

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, December 10, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (October 8, 2012)
- 3. Purpose of Special WEDA Meeting is to consider**
 - A. Westminster Center Urban Reinvestment Project Consultant Contracts
 - B. Westminster Center Urban Reinvestment Project Special Legal Counsel
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, OCTOBER 8, 2012, AT 7:50 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were Stephen P. Smithers, Acting Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Lindsey, to approve the minutes of the meeting of September 24, 2012, as written. The motion carried unanimously.

PUBLIC HEARING TO AMEND 2012 BUDGET

At 7:51 p.m., the Chairperson opened a public hearing to consider the 2013/2014 proposed budget. Staff was in attendance to respond to any questions from the Board. There were no questions, and when the Chairperson opened the floor for public comment, no one wished to speak. At 7:52 p.m., Chairperson McNally closed the hearing.

RESOLUTION NO. 147 ADOPTING THE 2013 AND 2014 BUDGET

It was moved by Councillor Briggs, seconded by Councillor Major, to adopt Resolution No. 147 adopting the 2013 and 2014 proposed budget for the Westminister Economic Development Authority as presented, including the appropriation of funds as set forth. The motion carried unanimously on roll call vote.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Atchison, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 7:53 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
December 10, 2012



SUBJECT: Westminster Center Urban Reinvestment Project Consultant Contracts

Prepared By: Susan Grafton, Economic Development Director

Recommended Board Action

Authorize the Executive Director to enter into one-year agreements with the Laramie Company and John M Mullins and Associates, Inc. to provide consultant services regarding the redevelopment of the Westminster Mall property.

Summary Statement

- The Westminster Mall redevelopment project is gaining significant momentum.
- Consultants were brought on board to help facilitate the project.
- WEDA approval of the contracts is required since the fees exceed staff approval authority.
- Adequate funds have been budgeted and were anticipated for this purpose.

Expenditure Required: Not to exceed \$290,200

Source of Funds: WEDA – Westminster Center Urban Reinvestment Project

Policy Issue

Should the City continue to work with highly respected consultants to assist with moving forward on the redevelopment of the Westminster Mall property?

Alternative

Do not hire experts to assist with and provide advice concerning the redevelopment of Westminster Mall. This is not recommended, as this is a highly complex and critically important project to the City's future. The two consultants recommended by Staff have an excellent track record working on various redevelopment projects in the Denver metropolitan area.

Background Information

Over the past few years, staff, along with the consultant team has moved the WURP forward significantly. Highlights include:

- Acquisition of the majority of the WURP property at or below anticipated costs.
- Demolition of the former mall.
- Actively moved the project forward with a national developer.
- Transitioned the former mall to close down all but the remaining five tenants.

The outside team assembled for the Westminster Center Urban Reinvestment Project is the same group that WEDA Staff worked with on The Orchard:

- John Mullins, Mullins & Associates, Inc., provides commercial financing expertise, assists with the development of business terms, as well as strategic assistance.
- Mary Beth Jenkins, The Laramie Company, provides retail expertise, guidance on the appropriate tenant mix, review and feedback concerning sales projections and costs, and provides market data as needed.

Contracts with Mullins and Associates, Inc. and The Laramie Company need WEDA authorization since the amount of both contracts exceed the Executive Director's approval authority. The work of these individuals will be critical to achieving the broad vision WEDA has for the former Westminster Mall site.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Agreement with The Laramie Company
- Agreement with John M. Mullins and Associates, Inc.

**AGREEMENT WITH THE LARAMIE COMPANY TO FURNISH SERVICES
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR
REDEVELOPMENT OF THE WESTMINSTER MALL PROPERTY**

THIS AGREEMENT, made and entered into this 10th day of December, 2012, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the "WEDA," and The Laramie Company, a limited Liability Company organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," is as follows:

WHEREAS, the WEDA wishes to redevelop the Westminster Mall area; and

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

WHEREAS, sufficient authority exists in City Charter 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 WEDA and the Consultant agree as follows:

This Agreement is expressly contingent upon the approval of the WEDA of all the terms set forth herein. In the event this Agreement is not approved in its entirety by WEDA, neither Party shall be bound to the terms of this Agreement.

I. THE PROJECT

The project consists of providing retail consulting services to City of Westminster staff to support redevelopment of the Westminster Mall site.

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general retail consulting services, including:

- Assisting with negotiation for the pre-development and final development agreements
- Providing competitive market data and retail demographic information

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.

III. ADDITIONAL SERVICES

When authorized in writing by the 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 WEDA and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the basic services described in this Agreement, the Consultant shall be paid a lump sum monthly fee of ten thousand five hundred dollars (\$10,500).

Preliminary Finance Agreement Bonus. Immediately following approval of the Preliminary Finance Agreement by both WEDA and the developer, the WEDA shall pay consultant a fee equal to Twenty-Five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by WEDA.

Final Development Agreement Bonus. Immediately following execution of a Final Development Agreement (or such similar agreement), the WEDA shall pay Consultant a fee equal to Twenty-five Thousand Dollars (\$25,000). The timing to pay this bonus may be extended by the WEDA.

Said fees shall constitute full and complete payment for services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

V. COMMENCEMENT & COMPLETION OF PROJECT

Consultant understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. Service begins effective January 1, 2013, and shall be completed by December 31, 2013, exclusive of time lost or due to delays beyond the control of the Consultant.

VI. TERMINATION

This Agreement shall terminate at the date of December 31, 2013 or the execution of the Final Development Agreement, unless agreed otherwise by the parties. This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the WEDA providing Consultant with seven (7) days advance written notices, whichever occurs first. In the event the Agreement is terminated by the WEDA's issuance of said written notice of intent to terminate, the WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the 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, Professional Liability Insurance in the minimum amount of \$500,000, but in any event sufficient to cover Consultant's liability under paragraph X.D.1. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The 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 WEDA, and 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 WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not discriminate against any 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.

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 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 WEDA except to the extent the Consultant is specifically authorized to act as agent of the 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 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 WEDA and Consultant. Upon completion of the Project, or at such other time as the WEDA may require, the Consultant shall deliver to the WEDA a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the WEDA and such additional copies thereof as the 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 WEDA for any loss, damages or costs incurred

by the 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 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 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 WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the WEDA on account of such injuries.

In any and all claims against the 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 WEDA and the Consultant.

Project Representative for WEDA:

Name: Susan Grafton
Address: 4800 W. 92nd Avenue
Westminster, CO 80031
Phone: 303-658-2113
email: sgrafton@cityofwestminster.us

Project Representative for Consultant:

Name: Mary Beth Jenkins
Address: 730 17th Street, Ste. 840
Denver, CO 80202
Phone: 303-573-4811
email: mb@laramiecompany.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 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 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 of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City'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'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 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. Consultant may not employ additional subcontractors to perform work on the Project without the 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 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 with the entity 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).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: _SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

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

THE LARAMIE COMPANY

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: Mary Beth Jenkins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

730 Seventeenth St., Ste. 840
Denver, CO 80202

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

Corporate Seal (if applicable)

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

Rev. 3/12

**AGREEMENT WITH JOHN M. MULLINS AND ASSOCIATES, INC. TO FURNISH SERVICES
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR
REDEVELOPMENT OF THE WESTMINSTER MALL PROPERTY**

THIS AGREEMENT, made and entered into this 10th day of December, 2012, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the "WEDA," and **JOHN M. MULLINS & ASSOCIATES, INC.**, a corporation organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," is as follows:

WHEREAS, the WEDA wishes to redevelop the Westminster Mall area; and

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

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

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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, Professional Liability Insurance in the minimum amount of \$500,000, but in any event sufficient to cover Consultant's liability under paragraph X.D.1. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The 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 WEDA, and 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 WEDA indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the WEDA in writing within two days of the cancellation of or substantive change to any of the insurance policies set out herein, and failure to do so shall constitute a breach of this Agreement.

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In connection with the execution of this Agreement, the Consultant shall not discriminate against any 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.

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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.

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

by the 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 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.

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 WEDA may, if it so desires, withhold the payments due the Consultant so long as shall be reasonably necessary to indemnify the WEDA on account of such injuries.

In any and all claims against the 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 WEDA and the Consultant.

Project Representative for WEDA:

Name: Susan Grafton
Address: 4800 W. 92nd Avenue
Westminster, CO 80031
Phone: 303-658-2113
email: sgrafton@cityofwestminster.us

Project Representative for Consultant:

Name: John M. Mullins
Address: 1988 E. Ross Lane
Highlands Ranch, CO 80126
Phone: 303-683-9382
email: jmmwurd@aol.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 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 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 of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City'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'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 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. Consultant may not employ additional subcontractors to perform work on the Project without the 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 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 with the entity 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).

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

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

JOHN M MULLINS & ASSOCIATES, INC.

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: John M. Mullins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

1988 E. Ross Lane
Highlands Ranch, CO 80126

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

Corporate Seal (if applicable)

APPROVED AS TO LEGAL FORM

By: _____
Authority Attorney

Rev. 3/12

WEDA Agenda Item 3 B

Agenda Memorandum

Westminster Economic Development Authority Meeting
December 10, 2012



SUBJECT: Westminster Center Urban Reinvestment Project Special Legal Counsel

Prepared By: Susan Grafton, Economic Development Manager
Marty McCullough, City Attorney

Recommended Board Action

Authorize the Executive Director to enter into an agreement with Murray Dahl Kuechenmeister & Renaud, LLP for legal representation related to the Westminster Center Urban Reinvestment Project and general urban renewal and eminent domain matters in an amount not to exceed \$125,000.

Summary Statement

- Malcolm Murray has served as special legal counsel in the past in connection with the Westminster Center Urban Reinvestment Project, and the City's various other urban renewal projects, including Mandalay and Orchard Town Center Urban Renewal Projects.
- City Council and the Authority have previously found merit in approving special legal counsel to assist the City Attorney's Office as needed, rather than expanding staff.
- Funds for this expense were budgeted and are available as part of the Westminster Center Urban Reinvestment Project (WURP) CIP account.

Expenditure Required: Not to exceed \$125,000

Source of Funds: WEDA Budget - Westminster Center Urban Reinvestment Project

Policy Issue

Should the Westminster Economic Development Authority (WEDA) retain special legal counsel to assist the City and WEDA in connection with the Westminster Center Urban Reinvestment Project and general urban renewal and eminent domain issues as needed?

Alternative

Do not retain this type of special legal counsel assistance or seek such assistance from another source. This alternative is not recommended given the need for specialized legal services in urban renewal law and potential eminent domain matters related to the redevelopment of the Westminster Mall site and other City and WEDA projects. Mr. Murray’s proposed fee of \$250 per hour is well within the Denver area market for such services.

Background Information

Malcolm Murray is a partner in the firm of Murray Dahl Kuechenmeister & Renaud LLP. His practice specializes in urban renewal and land use matters and eminent domain litigation for both public and private entities. In addition to WEDA, he currently advises the Denver Urban Renewal Authority, the Lakewood Reinvestment Authority, the Steamboat Springs Redevelopment Authority, and the Parker Authority for Reinvestment on urban renewal matters. Mr. Murray is a graduate of the University of Denver College of Law and has a M.A. in Government from Georgetown University and a B.S. from the United States Military Academy at West Point.

Mr. Murray’s expertise is in redevelopment projects pursuant to the Colorado urban renewal law. Mr. Murray has been providing a significant amount of legal work to the City and WEDA related to the negotiation and drafting of agreements with the WURP redeveloper. In addition Mr. Murray has been providing special legal counsel services related to the South Westminster Transit Oriented Development Project and assisting as needed staff in other urban renewal and eminent domain matters.

Action on this item addresses the following Strategic Plan goals: Strong Balanced Local Economy, Financially Sustainable City Government Providing Exceptional Services, and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachment – Contract

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT is made this ____ day of December, 2012, by and between MURRAY DAHL KUECHENMEISTER & RENAUD LLP, Attorneys at Law (the "Firm") and the THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA").

RECITALS

1. The City is desirous of contracting with the Firm for legal services.
2. The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish special legal services to WEDA in connection with the Westminster Center Urban Reinvestment and general urban renewal and eminent domain matters (the "Services").
2. Malcolm M. Murray of the Firm shall be principally responsible for the Services.
3. The Firm is acting as an independent contractor; therefore, WEDA will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.
4. WEDA shall pay for the Services at the rate not to exceed \$250 per hour.
5. This Contract may be terminated by WEDA with or without cause.
6. No payments to the Firm shall be made prior to the approval of this Contract by the Westminster Economic Development Authority.
7. Payments pursuant to this Contract shall not exceed \$125,000 without further written authorization by WEDA.
8. WEDA authorized this contract on December 10, 2012.
9. 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: The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the Firm shall not enter into a contract with a subcontractor that fails to certify to the Firm that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Firm shall notify the subcontractor and WEDA within three (3) days that the Firm has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, the Firm shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that the Firm shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Firm 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"). The Firm 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.

The Firm 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).

To the extent required by C.R.S. § 8-17.5-102(1), by submitting a bid, the Firm certifies that at the time of bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Agreement, and that the Firm will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

MURRAY DAHL KUECHENMEISTER & RENAUD LLP

By _____
Malcolm M. Murray

**WESTMINSTER ECONOMIC DEVELOPMENT
AUTHORITY**

By _____
J. Brent McFall
Executive Director

Approved as to legal form:

City Attorney's Office