

## **DPS/CITY POST-ELECTION BOND AND MILL LEVY AGREEMENT**

This DPS/CITY POST-ELECTION BOND AND MILL LEVY AGREEMENT (the “Agreement”) is executed by and between the **CITY AND COUNTY OF DENVER**, a Colorado home rule city and municipal corporation (“City”) and **SCHOOL DISTRICT NO. 1** in the City and County of Denver, State of Colorado, a public school district and body corporate (“DPS”), collectively the “Parties”. This Agreement is effective as of May 15, 2017.

### **Recitals**

**A.** DPS has built schools to serve development in the Stapleton area and intends to build two additional schools in Section 10 of the Stapleton site north of 56th Avenue (the “New Schools”).

**B.** DPS has been advised by the City Fire Chief that the national standard for travel response time to an emergency is four minutes and that there is not currently a City fire station located within four minutes’ travel time of the New Schools as well as the Paul Sandoval Campus, home to Northfield High School.

**C.** The City Fire Chief has strongly recommended that construction of a new fire station in the vicinity of 50th Avenue and Central Park Boulevard is in the interests of the safety of students, staff and visitors to the New Schools as well as the Paul Sandoval campus.

**D.** The City, DPS, Park Creek Metro District (“PCMD”), Forest City Stapleton, Inc. (“Forest City”), and Denver Urban Renewal Authority (“DURA”) are parties to that certain Individual Facilities Development Agreement F-8 dated as of May 15, 2017 (the “IFDA F-8”) where all have agreed on an arrangement to allow for funding for additional infrastructure in Section 10 and other areas of Stapleton, including acquisition of a school site and construction of one of the New Schools and a fire station.

**E.** In order to help fund the acquisition of a school site and construction of a fire station, DPS intends to issue Certificates of Participation in the net amount of \$16.45 million (“DPS COP Proceeds”).

**F.** Pursuant to this Agreement and the DPS COP Transaction Documents (as defined in IFDA F-8), DPS will place \$9.4 million of the DPS COP Proceeds in an account with the DPS Trustee (as defined in IFDA F-8) to be used to reimburse the City for design and construction of the fire station.

**G.** In consideration of DPS’s participation in the IFDA F-8 funding arrangement, the City’s Chief Financial Officer (as defined below) intends to annually request that City Council appropriate an amount equal to the City Appropriation Amount (as defined below) from 2017 to and including 2024, and if appropriated, pay DPS the DPS Payment Amount (as defined below) from 2018 to and including 2025.

**H.** In 2025, the City’s Chief Financial Officer intends to request that City Council appropriate an amount equal to the 2025 DPS Payment Amount (as defined below), and, if appropriated, pay DPS the 2025 DPS Payment Amount in 2026.

**I.** To effectuate this, the Parties desire to enter into this Agreement.

**Agreement**

**NOW, THEREFORE**, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and DPS agree as follows:

**1. Definitions.** In addition to the terms defined in the Recitals above, which Recitals are incorporated herein, the following terms shall have the meanings set forth below.

**A.** “2025 DPS Payment Amount” means, for the DURA Calculation Year commencing on December 1, 2024, an amount equal to (a) the DPS 2016 Bond and Mill Levy Override Amount for the DURA Calculation Year commencing on December 1, 2024, actually received by DURA through September 30, 2025, multiplied by (b) the City Percentage for the DURA Calculation Year commencing on December 1, 2024.

**B.** “Chief Financial Officer” or “CFO” means the Manager of Finance for the City and County of Denver as defined in the City Charter.

**C.** “City Appropriation Amount” means an amount equal to the product of (a) the DPS 2016 Election Mill Levies for the applicable tax year, (b) the total assessed property value within the Stapleton Urban Redevelopment Area for the applicable tax year, (c) the City Percentage for the applicable DURA Calculation Year, and (d) 0.99.

**D.** “City Percentage” means: (a) for the DURA Calculation Years commencing on December 1 of the years 2016, 2017 and 2018: 30%; (b) for the DURA Calculation Years commencing on December 1 of the years 2019, 2020, 2021, 2022, and 2023: 47%; and (c) for the DURA Calculation Year commencing on December 1, 2024: 20%.

**E.** “Cooperation Agreement” means the Stapleton Urban Redevelopment Area Cooperation Agreement between the City and DURA dated July 15, 2000, as amended.

**F.** “DPS 2016 Bond and Mill Levy Override Amount” means the amount of ad valorem property tax revenue received by DURA in a particular DURA Calculation Year within the Urban Redevelopment Area that is attributable to the DPS 2016 Election Mill Levies.

**G.** “DPS 2016 Election Mill Levies” means the mill levies levied for the payment of the general obligation bonds and the mill levy override approved by the voters of DPS on November 8, 2016.

**H.** “DPS Payment Amount” means, for any DURA Calculation Year commencing on December 1 of the years 2016 to and including 2023, an amount equal to (a) the DPS 2016 Bond and Mill Levy Override Amount for such DURA Calculation Year, multiplied by (b) the City Percentage applicable for such DURA Calculation Year.

**I.** “DPS Payment Shortfall Amount” means the amount, if any, by which a DPS Payment Amount exceeds the applicable City Appropriation Amount.

**J.** “DURA Calculation Year” means a 12-month period commencing on December 1 of a particular calendar year and ending on November 30 of the next calendar year.

**K.** “Urban Redevelopment Area” has the meaning given to such term by the Cooperation Agreement.

**2. Determination of City Appropriation Amount**

**A.** In order to determine the City Appropriation Amount, the Parties shall undertake the following process:

**(i)** On or before December 31 of each year from 2016 to and including 2024, DPS shall certify to the CFO and DURA:

- 1.** The total mills that DPS will levy; and
- 2.** The DPS 2016 Election Mill Levies.

**(ii)** The CFO will then calculate the City Appropriation Amount by multiplying:

- 1.** The DPS 2016 Election Mill Levies for the applicable tax year,
- 2.** The total assessed property value within the Urban Redevelopment Area, certified by the Denver Assessor’s Office to DPS for the applicable tax year,

3. The City Percentage for the applicable DURA Calculation Year, and
4. 0.99, in order to account for the City's 1% collection fee.

**Example:** As a hypothetical for the City Appropriation Amount for 2020 (i.e. the amount that the CFO will request on or before November 15, 2020):

1. DPS certifies, on or before December 31, 2019, that the DPS 2016 Election Mill Levies for 2019, the applicable tax year, equal 5 mills;
2. The total assessed property value within the Urban Redevelopment Area, as certified by the Denver Assessor's Office to DPS for 2019, the applicable tax year, is \$500,000,000;
3. The City Percentage for the DURA Calculation Year commencing on December 1, 2019, the applicable DURA Calculation Year, is 47%;
4. All of which is multiplied by 0.99.
5. Consequently, the City Appropriation Amount is:  
$$5 \text{ mills} \times \$500,000,000 \times 0.47 \times 0.99 = \$1,163,250.$$

3. **Annual Appropriation Request for City Appropriation Amount**

A. The City's Chief Financial Officer shall request annually from 2017 to and including 2024, that City Council appropriate the City Appropriation Amount and encumber such amount for payment to DPS as provided herein.

B. The CFO shall make the request for the City Appropriation Amount on or before November 15 of each year from 2017 to and including 2024.

4. **DURA's Calculation of DPS 2016 Bond and Mill Levy Override Amount; 2017 - 2024**

In accordance with IFDA F-8, after December 1 and on or before December 20 of each year from 2017 to and including 2024, DURA is required to calculate and report to the CFO the DPS 2016 Bond and Mill Levy Override Amount for the preceding DURA Calculation Year.

**5. Determination of the DPS Payment Amount**

In order to determine the DPS Payment Amount, the City will multiply the DPS 2016 Bond and Mill Levy Override Amount, reported to the City by DURA as required by IFDA F-8 and recited by Section 4 of this Agreement, by the City Percentage for the applicable DURA Calculation Year.

**Example:** As a hypothetical for the DPS Payment Amount for 2020 (i.e. the amount, if appropriated by City Council, to be paid to DPS on or before January 15, 2021):

1. DURA reports to the City, by December 20, 2020, that the DPS 2016 Bond and Mill Levy Override Amount for the DURA Calculation Year commencing on December 1, 2019 is \$2,000,000.
2. The City then multiplies the reported DPS 2016 Bond and Mill Levy Override Amount by the City Percentage for the DURA Calculation Year commencing on December 1, 2019, 47%.
3. Consequently, the DPS Payment Amount is:  
 $\$2,000,000 \times 47\% = \$940,000$ .

**6. Payment of DPS Payment Amount to DPS**

A. The portion of the City Appropriation Amount, if appropriated, to be actually paid to DPS shall be the DPS Payment Amount.

B. The City shall remit the DPS Payment Amount to DPS on or before January 15 of the year in which the funds become available.

**7. Insufficient Appropriation**

A. If the DPS Payment Amount is greater than the City Appropriation Amount, the difference will constitute the DPS Payment Shortfall Amount. If there is a DPS Payment Shortfall Amount in a particular year, then the Chief Financial Officer, in addition to the next City Appropriation Amount request, shall request that City Council appropriate an amount equal to the DPS Payment Shortfall Amount and encumber such amount for payment to DPS.

B. The CFO shall make the request for the DPS Payment Shortfall Amount on or before the next November 15.

C. If the DPS Payment Shortfall Amount is appropriated, the City shall remit such amount on or before January 15 of the year in which the funds become available.

**8. Determination of 2025 DPS Payment Amount**

In order to determine the 2025 DPS Payment Amount, the City will multiply (a) the DPS 2016 Bond and Mill Levy Override Amount for the DURA Calculation Year commencing on December 1, 2024, actually received by DURA through September 30, 2025, by (b) the City Percentage for the DURA Calculation Year commencing on December 1, 2024.

**Example:** As a hypothetical for the 2025 DPS Payment Amount (i.e. the amount, if appropriated by City Council, to be paid to DPS on or before January 15, 2026):

1. DURA reports to the City on October 1, 2025, the DPS 2016 Bond and Mill Levy Override Amount for the DURA Calculation Year commencing on December 1, 2024, that DURA has actually received, is \$5,000,000.
2. The City then multiplies this reported amount by the City Percentage for the DURA Calculation Year commencing on December 1, 2024, which is 20%.
3. Consequently, the 2025 DPS Payment Amount is:  
$$\$5,000,000 \times 20\% = \$1,000,000$$

**9. Appropriation Request for 2025 DPS Payment Amount**

A. In 2025, the City's Chief Financial Officer shall request that City Council appropriate an amount equal to the 2025 DPS Payment Amount and encumber such amount for payment to DPS.

B. The CFO shall make the request for the 2025 DPS Payment Amount after September 30, 2025, and on or before November 15, 2025.

**10. DURA's Calculation of DPS 2016 Bond and Mill Levy Override Amount; 2025**

In accordance with IFDA F-8, on October 1, 2025, DURA is required to calculate and report to the CFO the DPS 2016 Bond and Mill Levy Override Amount that DURA has received through September 30, 2025 for the DURA Calculation Year commencing on December 1, 2024.

**11. Payment of 2025 DPS Payment Amount**

If City Council appropriates the 2025 DPS Payment Amount, the City shall remit an amount equal to the 2025 DPS Payment Amount on or before January 15, 2026.

**12. Remaining DPS Payment Shortfall Amounts**

A. In 2025, the CFO shall also request that City Council appropriate any DPS Payment Shortfall Amount that has not been appropriated and encumber such amount for payment to DPS.

B. The CFO shall make the request for any remaining DPS Payment Shortfall Amount on or before November 15, 2025.

C. If any remaining DPS Payment Shortfall Amount is appropriated, the City shall remit such amount on or before January 15, 2026.

**13. No Amendments to DPS - DURA Third Supplement to Amended and Restated Stapleton School Funding Agreement Without CFO Approval**

A. DPS shall not approve any amendment or further supplement of the Third Supplement to Amended and Restated Stapleton School Funding Agreement, between DPS and DURA, without the written approval of the CFO.

**14. Miscellaneous**

A. **Relationship to IFDA F-8 and IFDA F-8 transaction documents.** This Agreement will be governed by the terms of IFDA F-8.

B. **Mutual Cooperation.** Upon completion and delivery of this Agreement, the City and DPS covenant and agree that they will mutually cooperate and perform all acts necessary or appropriate to discharge all obligations contained in or contemplated by this Agreement.

C. **No Third Party Beneficiaries.** The City and DPS intend that this Agreement shall create no third party beneficiary interest. The City and DPS are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation constituting a different interest, and, in any event, expressly disclaim any such acts or actions.

D. **Annual Appropriations.** All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. Failure by the City Council to appropriate funds shall not constitute a default hereunder. All obligations of

DPS under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the Board of Education for the purposes of this Agreement. Failure by DPS to appropriate funds shall not constitute a default hereunder.

**E. Default Remedies.** If either party to this Agreement defaults on its obligations expressly provided herein, the non-defaulting party may only seek, to the extent permitted by law, specific performance. The City and DPS specifically waive the right to recover damages and attorney's fees against each other.

**F. Right to Inspect Books.** In addition to all rights the City has under Colorado Revised Statutes, Section 24-72-201, *et seq*, DPS agrees that the City, the City's Auditor and any authorized representative shall have the right at all reasonable times and after reasonable notice to examine all books and records with respect to this Agreement.

**G. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and DPS and their respective successors and permitted assigns. This Agreement will not be binding until executed by all the Parties.

**H. Severability.** In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided however, that if either party determines, in its sole discretion, that such invalid or unenforceable provision was material, the Parties shall be obligated to use good faith efforts to negotiate and agree upon a replacement provision that is valid and enforceable.

**I. Applicable Law.** This Agreement shall be governed by and construed in accordance with applicable federal law, the laws of the State of Colorado, the City Charter, the Denver Revised Municipal Code, ordinances and rules and regulations of the City.

**J. Captions.** The captions herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

**K. Modification.** This Agreement may be modified, amended, changed or terminated, in whole or in part, without City Council approval unless City Council approval is required by City Charter. Any modification, amendment, change, or termination shall be in writing executed by the City and DPS.

**L. Waiver.** The waiver of a breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by any other party of the same or another provision of this Agreement.



**M. Venue.** Venue shall be exclusive to the District Court in and for the City and County of Denver.

**N. Notices.** Except as otherwise expressly provided herein, all notices, certificates or other communications hereunder shall be deemed given when personally delivered or upon three business days following mailing by registered or certified mail, postage prepaid, addressed as follows:

**If to the City:**

Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, CO 80202

**With copies to:**

Chief Financial Officer  
City and County of Denver  
201 W. Colfax Ave., Dept. 1010  
Denver, CO 80202

City Attorney  
City and County of Denver  
201 W. Colfax Ave, Dept. 1207  
Denver, CO 80202  
Attn: Municipal Operations

**If to DPS:**

Denver Public Schools  
Emily Griffith Campus  
1860 Lincoln Street  
11th Floor  
Denver, CO 80203  
Attention: Chief Financial Officer  
With a copies to:

Denver Public Schools  
Emily Griffith Campus  
1860 Lincoln Street  
11th Floor  
Denver, CO 80203  
Attention: General Counsel

Dee Wisor  
Butler Snow LLP

1801 California Street  
Suite 5100  
Denver, Colorado 80202

or at other such addresses as the parties may hereafter or from time to time designate by written notice to the other party given in accordance with this Section.

**O. Government Authority.** The City and DPS shall comply with any and all valid state, federal or local laws or regulations applicable to this Agreement, and any and all valid orders, regulations, or licenses issued pursuant to any federal, state, or local law or regulation applicable to this Agreement.

**P. Assignment.** Neither the City nor DPS shall assign any of their rights or duties, in whole or in part, under this Agreement without the prior written consent of the other party.

**Q. Responsibility.** Each party shall be responsible for any and all suits, demands, costs, or actions proximately resulting from its own individual acts or omissions.

**R. Public Officials.** No elected official, director, officer, agent, or employee of the City or DPS, nor any director, officer, employee or personal representative of the City or DPS shall be charged personally or held contractually liable by or to the other party under any term or provision of Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement.

**T. Conflicts.** DPS represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such officer or employee or as a result of an elected or appointed position with DPS such officer or employee holds.

**U. Force Majeure.** No party shall be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reasons beyond the control of such party, or by reasons of any of the following occurrences; strikes, labor disputes, failure of any governmental approval required for full performance (except for the City for approvals required by the City), riots, civil disorder or commotion, war, floods, earthquakes, acts of God, explosion or similar occurrences, provided that such party shall exercise its reasonable efforts to provide the best possible alternative performance and to prevent the foregoing occurrences from obstructing full performance.

V. **Nondiscrimination.** In connection with the performance of work under this Agreement, the City and DPS agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical and mental disability; and the City and DPS further agree to insert the foregoing provision in all subcontracts hereunder.

W. **Counterparts, Electronic Signatures and Electronic Records.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Facsimile signatures shall be accepted as originals. The parties consent to the use of electronic signatures by each of the parties. The Agreement and any other documents requiring a signature may be signed electronically by the City in the manner specific by the City. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

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**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

