

**AMENDMENT TO INTERGOVERNMENTAL AGREEMENT  
REGARDING ALLEY DESIGN, INCLUDING  
ACQUISITION OF RIGHT-OF-WAY FOR  
FEDERAL AND MISSISSIPPI RETAIL CENTER ALLEY PROJECT  
RELATING TO THE WESTWOOD URBAN REDEVELOPMENT AREA**

**THIS AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** ("Amendment") is made and entered as of the date set forth on the City's signature page 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. The City Council approved the Urban Renewal Plan for the Westwood Neighborhood Urban Renewal Project (the "Plan") dated January, 1990, which Plan created the Westwood Urban Redevelopment Area (the "Urban Redevelopment Area") and authorized the use of property and sales tax increment revenues.

2. The Plan includes goals of addressing inadequate streets, sidewalks, curbs and gutters in Urban Redevelopment Area and ensuring regular repair of streets and alleys.

3. The City and DURA agreed that the City would undertake the planning, engineering and design of an alley from Tennessee Avenue to Mississippi Avenue behind the Federal and Mississippi Retail Center (the "Alley"), including any necessary right-of-way acquisition and improvements necessary to construct the Alley (the "Project").

4. The City and DURA entered into that certain Intergovernmental Agreement Regarding Alley Design, Including Acquisition of Right-of-Way for Federal and Mississippi Retail Center Alley Project Relating to the Westwood Urban Redevelopment Area dated as of January 15, 2015 (the "Agreement") and now desire to amend the Agreement to include a scope of work for construction and provide for additional funds for construction.

5. The City will oversee the Project.

6. DURA is ready, willing and able to undertake additional support of the Project, 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** Section 1 of the Agreement (**THE PROJECT**) is amended and restated to read as follows:

The "Project" shall involve the planning, engineering, design and construction of the Alley and the acquisition of any required right-of-way and improvements necessary to complete the Project in the Urban Redevelopment Area. Exhibit A, entitled "Project Scope of Work, Budget and Timelines" is attached hereto and incorporated herein as the same may be revised from time to time. No material changes to the Scope of Work, any increase in the budgeted lines for Construction, Design, Contingency or Right-of-Way or extension of the timeline set forth in Exhibit A shall be made without the prior written approval of DURA, whose consent shall not be unreasonably withheld and shall be given in a timely manner. In no event shall the City commit more than \$250,000 of the DURA Contribution (as hereinafter defined) to the right-of-way acquisition and costs related thereto as set forth in Exhibit A. The City shall not expend any of the \$250,000 allocated to right-of-way acquisition until it has obtained agreements with all necessary landowners to complete the improvements to the Alley or as otherwise approved by DURA.

**2.0** Section 5.1 of the Agreement (**PAYMENT**) is amended and restated to read as follows:

In furtherance of the Project, DURA shall pay to the City an additional amount not to exceed **THREE HUNDRED NINETY-EIGHT THOUSAND DOLLARS (\$398,000)** (the "Additional DURA Contribution") on the terms set forth herein. The "DURA Contribution" shall mean the original DURA Contribution of \$334,000 and the Additional DURA Contribution and shall total an amount not to exceed **SEVEN HUNDRED THIRTY-TWO THOUSAND DOLLARS (\$732,000)**. DURA's obligation to pay the DURA Contribution shall be limited to the DURA Contribution which is derived from tax increment from sales taxes and property taxes already received by DURA. The DURA Contribution is on deposit with DURA and obligated specifically for the Project. DURA acknowledges and agrees that the City is relying upon the availability of the DURA Contribution to undertake the Project,

and DURA agrees to maintain the availability of the DURA Contribution until at least December 31, 2018 unless this Agreement is otherwise terminated pursuant to Section 4.0 of the Agreement.

**3.0** Section 8.1 of the Agreement (**RECORDS, REPORTS AND INSPECTIONS**) is amended and restated to read as follows:

**8.1 City Project Reports:** City shall prepare and deliver status reports to DURA on a monthly basis until completion of the Project. Such status report shall include information on design, timeline, budget, right-of-way acquisition and construction. The City shall prepare on a quarterly basis 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 Project completion shall confirm the completion of the Project and the amounts expended.

**4.0 TERM, TERMINATION OF AGREEMENT AND REMEDIES:** The term of the Amendment shall commence upon the date set forth above and terminate on final completion and final payment of the Project or December 31, 2018, whichever is earlier. The City may terminate this Amendment at any time, including cancellation of the Project, by giving a thirty (30) days' notice to DURA by the Manager of Public Works. This Amendment 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 Amendment and the other party has not cured such default within ninety (90) 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 Amendment 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 STATUS OF PARTIES:** 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 Amendment, 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.

**6.0 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 Amendment shall be construed as a waiver of any succeeding or other breach.

**7.0 EXAMINATION OF RECORDS:** Each party to this Amendment agrees that any duly authorized representative of either of the other parties, including, in the case of the City, the City Auditor and his or her representatives, shall have access to and the right to examine, during normal business hours and upon reasonable notice, any directly pertinent books, documents, papers, and records of the requested party relating to this Amendment subject to applicable laws, including maintaining the confidentiality of documents in accordance with the Colorado Open Records Act.

**8.0 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 Amendment 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.

**9.0 ASSIGNMENT:** Neither party is obligated or liable under this Amendment 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 Amendment 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 Amendment.

**10.0 LIABILITY:** As between the parties, and without either the City or DURA

waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 to 120, each party will be responsible for its own negligence and that of its agents and employees in the performance of this Amendment. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this Amendment or the design or construction of the Project, it agrees to give the other party prompt written notice of such claim or suit.

**11.0 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.

**12.0 NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Amendment, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DURA, and nothing contained in this Amendment shall give or allow any such claim or right of action by any other or third person on such Amendment, 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 Amendment shall be deemed to be an incidental beneficiary only.

**13.0 SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Amendment, 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 Amendment (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.

**14.0 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.

**15.0 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.

**16.0 SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Amendment 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 Amendment 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.

**17.0 AMENDMENTS:** No amendment to this Amendment shall be made or deemed to have been made unless embodied in writing properly executed by the parties. This Amendment and any further amendments shall be binding upon the parties, their successors and assigns. Except as set forth in this Amendment, the provisions of the Agreement remain unmodified and in full force and effect.

**18.0 COUNTERPARTS OF THIS AGREEMENT:** This Amendment shall be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

**19.0 APPROPRIATION:** The obligations of the City under this Amendment or any renewal shall extend only to monies appropriated for the purpose of this Amendment by the Denver City Council, paid into the Denver Treasury, and encumbered for the purposes of this Amendment. The City does not by this Amendment irrevocably pledge present cash reserves for payments in future fiscal years, and this Amendment is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. No penalties shall insure to the City for failure to budget or appropriate funding.

**20.0 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The parties hereto consent to the use of electronic signatures by each party. The Amendment, and any other documents requiring a signature hereunder, may be signed electronically. The Parties agree not to deny the legal effect or enforceability of the Amendment 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 Amendment 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.

**21.0 INDEPENDENT CONTRACTORS.** The Parties expressly agree that DURA and the City do not intend to act for or in the place of the other, and each shall be an independent contractor.

**22.0 AUTHORITY.** The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this Amendment on behalf of the Parties and to bind the Parties to its terms.

**23.0 EXECUTION OF AMENDMENT.** This Amendment shall be binding on and represent a commitment of funds that may be relied upon by the City upon the approval of the DURA Board of Commissioners and the execution of this Amendment by the appropriate officers of DURA. This Amendment shall be binding upon the City only when approved by the City and signed by all appropriate Denver officials, including the Mayor, the Clerk and Recorder, the Chief Financial Officer and the Auditor.

**24.0 NOTICES.** Except as may be specifically required herein, all communications required by this Amendment shall be made in writing, via US first Class Post, e-mail, or facsimile transmittal to the following individuals (or their delegates), who shall be the project liaisons for their respective organizations:

To the City:

City and County of Denver  
Department of Public Works,  
Capital Project Management  
Attn: Mike Harmer  
201 W. Colfax Avenue, Dept. 506  
Denver CO 80202

With a copy for legal notices to:

Denver City Attorney  
1437 Bannock Street, Room 353  
Denver CO 80202

To DURA: Denver Urban Renewal Authority  
Attn: Executive Director  
1555 California Street, Ste. 200  
Denver, Colorado 80202

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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 \_\_\_\_\_



**DENVER URBAN RENEWAL  
AUTHORITY**

**ATTEST:**

By: Tracy Huggins  
Title: Executive Director

Taxpayer IRS ID No. 84-6011688  
By: [Signature]  
Title: Chair

"DURA"



## **EXHIBIT A**

### **Project Scope of Work, Budget and Timeline**

#### Federal and Mississippi Retail

##### Center Alley project scope

The City and County of Denver Public Works Department will process a work order under one of the department's general on-call agreements for the design of the project in accordance with City standards 10.1 through 10.4. The City's survey group within Public Works will perform a topographic survey from building or fence face (whichever is closest to the alley) and provide this information to the consultant in an AutoCAD C3D compatible format. The survey group will also prepare legals and exhibits for the acquisition of Right-of-Way and Easements for the construction of the alley. The Public Works Department will either advertise the project for construction bids or utilize one of their on-call construction contracts to construct the alley. The City's real estate group will conduct negotiations with the property owners, acquire the property and record the deeds as necessary with the City Clerk's Office. DURA will continue to provide public outreach for the project.

#### Description:

Construct a 20 foot wide, 8" deep concrete alley between West Mississippi and West Tennessee Avenue behind the Federal and Mississippi Retail Center located on the West side of Federal Boulevard. Alley curb head will be added as needed for differences in grade over 6 inches. Lighting in the alley will be improved by adding street lights to the existing electrical poles. Existing fencing and bollards within the alley footprint will be removed. Existing asphalt will be patched between the new concrete and the existing paving.

Schedule: The project will be completed on or before December 31, 2018.

**ADDITIONAL DURA CONTRIBUTION**

**Mississippi\_Federal Alley  
Engineer's Opinion of Construction Costs**

**CCD Project No.**

ID	ITEM No.	DESCRIPTION	UNI	UNIT	QU	ITEM COST
1	202-00010	REMOVAL OF TREE	EA	\$2,000.00	4	\$8,000.00
2	202-00205	REMOVAL OF CURB, GUTTER & SIDEWALK	LF	\$9.00	100	\$900.00
3	202-00220	REMOVAL OF ASPHALT PAVEMENT	SY	\$14.00	427	\$5,978.00
4	203-00010	EXCAVATION (CIP)	CY	\$30.00	746	\$22,380.00
5	203-01597	POTHOLING	HR	\$235.00	10	\$2,350.00
6	210-00001	RESET DUMPSTER	EA	\$50.00	2	\$100.00
7	210-01001	RESET WOOD FENCE	LF	\$32.00	40	\$1,280.00
8	210-01002	RESET CHAIN LINK FENCE	LF	\$32.00	130	\$4,160.00
9	210-04010	ADJUST MANHOLE	EA	\$600.00	5	\$3,000.00
10	304-06000	AGGREGATE BASE COURSE (CLASS 6)	TON	\$28.00	271	\$7,588.00
11	311-00000	SOIL STABILIZATION FABRIC	SF	\$8.00	12,200	\$97,600.00
12	403-00720	HOT BITUMINOUS PAVEMENT (GRADING S)	TON	\$120.00	12	\$1,440.00
13	412-00600	CONCRETE PAVEMENT (DRIVEWAY) (6")	SY	\$50.00	50	\$2,500.00
14	412-00800	CONCRETE PAVEMENT (ALLEY PAVING) (8")	SY	\$55.00	1,350	\$74,580.00
15	609-22023	CURB, GUTTER & SIDEWALK (3' -11")	LF	\$32.00	40	\$1,280.00
16	609-40101	ALLEY CURB HEAD	LF	\$24.00	100	\$2,400.00
17	613.00000	LIGHTING	LS	\$20,000.00	1	\$20,000.00
18	630-90000	TRAFFIC CONTROL	LS	\$16,500.00	1	\$16,500.00
<b>SUBTOTAL</b>						<b>\$272,036</b>

**Engineer's Opinion of Construction Costs**

**Date: 12/15/14**

CONSTRUCTION CONTINGENCY (30%)	\$81,964
PROJECT CONTINGENCY (use subject to DURA Executive Director Approval)	\$44,000

**PROJECT TOTAL \$398,000**

**Exclusions**

- 1) Work outside of the ROW and the Temporary Easement for the alley construction.
- 2) Replacement of existing fences.
- 3) Reconstruction of sanitary sewer facilities.
- 4) Relocation of Xcel Electric facilities.
- 5) Public outreach. This will be handled by DURA.