

**City of Aurora and City and County of Denver
Tower Road Widening Between 38th/40th Avenue and 45th Avenue**

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), is made by and between the CITY OF AURORA, COLORADO, hereinafter referred to as "Aurora," a home rule city, 15151 E. Alameda Parkway, Aurora, CO 80012, and the CITY AND COUNTY OF DENVER, hereinafter referred to as "Denver," a municipal corporation and home rule city, 1437 Bannock Street, Denver, Colorado, 80202, hereinafter referred to collectively as the "Parties."

FACTUAL RECITALS

1. Aurora and Denver have jointly identified a need to widen Tower Road between 38th/40th Avenue and 45th Avenue (the "Project" or "Work") within the boundaries of both Aurora and Denver.

2. The Parties have jointly determined the Project will involve completing the construction of a full-width arterial street with the following elements: an 18-foot wide median with median curb and gutter; widening the south-bound lanes so there are three 12-foot lanes; three 12-foot lanes northbound within the Denver corporate limits, to be completed with the installation of the median and asphalt patch back; vertical curb and gutter; and a 10-foot wide detached walk on the west side of the road.

3. Required approval, clearance, and coordination will be accomplished from and with appropriate entities.

4. Each of the Parties is adequately staffed, funded and suitably equipped to undertake and satisfactorily complete its respective portion of the Work contemplated by this Agreement, or has programmed funding for completion of the Work within an appropriate period of time and will make reasonable efforts to budget, authorize and appropriate the same. Any contract to be issued for Work to be performed pursuant to this Agreement will be issued only after adequate funding is available. It is anticipated that The Sand Creek Metropolitan District ("District") shall act as Aurora's agent for the construction of the Project.

5. The Parties now wish to provide for the terms and conditions under which Denver will make funds available to Aurora for the Project and under which Aurora will cause the Project to be completed.

NOW THEREFORE, it is hereby agreed that:

1. Description of Work or Project.

The Project to be performed under this Agreement shall consist of the design and construction of Tower Road widening between 38th/40th Avenue and 45th Avenue. Design standards shall be in accordance with the Intergovernmental Agreement between Denver, Aurora, and the District for an Operations and Maintenance Plan for Shared Streets, dated September 24, 2012 (which may be found at Denver Clerk File No. 2012-0751. "Operations and Maintenance Plan"). The proposed street widening shall include the following:

- (a) Construction of a complete one-half of a six-lane arterial on the west side, between 38th/40th Avenue and 45th Avenue; and construction of a complete inside lane next to the median, variable width pavement, with an 18-foot wide raised median, with appropriate left turn bays, on the east side, between the Aurora/Denver corporate limits and 45th Avenue; and stabilization and landscape of the median; all in accordance with the approved construction plans.
 - (i) The east half of Tower Road from 38th/40th Avenue to approximately 865 feet north of 38th/40th Avenue is excluded from this Agreement.
- (b) Construction of the necessary curb and gutter, median curb and gutter on both sides of the median, sidewalk on the west side with a connection to the existing Denver sidewalk, installation of street lights in accordance with Denver standards per the Operations and Maintenance Plan, asphalt paving, signing and striping shall be coordinated between Aurora and Denver and installed, and the median stabilization shall be as noted below.
 - (i) Stabilization of the median between 38th/40th Avenue and approximately 640 feet north of 43rd Avenue with ¾-inch weathered granite over weed control fabric. The remaining median north to 45th Avenue shall be landscaped as a part of the Project as shown on the approved construction plans.
 - (ii) Denver shall make application to Denver Water for an irrigation tap. The tap and related physical improvements shall be included as a part of the construction for the Denver portion of the median.
 - (iii) Denver shall maintain the portion of the median lying greater than approximately 865 feet north of 38th/40th Avenue in accordance with the Operations and Maintenance Plan.
- (c) Modification of the existing traffic signal at the Tower Road and 43rd Avenue intersection, in order to accommodate the new road work in accordance with Denver standards.

2. Aurora's and Denver's Shared Responsibilities

Aurora and Denver agree to allow the District to act as Agent and thereby contract for and manage the construction of the Project with Aurora overseeing the District during the Project construction.

Aurora and Denver shall review the plans concurrently. The plans shall be submitted to both Aurora and Denver. Denver shall submit their comments to Aurora so the combined comments from Aurora and Denver can be sent back to the consultant used to prepare the civil plans and to the District. Aurora shall be the primary approving agency. Aurora shall provide a digital copy of the final approved plans to Denver.

The plans review shall not take more than:

- three weeks for the first review of the civil plan submittal;
- two weeks for the second review of the civil plan submittal; and
- one week for the approval review of the civil plan submittal.

3. Aurora's Responsibilities

During the execution of the design, bid, and construction of the Project, Aurora will:

- (a) Obtain all required right-of-way within its jurisdiction, if needed;
- (b) Coordinate with the District for the design the Project. This will include coordination meetings between Aurora, Denver, and the District;
- (c) Require the District to conform to Aurora's bidding of projects process by having a minimum of three (3) bids for the work;
- (d) Review and approve partial pay requests and issue payments to the District 30 days after the pay requests are approved. A standard five percent (5%) will be withheld from each pay request covering construction activities.
- (e) Perform the Project management, inspection, and coordinate the testing to be performed by the District;
- (f) Issue the construction permits for the work that is within Aurora's corporate limits. This will include writing a letter to Denver saying Aurora will use its MS4 permit during the construction activities. Aurora shall inspect the Project and coordinate with Denver's inspectors; and

- (g) Finalize the Project, including coordination with Denver, for the initial acceptance of the Project to begin the one-year warranty. Before the warranty period is up, a final inspection, including coordination with Denver, shall be completed. Any items needing correction shall be done by the District and its contractor before final acceptance.

4. Denver's Responsibilities

During the execution of the Project, Denver will:

- (a) Receive notice of and participate, at its option, in all design meetings, review, and, finally, approve all design documents for Project improvements located within Denver boundaries prior to construction; however, such approval shall not be unreasonably withheld or delayed.
- (b) Obtain all required construction and slope easements within its jurisdiction, as shown on the drawings, if required.
- (c) Receive notice of and participate, at its option, in all construction meetings and have the opportunity to enter the Project site and inspect the Project Work, upon reasonable notice to Aurora; except that Denver shall not direct any Project contractor, but will contact and work through the Aurora inspectors for resolution.
- (d) Review and approve all material changes to the approved final design; however, such approval shall not be unreasonably withheld or delayed.
- (e) Receive notice of and participate, at its option, in the Project punch list for initial and final Project inspection.
- (f) Accept all Project improvements located within the boundaries of Denver; however, such acceptance shall not be unreasonably withheld or delayed.
- (g) Provide construction, street occupancy, and other permits necessary for construction of the Project Improvements.

5. Project Funding

Project Funding Allocation and Payments of Project Cost:

- (a) Aurora has had the District prepare an exhibit which is attached hereto as Exhibit A to be used to identify the limits of Denver's and Aurora's responsibilities.

- (b) Aurora and Denver will not charge for permit, traffic management, or lane occupancy fees.
- (c) Aurora will collect the stormwater fiscal security identified in the approved construction plans and reports as required by §138-442 of the Aurora City Code. Aurora's contract with the District shall be a lump sum contract and shall include:
 - (i) All costs associated with the design, construction engineering, and the actual construction of the Project;
 - (ii) A schedule of values;
 - (iii) A ten percent (10%) contingency;
 - (iv) Any changes to the scope will be subject to approval by both Parties as further delineated in Section 5.(g) below; and
 - (v) Request for payment from the District to Aurora shall be submitted monthly. Request for final payment, including retainage, shall be made at the time of final acceptance.
 - (a) Based on preliminary drawings dated February 2, 2016, Denver's anticipated share for this Project is \$820,000 and does not include the cost for the Denver irrigation tap and meter. If a shortage of funds for Denver's portion of the Project is identified after receipt of bids, the schedule of values, or final costs of construction, the Parties shall work together to determine a course of action that remedies the shortfall and is mutually agreeable to both Parties. Denver may, at its sole discretion, transfer additional funds to satisfy such shortfall to Aurora to be administered pursuant to Paragraph 5.(v)(f) below. If Denver elects not to provide additional funds, or agree upon a reduced scope of the Project within the existing budget, Aurora, or the District, acting as its agent, shall have no obligation to complete the Denver portion of the Project and Aurora shall return any Project funding provided by Denver, except for the cost of design and any work constructed on the Denver portion of the Project.
 - (b) Denver agrees to pay for 100 percent of the traffic signal reconstruction at 43rd Avenue in accordance with the Operations and Maintenance Plan.
 - (c) Within ten (10) days of the execution of this agreement by both Denver and Aurora, Denver shall transfer funds in the amount of \$820,000 to the City of Aurora. This amount represents Denver's Anticipated Share for the Project, as well as the ten percent contingency, but not the cost of the irrigation tap and meter. Aurora will deposit the funds in a Project Account as provided for below.

- (d) Aurora will set up an account to hold only Project Funds received from Denver to be used by Aurora to pay Denver's share of the Project and charges chargeable to Denver as described in this Agreement (Project Account). Aurora will provide a monthly accounting to Denver including copies of invoices or other evidence of payment for all funds paid from the Project Account. Any portion this Project Account remaining after payment of all Denver obligations will be returned to Denver within thirty (30) days.
- (e) If there are any cost overruns above the ten percent (10%) contingency, Denver shall be responsible to pay any cost overrun within Denver's corporate limits based on the schedule of values in the District contract with Aurora. Aurora shall be responsible to pay any cost overrun within Aurora's corporate limits, and beyond what the District is responsible for, based on the schedule of values in the District contract with Aurora. Denver and Aurora shall have approval authority for any of the expenses anticipated to be billed against the contingency.
- (f) Of the total area of the construction and right-of-way limits, 37% is located within Denver and 63% is located within Aurora. Of the portion located within Aurora, the District's responsibility is 100%. All indirect costs for this Project, including, but not limited to, surveying, soil borings, design and coordination, contract administration, project management, inspection, and materials testing, shall be apportioned between Denver and the District in conformance with the above percentages between Denver and the District. Accordingly, Denver shall pay Aurora 37% of all indirect costs for this Project. Aurora shall have the District prepare a budget for this work with the maximum costs identified as Denver and the District's responsibility for review. Denver must specifically approve any and all indirect costs in excess of the budgeted amount in accordance with Section 5. (g) above.
- (g) Direct construction costs, as stated in the bid schedule and schedule of values, will be charged to Denver and the District according to the actual work performed within each jurisdiction.
- (h) Denver shall pay for the actual quantities of excavation, topsoil replacement, embankment, fence and tree removal and replacement, individual sediment control items, seeding and mulching, traffic signs, streetlights, barricades, and pavement markings. Lump-sum items, such as mobilization, clearing and grubbing, erosion

and sediment control, construction traffic control, and construction project signs shall be paid by Denver on the percentage basis as identified in paragraph (g) above.

- (i) Notwithstanding any other term or condition of this Agreement, it is expressly understood and agreed that the obligation of Denver for all or any part of any payment obligations set out herein, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated for the purpose of this Agreement by the Denver City Council and paid into Denver's Treasury. Denver hereby represents that \$820,000 has been legally budgeted, authorized and appropriated for the purpose of this Agreement by the Denver City Council. Aurora acknowledges that: (i) Denver does not, by this Agreement, irrevocably pledge present cash reserves for contingent payments in future fiscal years; and (ii) this Agreement is not intended to create multiple fiscal year direct or indirect debts for financial obligation of Denver. Denver shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Denver Revised Municipal Code.

6. Additional Agreements

This Agreement is intended as the complete integration of all understanding between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, without the approving authority as encompassed by this Agreement. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless approved in a written Agreement executed and approved by the Parties.

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, 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.

It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed to be an incidental beneficiary only.

The Parties acknowledge that all construction performed within the Denver City limits or otherwise included in Denver's share of the funding responsibility for the Project must comply with the prevailing wage requirements of Section 20-76 of the Denver Revised Municipal Code. As such, Aurora agrees to cooperate fully with the Denver Auditor's Officer in

implementing, administering, and enforcing all applicable requirements of Section 20-76, D.R.M.C.

7. Design Standards

The design standards shall be in accordance with the Operations and Maintenance Plan.

Since all street lighting to be installed is within Aurora's jurisdiction, the street lighting shall be installed per Aurora and Xcel Energy standards and the payment for the power shall be the responsibility of Aurora.

8. Ownership and Maintenance

Aurora will own and maintain the Project improvements within its boundaries and Denver will own and maintain the Project improvements within its boundaries in accordance with the Operations and Maintenance Plan.

9. Coordination and Cooperation

The Parties will pool their resources to exchange information with each other and with the neighboring businesses and communities concerning the portion(s) of the Project to be performed within the boundaries of each city in order to minimize disruption thereto.

The Parties will cooperate and coordinate, to the extent practicable, in the performance of the Project.

Denver shall use reasonable efforts to provide the staff necessary to accomplish timely review, comment, and, as appropriate, approval of plans and other documents for the processing of any Denver permits and other governmental approvals needed for the Project.

In order to ensure prompt and continued coordination between the Parties, the Parties hereby designate and authorize the following primary representatives to coordinate and to perform any administrative tasks needed as part of this Agreement.

Aurora Representative: City Engineer
 Department of Public Works
 15151 E. Alameda Parkway, Suite 3200
 Aurora, CO 80202

Denver Representative: City Engineer

Department of Public Works
1437 Bannock Street
Denver, CO 80202

10. Liability

Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. The Parties shall not be jointly and severally liable for claims arising out of such actions or omissions. This obligation shall survive termination of this Agreement.

11. Examination of Records

Aurora agrees that, for a period of at least three (3) years from termination of this Agreement, any duly-authorized representative of Denver, including the Denver Auditor or his or her designee, shall have access to and the right to examine any directly pertinent books, documents, papers and records of Aurora involving the transactions and other activities related to this Agreement.

12. Nondiscrimination

In connection with Aurora's performance pursuant to this Agreement, Aurora agrees 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, gender variance, marital status, or physical or mental disability, and further agrees to insert the foregoing provision in all contracts hereunder for work contemplated by the Agreement.

TOWER ROAD 38TH AVENUE TO 45TH AVENUE EXHIBIT A

