

AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, OCTOBER 26, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (August 10, 2015)
- 3. Public Hearings and New Business**
 - A. Contract for Underwriter Consulting Services
 - B. Westminster Downtown GID/City/WEDA Intergovernmental Cooperation Agreement
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, AUGUST 10, 2015, AT 10:34 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, David Frankel, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Vice Chairperson Briggs moved, seconded by Board Member Baker, to approve the minutes of the meeting of July 27, 2015, as written. The motion carried unanimously.

PUBLIC HEARING REGARDING SUPPLEMENTAL APPROPRIATION TO THE 2015 BUDGET

At 10:35 p.m., the Chair opened a public hearing to consider a supplemental appropriation to the 2015 budget. Staff had no formal presentation and was available to answer any questions, of which there were none. The Chair invited public comment. No one wished to speak and the public hearing was closed at 10:36 p.m.

RESOLUTION NO. 164 AUTHORIZING A SUPPLEMENTAL APPROPRIATION

Board Member Seitz moved, seconded by Vice Chairperson Briggs, to adopt Resolution No. 164 authorizing a supplemental appropriation to the 2015 Westminster Economic Development Authority budget. On roll call vote, the motion passed 6:1 with Board Member Baker voting no.

LEASE AMENDMENT FOR DOWNTOWN ROAD & INFRASTRUCTURE CONSTRUCTION

It was moved by Board Member Pinter and Seconded by Vice Chairperson Briggs to authorize the Executive Director to execute a Lease Amendment Agreement with J.C. Penney, in substantially the same form as attached, to accommodate road and infrastructure construction for the Downtown Westminster project, including authorization for funding the lease surrender payment in an amount not to exceed \$680,000.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 10:38 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority Meeting
October 26, 2015



SUBJECT: Contract for Underwriter Consulting Services

Prepared By: Tammy Hitchens, Finance Director
Rachel Price, Financial Analyst

Recommended Board Action

Authorize the Executive Director to execute a contract, in substantially the same form as attached, with George K. Baum & Company for underwriting services for a one-year period with the option to renew for an additional four years.

Summary Statement

- WEDA utilizes various debt instruments and strategies to assist with the financing of capital projects. Debt financing requires the specialized knowledge and tools of financial and legal professionals, such as a financial advisor, underwriter, bond counsel, and bond disclosure counsel. Together with Staff, they make up the financial team utilized to issue debt such as tax increment financing revenue bonds issued for redevelopment in Urban Renewal Areas (URA's).
- The underwriter's role is to assist WEDA with the structuring of the bond issue and marketing the bonds to investors. An underwriter may purchase some of the bonds on the issue date if they have been unable to sell the bonds to investors. On an ongoing basis, the underwriter may help "make a market" for the WEDA's debt by continuing to buy and sell our securities.
- On August 12, 2015 a Request for Proposal (RFP) was issued for underwriter services. Five proposals were analyzed and finalist interviews held from which Staff recommends George K. Baum & Company be hired as WEDA's underwriter.
- Funding for underwriting services comes from proceeds of individual debt issues. Prior to debt issuance, Staff will present the Board the information detailing costs for the various consulting and legal fees to be paid from financing proceeds.

Expenditure Required: Varies depending on the type of debt instrument used and amount issued

Source of Funds: Debt financing proceeds

Policy Issue

Should the Board proceed with contracting for underwriting services with George K. Baum & Company to assist in the structuring and marketing of debt offerings?

Alternative

1. Select another firm to perform the underwriting services. Staff does not recommend this alternative, as George K. Baum & Company represents the most qualified underwriter provider based on review of the RFP's submitted and presentations made to Staff on September 12, 2015.
2. Select an underwriter for each specific debt issuance. Staff does not recommend this alternative, as having to go to RFP for each debt issuance would delay the issuance process and could result in opportunity costs.
3. Do not use an underwriter to market WEDA's debt issues. Staff does not recommend this alternative. Public financing is a complex and specialized field requiring professional services of both financial and legal consultants. The services of these professionals result in WEDA issuing debt efficiently and legally.

Background Information

WEDA utilizes debt to finance a variety purchases and capital projects. Issuing debt requires external professional services of specialized financial and legal consultants who are knowledgeable about taxable and tax-exempt municipal finance. Together with Staff and legal counsel, the WEDA's financial advisor and underwriter represent WEDA's Finance Team for debt issuance. The underwriter is an important member of the team whose role is to structure and market debt to investors to achieve the lowest cost feasible given market conditions at the time of issuance. Given the variety of debt instruments utilized by WEDA and the complexities inherent in the structuring and marketing of the debt to investors, the services of an underwriter are in integral component to meet the WEDA's objective of issuing debt at the lowest cost, while attracting sufficient interest from investors.

WEDA has historically used an underwriter for all of its past bonded debt issues. While the firms have changed, WEDA has taken the approach of going out to competitive bid every 5 years and selecting a single firm to be its underwriter for the next term. Staff feel that having an underwriter already named as part of WEDA's financing team, regardless of whether debt will be issued during the term, is an advantage over having a competitive process each time for the following reasons. First, if debt is considered the underwriter is a part of the process from the beginning, which increases their knowledge and helps their efforts to market the bonds later. Second, having the bid process already completed allows finance team to focus on the debt issuance itself and does not add further delay to getting the deal done. Also, the cost per bond has already been negotiated and is a verifiable known cost when sizing the issue.

An RFP was released in August 2015 requesting the services of an underwriter as the existing contract with Piper Jaffray has expired. Staff analyzed the five RFP's received from which three respondents were selected for interviews. Staff hosted interviews on September 12 with participation from WEDA's financial advisor to provide their outside perspective. Staff later conducted reference checks on the firm and its personnel the week following the presentation. Based on their written response to the RFP and interview presentation, Staff evaluated each respondent based on multiple attributes including depth of key personnel experience, the firm's experience issuing various types of debt, rating agency presentation experience, the firm's financial soundness, pricing for services, and references.

Based on their RFP response and interview, Staff recommends that an underwriting contract be awarded to George K. Baum. One of the key factors for an underwriter is the personnel that will be working on the debt issues.

Pricing was considered an important component of the selected firm and each responded with a "not to exceed" estimated cost based on issue type as follows based on a cost per \$1,000 of bonds issued. The

actual cost by debt issue is uncertain until the time of issuance; however, as indicated below, George K. Baum & Company's pricing was lowest compared to the other finalist respondents as shown in the following chart.

ISSUE TYPE	George K. Baum	Piper Jaffray	Stifel Nicolaus
Fixed Rate Underwriting Fee (NTE)	\$3.40/1,000	\$3.65/1,000	\$3.75/1,000
Variable Rate Underwriting Fee (NTE)	\$1.00/1,000	\$3.65/1,000	\$2.50/1,000

The firm is dedicated to the Colorado market and municipal finance. Since 2010, George K. Baum & Company has senior managed 181 negotiated issues originating in Colorado. George K. Baum's public finance team is headquartered in Denver. This ensures Staff have access to these needed professionals in a timely manner, in-person, if needed. Their physical presence here adds to their in-depth knowledge of the Colorado market and its unique pool of investors.

While all of the firms had quality personnel, Staff believes George K. Baum's personnel best fit the needs of WEDA. The lead manager for George K. Baum has over 20 years of experience in the field. Additionally, she has previously worked in a municipal government giving her first-hand understanding of our goals and needs. George K. Baum & Company's staff have had recent successes in each of the various types of structures we may pursue. All of the reference checks on the firm and its staff were exemplary, citing their expertise, professionalism and commitment to the communities they serve.

George K. Baum & Company's staff have a unique focus on education. They have provided Bond 101 and Rating Agency trainings for clients and elected officials in the past and have suggested this for WEDA. As WEDA is preparing for issues, making sure all parties are well-educated on the process as well as the risk/rewards of debt are critical in making sound financial decisions. Furthermore, they have helped craft policies used to improve their clients' daily activities and compliance efforts.

Underwriting experience was also factored into the decision process. Each firm reviewed has excellent depth of experience, marketing a variety of debt issues throughout the state of Colorado. As such, Staff felt that overall each was very comparable to each other; however, it was felt that George K. Baum & Company had a stronger focus on local marketing within the state of Colorado since they have an underwriting desk located in Denver.

Finally, Staff analyzed the financial strength of each firm relative to its ability to underwrite and purchase any unsold bonds. As stated in their proposal, "One hundred percent of our capital is available to municipal business every day." George K Baum & Company has a strong balance sheet with more than sufficient excess net capital to underwrite the WEDA's bonds should takedowns be necessary.

Overall, Staff believes that based on the personnel, pricing, underwriting experience, and financial soundness, George K. Baum & Company is the most qualified firm to represent WEDA as its underwriter.

The selection of George K. Baum & Company as WEDA's underwriter helps achieve City Council's Strategic Plan goal of "Financially Sustainable Government Providing excellence in City Services" by assisting Staff in making the best financial decisions related to structuring, marketing and issuance of debt.

Staff will be present at the October 26th Board meeting to address any questions or concerns relative underwriting services.

Respectfully submitted,

Donald M. Tripp
Executive Director

AGREEMENT TO FURNISH PUBLIC FINANCE UNDERWRITER SERVICES
TO THE CITY AND
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered into this 26th day of October, 2015, among the **CITY OF WESTMINSTER**, hereinafter called the “City,” the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called “WEDA,” and **GEORGE K. BAUM & COMPANY**, a corporation organized pursuant to the laws of the State of Missouri, and doing business in Colorado, hereinafter called the “Consultant,” is as follows:

WHEREAS, the City and WEDA wish to enter into an agreement for Underwriting Services; and

WHEREAS, the City and WEDA desire to engage the Consultant to render the professional services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in the City Charter, City ordinances, and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City, WEDA, and the Consultant agree as follows:

I. THE PROJECT

The project consists of Consultant providing underwriter services to the City and WEDA as more specifically described the Scope of Services, attached hereto and incorporated herein as **Appendix A** (hereinafter, the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

A. Capital Financing

Consultant shall perform the following functions as Consultant:

- (1) Financing Alternatives. The Consultant, in consultation with the City and WEDA officials, auditor, municipal advisor and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial, and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty programs and other cost effective financing methods, both long and short term. In addition, the

Consultant shall make recommendations concerning the need for short or intermediate-term financing prior to or in conjunction with long-term financing.

- (2) Bond Financing. The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:
 - a. Determination of the structure of such financing, including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. Assisting the City and WEDA and its citizen committees to effectively present the City and WEDA's proposal to the electorate in an organized, thoughtful, and concise manner;
 - c. Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies, where advisable;
 - d. Use of credit enhancement techniques, such as: direct pay letters of credit, and other such financial instruments;
 - e. Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;
 - f. Printing of the bonds;
 - g. Coordination of the legal proceedings recommended by bond counsel, any temporary investment of sale proceeds, and all other necessary arrangements in connection with the delivery of the bonds by the City and WEDA; and
 - h. Bond partial or full refundings, redemptions, advanced refundings.
- (3) Competitive Bids. In the event the City and WEDA elects to solicit bids for the bonds through a public sale, the Consultant may compete in the sale to purchase, directly or indirectly, from the City and WEDA, all or any portion of the bonds sold at competitive bid either as principal alone or as a participant in a syndicate or other similar account.
- (4) Negotiated Sales. In the event of a negotiated sale of a bond issue by the City and WEDA to the Consultant, the Consultant will underwrite the issue. In connection therewith, the Consultant shall prepare financial plans and price the issue. The City and WEDA also reserves the right to compete the negotiated sale.
- (5) The City and WEDA reserves the right to substitute another firm and/or such personnel as the City and WEDA deems best addresses the City and WEDA's needs, on an issue-by-issue basis.

- (6) The Consultant shall at all times comply with applicable requirements and regulations of the Securities and Exchange Commission (“SEC”) and the Municipal Securities Rulemaking Board (“MSRB”).

III. ADDITIONAL SERVICES

When authorized in writing by the City and WEDA, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between the City and WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

The compensation for the Project shall be according to the contract applicable to that offering, (the Bond Purchase Agreement for negotiated offerings, or Notice of Sale for competitive offerings), and subsequent acceptance and award, (collectively, the Bond Sale Contract). The Consultant’s requirement to purchase any bonds shall be subject to the satisfaction of the terms and conditions provided in the Bond Sale Contract.

The Bond Sale Contract shall in all respects supersede any conflicting provisions of this Agreement, except that the Consultant shall be entitled to payment under this Agreement of permitted and approved expenses under Section IV C below. The following guidelines shall apply to a Bond Sale Contract, as applicable:

- A. For negotiated sales, pricing shall be as set forth in Appendix B, attached hereto and incorporated herein.
- B. Other financing expenses as authorized by the City and WEDA through the City and WEDA Manager in connection with a negotiated sale, including, without limitation, bond counsel, rating agency, and printing expenses, shall be paid by the City and WEDA.
- C. No expenses shall be payable to the Consultant under this Agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA’s securities. Other financing expenses as authorized by the City and WEDA, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.
- D. The approximate underwriting spread for a negotiated sale shall be agreed on by both parties after consideration of similar issues, competitive or negotiated.
- E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably required by the City and WEDA. Reimbursable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall be for one (1) year, beginning on the date first referenced above, and, subject to annual appropriation and absent notice of termination as set forth in Section VI below, the Agreement will renew for four (4), additional one (1) year terms following the initial one (1) year term. Compensation in each renewal year shall remain as set forth in Appendix B. However, all payments under this Agreement are subject to annual appropriation of the funds. Therefore, nothing in this Agreement shall be deemed or

construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the City and WEDA's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City and WEDA's issuance of said written notice of intent to terminate, the City and WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the City and WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City and WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado and Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below. Consultant shall maintain an Automobile Liability policy of \$500,000 per person/\$1,000,000 per occurrence and a Commercial General Liability policy of \$500,000 per person/\$1,000,000 per occurrence; or alternatively, Consultant shall maintain an Automobile Liability policy and a Commercial General Liability policy each with a \$1,000,000 per occurrence combined single limit. The City and WEDA shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City and WEDA. These coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City and WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the City and WEDA in writing within two (2) days of the cancellation of or substantive change to any insurance policy set out herein, and failure to do so shall be a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

IX. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City and WEDA shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

X. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Consultant shall act as an independent contractor and not as agent of the City and WEDA except to the extent the Consultant is specifically authorized to act as agent of the City and WEDA.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City and WEDA's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating to the Project shall be the joint property of the City and WEDA and Consultant. Upon completion of the Project, or at such other time as the City and WEDA may require, the Consultant shall deliver to the City and WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the City and WEDA and such additional copies thereof as the City and WEDA may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City and WEDA for any loss, damages or costs incurred by the City and WEDA for the repair, replacement or correction of any part of the Project that is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Consultant shall indemnify, defend, and hold harmless the City and WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City and WEDA and its agents and employees from and against all professional liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph D.2. The City and WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the City and WEDA on account of such injuries.

In any and all claims against the City and WEDA or any of its agents or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this paragraph D.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the City and WEDA and the Consultant.

<u>Project Representative for City and WEDA:</u>	<u>Project Representative for Consultant:</u>
Name: Rachel Price Address: 4800 W. 92 nd Avenue Westminster CO 80031 Phone: 303-658-2441 email: rprice@cityofwestminster.us	Name: Robyn Moore Address: 1400 Wewatta Street, Suite 800 Denver, CO 80202 Phone: 303-391-5495 email: moore@gkbaum.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the City and WEDA and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City and WEDA; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter and ordinances of the City and WEDA of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City and WEDA are located in both counties. At the City and WEDA's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000), shall not serve as a limitation on the City and WEDA's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations

and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Except subcontractors identified by name and accepted by the City and WEDA as part of **Appendix A**, Consultant may not employ additional subcontractors to perform work on the Project without the City and WEDA's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Immigration Compliance. To the extent this Agreement constitutes a public contract for services pursuant to C.R.S. § 8-17.5-101 et seq., the following provisions shall apply: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Consultant shall not enter into a contract with any entity that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Consultant obtains actual knowledge that an entity performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall notify the entity and the City and WEDA within three (3) days that Consultant has actual knowledge that the entity is employing or contracting with an illegal alien. Furthermore, Consultant shall terminate such contract if, within three (3) days of receiving the notice required pursuant to this paragraph, the entity does not stop employing or contracting with the illegal alien. Except that Consultant shall not terminate the contract with the entity if during such three (3) days the entity provides information to establish that the entity has not knowingly employed or contracted with an illegal alien.

Consultant certifies that, prior to executing this Agreement, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the "E-verify Program"), or the employment verification program administered by the Colorado Department of Labor and Employment (the "Colorado Verification Program"). Consultant shall not use either the E-verify Program or the Colorado Verification Program procedures to undertake preemployment screening of job applicants while performing this Agreement.

Consultant shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. § 8-17.5-102(5).

This Agreement is expressly contingent upon the approval by Westminster's City Council and WEDA's Board of all the terms set forth herein. In the event this Agreement is not approved in its entirety by either body, no Party shall be bound to the terms of this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO
FINANCE DEPARTMENT, ATTENTION: RACHEL PRICE.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

GEORGE K. BAUM & COMPANY

CITY OF WESTMINSTER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: Donald M. Tripp

Address:

Address:

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

City Clerk

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: _____
City Attorney

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

Printed Name:

Title: Executive Director

Address: 4800 West 92nd Avenue
Westminster, CO 80031

ATTEST:

Authority Secretary

APPROVED AS TO LEGAL FORM:

Authority Attorney

I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.

City Manager

Rev. 3/2014

Appendix A to Services Agreement Scope of Services

The Consultant agrees that it shall furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, analyses, calculations, and any other facilities or resources necessary to provide the professional services as described hereto and incorporated herein by this reference.

A. Capital Financing

Consultant shall perform the following functions as underwriter:

- (1) **Financing Alternatives:** The Consultant, in consultation with the City and WEDA officials, auditor, financial advisor, and municipal bond counsel, shall recommend financing alternatives for specific capital projects. Such financing alternatives will be based on revenue projections, and the existing corporate, financial and legal structure of the City and WEDA. The Consultant shall assist the City and WEDA in evaluating the financing alternatives and make recommendations concerning general obligation and revenue bond financing, lease-purchase and installment purchase financing, participation in federally sponsored programs, and the utilization of insurance guaranty and other cost effective financing methods, both long and short term. In addition, the Consultant shall make recommendations concerning the need for short or immediate term financing prior to or in conjunction with long term financing.
- (2) **Bond Financing:** The Consultant shall assist in recommending to the City and WEDA the method of sale, which will be in the best interest of the City and WEDA. In the case of general obligation bonds, revenue bonds, or other municipal securities, the recommendations shall include recommendations concerning the advisability of selling the proposed municipal securities either by competitive or negotiated sale. The Consultant shall assist the City and WEDA in the following tasks in connection with the issuance of bonds or other debt securities by the City and WEDA:
 - a. Determination of the structure of such financing, including sources of payment, security, maturity schedule, rights of redemption prior to maturity, and other matters concerning the call provision features of the bonds;
 - b. Preparation of education materials, or survey materials, in an organized, thoughtful, and concise manner that are suitable for public distribution explain the nature and substance of any bond financings, to the extent that such tasks are not inconsistent with the limitations prescribed in C.R.S. 1-45-117.
 - c. Preparation and presentation of applications and detailed information about the City and WEDA and the proposed bond issue to appropriate rating agencies, where advisable;
 - d. Use of credit enhancement techniques, such as: direct pay letters of credit, and other such financial instruments;
 - e. Assistance in the review and preparation of an official statement to be distributed to prospective bond purchasers;
 - f. Printing of the bonds;
 - g. Coordination of the legal proceedings recommended by bond counsel, and temporary investment of sale proceeds; and all other necessary arrangements in connection with the delivery of bonds by the City and WEDA; and
 - h. Bond partial or full refundings, redemptions, advance refundings.

B. Notwithstanding anything herein, this Agreement does not constitute an agreement for financial advisory services, and Consultant is acting in the capacity of an underwriter, not as a financial advisor as defined in Municipal Securities Rulemaking Board Rule G-23.

C. No expenses shall be payable to the Consultant under this agreement in the event of an unsuccessful bond election or an inability to consummate a sale of the City and WEDA's securities. Other financing expenses as authorized by the City and WEDA Manager, including but not limited to third party expenses (i.e. bond counsel) and out-of-state travel, incurred before an unsuccessful election or a failed sale, shall be paid by the City and WEDA.

D. The approximate underwriting spread for a negotiated sale shall be agreed upon by both parties after consideration of similar issues, competitive or negotiated.

E. The Consultant shall submit invoices to the City and WEDA for services rendered during the preceding month, such invoices, to be in such form and detail as shall reasonably be required by the City and WEDA. Reasonable expenses shall be itemized. The City and WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

**Appendix B to Services Agreement
Consultant's Fee Schedule**

For the term of this Agreement, including all four (4) potential renewal years, Consultant's fees shall be as follows.

FIXED RATE UNDERWRITING FEE:

Fee for a fixed rate bond issue will not exceed \$3.40/\$1,000 (\$3.40 per bond or 0.0340% of par) with no additional expenses. Consultant will only charge the City and WEDA for any out of state travel related to rating agency or investor presentations.

VARIABLE RATE UNDERWRITING FEE:

For any takedown for Variable Rate Demand Notes (VRDNs) fee will not exceed \$1 per \$1,000 of par amount of bonds. We will not include a management fee and depending on the transaction we may not require underwriter's counsel. It does include other customary expenses (DTC, day loan, CUSIP).

EXPENSES INCURRED BY THE CITY AND WEDA:

Each transaction includes certain expenses that are due to third party providers. These include:

- Bond Counsel
- Disclosure Counsel
- Municipal Advisor
- Bond rating fees
- Paying agent/ trustee fees
- Disclosure document printing
- Travel expenses outside the state of Colorado.

These fees are the responsibility of the City and WEDA.

EXPENSES INCURRED BY CONSULTANT:

Certain costs are incurred by Consultant in the course of transacting each issue. These include:

- Consultant travel costs in Colorado
- Short-term loan expenses
- DTC delivery charges
- CUSIP subscription
- Other delivery-related internal costs

These expenses are the responsibility of Consultant.

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
October 26, 2015



SUBJECT: Westminster Economic Development Authority/City of Westminster/Westminster Downtown General Improvement District Intergovernmental Cooperation Agreement

Prepared By: Tammy Hitchens, Finance Director
Robert Byerhof, Treasury Manager
Karen Creager, Special Districts Accountant

Recommended Board Action

Authorize the Executive Director to execute an Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority (WEDA), the City of Westminster (City), and the Westminster Downtown General Improvement District (GID), in substantially the same form as attached, providing for reimbursement to the City by either WEDA and/or the GID of certain costs incurred by the City within the boundaries of the Westminster Center Urban Reinvestment Plan Area.

Summary Statement

- The Westminster Center Urban Reinvestment Plan Area, commonly known as Downtown Westminster, was created on April 13, 2009, to facilitate redevelopment of property within the Downtown area.
- In July 2015, the City issued \$40,000,000 in Certificates of Participation (COPS) to help finance improvements related to Phase I of the Downtown Westminster redevelopment project.
- In August 2015, Council approved the creation of the City of Westminster Downtown GID.
- Also in August 2015, Council, as ex officio Board of Directors of the GID, approved the ballot language to be presented to District voters in the November 2015 election to authorize a mill levy of up to 50 mills to pay for public infrastructure, services and financing costs within the GID's boundaries.
- In consideration of the City constructing the improvements benefitting the Downtown Westminster redevelopment project, the City, WEDA and the GID wish to enter into an Intergovernmental Cooperation Agreement (ICA) to spell out each of the Parties obligations related to the construction and maintenance of public improvements, other public services within the boundaries, and debt service incurred on behalf of redevelopment projects.
- The source of revenues to be used for the obligations in the area will be property tax increment and sales tax increment collected in redevelopment area, property taxes generated from the GID mill levy and other revenues collected by WEDA and the GID.

Expenditure Required: Amounts billed to WEDA and GID by the City

Source of Funds: WEDA property tax and sales tax increment, GID property tax revenues, and other revenues collected by WEDA and the GID

Policy Issue

Does the Board support entering into an ICA with the City and the Westminster Downtown GID to provide for the reimbursement of capital and maintenance costs along with other contractual obligations associated with the Downtown Westminster Urban Center project provided all other superior covenants and superior obligations have been met?

Alternative

Do not authorize the execution of the proposed ICA between the City, WEDA and the GID. This alternative is not recommended. The sharing of revenue is necessary given the costs borne by the City for the construction and maintenance of improvements within the URA and other contractual obligations. Additionally, these expenses are a proper and legal use of URA tax increment and GID tax revenues.

Background Information

On April 13, 2009, City Council created the Westminster Center Urban Reinvestment Plan Area to encourage and support the redevelopment of the former Westminster Mall into what is now known as Downtown Westminster. The City and WEDA continue to work together to design and construct public improvements within Downtown Westminster to further enhance the redevelopment strategy. As part of that effort, on August 10, 2015, City Council established the City of Westminster Downtown General Improvement District to fund improvements and operational costs within the GID boundaries. Under the GID structure, a property tax mill levy is assessed on property owners within the GID boundaries. The property owners are the primary beneficiaries of the public improvement, such as streets, lights, parks, parking improvements etc. to be built and such improvements are maintained for the benefit of the users.

In late July, the City issued \$40,000,000 in Certificates of Participation to finance improvements and infrastructure related to Downtown Westminster. Additionally on August 24, 2015, Council, acting as the ex officio board of the GID, approved the ballot language that would authorize a mill levy not to exceed 50 mills to pay for public infrastructure, maintenance, professional services, and financing costs within the district's boundaries and establish multi-year obligations.

Pursuant to article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City, WEDA, and the GID are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each governmental entity. On June 27, 2011, and on December 9, 2013, WEDA and City entered into separate ICAs for the reimbursement of certain costs incurred within the Westminster Center Reinvestment Plan area. Staff along with legal counsel recommend that a new ICA be adopted, which includes the recently approved Westminster Downtown GID and affirms the contractual obligations between the ICA parties. Accordingly, an ICA between the entities provides a prudent mechanism for the City to recover expenses incurred for capital investment, maintenance, professional services, and any financing costs made on behalf of WEDA and the GID.

This ICA generally accomplishes the following:

- The City agrees to enter into one or more contracts for the construction of the Improvements as defined in the ICA.
- WEDA agrees to reimburse the City for amounts Advanced and the City's costs as described in the ICA.

- The GID agrees to levy a property tax not to exceed 50 mills.
- WEDA agrees to return the portion of the District's revenues, which are attributable to the District's mill levy, to the District.
- The GID agrees to utilize revenues it receives to assist in paying the costs of certain improvements and services within District's boundaries.

Although the final build-out of Downtown Westminster is years from completion, the recommended action to approve the ICA will establish the contractual obligations needed to provide the City repayment of capital, maintenance, professional services, and any financing costs incurred that benefit WEDA and the District.

The action requested in this agenda memorandum relates to the City's Strategic Plan goals of Visionary Leadership, Effective Governance and Proactive Regional Collaboration and to a Financially Sustainable Government Providing Excellence in City Services by entering into an intergovernmental cooperation agreement to provide and finance the ongoing needs of the Downtown Westminster development.

Respectfully submitted,

Donald M. Tripp
Executive Director

Attachment – Intergovernmental Cooperation Agreement

**INTERGOVERNMENTAL COOPERATION AGREEMENT AMONG
THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, THE CITY OF
WESTMINSTER AND THE CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT REGARDING THE WESTMINSTER CENTER URBAN
REINVESTMENT PROJECT.**

This Intergovernmental Cooperation Agreement (the “Agreement”), dated as of _____, 2015, by and among the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (“WEDA”), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, the CITY OF WESTMINSTER (“the City”), a home rule municipality duly organized and existing under the Constitution and laws of the State of Colorado, the CITY OF WESTMINSTER DOWNTOWN GENERAL IMPROVEMENT DISTRICT (“District”), a quasi-municipal corporation and body corporate of the State of Colorado duly organized and existing pursuant to Title 31, Article 25, Part 6, C. R.S., as amended (collectively the “Parties”).

W I T N E S S E T H

WHEREAS, the City Council of the City has adopted an urban renewal plan known as the “Westminster Center Urban Reinvestment Plan” (“Urban Renewal Plan”) under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the “Act”); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, WEDA is authorized to undertake an urban renewal project and to finance such project by utilization of certain incremental increases in property and sales taxes; and

WHEREAS, the District was created in part to finance the costs of various public improvements and services for the benefit of property described in the Urban Renewal Plan; and

WHEREAS, the Parties desire to provide various public improvements as part of the urban renewal project described in the Urban Renewal Plan, including, without limitation, water and sewer lines, streets, curb and gutter, sidewalks, streetscape, landscape, lighting, security, drainage, telecommunications, signage, parking and transportation facilities, parks, plazas, trails, recreation facilities, public art projects, traffic improvements, utilities and all other necessary, incidental, appurtenant, and convenient facilities, equipment, land and property rights (“Improvements”); and

WHEREAS, in order to finance a portion of the costs of the Improvements, the City has entered into a lease-purchase agreement and in connection therewith there have been issued \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the “Certificates”); and

WHEREAS, pursuant to a Cooperation Agreement dated June 27, 2011, between the City and WEDA, WEDA agreed to repay the City (a) \$15,825,000 which the City advanced to WEDA to acquire the Westminster Mall and (b) amounts advanced by the City to WEDA to pay the ongoing costs to maintain the Westminster Mall until its demolition and to demolish the Westminster Mall and prepare the site for redevelopment which amounts equal \$3,591,886 as of the date hereof (collectively, the “2011 Agreement Advances”); and

WHEREAS, the City has also advanced to WEDA \$13,425,523 for the costs of other land acquisitions related to the redevelopment of the Westminster Mall site and has spent \$32,842,409 as of the date hereof and will spend additional amounts in the future to redevelop the Westminster Mall site (together with the 2011 Agreement Advances, collectively, the “Advances”); and

WHEREAS, the Parties are authorized by the Section 112 of the Act to enter into cooperative agreements with respect to projects and activities and are authorized by Section 29-1-203, C.R.S. to enter into contracts to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Parties desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and the maintenance of such Improvements and to assure that taxes levied by the District are made available to pay the costs of certain improvements and services; and

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, the City, WEDA and the District hereby agree as follows:

1. Improvements. The City or WEDA will enter into one or more contracts for the construction of the Improvements. The City agrees to pay a portion of the cost of the Improvements located within the Urban Renewal Plan from the proceeds of its \$30,000,000 Certificates of Participation, Series 2015A and \$10,000,000 Certificates of Participation, Taxable Series 2015B (the "Certificates") and other legally available funds. WEDA agrees to reimburse the City (a) for the amount of the Advances and (b) for the City's costs related to the financing of the costs of the Improvements and (c) in the event the City pays the costs of the maintenance of said Improvements, for the costs paid by the City to maintain the Improvements. The City will advise WEDA of amounts spent by the City (other than from the proceeds of the Certificates) after the date hereof on redevelopment of the Westminster Mall site and if WEDA consents such amounts will be added to the amount of the Advances to be reimbursed by WEDA.

2. Tax Increment Revenues. In consideration of the District providing improvements and services to benefit property described in the Urban Renewal Plan, WEDA agrees that the portion of revenues that it receives as tax increment revenues that are attributable to the District's annual levy of ad valorem taxes on real and personal taxable property shall be remitted to the District periodically, but no less frequently than annually. In consideration of City financing the Improvements and providing for the maintenance of the Improvements as described in Section 1, WEDA agrees that the revenues that it receives as tax increment revenues pursuant to Section 107(9)(II) of the Act and the Urban Renewal Plan, except for the revenues paid to the District pursuant to the preceding sentence, shall be used by WEDA to reimburse the City for the costs it incurs pursuant to Section 1. It is the intent of the parties that WEDA's obligations pursuant to this Agreement shall be deemed and construed as an indebtedness of WEDA within the meaning of § 31-25-107(9)(a)(II), C.R.S., and WEDA irrevocably pledges all of its tax increment revenues as described in § 31-25-107(9)(a)(II), C.R.S. to the repayment of the same. WEDA shall not incur any other obligation payable from the tax increment revenues without the consent of the District and the City.

3. Cooperation. The Parties covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

4. Enforcement. WEDA agrees that it shall enforce the collection of the Tax Increment Revenues.

5. Effective Date; Term. The City and WEDA agree that this agreement supersedes a Cooperation Agreement dated June 27, 2011 (the "2011 Agreement") between the City and WEDA and an Intergovernmental Cooperation Agreement dated as of December 23, 2013 (the "2013 Agreement") between the City and WEDA and the 2011 Agreement and 2013 Agreement are no longer of any force and effect. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. This Agreement shall remain in full force and effect until terminated by mutual consent of the Parties or until the tax allocation provisions of the Urban Renewal Plan terminate, whichever is earlier.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Colorado.

8. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

EXECUTED this __ day of _____, 2015.

WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Executive Director

APPROVED AS TO FORM:

Attorney for Authority

CITY OF WESTMINSTER

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF WESTMINSTER DOWNTOWN GENERAL
IMPROVEMENT DISTRICT

By: _____
Mayor, Presiding Officer of the District

Attest

Secretary

APPROVED AS TO FORM:

District's Attorney