

**INTERGOVERNMENTAL AGREEMENT  
REGARDING CONSTRUCTION OF  
TWO-WAY STREET CONVERSIONS RELATING TO THE  
ST. LUKE'S URBAN REDEVELOPMENT AREA**

**THIS INTERGOVERNMENTAL AGREEMENT ("Agreement")** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016 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 St. Luke's Urban Redevelopment Plan ("Plan") dated June, 1996, which Plan created the St. Luke's Urban Redevelopment Area and authorized the use of property and sales tax increment revenues.
2. The Plan is intended to promote, among other things, improved traffic within the Urban Redevelopment Area and authorizes the installation, construction and reconstruction of any public improvements including streets, sidewalks, alleys and underground facilities.
3. The City and DURA have determined pursuant to a study conducted by the City in cooperation with DURA that the City should now undertake the complete design and construction of two-way street conversions relating to the St. Luke's Urban Redevelopment Area and its environs (the "Work").
4. The City will oversee the Work and will provide the remaining funding, if any, to complete the Work.
5. DURA is ready, willing and able to undertake support of the Work, 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 WORK:**

The Scope of Work, Budget and Timelines for the Work are set forth in Exhibit A, attached hereto and incorporated herein as the same may be revised from time to time. No material changes to the Scope of Work or extension of the timeline set forth in Exhibit A 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) Material changes to the Scope of Work; or
- (2) Any extension of the timeline for the Work beyond the dates set forth in Exhibit A.

**2.0 CITY RESPONSIBILITIES:**

The City shall:

- a. Manage and oversee all aspects of the Work;
- b. Procure and contract with third party contractors to perform the Work;
- c. Submit invoices and back-up documentation for payment of third-party costs incurred by the Work as required by DURA in accordance with Section 6 below.

**3.0 WORK 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 COMPLIANCE WITH CERTAIN DURA CONTRACTING POLICIES:**

**4.1 *Project Art.*** The obligations regarding project art under the Plan have previously been satisfied and no additional commitment is required by this Agreement.

**4.2 *Enhanced Training Opportunities.*** The City agrees that, with respect to the City Projects, it shall comply with DURA's Policy Regarding Enhanced Training Opportunities for Projects Funded with Tax Increment Financing ("ETO Policy"). DURA and

the City agree that the amount of funding that must be provided for enhanced training opportunities under the policy in connection with the Work is one percent (1%) of the total funding provided by DURA for the Work, totaling \$31,000.

**4.3** *Small Business Enterprise Utilization Program.* In lieu of compliance with DURA's Guidelines for Utilization of Small Business Enterprises, the City shall comply with the City's M/WBE Ordinance, Divisions 1 and 3 of Article III, of Chapter 28, D.R.M.C., designated as sections 28-31-29-36 and 28-52-28-90, D.R.M.C., as required by the City.

**5.0 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 Work or December 31, 2019, whichever is earlier. Upon the earlier of completion of construction or the final payment of the Work, the city shall submit to DURA a written certificate stating that no further payments or reimbursements related to the Work shall be requested by the City. The City may terminate this Agreement at any time, including cancellation of the Work by giving a thirty (30) days' notice to DURA by the Executive Director 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.

**6.0 PAYMENT:**

**6.1** In furtherance of the Work, DURA shall pay to the City an amount not to exceed Three Million One Hundred Thirty-One Thousand Dollars (\$3,131,000) consisting of \$3,100,000 for the Work and \$31,000 pursuant to the ETO Policy as set forth in Section 4.2 (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 already received and on deposit with DURA from the City pursuant to the Cooperation Agreement for the St. Luke's Urban Redevelopment Area dated June, 1996, between the parties,

as has been and may be amended from time to time (“Cooperation Agreement”) and legally available for such purposes minus the annual amount of priority fees due to the Authority while this Work remains in effect.

**6.2** After execution of this Agreement, the City shall invoice DURA no more than once per month for all costs incurred in connection with the Work, including design formerly accomplished preceding this Agreement, as included in the Scope. 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) business days following approval of an invoice.

**6.3** If the Work 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.

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

**7.0 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.

**8.0 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.

**9.0 RECORDS, REPORTS AND INSPECTIONS:**

**9.1. City Reports:** City shall prepare and deliver status reports to DURA on a quarterly basis until completion of the Work. The status reports shall be delivered on or before

April 15, July 15, October 15 and January 15 of each year and cover the prior quarter. Such status report shall include information on any design revisions included in the Work 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 Work completion shall confirm the completion of the Work and the amounts expended.

**9.2 Examination of Records.** Each party to this Agreement 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 Agreement subject to applicable laws, including maintaining the confidentiality of documents in accordance with the Colorado Open Records Act.

**10.0 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.

**11.0 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.

**12.0 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.

**13.0 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.

**14.0 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.

**15.0 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.

**16.0 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.

**17.0 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.

**18.0 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.

**19.0 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.

**20.0 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.

**21.0 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.

**22.0 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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**Contract Control Number:** FINAN-201630791-00

**Contractor Name:** Denver Urban Renewal Authority

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:

Attorney for the City and County of  
Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





**Contract Control Number:** FINAN-201630791-00

**Contractor Name:** Denver Urban Renewal Authority

By: *Joshua S. Widoff*

Name: *Joshua S. Widoff*  
(please print)

Title: *Vice Chair*  
(please print)

**ATTEST: [if required]**

By: *Tracy Huggins*

Name: *Tracy Huggins*  
(please print)

Title: *Secretary*  
(please print)



**EXHIBIT A**  
**Scope of Work, Budget, and Timeline**

Final Design and Construction of the conversion of streets in the Uptown neighborhood to two-way operations with pedestrian, bicycle and transit enhancements. This includes signal construction, curb line adjustments, and restriping of pavement markings.

The project area includes 19<sup>th</sup> and 20<sup>th</sup> Avenues between Broadway and Park Avenue and related cross-streets between 18<sup>th</sup> and 20<sup>th</sup> Avenues.

Final Design to be complete by January 2017 and Construction to be complete by June 2018.  
Cumulative cost of Final Design and Construction not to exceed \$3,100,000