



**W E S T M I N S T E R**  
**C O L O R A D O**

**AGENDA**

**SPECIAL CITY COUNCIL MEETING**

**MONDAY, APRIL 30, 2001 AT 7:00 P.M.**

**1. Pledge of Allegiance**

**2. Roll Call**

**3. Purpose of Special Council Meeting**

A. Councillor's Bill No. 22 re amending Willow Run Assistance Agreement

**4. Adjournment**



## W E S T M I N S T E R

City of Westminster

April 25, 2001

Office of the Mayor

4800 West 92<sup>nd</sup> Avenue

Westminster, Colorado

80031-6387

303-430-2400

FAX 303-428-4564

Michele Kelley, City Clerk

City of Westminster

4800 West 92<sup>nd</sup> Avenue

Westminster, CO 80031

Dear Michele:

Please call a special meeting of the City Council for Monday, April 30, 2001 at 7:00 P.M. to be held at City Hall in the City Council Chambers for the following purpose:

Emergency ordinance amending Willow Run Assistance  
Agreement  
and  
Westminster Economic Development Authority  
authorization re South Westminster Revitalization  
request for proposals

Sincerely,

Nancy M. Heil, Mayor



## W E S T M I N S T E R

City of Westminster  
General Services  
Department

City Clerk's Office

4800 West 92<sup>nd</sup> Avenue  
Westminster, Colorado  
80031-6387

303-430-2400  
FAX 303-428-4564

April 25, 2001

To All Members of City Council:

A special meeting of the City Council has been set for Monday, April 30, 2001 at 7:000 P.M. to be held at City Hall Council Chambers for the following purpose:

Emergency ordinance amending Willow Run Assistance Agreement  
and  
Westminster Economic Development Authority authorization re South Westminster Revitalization request for proposals

Sincerely,

Michele Kelley, CMC  
City Clerk

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
HELD ON MONDAY, APRIL 30, 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 Dixion, Councillors Hicks, Moss, and Kauffman. Also present were William Christopher, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk. Absent was Councillor Merkel and Atchison.

The Mayor stated the purpose of the Special Meeting is to consider Councillor's Bill No. 22 re amending the Willow Run Assistance Agreement.

COUNCILLORS BILL NO. 22 AMENDING WILLOW RUN BUSINESS ASSISTANCE AGREEMENT

A motion was made by Councillor Moss and seconded by Hicks to adopt Councillor's Bill No. 22 as an emergency ordinance approving the amendment to the Willow Run Business Assistance Package so that construction can begin on the Federal Boulevard extension project. Mark Campbell, 6492 S. Tabor Court addressed Council. Upon roll call vote, the motion carried unanimously.

ADJOURNMENT:

The meeting was adjourned at 7:15 P.M.

ATTEST

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

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\_\_\_\_\_  
Mayor



## Agenda Item 3 A

### W E S T M I N S T E R C O L O R A D O

#### Agenda Memorandum

**Date:** April 30, 2001

**Subject:** Councillor's Bill No. 22 re Amendment to the Business Assistance Agreement for Willow Run Subdivision

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

#### Introduction

City Council action is requested to adopt the attached Councillor's Bill as an emergency ordinance approving the amended Willow Run Business Assistance Agreement so that construction can begin immediately on the Federal Boulevard Extension Project. Additional funding of approximately \$1.6 million is needed for the road project.

#### Summary

In October 1999, Council approved the Willow Run Business Assistance Package. The key component of that package was Southwestern Investment Group, LLC's (SIG) agreement to finance and build Federal Boulevard from 120<sup>th</sup> Avenue to 128<sup>th</sup> Avenue. In 1999, the road project was estimated to cost \$2.3 million. Now over two years later, actual costs and construction bids indicate the project cost is closer to \$3.9 million because of the increase in costs of construction and change in project specifications.

The amended agreement attached provides for the additional \$1.6 million needed for the project to move forward.

It is important to note that this road project is being financed by SIG and normally would be the City's responsibility.

#### Policy Issue

Is the construction of the Federal Boulevard Extension project, north of 120<sup>th</sup> to 128<sup>th</sup> Avenue as a two-lane road, a sufficient priority to allocate, at this time, an additional \$1,362,696 of City funding to the project?

#### Recommendation

Adopt Councillor's Bill No. as an Emergency Ordinance approving the amendment to the Willow Run Business Assistance Package so that construction can begin on the Federal Boulevard extension project.

#### Alternatives

- 1) Allow the Federal Boulevard Extension Project to move forward and provide, at this time, an additional \$1,362,696 funds needed from the 2000 General Fund Carryover.
- 2) Shift funding from other capital improvement projects to fund this project. Staff investigated this option and does not recommend this approach as this would delay other key capital projects.

- 3) Do not provide anymore money for the road project at this time; but risk jeopardizing the construction of the Federal Boulevard Extension Project and put SIG in an extreme financial bind over a City road project.

### **Background Information**

City Council approved the Willow Run Business Assistance package in October, 1999. The majority of the financial assistance in the Business Assistance Package provides for funding and reimbursement of costs relative to the construction of the Federal Boulevard extension (120<sup>th</sup> to 128<sup>th</sup> Avenues). At the time the agreement was approved, the extension of Federal Boulevard, as a 2-lane road including right-of-way acquisition was estimated to cost \$2.3 million. Construction bids for the road project were opened on March 13<sup>th</sup>. The low bid, which includes 10% contingency, came to \$2,666,000. In addition, \$896,419 is being spent on design, right-of-way acquisition, services, and wetland mitigation. Therefore, a \$1,262,419 short fall is projected. Also, turn lanes on 120<sup>th</sup> Avenue at Federal Boulevard have been added to the project (as an upgrade) which are estimated to add \$300,000 to the project, a portion of which (\$100,277) is being funded through the 2000 General Fund Carryover Funds. The remaining portion of the additional cost for the turn lanes will be appropriated at a later date.

It is Staff's recommendation that the City proceed with this project, despite the increased costs. The project not only provides direct access to the Willow Run Shopping Center, but also will aid in diverting traffic away from the very busy 120<sup>th</sup> Avenue and Huron Street intersection. Furthermore, the projected opening of the Federal Boulevard extension has spurred business park development interest west of Pecos Street. Without the subject project, some of the land being considered for development would not enjoy public access. Actual road construction will facilitate development of this key employment center adjacent to Park Centre.

To allow the Federal Boulevard extension project to move forward at this time, Staff has proposed that additional funds be taken from the 2000 General Fund Carryover revenues. The funds will be provided to Southwest Investment Group according to Section 2.b. of the business assistance agreement (in addition to the funds already noted in the agreement).

The proposed amendments to the assistance package as reflected in this memorandum have been approved to by Southwest Investment Group. Also, the extension of Federal Boulevard has several positive effects. It allows additional traffic to the Safeway shopping center at 128<sup>th</sup> Avenue and Zuni Street. Sales at the center have been less than projected, probably since the road extension project has not proceeded. The new road will open up the Park Centre area west of Pecos Street for business park development. And, most significantly, it will provide significant traffic relief to the 120<sup>th</sup> Avenue and Huron Street intersection.

Respectfully submitted,

William M. Christopher  
City Manager

Attachment

BY AUTHORITY

ORDINANCE NO.  
SERIES OF 2001

COUNCILLOR'S BILL NO. **22**  
INTRODUCED BY COUNCILLORS

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A BILL  
FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT  
WITH SOUTHWESTERN INVESTMENT GROUP, LLC:

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

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

WHEREAS, Southwestern Investment Group, LLC will be building the Federal Boulevard Extension Project on behalf of the City; and

WHEREAS, the estimated cost of the Federal Boulevard Extension Project has increased in cost by approximately \$1,587,420 and additional funds need to be allocated for the project; and

WHEREAS, it is urgent to get the funding in place for this project so construction can begin immediately; and

WHEREAS, the proposed Amendment to the Assistance Agreement between the City and Southwestern Investment Group, LLC is attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW, THEREFORE, pursuant to the terms of the Constitution of the State of Colorado, the Charter and ordinances of the City of Westminster, and Resolution No. 53, Series of 1988, the members of the City Council of the City of Westminster direct and authorize the following actions by the City Staff:

Section 1. The City Manager of the City of Westminster is hereby authorized to enter into an Amendment to the Assistance Agreement with Southwestern Investment Group, LLC in substantially the same form as the one attached as Exhibit "A," and upon execution of the Amended Agreement to fund and implement said Agreement.

Section 2. This ordinance shall be in full force and effect upon adoption of this ordinance on April 30, 2001, by an affirmative vote of six of the members of the Council, if six or seven members of the Council are present, or by an affirmative vote of four of the members of the Council, if four or five members of the Council are present at the meeting at which this ordinance is presented and the signature on this ordinance by the Mayor or the Mayor Pro Tem.

Section 3. This ordinance shall be published in full within ten (10) days after its enactment.

INTRODUCED, READ IN FULL AND PASSED AND ADOPTED AS AN EMERGENCY  
ORDINANCE this 30<sup>th</sup> day of April 2001.

ATTEST:

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Mayor

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City Clerk

**AMENDMENT TO THE  
ASSISTANCE AGREEMENT  
FOR THE CONSTRUCTION OF WILLOW RUN  
SHOPPING CENTER IN THE CITY OF WESTMINSTER**

THIS AMENDED AGREEMENT is made and entered into this \_\_\_\_\_ day of ~~October, 1999,~~  
**May, 2001**, between the CITY OF WESTMINSTER (the "City"), and SOUTHWESTERN INVESTMENT GROUP, LLC ("SIG").

WHEREAS, the City wishes to provide certain assistance to SIG to aid in the construction of their new retail center within the City of Westminster located at 128<sup>th</sup> Avenue and Zuni Street; and

WHEREAS, SIG has agreed to engineer, build and install the Federal Boulevard extension, certain utilities and public art valued at about \$2,937,060 **\$4,980,000** and

WHEREAS, City Council finds the execution of this Agreement will serve to provide benefit and advance the public interest and welfare of the City and its citizens by securing the location of this economic development project within the City and further expand the City's tax base.

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

1. Southwestern Investment Group, LLC responsibilities:
  - a. Federal Boulevard Extension. SIG will engineer, design, obtain right-of-way and build the Federal Boulevard extension from 120<sup>th</sup> Avenue to 128<sup>th</sup> Avenue including **turn lanes off 120<sup>th</sup> Avenue, as well as** improvements to the Zuni Street and 128<sup>th</sup> Avenue intersection, in compliance with City engineering standards and practices, and will be subject to approval by the City Engineer.
  - b. Off-site Improvements. In addition to normal development requirements, SIG will also construct the City's portion of the off-site improvements, which includes installation of the water and sewer lines to the edge of SIG's property line and one-third (1/3) of the street widening of 128<sup>th</sup> Avenue and Zuni Street in front of SIG's property. All improvements will be built and installed as shown on the Official Development Plan and Construction Documents as well as in compliance with City Engineering standards and practices and will be subject to approval by the City Engineer.
  - c. Public Art. SIG will install public art in the Willow Run Shopping Center with a minimum value of \$15,000 no later than 12 months after the issuance of the final Safeway Certificate of Occupancy.
  - d. Gateway Sign. SIG will install the City gateway sign as shown on the Willow Run Official Development Plan no later than 12 months after the issuance of the Safeway Certificate of Occupancy.
  - e. Shopping Center Construction. SIG will construct the Willow Run Shopping Center, including all on-site and off-site development responsibilities as outlined and shown on the Willow Run Official Development Plan. Development of the center shall be at least 80% complete by December 31, 2001.
  - f. Caulkins Ditch. SIG will reimburse the City \$3,500 for the Caulkins Ditch Open Space as documented with the Open Space Coordinator.

2. City of Westminster Responsibilities:

- a. Engineering of Alignment. City's Planning and Engineering Staff will work with SIG to determine the appropriate alignment for the Federal Boulevard extension from 120<sup>th</sup> Avenue to 128<sup>th</sup> Avenue.
- b. Reimbursement. The City will reimburse SIG for the actual cost of engineering, design, right-of-way acquisition and construction of the Federal Boulevard and Zuni Street extension **including a second left turn lane from west bound 120<sup>th</sup> to south bound Federal**, as well as the City's portion of the utility and street improvements in Zuni Street and 128<sup>th</sup> Avenue as noted on the Willow Run Official Development Plan. Coordination, timing and funding of the improvements will be more specifically defined in the Willow Run Shopping Center Public Improvement Agreement to be prepared by the City Engineering Staff. The final reimbursement amount will include accrued interest at the rate of 7.5% interest per annum from the point at which the City accepts the project as complete. The amount to be reimbursed for street and utility improvements is subject to the City Engineer's approval, and is estimated to be \$3,300,000 **\$4,900,000** plus accrued interest as noted on the following payment schedule. The reimbursement payments pursuant to this paragraph will be paid to SIG as follows:
  - (1) The City will pay \$800,000 **\$2,500,000** to SIG from the General CIP account **and \$400,000 from the Utility CIP account**, as bills are provided to substantiate expenditures. Payment will be made within 30 days of the date the bills are presented.
  - (2) ~~The City will pay \$800,000 from the General CIP account to SIG by January 31, 2000.~~
  - (3) ~~The City will pay \$400,000 from the Utility CIP account to SIG, by January 31, 2000.~~
  - (4) ~~The City will pay \$900,000 to SIG from the General CIP Account by January 31, 2001.~~
  - (2) **The City will pay up to \$1,363,700 from the 2000 General Fund Carryover revenues as invoices are provided to substantiate expenditures.**
  - (3) **The City will pay up to \$200,000 for the remaining balance of the cost to build the additional left turn lane on 120<sup>th</sup> Avenue, subject to future appropriation.**
  - (4)(3)(5) Any additional costs, incurred for the Federal Boulevard and Zuni Street extension and other utility and street improvements, as defined in the Willow Run Official Development Plan, over the \$2,900,000 **\$4,463,700** provided in paragraphs 1, 2, and 3 above, will be rolled into the Sales Tax rebate provided for in paragraph 2d. Said amount will accrue interest at 7.5% per annum and will be pro-rated for the period of time from project completion as established by the City Engineer until the final payment date.
  - 5(4)(6) The exact amount to be reimbursed, with interest for the Federal Boulevard and Zuni Street extension and other road and utility improvements, will be that portion of **the actual costs not yet paid but** incurred by SIG in performing such work (as submitted by SIG and verified and approved by the City Engineer) that the City has agreed to reimburse, pursuant to paragraph 2b. above, and, as reasonably determined

by the City Engineer and Finance Director upon completion of the Federal Boulevard and Zuni Street extension and installation of the utility and street improvements described in paragraphs 1.a and 1.b., **to still be due to SIG**

c. Sale Tax Rebate

1. A Sales Tax Rebate shall be paid by the City in quarterly installments equal to 50% of Sales Tax received by the City from Willow Run Shopping Center. Such rebate shall be payable exclusively from Sales Tax revenues collected by the City from Willow Run Shopping Center and attributable to the imposition of the City's 3.0% general Sales Tax (excludes the City's .25% Open Space Tax); and shall continue until such time as the items in 2.c.2 below have been completely rebated. Said amount is estimated to be \$1,385,500.
2. Such quarterly installments shall be paid as follows:
  - a) Any additional funds due to SIG per paragraphs 2.c.(3)and 2.c.(4) will be rebated until the dollar amount established by the City Engineer and Finance Director has been reimburse.
  - b) \$18,500 in sales tax will be rebated to SIG to compensate SIG for the provision of public art and Caulkins Ditch.
  - c) \$967,000 in sales tax will be rebated to SIG to aid in the overall project development.
3. The payment of each quarterly installment shall be made within 20 days following the close of each calendar quarter.

d. Enhancement Fund Reimbursement

The City will reimburse SIG ~~up to \$60,000 for the actual cost of erecting the~~ “Westminster” gateway sign by January 31, 2002, upon approval and acceptance of the gateway sign by the City. **Construction cost for the sign is estimated to be \$92,000.**

3. Completion Deadline. This assistance Agreement shall terminate and become void and of no further force or effect upon the City if construction of Willow Run Shopping Center is not at least 80% completed or such center is not in operation by December 31, 2001.
4. Vacancy Condition. In the event that at least 70% of the leasable square feet of the Willow Run Shopping Center becomes vacant, for a period of eight (8) consecutive months, within seven (7) years after the new Safeway Grocery Store commence operations, SIG shall repay the City that amount of the sales tax previously rebated, but not attributable to road, utility and public improvement, which is \$967,000. The obligation to repay the \$967,000 shall be deemed an obligation that is personal to SIG or its assignee. In no event shall such obligation be deemed to run with the title to Willow Run Shopping Center property after such property is sold or be binding upon any owner thereof other than SIG or its assignee.
5. Other Regulations. Nothing in this Agreement waives or reduces SIG's obligation to abide by and comply with the City's zoning and planning regulations or Building Codes.
6. Entire Agreement. This instrument shall constitute the entire agreement between the City and SIG, and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to

its subject matter.

7. **Assignment.** This Agreement is assignable to another legal entity subject to the City's reasonable consent, which will not be withheld as long as evidence satisfactory to the City in its reasonable discretion is provided which demonstrates that the successor entity has the financial wherewithal, experience, and expertise to carry out the project and the obligations under this agreement. However, any assignment of transfer of this Agreement other than as defined herein shall require City's approval, which shall not be unreasonably withheld. The rights and obligations hereunder shall inure to the benefit and detriment of any transfer, assigns or beneficiaries.
8. **Subordination.** The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenue of the City.
9. **Annual Appropriation Condition.** Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Construction Article X, Section 20, and the City's obligations hereunder are expressly conditional upon annual appropriation by the seated City Council.

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

SOUTHWESTERN INVESTMENT GROUP, LLC      CITY OF WESTMINSTER

By \_\_\_\_\_  
Mark D. Campbell  
President

\_\_\_\_\_  
William Christopher  
City Manager

ATTEST:

\_\_\_\_\_  
Michele Kelley, City Clerk

## Summary of Proceedings

Summary of proceedings of the City of Westminster Special City Council meeting of Monday, April 30, 2001.

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

The following Councillor's Bill was passed and adopted as an emergency ordinance:

A BILL FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT WITH SOUTHWESTERN INVESTMENT GROUP, LLC purpose: to allow construction to begin on the Federal Boulevard extension project.

At 7:15 P.M. the meeting was adjourned.

By order of the Westminster City Council  
Michele Kelley, CMC, City Clerk

Published in the Westminster Window on May 10, 2001