

**INTERGOVERNMENTAL AGREEMENT
REGARDING DESIGN AND PLANNING WORK
RELATING TO THE SOUTH BROADWAY MONTGOMERY WARD URBAN
RENEWAL AREA**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2011 by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, with an address of 1437 Bannock, Denver, Colorado 80202 hereinafter referred to as the “CITY,” and the **DENVER URBAN RENEWAL AUTHORITY**, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, with an address of 1555 California Street, Ste. 200, Denver, Colorado 80202, hereinafter referred to as “DURA.”

RECITALS:

1. By Ordinance 740, Series of 1992, the City approved the South Broadway Montgomery Ward Urban Renewal Plan (“Plan”) found in City Clerk File No. 92-858, which Plan created the South Broadway Montgomery Ward Urban Renewal Area and authorized the use of property and sales tax increment revenues.

2. The City and DURA have jointly determined that the City should undertake the assessment, planning and design of possible storm sewer improvements to address drainage issues affecting the South Broadway Montgomery Ward Urban Renewal Area and its environs (the “Study”).

3. The City will oversee the Study.

4. DURA is ready, willing and able to undertake support of the Study, as a body corporate and urban renewal authority and not as an agent of the City, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1.0 THE STUDY:

The “Study” shall consist of assessment, planning and if determined by the City to be merited, design of storm sewer improvements to address drainage issues affecting the South Broadway Montgomery Ward Urban Renewal Area. The Scope of Work, Budget and

Timelines for the Study are set forth in Exhibit A, attached hereto and incorporated herein as the same may be revised from time to time. No changes shall be made without the prior written approval of the Executive Director of DURA, whose consent shall not be unreasonably withheld and shall be given in a timely manner, for any of the following

- (1) Any increases in the Budget of greater than ten percent (10%) for any Phase of the Study, provided that no Budget increases shall cause the combined budgets of Phases 1 and 2 to exceed the DURA Contribution as hereinafter defined;
- (2) Material changes to the Scope of Work; or
- (3) Any extension of the timeline for Phase I of the Study beyond September 1, 2011.

2.0 CITY RESPONSIBILITIES:

The City shall:

- a. Manage and oversee all aspects of the Study;
- b. Procure and contract with third party consultants to perform the Study;
- c. Submit invoices and back-up documentation for payment of third-party costs incurred by the Study as required by DURA in accordance with Section 5 below.

3.0 STUDY COORDINATION:

The City's Manager of Public Works or designee is the City's representative under this Agreement and through whom contractual services performed under this Agreement shall be coordinated.

4.0 TERM, TERMINATION OF AGREEMENT AND REMEDIES: The term of the Agreement shall commence upon the date set forth above and terminate on final completion and final payment of the Study or December 31, 2013, whichever is earlier. The City may terminate this Agreement at any time, including cancellation of the Study by giving a thirty (30) days' notice to DURA by the Manager of Public Works. This Agreement may be terminated by either party by giving a thirty (30) days' notice to the other party if the other party's obligations are not being satisfactorily performed in accordance with this Agreement and the other party has not cured such default within thirty (30) days after receipt of a written notice of default from the

non-defaulting party which includes a statement specifically describing all deficiencies of performance by the party receiving the notice. The only other remedy available for a default under this Agreement besides termination, is specific performance against the defaulting party. The parties waive all other remedies in law or equity including damages. Failure to appropriate shall not be an event of default by the City.

5.0 PAYMENT:

5.1 In furtherance of the Study, DURA shall pay to the City an amount not to exceed **ONE MILLION DOLLARS (\$1,000,000.00)** (the “DURA Contribution”) on the terms set forth herein. DURA's obligation to pay the DURA Contribution shall be limited to the amount of tax increment from sales taxes and property taxes actually received by DURA from the City pursuant to the South Broadway/Montgomery Ward Cooperation Agreement between the parties dated as of October 22, 1992, as has been and may be amended from time to time (“Cooperation Agreement”) and legally available for such purposes. DURA’s obligation to pay the DURA Contribution shall not include the use of DURA’s funds under the Indenture of Trust between DURA and U.S. Bank, N.A., as Trustee relating to the Tax Increment Revenue Refunding Bonds for the South Broadway Urban Renewal Project, dated as of July 1, 2002 (the “Indenture”) and any such funds shall be disbursed as provided in the Indenture; provided that DURA shall not retain more than Nine Hundred Fifty Thousand Dollars (\$950,000) from the Reserve Fund. Any amounts distributed from the Reserve Fund to DURA in excess of \$950,000 may be used to make the DURA Contribution. Further, DURA shall be entitled to withdraw its priority fee prior to the payment of the first invoice (if no priority fee for 2011 has already been retained by DURA) and in the first quarter of subsequent years all as set forth in the Cooperation Agreement.

5.2 After execution of this Agreement, the City shall invoice DURA no more than once per month for all costs incurred in connection with the Study. DURA shall review the invoice and all back-up documentation promptly upon receipt and notify the City of any issues concerning the applicable invoice within ten (10) business days of its receipt. DURA shall make payments to the City within ten (10) days following approval of an invoice.

5.3 If the Study is terminated for any reason, DURA shall not be obligated to spend any amounts of the DURA Contribution not previously expended or invoiced by the City.

5.4 DURA shall not be responsible for any obligations in excess of the DURA Contribution.

6.0 STATUS OF DURA: It is understood and agreed by and between the parties that the status of the DURA shall be that of a body corporate and urban renewal authority under Colorado law retained on a contractual basis to perform the services provided in this Agreement, and it is not intended, nor shall it be construed, that either party or any employee or subcontractor of such party is an employee, officer, or agent of the other party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

7.0 WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any payment or performance hereunder by either party constitute or be construed to be a waiver by such party of a breach of any term, covenant or condition, or default which may then exist on the part of the other party, and the making of any such payment or rendering of such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

8.0 RECORDS, REPORTS AND INSPECTIONS:

8.1. City Study Reports: City shall prepare and deliver status reports to DURA on a quarterly basis until completion of the Study. In addition, upon completion of Phase 1 of the Scope of Work attached hereto as Exhibit A, the City will notify DURA whether it intends to proceed with Phase 2 and the alignment chosen. Such status report shall include information on any design revisions included in the Study and a detailed accounting of all amounts expended to date by the City and such additional information as DURA may reasonably request. The final report upon Study completion shall confirm the completion of the Study and the amounts expended.

8.2 Inspection of Records: Any authorized agent of the City, including the City Auditor or his or her representative, has the right upon request and during normal business hours to access and the right to examine any pertinent books, documents, papers and records of DURA, involving transactions related to the Agreement until three (3) years after the final payment under the Agreement.

9.0 VENUE GOVERNING LAW: Each and every term, condition, or covenant

herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

10.0 ASSIGNMENT: Neither party is obligated or liable under this Agreement to any party other than the other party named herein. Each party understands and agrees that it shall not assign any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the other party, which consent or approval may be withheld in the absolute discretion of such party; and in the event any non-approved assignment, such action shall not be construed to create any contractual relationship between the other party and such assignee, and each party herein named shall remain fully responsible to the other party according to the terms of this Agreement.

11.0 LIABILITY: Each party hereto shall be liable for the errors and omissions of its agents, servants and employees, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement.

12.0 CONFLICT OF INTEREST: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and DURA further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9. and 1.2.12.

13.0 NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DURA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and DURA that any person other than the City or DURA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14.0 SURVIVAL OF CERTAIN AGREEMENT PROVISIONS: The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication or express statement, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

15.0 TAXES, CHARGES AND PENALTIES: Neither party shall be liable for the payment of taxes, late charges or penalties of any nature, except as required by, respectively, the City's Revised Municipal Code or other applicable law.

16.0 PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

17.0 SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be effected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid so long as the intent of the parties can still be achieved.

18.0 AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties; provided that no City Council approval shall be necessary unless required by City Charter. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

19.0 COUNTERPARTS OF THIS AGREEMENT: This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

20.0 APPROPRIATION: All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

21.0 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The parties hereto consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the 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 the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

By: _____
Mayor

Clerk and Recorder, Ex-Officio Clerk of the
City and County of Denver

RECOMMENDED AND APPROVED:

By: 
Manager of Public Works

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Denver City Attorney, Attorney for the
City and County of Denver

By: _____
Manager of Finance

Contract Control No. *XC1A012*

By: _____
Assistant City Attorney

By: _____
Auditor

"CITY"

**DENVER URBAN RENEWAL
AUTHORITY**

ATTEST:

By: Tracy Higgins

Title: EXECUTIVE DIRECTOR

Taxpayer IRS) ID No. 84-601-1088

By: [Signature]

Title: CHAIRMAN

"DURA"

EXHIBIT A
Study Scope of Work, Budget, and Timeline

Exhibit A to IGA
Scope of Work, Budget, Timeline

Background:

The design and planning work for a drainage facility is a City and County of Denver ("City") stormwater project, identified in the Stormwater Master Plan dated 2009 as an outfall that is to provide drainage improvements for the South Broadway Montgomery Ward Urban Renewal Area and its environs, which is historically susceptible to frequent flooding. The City has also completed a concept level study to determine the most feasible method of improving the drainage from the affected area to the CDOT box culvert at approximately Alameda/I-25 and the Platte River. The following scope of work provides for the planning and design of that drainage facility.

Scope of Work/Budget/Timeline:

Phase 1 Scope of Work: Via an existing on-call contract, Felsburg, Holt, and Ullevig (FHU) will do a feasibility study for an alignment in Dakota Ave to be compared to the existing 30% study completed for an alignment on Alaska Avenue. The study will compare a 30% design of both the Alaska Avenue alignment and the Dakota Avenue alignment (see attached Phase I plan) to determine any major utility conflicts and obtain a preliminary cost estimate. The scope of work for this phase includes the following tasks:

- Perform detailed topographical survey of the Dakota Alignment as needed to provide a 30% design (the 30% Alaska Alignment survey is already complete)
- Perform utility investigation to include pot-holing of major utilities that cross or parallel the storm sewer alignments as needed to provide a 30% design for both alignments
- Provide environmental and geotechnical services as needed for 30% design, including, but not limited to Hazardous Materials Assessments along both alignments
- Provide preliminary design of water and sanitary sewer relocations and lowerings as needed to provide a 30% design for both alignments
- Provide summary plan, profile sheets, and cost estimates for both alignments

Budget: \$250,000

Timeline: Completed by June 1, 2011

Phase 2 Scope of Work: A consultant will be obtained via the City's Request for Proposal (RFP) process to do a final design of the alignment selected in Phase I, and provide construction documents. The scope of work for this phase includes the following tasks:

- Perform a hydrologic analysis and verify current hydrologic models
- Perform hydraulic modeling of the proposed system and submit a final drainage report
- Perform any additional topographical survey as needed for final design
- Perform any additional utility investigations to include pot-holing of utilities that cross or parallel the storm sewer alignment

- Design storm sewer system and outfall to address local flooding issues at Broadway and Virginia and any drainage areas tributary to the storm sewer that are not intercepted by any existing storm sewer systems. Design shall include detailed inlet design.
- Provide environmental and geotechnical services as needed for finalizing design, including, but not limited to Hazardous Materials Assessments and Material Management Plans.
- Provide baseline geotechnical report and tunneling report to include tunneling feasibility study, tunnel design, settlement mitigation, technical tunneling specifications, and tunneling plans and details
- Design transition structures and special structures
- Design water and sanitary sewer relocations and lowerings as needed for the construction of the storm sewer including coordinating approvals from Denver Water, Metro Wastewater Reclamation District, and Wastewater Management
- Prepare exhibits as needed to obtain easements, license agreements, and permits needed from stakeholders and the railroad utilities
- Plan, attend, and coordinate meetings with stakeholders {ie RTD, UDFCD, XCEL, private land owners, and others}
- Plan, attend, and coordinate public meetings at the 60% level and any follow-ups, if needed
- Prepare construction documents to include specifications, plans, and schedules using Wastewater Capital Projects Management standards
- Submit construction documents at 30%, 60%, and 95% for review and prepare final construction documents based on all comments.
- Prepare quantity take-offs and engineer's estimate of probable construction costs at each submittal phase
- Construction related services to include submittal review, review of RFI's, and preparation of as-built record drawings

Budget: \$750,000 plus any funds remaining from the Phase 1 Work.

Timeline: One year from Notice to Proceed, which is currently anticipated to be awarded in the Fall of 2011.

PHASE 1 DESIGN: DAKOTA FEASIBILITY STUDY AND 30% DESIGN

