

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, June 11, 2012

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (April 23, 2012)
- 3. Purpose of Special WEDA Meeting is to**
 - A. Authorize Two Special Counsel Agreements for Services re Refinancing of the 2009 Mandalay Gardens Tax Increment Bond Issue
 - B. Authorize a Special Counsel Agreement for Services re Loan Refinancing for the North Huron Urban Renewal Project
 - C. Adopt Resolution No. 141 re Interest Rate Reset under the Loan Agreement between WEDA and Vectra Bank for the South Sheridan URA
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, APRIL 23, 2012, AT 7:25 P.M.

ROLL CALL

Present at roll call were Chairperson McNally and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Vice Chairperson Winter was absent and excused. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Major, to approve the minutes of the meeting of March 26, 2012, as written. The motion carried unanimously.

CHANGE ORDER FOR PHASE 2 OF WESTMINSTER MALL DEMOLITION

It was moved by Board Member Major and seconded by Board Member Lindsey to authorize the Executive Director to execute a change order with American Demolition, Inc. for the demolition of the Sears and Sears Automotive buildings in the amount of \$83,000, bringing the total contract amount to \$423,702 for the Westminster Mall Demolition – Phase 2 Project, and to authorize a construction contingency in the amount of \$15,000. The motion carried unanimously.

ADJOURNMENT

There was no further business for the Authority's consideration, and it was moved by Kaiser, seconded by Major, to adjourn. The motion passed and the meeting adjourned at 7:27 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A&B

Agenda Memorandum

Westminster Economic Development Authority Meeting
June 11, 2012



SUBJECT: Bond and Disclosure Counsel Agreements for Mandalay Gardens and North Huron Urban Renewal Refinancings

Prepared By: Martin McCullough, City Attorney

Recommended Board Action

1. Authorize the Executive Director to execute special counsel agreements in a form acceptable to the City Attorney for bond counsel and disclosure counsel services for the proposed refinancing of the 2009 Mandalay Gardens Tax Increment Bond issue as follows:
 - a. With Sherman and Howard for bond counsel services in the amount of \$35,000.
 - b. With Kutak Rock for disclosure counsel services in the amount of \$28,500.
2. Authorize the Executive Director to execute a special counsel agreement with Sherman and Howard in the amount of \$30,000 in a form acceptable to the City Attorney for bond counsel services for the proposed refinancing of the Compass Mortgage Loan for the North Huron Urban Renewal Project.

Summary Statement

- The Westminster Economic Development Authority (WEDA) is requested to authorize fee agreements for bond counsel and disclosure counsel services in connection with the proposed refinancing of the Mandalay Gardens (a.k.a. Shops at Walnut Creek) and North Huron (a.k.a. The Orchard) Urban Renewal financings.
- The proposed refinancings are subject to being separately considered and approved by the Board.
- The fees are payable out of the proceeds of these refinancings. The fee agreements include a provision that fees are not due if for any reason the refinancing is not consummated.

Expenditure Required: \$93,500

Source of Funds: Bond Refinancing Proceeds

Policy Issue

Whether to retain Sherman & Howard and Kutak Rock for bond and disclosure counsel services on behalf of WEDA in connection with the proposed refinancing of the Authority's Mandalay and North Huron debt financings.

Alternative

Do not retain bond and disclosure counsel for these debt refinancings. This is not recommended in the event the Board wishes to proceed with these refinancings. The proposed fees are deemed fair and reasonable, and these firms are nationally recognized and rated in their areas of expertise. An alternative includes retaining other attorneys. This is not recommended, as the fees quoted by the recommended firms are reasonable, in line with past financings, and at or below the fees being charged by other firms for such services. In addition, the familiarity of these attorneys with WEDA and the City and its legal documents is significant. WEDA will realize significant efficiencies by retaining these firms.

Background Information

North Huron refinancing

In 2009, the Westminster Economic Development Authority (WEDA) entered into a loan agreement with Compass Mortgage (Bank) in the amount of \$62,375,000 to refinance debt issued in 2005 for the North Huron Urban Renewal Area (URA) redevelopment project. The current loan features a balloon payment in 2016 in the amount of \$46,975,000. The interest rate under the loan is a variable rate, but this rate was fixed to 4.51% through a rate exchange agreement (swap) with the parent company of Compass, Banco Bilbao Vizcaya Argentaria (BBVA). Staff was aware of the need to refinance this debt at the time the loan was secured. Current market conditions afford WEDA an opportunity to obtain a long-term interest rate loan with the Bank through a refunding of the existing debt. By entering into a new loan versus waiting another 4 years, Staff estimates that WEDA will save approximately \$4,514,000 in interest costs over the life of the loan on a nominal basis, and on a present value basis saves WEDA \$1,788,000, inclusive of the fee to terminate the exchange rate agreement before its 2016 maturity. Under the new loan, the interest rate will be fixed, and so no new interest rate exchange agreement will be required.

Mandalay refinancing

Staff will be refinancing Westminster Economic Development Authority's (WEDA) Tax Increment Adjustable Rate Revenue Refunding Bonds, Series 2009. The bonds will be converted into fixed rate bonds, which are permitted within the current indenture of trust. Interest rates are at a historic low point, and WEDA has the opportunity to secure a blended financing rate of around 4% until the last bonds are paid in 2028. Refinancing the bonds at this level is deemed a prudent course of action given the projected interest rate. The interest cost savings cannot be calculated on this type of financing due to the variable interest rate inherent in the current debt structure; however, fixing the rate at historically low interest rate market will mitigate future interest rate risk as well as establish a predetermined debt service schedule for budget projections.

Staff anticipates closing on the Mandalay refinancing in late July and will submit to the Board an agenda item requesting authorization for this action. Over the next couple of months, Staff and the bond financing team will collect the information and data required to prepare the documents needed for the Board's review, such as the Official Statement and Bond Ordinance.

The Mandalay Gardens refinancing will involve the issuance of tax-exempt bonds and will require an opinion from a nationally recognized law firm regarding certain tax-related matters. Mr. Dee Wisor of Sherman & Howard has served as the City's bond counsel on numerous other issues and is thoroughly familiar with the City's Charter, ordinances and outstanding bond covenants. The Mandalay refinancing, since it involves publically traded bonds, will also require the preparation and issuance of an official statement and an opinion concerning its compliance with federal security laws and regulations. Kutak Rock, has acted in this capacity on numerous other bond issues, and is familiar with the City's financial statements, Charter, ordinances and outstanding bond covenants.

By contrast, the refinancing of the Compass Mortgage Loan for North Huron will not result in any publically traded debt that would otherwise require an official statement and opinion of disclosure counsel. Therefore, this refinancing requires the retention of bond counsel for an opinion regarding the tax exempt status of the refinanced loan, but not disclosure counsel.

Sherman & Howard has acted on several past financings as bond counsel for the City and WEDA, including the original financing of the North Huron and Mandalay urban renewal projects. Kutak Rock has also acted on several past financings as disclosure counsel for the City and WEDA, including the Mandalay project. The proposed fees are considered within the range of fees experienced for similar City and WEDA financings in the past, and will be included as part of the issuance costs for these debt refinancings.

Respectfully submitted,

J. Brent McFall
Executive Director

WEDA Agenda Item 3 C

Agenda Memorandum

Westminster Economic Development Authority Meeting
June 11, 2012



SUBJECT: Resolution No. 141 re Interest Rate Reset under the Loan Agreement between the Westminster Economic Development Authority and Vectra Bank

Prepared By: Tammy Hitchens, Finance Director
Robert Smith, Treasury Manager
Robert Byerhof, Senior Financial Analyst

Recommended Board Action

Adopt Resolution 141 approving a new interest rate under terms of the First Amendment of the Loan Agreement with Vectra Bank for the South Sheridan Urban Renewal Area and to authorize the officers of the Westminster Economic Development Authority to take all actions necessary to execute documents to effectuate this interest rate.

Summary Statement

- On June 16, 2009, the Westminster Economic Development Authority (WEDA) entered into a loan agreement with Vectra Bank (Lender) to refinance a debt issue that had been secured by a letter of credit from DEPFA Bank plc. The 2007 Revenue Bonds (South Sheridan Project) were refinanced by the Lender as a result of a downgrade in credit rating of DEPFA Bank plc.
- Under the loan agreement the interest rate the Lender charged WEDA was set at 4.95% for a three year period ending June 15, 2012.
- The Lender has offered WEDA a rate of 70% of 3 month LIBOR plus 2.25% for a 90 day extension period. This rate will be 2.58% starting on June 16, 2012 through and including September 13, 2012.
- For this rate to be effective the WEDA Board must approve the new interest rate.

Expenditure Required: Approximately \$5,000

Source of Funds: South Sheridan URA

Policy Issue

Should the Board approve the new interest rate and direct the officers of the Authority to execute documents necessary to initiate a change in the interest rate under the Loan Agreement with Vectra Bank?

Alternative

The alternative would be to not approve the new interest rate. This alternative is not recommended. If the WEDA Board were not to approve the new rate the outstanding \$7,420,000 balance of the 2009 Loan would be immediately due and payable.

Background Information

In 2009, WEDA refinanced three outstanding Variable Rate Revenue Bonds that had been secured by letters of credit from DEPPFA Bank plc after the Bank's credit rating fell to below investment grade. The WEDA 2007 Revenue Bonds (South Sheridan Project) were refinanced by an \$8,075,000 loan from Vectra Bank.

Under the terms of the Agreement the initial interest rate is 4.95% and that rate remains in effect until June 15, 2012. Thereafter the Loan bears interest at a per annum rate to be determined by the Bank, which takes affect on June 16, 2012. The Loan Agreement as approved did not specify a specific interest rate reset methodology. However, the parties to the Agreement knew that negotiations would be necessary to establish a mutually acceptable interest rate reset formula. The Lender has offered WEDA very favorable reset options going forward, which are being analyzed by Staff. In the meantime, the Lender has offered WEDA a 90-Day extension of the Agreement at historically low interest rate to provide staff time to evaluate the long term solution.

The Lender proposed several rate structures to be considered, ranging from 70% of the 1-month LIBOR plus 2.25% to 70% of 5 year LIBOR plus 2.25%. The London Interbank Offered Rate (LIBOR) is similar to the US Federal Reserve's Federal Funds rate, which is the rate US Banks charge to loan money between each other. LIBOR is the rate international banks will charge each other to lend US dollar deposit they hold and it sets the base rate from which lending rates are determined for banks and other entities based on their credit worthiness.

The Lender has provided WEDA an extension of the existing loan under the calculation method proposed for a long term solution for 90 days. Extending the existing loan 90 days, gives Staff time to thoroughly analyze the Lender's long term solution in comparison to other solution offerings, including refunding as an underwritten debt issue. The 90 day rate will apply to the outstanding principal effective June 16, 2012 and end on September 13, 2012. The rate of 2.58% is a very favorable rate based on estimated 2012 rates for underwritten debt issues and is significantly lower than the current rate of 4.95%. Attached is a graph of the historic monthly average 3-Month LIBOR rate since 1992. As displayed on the graph, the current 3 month rate is significantly lower than the average rate over this time horizon.

For the new rate to be effective, the Loan Agreement stipulates that two things must happen. First, the Borrower shall have approved of the new interest rate, which is being requested by Staff in this action. Second, Bond Counsel has to deliver an opinion to the Borrower (and a corresponding reliance letter to the Lender) that the interest on the Loan is tax-exempt following the interest rate reset. Staff believes that Bond Counsel will issue such an opinion.

Since a specific rate or rate calculation method was not agreed upon in the initial Loan Agreement, Bond Counsel has concluded that it is likely that a rate reset by the bank would be deemed a reissuance for tax purposes. Both Staff and the Lender are working to resolve the rate calculation reset methodology in good faith given our positive working relationship. As a result WEDA must execute a Tax Certificate and file a new Form 8038-G with the IRS. This is necessary since the rate changed significantly and is worth

the effort of this administrative formality, since the interest rate savings will be approximately \$50,000 over the existing rate over the 90 day extension period. With a reissuance, WEDA will also have to determine if any arbitrage rebate must be paid. Staff previously contracted with Arbitrage Compliance Specialists to complete the arbitrage analysis within the maximum sixty day period the IRS permits. The arbitrage fees for the report were prefunded at the time the original loan agreement closing. It is highly unlikely that any arbitrage liability will be calculated given the difference between interest earnings and the rate paid on the existing loan.

This recommended action supports the strategic objectives of a Financially Sustainable City Government Providing Exceptional Services, a Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Resolution
- First Amendment to the Loan Agreement
- Graph of proposed LIBOR rate index

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **141**

INTRODUCED BY COMMISSIONERS

SERIES OF 2012

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WESTMINSTER
ECONOMIC DEVELOPMENT AUTHORITY APPROVING A NEW INTEREST RATE
PURSUANT TO THE LOAN AGREEMENT BETWEEN THE AUTHORITY AND VECTRA
BANK DATED AS OF JUNE 16, 2009.**

WHEREAS, the Westminster Economic Development Authority (the "Authority") is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Westminster, Colorado (the "City") to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended (the "Act"); and

WHEREAS, the Authority has previously entered into a Loan Agreement with Vectra Bank Colorado, National Association ("Vectra") dated as of June 16, 2009 (the "Loan Agreement") to obtain a loan (the "Loan") to refinance bonds issued to finance the South Sheridan Urban Renewal Project; and

WHEREAS, the Loan Agreement provides that the interest rate changes June 16, 2012; and

WHEREAS, Vectra proposes that the Loan will bear interest at the rate of 2.58% per annum from June 16, 2012 through and including September 13, 2012; and

WHEREAS, it is necessary to approve a First Amendment to Loan Agreement (the "First Amendment") to implement the change in interest rate, a form of which First Amendment is on file with the Secretary;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, COLORADO, THAT:

Section 1. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the Board and the officers of the Authority directed entering into of the Loan Agreement are hereby ratified, approved and confirmed.

Section 2. The Board hereby approves the interest rate under the Loan Agreement of 2.58 % per annum through and including September 13, 2012.

Section 3. The form, terms and provisions of the First Amendment hereby are authorized and approved, and the Authority shall enter into the First Amendment in the form as is on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chair and/or the Vice Chairperson of the Board is hereby authorized and directed to execute and deliver the Documents, for and on behalf of the Authority. The Secretary of the Board is hereby authorized and directed to affix the seal of the Authority to, and to attest the First Amendment.

Section 4. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act in connection with the new interest rate under the Loan Agreement, including the paying of incidental expenses, which are hereby authorized to be paid, and for carrying out, giving effect to and consummating the transactions contemplated by this

Resolution, including, without limitation, the execution and delivery of any necessary or appropriate documents to be delivered in connection with new interest rate under the Loan Agreement.

Section 5. All costs and expenses incurred in connection the transactions contemplated by this Resolution shall be paid from legally available moneys of the Authority, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 6. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution or part thereof.

Section 8. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this June 11, 2012.

(SEAL)

Chair/Vice Chairperson of the Board

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Attorney for the Authority

STATE OF COLORADO)
) SS.
 WESTMINSTER ECONOMIC)
 DEVELOPMENT AUTHORITY)

I, the Secretary of the Westminster Economic Development Authority (the “Authority”), do hereby certify that:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the Board of Commissioners of the Authority (the “Board”) at a regular meeting held on June 11, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of June 11, 2012, by an affirmative vote of a majority of the members of the Board as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally				
Faith Winter				
Herb Atchison				
Bob Briggs				
Mary L. Kaiser				
Mary Lindsey				
Scott Major				

3. The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chair or Vice Chairperson of the Board, sealed with the Authority seal, attested by the Secretary of the Board and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the meeting of June 11, 2012, in the form attached hereto as Exhibit A, was posted in at the Westminster City Hall, 4800 W. 92nd Street, in the City of Westminster, not less than twenty-four hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Authority affixed June 11, 2012.

(SEAL)

Secretary

EXHIBIT A

(Form of Notice of Meeting)

**FIRST AMENDMENT
TO
LOAN AGREEMENT**

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this “Amendment”) is entered into as of the ___ day of June, 2012 by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY** (the “Borrower”), a public body corporate and politic duly existing under the laws of the State of Colorado, and **VECTRA BANK COLORADO, NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the “Lender”). This Amendment shall be effective on the Effective Date, as defined in Section 10 hereof.

WHEREAS, the Lender and the Borrower entered into a Loan Agreement dated as of June 16, 2009 (the “Original Agreement”) (all capitalized terms used and not otherwise defined in the recitals hereof shall have the meaning assigned in the Original Agreement); and

WHEREAS, Section 2.04(a)(i) of the Original Agreement provides for the interest rate borne by the Loan from the Closing Date through and including June 15, 2012; and

WHEREAS, Section 2.04(a)(ii) of the Original Agreement states that “...commencing on June 16, 2012 and thereafter, the outstanding principal of the Loan shall bear interest at a per annum rate to be determined by the Lender, provided, however, that such rate shall be effective only if (A) the Borrower has duly and properly approved such new interest rate and (B) Special Counsel delivers an opinion to the Borrower (and a corresponding reliance letter to the Lender) that the interest on the Loan is tax-exempt following such interest rate reset...”; and

WHEREAS, the Lender has determined such new interest rate for a temporary period of ninety (90) days and the Borrower has duly and properly approved such new interest rate pursuant to a resolution of the Board of Commissioners of the Borrower (the “Board”) adopted on June 11, 2012; and

WHEREAS, Section 10 of this Amendment provides that it is a condition to the Effective Date hereof that Special Counsel deliver an opinion as described above; and

WHEREAS, Section 5.17 of the Original Agreement provides that the Borrower shall not amend or consent to any amendment to any Financing Document without the prior written consent of the Lender; and

WHEREAS, the Original Agreement is a Financing Document; and

WHEREAS, as evidenced by its execution hereof, the Lender hereby approves and consents to this Amendment to the Original Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the Lender and the Borrower hereby agree as follows:

Section 1. Defined Terms. All capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in the Original Agreement.

Section 2. Interest Rate. The Borrower and the Lender hereby agree that for a period of ninety (90) days, commencing on June 16, 2012 through and including September 13, 2012, the outstanding principal of the Loan shall bear interest at a rate equal to 2.58% per annum. On September 14, 2012, the outstanding principal of the Loan shall bear interest at a per annum rate to be determined by the Lender, provided, however, that such rate shall be effective only if (A) the Borrower has duly and properly approved such new interest rate and (B) Special Counsel delivers an opinion to the Borrower (and a corresponding reliance letter to the Lender) that the interest on the Loan is tax-exempt following such interest rate reset. If the conditions set forth in the preceding clauses (A) and (B) are not met, then the Loan shall immediately be due and payable in full on September 14, 2012.

Section 3. Affirmation of Representations, Warranties and Covenants. The Borrower hereby affirms the representations, warranties and covenants set forth in Article V of the Original Agreement as of the Effective Date.

Section 4. No Default or Event of Default Under Original Agreement. The Borrower hereby represents and warrants to the Lender that no Default or Event of Default under the Original Agreement has occurred and is continuing and no Default or Event of Default will exist immediately after giving effect to this Amendment.

Section 5. Ratification. Except as modified herein, all terms and provisions of the Original Agreement are hereby ratified and affirmed.

Section 6. Severability. If any section, paragraph, clause, or provision of this Amendment shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Amendment, the intent being that the same are severable.

Section 7. Amendment of Original Agreement. This Amendment is made pursuant to and in accordance and conformity with the Original Agreement. All references to the "Loan Agreement" or any other similar references in any of the Financing Documents shall, after the date hereof, mean the Original Agreement as amended by this Amendment.

Section 8. Execution in Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Amendment or the Original Agreement.

Section 10. Effective Date. Upon satisfaction of the following conditions, this Amendment shall be effective as of June 16, 2012 (the "Effective Date").

- (a) Lender shall be in receipt of a fully executed original of this Agreement;

(b) Lender shall be in receipt of an opinion from Special Counsel addressed to it (or addressed to the Borrower with a corresponding reliance letter to the Lender) to the effect that the change in the rate of interest borne by the Loan as provided in Section 2 of this Amendment does not adversely affect the exemption from federal and State of Colorado income taxation of interest on the Loan; and

(c) Lender shall be in receipt of an original or certified copy of the resolution adopted by the Board of the Borrower authorizing the new interest rate and this Amendment.

[End of Amendment; Signatures on Following Page]

IN WITNESS WHEREOF, the duly authorized officers of the Lender and the Borrower have executed this First Amendment to Loan Agreement as of the day and year first above written, to be effective as of the Effective Date.

LENDER

VECTRA BANK COLORADO, NATIONAL ASSOCIATION, a national banking association

By _____
Conrad Freeman, Senior Vice President

BORROWER

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By _____
Vice Chairperson, Board of Commissioners

[SEAL]

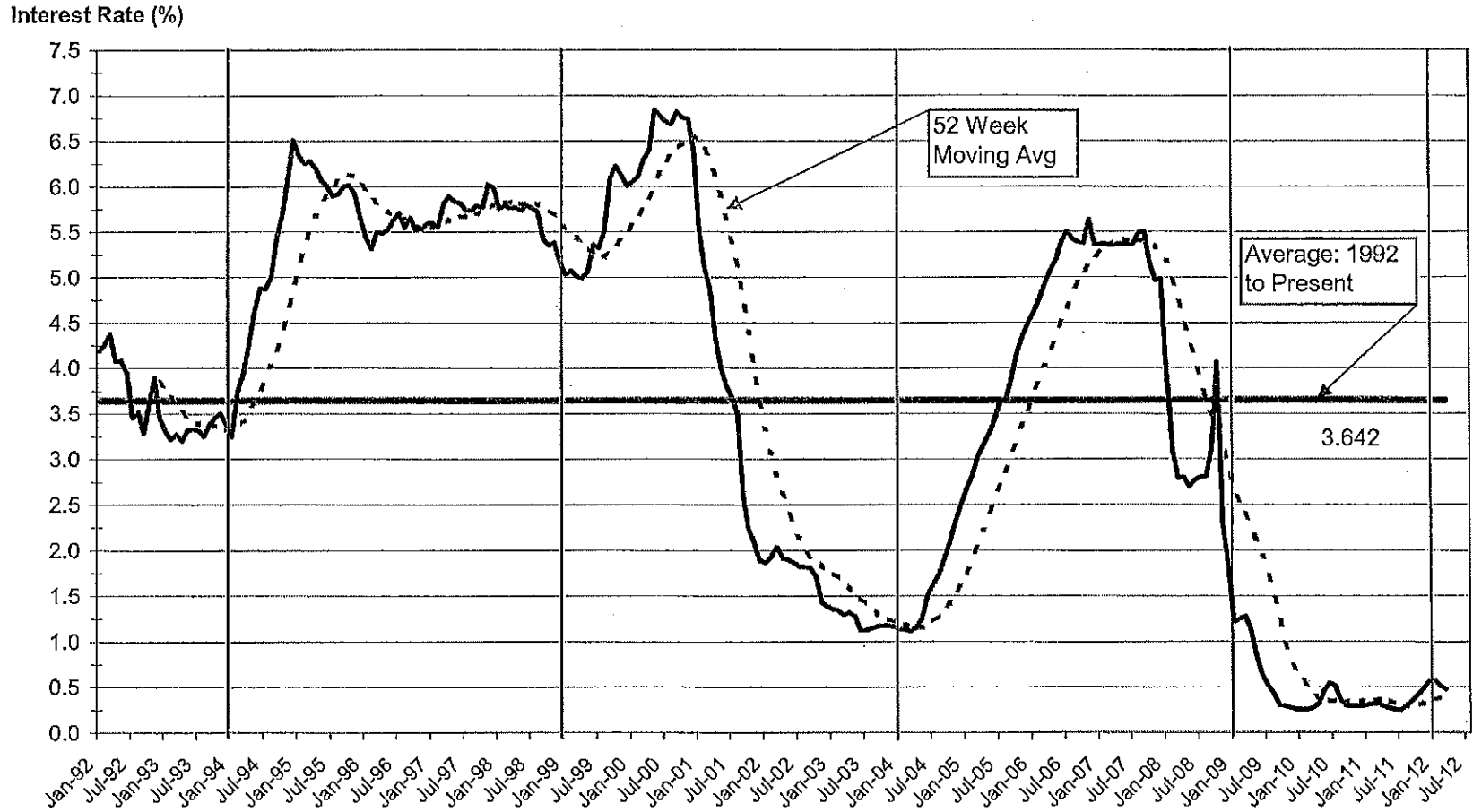
Attest:

By _____
Secretary, Board of Commissioners

By _____
Executive Director, Board of Commissioners

[Signature Page to First Amendment to Loan Agreement]

3-Month LIBOR Monthly Average (January 1992 Through March 2012)



Data Source: British Bankers' Association