

# **AGENDA**

## **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING**

**MONDAY, July 23, 2012**

**AT 7:00 P.M.**

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (June 11, 2012)
- 3. Purpose of Special WEDA Meeting is to**
  - A. Adopt Resolution No. 142 re Approval of WEDA Tax Increment Revenue Refunding Bonds for Mandalay Gardens Urban Renewal Project, Series 2012 Bond Issue
  - B. Adopt Resolution No. 143 re Title Clearing Condemnation of Easements and Similar Interests in the Former Westminster Mall Property
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, JUNE 11, 2012, AT 8:16 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter, and Board Members Atchison, Briggs, Kaiser, and Major. Board Member Lindsey 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 April 23, 2012, as written. The motion carried unanimously.

SPECIAL COUNSEL AGREEMENTS FOR MANDALAY GARDENS BOND ISSUE REFINANCE

It was moved by Board Member Kaiser and seconded by Board Member Atchison to 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: (1) with Sherman and Howard for bond counsel services in the amount of \$35,000; and (2) with Kutak Rock for disclosure counsel services in the amount of \$28,500. The motion carried unanimously.

SPECIAL COUNSEL AGREEMENT FOR NORTH HURON URBAN RENEWAL REFINANCING

Board Member Kaiser moved, seconded by Board Member Atchison, to authorize the Executive Director to execute a special counsel agreement, in a form acceptable to the City Attorney, with Sherman and Howard in the amount of \$30,000 for bond counsel services for the proposed refinancing of the Compass Mortgage Loan for the North Huron Urban Renewal Project. The motion carried unanimously.

RESOLUTION NO. 141 APPROVING NEW INTEREST RATE – VECTRA BANK LOAN

Upon a motion by Board Member Atchison, seconded by Board Member Major, the Authority voted unanimously on roll call vote to adopt Resolution No. 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.

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 8:20 p.m.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
July 23, 2012



**SUBJECT:** Resolution No. 142 re Approval for up to \$30.500 million in Westminster Economic Development Authority Tax Increment Revenue Refunding Bonds, (Mandalay Gardens Urban Renewal Project), Series 2012 Bond Issue

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

### Recommended Board Action

Adopt Resolution No. 142 approving the issuance of up to \$30.500 million in Westminster Economic Development Authority Tax Increment Revenue Refunding Bonds, (Mandalay Gardens Urban Renewal Project), Series 2012 as well as approving bond documents including but not limited to the Bond Indenture of Trust, Bond Purchase Agreement, Reimbursement Agreement; Cooperation Agreement with the City; and Final Official Statement.

### Summary Statement

- By approving the attached resolution, WEDA approves the bond refunding and the following contract documents necessary to complete the transaction:
  - a) Bond Indenture of Trust dated August 15, 2012 between the Authority and the Trustee Bank, US Bank National Association.
  - b) Bond Purchase Agreement dated July 24, 2012 between the Authority and the Original Purchasers of the Bonds, Stifel Nicolaus & Company, Inc. and Piper Jaffray, Inc.
  - c) Reimbursement Agreement dated July 23, 2012 between the Authority and the City.
  - d) Cooperation Agreement dated July 23, 2012 between the Authority and the City.
  - e) Final Official Statement dated August 15, 2012 for distribution to the purchasers of the bonds.

Copies of all of these agreements are on file with the City Clerk's Office.

- In 2006, the Mandalay Gardens URA (URA) issued \$38,455,000 in tax-exempt tax increment revenue bonds with an underlying Letter of Credit (LOC) agreement with DEPFA Bank. The bonds converted to Bank Bonds in the fall of 2008 due to a credit downgrade of the Bank, which subsequently led investors to tender bonds back to the Bank. The WEDA Board and the Council were apprised of this situation that impacted all of Westminster Economic Development Authority's (WEDA) bonds.
- In 2009, WEDA issued \$35,830,000 in tax-exempt adjustable rate tax increment revenue refunding bonds with an underlying Letter of Credit (LOC) issued by US Bank. The LOC agreement expires on September 15, 2012, which necessitated the need to analyze various refinancing options.
- After thorough analysis of several refinancing options, Staff along with its financing team recommend that the existing 2009 Series revenue bonds be refunded by issuing fixed rate bonds.

**Expenditure Required:** Up to \$30.500 million

**Source of Funds:** WEDA Tax Increment Revenue Bonds

**Policy Issue**

Should WEDA refund the Mandalay Gardens URA 2009 Tax Increment Revenue Bonds?

**Alternatives**

Decline or delay approval of the resolution concerning refunding of the 2006 WEDA bonds - This is not recommended. On September 15, 2012 the current LOC expires and the current bonds become due. Of the solutions investigated, the proposed action provides a financially prudent long-term fixed rate solution without extending the term of the original bonds issued in 2003. In addition, the refunding continues to provide for a floating sales tax pledge under the terms of the Indenture, which permits excess sales tax revenues not needed for WEDA debt service to be available for the General Fund.

**Background Information**

In 2003, the Mandalay Gardens URA issued \$38,525,000 of taxable tax increment revenue bonds with an underlying LOC agreement with HSF Nordbank to guarantee debt service payment to bond holders. In 2006, the bonds were refunded into tax-exempt bonds and the LOC bank was changed to DEPFA Bank. In the fall of 2008 DEPFA Bank's credit ratings were downgraded, which resulted in investors tendering bonds back to the bank and subsequently resulted in these bonds being converted into Bank Bonds. The terms of the Bank Bonds eliminated the ability to release excess sales tax increment revenue due to an accelerated repayment of the principal, equal quarterly payments over a ten year period per the agreement. On January 12, 2009 a Staff Report was presented to the WEDA Board and the Council regarding the Bank Bond issue.

The recommendation to refund the 2006 Series WEDA Bonds in 2009 and obtain a new direct pay LOC with US Bank was deemed beneficial to both WEDA and the City. The refunding resulted in WEDA benefitting with a financing solution eliminating the Bank Bonds and entering into a variable rate bond issue similar to the terms of the original bonds but with the added benefit of creating a floating sales tax pledge that allows for the release of excess sales tax increment revenues above that needed for debt. Prior to this, any excess sales tax revenues were kept within the URA and used solely for costs incurred with the URA.

The original Series 2003, 2006, and 2009 bonds were issued in a variable rate mode for several reasons. One primary reason was the ability to obtain low interest rates on the short-end of the interest rate curve versus borrowing at the then current long-term rate. The bonds were issued in a weekly reset mode, which has served WEDA very well in comparison to the estimated fixed rates at the time of issuance. Since the 2009 bonds were issued, WEDA has saved over \$2.5 million in interest rate expenses. Since the original 2003 bonds were issued, the total estimated savings above the assumed fixed rate, inclusive of all variable rate fees for the letter of credit and the weekly remarketing of the bonds, and even including the higher interest rate paid on the Bank Bonds, is over \$3.75 million.

Since the LOC agreement with US Bank expires on September 15, 2012, Staff investigated several refinancing options including extending the existing LOC agreement, entering into a LOC agreement with a new provider, converting the bonds to a fixed rate under the existing indenture, and completing a refunding with a new bond issue. This analysis was done against a backdrop of bank regulatory changes in the US and abroad that might adversely impact banks willingness to issue letters of credit and, if they would, at what price. Further current conditions in the credit markets were considered. While WEDA currently benefits from borrowing at historically low short-term rates of about 0.25% staff believes that rates will eventually increase. Since 1995 the average adjustable rate has been about 2.33% and the range has been between a low of 0.06% (January 1, 2012) and a high of 7.93% (September 24, 2009).

Meanwhile current long-term borrowing rates for municipal debt are at historically low levels of about 3.75% for 20-year debt. After careful analysis of all of the relevant factors Staff recommends that the Board approve the attached Resolution by which the Authority will issue new bonds to refund the existing variable rate bonds into fixed rate bonds maturing in 2028, the end of the 25 year TIF period.

Despite the overall financial success of the variable interest rate bonds, WEDA has an opportunity to not only retain the interest cost savings already earned but secure a historically low interest rate with a projected blended rate to be approximately 3.75%. In doing so, the refunding will provide WEDA with known debt expenses until the final maturity in December 2028. Staff and the finance team believe that given the level of outstanding debt in the URA, there is potentially greater risk to continue the variable rate bond solution versus securing a fixed rate solution. While current short-term rates are at a historic low point, there is high probability that interest rates will only increase over time through final maturity in 2028. In addition, as experienced in 2008, there is a risk that the LOC market will collapse due to systematic issues unrelated to WEDA's credit, resulting in higher costs to secure letters of credit. If Banks are unable or unwilling to issue such credit enhancements, the variable rate bonds once again become Bank Bonds forcing WEDA into a temporary solution that is financially undesirable.

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. It does so by controlling the financing costs for debt issued by WEDA and providing more certainty for the sales tax revenues generated in the Urban Renewal Area that the City will be able to retain.

Staff and Underwriters will be available at the WEDA meeting on July 23, 2012 to answer WEDA Commissioners' questions.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachments

- Bond Resolution
- 2012 Cooperation Agreement

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **142**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

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**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AUTHORIZING, APPROVING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY BY THE AUTHORITY OF TAX INCREMENT REVENUE REFUNDING BONDS (MANDALAY GARDENS URBAN RENEWAL PROJECT) SERIES 2012, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$30,500,00 FOR THE PURPOSE OF REFUNDING OUTSTANDING BONDS.**

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, pursuant to Section 31-25-105 of the Act, the Authority has the power to borrow money and to apply for and accept advances, loans, grants and contributions from any source for any of the purposes of the Act and to give such security as may be required; and

WHEREAS, pursuant to Section 31-25-109 of the Act, the Authority has the power to issue refunding or other bonds (defined by the Act to mean any bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures or other obligations) from time to time in its discretion for the payment, retirement, renewal or extension of any bonds previously issued by it under the Act; and

WHEREAS, the Authority is authorized to issue bonds without an election; and

WHEREAS, an urban renewal plan, known as the “Mandalay Gardens Urban Renewal Plan” (the “Urban Renewal Plan”), was duly and regularly approved by the City Council of the City for an urban renewal project under the Act (the “Project”); and

WHEREAS, all applicable requirements of the Act and other provisions of law for and precedent to the adoption and approval by the City of the Urban Renewal Plan have been duly complied with; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2009 (the “Series 2009 Bonds”) for the purpose of refinancing bonds which financed the acquisition, construction and equipping of the Project; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority and the citizens and taxpayers of the City that, for the purpose of refunding the Series 2009 Bonds and paying a the costs of the issuing such bonds, the Authority issue its Tax Increment Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2012 (the “Series 2012 Bonds”) in the aggregate principal amount of not to exceed \$[par] (the “Refunding Project”); and

WHEREAS, the Series 2012 Bonds will be issued under and pursuant to the Indenture of Trust (the “Indenture”) between the Authority and U.S. Bank National Association, Denver, Colorado, as trustee (the “Trustee”); and

WHEREAS, the Series 2012 Bonds shall be sold and delivered by the Authority to Stifel, Nicolaus & Company, Incorporated and Piper Jaffray Inc. (the “Original Purchasers”), in order to provide funds to refund the Series 2009 Bonds, to fund certain funds and accounts in connection therewith and to pay certain incidental costs incurred in connection with the issuance of the Series 2012 Bonds; and

WHEREAS, there are on file with the Secretary of the Board of Commissioners of the Authority (the “Board”): (a) the proposed form of the Indenture; (b) the proposed form of the Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Authority and the Original Purchasers; (c) the proposed form of the 2012 Cooperation Agreement between the Authority and the City (the “Cooperation Agreement”); (d) the proposed form of the Preliminary Official Statement (the “Preliminary Official Statement”) prepared for distribution to the Purchasers of the Series 2012 Bonds; and (e) the proposed form of a Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”).

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 toward the Urban Renewal Project, the refunding of the Series 2009 Bonds and the issuance and sale of the Series 2012 Bonds hereby are ratified, approved and confirmed.

Section 2. To provide funds to finance the costs of the Refunding Project, to fund certain funds and accounts in connection therewith and to pay certain incidental costs incurred in connection with the issuance of the Series 2012 Bonds, there are hereby authorized and created an issue of revenue bonds of the Authority designated as its “Tax Increment Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2012” in the aggregate original principal amount of not to exceed \$30,500,000, in accordance with the provisions of the Indenture. The Series 2012 Bonds shall be dated, shall bear interest and shall mature as provided in the Indenture. the Authority specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Act”) to the Series 2012 Bonds. The Series 2012 Bonds shall be sold by the Authority to the Original Purchasers in a negotiated private sale at the purchase price set forth in the Bond Purchase Agreement.

Section 3. The forms, terms and provisions of the Indenture, the Bond Purchase Agreement, the Continuing Disclosure Certificate, and the Cooperation Agreement (collectively, the “Documents”) hereby are authorized and approved, and the Authority shall enter into the Documents in the respective forms as are on file with the Secretary of the Board, but with such changes therein as shall be consistent with this Resolution and as the Chairperson of the Board or the Executive Director of the Authority shall approve, the execution thereof being deemed conclusive approval of any such changes. The Chairperson of the Board, the Vice Chairperson of the Board or the Executive Director are 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 those Documents requiring the attestation of the Secretary.

Section 4. A final Official Statement, in substantially the form of the Preliminary Official Statement on file with the Secretary, is in all respects approved and authorized. The Chairperson of the Board is hereby authorized and directed, for and on behalf of the Authority, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the Secretary, with such changes as may be approved by the Executive Director. The distribution of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Series 2012 Bonds is hereby ratified, approved and authorized.

Section 5. The form, terms and provisions of the Series 2012 Bonds, in the form contained in the Indenture, hereby are approved, with such changes therein as are approved by the Chairperson of the Board; and the manual or facsimile signature of the Chairperson of the Board is hereby authorized and directed to be placed on the Series 2012 Bonds, the seal of the Authority, or a facsimile thereof, is hereby authorized and directed to be affixed to the Series 2012 Bonds, and the Secretary of the Board is hereby authorized and directed to attest the Series 2012 Bonds, in accordance with the Indenture.

Section 6. The officers of the Authority shall take all action which they deem necessary or reasonably required in conformity with the Act to issue the Series 2012 Bonds, including the paying of incidental issuance expenses, which are hereby authorized to be paid, and the Authority Representative (as defined in the Indenture) is authorized and directed to execute all requisitions to pay issuance expenses, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution, the Documents and the Official Statement, including, without limitation, the execution and delivery of any necessary or appropriate closing documents to be delivered in connection with the issuance, sale and delivery of the Series 2012 Bonds.

Section 7. Pursuant to Section 11-57-205, C.R.S., the Board hereby delegates to the Chairperson of the Board or the Executive Director of the Authority the authority to accept and sign the Bond Purchase Agreement and the Sale Certificate, and the authority to make determinations in relation to the Series 2012 Bonds, subject to the following parameters and restrictions:

(a) the aggregate principal amount of the Series 2012 Bonds shall not exceed \$30,500,000;

(b) the Series 2012 Bonds shall mature no later than December 1, 2028,

(c) the purchase price of the Series 2012 Bonds shall not be less than 99% of the original principal amount on the Series 2012 Bonds;

(d) the Series 2012 Bonds shall be subject to optional redemption no later than December 1, 2022; and

(e) the net effective interest rate of the Series 2012 Bonds shall not exceed 4.25%.

Section 8. The Series 2012 Bonds, together with interest payable thereon, are special obligations of the Authority payable solely as provided in the Indenture. The principal of, premium, if any, and interest on the Series 2012 Bonds shall not constitute an indebtedness of the City or the State of Colorado or any political subdivision thereof, and neither the City, the State of Colorado nor any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the Series 2012 Bonds be payable out of funds or properties other than the Trust Estate, as such term is defined in the Indenture. Neither the Commissioners of the Authority nor any persons executing the Series 2012 Bonds shall be liable personally on the Series 2012 Bonds.

Section 9. After the Series 2012 Bonds are issued, this Resolution shall be and remain irrevocable, and may not be amended except in accordance with the Indenture, until the Series 2012 Bonds and the interest thereon shall have been fully paid, canceled and discharged in accordance with the Indenture.

Section 10. 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 11. 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 12. This Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED, ADOPTED AND APPROVED this July 23, 2012.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

(SEAL)

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Attorney for the Westminster Economic Development Authority

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

I, Linda Yeager, 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 July 23, 2012.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the meeting of July 23, 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				
Mark 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 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 July 23, 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 this July 23, 2012.

(SEAL)

\_\_\_\_\_  
 Secretary

EXHIBIT A

(Form of Notice of Meeting)

## 2012 COOPERATION AGREEMENT

### BETWEEN THE CITY OF WESTMINSTER AND THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

THIS 2012 COOPERATION AGREEMENT (this "Agreement"), dated as of August 15, 2012, is made and entered into between the CITY OF WESTMINSTER, COLORADO (the "City") and the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY (the "Authority").

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has heretofore approved the Westminster Economic Development Authority Mandalay Gardens Urban Renewal Plan, as amended on August 24, 2009 (as amended, the "Plan") and the urban renewal project described therein (the "Project"); and

WHEREAS, the Project has been undertaken for the public purpose of enhancing employment opportunities, eliminating existing conditions of blight, and improving the tax base of the City; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, the Authority has previously issued its Tax Increment Adjustable Rate Revenue Refunding Bonds (Mandalay Gardens Urban Renewal Project) Series 2009 (the "2009 Bonds"); and

WHEREAS, in connection with the 2009 Bonds, City and the Authority have previously entered into a cooperation agreement dated as of September 15, 2009 (the "2009 Agreement"), which agreement was amended by the First Amendment to 2009 Cooperation Agreement dated as of March 28, 2011 (the "2009 Cooperation Agreements"); and

WHEREAS, the Authority has determined that it is in the best interest of the Authority, the City and its residents to refund the 2009 Bonds with the issuance of its Tax Increment Revenue Refunding Bonds, Series 2012; and

WHEREAS, the City Council of the City (the "Council") has adopted its Resolution \_\_\_\_\_ declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Bond Reserve Requirement (the "Replenishment Resolution") as defined in the Indenture of Trust dated as of August 15, 2012 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "Trustee");

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** (a) If the Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

(b) The Authority acknowledges that the City Manager, City staff and the City Attorney have provided and will continue to provide substantial administrative and legal services to the Authority in connection with the Plan and the Project. The Authority shall pay to the City, upon the request of and at the discretion of the City, the City's actual costs for services rendered to the Authority in connection with the Plan and the Project. The City shall provide written evidence of such costs to the Authority from time to time. To the extent that this annual debt is incurred, this obligation is hereby designated a loan from the City to the Authority to be repaid as provided herein.

(c) Any other amounts advanced or loaned to the Authority by the City or payments made or debts incurred by the City on behalf of the Authority relating to the Plan or the Project may be designated a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT.** (a) When Pledged Revenues (as defined in the Indenture) are available pursuant to the Section 3.03(b)(vi) of the Indenture, the Authority shall repay the City for all amounts due hereunder to the extent that such moneys are available.

(b) The Authority agrees to pay the City interest in the amount of 5% on the principal balance of any amounts designated as a loan hereunder.

3. **FURTHER COOPERATION.** (a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the

Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues for the Project.

4. **SUBORDINATION.** The Authority's obligations pursuant to this Agreement are subordinate to the Authority's obligations for the repayment of any current or future bonded indebtedness. For purposes of this Agreement, the term "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the Authority, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by revenues of the Authority.

5. **ALLOCATION OF SALES TAX REVENUE.** The City currently imposes a municipal sales tax at a rate of 3.85%, pertaining to, including without limitation, the sale, lease, rental, purchase or consumption of tangible personal property and taxable services. Pursuant to the terms of the Plan, the City and the Authority may provide for the method by which sales tax increments shall be allocated and paid to the Authority. The City and the Authority hereby agree that the revenues derived from the City sales tax at a rate as specified in the Sales Tax Rate Certificate, attached as Exhibit D to the Indenture, shall be allocated to the Authority. Pursuant to Section 31-25-107, C.R.S., the balance of the City's sales tax revenues shall be retained by the City.

6. **GENERAL PROVISIONS.** (a) **Dispute Resolution.** If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation prior to filing litigation.

(b) **Separate Entities.** Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(c) **Third Parties.** Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

(d) **Modifications.** No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties and incorporated as a written amendment to this

Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(e) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(f) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(g) Assignment. Except for pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other.

(h) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

(i) The Prior Cooperation Agreements. This Agreement supersedes and replaces any and all prior cooperation agreements. Any amounts owing to the City by the Authority pursuant to such prior cooperation agreements shall be payable under the terms and conditions described in this Agreement and shall be payable on a subordinate basis to the payment of the Bonds or Additional Bonds (as such terms are defined in the Indenture).

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

WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY

CITY OF WESTMINSTER

BY \_\_\_\_\_  
Executive Director

BY \_\_\_\_\_  
City Manager

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary

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

APPROVED AS TO LEGAL FORM

APPROVED AS TO LEGAL FORM

BY Mark Gulliford  
Authority Attorney

BY Mark Gulliford  
City Attorney

# WEDA Agenda Item 3 B

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
July 23, 2012



**SUBJECT:** Resolution No. 143 re Title Clearing Condemnation of Easements and Similar Interests in the Former Westminster Mall Property

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

### Recommended Board Action

Adopt Resolution No. 143 authorizing the Executive Director and Authority Counsel to initiate and file title clearing condemnation action for the Westminster Center Urban Reinvestment Project; to enter such stipulations and court orders as necessary to accomplish the purposes of the condemnation; and to incur reasonable costs associated with acquiring the subject property.

### Summary Statement

- WEDA has now acquired approximately 96% of the Westminster Center Urban Reinvestment Project (WURP) site.
- It is important to clear WEDA's title to the property of any old easements, agreements, and similar encumbrances against the property to facilitate the future development of the property.
- Condemnation of easements and other possible real estate interests is needed to clear such encumbrances from WEDA's title of the property.
- New easements will be created as part of the redevelopment process.

**Expenditure Required:** \$10,000 plus cost to acquire interests.

**Source of Funds:** WURP CIP Account

**Policy Issue**

Should WEDA proceed with condemnation of easements, and similar interests in the former Westminster Mall site?

**Alternative**

Convey property without title clearing. This alternative will inhibit the ability of the developer to market and develop the property and finance the project. Doing the condemnation now will expedite the development process.

**Background Information**

As conversations move forward with the developer, discussions will begin to focus on the transfer of ownerships of the WURP site. It will be critical to be able to convey property without encumbrances of old easements, real estate agreements and other such interests. WEDA's authorization will simplify the clearing of title by condemning out all such property interests that are known and potentially unknown. The proposed condemnation will exclude the current interests owned by JCPenneys, US Bank, Olive Garden, Brunswick and McMurtrey. These interests will be addressed at a future date as part of the redevelopment planning process.

The process for this "clean up condemnation" is generally as follows:

1. WEDA authorizes condemnation
2. File condemnation
3. Serve known parties with notice of condemnation (Excel Energy, Century Link, Allen Ditch Company)
4. Advise JCPenneys, US Bank, Olive Garden, Brunswick and McMurtrey of pleadings even though they are not affected.
5. Serve by publication all unknown parties.
6. Negotiate terms with Xcel, Century Link and Allen Ditch concerning relocation of utilities.
7. Obtain a Rule and Order from the court granting WEDA fee title to the property free and clear of all encumbrances.

Staff is continuing communication with the property interests on the site. It is expected that the process will take through the middle of December, 2012 to complete.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment - Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **143**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2012

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**A RESOLUTION FOR  
ACQUISITION OF PROPERTY INTERESTS FOR THE  
WESTMINSTER CENTER URBAN REINVESTMENT PROJECT**

WHEREAS, the Westminster Economic Development Authority (“WEDA”) has determined that it is necessary to acquire certain remaining property interests for the Westminster Center Urban Reinvestment Project; and

WHEREAS, WEDA has purchased the fee interest in the property identified on Exhibit A attached hereto (“Subject Property”); and

WHEREAS, certain easements and recorded and unrecorded interests remain which encumber the Subject Property; and

WHEREAS, it is necessary to acquire these remaining interests in order to gain unencumbered title to the Subject Property for conveyance of the Subject Property to a development entity; and

WHEREAS, rights of existing tenants and owners of adjacent parcels will be respected and will be exempted from the condemnation; and

WHEREAS, a public purpose exists to acquire the Subject Property in order to carry out the proposed redevelopment project.

NOW, THEREFORE, the Board of Commissioners of the Westminster Economic Development Authority resolves that:

1. The Authority Counsel is authorized to initiate a condemnation action, pursuant to C.R.S. § 31-25-105, to acquire such remaining interests as necessary to clear title to the Subject Property while respecting the rights of remaining tenants and adjacent landowners.
2. The Authority Counsel, at the direction of the Executive Director, is authorized to enter such stipulations and court orders as necessary to accomplish the purposes of the condemnation.
3. The Executive Director shall be further authorized to incur reasonable costs associated with acquiring the Subject Property, including, without limitation, the cost of title examination, title insurance, court costs and all other related or incidental costs or expenses customarily associated with the acquisition of property.

PASSED AND ADOPTED this 23rd day of July, 2012.

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Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

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Secretary

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Attorney for Authority

EXHIBIT A

**WESTMINSTER URBAN REINVESTMENT PROJECT  
CLEANUP CONDEMNATION LEGAL DESCRIPTION**

Five parcels of land being a part of the South One-Half of Section 24, Township 2 South, Range 69 West of the Sixth Principal Meridian, City of Westminster, County of Jefferson, State of Colorado, more particularly described as follows:

**Parcel No. 1 – (former Trail Dust Steak House Property)**

Lots 2 and 3, Block 1, Lake Arbor Commercial Office Park Filing No. 1 as recorded in Book No. 55 at Page 33 under Reception No. 78044537 in the records of the Clerk and Recorder of Jefferson County, Colorado.

**Parcel No. 2 – (former Macy's Property)**

Lot 13, Block 1, Westminster Mall 2<sup>nd</sup> Amended Plat as recorded in Book 87 at Pages 31 through 40 under Reception No. 86016236 in the records of the Clerk and Recorder of Jefferson County, Colorado.

**Parcel No. 3 – (former Mervyn's Property)**

Lot 8, Block 1, Westminster Mall 2<sup>nd</sup> Amended Plat as recorded in Book 87 at Pages 31 through 40 under Reception No. 86016236,

Except that portion conveyed to the City of Westminster by Deed recorded August 9, 2000 under Reception No. F1097396 all as recorded in the records of the Clerk and Recorder of Jefferson County, Colorado.

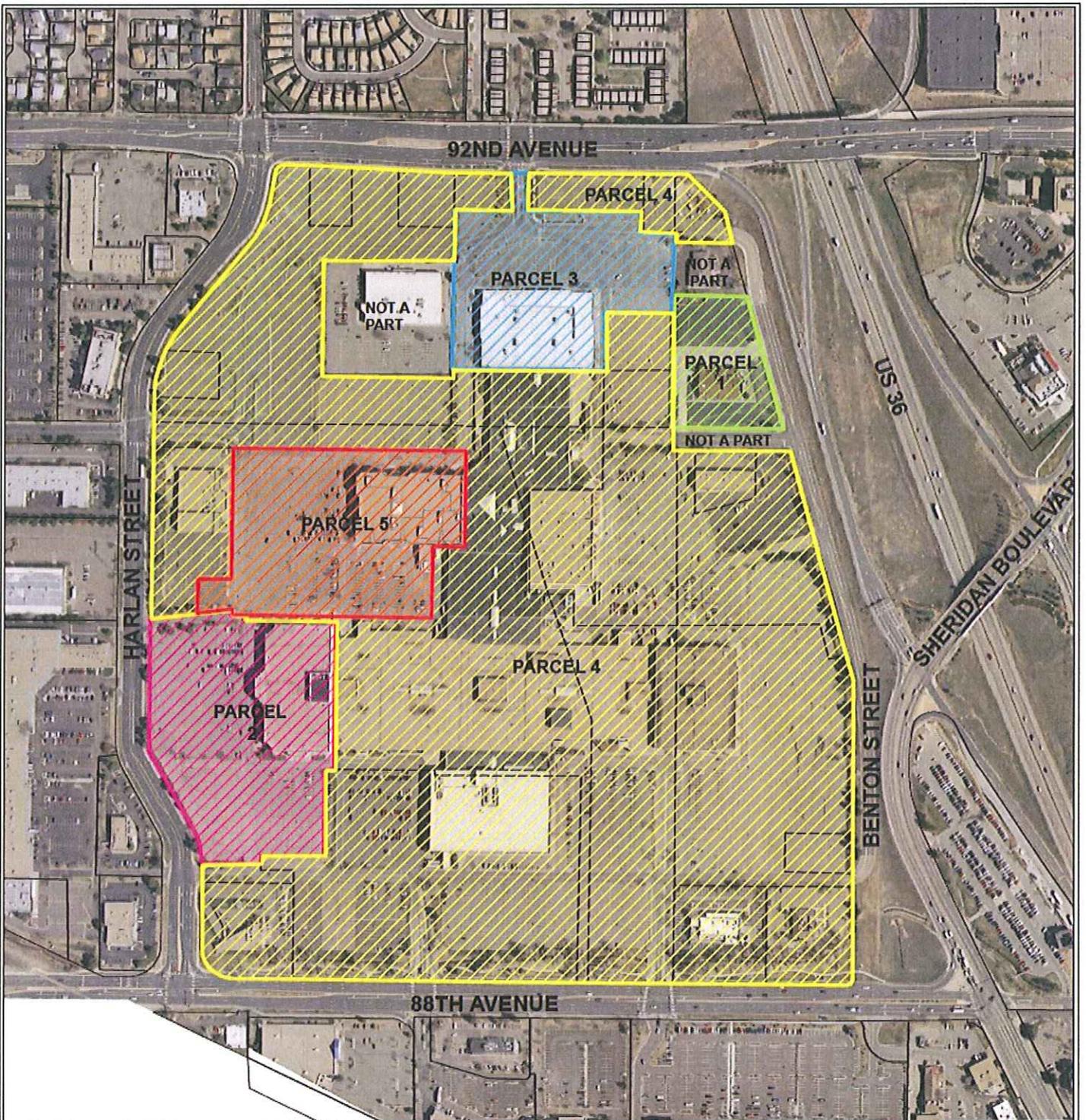
**Parcel No. 4 – (former Westminster Mall Property)**

Lots 1 through 7, inclusive, 9, 10, 12 and 14 through 19, inclusive, Block 1, Westminster Mall 2<sup>nd</sup> Amended Plat as recorded in Book 87 at Pages 31 through 40 under Reception No. 86016236,

Except that portion conveyed to the City of Westminster by Deed recorded June 21, 1989 under Reception No. 89053018 and except that portion conveyed to the City of Westminster by Deed recorded March 6, 1999 under Reception No. F0832987 all as recorded in the records of the Clerk and Recorder of Jefferson County, Colorado.

**Parcel No. 5 (former Sears Property)**

Lot 11, Block 1, Westminster Mall 2<sup>nd</sup> Amended Plat as recorded in Book 87 at Pages 31 through 40 under Reception No. 86016236 in the records of the Clerk and Recorder of Jefferson County, Colorado.



WESTMINSTER URBAN REINVESTMENT PROJECT  
CLEANUP CONDEMNATION MAP

