

AGENDA

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING

MONDAY, JANUARY 27, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (December 9, 2013)
- 3. Public Hearings and New Business**
 - A.** Westminster Center Urban Reinvestment Project Consultant Contracts
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, DECEMBER 9, 2013, AT 7:58 P.M.

ROLL CALL

Present at roll call were Chairperson Atchison, Vice Chairperson Winter and Board Members Baker, Briggs, Garcia, Pinter, and Seitz. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Board Member Briggs moved, seconded by Garcia, to approve the minutes of the meeting of August 26, 2013, as written. The motion carried unanimously.

ICA BETWEEN CITY/WEDA RE REIMBURSEMENT OF COSTS – NORTH HURON URA & WURP

Board Member Briggs moved, seconded by Vice Chairperson Winter, to authorize the Executive Director to execute two Intergovernmental Cooperation Agreements between the City of Westminster and the Westminster Economic Development Authority, in substantially the same form as distributed in the agenda packet, providing payment to the City by WEDA for reimbursement of costs incurred by the City associated with maintenance of improvements and other contractual obligations in the North Huron Urban Renewal Area and Westminster Center Urban Reinvestment Plan Area. The motion passed on a 5:1:1 vote with Board Member Baker voting no and Board Member Seitz abstaining.

ADJOURNMENT

There was no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 8:00 p.m.

Chairperson

ATTEST:

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
January 27, 2014



SUBJECT: Westminster Center Urban Reinvestment Project Consultant Contracts

Prepared By: Susan Grafton, Economic Development Director

Recommended WEDA Board Action

Authorize the Executive Director to enter into one-year agreements with the Laramie Company and John M Mullins and Associates, Inc. to provide consultant services regarding the redevelopment of the Westminster Center Urban Reinvestment Project (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 retail consultant with over 30 years of retail leasing 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.
- WEDA approval of the contracts is required since the fees exceed staff approval authority.
- Adequate funds have been budgeted and were anticipated for this purpose.

Expenditure Required: \$182,500

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 two 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. Both 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 works to facilitate the development of Phase 1 this fall. Mary Beth Jenkins will be key in helping prepare the concept plan for the retail area, attracting retail users and development to the site as well as with all real estate negotiations.

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

Attachments

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

AGREEMENT WITH THE LARAMIE COMPANY 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 January, 2014, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the “WEDA,” and **THE LARAMIE COMPANY, 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 wishes to redevelop the Westminster Center Urban Reinvestment Project (“WURP”) area, located at approximately 88th and Sheridan; and

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

WHEREAS, sufficient authority exists in 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 Consultant agree as follows:

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

I. THE PROJECT

The project consists of providing consulting services to the City of Westminster staff, acting on behalf of WEDA, to support redevelopment of the WURP site (hereinafter referred to as the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general retail consulting services, including the following tasks:

- Providing feedback and input to WEDA concerning planning for retail and other uses;
- Assisting in identifying, qualifying, selecting and negotiating terms for developers, end users and anchor tenants;
- Assisting with negotiation for pre-development and final development agreements;
- Assisting with creation of a Phase I finance agreement (as defined by WEDA) and in Phase I land transfer;
- Providing and coordinating competitive market data and retail demographic information;
- Assisting with ongoing communications and negotiations with JCPenney, Brunswick and other existing onsite users; and
- Assisting with branding and marketing the site.

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 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 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 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.

V. COMMENCEMENT & COMPLETION OF PROJECT

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

VI. TERMINATION

This Agreement terminates on December 31, 2014, 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.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The Consultant's Automobile and Commercial General Liability policies shall be endorsed to name WEDA as an additional insured and to provide that such insurance is primary with respect to claims made by WEDA. Consultant's Automobile and Commercial General Liability policies 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 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 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 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 the
City of Westminster, acting on behalf of
WEDA:**

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

Project Representative for Consultant:

Name: Mary Beth Jenkins
Address: 730 17th Street, Suite 840
Denver, CO 80202
Phone: 303-573-4811
email: mb@laramiecompany.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of 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 the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

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

I. Entire Agreement. This Agreement 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 MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

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

THE LARAMIE COMPANY, LLC

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: Mary Beth Jenkins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

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

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

APPROVED AS TO LEGAL FORM

By: _____

Authority Attorney

I certify that either an appropriation has been made by the WEDA Board or that sufficient funds have otherwise been made available for the payment of this Agreement.

Executive Director

Account No. 80968005952

Rev. 05/13

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

THIS AGREEMENT, made and entered into this 1st day of January, 2014, between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called the “WEDA,” and **JOHN M. MULLINS & ASSOCIATES, INC.**, a corporation organized pursuant to the laws of the State of Colorado hereinafter called the “Consultant,” is as follows:

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

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

WHEREAS, sufficient authority exists in 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 Consultant agree as follows:

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

I. THE PROJECT

The project consists of providing retail consulting services, initiating developer contacts, financial strategies, district development strategies, consultation on operation and maintenance of the ultimate project and other similar advisory services to the City of Westminster staff acting on behalf of WEDA to support redevelopment of the WURP site (hereinafter referred to as the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general consulting services, including the following tasks:

- Initiating developer contacts as well as contacts with potential end users;
- Providing financial strategy services, strategy concerning districts and operation and maintenance strategies;
- Establishing a detailed finance plan for phase 1 of the WURP;
- Establishing a general finance plan for the overall site (considering operation and maintenance);
- Assisting with negotiation of pre-development and final development agreements;

- Providing competitive market data and retail demographic information; and
- Assisting in drafting terms for specific development on site.

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 basic 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 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, 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.

V. COMMENCEMENT & COMPLETION OF PROJECT

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

VI. TERMINATION

This Agreement terminates on December 31, 2014, 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.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado, Professional Liability Insurance in the minimum amount of \$1,000,000, but in any event sufficient to cover Consultant's liability under paragraph X.D. below, Automobile Liability of \$500,000 per person/\$1,000,000 per occurrence, and Commercial General Liability of \$500,000 per person/\$1,000,000 per occurrence. The Consultant's Automobile and Commercial General Liability policies shall be endorsed to name WEDA as an additional insured and to provide that such insurance is primary with respect to claims made by WEDA. Consultant's Automobile and Commercial General Liability policies 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 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 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 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 the
City of Westminster, acting on behalf of
WEDA:**

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

Project Representative for Consultant:

Name: John M. Mullins
Address: 1988 E. Ross Lane
Highlands Ranch, CO 80126
Phone: 303-683-9382
email: jmmwurd@aol.com

All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of 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 the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

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

I. Entire Agreement. This Agreement 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 MANAGERS OFFICE, ATTENTION: SUSAN GRAFTON.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

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

JOHN M MULLINS & ASSOCIATES, INC.

WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY

By: _____

By: _____

Printed Name: John M. Mullins

Printed Name: J. Brent McFall

Title: President

Title: Executive Director

Address:

Address:

1988 E. Ross Lane
Highlands Ranch, CO 80126

4800 West 92nd Avenue
Westminster, Colorado 80031

ATTEST:

ATTEST:

Title: _____

Secretary

APPROVED AS TO LEGAL FORM

Corporate Seal (if applicable)

By: _____
Authority Attorney

I certify that either an appropriation has been made by the WEDA Board or that sufficient funds have otherwise been made available for the payment of this Agreement.

Executive Director

Account No. 80968005952

Rev. 05/13