

AGENDA

**WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
SPECIAL MEETING**

MONDAY, DECEMBER 14, 2015

AT 7:00 P.M.

- 1. Roll Call**
- 2. Consideration of Minutes of the Preceding Meetings** (October 26, 2015, and November 23, 2015)
- 3. Public Hearings and New Business**
 - A. Downtown Westminster Project Consultant Contracts
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, OCTOBER 26, 2015, AT 10:13 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Bob Briggs, and Board Members Bruce Baker, Maria De Cambra, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, David Frankel, Attorney, and Linda Yeager, Secretary.

APPROVAL OF MINUTES

Vice Chairperson Briggs moved, seconded by Board Member Baker, to approve the minutes of the meeting of August 10, 2015, as written. The motion carried unanimously.

CONTRACT FOR UNDERWRITER CONSULTANT SERVICES

Board Member Garcia moved, seconded by Board Member De Cambra, to authorize the Executive Director to execute a contract, in substantially the same form as attached to the agenda memorandum, with George K. Baum & Company for underwriting services for a one-year period with the option to renew for an additional four years. The motion passed on a 6:1 vote with Councillor Baker dissenting

WEDA, CITY, DOWNTOWN GID INTERGOVERNMENTAL COOPERATION AGREEMENT

Board Member Seitz moved, seconded by Vice Chairperson Briggs, to authorize the Executive Director to execute an Intergovernmental Cooperation Agreement between the Westminster Economic Development Authority, the City of Westminster, and the Westminster Downtown General Improvement District, in substantially the same form as attached to the agenda memorandum, providing for reimbursement to the City by either WEDA and/or the GID of certain costs incurred by the City within the boundaries of the Westminster Center Urban Reinvestment Plan Area. The motion carried by unanimous vote.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 10:19 p.m.

ATTEST:

Chairperson

Secretary

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY
MONDAY, NOVEMBER 23, 2015, AT 8:29 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Alberto Garcia, and Board Members Bruce Baker, Shannon Bird, Emma Pinter, and Anita Seitz. Board Member Maria De Cambra was absent. Also present were Donald M. Tripp, Executive Director, David Frankel, Attorney, and Linda Yeager, Secretary.

RESOLUTION NO. 165 ACCEPTING PETITION FOR INCLUSION OF PROPERTY

Vice Chairperson Garcia moved, seconded by Board Member Pinter, to adopt Resolution No. 165 authorizing WEDA's Executive Director to Petition for Inclusion of WEDA-owned property at the Downtown Westminster site into the City of Westminster Downtown General Improvement District. At roll call, the motion passed unanimously.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 8:30 p.m.

ATTEST:

Chairperson

Secretary

WEDA Agenda Item 3 A

Agenda Memorandum

Westminster Economic Development Authority
December 14, 2015



SUBJECT: Downtown Westminster Project Consultant Contracts

Prepared By: Jody Andrews, Deputy Executive 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 development of the Downtown Westminster Project, in a form substantially the same as the attached documents.

Summary Statement

- The Downtown Westminster Project is gaining significant momentum as the commercial real estate market continues to revive and WEDA and the City implement the affirmed vision for the project. An increased use of specialized consulting services are needed through 2016 to facilitate the revised block-by-block development approach, particularly with respect to real estate and financial services.
- The Laramie Company provides special project support as a real estate 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 as 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: \$323,500

Source of Funds: WEDA – Downtown Westminster Project Participation

Policy Issue

Should the WEDA continue to work with highly respected consultants to assist with moving forward on the redevelopment of Westminster's new Downtown?

Alternatives

Do not hire existing experts to assist with and provide advice concerning the redevelopment of the new Downtown, or hire different experts.

Not hiring the existing experts 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 not only on the Downtown Westminster project, but on various redevelopment projects in the Denver metropolitan area, as well as throughout Colorado and the western United States.

Hiring different experts is also not recommended at this time, as the two consultants recommended by Staff have been integrally involved in the Downtown Project for many years and provide a high level of continuity in planning, financing, and developer and tenant networking and negotiations. Changing the WEDA consulting team at this time could be detrimental to the current negotiations underway and the timely implementation of the project.

Background Information

The team assembled for the Downtown Westminster Project is highly skilled, with many 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 general improvement districts, financial pro formas and development strategies will be key throughout 2016 as the Downtown Westminster team works to facilitate the development of Phase 1. Mary Beth Jenkins of the Laramie Company will be key in attracting and negotiating with vision-aligned mixed-use, retail, office and residential developers, preparing the overarching retail strategy for the entire Downtown as well as for individual blocks, negotiating revised leases with existing businesses, and attracting and securing key retail tenants vital to the success of the project.

In 2015 WEDA changed from a master developer approach to a block-by-block development approach for the new Downtown, and this has necessitated certain changes to the scope of work and compensation elements in the Laramie Company and John M Mullins and Associates contracts, the redlined versions of which are attached to this memorandum.

These contracts require WEDA authorization since the amount of each contract exceeds the Executive Director's approval authority, with the Laramie contract not to exceed \$220,000 exclusive of commissions and the John M Mullins not to exceed \$103,500. The work of these expert consultants will be critical to achieving the vision WEDA and the City have for the Downtown Westminster site.

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

Respectfully submitted,

Don Tripp
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

THIS AGREEMENT (the "Agreement"), is made and entered into effective the 1st day of January, 2016, by and between the **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY**, hereinafter called "WEDA," and **THE LARAMIE COMPANY, LLC**, a limited liability company organized pursuant to the laws of the State of Colorado hereinafter called the "Consultant," as follows:

WHEREAS, WEDA wishes to wishes to redevelop the Westminster Center Urban Reinvestment Project ("WURP") area, located at approximately 88th and Sheridan, in the City of Westminster, Colorado (the "Property"); 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, herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 by December 31, 2015, neither Party shall be bound to the terms of this Agreement.

I. THE PROJECT

The Consultant agrees to provide real estate consulting services to the City of Westminster ("City") staff, acting on behalf of WEDA, to support the sale and redevelopment of the Property (hereinafter referred to as the "Project[CB1]").

II. THE CONSULTING SERVICES

The Consultant shall provide general real estate consulting services, including without limitation the following tasks:

- Providing input and feedback to WEDA concerning planning for retail and other uses;

- Assisting in identifying, qualifying, selecting and negotiating on behalf of WEDA term sheets for residential, retail and office developers for the site;
- Assisting with negotiation for the pre-development and final development agreements;
- Providing and coordinating competitive market data and retail demographic information and coordinating activities with the retail demographic consultant;
- Assisting in ongoing communications and negotiations with JCPenney, Brunswick Bowling, Olive Garden and Dr. McMurtry;
- Assisting with branding and marketing the site; and
- Identifying additional tenants to determine interest level and deal parameters.

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. THE CONSULTANT'S REAL ESTATE BROKERAGE SERVICES

WEDA and Consultant agree to enter into an Exclusive Listing Agreement for the Sale of all or any portion of the Property, with Consultant acting as Seller's Exclusive Listing Agent, under mutually acceptable terms and conditions to be outlined in an Exclusive Listing Agreement to be drafted by WEDA's attorney and executed by WEDA and Consultant on or before January 31, 2016 (the "Listing Agreement"). The Listing Agreement shall provide that WEDA will pay the Consultant, as real estate broker, a real estate commission ("Commission") in the amount of the greater of (i) Two and One-Half Percent (2.5%) of the Net Purchase Price or (ii) \$25,000 for a Sale in which there is no buyer's cooperating broker. WEDA will pay the Consultant a Commission in the amount of the greater of (i) Two and One-Half Percent (2.5%) of the Net Purchase Price or (ii) \$25,000, increased by the amount of any commission to be paid by the Consultant, as real estate broker, to a buyer's cooperating broker as may be agreed by WEDA in writing prior to execution of the Purchase and Sale Agreement for the Sale, but in no event increased more than Three Percent (3%) of the Net Purchase Price. The term "Net Purchase Price" is defined as the Sale purchase price paid by a buyer for the portion of the Property being purchased, net of any price adjustments agreed to by WEDA and the buyer.

IV. ADDITIONAL SERVICES

When authorized in writing by WEDA, the Consultant agrees to furnish or obtain from others, additional professional services related to the Project, the Property or its redevelopment, subject to separate written agreements between WEDA and the Consultant as to additional compensation for additional services.

V. CONSULTANT'S COMPENSATION

Monthly Retainer. WEDA will pay the Consultant a lump sum monthly fee in the amount of Twenty Thousand Dollars (\$20,000) for the month of January 2016 and thereafter a monthly fee of Seventeen Thousand Five Hundred Dollars (\$17,500) per month over the remaining term of this

Agreement. 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.

Reimbursable Expenses. WEDA will reimburse Consultant a maximum of Seven Thousand Five Hundred Dollars (\$7,500) in reasonable travel costs and other approved consulting expenses during the term of this Agreement. The Consultant's total fees under this Agreement, including reimbursable expenses, shall not exceed Two Hundred Twenty Thousand Dollars (\$220,000.00), exclusive of any real estate brokerage commissions payable to Consultant as a real estate broker under the Listing Agreement. Said fees and the Commissions 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 in Article V.

VI. TERM OF THE AGREEMENT

The term of this Agreement shall begin on January 1, 2016, and shall terminate on December 31, 2016, unless earlier terminated pursuant to the provisions set out below.

VII. TERMINATION

This Agreement shall terminate prior to December 31, 2016 at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon either the Consultant or WEDA providing ninety (90) 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 the 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.

In addition, WEDA shall have the right to immediately terminate this Agreement upon notice to the Consultant if any of the following events shall occur: cancellation or expiration of Consultant's real estate brokerage license; termination of the entity existence of the Consultant; dissolution of the Consultant entity, except by merger with or consolidation with another entity which is wholly owned by Consultant or the principals of the Consultant; the adjudication of the bankruptcy of Consultant under any Chapter of the Federal Bankruptcy Code; the reorganization or reconstruction or the making of an assignment for the benefit of creditors by Consultant; or the Consultant's breach of the requirement to provide insurance certificates.

VIII. 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 the Consultant's liability under its Indemnity obligations set out in this Agreement. 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. The 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.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO CITY MANAGERS OFFICE, ATTENTION: JODY ANDREWS.

IX. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any prospective purchaser, Buyer, 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. The 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.

X. PROHIBITED INTERESTS; CONFIDENTIALITY

1. Consultant agrees not to provide consulting or brokerage services related to the Project to any third party other than to WEDA pursuant to the terms of this Agreement. Neither Consultant nor any of its employees or agents shall at any time be in the employ of WEDA or the City or be considered the employee of WEDA or of the City. Nothing contained herein or in the relationship of WEDA and Consultant shall be deemed to constitute a partnership, joint venture or any other similar relationship between WEDA and Consultant or the City and Consultant.

The Consultant agrees that it presently has no interest in the Project and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder during the term of this Agreement and any Holdover Period. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed. Consultant covenants and warrants that Consultant shall not act as a principal in this transaction; and, other than with respect to the relationship which results due to this Agreement, neither Consultant nor anyone in whom Consultant has a financial interest nor any Affiliate of Consultant including, without limitation, the Consultant, shall benefit from the Project unless disclosed in writing to WEDA in advance

and approved by WEDA in writing, which approval may be withheld in WEDA's sole and absolute discretion.

2. No official or employee of WEDA shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

3. Consultant shall keep all information which comes into Consultant's possession with respect to the sale of the Property and Project and with respect to WEDA and any other data given to Consultant by WEDA confidential; and Consultant shall not disclose such information to any third parties without WEDA's prior written approval. However, Consultant's obligation to keep information confidential shall not apply to information which (i) is already available to the general public; or (ii) becomes available to the general public through no fault of Consultant or any of its or their respective officers, employees, contractors or agents; or (iii) is required by law to be disclosed. Colorado law requires a broker to disclose to any prospective buyer all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property and the physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which are required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. WEDA agrees that, following any execution of a mutually acceptable purchase and sale agreement, any Buyer may have the Property inspected, and WEDA authorizes Broker to disclose to the Buyer, without making any representation or warranty, any facts actually known by Broker about the condition of the Property.

XI. GENERAL PROVISIONS

A. Independent Contractor. In the performance of this Agreement, 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 an 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 the 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 by Consultant. 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 reasonable attorneys' fees, arising out of or resulting from performance of Consultant's work on 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 section entitled "Responsibility; Liability". 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 section 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. Notice/Communications. Any notice which a party is required or may desire to give the other party shall be in writing and may be delivered (a) personally (b) by United States registered or certified mail, postage prepaid, return receipt requested or (c) by a reputable national overnight courier service regularly providing evidence of delivery (with charges paid by the party sending the notice). Any such notice shall be addressed to the address set out in each signature block below, subject to the right of a party to designate a different address for itself by notice similarly given. Notice given in the manner specified above shall be deemed to have been given as follows: (i) if given in the manner specified in clause (b) above, on the date which is three (3) business days after the date mailed (as evidenced by the receipt); (ii) if given in the manner specified in clause (c) above, on the date which is one (1) business day after the date sent (as evidenced by the receipt); and (iii) in all other instances, upon receipt of the same by the party to whom the same is to be given (whether accepted or refused).

F. Assignment. The Consultant shall not assign this Agreement (which is deemed to be a personal services 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. The 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 WEDA's right to pursue tort remedies in addition to other remedies it may have against the 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. The Consultant may not employ subcontractors to perform work on the Project without WEDA's express prior written approval. The 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: The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. In addition, the 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 the Consultant obtains actual knowledge that an entity performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall notify the entity and WEDA within three (3) days that the Consultant has actual knowledge that the entity is employing or contracting with an illegal alien. Furthermore, the 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 the 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.

The 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"). The 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.

The 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).

Counterparts. This Agreement may be executed in counterpart, and when so executed, such copies taken together, with one executed by WEDA and one executed by Broker on behalf of Consultant, shall be deemed to be a full and complete contract between the parties.

Signage. No signs shall be placed on the Property without the prior written consent of WEDA, and neither Broker nor the Consultant shall advertise or otherwise make any public statements regarding the Sale of the Property or any portion thereof except as expressly authorized in this Agreement. Upon the consummation of a Sale of the Property or any portion thereof, Broker or the Consultant shall have the right to advertise such Sale, provided that such advertisement shall not include any details of the terms of the Sale other than Broker's participation in the transaction, and the identity of the Buyer and WEDA.

Preparation of Agreement. This Agreement was prepared by the Office of the City Attorney on behalf of WEDA.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

THE LARAMIE COMPANY, LLC

By: _____
Donald M. Tripp, Executive Director

By: _____
Mary Beth Jenkins, President

Address: 4800 West 92nd Avenue
Westminster, CO 80031

Consultant signs to evidence her agreement to be personally bound by the provisions of Article X, Prohibited Interests/Confidentiality.

Attest:

Secretary

Consultant's Signature

APPROVED AS TO LEGAL FORM

Address: 730 Seventeenth St., Suite 840
Denver, CO 80202

By: _____
Authority Attorney

AGREEMENT WITH JOHN M. MULLINS AND ASSOCIATES, INC., TO FURNISH CONSULTING SERVICES TO THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY FOR REDEVELOPMENT OF DOWNTOWN WESTMINSTER

THIS AGREEMENT, made and entered into effective the 1st day of January, 2016, between the WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, hereinafter called "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 redevelop the Downtown Westminster site located at approximately 88th and Sheridan in the City of Westminster (the "Development Site"); and

WHEREAS, WEDA desires to engage the Consultant to render the professional 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, office and residential real estate 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 Development Site (hereinafter referred to as the "Project").

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant shall provide general real estate 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 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 eight thousand dollars (\$8,000) 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.

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 three thousand five hundred dollars (\$103,500.00). 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, 2016, and shall terminate on December 31, 2016.

VI. TERMINATION

This Agreement terminates on December 31, 2016, unless agreed otherwise by the parties. This Agreement shall earlier terminate 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.

3. 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: Jody Andrews
Address: 4800 W. 92nd Avenue, Westminster,
CO 80031
Phone: 303-658-2003
E-mail: jandrews@cityofwestminster.us

Project Representative for Consultant

Name: John M. Mullins
Address: 1988 E. Ross Lane,
Highlands Ranch, CO 80126
Phone: 303-683-9382
E-mail: jmmworld@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, including without limitation that certain Agreement dated effective January 1, 2014, as amended. 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: JODY ANDREWS.

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.

**WESTMINSTER ECONOMIC
DEVELOPMENT AUTHORITY**

JOHN M. MULLINS & ASSOCIATES, INC.

By: _____
Donald M. Tripp, Executive Director

By: _____
John M. Mullins, President

Attest:

Attest:

Secretary

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.: _____