for the purchase and Dam improvements are available in the Capital Project Fund and 2000 carryover funds in the General Fund.

Summary

Negotiations between Jefferson County, the City of Arvada, the Farmers' High Line Canal and Reservoir Company (FHL) and Urban Drainage and Flood Control District (the District) on rehabilitation plans for Leyden Reservoir have been on-going for over twenty years. In 1999, the City of Westminster became involved in the negotiations and a "package deal" was formalized that laid out a plan for Leyden Reservoir.

The "package deal" consists of Westminster funding the purchase of the Leyden Reservoir property where payment would go to the FHL. The FHL would then directly convey the property together with all liability to the Urban Drainage and Flood Control District.

The District, with additional funding from Arvada, Jefferson County, and Westminster, would rehabilitate Leyden Reservoir into a storm water detention facility and adjacent open space. Improvements over the long term to the Leyden Creek floodplain would be made without Westminster's participation.

Bids for construction of the Leyden Reservoir Dam improvements were opened on January 4 and were used as the basis for the cost sharing arrangement between Westminster, Arvada, and the District. The low construction bid (including contingency) for repairing the dam for use as a flood control facility is \$1.7 million. The proposed cost sharing arrangement calls for Westminster contributing 16.67% or \$283,333.

In return, Jefferson County has converted the "loan" on the Heritage Golf Course into a "grant," eliminating the \$3.3 million full repayment to Jefferson County. The present dollar value of the \$3.3 million "grant" is \$1.6 million. For total projected expenditures of approximately \$1.13 million, Westminster has received a grant of \$3.3 million.

Policy Issues

- Should Westminster enter into an agreement for expenditure of funds on storm water facilities outside of the City's jurisdiction?
- Are the "package deal" terms sufficient to Westminster to contribute funds to the Leyden purchase and dam improvement project?

Staff Recommendation

1. Authorize the Mayor to sign an Intergovernmental Agreement for the purchase of the Leyden Reservoir property from the Farmers' High Line Canal and Reservoir Company for \$800,000 for conveyance to Urban Drainage and Flood Control District, and sign an amendment to an existing Intergovernmental Agreement for contributing funds to the Leyden Reservoir Dam improvements in the amount of \$283,333 plus a 15% contingency of \$42,500.
2. Pass Councillor's Bill No. 7 on first reading appropriating \$125,833 in funds from the 2000 carryover funds from the General Fund.

Alternative

The alternative is for Westminster to back out of the deal leaving the FHL with the Leyden property for potential sale on the open market. A State Engineer Office (SEO) breach of the dam would then have to be performed in 2001 as ordered by the SEO as it is doubtful the District and Arvada would fund the entire project by themselves. This action would severely strain the relations between Westminster and Jefferson County as well as put the financial burden of paying for the dam breach on the FHL (which the City would be required to pay a significant portion of as a major shareholder in FHL). The City has already realized the good faith effort by Jefferson County approving the conversion of the \$3.3 million loan to a grant, thus eliminating any financial obligation on Westminster's part.

Background Information

Leyden Reservoir, located on Leyden Creek in unincorporated Jefferson County, is owned by the FHL. The Leyden Reservoir Dam was constructed in 1908 for use as a water supply. The FHL also owns the Leyden Reservoir storage right totaling 1,053 acre-feet, of which a portion will be retained by the FHL for transfer to another storage vessel. The City of Westminster owns over 50% of the stock shares in the FHL Company.

Jefferson County has approved numerous developments in the Leyden basin that have degraded the quality of water in Leyden Reservoir, and as a result, the FHL does not deliver any water from Leyden Reservoir into Standley Lake. Although not required by State Law, the dam has provided inadvertent storm water detention. With the dam in place, Jefferson County and the City of Arvada have allowed development within the historic (pre 1908) Leyden Creek floodplain.

The dam is in very poor shape, with an inadequate spillway. As early as 1913, the Leyden Dam embankment began to experience problems. The State Engineer's Office (SEO) issued a hold order of 10 feet below the spillway in 1975, which prompted discussions between the FHL and the District. In the early 1980's, a study was completed regarding the stability of Leyden Dam and possible cost sharing of the then estimated \$2 million required to renovate the dam.

In the mid-1980's several water quality threats began to develop in the Leyden basin including the Rocky Flats Industrial Park (a Superfund site), Public Service gas storage facility, and the second Jefferson County landfill. These water quality threats prompted Westminster and Thornton (the other major FHL shareholder) to bypass Leyden Reservoir water from Standley Lake when Leyden Reservoir water was being released to the FHL canal. This mode of operation has been the standard practice since 1985.

Discussions continued with the FHL, the District and the City of Arvada focusing on cost sharing for a rehabilitation project that would provide some flood control. The SEO informed the FHL in 1991 that the Leyden Reservoir spillway needed to be enlarged to meet current safety standards. It was at this time, due to the high costs of repair and the water quality threats that the FHL Board began to consider breaching the dam. A dam breach involves removing a portion of, or the entire dam embankment, so that no water, even during a flood, is stored. The effects downstream are the same as if the dam were not in existence. The reservoir site could then be sold possibly to the local jurisdictions for construction of a flood detention facility. A formal offer was made to Arvada and the District in 1994 to sell the reservoir. A response was never received.

Meetings with the District and Arvada continued and in 1997, the SEO informed the FHL that a zero storage hold order would be placed on Leyden until plans for either a renovation or breach were submitted to them. The SEO allowed the FHL one more year of operation of Leyden Reservoir as long as the breach process was initiated with a deadline established of May 1, 1999 for the actual breach. The FHL Board decided to begin the design of the breach and continue discussions with the local jurisdictions. The breach option was the most economical option as the Leyden water supply was no longer of value to Westminster and Thornton.

During 1998, negotiations with the District, Arvada, Jefferson County and the SEO continued on various alternatives. The discussions did not result in any realistic offer to the FHL, so in the interim, the breach process continued. The breach design plans were submitted to the SEO in late 1998 and approved in January 1999. The plans called for construction of the breach in February 1999.

Arvada officials attended a FHL Board meeting and did not profess significant concern if the Leyden Dam breach was to take place because Arvada had regulated development in their portion of the Leyden floodplain as if the Dam were not in existence. They also indicated that Arvada was not willing to pay much for the property.

The local jurisdictions, and residents surrounding the reservoir, appealed to the State, including State Legislators, for an extension in the breach deadline based on their assertion that funding was being established for a realistic offer to the FHL. Jefferson County informed the FHL that before the breach could commence, certain Jefferson County grading and flood plain permit requirements must be met. The net effect of this action by Jefferson County was to delay the actual breach construction. The FHL agreed to apply for an extension of the breach deadline until 2000, which was subsequently granted by the SEO. The SEO did not, however, allow for long term storage of water.

Jefferson County was heavily lobbied by County residents and the City of Arvada to acquire the Leyden property for flood control, recreation and open space. The cost to repair Leyden Reservoir as a flood control reservoir and to make improvements to the floodplain is estimated at more than \$3 million.

After some discussion, Jefferson County agreed to the package deal, which involves Westminster contributing funds to the Leyden Reservoir project. In addition to converting the Heritage Golf Course loan to a grant, Jefferson County has conveyed the remaining 50 plus acres to Westminster for the Standley Lake Regional Park, which the County had held back. The FHL will also convey a portion of the Leyden Reservoir water right to the District and Arvada for maintaining a 100 acre foot permanent pool.

The SEO was involved in the negotiations and has granted another extension to the breach deadline for the dam as long as the "package deal" is in place. The present schedule calls for the construction of the dam rehabilitation to begin in April, 2001 and project completion in June, 2001.

An Intergovernmental Agreement between the District and Arvada for the design phase is in place and the project went out for construction bids on December 4. The engineer's estimated construction cost for repairing the dam for use as a flood control facility is \$1.4 million. The low construction bid with contingency is \$1.7 million.

The FHL will in turn benefit from the sale of the Leyden Reservoir property (the sale was approved by the FHL shareholders at a September 17, 1999 special meeting). The improved Leyden Dam facility will prevent poor quality storm water from entering the FHL canal, and sale proceeds will fund projects to improve canal operations, minimize seepage loss, and restore some capacity for the canal. The FHL and its stockholders are currently liable if the dam should fail. With Westminster being more than a 50% stock owner, the sale proceeds provides funds that the stockholders might have to provide otherwise.

In 2000, \$1.0 million was appropriated from Capital Improvement carryover funds to the Leyden Reservoir Fund in the General Capital Improvement Fund for the proposed settlement of the Leyden Reservoir discussions with Jefferson County, City of Arvada, Farmers Highline Canal and Reservoir Company, and Urban Drainage and Flood Control District. The remaining \$125,833 is not included in the adopted 2001 budget due to the great uncertainty surrounding the negotiations. Staff anticipated that should an agreement materialize outside of the regular budget development that carryover or contingency funds could be utilized, depending on the timing during the year. Since this agreement has entered this final phase of development, Staff recommends utilizing carryover funds from the 2000 General Fund to cover the difference needed for the cost of the land purchase and dam repair.

Respectfully submitted,

William M. Christopher
City Manager

BY AUTHORITY

ORDINANCE NO.

COUNCILOR'S BILL NO. **7**

SERIES OF 2001

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 2001 BUDGET OF THE GENERAL FUND AND THE GENERAL CAPITAL IMPROVEMENT FUND.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 2001 appropriation for the General Fund, initially appropriated by Ordinance No. 2839 in the amount of \$67,845,371 is hereby increased by \$125,833 which, when added to the fund balance as of the City Council action on April 9, 2001 will equal \$67,971,204. 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 increase is due to the appropriation of 2000 carryover funds.

Section 2. The \$125,833 increase in the General Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	\$ Increase	Final Budget
REVENUES			
Carryover- General fund 10-0090-000	\$1,798,308	<u>\$125,833</u>	\$1,924,141
Total Change to Revenues		<u>\$125,833</u>	
EXPENSES			
Transfer to Capital Projects Fund 10-10-95-990-975	\$1,798,308	<u>\$125,833</u>	\$1,924,141
Total Change to Expenditures		<u>\$125,833</u>	

Section 3. The 2001 appropriation for the General Capital Improvement Fund, initially appropriated by Ordinance No. 2839 in the amount of \$14,802,638 is hereby increased by \$125,833 which, when added to the fund balance as of the City Council action on April 9, 2001 will equal \$14,928,471. 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 increase is due to the appropriation of a transfer from the General Fund.

Section 4. The \$125,833 increase in the General Capital Improvement Fund shall be allocated to City Revenue and Expense accounts, which shall be amended as follows:

Description	Current Budget	\$ Increase	Final Budget
REVENUES			
Transfer From the General Fund 75-9999-360	\$1,798,308	<u>\$125,833</u>	\$1,924,141
Total Change to Revenues		<u>\$125,833</u>	
EXPENSES			
Leyden Reservoir 75-50-88-555-144	\$1,000,000	<u>\$125,833</u>	\$1,125,833
Total Change to Expenditures		<u>\$125,833</u>	

Section 5. – 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 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 19th day of March 2001. PASSED, ENACTED ON SECOND READING, AND
FULL TEXT ORDERED PUBLISHED this day of April, 2001.

ATTEST:

Mayor

City Clerk

Summary of Proceedings

Summary of proceedings of the City of Westminster Special City Council meeting of Monday, March 19, 2001.

Present at roll call were Mayor Heil, Mayor Pro-Tem Dixon, Councillors Atchison, Hicks, Kauffman, and Merkel. Absent was Councillor Moss.

Council authorized the following: City Manager to sign the amended Joint Development Agreement with Westminster Pavilion Development Company, LLC, and other such documents, agreements and letters necessary to achieve the office building and parking structure as proposed; Mayor to sign an Intergovernmental Agreement for the purchase of the Leyden Reservoir property from the Farmers' High Line Canal and Reservoir Company for \$800,000 for conveyance to Urban Drainage and Flood Control District, and sign an amendment to an existing Intergovernmental Agreement for contributing funds to the Leyden Reservoir Dam improvements in the amount of \$283,333 plus a 15% contingency of \$42,500.

The following Councillor's Bill was introduced on first reading:

A BILL FOR AN ORDINANCE INCREASING THE 2001 BUDGET OF THE GENERAL FUND AND THE GENERAL CAPITAL IMPROVEMENT FUND purpose: appropriating funds from the 2000 carryover funds for the Leyden Reservoir Dam improvements.

At 7:22 P.M. the meeting was adjourned.

By order of the Westminster City Council

Michele Kelley, CMC, City Clerk

Published in the Westminster Window on March 29, 2001