

# **AGENDA**

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

**MONDAY, January 9, 2012**

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

**1. Roll Call**

**2. Minutes of Previous Meeting** (December 19, 2011)

**3. Purpose of Special WEDA Meeting is to**

A. Authorize a Westminster Center Urban Reinvestment Project Security Contract

**4. Executive Sessions**

Discuss strategy and progress on potential acquisition of certain real property by the Westminster Economic Development Authority for the Westminster Urban Reinvestment Project pursuant to CRS 24-6-402 (4)(a) and (e), discussion of strategy and progress on negotiations related to the Westminster Urban Center Redevelopment and provide instructions to the Authority's negotiators as authorized by CRS 24-6-402 (4)(a) and (e), and consultation with the Authority's legal counsel concerning the *Sears* litigation, pursuant to CRS 24-6-402(4)(b) and (e) and WMC 1-11-3 (C)(3) – *Verbal*

**5. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, DECEMBER 19, 2011, AT 7:07 P.M.

ROLL CALL

Present at roll call were Chairperson McNally, Vice Chairperson Winter and Board Members Atchison, Briggs, Kaiser, Lindsey, and Major. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Carla Koeltzow, Acting Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Board Member Major, to approve the minutes of the meeting of November 14, 2011, as written. The motion carried by a 5:1 vote with Board Member Atchison abstaining, stating he was not a member of the Authority at that time.

CUMULATIVE 2011 PURCHASES OVER \$50,000 FOR MALL SECURITY AND MANAGEMENT

Upon a motion by Board Member Major, seconded by Vice Chairperson Winter, the Authority voted unanimously, based on the report and recommendation of the Executive Director, to determine that the public interest will be best served by ratifying the purchase of services from Advantage Security and The Laramie Property Company and to pay any past invoices not previously authorized with Advantage Security up to a maximum of \$69,000 as well as pay any past invoices not previously authorized with The Laramie Property Company up to a maximum of \$80,000.

ICA WITH CITY AND OPPNGID RE RELEASE PROPERTY TAX COLLECTIONS TO DISTRICT

Upon a motion by Vice Chairperson Winter, seconded by Board Member Major, the Authority voted unanimously to authorize the Executive Director to execute the Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority, the City of Westminster and the City of Westminster Orchard Park Place North General Improvement District for the release of unpledged property tax increment collections to the District for payment to the City for assessments, recoveries, interest, maintenance and administrative costs associated with the Orchard View Property and the Centura Orchard View Property in substantially the same language as presented.

ADJOURNMENT

There being no further business to conduct, it was moved by Atchison, seconded by Kaiser, to adjourn. The motion carried and the meeting adjourned at 7:10 p.m.

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Acting Secretary

# WEDA Agenda Item 3 A

## Agenda Memorandum

Westminster Economic Development Authority Meeting  
January 9, 2012



**SUBJECT:** Westminster Center Urban Reinvestment Project Security Contract

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

### Recommended Board Action

Based on the recommendation of the Executive Director, find that the public interest would best be served by authorizing the Executive Director to enter into agreement with Advantage Security to obtain security services for the Westminster Mall property.

### Summary Statement

- Though the majority of the former mall will be demolished by May 2012, security is still needed for the remaining tenants.
- Advantage Security provided security services for the former mall property during 2011; and staff was satisfied with the service provided.

**Expenditure Required:** Not to exceed \$68,000

**Source of Funds:** WEDA – Westminster Center Urban Reinvestment Project

**Policy Issue**

Should the Westminster Economic Development Authority (WEDA) hire security services for the businesses remaining on the former Westminster Mall site?

**Alternatives**

1. Adjust the number of hours that Advantage Security provides services. The service provided meets WEDA's obligation as property owner, therefore Staff does not recommend altering the hours.
2. Not hire a service and request additional police coverage on site. This alternative is not recommended because this would likely require the Police Department to utilize overtime to provide these services, which would be significantly more expensive than the cost proposed by Advantage Security.

**Background Information**

As owner of the former Westminster Mall property, WEDA took on certain responsibilities and obligations. The provision of security on the premises, particularly at opening and closing of operations as well as over night to prevent vandalism and theft, is one of WEDA's responsibilities. The previous ownership was utilizing Advantage Security when WEDA took ownership. Staff retained their services and has been pleased with their responsiveness. The attached agreement provides for Advantage Security to continue services seven (7) days a week from 5 PM to 1 AM. The total cost is estimated to run about \$59,952 with a maximum contract amount of \$68,000 to allow for any unanticipated security needs.

Respectfully submitted,

J. Brent McFall  
Executive Director

Attachment - Agreement with Advantage Security

*Responsible people... Responsive management*

December 5<sup>th</sup>, 2011

Mr. Jerry Cinkosky  
 City of Westminster  
 6575 West 88<sup>th</sup> Avenue  
 Westminster, CO 80031

Jerry:

The following information is being provided based on our discussions to reduce the level security at Westminster Mall. Below will be your rates for the year 2012.

**Scope of Service:** Provide one unarmed uniformed security officer seven days a week from 5pm-1am for a total of 56 weekly hours.

**Pricing:**

<u>Level</u>	<u>Wage*</u>	<u>Bill Rate</u>	<u>OT/Hol Rate</u>
Security Officer	\$12.00	\$17.25	+\$7.67

\*Includes \$.30 per hour for Uniform Maintenance Allowance

Vehicle Cost: \$150/week  
 Cell Phone Cost: \$11/week

Estimated yearly cost: \$59,952 (\$50,370 for 56 hours/week + \$430 holiday coverage + \$572 phone + \$8,580 patrol vehicle)

Please keep in mind that we can modify the above security program to meet your needs and budget. We remain flexible to your desires and look forward to continuing our partnership with Westminster. Please feel free to contact me at (303) 755-4407 if you have any questions or need additional information.

Thanks,

Jennifer Evans  
 Account Manager

AGREEMENT TO FURNISH PROFESSIONAL SERVICES  
TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR  
SECURITY AT THE FORMER WESTMINSTER MALL SITE

THIS AGREEMENT, made and entered into this 1st day of January, 2012, between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, hereinafter called the "WEDA," and ADVANTAGE SECURITY, INC., a corporation organized pursuant to the laws of the State of Colorado, hereinafter called the "Contractor," is as follows:

WHEREAS, WEDA wishes to obtain security services for maintenance of the former Westminster Mall site, which is generally located between 88<sup>th</sup> and 92<sup>nd</sup> Avenues and Sheridan Boulevard within the City of Westminster; and

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

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

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

I. THE PROJECT

The project consists of providing security services as more specifically described the Scope of Services, attached hereto and incorporated herein as Appendix A (hereinafter, the "Project").

II. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

The Contractor 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 Contractor 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 Contractor as to additional compensation for additional services.

IV. CONTRACTOR'S FEE

Hourly Basis Per Scheduled Rates. The compensation for the Project shall be according to the fee schedule attached hereto and incorporated herein as **Appendix A**, including reimbursable expenses as described therein. The maximum amount billable under this Agreement shall not exceed Sixty-Eight Thousand Dollars (\$68,000). The Contractor shall submit invoices to WEDA for services rendered during the preceding month, such invoices to be in the form and detail reasonably be required by WEDA. Reimbursable expenses shall be itemized. WEDA agrees to pay the Contractor within thirty (30) days of

receipt of properly documented invoices.

#### V. COMMENCEMENT & COMPLETION OF PROJECT

Contractor understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. In any event, the Project shall be completed within twelve (12) months after the Contractor receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Contractor.

#### VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon WEDA's providing Contractor with seven (7) days advance written notice, or on December 31, 2012, 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 Contractor 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 Contractor'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 Contractor in performing work on the Project, whether completed or in progress.

#### VII. INSURANCE

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

#### VIII. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## IX. PROHIBITED INTEREST

A. The Contractor 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 Contractor further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of 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 Contractor shall act as an independent contractor and not as agent of WEDA except to the extent the Contractor is specifically authorized to act as agent of WEDA.

B. Books and Records. The Contractor'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 Contractor 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 Contractor. Upon completion of the Project, or at such other time as WEDA may require, the Contractor 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 Contractor shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Contractor 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 Contractor 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 Contractor 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 Contractor, any subcontractor of the Contractor, 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 Contractor 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 Contractor, any subcontractor of the Contractor, 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 Contractor 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 Contractor, any subcontractor of the Contractor, 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 Contractor 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 Contractor.

**Project Representative for WEDA:**

Name: Jerry Cinkosky, Facilities Manager  
City of Westminster  
(on behalf of WEDA)  
Address: 6575 W. 88<sup>th</sup> Avenue  
Westminster, CO 80031  
Phone: 303-758-2160  
email: jcinkosk@cityofwestminster.us

**Project Representative for Contractor:**

Name: Jeffrey Rauske,  
Executive Vice President  
Address: 13669 E. Iliff Avenue, Suite 234  
Aurora, CO 80014  
Phone: 303-755-4407  
email: jrauske@advantagesecurityinc.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 Contractor 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 Contractor shall not assign this Agreement in whole or in part, including the Contractor'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 Contractor's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Contractor of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Contractor's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of WEDA of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as WEDA 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. Contractor 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 WEDA's right to pursue

tort remedies in addition to other remedies it may have against Contractor. Such rights and remedies shall survive the Project or any termination of this Agreement.

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

J. Subcontracting. Except subcontractors identified by name and accepted by WEDA as part of **Appendix A**, Contractor may not employ additional subcontractors to perform work on the Project without WEDA's express prior written approval. Contractor 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: Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and WEDA within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien. Furthermore, Contractor shall terminate such subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. Except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor 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"). Contractor 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.

Contractor 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).

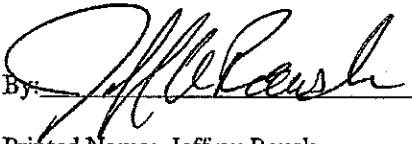
INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO BUILDING OPERATIONS & MAINTENANCE DEPARTMENT, ATTENTION: JERRY CINKOSKY.

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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.

ADVANTAGE SECURITY, INC.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

By: 

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

Printed Name: Jeffrey Rauske

Printed Name: J. Brent McFall

Title: Executive Vice President

Title: Executive Director

Address: \_\_\_\_\_

Address: \_\_\_\_\_

<sup>93</sup>  
136~~69~~ E. Iliff Avenue, Suite <sup>200</sup>~~234~~  
Aurora, CO 80014

4800 West 92nd Avenue  
Westminster, Colorado 80031

ATTEST:

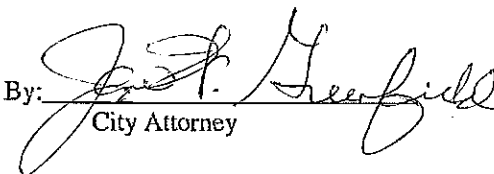
ATTEST:

  
Title: VP - Administration

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

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By:   
City Attorney

Rev. 8/11