

## **AGENDA**

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

**MONDAY, DECEMBER 22, 2014**

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

**1. Roll Call**

**2. Minutes of Previous Meeting** (November 24, 2014)

**3. Public Hearings and New Business**

- A. Resolution No. 160 re ICA with Orchard Park Place North Metropolitan District
- B. Resolution No. 161 Authorizing the Acquisition of Property Interests for the WURP
- C. Consultant Contracts for WURP with the Laramie Company and John M. Mullins and Associates, Inc.
- D. Consultant Contract with McFall Associates for Redevelopment of WURP Property

**4. Miscellaneous and Executive Session**

- A. Executive Session to discuss strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and the possible sale, acquisition, trade or exchange of property interests, including future leases, and provide instructions to the Authority's negotiators as authorized by Sections 24-6-402 (4)(a) and 24-6-402(4)(e), C.R.S.

**5. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, NOVEMBER 24, 2014, AT 8:09 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Faith Winter, and Board Members Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were J. Brent McFall, Executive Director, Hilary Graham, Acting Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Vice Chairperson Winter, to approve the minutes of the meeting of October 13, 2014, as written. The motion carried unanimously.

PUBLIC HEARING TO CONSIDER AMENDMENT TO 2014 BUDGET

Mr. McFall reported that staff had no formal presentation to make and was available to answer any questions from the Authority. There were no questions.

At 8:12 p.m., the Chairperson opened the public hearing. No one wished to speak and the public hearing was closed.

RESOLUTION NO. 159 AUTHORIZING SUPPLEMENTAL APPROPRIATION TO 2014 BUDGET

Board Member Briggs moved, seconded by Vice Chairperson Winter, to adopt Resolution No. 159 authorizing a supplemental appropriation to the 2014 Westminster Economic Development Authority budget. At roll call, the motion passed unanimously.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 8: 13 p.m.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority  
December 22, 2014



**SUBJECT:** Resolution No. 160 re Intergovernmental Cooperation Agreement with Orchard Park Place North Metropolitan District

**Prepared By:** Robert Byerhof, Treasury Manager  
Karen Creager, Special Districts Accountant

### Recommended City Council Action

Adopt Resolution No. 160 authorizing the Executive Director to execute an Intergovernmental Cooperation Agreement (ICA) with Orchard Park Place North Metropolitan District (the “District”) in substantially the same form as attached regarding the release of certain tax increment revenues to finance the District’s improvements to property located within the Westminster Economic Development Authority’s (WEDA) North Huron Urban Renewal Area (URA).

### Summary Statement

- On February 25, 2008, Council approved a skeletal service plan for the Orchard Park Place North Metropolitan District and on September 24, 2012 approved the amended and restated service plan.
- The District consists of approximately 56 acres of commercial development located at approximately 144<sup>th</sup> Avenue and Huron Street and includes the St. Anthony Centura Medical project.
- The District’s primary purpose is to finance the construction of public improvements for the use and benefit of the taxpayers of the District. The District will annually certify a mill levy on property owners of the District to pay the debt service and operating costs of the District.
- The District is located within the boundaries of WEDA’s North Huron URA.
- Pursuant to state statute, as a tax increment financing district WEDA receives incremental revenues attributable to development from overlapping jurisdictions within the boundaries of the URA.
- WEDA and the City entered into an economic development agreement (EDA) with Centura Health Corporation and AZG Westminster, LLC in November, 2009 that specified AZG’s intent to create one or more Districts to facilitate financing, development, operation and maintenance of the public facilities for the Orchard View Property (Property) as defined in the EDA. WEDA agreed that the portion of tax increment revenues that it received attributable to the District’s current and future levy of ad valorem taxes on real and personal taxable property within the Property would be released back to the District.
- Incremental property tax revenues generated by the District’s mill levy are excluded from the “pledged property tax revenue” as provided in the loan agreement between Compass Mortgage Corporation and WEDA.
- The attached ICA addresses the logistics of releasing back to the District the funds described in the amended and restated EDA dated November 26, 2009.

**Expenditure Required:** Amount of returned tax increment to be determined annually based upon incremental property tax revenues generated by the District’s mill levy, less a collection fee

**Source of Funds:** Incremental Property Tax Revenues

**Policy Issue**

Should WEDA enter into an ICA with the District for the release of certain incremental property tax revenues?

**Alternative**

The alternative to the recommended action is to not approve the ICA. This alternative is not recommended as the incremental property tax revenues are excluded from the North Huron URA pledge and are needed by the District to finance the improvements outlined in the District's Service Plan previously approved by City Council. Additionally, not approving the ICA would cause WEDA to be in violation of the contractual obligation to return to the District their share of the incremental property tax received by WEDA.

**Background Information**

City Council approved a "skeletal service plan" for the District on February 25, 2008 to allow the developer to proceed with the formation of the District at the May 2008 election. However, this preliminary service plan specifically provided that the District would not be allowed to levy any tax or incur any debt until a final Amended and Restated Service Plan containing specific limits and conditions on the District's financial powers and other constraints on the District's authority consistent with the City's Metropolitan District Approval Policy (the "Policy") was approved by Council. The District's Amended and Restated Service plan was approved by City Council on September 24, 2012. In accordance with the District's Service Plan, the District will undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of certain public improvements needed for the development of property commonly referred to as Orchard Park Place North. The primary purpose of the District is to finance the construction of these public improvements through the imposition of a mill levy certified annually with Adams County.

The Plan includes a maximum combined mill levy of 50 mills, of which a maximum of 10 mills may be used for operations and maintenance. Any debt service mill levy has a maximum term of 30 years. Additionally, the Plan includes a total debt issuance limitation of \$7,000,000 and a requirement that prior to issuing any debt the proposed issuance must be reviewed and deemed financially feasible by an independent financial advisor.

The District is located within the boundaries of the North Huron URA, which was established in January 2004 to foster development in the area generally bound by I-25 on the east, 124<sup>th</sup> Avenue extended on the south, Huron Street on the west and 152<sup>nd</sup> Avenue on the north. The District encompasses approximately 56 acres of commercial development bounded north and south by 144<sup>th</sup> Avenue and approximately 142<sup>nd</sup> Avenue and east and west by I-25 and Huron Street and includes the St. Anthony Centura Medical project.

As a tax increment financing district WEDA receives incremental revenues from overlapping jurisdictions. As such, the District's mill levy on any valuation above the base valuation is allocated and remitted directly to WEDA. The incremental revenues received by WEDA are pledged to the repayment of the debt issued to fund the initial improvements in the URA. However, when the loan agreement for the debt was contemplated, WEDA recognized that several special districts were reliant on their proportionate share of property tax to meet operating and maintenance obligations. For this reason, the loan agreement excluded specific special districts' mill levies from pledged revenues.

In November, 2009, WEDA and the City entered into an economic development agreement (EDA) with Centura Health Corporation and AZG Westminster, LLC that specified AZG's intent to create one or more Districts to facilitate financing, development, operation and maintenance of the public facilities for the Property as defined in the EDA. WEDA agreed that the portion of tax increment revenues that it received attributable to the District's current and future levy of ad valorem taxes on real and personal taxable property within the Property would be released back to the District. The EDA specified that conditions regarding release of the funds to the District would be addressed in future Intergovernmental Cooperation

Agreements (ICA) between WEDA, the District and the City, to be executed after establishment of the District was completed. The attached ICA addresses the logistics of releasing the funds described in the amended and restated EDA dated November 26, 2009 back to the District. Releasing the incremental property tax revenues attributable to the District's mill levy to the District is necessary in order for the District to meet its obligations under the Service Plan.

The attached ICA outlines the responsibilities of WEDA and the District with respect to the release of these revenues. WEDA will automatically receive the incremental property tax revenues from Adams County net of the County's 1.5% collection fee. The ICA also specifies that the District will invoice WEDA by the 30<sup>th</sup> of each month for the amount of the current month's ad valorem taxes due to the District. WEDA will pay the District's invoice by the 30<sup>th</sup> of the following month less an annual collection fee to cover WEDA's cost of processing the release of the tax. This fee will be set at \$1,000 for 2014 through 2020 and \$1,500 from 2021 to 2028.

The URA's current debt liability consists of the Compass Bank loan. The URA will be able to meet its loan obligations using the balance of the incremental revenues received by the URA.

The proposed action supports the City Council's strategic goals of Proactive Regional Collaboration and Dynamic, Diverse Economy by collaborating with the District to continue North I-25 development.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachments

- Resolution: ICA with Orchard Park Place North Metropolitan District
- Agreement
- Exhibit A Legal Description

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **160**

INTRODUCED BY COMMISSIONERS

SERIES OF 2014

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**A RESOLUTION APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT REGARDING TAX INCREMENT REVENUES**

**WHEREAS**, the Westminster Economic Development Authority (“WEDA”) and the Westminster City Council have established an urban renewal area based on the North Huron Urban Renewal Plan (“North Huron Plan Area”) under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, *et seq.*, C.R.S., as amended (the “Act”); and

**WHEREAS**, in accordance with the North Huron Urban Renewal Plan and the Act, WEDA is authorized to finance project improvements through the use of sales and property tax increment financing (“Tax Increment Revenues”) within the North Huron Plan Area; and

**WHEREAS**, the Orchard Park Place North Metropolitan District (“District”) was organized to provide certain improvements within the District’s boundaries as more specifically set forth in the District’s Amended and Restated Service Plan approved by the City of Westminster on September 24, 2012 (“Service Plan”); and

**WHEREAS**, WEDA and the City entered into an economic development agreement (EDA) on November 24, 2009, with Centura Health Corporation and AZG Westminster, LLC that specified AZG’s intent to create one or more Districts to facilitate financing, development, operation and maintenance of the public facilities for the Property, as defined in the EDA, whereby WEDA agreed that the portion of tax increment revenues that it received attributable to the District’s current and future levy of ad valorem taxes on real and personal taxable property within the Property would be released back to the District; and

**WHEREAS**, the EDA specified that conditions regarding release of the funds to the District would be addressed in future Intergovernmental Cooperation Agreements (ICA) between WEDA, the District and the City, to be executed after establishment of the District was completed; and

**WHEREAS**, the attached ICA addresses the logistics of releasing the funds described in the EDA back to the District; and

**WHEREAS**, the District plans to provide for the design, acquisition, construction, installation, and financing of certain water, sanitation, street and safety protection, and park and recreation improvements and services to the Property (“Improvements”) through the issuance of bonds; and

**WHEREAS**, the Improvements will benefit the property within the North Huron Plan Area; and

**WHEREAS**, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

**WHEREAS**, the District is authorized to levy *ad valorem* taxes on real and personal taxable property within its boundaries to finance the Improvements, to provide services and to conduct its operations; and

**WHEREAS**, pursuant to the District’s Service Plan, the District intends to issue bonds to pay for the Improvements and levy *ad valorem* taxes to pay for the debt service on the bonds as well as District operating expenses; and

**WHEREAS**, any taxes imposed by the District will be paid directly to WEDA unless otherwise provided by an agreement between WEDA and the District; and

**WHEREAS**, WEDA and the District desire to enter into an Intergovernmental Cooperation Agreement Regarding Tax Increment Revenues to assure that taxes levied by the District are made available

to the District for purposes of paying the debt service on the bonds and operating costs as provided in the District's Service Plan; and

**WHEREAS**, WEDA and the District have determined it to be in the best interests of their respective taxpayers and property owners to enter into the Intergovernmental Cooperation Agreement Regarding Tax Increment Revenues.

NOW, THEREFORE, BE IT RESOLVED BY THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WESTMINSTER, COLORADO, AS FOLLOWS:

1. That the Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority and Orchard Park Place North Metropolitan District Regarding Tax Increment Revenues, attached hereto and incorporated herein by this reference, is hereby approved.
2. That the Executive Director is authorized to sign, and the Secretary to attest, the Intergovernmental Cooperation Agreement.
3. That the Intergovernmental Cooperation Agreement shall not be effective until executed by WEDA and the District.

PASSED AND ADOPTED at a special meeting of the Westminster Economic Development Authority of the City of Westminster, Colorado, this 22nd day of December, 2014.

WESTMINSTER ECONOMIC DEVELOPMENT  
AUTHORITY

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Herb Atchison, Chairperson

ATTEST:

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Linda Yeager, Secretary for WEDA

Approved as to Legal Form:

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Hilary Graham, Deputy Attorney

## INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY AND THE ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT REGARDING TAX INCREMENT REVENUES

This Intergovernmental Cooperation Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2014, by and among the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY ("WEDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado and ORCHARD PARK PLACE NORTH METROPOLITAN DISTRICT ("District"), a quasi-municipal corporation and political subdivision of the State of Colorado created pursuant to Title 32, Article 1, C.R.S., as amended (collectively the "Parties").

### WITNESSETH:

WHEREAS, WEDA and the Westminster City Council have adopted an Urban Renewal Plan known as the "North Huron Urban Renewal Plan" ("Plan") under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the "Act"); and

WHEREAS, in accordance with the Plan and the Act, WEDA is authorized to undertake urban renewal projects and activities and to finance such projects and activities in part by utilization of certain incremental property taxes ("Tax Increment Revenues"); and

WHEREAS, the District currently encompasses approximately 56 acres of real property ("Property"). The boundaries of the Property are set forth in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, the Property is located within the boundaries of the urban renewal area of the Plan which is known as the "North Huron Urban Renewal Area;" and

WHEREAS, the District plans to provide for the design, acquisition, construction, installation, and financing of certain water, sanitation, street and safety protection, and park and recreation improvements and services to the Property ("Improvements"), and the Improvements are designed to further the purposes of the Plan and further the policy of WEDA; and

WHEREAS, the District is authorized to levy *ad valorem* taxes on real and personal taxable property within its boundaries to finance the Improvements, to provide services and to conduct its operations; and

WHEREAS, pursuant to the Amended and Restated Service Plan for the District approved by the City of Westminster City Council on September 24, 2012 (the "Service Plan"), the District has the authority to issue a total maximum amount of \$7,000,000 (seven million) Dollars in General Obligation Bonds, which bonds will be secured, in part, by the Tax Increment Revenues (as defined in the Amended and Restated Service Plan for the District) paid to the District pursuant to this Agreement; and

WHEREAS, the development that results from the construction of the Improvements is expected to generate tax revenues and provide extraordinary public benefit to the City; and

WHEREAS, WEDA and the District are authorized by the Act to enter into cooperative agreements with respect to projects and activities; and

WHEREAS, WEDA and the District desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and to assure that taxes levied by the District are made available to the District for purposes of implementing the Service Plan.

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

1. Improvements. The District and WEDA hereby state their intention to cooperate in providing the Improvements to be financed by the District as may be desirable and to serve the Property. This statement of intention shall not obligate any Party with respect to the Improvements and services, which, without this Agreement, would be the obligation of any other Party hereto.
2. Property Taxes. In consideration of the District providing the Improvements and services within the Property, WEDA agrees that the portion of revenues that it receives as Tax Increment Revenues

that are attributable to the District's current and future levy of *ad valorem* taxes on taxable real and personal property within the Property and encompassed by the Plan, shall be remitted to the District monthly. Based on tax distribution notices from Adams County, the District will invoice WEDA by the 30th of each month for the current month's revenues attributable to the District's ad valorem tax levy remitted to WEDA by Adams County. The District's invoice will include sufficient documentation, as required by the City of Westminster's Finance Director, to substantiate the amount of tax increment revenue received by WEDA attributable to the District's ad valorem levy. Providing that such invoice is timely received, WEDA will remit payment for the District's invoice by the 30th day of the month following receipt of the funds by WEDA from Adams County. Payment will be issued electronically to the District's designated financial institution. WEDA will invoice the District an annual collection fee that is set at \$1,000 for 2014 through 2020 and \$1,500 from 2011 to 2028. Additionally, the District will provide to WEDA the preliminary assessed valuation for the District as certified by Adams County on or around August 25<sup>th</sup> annually.

3. District Improvements and Financing. In consideration of WEDA paying the revenues to the District as provided in Section 2, the District agrees to provide the Improvements. In order to provide the Improvements, it will be necessary for the District to incur debt to provide funding for the construction of the Improvements. The primary source of repayment of such debt is the tax increment revenues described herein. The obligation of WEDA set forth herein shall constitute an obligation to the District within the meaning of Section 31-25-107(9) of the Act. The District agrees that all revenues provided pursuant to this Agreement shall be used in accordance with the Act, the Plan and the District's Service Plan.
4. WEDA Covenant Relating to Pledge of Amounts Owning. WEDA hereby covenants that so long as this Agreement is in effect, it will not pledge, encumber or otherwise transfer the revenues or the right to the revenues resulting from the levy of *ad valorem* taxes by the District and paid to WEDA in accordance with the Act, but shall maintain the same for the use and benefit of the District until paid to the District. The covenant set forth in this paragraph shall include all revenues received by WEDA arising from any mill levy imposed by the District on taxable real and personal property for payment of operations and maintenance and debt, as authorized by the Service Plan or any subsequent amendments thereto.
5. Cooperation. WEDA and the District covenant with each other that in any action or challenge of the Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.
6. Enforcement. WEDA agrees that it shall enforce the collection of all moneys, which may qualify as Tax Increment Revenues.
7. Enforceable Opinion. Each Party agrees that during the term of this Agreement, either Party may request an opinion from the other Party's bond counsel to the effect that this Agreement and the obligations of the Parties set forth herein are valid and binding and which shall be reasonably acceptable to the Party requesting the opinion. The District shall pay the costs for any opinions requested pursuant to this section.
8. Litigation. Each of the Parties agrees to promptly notify the other Parties hereto in writing of the pendency of any litigation involving this Agreement in which any other Party hereto is not a named party. So long as the Parties are not adverse parties in the litigation, no Party will object to or otherwise oppose any effort by another Party hereto to intervene in such litigation proceeding.
9. Effective Date; Term. This Agreement shall become effective retroactively to January 1, 2011. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the earlier event to occur of (i) the expiration of the tax allocation provision of the Plan pursuant to the Act or (ii) payment in full or defeasance of the District's bonded indebtedness. If on or after the expiration of this Agreement, WEDA has or receives any Tax Increment Revenues, which would have been due to the District under this Agreement, it shall pay such Tax Increment Revenues to the District notwithstanding the expiration.
10. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing

and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
12. Headings. Paragraph headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
13. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.
14. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Orchard Park Place North Metropolitan District  
Arizona Gold Properties  
1129 South Oakland, Suite 101  
Mesa, AZ 85206  
Attn: Rob Friend  
Phone: (480) 353-2900, ext 15  
Fax: (480) 353-2901

With a Copy To: Collins, Cockrel and Cole  
390 Union Boulevard, Suite 400  
Lakewood, CO 80228  
Attn: Paul Cockrel  
Phone: (303) 986-1551  
Fax: (303) 986-1755

To WEDA: Westminster Economic Development Authority  
Westminster City Hall  
4800 W. 92nd Avenue  
Westminster, CO 80031  
Attn: City Attorney, City Attorney's Office  
Phone: (303) 658-2431  
Fax: (303) 706-3920

With a Copy To: City of Westminster  
Finance Department  
4800 W. 92nd Avenue  
Westminster, CO 80031  
Attn: Karen Creager, Special District Accountant  
Phone: (303) 658-2442  
Fax: (303) 706-3920

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service, upon electronic confirmation of facsimile transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers' thereunto and duly authorized as of the date first above written.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

\_\_\_\_\_  
J. Brent McFall, Executive Director of WEDA

ATTEST:

\_\_\_\_\_  
Secretary for WEDA

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for WEDA

ORCHARD PARK PLACE NORTH  
METROPOLITAN DISTRICT

By: \_\_\_\_\_  
Officer for District

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
by \_\_\_\_\_, as Officer of Orchard Park Place North Metropolitan District.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

Legal Description of District

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6TH P.M., EXCEPT THAT PORTION CONVEYED TO THE FARMERS RESERVOIR AND IRRIGATION COMPANY IN DEED RECORDED MAY 16, 1910 IN BOOK 47 AT PAGE 72, AND THAT PORTION CONVEYED TO THE DEPARTMENT OF HIGHWAYS IN DEED RECORDED AUGUST 24, 1953 IN BOOK 473 AT PAGE 187 AND DEED RECORDED MARCH 1, 1956 IN BOOK 597 AT PAGE 367, AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF WESTMINSTER IN DEEDS RECORDED FEBRUARY 21, 2006 AT RECEPTION NO. 20060221000169780 AND RECEPTION NO. 20060221000169800, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHWEST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 22; THENCE SOUTH 89°56'14" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 141.51 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°42'47" WEST, ALONG SAID EAST LINE, A DISTANCE OF 1,065.06 FEET; THENCE NORTH 05°06'35" EAST, A DISTANCE OF 85.51 FEET; THENCE NORTH 44°07'32" EAST, A DISTANCE OF 34.92 FEET; THENCE NORTH 75°29'12" EAST, A DISTANCE OF 84.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE 375.85 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 7,726.94 FEET, A CENTRAL ANGLE OF 02°47'13", AND BEING SUB-TENDED BY A CHORD WHICH BEARS NORTH 87°17'47" EAST, 375.81 FEET TO THE BEGINNING OF A REVERSE CURVE; THENCE 550.58 FEET ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 7,551.94 FEET, A CENTRAL ANGLE OF 04°10'38", AND BEING SUB-TENDED BY A CHORD WHICH BEARS NORTH 87°59'30" EAST, 550.46 FEET; THENCE SOUTH 89°55'11" EAST, A DISTANCE OF 41.76 FEET; THENCE SOUTH 88°55'49" EAST, A DISTANCE OF 102.08 FEET; THENCE SOUTH 79°21'01" EAST, A DISTANCE OF 354.25 FEET; THENCE SOUTH 00°04'49" WEST, A DISTANCE OF 10.15 FEET; THENCE SOUTH 79°56'39" EAST, A DISTANCE OF 390.17 FEET; THENCE SOUTH 15°12'03" EAST, A DISTANCE OF 116.12 FEET; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 10.36 FEET; THENCE SOUTH 15°12'03" EAST, A DISTANCE OF 972.82 FEET; THENCE SOUTH 45°48'46" WEST, A DISTANCE OF 56.23 FEET; THENCE NORTH 89°56'14" WEST, A DISTANCE OF 2,157.57 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,451,442 SQUARE FEET OR 56.277 ACRES, MORE OR LESS.

# WEDA Agenda Item 3 B

## Agenda Memorandum

Westminster Economic Development Authority Board Meeting  
December 22, 2014



**SUBJECT:** Resolution No. 161 Authorizing the Acquisition of Property Interests for the Westminster Center Urban Reinvestment Project

**Prepared By:** Marty McCullough, Authority Attorney

### Recommended Board Action

Adopt Resolution No. 161 authorizing the Executive Director and the Authority's legal counsel to proceed with the acquisition of JC Penney's leasehold interest in the Downtown Westminster Specific Plan District, including the use of eminent domain, if necessary, to establish and pay the minimum just compensation for such interest as established by the Executive Director, and to incur all reasonable costs associated with the acquisition.

### Summary Statement

- The Westminster Economic Development Authority (the "Authority") has previously approved an urban renewal project for the former site of the Westminster Mall known as the Westminster Center Urban Reinvestment Project (the "Project").
- The Authority previously acquired the property necessary for the Project, cleared the site, and is now prepared to move forward with the Project.
- The City, the Authority and OliverMcMillan LLC have entered into exclusive negotiations for the redevelopment of the site.
- The City has recently zoned the site Specific Plan District and has adopted the Downtown Westminster Specific Plan.
- In order to implement the Specific Plan adopted by the City, and the urban renewal plan adopted by the Authority, it will be necessary to acquire all or a portion of JC Penney's leasehold interest in the site, by negotiation or, if necessary, through eminent domain.
- JC Penney's has been previously notified of the Authority's intent to acquire all or part of JC Penney's leasehold interest in the site.

**Expenditure Required:** \$0

**Source of Funds:** N/A

**Policy Issue**

Should the Executive Director and the Authority's legal counsel be authorized to acquire JC Penney's leasehold interest in the former Westminster Mall site in order to implement the Westminster Center Urban Reinvestment Plan and the Downtown Westminster Specific Plan?

**Alternative**

The Westminster Center Urban Reinvestment and Downtown Westminster Specific Plans could be modified to avoid the JC Penney's leasehold area. However, the Authority and City Council have previously determined that the plans as approved are in the best public interest.

**Background Information**

The Westminster Center Urban Reinvestment Project was approved in April 2009. Since that time, the Authority and the City have been working on implementing this Plan and have made significant investments in the site. The Downtown Westminster Specific Plan was adopted in November of this year. The Authority now owns the property necessary to implement the Project. However, JC Penney's has a leasehold interest in part of the site that conflicts with the approved urban renewal plan and the Downtown Westminster Specific Plan. The Authority has notified JC Penney's of the need to acquire all or part of its leasehold interest in the former Westminster Mall site. Construction of the necessary roads and utilities infrastructure is scheduled to commence in March of 2015. It is necessary to address the Penney's lease before then, in order to proceed with these improvements and to address other provisions in the Penney's lease that Penney's may claim gives them rights to control other elements of the redevelopment Project.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment: Resolution No. 161

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **161**

INTRODUCED BY COMMISSIONERS

SERIES OF 2014

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

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to Part I of Article 25 of Title 31, C.R.S.

WHEREAS, an urban renewal plan for the Westminster Center Urban Reinvestment Plan Area was adopted by the City Council of the City of Westminster on April 13, 2009, pursuant to Part 1 of Article 25 of Title 31, C.R.S.; and

WHEREAS, the Authority has determined that it is necessary to acquire certain property interests for the Westminster Center Urban Reinvestment Project; and

WHEREAS, the property interests to be acquired include the interests of J.C. Penney Properties, Inc., in that certain Indenture of Lease, dated February 13, 1986, as amended, and recorded at reception No. 86016388 of the records of the Clerk and Recorder of Jefferson County ("Subject Property"); 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 Executive Director is hereby authorized to establish the minimum just compensation to be offered to acquire the Subject Property.
2. The Executive Director is authorized to negotiate in good faith for the acquisition of the Subject Property on the basis of the appraised value, or such amount as may seem just and reasonable to facilitate such acquisition without the necessity of condemnation.
3. The Executive Director is authorized to enter to such contracts and to execute such documents as are necessary to effectuate a voluntary purchase on such reasonable terms as the Executive Director may deem reasonable and prudent.
4. The Authority Counsel is authorized to take all necessary legal measures to acquire the Subject Property, including proceeding with condemnation of the Subject Property against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such other or further action as may be reasonably necessary for or incidental

to the filing and diligent prosecution of any litigation or proceeding required to obtain the Subject Property should normal negotiations fail or exceed the time constraints of the overall project.

5. 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, appraisal fee payments mandated by statute, normal closing costs, filing fees and charges, and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property.

PASSED AND ADOPTED this 22nd day of December, 2014.

\_\_\_\_\_  
Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Attorney for Authority

# WEDA Agenda Item 3 C-D

## Agenda Memorandum

Westminster Economic Development Authority  
December 22, 2014



**SUBJECT:** Westminster Center Urban Reinvestment Project Consultant Contracts

**Prepared By:** Susan Grafton, Economic Development Director

### Recommended WEDA Board Action

1. 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 Center Urban Reinvestment Project (WURP) property.
2. Authorize the Chairman of the Board to enter into a one year agreement with McFall Associates, LLC to provide consulting services regarding the redevelopment of the WURP property.

### Summary Statement

- The WURP is gaining significant momentum as the commercial real estate market continues to revive. Specialized consulting services are needed to facilitate the project.
- The Laramie Company provides special project support as a real estate and retail consultant with over 30 years of retail leasing property sales and development experience.
- John M Mullins and Associates specializes in financial structuring of projects, strategy and economic development with years of experience at the state and local level as well with special districts and commercial development.
- McFall Associates expertise is in developing and implementing strategy to facilitate project development.
- WEDA approval of the contracts is required since the fees exceed staff approval authority.
- Adequate funds have been budgeted and available for this purpose.

**Expenditure Required:** \$373,500

**Source of Funds:** WEDA – WURP City Center Participation

**Policy Issue**

Should the WEDA continue to work with highly respected consultants to assist with moving forward on the redevelopment of the WURP site?

**Alternative**

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

**Background Information**

The team assembled for the Westminster Center Urban Reinvestment Project is highly skilled, with years of relevant public and private sector experience. The Laramie Company (Mary Beth Jenkins) and John M Mullins and Associates were key contributors to the successful Orchard project that involved developer recruiting, land acquisition, detailed financial analysis and projection and development negotiations. John Mullins' background with finance districts, financial pro forma and development strategy will be key in the months ahead as the WURP team finalizes the formal finance plan and establishes maintenance districts for the project. Mary Beth Jenkins will be key in helping to attract retail users and development to the site as well as with all real estate negotiations.

The addition of McFall Associates LLC, a new consultant for the project, is allowing WEDA to keep the project team whole. City Manager Brent McFall retires in January 2015. The recommended contract is proposed to start February 1, 2015 and continue through December 31, 2015. Brent has been instrumental in WURP negotiations and strategy. His continued presence "at the table" will provide continuity and assurance to the Developer.

Contracts with John M. Mullins and Associates, Inc., The Laramie Company, and McFall Associates, LLC need WEDA authorization since the amount of each contract exceeds the Executive Director's and Chairman of the Board's approval authority. The work of these individuals will be critical to achieving the broad vision WEDA has for the WURP site.

The Westminster Center Urban Reinvestment Project supports the City's Strategic Plan goals by facilitating a Strong, Balanced Local Economy and Vibrant Neighborhoods in One Livable Community

Respectfully submitted,

J. Brent McFall  
Executive Director

**Attachments**

- The Laramie Company Contract
- John M. Mullins and Associates, Inc. Contract
- McFall Associates, LLC

**FIRST AMENDMENT TO THE  
AGREEMENT WITH THE LARAMIE COMPANY TO FURNISH CONSULTING SERVICES  
TO THE WESTMINSER ECONOMIC DEVELOPMENT AUTHORITY FOR  
REDEVELOPMENT OF THE WESTMINSTER CENTER URBAN REINVESTMENT PROJECT  
PROPERTY DATED JANUARY 1, 2014**

The Westminster Economic Development Authority (hereinafter referred to as "WEDA") and The Laramie Company, LLC (hereinafter referred to as "Consultant") agree to amend the Agreement described above as follows for continued consulting services in calendar year 2015, to be known as the "2015 Project":

1. Article IV of the Agreement, "CONSULTANT'S FEE," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Monthly Retainer. As compensation for the 2015 Project ~~basic services~~ described in this Agreement, the Consultant shall be paid a lump sum monthly fee of twelve thousand five hundred dollars (\$12,500) over the twelve (12) month term of the Project. The Consultant shall submit invoices to WEDA for its monthly fee, such invoices to be in the form and detail reasonably required by WEDA. Reimbursable expenses (as defined below) shall be itemized on such invoices. WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Transfer Fee. Upon transfer of land in Phase I (as defined by WEDA) a five percent (5%) transfer fee will be paid to Consultant at closing with said fee to be no less than \$25,000 per incident.

Finance Agreement Bonus. Immediately following execution of a Phase I finance agreement (as defined by WEDA, or such similar agreement, as determined by WEDA), or at such later time as may be determined by WEDA, WEDA shall pay Consultant a fee of Twenty-five Thousand Dollars (\$25,000).

Reimbursable Expenses. WEDA will reimburse Consultant for 2015 reimbursable expenses up to ~~for~~ a maximum of seven thousand five hundred dollars (\$7,500) in reasonable travel costs and other approved consulting expenses.

Consultant's total fee ~~under this~~ for the 2015 Project Agreement, including reimbursable expenses, shall not exceed one hundred eighty two thousand five hundred dollars (\$182,500.00), exclusive of the Transfer Fee referenced above. 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.

2. Article V of the Agreement, "COMMENCEMENT & COMPLETION OF SERVICES," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

The Project shall begin on January 1, ~~2014~~2015, and shall terminate on December 31, ~~2014~~2015.

3. Article VI of the Agreement, "TERMINATION," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

~~This Agreement~~The 2015 Project terminates on December 31, 2014~~2015~~, 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 either the Consultant or WEDA providing sixty (60) days advance written notice, whichever occurs first. In the event the Agreement is terminated by WEDA issuance of said written notice of intent to terminate, WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to 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.

4. The requirements for insurance set forth in Article VII of the Agreement shall continue to apply, and Consultant shall furnish new certificates of insurance at the time of executing this First Amendment.
5. All other terms and conditions of this Agreement shall remain in effect.

This Amendment is dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE LARAMIE COMPANY, LLC**

**WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Mary Beth Jenkins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Attest: \_\_\_\_\_  
Secretary

Attest: \_\_\_\_\_  
Secretary

(Corporate Seal,  
if applicable)

(Seal)

Approved as to legal form and content:

\_\_\_\_\_  
Authority Attorney

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

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

Account No. 80968005952 *Rev'd 10/12*

**FIRST AMENDMENT TO THE  
AGREEMENT WITH JOHN M. MULLINS AND ASSOCIATES, INC., TO FURNISH  
CONSULTING SERVICES TO THE WESTMINSTER ECONOMIC DEVELOPMENT  
AUTHORITY FOR REDEVELOPMENT OF THE WESTMINSTER CENTER URBAN  
REINVESTMENT PROJECT PROPERTY DATED JANUARY 1, 2014**

The Westminster Economic Development Authority (hereinafter referred to as "WEDA") and John M. Mullins and Associates, Inc. (hereinafter referred to as "Consultant") agree to amend the Agreement described above as follows for continued consulting services in calendar year 2015, to be known as the "2015 Project":

1. Article IV of the Agreement, "CONSULTANT'S FEE," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

Monthly Retainer. As compensation for the ~~basic 2015 Project services~~ described in this Agreement, the Consultant shall be paid a lump sum monthly fee of six thousand dollars (\$6,000) over the twelve (12) month term of the Project. The Consultant shall submit invoices to WEDA for its monthly fee, such invoices to be in the form and detail reasonably required by WEDA. Reimbursable expenses (as defined below) shall be itemized on such invoices. WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Finance Plan Bonus. Immediately following establishment of a detailed finance plan for phase 1 of the WURP (as defined by WEDA) and a general finance plan for the overall site (considering operation and maintenance) ~~or at a later time as may be determined by WEDA,~~ WEDA shall pay Consultant a fee of ~~Twenty-five Thousand Dollars (\$25,000).~~

Reimbursable Expenses: WEDA shall cover Consultant's reimbursable expenses for the 2015 Project up to a maximum of seven thousand five hundred dollars (\$7,500) for reasonable travel expenditures and other approved project-related expenses.

Consultant's total fee ~~under this Agreement~~ for the 2015 Project, including reimbursable expenses, shall not exceed one hundred four thousand five hundred dollars (\$104,500.00.) Said fees shall constitute full and complete payment for the Project and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

2. Article V of the Agreement, "COMMENCEMENT & COMPLETION OF SERVICES," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

The Project shall begin on January 1, ~~2014~~2015, and shall terminate on December 31, ~~2014~~2015.

3. Article VI of the Agreement, "TERMINATION," shall be amended to read as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

~~This Agreement~~ The 2015 Project terminates on December 31, ~~2014~~2015, ~~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 either the Consultant

or WEDA providing sixty (60) days advance written notice, whichever occurs first. In the event the Agreement is terminated by WEDA issuance of said written notice of intent to terminate, WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to 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.

4. The requirements for insurance set forth in Article VII of the Agreement shall continue to apply, and Consultant shall furnish new certificates of insurance at the time of executing this First Amendment.

5. All other terms and conditions of this Agreement shall remain in effect.

This Amendment is dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**JOHN M. MULLINS AND ASSOCIATES, INC.**

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: John M. Mullins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

Secretary

(Corporate Seal, if applicable)

(Seal)

Approved as to legal form and content:

\_\_\_\_\_  
Authority Attorney

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

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

Account No. 80968005952

Rev'd 10/12

AGREEMENT TO FURNISH CONSULTING SERVICES  
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR REDEVELOPMENT  
OF THE WESTMINSTER CENTER URBAN REINVESTMENT PROJECT PROPERTY

THIS AGREEMENT, made and entered into this 1st day of February, 2015, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the “WEDA,” and **MCFALL ASSOCIATES, LLC**, a limited liability company organized pursuant to the laws of the State of Colorado, hereinafter called the “Consultant,” is as follows:

WHEREAS, WEDA wishes to redevelop the Westminster Center Urban Reinvestment Project (“WURP”), located at approximately 88<sup>th</sup> Avenue and Sheridan Boulevard; and

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

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

I. THE PROJECT

The project consists of consulting services, developer negotiations, advising on finance strategies, and other similar advisory services to the City of Westminster staff, acting on behalf of WEDA, to support redevelopment of the WURP site, as more specifically described in the Scope of Services, attached hereto and incorporated herein as **Appendix A** (hereinafter, the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

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

III. ADDITIONAL SERVICES

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

IV. CONSULTANT'S FEE

Monthly Retainer. As compensation for the Project, the Consultant shall be paid a lump sum monthly fee of four thousand dollars (\$4,000) for the month of February 2015, and seven thousand five hundred dollars (\$7,500) per month beginning March 2015 and every month thereafter through December 2015. The Consultant shall submit invoices to WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably required by WEDA. Reimbursable expenses (as defined in Appendix A) shall be itemized on such invoices. WEDA agrees to pay the Consultant within thirty (30) days of receipt of properly documented invoices.

Consultant's total fee under this Agreement, including reimbursable expenses, shall not exceed eighty six thousand five hundred dollars (\$86,500). Said fees shall constitute full and complete payment for the Project and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

#### V. COMMENCEMENT & COMPLETION OF PROJECT

The Project shall begin on February 1, 2015, and shall terminate on December 31, 2015.

Subject to annual appropriation, WEDA may renew this Agreement in writing for three (3) additional twelve (12) month terms following the initial term. If this Agreement is renewed, compensation shall be mutually agreed upon by the parties. Any adjustment in compensation in the renewed agreement shall not be retroactive and shall apply only to services performed after renewal. WEDA shall provide Consultant at least sixty (60) days' notice of its intent to renew. However, all payments under this Agreement are subject to annual appropriation of the funds. Therefore, nothing in this Agreement shall be deemed or construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment.

#### VI. TERMINATION

This Agreement shall terminate on December 31, 2015, or upon WEDA's providing Consultant with sixty (60) days advance written notice, whichever occurs first. In the event the Agreement is terminated by WEDA's issuance of said written notice of intent to terminate, WEDA shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services WEDA deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to WEDA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

#### VII. INSURANCE

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

#### VIII. EQUAL EMPLOYMENT OPPORTUNITY

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

#### IX. PROHIBITED INTEREST

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

B. No official or employee of the City or 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 WEDA except to the extent the Consultant is specifically authorized to act as agent of 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 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 WEDA and Consultant. Upon completion of the Project, or at such other time as WEDA may require, the Consultant shall deliver to WEDA a complete corrected set of drawings in hard copy *and* in an electronic/digital format acceptable to WEDA and such additional copies thereof as 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 WEDA for any loss, damages or costs incurred by 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 WEDA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of use resulting therefrom, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

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

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

In any and all claims against 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 WEDA and the Consultant.

**Project Representative for City**  
**Acting on behalf of WEDA:**

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

**Project Representative for Consultant:**

Name: J. Brent McFall  
Address: P.O. Box 998  
Eagle, CO 81631  
Phone: 970-328-3173  
email: jbmac5@msn.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 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 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. 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 WEDA's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

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

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Consultant may not employ subcontractors to perform work on the Project without 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 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 MANAGER’S 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.

MCFALL ASSOCIATES, LLC

WESTMINSTER ECONOMIC  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: J. Brent McFall

Printed Name: Herb Atchison

Title: \_\_\_\_\_

Title: Chairman

Address:

Address:

\_\_\_\_\_  
\_\_\_\_\_

4800 West 92nd Avenue  
Westminster, Colorado 80031

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

City Clerk

Corporate Seal (if applicable)

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
City Attorney

Rev. 03/14

PROPOSAL TO PROVIDE CONSULTING SERVICES  
TO  
WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
FOR  
WESTMINSTER CENTER URBAN REINVESTMENT PROJECT

Under the direction and guidance of the Executive Director (City Manager), consulting services will be provided by McFall Associates, LLC (Consultant). Brent McFall shall provide all consulting services unless other associates are utilized in areas of specific expertise. In no case shall anyone associated with Consultant other than Brent McFall engage in providing consulting services under the terms of this proposal unless approved by the Executive Director.

#### Scope of Services

The Consultant shall provide general consulting services under the direction and guidance of the Executive Director (City Manager), including the following tasks:

- Advise team of WEDA (City) staff and consultants in developing and implementing strategy to facilitate redevelopment of the Westminster Center Urban Reinvestment Project (WURP).
- Regularly attend weekly staff meetings and other such meetings as is necessary to facilitate successful redevelopment at WURP. Meetings may be attended either in person, by telephone or video conference as agreed upon in advance.
- Participate in and facilitate negotiations with developer(s) of pre-development and final development agreements
- Work with team of City staff and consultants to develop finance strategies for public improvements for various phases of redevelopment at WURP.
- Work with all parties (City/WEDA/ developer) to facilitate execution of WURP redevelopment.
- Serve as project liaison with WEDA Board (Mayor and City Council) – provide at minimum one written project report monthly and one in person report quarterly in coordination with the City/WEDA team.
- Such other duties as may be required by the City Manager or WEDA Board from time to time.

#### Reimbursable Expenses

WEDA shall pay Consultant's pre-approved reimbursable expenses up to a maximum of \$7,500 for reasonable travel expenditures and other approved Project-related expenses. Such expenses may include travel to ICSC and/or developer offices, or other locations as necessary.