

12-047

**SOUTH BROADWAY/MONTGOMERY WARD
URBAN RENEWAL AREA**

**PROJECT FUNDING AGREEMENT FOR
W. DAKOTA AVENUE STORM WATER OUTFALL AND STREET
IMPROVEMENTS**

**AMONG
CITY AND COUNTY OF DENVER, COLORADO,
DENVER URBAN RENEWAL AUTHORITY
AND
BMP METROPOLITAN DISTRICT NO. 1**

Dated as of _____, 2012

THIS PROJECT FUNDING AGREEMENT FOR W. DAKOTA STORM WATER OUTFALL AND STREET IMPROVEMENTS PROJECT, dated as of _____, 2012 (this "Agreement") is made by and among the CITY AND COUNTY OF DENVER, COLORADO (the "City"), a home-rule city and municipal corporation of the State of Colorado, the DENVER URBAN RENEWAL AUTHORITY ("DURA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, and BMP METROPOLITAN DISTRICT NO. 1 ("BMP"), a metropolitan district organized and existing under the Special District Act of the State of Colorado.

WITNESSETH:

WHEREAS, DURA is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to the Colorado Urban Renewal Law, constituting Sections 31-25-101, *et seq.*, C.R.S., as amended (the "Act"); and

WHEREAS, BMP is a metropolitan district duly created, organized and established and authorized to transact business and exercise its powers as a special district within the City, all under and pursuant to the Colorado Special District Act, constituting Sections 32-1-101, *et seq.*, C.R.S., and the service plan of the district approved by the City pursuant to Ordinance No. 457, Series 2010 and filed with the Clerk of the City at Clerk Filing No. 10-846 ("Service Plan").

WHEREAS, an urban renewal plan, known as the South Broadway/Montgomery Ward Urban Renewal Plan originally dated October, 1992, as amended February, 2012, has been duly and regularly approved by the City Council of the City in accordance with the Act, which Plan contemplates the construction of storm water and street improvements in and near the South Broadway/Montgomery Ward Urban Renewal Area ("Urban Renewal Area"), and

WHEREAS, the boundaries of BMP encompass the boundaries of the Urban Renewal Area, and BMP is authorized by its service plan to construct various public improvements, including storm water and street improvements both within and without the Urban Renewal Area; and

WHEREAS, the City and DURA have entered into the South Broadway/Montgomery Ward Urban Redevelopment Area Cooperation Agreement dated _____, 2012 (the "Cooperation Agreement") to finance additional storm water and street improvements in and near the Urban Renewal Area; and

WHEREAS, the City is willing to advance funds for certain costs related to the construction of the storm water and street improvements in and near the Urban Renewal Area, to be reimbursed in part by DURA from property tax increment revenues as provided in the Cooperation Agreement; and

WHEREAS, BMP agrees herein to undertake the Project as defined below in accordance with the provisions of this Agreement; and

WHEREAS, upon entering into this agreement, the Parties anticipate that the overall Project Costs will total approximately \$17.9 million, the initial \$13 million in Project Costs to be borne by the City and the remaining \$4.9 million in Project Costs to be borne by BMP, as more fully set forth herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

In addition to the defined terms set forth in the recitals or elsewhere in this agreement, the following terms shall have the following meanings:

“Certification of Project Costs” or “Expenditure Certification” means the certificate of BMP, delivered to the City and DURA in the form attached hereto as **Exhibit 1**, and relating to Project Costs incurred by BMP for construction and delivery to the City of the Project.

“Project” means the W. Dakota Avenue Storm Water Outfall and Street Improvement Project, the purpose of which is to provide drainage improvements in accordance with City standards and requirements for the outfall area, including the South Broadway/Montgomery Ward Urban Renewal Area. The project involves the construction of a large box culvert along with upstream inlets and conduits commencing at the intersection of South Grant Street and Virginia Avenue, then running westerly along Virginia Avenue to South Broadway, northerly along South Broadway to Dakota Avenue, westerly along the West Dakota Avenue alignment through the South Broadway Montgomery Ward Urban Renewal Area to South Cherokee Street, continuing westerly through a bore or tunnel under the RTD and Consolidated Main Line tracks, across the former RTD bus barn property on South Santa Fe Drive, and connecting to the existing CDOT culvert under I-25 for ultimate drainage into the South Platte River. The route described above is subject to modification upon the mutual agreement of the City and BMP as may be necessary to address unknown conditions, provided that the alignment within the South Broadway Montgomery Ward Urban Renewal Area along the West Dakota Avenue alignment to South Cherokee Street shall not be modified in any material manner. The Project shall also include, upon completion of the stormwater improvements through the Urban Renewal Area, improvements to West Dakota Avenue between South Broadway and South Cherokee Street sufficient to re-establish and dedicate West Dakota as a public street as well as streetscape improvements on South Cherokee Street, all in accordance with City standards and requirements; provided, however, that the West Dakota Avenue street improvements shall not include sidewalk and streetscape improvements along the northerly side of the street.

“Project Costs” means the commercially reasonable costs and expenses actually incurred by BMP for design, engineering, labor, materials, equipment and subcontracting expenses used for excavating, grading, landscaping or constructing the Project. By way of example and not by way of limitation, Project Costs shall include any costs related to the acquisition of real property, easements, licenses or permits necessary for the construction of the project; and the gross cost of any general or special construction contract for the Project which is reduced to writing, and the additional charges for change orders, discharge of mechanics liens, and other similar extras contemplated by or resulting from such contract as approved by the City and DURA.

SECTION 2. CONSTRUCTION AND FUNDING OF THE PROJECT

Section 2.1 Construction and delivery of the Project.

BMP agrees to complete the design for and undertake the construction of the Project and to pursue the same with appropriate care and diligence, subject to Force Majeure, as defined in Section 9.26 below. All construction by BMP with respect to the Project shall be undertaken and completed in accordance with all applicable laws and regulations, including but not limited to the South Broadway/Montgomery Ward Urban Renewal Plan, as it may be amended, and this Agreement. The City and DURA shall have no responsibility to undertake any construction with respect to the Project. Upon completion of the Project to the satisfaction of the City and DURA, BMP shall convey Project improvements to the City, shall convey property for the extension of West Dakota Avenue from South Broadway to South Cherokee Street to the City and shall convey or assign to the City the District’s interests in any and all additional easements, license or permits necessary for the construction and maintenance of the storm water components of the Project westerly from S. Cherokee Street to the South Platte River.

Section 2.2 Eminent domain.

In accordance with Section V(B)(4) of the BMP Service Plan, the City hereby authorizes BMP to condemn property or easements along the West Dakota Avenue corridor between South Broadway and South Cherokee Street as may be necessary for the construction of the Project. By virtue of the fact that this Agreement as a whole has been approved by the City Council, the Council shall be deemed to have authorized condemnation as required by the Service Plan. All other provisions of Section V(B)(4) of the Service Plan shall remain in full force and effect and shall govern any exercise of eminent domain by BMP.

Section 2.3 Consolidated main line railroad crossing.

The City shall actively assist and cooperate with BMP, and use its best efforts to assist BMP in obtaining any and all necessary permits or licenses allowing the storm water outfall components of the Project to cross beneath the consolidated main line railroad tracks. Upon the request of BMP, the City shall act as a co-applicant with BMP on any application for such licenses or permits from the affected railroad companies or regulatory approval from government agency

exercising authority over utility crossings of railroad facilities; provided, however, the ultimate responsibility for obtaining such licenses, permits or approval shall remain with BMP. Any and all costs associated with obtaining such licenses, permits or approval shall be included as a Project Cost and billed as provided in Section 2.4.

Section 2.4 Payment procedures for Project Costs.

In connection with all payments of Project Costs, BMP shall deliver to the City and DURA an Expenditure Certification signed by an authorized representative of BMP, provided that such Expenditure Certifications shall be delivered no more frequently than once per month. The City and DURA shall jointly review each Expenditure Certification promptly upon receipt and notify BMP of any issues concerning the applicable Expenditure Certification within fifteen (15) business days of its receipt; if neither DURA nor the City notifies BMP of any such issues within fifteen (15) business days of receipt of the Expenditure Certification, the Expenditure Certification shall be deemed approved for payment by the City. DURA's approval of any Expenditure Certification shall be made upon the form set forth in **Exhibit 2** of this Agreement. The City shall make payments to BMP within five (5) business days following approval of an Expenditure Certification by the City and DURA. The obligation of the City to pay Project Costs shall be contingent upon receipt and approval by the City and DURA of such Expenditure Certifications. BMP covenants that all payments made to BMP hereunder shall be used solely for payment of Project Costs.

Section 2.5 Maximum City Liability for Project Costs

- (a) In order to pay Project Costs incurred under this Agreement, the City has appropriated \$13 million (\$13,000,000.00) in its Capital Projects Fund, project accounting number 38302-5011102-PL020, via Ordinance No. 256, Series 2011 and Ordinance No. ____, Series 2012. This sum shall be deemed a continuing capital appropriation from year-to-year within the meaning of Denver Charter section 7.2.3, and the City hereby irrevocably pledges this appropriation for future-year payments of Project Costs under this Agreement within the meaning of Article X, Section 20 (4)(b) of the Colorado Constitution.
- (b) The City's maximum liability for payment of Project Costs under this Agreement shall be \$13 million (\$13,000,000.00), minus expenditures previously authorized by DURA for study and design work associated with the Project pursuant to an Intergovernmental Agreement ("IGA") between the City and DURA dated May 16, 2011 (City Clerk Filing No. 11-327), part of the performance of which was assigned to BMP via a Memorandum of Understanding dated August 8, 2011 and amended November 22, 2011. Upon execution of this Agreement, the previous IGA and MOU shall be deemed terminated and superseded by this Agreement, and all future Project Costs related to design and engineering of the Project shall be billed to the City via an Expenditure Certification as provided in Section 2.4.
- (c) Any and all costs in excess of \$13 million associated with completion and delivery of the Project shall be the responsibility of BMP

Section 2.6. Reimbursement by DURA to the City for Project Costs.

As more fully set forth in the Cooperation Agreement, DURA shall reimburse the City from property tax increment revenues derived from the Urban Renewal Area for payments made by the City to BMP for a portion of the Project Costs incurred by the City under this Agreement, excluding the following: (A) any costs associated with the acquisition of land for the Project within the Urban Renewal Area; (B) any costs associated with the demolition of any existing commercial building within the Urban Renewal Area; or (C) any costs associated with the relocation of any tenants presently located in any commercial building within the Urban Renewal Area. DURA shall authorize such reimbursement concurrently with approving any Expenditure Certification under Section 2.4 utilizing the form set forth in **Exhibit 2** of this Agreement. DURA's reimbursement obligations under this Section shall be limited to the amounts legally available for such purposes under the Cooperation Agreement. DURA's obligation to reimburse the City shall cease no later than October 31, 2017 regardless of whether or not all Project Costs have been paid or all City payments to BMP under section 3.4 have been reimbursed as of that date.

Section 2.7 Access by the City and DURA.

BMP hereby grants to the City and DURA authority to enter any location where the Project is being constructed for the purpose of carrying out or determining compliance with the South Broadway/Montgomery Ward Urban Renewal Plan or any City code or ordinance, including, without limitation, inspection of any work being conducted with respect to the Project; provided that, except in the event of an emergency, the City or DURA shall provide reasonable advance notice to BMP of their intention to so inspect. Nothing herein shall limit the City's exercise of its police power.

Section 2.8 Compliance with certain DURA contracting policies

- (a) *Project Art.* As provided in the Cooperation Agreement, DURA shall reserve from the tax increment revenues derived from the Urban Renewal Area the sum of \$130,000 for the purpose of purchasing and installing project art in the Urban Renewal Area. DURA shall cooperate with BMP in the selection and installation of project art after the completion and delivery of the Project in accordance with DURA's Project Art Policy, a copy of which is attached hereto as **Exhibit 3**. Compliance with DURA's Project Art Policy shall be deemed to be in lieu of any obligation on the part of BMP to comply with the City's Public Art Ordinance (Sections 20-85, *et seq.*, D.R.M.C.) in the construction of the Project.

- (b) *Enhanced Training Opportunities.* BMP agrees that, with respect to the Project, it shall comply with DURA's Policy Regarding Enhanced Training Opportunities for Projects Funded with Tax Increment Financing ("ETO Policy"), a copy of which is attached as **Exhibit 4**. DURA and BMP agree that the amount of funding that must be provided for enhanced training opportunities under the policy in connection with the Project is \$130,000.
- (c) *First Source Program.* BMP shall cooperate with DURA for the period of construction of the Project and, in connection with DURA or a government office or agency designated by DURA (the "Agency"), participate in a program to provide preferential opportunities for employment and training of low-income Denver residents (the "First Source Program") more fully described in **Exhibit 5**. BMP shall designate a job placement **coordinator who shall be** responsible for implementing the First Source Program and coordinating with DURA and the Agency regarding BMP's efforts in connection therewith. To the extent not paid by the Agency, the costs of the First Source Program shall be shared equally between DURA and BMP. In the event that BMP believes that the First Source Program as structured in **Exhibit 5** substantially interferes with BMP's business operations, DURA agrees to consider in good faith any reasonable modifications to ameliorate such substantial interference.
- (d) *Relocation Assistance Policy.* Notwithstanding the fact that DURA shall not be required to pay or reimbursed the City or BMP for any tenant relocation costs as provided in Section 2.6, BMP shall comply with DURA's Relocation Assistance Policy, a copy of which is attached hereto as **Exhibit 6**, to the extent the construction of the Project results in the displacement of any existing business.

Section 2.9 Compliance with certain City contracting policies.

In accordance with Section V(C) of the BMP Service Plan and as more fully set forth in the ordinances of the City, in contracting for the construction of the Project, BMP shall comply with the following City contracting requirements:

- (a) Payment of prevailing wages.
- (b) Participation of small or disadvantaged businesses.
- (c) Non-discrimination in employment.

Section 2.10 Project Commencement and Project Completion.

Subject to Section 2.11 below, BMP shall commence construction of the Project (the "Project Commencement Date") on or before August 31, 2013, and shall complete the construction of the Project to the satisfaction of the City and DURA and shall deliver the Project to the City no later

than thirty-six (36) months after the Project Commencement Date (the "Project Completion Date.") Upon completion, BMP shall also submit to DURA and the City a written certificate stating that no further payments or reimbursements of Project Costs shall be requested by BMP pursuant to the terms hereof (a "Funding Completion Certificate").

Section 2.11 Contingency for early termination of construction and payment obligations.

BMP's obligation to construct and deliver the Project, the City's obligation to pay Project Costs, and DURA's obligation to reimburse the City for such payments, all as described in this Section 2, shall cease on August 31, 2012, unless on or before said date: (1) the Board of Directors of the Regional Transportation District takes formal action approving and executing a development agreement or similar contract with the principal owner of the real property encompassed within the Urban Renewal Area, D4 Urban, LLC, ("D4") for the development of land on and around the Alameda Light Rail Transit Station, and (2) D4 approves such development agreement or similar contract by formally executing the same.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF BMP

Section 3.1 Representations and warranties.

BMP represents and warrants that:

- (a) BMP is a legal entity established under the Colorado Special Districts Act of the State of Colorado. BMP validly exists, the execution and delivery of this Agreement is not a violation of the Special Districts Act, the Service Plan or BMP's bylaws, and BMP has the power and the legal right to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action.
- (b) The consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of BMP or constitute a default or result in the breach of any term or provision of any contract or agreement to which BMP is a party or by which it is bound.
- (c) BMP will cooperate with DURA with respect to any litigation brought by a third party concerning the South Broadway/Montgomery Ward Urban Renewal Plan, the Project, or this Agreement.
- (d) The construction of the Project and the contemplated uses and occupancy thereof, shall comply with all applicable federal, state and City laws, rules and regulations, including, but not limited to, building, zoning, and other applicable land use codes, subject to modifications approved by the City pursuant to the planning, subdivision, zoning environmental and other development ordinances and regulations.

SECTION 4. GENERAL COVENANTS

Section 4.1 Insurance.

(a) Within ten (10) days after the satisfaction of the contingency set forth in Section 2.11 hereof and until completion of construction, BMP shall provide the City and DURA with certificates of insurance as follows:

(i) Commercial general liability insurance with XC&U exclusions deleted (including completed operations, operations of subcontractors, blanket contractual liability insurance, owned, non-owned and hired motor vehicle liability, personal injury liability) with limits against bodily injury and property damage of not less than \$5,000,000 for any person and \$5,000,000 for any occurrence; and

(ii) Worker's compensation insurance, with statutory coverage.

(b) The policies of insurance required under subsection (a) above, shall be reasonably satisfactory to the City and DURA, shall, for commercial general liability, list the City and DURA as additional insureds, shall be placed with financially sound and reputable insurers licensed to transact business in the State of Colorado, and shall require the insurer to give at least thirty (30) days' advance written notice to the City and DURA prior to cancellation or change in coverage. BMP shall provide certified copies of all policies of insurance required under subsection (a) above, to DURA and the City upon request. For all insurance required to be carried by BMP under this Section 4.1, BMP shall require its insurer(s) to provide the City and DURA and their respective commissioners, directors, officers, employees and agents with waivers of subrogation. BMP shall not obtain any insurance that prohibits the insured from waiving subrogation. To the extent available in the insurance industry at a commercially reasonable price, all policies required to be obtained by BMP shall be written as "occurrence" policies and not as "claims-made" policies.

(c) In agreeing to the foregoing insurance requirements, BMP does not intend to waive any provision of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

Section 4.2 Cooperation.

The parties agree to execute such additional documents, including any estoppel certificates and take any such actions as may be reasonably requested by the other parties in order to fulfill the purposes of this Agreement.

SECTION 5. INDEMNITY

Section 5.1 General Indemnity. – This issue needs further discussion.

To the extent permitted by law, and without intending to waive applicable governmental immunity, BMP covenants and agrees, at its expense, to release, pay, indemnify, and defend and hold harmless, DURA, and its board of commissioners, officers, agents, employees, engineers and attorneys and the City and its City Council, officers, agents, employees, engineers and attorneys (collectively, “Indemnified Parties” or singularly, each an “Indemnified Party”) of, from and against, any and all claims, damages, demands, expenses (including reasonable attorneys’ fees and court costs), and liabilities resulting directly or indirectly from BMP’s development, construction, repair, maintenance, management, and any other conduct or activities with respect to the Project unless such claims, damages, demands, expenses, or liabilities, arise solely by reason of the negligent act or omission of DURA, the City or other Indemnified Party.

Section 5.2 Environmental Indemnity.

To the extent permitted by law, and without intending to waive applicable governmental immunity, BMP hereby agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all Environmental Liabilities, whenever and by whomever asserted.

As used in this Section, “Environmental Liabilities” shall mean any obligations or liabilities (including, without limitation, any claims, demands, actions, suits, enforcement actions, judgments, orders, writs, decrees, permits or injunctions imposed by any court, administrative agency, tribunal or otherwise, or other assertions of obligations and liabilities) that are:

(a) related to protection of the environment or human health or safety and involving the Project or the Urban Renewal Area (including, but not limited to, on-site or off-site contamination by pollutants, whether known or unknown, and occupational safety and health); and

(b) involving the Project or the Urban Renewal Area and arising out of, based upon or related to (x) environmental protection laws, or (y) any judgment, order, writ, decree, permit or injunction imposed by any court, administrative agency, tribunal or otherwise.

The term “Environmental Liabilities” shall include, but not be limited to: (i) fines, penalties, judgments, awards, settlements, losses, damages (including foreseeable and unforeseeable consequential damages), costs, fees (including attorneys’ and consultants’ fees), expenses and disbursements; (ii) defense and other responses to any administrative or judicial action (including claims, notice letters, complaints, and other assertions of liability); and (iii) financial responsibility for (x) cleanup costs and injunctive relief, including any corrective action, removal, remedial or other response actions, and natural resources damages, (y) any other compliance or remedial measures, and (z) bodily injury, medical monitoring, wrongful death, and property damage.

The terms “removal,” “remedial” and “response” action shall include, without limitation, the types of activities covered by CERCLA, as amended, and whether the activities are those which might be taken by a government entity or those which a government entity might seek to require

of waste generators, storers, treaters, owners, operators, transporters, disposers or other persons under "removal," "remedial," or other "response" actions.

Section 5.3 Indemnification Procedures.

(a) If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to BMP.

(b) Upon receipt of such notice, BMP shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

(c) The Indemnified Party shall cooperate with BMP in such defense at BMP's expense and provide BMP with all information and assistance reasonably necessary to permit such party or parties to settle and/or defend any such claim.

(d) The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but BMP shall be entitled to control the defense unless the Indemnified Party has relieved BMP from liability with respect to the particular matter.

(e) If BMP elects to undertake such defense by its own counsel or representatives, BMP shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

(f) If BMP does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of BMP.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of BMP; provided, that no settlement of any claim shall be effected without BMP's consent.

SECTION 6. EVENTS OF DEFAULT; REMEDIES

Section 6.1 Events of Default by BMP.

A Default by BMP under this Agreement shall mean one or more of the following events:

(a) BMP transfers or assigns its interest in this Agreement, without the consent of the City and DURA;

(b) BMP commences a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or is the subject of an involuntary case of such nature not dismissed within sixty (60) days after it is filed, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of BMP or of any substantial part of its property, or BMP makes any general assignment for the benefit of creditors or generally fails to pay its debts as they become due or takes any action in furtherance of such action;

(c) BMP fails to comply with the requirements of Section 5 hereof;

(d) BMP fails to use best efforts to comply with the DURA's First Source Program or ETO Policy or the City's Prevailing Wage requirements.

(e) BMP fails to spend amounts received pursuant to Section 2.4 on the Project; or

(f) BMP fails to complete and deliver the Project by the date prescribed in Section 2.10;

and if such Defaults are not cured by BMP within the time provided in Section 6.5, then an Event of Default shall have occurred and each of DURA and the City may exercise any remedy available under this Agreement.

Section 6.2 Events of Default by DURA.

Default by DURA under this Agreement shall be limited solely to the failure of DURA to reimburse the City for payment of Project Costs as provided in Section 2.6. If such Default is not cured within the time provided in Section 6.5, then an Event of Default shall be deemed to have occurred, and the City may exercise the remedy available under Section 6.4 of this Agreement.

Section 6.3 Events of Default by the City.

Default by the City under this Agreement shall be limited solely to the failure of the City to make payments to BMP for Project Costs as provided in Section 2.4. If such Default is not cured within the time provided in Section 6.5, then an Event of Default shall be deemed to have occurred, and BMP may exercise the remedy available under Section 6.4 of this Agreement.

Section 6.4 Remedies.

If any Event of Default by BMP occurs and is continuing hereunder, DURA or the City may (i) seek any available remedy at law; (ii) seek enforcement of BMP's obligations hereunder by any equitable remedies, such as specific performance or injunction; (iii) cure such Event of Default, for which BMP agrees to indemnify DURA and the City in accordance with the procedures set forth in Section 5.1; or (iv) with respect to Project Costs, if the Event of Default is due to BMP's failure to spend amounts received pursuant to Section 2.4 on the Project or if BMP fails to complete and deliver the Project by the Project Completion Date, the City may withhold payment of such Project Costs. If any Event of Default by DURA occurs and is continuing

hereunder, the City may seek enforcement of DURA's reimbursement obligation under Section 2.6 through specific performance. If an Event of Default by the City occurs and is continuing hereunder, BMP may seek enforcement of the City's obligations under Section 2.4 through specific performance. If payment to BMP of Project Costs are not made by reason of the City's failure to pay BMP for project costs as provided in Section 2.4, BMP shall have the right to terminate work on Project until such payment failure is remedied, and, if such payment is not made within ten (10) days of receipt by the City and DURA of notice from BMP of the failure by BMP to receive such payment, BMP may terminate the Project.

In no event shall BMP, DURA or the City be liable to the other parties hereto for damages, including special, consequential or punitive damages, and each party hereby waives any claims or actions for damages against the other parties hereto.

Section 6.5 Notice of Defaults; Opportunity to Cure Such Defaults.

Anything hereunder to the contrary notwithstanding, no Default under Section 6.1, 6.2 or 6.3 hereof shall constitute an Event of Default until (a) actual notice of such Default shall be given to the party in Default by one of the other parties hereto, (b) and the party in Default shall have had thirty (30) days after receipt of such notice to correct said Default or cause said Default to be corrected and shall not have corrected said Default or caused said Default to be corrected within the applicable period; (c) provided, however, if said Default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted within the applicable period and diligently pursued until the Default is corrected; so long as that corrective action is completed no later than ninety (90) days after receipt of notice; and d) if the actual notice of Default is given by BMP to the City due to failure by the City to deliver funds to BMP as required pursuant to Section 2.4, the Default under Section 6.3 shall constitute an Event of Default if the City has not delivered funds to BMP within five (5) business days of receipt of the actual notice of Default.

SECTION 7. TERMINATION

Section 7.1 Scheduled termination.

This Agreement shall continue throughout the design and construction of the Project through the Project Completion Date, and thereafter this Agreement shall automatically terminate, except as provided in Section 9.17, and each party shall execute such documents to evidence such termination as may be reasonably required by any of the parties.

Section 7.2 Early termination.

This Agreement shall be deemed automatically terminated on and after August 31, 2012 if the contingency set forth in Section 2.11 is not fulfilled by that date. Should this Agreement be terminated under this Section, the Parties shall have no further obligations hereunder.

SECTION 8. RESTRICTIONS ON ASSIGNMENT AND TRANSFER

Section 8.1 Limitation on Assignment and Pledge.

BMP shall not assign or pledge its rights or duties and obligations pursuant to this Agreement without the prior written consent of DURA and the City, and any purported assignment without consent of DURA and the City shall be null and void.

SECTION 9. MISCELLANEOUS

Section 9.1 Limitation of Rights.

With the exception of rights herein expressly conferred, nothing expressed or to be implied by this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

Section 9.2 Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, or dispatched by telegram or telecopy (if confirmed promptly telephonically), addressed to the following persons and addresses or at such other address or addresses as any party hereto shall designate in writing to the other parties hereto:

TO DURA:

Denver Urban Renewal Authority
1555 California Street
Suite 200
Denver, Colorado 80202
Attention: Executive Director

TO THE CITY:

Manager of Finance
Webb Municipal Office Building
201 W. Colfax Ave., Dept. 1010
Denver, CO 80202

Manager of Public Works
Webb Municipal Office Building
201 W. Colfax Ave, Dept 608
Denver, CO 80202

City Attorney
Denver City and County Building
1435 Bannock St., Room 353

Denver, CO 80202

TO BMP:

District President:

Dan Cohen, President
BMP Metropolitan Districts
595 S. Broadway, Suite 200
Denver, CO 80203

District Counsel:

MaryAnn M. McGeady
McGeady Sisneros, P.C.
450 E. 17th Ave.
Denver, CO 80203

Section 9.3 Waiver.

No failure by any party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party, by giving notice to the other parties may, but shall not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 9.4 Attorneys' Fees.

In any proceeding brought to enforce the provisions of this Agreement, each party shall be responsible for its own attorneys' fees, actual court costs and other expenses incurred.

Section 9.6 Conflicts of Interest.

DURA and the City shall not allow, and except as disclosed in writing to DURA and the City, BMP shall not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: A member of the governing body of DURA or of the City or an employee of DURA or of the City who exercises responsibility concerning the Project. DURA and the City shall not allow and BMP shall not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 9.7 Titles of Sections.

Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.8 Not Partners; BMP Not Agent of DURA or City.

Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither DURA nor the City shall be deemed or constituted a partner or joint venturer of BMP, BMP shall not be the agent of DURA or the City, and neither DURA nor the City shall be responsible for any debt or liability of BMP.

Section 9.10 Applicable Law.

The internal laws of the State of Colorado, the City Charter and the Denver Revised Municipal Code shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law principles.

Section 9.11 Binding Effect.

This Agreement shall be binding on and inure to the benefit of the parties hereto, and their successors and assigns, subject to the limitations on assignability of this Agreement by BMP as set forth in Section 11.1.

Section 9.12 Further Assurances.

The parties hereto agree to execute such documents, and take such action, as shall be reasonably requested by the other parties hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 9.13 Time of Essence.

Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 9.14 Severability.

If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 9.15 Good Faith; Consent or Approval.

Except as specifically set forth herein to the contrary, in performance of this Agreement, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold or delay any approval required by this Agreement. Except

as otherwise provided in this Agreement, whenever consent or approval of a party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. BMP agrees and acknowledges that in each instance in this Agreement or elsewhere where DURA or the City is required or has the right to review or give its approval or consent, no such review, approval or consent shall imply or be deemed to constitute an opinion by DURA or the City, nor impose upon DURA or the City, any responsibility for the design or construction of the Lowry Supplemental Projects, including but not limited to the structural integrity or life/safety requirements or adequacy of budgets or financing or compliance with any applicable federal or state law, or local ordinance or regulation, including the Environmental Laws. All reviews, approval and consents by DURA or the City under the terms of this Agreement are for the sole and exclusive benefit BMP and no other person or party shall have the right to rely thereon. Notwithstanding anything in the Agreement to the contrary, nothing herein shall limit or impair the City's police powers, including its regulatory powers.

Section 9.16 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.17 Nonliability of DURA, BMP or City Officials and Employees.

No council member, commissioner, board member, official, officer, employee, agent or consultant of DURA, BMP or the City shall be personally liable in the event of a breach or Event of Default by DURA, BMP or the City or for any amount that may become due under the terms of this Agreement.

Section 9.18 Incorporation of Exhibits.

All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 9.19 Survival.

The indemnity obligations of BMP under Section 5 shall survive any termination of this Agreement until the latest expiry of all applicable statutes of limitation.

Section 9.20 Subsequent Events.

If at any time during the term of this Agreement BMP requests the cooperation of DURA or the City in connection with an assignment or any other action under this Agreement, BMP expressly assumes the obligation to pay any and all fees and expenses, including reasonable consultants' fees, attorneys' fees, incurred by DURA and the City in connection with such action or assignment.

Section 9.21 No Third Party Beneficiaries.

The City, BMP and DURA intend that this Agreement shall create no third party beneficiary interests. The City, BMP and DURA are not presently aware of any actions by them or any of

their authorized representatives which would form the basis for interpretation constituting a different interest, and, in any event, expressly disclaim any such acts or actions.

Section 9.22 Right to Inspect Books.

In addition to all rights the City has under C.R.S. 24-72-201, BMP and DURA agree that the City, the City's Auditor and any authorized representative of the City shall have the right, at all reasonable times and after reasonable notice, to examine all books and records with respect to this Agreement.

Section 9.23 Modification.

This Agreement may be modified, amended, changed or terminated, in whole or in part, without City Council approval unless City Council approval is required by City Charter. Any modification, amendment, change or termination shall be in writing executed by the City, BMP and DURA.

Section 9.24 Venue.

Venue shall be exclusively to the District Court in and for the City and County of Denver.

Section 9.25 Nondiscrimination.

In connection with the performance of work under this Agreement, the City, BMP and DURA agree 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, marital status or physical and mental disability; and the City, BMP and DURA further agree to insert the foregoing provision in all subcontracts hereunder.

Section 9.26 Force Majeure

(a) "Force Majeure" shall mean any event arising from causes beyond the control of BMP that delays the performance of any obligation under this Agreement despite BMP's best efforts to fulfill the obligation, limited to: (i) acts of God; (ii) war; (iii) terrorist attacks; (iv) prolonged strikes; (v) flooding; and (vi) vandalism.

(b) In the event that a delay or anticipated delay in performance is anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Agreement that are affected by the Force Majeure event will be extended for such reasonable time as is necessary to complete those obligations. In the event that the Force Majeure event is of a nature that makes the completion of the Project physically impossible or commercially unreasonable, BMP shall have no further obligation to complete the Project but shall make the conveyances to the City contemplated in Section 2.1 above of the portions of the Project that were completed prior to the Force Majeure event.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their respective officers, as of the date first above written.

DENVER URBAN RENEWAL AUTHORITY

By: 
Name: Chris JIM MARTINEZ
Title: Chair

ATTEST:

By: 

BMP METROPOLITAN DISTRICT NO. 1

By: 
Name: Daniel M. Cohen
Title: President

ATTEST:

By: 

CITY AND COUNTY OF DENVER

ATTEST:

By: _____
Mayor

By: _____
Debra Johnson, Clerk and Recorder, *Ex-Officio* Clerk of the City and County of Denver

RECOMMENDED AND APPROVED:

By: _____
Manager of Public Works

By: _____
Manager of Finance

APPROVED AS TO FORM:

Douglas J. Friednash, Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance

Contract Control No. _____

By: _____
Auditor

EXHIBIT 1

EXPENDITURE CERTIFICATION

W. Dakota Avenue Storm Water Outfall and Street Improvement Project

Date: _____
Project: W. Dakota Avenue Storm Water Outfall and Street Improvement Project
Payment Request No: _____
Amount Requested: \$ _____

The following documents are attached to this certification are;

1. W. Dakota Avenue Storm Water Outfall and Street Improvement Project Schedule of Total Costs for Expenditure Certification.
2. Itemized bill or statement of account for each itemized cost as listed on the Schedule of Total Costs for Payment.
3. Partial and/or Final Lien Waivers from each Contractor and/or Sub-Contractor for the previous expenditure certification showing payments made per the previously approved Schedule of Total Costs for Payment.

(a) The items of costs for which payment is certified herein (i) are or were necessary in connection with, and are reasonably attributable to, the W. Dakota Avenue Storm Water Outfall and Street Improvement Project and (ii) have not formed the basis for any previous payment to the person receiving payment as described herein.

(b) No event has occurred and is continuing which constitutes an Event of Default of BMP Metropolitan District No. 1, as defined in the Project Funding Agreement for W. Dakota Avenue Storm Water Outfall and Street Improvement Project (the "Funding Agreement"), or would constitute an Event of Default but for the requirement that notice be given or time elapsed or both.

(c) The Project Costs certified herein were incurred pursuant to the Project Funding Agreement for the W. Dakota Avenue Storm Water Outfall and Street Improvement Project.

Dated: _____ 20____ BMP Metropolitan District No. 1

By: _____
Name: _____
Title: _____

Schedule A to Exhibit 1

**W. Dakota Avenue Storm Water Outfall and Street Improvement
Project Schedule of Total Costs for Expenditure Certification**

Payment Request No. _____

Date: _____

Schedule of Total Costs

Cost Categories	Amount Requested for Reimbursement
Eligible Hard Costs	
Demolition	
Drainage	
Tunneling	
Utilities	
Roadway	
Dakota Enhancements	
Cherokee Enhancements	
Environmental	
Miscellaneous Hard Costs	
Non-Eligible Hard Costs	
Demolition of Existing Buildings Inside URA	
Building and Tenant Improvements after Demolition	
Eligible Soft Costs	
Design Fees	
Review Fees	
Permit Fees	
Legal Fees	
Land Acquisition Outside URA	
Project and Construction Management	
Other Soft Costs	
Non-Eligible Soft Costs	
Land Acquisition Costs Inside URA	
Legal Fees for Land Acquisition inside URA	
Tenant Relocation Costs	

Eligible Improvements means the Project Costs as defined in the Project Funding Agreement except for those Project Costs associated with (i) the demolition of any existing commercial buildings within the Urban Renewal Area,(ii) the relocation of tenants occupying commercial buildings within the Urban Renewal Area or (iii) the acquisition of real property within the Urban Renewal Area including through the use of eminent domain. The payment of costs for items (i) through (iii) shall be categorized and processed as Non-Eligible Improvements hereunder.

EXHIBIT 2

CERTIFICATION OF COSTS ELIGIBLE FOR PAYMENT & COSTS FOR ELIGIBLE IMPROVEMENTS FROM DURA TO CITY

Date: _____

Project: W. Dakota Avenue Storm Water Outfall and Street Improvement Project

Payment Request No.: _____

Amount of Project Costs Approved for Payment to BMP. No. 1 \$ _____

Amount of Eligible Improvements Approved for Reimbursement to City: \$ _____

By signing below, the City and DURA hereby approve the above amount of Costs as Eligible for Payment to be paid by the City to BMP no. 1, and approve the amount of Costs for Eligible Improvements to be reimbursed by DURA to the City, pursuant to South Broadway/Montgomery Ward Cooperation Agreement between the City and DURA dated _____.

Dated: _____, 20__

City and County of Denver

Denver Urban Renewal Authority

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Schedule A to Exhibit 2

**W. Dakota Avenue Storm Water Outfall and Street Improvement Project
Schedule of Total Costs for Expenditure Certification of Costs Eligible
for Payment & Costs for Eligible Improvements from Dura To City**

Payment Request No. _____

Date: _____

Total Costs for Eligible Improvements for reimbursement to the City from DURA

Cost Categories	Amount Requested for Reimbursement
Eligible Hard Costs	
Demolition	
Drainage	
Tunneling	
Utilities	
Roadway	
Dakota Enhancements	
Cherokee Enhancements	
Environmental	
Miscellaneous Hard Costs	
Non-Eligible Hard Costs	
Demolition of Existing Buildings Inside URA	
Building and Tenant Improvements after Demolition	
Eligible Soft Costs	
Design Fees	
Review Fees	
Permit Fees	
Legal Fees	
Land Acquisition Outside URA	
Project and Construction Management	
Other Soft Costs	
Non-Eligible Soft Costs	
Land Acquisition Costs Inside URA	
Legal Fees for Land Acquisition inside URA	
Tenant Relocation Costs	

Eligible Improvements means the Project Costs as defined in the Project Funding Agreement except for those Project Costs associated with (i) the demolition of any existing commercial buildings within the Urban Renewal Area,(ii) the relocation of tenants occupying commercial buildings within the Urban Renewal Area or (iii) the acquisition of real property within the Urban Renewal Area including through the use of eminent domain.

EXHIBIT 3

**DENVER URBAN RENEWAL AUTHORITY
PROJECT ART POLICY**

(See attached)

DENVER URBAN RENEWAL AUTHORITY

Project Art Policy

February 2006

A project art component contribution is required on all private development projects receiving funds from the Denver Urban Renewal Authority (DURA). The value of the project art must be equal to at least one percent of the gross bond proceeds issued by DURA in connection with the project or one percent of the project's maximum reimbursable expenses as of the effective date of the Redevelopment Agreement. This amount may include all costs associated with the project art including production of the proposal as outlined below, design fees, fabrication, transportation, delivery, installation and insurance fees.

The cost of the project art is an eligible tax increment expenditure and may be paid for with bond proceeds or reimbursed to the developer through the project's tax increment.

Process

In order to obtain approval of the proposed artwork, the developer must submit a proposal to DURA prior to purchasing or commissioning the artwork for consideration. Furthermore, the developer is strongly encouraged to meet with DURA as early as possible and prior to submitting the proposal to discuss possible and acceptable concepts.

For projects with a project art budget of less than or equal to \$50,000, the review of the artwork will be undertaken by DURA's art review staff and approved by the Executive Director. Projects with an art budget between \$50,001 and \$100,000 must be reviewed by DURA's art review staff and approved by the DURA Board of Commissioners. For projects with an art budget equal to or greater than \$100,001, DURA will establish a Project Art Committee charged with reviewing the artwork. This committee will make a recommendation to the DURA Board of Commissioners which makes the final determination on acceptance or denial of the artwork.

The Project Art Committee is appointed by DURA's Board of Commissioners and is comprised of the following individuals:

- a. one DURA Board member;
- b. one DURA staff member;
- c. an architect or other professional design staff member of the Denver Planning office;
- d. the Director of the Denver Art Museum or his/her designee;
- e. one representative designated by the developer;
- f. one person selected by DURA from a list of artists maintained by DURA; and
- g. other members that may be determined.

Before purchasing or commissioning any piece of art, the developer must first meet with the DURA art review staff or the Project Art Committee, as appropriate. The purpose of this meeting is to discuss the general characteristics and possible concepts for the artwork. Following this meeting, a proposal from the developer must be submitted to the staff/committee for consideration.

The proposal must contain a written and graphic description of the project art, including the following appropriate information:

- a. site plans of the vicinity where the art is to be located;
- b. elevations;
- c. perspectives;
- d. details of structural elements;
- e. verification of costs; and
- f. maintenance requirements and schedule and source of maintenance funds.

For projects utilizing the Project Art Committee for review, seven (7) copies of any of the items above which are not able to be photocopied (i.e., color boards and photographs) must be submitted for distribution to the

committee. Additional information, such as sample materials and colors, photographs, and/or scale models, may be required by the committee as part of the submission.

The staff/committee must review and approve any changes in the design and/or concept of the project art after the final proposal has been approved.

DURA may, at its sole discretion, revise this process as necessary to respond to individual circumstances of different projects.

Design and Concept Requirements

The project art may be located in either an interior or exterior space. However, it must be available and accessible to the general public. When reviewing a proposal for a piece of art to be placed in an interior space, DURA's project art staff/committee and Board will make a distinct effort to consider the program and objectives of the developer.

For purposes of this program, project art is defined as, but need not be limited to, the following:

- a. **sculpture:** in the round, bas relief, mobile, fountain, kinetic, and electronic, in any material or combination of materials;
- b. **painting:** all media, including portable and permanently affixed works;
- c. **graphic arts:** printmaking and drawing;
- d. **mosaics;**
- e. **photography;**
- f. **crafts:** in clay, fiber and textiles, wood, metal, plastics, stained glass, and other materials both functional and nonfunctional;
- g. **mixed media:** any combination of forms or media, including collage;
- h. **earth works and environmental installations;** and
- i. **decorative or ornamental elements which are designed by practicing artists.**

The following elements will generally not be considered acceptable forms of art under this program:

- a. directional elements such as supergraphics and signage;
- b. objects which are mass produced in a standard design such as playground equipment, benches, and chairs;
- c. reproductions of original works of art, except in such cases as film, video, photography, printmaking, or other media arts;
- d. landscape architecture and gardening **except** where the elements are designed by an artist and are an integral part of a larger piece of artwork;
- e. renovation of historic facades or other historical elements functional to the project;
- f. commercial elements used to promote or advertise the project; and
- g. other elements of the redevelopment project which are functional or directly related to the operation of the project.

Criteria for Review of Proposal

The developer is encouraged to utilize a local artist in the development of the project art. Additionally, the staff/committee will use the following criteria in evaluating the proposal:

- a. appropriateness of relationship to project;
- b. artistic excellence;
- c. strong contribution to the historic, ethnic or other characteristics of the site;
- d. susceptibility to wear and vandalism;
- e. longevity and permanence of materials;
- f. maintenance schedule and source of maintenance funds;
- g. mediation of environmental hazards; and
- h. compliance with applicable public safety codes.

EXHIBIT 4

**DENVER URBAN RENEWAL AUTHORITY
POLICY REGARDING ENHANCED TRAINING OPPORTUNITIES FOR PROJECTS FUNDED WITH
TAX INCREMENT FINANCING**

(See attached)

DENVER URBAN RENEWAL AUTHORITY

POLICY REQUIRING ENHANCED TRAINING OPPORTUNITIES FOR PROJECTS FUNDED WITH TAX INCREMENT FINANCING

May 2008

Policy Statement

The Denver Urban Renewal Authority ("DURA") has determined that improved access to training opportunities within the construction trades would benefit DURA and the citizens of Denver by improving job safety and opportunities for advancement within the construction industry. As such, the funding of enhanced training opportunities (ETO) is required on all projects funded in whole or in part by tax increment financing (TIF) provided by DURA. The cost of the ETO provided must be equal to at least one percent of the gross bond proceeds issued by DURA in connection with the project or one percent of the project's maximum reimbursable expenses as of the effective date of the Redevelopment Agreement.

The cost of the ETO is an eligible tax increment expenditure and may be paid for with bond proceeds or reimbursed to the developer through the project's tax increment.

Goals

The goal of DURA's ETO Policy is to improve access to training within the construction trades, improve job safety, and increase individuals' opportunity for advancement within Denver's construction industry. ETO funds are intended to increase the availability of, access to, or quality of training opportunities in Denver – not to subsidize existing training where funding is already required and/or in place. Funding is intended to primarily benefit construction workers on DURA projects or, more broadly, Denver residents and/or employees of Denver-based construction firms. Where possible, ETO funds should serve to enhance outcomes under DURA's Small Business Enterprise (SBE) and First Source policies.

ETO funds may be deployed on a project specific basis according to a DURA approved ETO plan or as a payment in lieu contribution to an approved training provider or program, such as the City and County of Denver's Office of Workforce Development or the Economic Development Construction Empowerment Initiative, as described below.

All projects funded in whole or in part by tax increment financing (TIF) provided by DURA are required to participate.

Plan Components

Developers choosing to expend ETO funds on their project job site must prepare an ETO Plan. The ETO Plan must include the plan objective(s), specific training opportunities, implementation strategy, and a budget. An ETO Plan may be merged with the project's SBE Plan into a single plan for meeting both requirements. Developers are encouraged

to develop both plans in coordination with their general contractor, as the entity most directly responsible for success in meeting SBE and ETO objectives.

Plan Objectives

ETO Plan objectives will vary by project type, stage in the development process, and goals of the developer. Plan objectives should be clearly stated and, where possible, measurable (% decrease in reported safety incidents, number of training hours sponsored, etc.).

Training Opportunities

Developer sponsored training opportunities should be clearly tied to meeting the plan objectives. Training opportunities not specifically identified in the ETO Plan must be approved by a four-member committee as defined in the implementation strategy below. Training opportunities not initially identified in the ETO Plan may be included after the fact if they are in keeping with the plan objectives. Such amendments to the ETO Plan should be submitted to DURA in writing for approval by staff.

Implementation Strategy

Strategies for implementing the ETO Plan will vary according to plan goals, project type and the stage in the development process during which the plan is drafted. The implementation strategy should make clear who will be responsible for carrying out various aspects of the plan (developer, general contractor, sub contractor, etc.), how specific training opportunities will be identified (if not already identified above), how beneficiaries will be selected (i.e., which DBEs or employees can participate), and include an implementation timeline.

For plans that have identified categories of training opportunities, but have not identified specific training providers, the implementation strategy must include the creation of a four-member approval committee. The committee will be made up of two representatives identified by DURA and two representatives identified by the redeveloper (e.g., developer representative, general contractor representative, etc.) at the time the plan is submitted. One DURA representative will be a staff member and the other will be an independent party with expertise in the areas of construction and workforce training. The role of the committee is to review and approve the appropriateness of a proposed training opportunity.

Finally, the implementation strategy must include a mechanism for reporting outcomes.

Budget

The Plan Budget must total at least one percent of the gross bond proceeds issued by DURA in connection with the project or one percent of the project's maximum reimbursable expenses as of the effective date of the Redevelopment Agreement. The budget must breakout the estimated cost for providing the identified training

opportunities on a per unit basis (per session, per employee, etc.) and in the aggregate. Projects in which the total TIF contribution is at least \$10 million are permitted to include an overhead cost for implementing the ETO Plan, which shall not exceed 5% of the total plan budget.

The Plan Budget is an estimate and, with the exception of overhead expenses, will not represent minimum or maximum itemized expenditures. Any unexpended funds remaining at the completion of the project will be contributed as a payment in lieu to an approved training provider or program, as further described below.

Payment In Lieu

Developer's not choosing to expend ETO funds on their project job site must make a payment in lieu contribution to an approved training provider or program, such as the City and County of Denver's Office of Office of Workforce Development or Economic Development Construction Empowerment Initiative. A Payment In Lieu will be equal to at least one percent of the gross bond proceeds issued by DURA in connection with the project or one percent of the project's maximum reimbursable expenses as of the effective date of the Redevelopment Agreement. A Payment In Lieu will be paid by the developer at commencement of construction or from net bond proceeds at closing.

The option of making a Payment In Lieu is not available to projects in which gross bond proceeds issued by DURA in connection with the project or one percent of the project's maximum reimbursable expenses are equal to or greater than \$20 million. Projects of this size are required to prepare an ETO Plan.

Reimbursement

ETO Plan costs are eligible tax increment expenditures and may be paid for with bond proceeds or reimbursed to the developer through the project's tax increment. Such payment or reimbursement will be based on actual costs incurred, submitted for review and approval by DURA.

In the event a developer fails to evidence expenditure of the full 1% as required by this policy, DURA shall have the right to withhold bond proceeds or reimbursement from TIF in an amount equal to the shortfall. Amounts may be withheld in advance other obligations owed to the developer from TIF and DURA, at its sole discretion, may defer any interest accrual on those obligations until such time as the ETO requirement has been satisfied. Amounts withheld will be contributed to the Denver's Office of Workforce Development or Construction Empowerment Initiative.

EXHIBIT 5

**DENVER URBAN RENEWAL AUTHORITY
FIRST SOURCE PROGRAM**

(See attached)

**DURA FIRST SOURCE HIRING AND OUTREACH
PROGRAM FOR LOW INCOME DENVER RESIDENTS FOR
URBAN RENEWAL PROJECTS**

BACKGROUND

I. Purpose of the First Source Program In connection with DURA's primary goal of undertaking urban renewal projects to revitalize the City and foster sound growth and development, DURA will develop a program, in cooperation with the appropriate agencies of the City and County of Denver or other governmental agencies chosen by DURA, which is intended to provide preferential opportunities for employment and training of low-income Denver residents and will require developers with Redevelopment Agreements approved by DURA after May, 1995 to participate in such programs.

II. Development and Implementation of the First Source Program; Division of Responsibility.

(a) DURA will require developers to participate in the program as a condition to receiving tax increment financing or similar assistance from DURA for urban renewal projects. Developers will require their tenants to participate by including this requirement in their tenant's leases or other documents. The term of the developer commitment will be the lesser of the (10) years or the term of repayment of DURA's financial assistance for the project. This obligation will be set forth in the Redevelopment Agreement between DURA and the developer.

(b) The Colorado Department of Labor & Employment, Denver Job Service Center will provide a staff member to act as the employment coordinator (First Source Program Coordinator). The Mayor's Office of Employment and Training (MOET), the Mayor's Office of Economic Development (MOED) or other appropriate agency chosen by DURA are cooperating agencies for providing training in the First Source Program.

The specific steps of the First Source Program are discussed below.

**FIRST SOURCE PROGRAM
FOR LOW INCOME DENVER RESIDENTS**

A. Pre-Hiring Training Outreach

1. The First Source Program applies to both the construction period and post construction long-term jobs. For the construction period jobs, the Developer's Job Placement Coordinator and First Source Program Coordinator (a staff member of the Colorado Department of Labor & Employment, Denver Job Service Center) will meet as early as feasible, but prior to the pre-bidding process for construction contracts, to determine employee skill needs and number of employees needed by the Developer and its construction contractors for the Project. For the post construction long-term jobs, the Developer's Job Placement Coordinator and First Source Program Coordinator will meet, in concert with employers in the Project, as early as possible but no later than the middle

of the construction period, to determine employee skill needs and number of employees needed by the employers in the Project.

2. The First Source Program Coordinator contacts eligible Community Based Organizations (CBOs), MOET and MOED to notify them of job opportunities. Eligible CBOs are understood to be organizations interested in participating in the First Source Program and organizations with the capacity to perform employment outreach notification, as determined by the First Source Program Coordinator. The First Source Program Coordinator will co-sponsor with CBOs workshop(s) to explain the types of development projects, the list of employers, and the anticipated job position requirements. At future meeting(s), information will be supplied about the nature of employment (full or part-time), the employee benefits offered, the employer's promotion policy, the possibility of advancement, the employee's expected hours, and other employer policies.
3. The Developer's Job Placement Coordinator and First Source Program Coordinator work together to determine general training needs for specific project employers. Interested job applicants are directed to MOET or other appropriate existing community training opportunities relevant to employment training for the Project. The First Source Program Coordinator, in consultation with the Developer's Job Placement Coordinator, will determine the need for additional pre-hiring training, such as job application preparation, interview preparation, general work or construction readiness, and arrange referrals for interested applicants.

B. Interview Outreach and Preferential Hiring Period

1. Developer's Job Placement Coordinator provides employer job listings to First Source Program Coordinator within a time frame which allows for an interview at least five (5) calendar days in advance of filling an applicable position for low-income Denver residents. The First Source Program Coordinator will notify CBO's, by a method mutually agreeable to the CBO's and the First Source Program Coordinator, such as by facsimile or community meeting, or job listings and the proposed interview schedule.
2. Within the original five days, as referenced above, applications are provided by the First Source Program Coordinator to the employers or the Developer for interview when the employer is ready to hire.
3. The employer interviews only people referred by the First Source Program Coordinator who meet the employment qualifications as proposed by the employer for positions covered by the First Source Program first, for a period of five (5) calendar days preceding the employer's opening general interview date. The First Source Program Coordinator consults with the Developer and employer(s) to determine which staff positions or staffing situations, by their nature to the daily operation of the employer's business, will be considered exempt from inclusion in the First Source Program.

4. Employers may exempt management employees, licensed professionals, and those hired on a temporary or emergency basis. The First Source Program will consider management hires filled by an employer's current employee, on a transfer basis or as a promotion in manager development process, as positions which may be excluded from the Program, at the sole discretion of the Employer.
5. At the expiration of the five (5) day period the employer will be free to follow its standard recruitment and selection procedures to fill vacant positions, so long as the same full and fair consideration is given to applicants referred by the First Source Program Coordinator. As employment vacancies continue to occur, the employer will continue to contact the First Source Program Coordinator as a first step in filling the vacancy. The First Source Program Coordinator will allow the employer some flexibility in the five-day preference period when the number of vacancies is small, after start-up, so long as the same full and fair consideration is given to applicant(s) referred by the First Source Program Coordinator first. The employer retains, at all time, full choice of whom to hire and, except as otherwise applicable, such employees will be employed at the will of the employers.

C. Reporting and Monitoring

The First Source Program Coordinator will develop quarterly reports for the first year and annual reports thereafter relating to the First Source Program. The Developer's Job Placement Coordinator and the Developer will cooperate with the First Source Program Coordinator to accumulate performance data. These reports are to accumulate performance data. These reports are intended to allow the First Source Program Coordinator to monitor and evaluate First Source Program performance, and the Developer and tenant performance. The First Source Program's performance will be measured, after the first year, by the percentage of Denver residents employed (referenced by zip codes), the percentage of First Source Program job placements made to and hired at the respective project during the review period, and by race, sex, age, national origin, handicap or veteran status.

The First Source Program Coordinator will provide the quarterly and annual reports to DURA. DURA will arrange for an advisory group which would include representatives from interested parties such as the Denver City Council, the Denver Job Service Center, MOET, MOED, CBO's (such as ACORN, Servicios de La Raza, Urban League, SWIC, and Mi Casa) and other representatives of governmental agencies appointed by DURA, to periodically evaluate the performance of the First Source Program and recommend appropriate future modifications. DURA will also solicit suggestions from the Developer and employers for suggestions from the Developer and employers for additional advisory group representatives which could provide valuable input into the review and evaluation process.

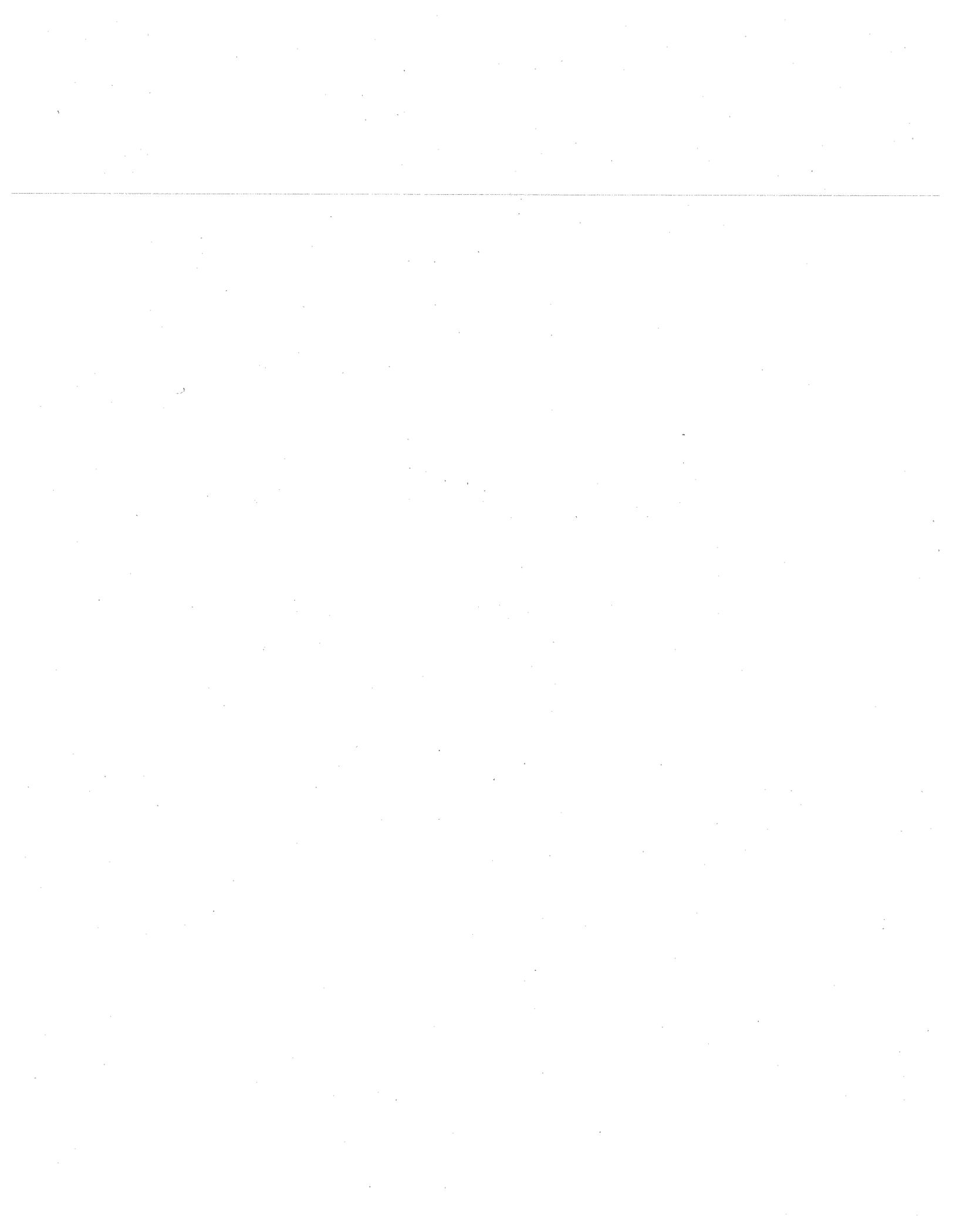


EXHIBIT 6

**DENVER URBAN RENEWAL AUTHORITY
RELOCATION ASSISTANCE POLICY**

(See attached)

DENVER URBAN RENEWAL AUTHORITY

Relocation Assistance Policy

The Denver Urban Renewal Authority (DURA) hereby adopts the following policies to govern activities when relocating individuals, families, businesses, non-profit organizations and personal property displaced by urban renewal projects. These policies have been adopted by DURA to provide relocation assistance to displaced persons and businesses, and to comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Uniform Act) and the implementing regulations thereof including 49 CFR Part 24, HUD Handbook 1378, and Colorado Revised Statute 24-56-101 through 113.

It is DURA's policy to treat all relocatees uniformly by basing relocation payments to displaced occupants on the policies set forth herein. This document sets forth a basic overview of the DURA Relocation Assistance Policy, which is based on the Uniform Act and HUD Handbook 1378. When projects require occupants to move and the move involves residential relocation assistance payments or business move assistance payments, it is DURA's policy to provide these services and payment calculations in accordance with the Uniform Act.

THE RELOCATION PROCESS

When property needed for a DURA urban renewal project is occupied, it may be necessary to displace the occupants. The Uniform Act and US Department of Housing and Urban Development regulations prescribe certain benefits and protections for persons displaced by public projects funded, at least in part, with federal money. However, DURA will implement this policy regardless of the inclusion of federal funds in any portion of the project.

Among other benefits, the Uniform Act provides relocation payments for persons displaced from their residences, businesses and non-profit organizations. These payments include moving expenses and certain supplements for increased costs at a replacement location. In addition, the Act provides protections for displaced persons such as requiring the availability of replacement housing, minimum standards for such housing, and requirements for notices and informational materials. Also, the Act entitles displaced persons to certain "advisory services" to help them relocate and reestablish successfully.

The provisions of the Uniform Act concerning relocation are found in Title II of the Act which contains this "Declaration of Policy:

"This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize hardship of displacement on such persons."

DURA is committed to the successful relocation of those to be displaced as a goal in ensuring the success of the overall project.

To assist in achieving this goal, DURA has adopted a relocation program consisting of five main components: **Relocation Planning, Notices, Advisory Services, Relocation Assistance Payments and Appeals.**

RELOCATION PLANNING

Successful relocation requires planning. Housing resources must meet the needs of displaced residents in terms of size, price, rental rate, location, and timely availability. Advisory services and various notices, some with specific timing requirements, must be provided. Businesses must be given relocation assistance to ensure a minimum of disruption to operations. Payments must be made to displaced persons at the time they are needed to obtain replacement housing. Coordination with other displacing programs or agencies may be necessary. These activities and requirements require planning by DURA. Since the relocation of occupants may be one of the major potential impacts of any project, the earlier such impacts are considered, the easier it will eventually be to deal with challenges encountered. Early consideration of relocation impacts may also influence the timing of a project. If a project displacement involves persons with special needs such as the disabled or the elderly, particular attention will have to be given to providing advisory services. Therefore, it is DURA policy that a Relocation Plan addressing relocation impacts and possible solutions will be prepared early in the developmental stages of a project.

NOTICES

The Uniform Act and the implementing regulations recognize the need of displaced persons for information about the relocation process and require that certain information be provided to them. This information will be provided through personal contact and through a series of notices for the purposes of minimizing disruption and maximizing the chances of a successful relocation. The following are the primary notices that must be delivered:

1. **General Information Notice** – This notice is to be provided to potential displaced persons as soon as feasible in the early stages of the project. It is to be written in easily understood language and, if appropriate, in a foreign language. The purpose of the notice is to provide a general description of DURA's relocation program, including benefits, responsibilities and protection.
2. **Notice of Relocation Eligibility** – This notice will be provided later in the project when it has been determined that particular persons will be displaced. The time for providing this notice is the initiation of negotiations, that is, the date of the first written offer to acquire the real property at which the person is an occupant (residential or non-residential). If no acquisition of real property is required, then a project start date will be determined by the DURA Project Manager. The notice informs the occupant that he or she will be displaced as a result of the project and, therefore, will be eligible for relocation benefits, as applicable.
3. **90-Day Notice** – The 90-day notice is a basic protection of the Uniform Act. Upon a determination of project start date by the DURA Project Manager, DURA will provide

occupants with a written notice at least 90 days in advance of the earliest date he or she will be required to move. In the case of residential displacement, this notice can only be issued after ensuring that at least one comparable replacement dwelling is available. In addition, a 30-day notice will be delivered to the occupant no less than 30 days prior to the specific day that the occupant will be required to move.

ADVISORY SERVICES

It is recognized that relocation payments may not be sufficient to minimize the hardship of a move necessitated by an urban renewal project. Relocation advisory services will also be provided to assist displacees. These services will provide displaced persons with information, counseling and advice as necessary.

Typical basic services, which must be made available to all displaced persons, include:

- Explanation that no person can be required to move from a dwelling for a DURA project unless replacement housing is available to such person.
- Explanation of relocation services and appropriate payments.
- Explanation and discussion of eligibility requirements for each relevant type of relocation payment, and, at an appropriate time, determination of eligibility for each displaced person. In accordance with amendments to the Uniform Act passed in 1997, persons who are aliens not lawfully present in the United States are not eligible, with certain limited exceptions, to receive relocation payments or advisory services.
- Determination of the needs and preferences of the person to be displaced through a personal interview.
- Making every effort to meet identified needs, while recognizing the importance of the displaced persons' priorities and their desire, or lack of desire, for assistance.
- Provision of the following specific types of services, as appropriate:
 - Current listings, including prices or rents, of replacement properties either comparable to acquired dwellings or appropriate for displaced businesses.
 - Transportation for displaced persons to inspect potential relocation housing if they are unable to do so on their own.
 - Information concerning Federal and State housing, disaster loan assistance (when applicable), and other programs offering relocation or related types of assistance.
 - Assistance in obtaining and completing applications or claim forms for relocation payment or other related assistance.

RELOCATION ASSISTANCE PAYMENTS

Relocation assistance payments will be available to displaced persons. There are two main categories of payments: residential and non-residential. Within each category there are several types of payments which address expenses incurred as a result of a required move. Specific requirements and eligibility requirements for these payments are contained in 49 CFR Part 24 and HUD Handbook 1378.

RESIDENTIAL DISPLACEMENTS

1. Moving and related expenses – This includes payment for the actual cost to move personal property. A property owner may have a commercial mover move personal property or may elect to move the personal property himself. In addition, the property owner has the option to be paid on the basis of a schedule published by FHWA rather than on the basis of actual costs (a copy of the schedule is available on the FHWA website at <http://www.fhwa.dot.gov/realestate/index.htm>).

Payments For Actual Reasonable Moving And Related Expenses include the reasonable and necessary costs for:

- Transportation costs to the new site within a 50 mile radius.
 - Packing, moving and unpacking of household goods.
 - Disconnecting and reconnecting household appliances and other personal property (examples: telephone and cable TV).
 - Storage of household goods, as may be necessary.
 - Insurance for the replacement value of the relocatees' property during the move and necessary storage.
 - The replacement value of property lost, stolen or damaged in the move (but not through owner neglect) if insurance is not reasonably available.
2. Replacement housing payment – This is a payment for the difference, if any, between the actual acquisition price or rent plus utilities of a comparable replacement dwelling and the acquisition price or rent plus utilities of the dwelling from which the occupant is being displaced (or, in the case of financial need, 30% of the household's gross monthly income). Under the Uniform Act, the minimum number of months used to determine rent differential payment is 42, but this may increase to 60 months depending on the nature of the project. See HUD Handbook 1378 Chapter 7 Section 104(d) Relocation Requirements for more information. Additionally, increased mortgage interest costs and selected incidental expenses (settlement costs) also may be eligible. These payments are made based on certain eligibility requirements found in 49 CFR Part 24 and under statutory caps of \$5,250.00 for 90-day occupants and \$22,500.00 for 180-day owners.

For displaced homeowners who have owned and occupied their property for more than 180 days, a replacement housing payment will be calculated and made available based on the criteria contained in the HUD Handbook 1378 Section 3-3.

For displaced homeowners or tenants who have occupied their dwellings for more than 90 days, a replacement housing payment will be calculated and made available based on the criteria contained in the HUD Handbook 1378 Section 3-4.

For displaced persons who have not occupied their dwellings for more than 90 days, a replacement housing payment may be calculated and made available based on the criteria contained in the HUD Handbook 1378 Section 3-5.

When payments under the caps are insufficient to provide a comparable replacement dwelling in a timely and cost-effective manner, Last Resort Housing measures may be implemented based on the criteria set forth in the HUD Handbook 1378 Section 3-6.

REPLACEMENT HOUSING STANDARDS

A basic requirement of the Uniform Act is that the replacement housing made available to displaced persons must meet certain standards. These standards are contained in the interrelated concepts of "decent, safe, and sanitary housing" and "comparable replacement housing."

The phrase "decent, safe, and sanitary (DSS)" refers to the physical condition of the replacement dwelling. Basically, a dwelling, which meets the standards of the local housing or occupancy code and the minimum requirements of the Federal regulation, will be DSS.

The phrase "comparable replacement dwelling" means a dwelling which meets the following criteria:

1. Decent, safe, and sanitary, as described previously.
2. Functionally equivalent to the displacement dwelling.
3. Adequate in size to accommodate the displaced person(s).
4. Located in an area that is:
 - not subject to unreasonable adverse environmental conditions;
 - generally not less desirable than the location of the displacement dwelling with regard to public utilities and commercial and public facilities;
 - reasonably accessible to the displaced person's place of employment.
5. Located on a typical residential site.
6. Currently available to the displaced person(s).

7. Within the financial means of the displaced person(s).

No person may be required to move from a dwelling unless he or she has been offered an available comparable replacement dwelling. In carrying out this requirement, DURA must offer every displaced person at least one comparable replacement dwelling and, if possible, three. The comparable replacement dwelling will form the basis of the computation of the Replacement Housing payment.

BUSINESS AND NON-PROFIT DISPLACEMENTS (NON RESIDENTIAL)

1. Relocation payments for actual moving and related expenses include reasonable and necessary costs of:

- Transportation of personal property from their present location to the replacement location. (Generally, transportation costs are limited to a distance of 50 miles. If the business plans to move beyond 50 miles, discuss their planned move with the Agency.)
- Packing, crating, uncrating, and unpacking the personal property.
- Disconnecting, dismantling, removing, reassembling, and installing relocated and "substitute" machinery, equipment and other personal property. This includes connection to utilities available nearby. It also includes modifications to the personal property that are necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property.
- Storage of personal property for a reasonable period of time, if required.
- Insurance for the replacement value of the personal property in connection with the move and necessary storage. Where insurance is not available on reasonable terms, the Agency may elect to "self-insure" the replacement value of property lost, stolen, or damaged in the move (but not through your neglect).
- Any license, permit or certification required of the displaced person at the replacement location. However, the cost must be reasonable and necessary to reestablishment at the replacement location and the payment may be based on the remaining useful life of the existing license, permit, or certification.
- Professional services, necessary for (1) planning the move of the personal property, (2) moving the personal property, or (3) installing relocated or "substitute" personal property at the replacement location.
- Relettering signs and replacing stationery on hand at the time of the displacement and made obsolete as a result of move.
- The reasonable cost incurred in attempting to sell an item that is not relocated.

- Actual direct loss of tangible personal property. This payment provides compensation for property that is neither moved nor promptly replaced with a "substitute" item at the replacement location. Payment is limited to the lesser of: (1) the estimated cost of moving and reinstalling the personal property or (2) the market value of the property for its continued use at the old location, less any proceeds from its sale. To be eligible, the business must make a good faith effort to sell the property, unless the Agency determines that such effort is not necessary. Payment for the loss of goods held for sale shall not exceed the cost of the goods to the displaced person.
 - Purchase and installation of "substitute" personal property. This payment is made when an item of personal property is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site. Payment will be limited to the lesser of: (1) the estimated cost of moving and reinstalling the item, or (2) the actual cost of the substitute item delivered and installed at the replacement location, less any proceeds from the sale or trade-in of the replaced item. It is important that the business discuss its plans with the Agency before it proceeds.
2. Relocation Payments for Reestablishment Expenses include reasonable and necessary costs, not to exceed \$10,000, of:
- Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
 - Modifications to the replacement property to accommodate the business operation or make a replacement structure suitable for conducting the business.
 - Construction and installation costs for exterior signs to advertise the business.
 - Provision of utilities from the right-of-way to improvements on the replacement site.
 - Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.
 - Licenses, fees and permits that are not paid as part of moving expenses.
 - Feasibility surveys, soil testing and marketing studies.
 - Advertisement of the replacement location.
 - Professional services and incidental expenses in connection with the purchase or lease of a replacement property.
 - Estimated increased costs of operation during the first two years at the replacement site for such items as (1) lease or rental charges, (2) personal or real property taxes, (3) insurance premiums, and (4) utility charges, excluding impact fees.

- Impact fees or one-time assessments for anticipated heavy utility usage.
3. Relocation Payments for Search Costs include reasonable and necessary costs up to \$2,500 of expenses incurred in connection with searching for a replacement location. It covers costs for:
 - Transportation expenses.
 - Time spent searching for a replacement location, based on reasonable salary or earnings.
 - Reasonable fees paid to a real estate agent or broker to find a replacement location (not fees related to the purchase of the site).
 - Meals and lodging away from home.
 4. Certain businesses, non-profit organizations and farms are eligible to obtain a Fixed Payment (Alternative Allowance). If a business receives this payment, it will not receive a Payment for Actual Reasonable Moving and Related Expenses or a Payment for Reestablishment and Site Search Expenses. The Fixed Payment to a business or farm operation is based on the average annual net earnings of the business or farm operation; the Fixed Payment to a non-profit organization is based on average annual expenses and revenue. A Fixed Payment will not be less than \$1,000 nor more than \$20,000.

APPEALS

The Uniform Act anticipates the possibility of an individual or entity disagreeing with the relocation assistance decisions. The following summarizes DURA's appeal process:

1. **General.** DURA shall promptly review all written appeals in accordance with applicable law, regulations and the following policies. DURA shall consider a written appeal regardless of form.
2. **Actions Which May Be Appealed.** A person may file an appeal with DURA in any case in which the person believes that DURA has failed to:
 - Properly determine that the person qualifies, or will qualify (upon moving), as a displaced person who is eligible for relocation assistance;
 - Properly determined the amount of any relocation payment required by this policy;
 - Provide appropriate referrals to comparable replacement dwellings or inspect the replacement dwelling in a timely manner; or
 - Waive the time limit for (a) the filing of a claim or an appeal or (b) purchasing, renting or occupying a replacement dwelling.
3. **Time Limit for Initiating Appeal.** DURA may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of DURA's determination on the person's claim. On a case-by-case basis, and for good cause, DURA shall extend such time limit.

4. **Right to Representation.** A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense. (If a lower income person is unable to prepare a written appeal or requires assistance in preparing an appeal, DURA shall provide such assistance and/or refer the person to an appropriate third party who will provide such assistance at no cost to the person, e.g., certain citizen groups, tenant unions, neighborhood legal service or urban league.)
5. **Review of Records by Person Making Appeal.** DURA shall permit a person to inspect and copy all material pertinent to his or her appeal, except materials which DURA determines may not be disclosed to the person for reasons of confidentiality. DURA may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable law.
6. **Agency Official Reviewing Appeal.** The DURA official conducting the review of the appeal shall be either the Executive Director of DURA or his or her authorized designee. However, the reviewing official shall not have been directly involved in the action appealed.
7. **Scope of Review of Appeal.** In deciding an appeal, the reviewing official shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.
8. **Determination and Notification After Appeal.** Promptly after receipt of all information submitted by a person in support of an appeal, the reviewing official shall schedule a hearing to consider the appeal. The person bringing the appeal shall be given at least 14 days written notice of the time and place of the hearing. The person bringing the appeal and DURA may submit written or oral testimony in support of the respective position. The proceedings will be recorded in such a manner as will allow a transcript of the proceedings to be prepared. The Reviewing official shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and shall furnish the person bringing the appeal with a copy. If the full relief requested is not granted, DURA shall advise the person of his or her right to seek judicial review.
9. **Judicial Review.** The person bringing the appeal shall have the right to seek judicial review of the reviewing official's decision pursuant to C.R.C.P. 106(a)(4).

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