

SECOND AMENDMENT TO CITY INTERGOVERNMENTAL AGREEMENT

This **SECOND AMENDMENT TO CITY INTERGOVERNMENTAL AGREEMENT** (this “**Second Amendment**”) is made and entered into as of the date of approval, execution and delivery of this Second Amendment by the Mayor of the City (as that term is defined herein) (“**Effective Date**”), by and between **DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **THE CITY AND COUNTY OF DENVER**, a municipal corporation organized and operating as a home rule city under the laws of the State of Colorado (the “**City**”) (individually, each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. The City and the District entered into that certain City Intergovernmental Agreement dated September 2, 2008 (the “**Original IGA**”) as amended by that First Amendment to City Intergovernmental Agreement dated March 17, 2014 (the “**First Amendment**” and, with the Original IGA, collectively the “**City IGA**”).

B. Pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and Section 29-1-201, C.R.S., and the City’s home rule Charter, the City and the District may cooperate and contract with each other to provide any function, service or facility lawfully authorized to each of them.

C. Pursuant to Section 11.9 of the Original IGA, the Parties may amend the City IGA, and the City shall obtain City Council approval of any amendment thereto, including this Second Amendment.

D. The City and the District desire to amend the City IGA as more fully set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. All terms which are not otherwise defined herein shall have the same meaning as set forth in the City IGA.

2. Exhibit D to the City IGA. **Exhibit D** to the City IGA is hereby amended by the supplementation, addition and incorporation of **Attachment 1**, attached hereto and incorporated herein by this reference, which identifies the “**2025 District Projects**.” All references to **Exhibit D** in the City IGA shall be automatically amended to incorporate **Attachment 1**, as described herein.

3. Amendment to Section 1.1 of the City IGA. Section 1.1 of the City IGA is hereby amended with the addition of the following definitions:

(a) Section 1.1(L) of the City IGA shall be replaced and restated with the following:

“L. “District Improvements” mean the public improvements described in Exhibits F and G of the Service Plan and/or the High Point GDP and/or the 2025 District Projects, which District Improvements may vary over time with respect to both the amount of the costs and the scope of such improvements within the limitations set forth in the Service Plan and this Agreement.”

(b) Section 1.1(BB) of the City IGA shall be replaced and restated with the following:

“BB. “GRMD Service Plan Projects” means those improvements delineated in Exhibit A Table 3 of the GRMD Restated RFA and the 2025 District Projects, attached hereto and incorporated herein as **Exhibit D** and **Attachment 1** to **Exhibit D**, respectively.”

(c) Section 1.1(JJ) of the City IGA shall be replaced and restated with the following:

“JJ. “Manager of DOTI” means the Manager of the City’s Department of Transportation and Infrastructure or such Manager’s designee.”

All references to the “Manager of Public Works” in the City IGA shall be automatically amended to instead refer to the “Manager of DOTI.”

(d) Section 1.1(WW) of the City IGA shall be replaced and restated with the following:

“WW. “Regional Improvement Costs” means the costs of the Regional Improvements and the 2025 District Projects to be paid by the District. Regional Improvement Costs may include any costs of financing the Regional Improvements, including interest costs and costs of issuance, subject to all limitations with respect to the Regional Mill Levy as set forth in the Service Plans and as further defined herein, if such financing costs are authorized under the Regional Improvements Funding Plan. Regional Improvement Costs may be adjusted over time in accordance with Section 3.7.”

(e) The following definition shall be added as Section 1.1(OOO) to the City IGA:

“OOO. “2025 District Projects” shall mean those District projects identified as such in **Attachment 1** to **Exhibit D** to the City IGA as amended pursuant to the Second Amendment to the City IGA.”

4. Amendment to Section 3.1. Section 3.1 of the City IGA is hereby replaced in its entirety with the following:

“3.1 **Payment of Regional Improvement Costs.** The District shall have the authority to Construct the Regional Improvements, including specifically the 2025 District Projects,

or any portion thereof. The Parties acknowledge that **Exhibit D** hereto includes the GRMD Service Plan Project Costs, for which the District shall be responsible for 17% of such actual costs (the “District’s Share of the GRMD Service Plan Project Costs”). The District hereby agrees to pay 17% of GRMD’s share of the Original Regional Improvements. The District has entered into an intergovernmental agreement with GRMD regarding funding its share of certain operations and maintenance costs. Payment of Regional Improvement Costs shall be made in accordance with Section 3.2, below.”

5. Amendment to Section 3.2. Section 3.2 of the City IGA is hereby amended by revising the “SIXTH” order of priority to state as follows:

“SIXTH: To pay the District’s share of: 1) any Regional Improvements when due, including GRMD Service Plan Project Costs, and 2) Construction costs associated with the 2025 District Projects to the extent that such Construction costs are not funded by Bonds, with such amounts to be paid in descending order from oldest to most recent with the oldest being paid first.”

6. Amendment to Section 4.1. Section 4.1 of the City IGA is hereby replaced in its entirety with the following:

“4.1 **Authorization to Acquire or Construct District Improvements and 2025 District Projects.** The District shall acquire or Construct the District Improvements in accordance with the provisions of the Service Plans and this Agreement, as the same may be amended from time to time. The District shall, in its sole discretion, make all determinations relating to the expenditure of proceeds of Bonds for the Processing of Construction of the District Improvements, and specifically the 2025 District Projects, including but not limited to the selection of construction managers, engineers, architects, contractors and other construction professionals, and the payment of all Process of Construction costs, or for any other purpose with respect to the implementation, performance or enforcement of the terms of this Agreement.”

7. Amendment to Section 5.3. Section 5.3 of the City IGA is hereby replaced in its entirety with the following:

“5.3 **No Discrimination in Employment.** In connection with the performance of work under this Agreement, the District may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The District shall insert the foregoing provision in all subcontracts.”

8. Amendment of Section 11.16. Section 11.16 of the City IGA is hereby replaced in its entirety with the following:

“11.16 **Liability of Parties.** The Parties agree that notwithstanding any contrary provision in this Agreement, nothing contained in this Agreement is intended or shall be construed to waive the protections provided to either Party under the Colorado

Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as the same may be amended from time to time (“CGIA”). At all times during the term of this Agreement, including any renewals or extensions, the Parties shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. This obligation shall survive the termination of this Agreement.”

9. Examination of Records. Any authorized representative of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the District’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The District shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the termination of this Agreement according to its terms or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the District to make disclosures in violation of State or federal privacy laws. The District shall at all times comply with DRMC 20-276.

10. Compliance with Denver Wage Laws. To the extent applicable to the District’s provision of services hereunder, the District shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable State, federal, and city law in accordance with the foregoing D.R.M.C. sections. By executing this Agreement, the District expressly acknowledges that the District is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the District, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. sections shall result in the penalties and other remedies authorized therein. The District shall insert the foregoing provision in all subcontracts.

11. Except as expressly set forth in this Second Amendment, all provisions of the City IGA remain unchanged and in full force and effect, valid and binding upon the Parties thereto.

12. This Second Amendment will not be effective or binding upon the City until it has been approved by City Council and fully executed by all required signatories of the City.

[SIGNATURE PAGE FOLLOWS]

Contract Control Number:

FINAN-202580100-02, RC8A007

Contractor Name:

Denver High Point at DIA Metropolitan District

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:
Contractor Name:

FINAN-202580100-02, RC8A007
Denver High Point at DIA Metropolitan District

By: See Attached Signature Page

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

[SIGNATURE PAGE TO SECOND AMENDMENT TO CITY INTERGOVERNMENTAL AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first set forth above.

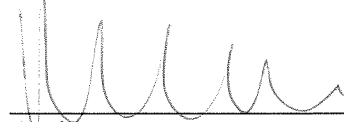
[CITY SIGNATURE PAGE TO BE SEPARATELY GENERATED]

**DENVER HIGH POINT AT DIA
METROPOLITAN DISTRICT**, a quasi-
municipal corporation and political subdivision
of the State of Colorado

By: 

President

Attest:



Assistant Secretary

Attachment 1 to Exhibit D

2025 District Projects

| COMPLETED PROJECTS | | | |
|---|---|------------------|-----------|
| Project | Description | Contract Costs | Year |
| 64th Ave Roadway | Roadway and Infrastructure-Tower to Dunkirk | \$ 648,945.00 | 2006 |
| Denver High Point Filing One/Two Grading | Mass Earthwork for Filing One and Two Infrastructure | \$ 1,232,000.00 | 2007 |
| DHP West Fork Channel/Pond s-243 | Mass Earthwork for WF Channel and DetentionPond | \$ 1,236,480.00 | 2007 |
| North Block Water Quality Pond | Strom Drain Pond at 70th and Argonne | \$ 575,000.00 | 2007 |
| Denver Sanitary Sewer | Sanitary Sewer Trunk Line - HP Blvd to Lift Station | \$ 425,000.00 | 2008 |
| North Block TEP | Argonne 69th to 71st Roadway Improvements | \$ 453,860.00 | 2008 |
| West Fork Channel Improvements | Channel Grade Control Structures | \$ 1,627,603.00 | 2009 |
| 64th Ave/Tower Rd | Intersection Improvements | \$ 73,781.00 | 2011 |
| Tower Road Landscape | Tower Streetscape Project- 64th to 68th Ave | \$ 588,179.00 | 2011 |
| 64th Ave/Tower Waterline | 16" WL Extension | \$ 55,811.00 | 2011 |
| Pond 243 Drop Structure | Pond 243 Improvements | \$ 969,482.00 | 2016 |
| Denver High Point Filing One Infrastructure | Phase One and Two Infrastructure | \$ 5,103,766.00 | 2017 |
| 64th Ave/Tower | Intersection Improvements/Traffic Signal update | \$ 318,911.00 | 2018 |
| Conoco Phillips Gas line | Relocate gas line for infrastructure Improvements | \$ 1,817,808.00 | 2018 |
| West Fork Channel Improvements | Channel Infrastructure Improvements-UDFCD | \$ 2,086,515.00 | 2019 |
| Denver High Point Filing Two | High Point Blvd/Dunkirk Street | \$ 8,248,970.00 | 2019 |
| DHP filing One Lot 2 Grading | Mass Grading Project | \$ 517,930.00 | 2020 |
| Dunkirk Street & Roundabout | Dunkirk 65th north and Roundabout | \$ 1,875,863.00 | 2021 |
| | | \$ 27,855,904.00 | |
| PROJECTS IN PROGRESS | | | |
| | Description | Contract Costs | Year |
| High Point Park | ~9 Acre Regional Park - High Point Blvd & Dunkirk | \$ 5,750,000.00 | 2025 |
| West Fork Trail | Completion West Fork Trail/Landscaping - Dunkirk to 71st) | \$ 3,620,000.00 | 2025 |
| Traffic Signals | 65th and Tower, 64th and Dunkirk | \$ 750,000.00 | 2025/2026 |
| | | \$ 10,120,000.00 | |