

**PROJECT FUNDING AGREEMENT FOR
DOWNTOWN DENVER IMPROVEMENTS**

**BETWEEN
CITY AND COUNTY OF DENVER, COLORADO
AND
DENVER URBAN RENEWAL AUTHORITY**

Dated as of _____, 2013

THIS PROJECT FUNDING AGREEMENT FOR DOWNTOWN DENVER IMPROVEMENTS, dated as of the Effective Date (defined below) (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, and 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.

W I T N E S S E T H:

WHEREAS, the City is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX, of the Colorado Constitution and the Charter of the City; and

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, the Denver City Council approved the creation of the Downtown Denver Urban Renewal Area (the “Urban Renewal Area”) pursuant to the Urban Renewal Plan for Downtown Denver Urban Redevelopment Projects filed in City Clerk File No. 91-1097-F, as amended and supplemented from time to time (the “Urban Renewal Plan”); and

WHEREAS, the City and DURA are entering into the Amended and Restated Cooperation Agreement for Downtown Urban Redevelopment Area Projects filed in City Clerk File No. 91-1097-F, as amended and supplemented from time to time (the “Cooperation Agreement”); and

WHEREAS, both the Act and Section 18, Article VIX of the Colorado Constitution and Charter authorize the City and DURA to enter into cooperative agreements, such as this Agreement; and

WHEREAS, the Parties wish to make the revenue from the tax increment approved in the Urban Renewal Plan available for projects that will further the Urban Renewal Plan, which projects will include the DURA-Managed Projects; and

WHEREAS, the projects to further the Urban Renewal Plan will also include projects to be proposed by the City and approved by DURA pursuant to this Project Funding Agreement (the “City Projects”), which may include improvements to the 16th Street Mall; a conversion of 18th Street to a two-way street in sections to support a transportation circulator; a conversion of Welton Street between 15th Street and 16th Street to assist in the future development of the adjacent block; acquisition and renovation of buildings adjacent to the Denver Rescue Mission to support Denver’s RoadHome; artwork satisfying the City and DURA requirements for such; acquisition and construction of a plaza on 14th Street near the Colorado Convention Center; and project management services associated with finance planning and project execution

WHEREAS, the City is willing to advance funds for certain costs related to the City Projects in and near the Urban Renewal Area, and once approved by DURA to be reimbursed in whole or in part, for eligible costs, by DURA from property tax increment revenues, sales tax increment revenues and lodger's tax increment revenues which are available to DURA as provided in the Cooperation Agreement;

WHEREAS, DURA agrees to make available for the City Projects the amount of property tax increment revenues, sales tax increment revenues and lodger's tax increment revenues, as provided in the Cooperation Agreement, minus the amount of such revenues allocated to the DURA-Managed Projects in the Cooperation Agreement (the "PFA Pledged Revenues").

AGREEMENT

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

The defined terms set forth in the recitals or elsewhere in this Agreement, shall have the meaning set forth therein whenever used in this Agreement. Capitalized terms used in this Agreement that are not defined herein shall have the meaning set forth in the Cooperation Agreement. The following terms shall have the following meanings:

"City Project" or "City Projects" means that project or those projects approved pursuant to the process described in Section 3 below.

"City Project Contract" means an agreement by and between the City and an outside party or contractor for work on a City Project.

"City Project Costs" means the commercially reasonable costs and expenses actually incurred by City pursuant to a City Project Contract and reflected on an Expenditure Certification, including any design and planning costs for a City Project; any costs related to the acquisition of real property, easements, licenses or permits necessary for the implementation of the City Project; any project management costs of the City Projects as a whole; any change orders to a City Project Contract as may be reflected on the Expenditure Certification from time-to-time; and any other documented and capitalizable costs of a City Project, to be reimbursed to the City by DURA from PFA Pledged Revenues .

"Expenditure Certification" means the certificate the City delivers to DURA in the form attached hereto as **Exhibit 1**, and relating to City Project Costs incurred by City for construction and delivery of a City Project.

"Termination Date" has the meaning set forth in Section 2.3 hereof.

SECTION 2. IMPLEMENTATION AND FUNDING OF CITY PROJECTS

Section 2.1 Implementation and Delivery of the City Projects.

(a) The Parties acknowledge that the City Project Costs incurred in connection with the City Projects cannot be currently determined. The City shall have the right to allocate expenditures among the City Projects, including the right in its sole discretion, not to make any expenditures on a specific City Project. As the aggregate City Project Costs cannot be determined, DURA's reimbursement obligation shall be limited as set forth in Section 2.3.

(b) The City agrees to complete the design for, and undertake the construction of, or implementation of and take all other actions necessary to implement the City Projects and to pursue the same with appropriate care and diligence or to cause its contracting parties to do the same. All activities by the City or its contracting parties, including design and construction and other implementation activities with respect to the City Projects shall be undertaken and completed in accordance with all applicable laws and regulations, including but not limited to the Urban Renewal Plan, as it may be amended, the Cooperation Agreement, other related agreements and this Agreement. DURA shall have no responsibility to undertake any design, implementation or construction with respect to any City Project.

Section 2.2 Payment Procedures for City Project Costs.

In connection with all payments of City Project Costs, the City shall deliver to DURA an Expenditure Certification signed by an authorized representative of City, provided that such Expenditure Certifications shall be delivered no more frequently than once per month. DURA shall review each Expenditure Certification promptly upon receipt and notify City of any issues concerning the applicable Expenditure Certification within ten (10) business days of its receipt. If DURA does not notify the City of any such issues within ten (10) business days of receipt of the Expenditure Certification, the Expenditure Certification shall be deemed approved for payment by DURA. DURA's approval of any Expenditure Certification shall be made upon the form of Certification of Costs set forth in **Exhibit 2** of this Agreement ("Certification of Costs"). All payments made to the City hereunder shall be used solely for payment of City Project Costs. The City agrees to provide, at the time it submits each Expenditure Certification, an update on the status of the City Project, including information regarding its compliance with the requirements of Section 2.7 hereof, its budget, and if the current budget to complete exceeds, is within, or is below the budget for the City Project as approved by DURA pursuant to Section 3.2(a) hereof. DURA's reimbursement obligations under this Agreement shall be limited to the amounts legally available for such purposes under this Agreement.

Section 2.3. Reimbursement by DURA to the City for City Project Costs.

As more fully set forth in the Cooperation Agreement, DURA shall reimburse the City only from PFA Pledged Revenues available under the Cooperation Agreement. DURA shall authorize such reimbursement concurrently with approving any Expenditure Certification under Section 2.2 utilizing the Certification of Costs. 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 on December 31, 2022(the "Termination Date").

Section 2.4 Completion. At such time as the City shall determine that completion of construction has occurred for each of the City Projects, the City shall submit a request for issuance of a Certificate of Completion to the Authority, which request shall include a “punch list” of uncompleted items, if any, and an estimate of the amounts required to complete such items. The Authority shall, within twenty (20) business days after such request, (a) inspect the completed City Project and review the items and amounts on the aforementioned “punch list,” if any, and (b) either (i) issue a Certificate of Completion, if the City Project have been substantially completed (ii) if the Authority determines that the City Projects have not been substantially completed, provide the City with a written statement specifying in what respect the City has not achieved substantial completion of construction or is otherwise in noncompliance with this Agreement and what measures or acts will be necessary, in the opinion of the Authority, for the City to take or perform in order to obtain a Certificate of Completion for the Improvements. If the City disagrees with the Authority’s written statement stating that completion of construction has not been achieved, it shall have the right within thirty (30) days after receipt of the statement to contest the same and the parties shall attempt to mediate their differences for the next fifteen (15) days. .

Section 2.5. Priority Fee. Commencing January 1, 2014 and continuing each year thereafter until the Termination Date, DURA will charge an annual priority administrative fee in the amount as set forth in Exhibit 3 attached hereto (the Priority Fee). DURA shall deduct from each month’s PFA Pledged Revenues an amount equal to one-twelfth (1/12) of the annual Priority Fee. To the extent that the PFA Pledged Revenues in a month are insufficient to pay the portion of the Priority Fee due in said month, the unpaid amount of such Priority Fee shall be added to the amount due in the following month to be paid from PFA Pledged Revenues. In addition, DURA shall deduct from PFA Pledged Revenues, all out-of-pocket expenses (including reasonable attorneys’ fees and reasonable expenses incurred by DURA for other necessary consultants) incurred by DURA in connection with the City Projects. The Priority Fee and reimbursement for out-of-pocket expenses shall be first and prior in right and payment to any reimbursements to City and shall not be subordinated in any manner to any right or claim of the City.

Section 2.6 Access by the City and DURA.

To the extent the City has rights, the City hereby grants to DURA authority to enter any location where a City Project is being implemented for the purpose of carrying out or determining compliance with the Urban Renewal Plan, this Agreement, any other agreements related to the City Project; provided that, except in the event of an emergency, DURA shall provide reasonable advance notice to the City of their intention to so inspect.

Section 2.7 Compliance with Certain DURA Contracting Policies.

(a) *Project Art*. Compliance with the City’s Public Art Ordinance (Section 20-85, *et. seq.*, D.R.M.C.) shall be deemed to satisfy the obligation to comply with DURA’s Project Art Policy, so long as at least \$1.0 Million dollars is spent on all public art on all City Projects, which amount is eligible to be funded from the PFA Pledged Revenues.

(b) *Enhanced Training Opportunities*. The City agrees that, with respect to the City Projects, it shall comply with DURA’s Policy Regarding Enhanced Training

Opportunities for Projects Funded with Tax Increment Financing (“ETO Policy”), a copy of which is attached as **Exhibit 4** (the “ETO Program”). DURA and the City agree that the amount of funding that must be provided for enhanced training opportunities under the policy in connection with all the City Projects is one percent (1%) of the total funding provided by DURA for the City Projects.

(c) *First Source Program.* The City shall cooperate with DURA in connection with DURA or a government office or agency designated by DURA (the “Agency”), and 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**. The City shall designate a job placement coordinator who shall be responsible for implementing the First Source Program and coordinating with DURA and/or the Agency regarding City’s efforts in connection therewith. To the extent not paid by the Agency, the costs of the First Source Program shall be paid by the City. In the event the City cannot comply with such requirements because other funding for the City Project does not allow local preferences, the City will notify DURA and will, if requested by DURA, meet to review and discuss the City’s inability to comply. In the event that the City believes that the First Source Program as structured in **Exhibit 5** substantially interferes with the City’s implementation of the City Projects, DURA agrees to consider in good faith any reasonable modifications to ameliorate such substantial interference. Such modifications, if any, shall be agreed upon by DURA and the Manager of Finance and shall not constitute or require an amendment to this Agreement.

(d) *Small Business Enterprise Utilization Program.*

(e) The City shall comply with DURA’s policy regarding utilization of small business enterprises. The City may implement and utilize the small business enterprise program set forth in Section 28-201 et seq. of the City’s Revised Municipal Code, as the same may be amended from time to time. The City may, with DURA’s approval, consent to the use of another governmental agency’s policy regarding small business enterprise utilization if such other governmental agency is completing the construction-related work subject to such a small business enterprise utilization program. *Relocation Assistance Policy.* The City shall comply with DURA’s Relocation Assistance Policy to the extent implementation of a City Project results in the displacement of any existing individuals, families or businesses.

SECTION 3. APPROVAL OF CITY PROJECTS

Section 3.1 City Projects. The PFA Pledged Revenues are to be allocated for City Projects. The City Projects and the City Project Costs are to be determined by the process set out below in Section 3.2.

Section 3.2 Approval of City Project(s). In order for a project to be eligible for reimbursement of its City Project Costs by PFA Pledged Revenues, the City must receive approval of such project and its cost by DURA pursuant to the following procedure.

(a) The City will submit to DURA the information required in the City Project Information Packet attached as Exhibit 6 and any other information DURA deems to be necessary to review and approve the proposed project. The City shall submit a City Project Information Packet for each project for which it intends to seek reimbursement from the PFA Pledged Revenues before June 30, 2020.

(b) DURA staff will review the City Project Information Packet and will recommend to its Board of Directors approval or denial of the proposed project. DURA staff may recommend denial of the proposed City project if DURA staff finds, in its reasonable discretion, that there is not enough projected PFA Pledged Revenues to pay the costs of the proposed City project or if the proposed City project does not contain costs eligible to be reimbursed by the PFA Pledged Revenues.

(c) The Board of Commissioners of DURA shall approve or deny such proposed project (“City _Project”) and its budget (“City Project Budget”) at the Board meeting following the receipt of the recommendation of its staff.

Section 3.3 Modifications to City Project Budget. After approval by the DURA Board of Commissioners, the City may, without further DURA approval, increase or decrease a City Project Budget by up to 10% of the approved cost of such City Project. A budget increase of greater than 10% shall require approval of the DURA Board of Directors. The City may, without further DURA approval, increase or decrease a line item of a City Project Budget by up to 12%. A change to a line item of such City Project Budget of greater than 12 % requires the approval of DURA staff.

Section 3.4 Modifications to Scope of City Project. Substantial changes to the scope of a City Project shall be submitted by the City to DURA for approval.

SECTION 4. GENERAL COVENANTS

Section 4.1 Insurance.

(a) If a City Project requires construction, within ten (10) days after the commencement of the construction of a City Project and until completion of construction the City shall provide DURA with certificates of insurance from the City’s contractor(s) 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 \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury

claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate ; and

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

(b) The policies of insurance required under subsection (a) above, shall be reasonably satisfactory to DURA, shall, for commercial general liability, list DURA as an additional insured, 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. The City shall provide certified copies of all policies of insurance required under subsection (a) above, to DURA upon request. For all insurance required to be carried by the City's contractors under this Section 3.1, the City shall require its insurer(s) to provide the City and DURA and their respective commissioners, directors, officers, employees and agents with waivers of subrogation. The City shall not allow any party to obtain any insurance that prohibits the insured from waiving subrogation. To the extent available in the insurance industry at a commercially reasonable price, the City shall require all policies obtained to be written as "occurrence" policies and not as "claims-made" policies.

(c) In agreeing to the foregoing insurance requirements, neither the City nor DURA 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

The City shall request indemnification provisions from its contractors consistent with those customarily requested by the City from its contractors and require its contracting parties to indemnify DURA, to the same extent that the City is indemnified in such contracts, in each City Project Contract for which the City will seek reimbursement under this Agreement.

SECTION 6. EVENTS OF DEFAULT; REMEDIES

Section 6.1 Event of Default by City.

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

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

(b) The City 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 the City or of any substantial part of its property, or the City 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) The City fails to use good faith efforts to comply with Section 2.7 of this Agreement;

(d) The City breaches any provision of this Agreement.

and if such Defaults are not cured by the City within the time provided in Section 64, then an Event of Default shall have occurred and DURA 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 City Project Costs as provided in Section 2. If such Default is not cured within the time provided in Section 6.4, then an Event of Default shall be deemed to have occurred, and the City may exercise the remedy available under this Agreement.

Section 6.3 Remedies.

If any Event of Default by the City occurs and is continuing hereunder, DURA may seek enforcement of the City's obligations hereunder by specific performance. DURA expressly waives all other remedies available in law or equity.. If any Event of Default by DURA occurs and is continuing hereunder, the City may seek enforcement of DURA's obligations in Section 2 and Section 3 hereof.

In no event shall 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 6.4 Notice of Defaults; Opportunity to Cure Such Defaults.

Anything hereunder to the contrary notwithstanding, no Default under Section 6.1 or 6.2 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 one hundred eighty (180) days after receipt of notice.

SECTION 7. MISCELLANEOUS

Section 7.1 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 7.2 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

Section 7.3 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 7.4 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 7.5 Conflicts of Interest.

DURA and the City shall not allow 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 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 7.6 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 7.7 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 7.8 Binding Effect.

This Agreement shall be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

Section 7.9 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 7.10 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 7.11 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 7.12 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. The City agrees and acknowledges that in each instance in this Agreement or elsewhere where DURA 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, nor impose upon DURA any responsibility for the design construction or implementation of the City 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 under the terms of this Agreement are for the sole and exclusive benefit of the City 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 7.13 Nonliability of DURA or City Officials and Employees.

No elected official, commissioner, board member, director, officer, agent or employee, of the City or DURA shall be charged personally, or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement, in the event of a breach or Event of Default by DURA or the City or for any amount that may become due under the terms of this Agreement.

Section 7.14 Incorporation of Exhibits.

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

Section 7.15 Survival.

The obligations of the City under Section 5 to seek indemnification of DURA by the City's contractors shall survive any termination of this Agreement until the latest expiry of all applicable statutes of limitation.

Section 7.16 No Third Party Beneficiaries.

The City and DURA intend that this Agreement shall create no third party beneficiary interests. The City 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 7.17 Examination of Records.

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

Section 7.18 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 and DURA.

Section 7.19 Venue.

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

Section 7.20 Nondiscrimination.

In connection with the performance of work under this Agreement, the City 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 and DURA further agree to insert the foregoing provision in all subcontracts hereunder.

Section 7.21 Effective Date and Term.

The Effective Date of this Agreement shall be the date set forth on the City signature page below. This Agreement shall automatically terminate upon the earlier of (i) completion of all obligations hereunder or (ii) the Termination Date.

Section 7.22 Counterparts; Electronic Signatures and Electronic Records.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Facsimile signatures shall be accepted as originals. The parties consent to the use of electronic signatures by the City. The Agreement and any other documents requiring a signature may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

Section 7.23 Appropriation. The City's obligations, whether direct or contingent, extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement.

Exhibit 1: Expenditure Certification

Exhibit 2: Certification of Costs

Exhibit 3: Schedule of Priority Fees

Exhibit 4: Description of ETO Program

Exhibit 5: First Source Program

Exhibit 6: City Project Information Packet

[SIGNATURE PAGE FOLLOWS]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____


By _____

By _____

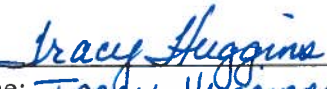


IN WITNESS WHEREOF, the parties have caused this Project Funding Agreement for Downtown Denver Projects to be executed by their duly authorized officers, as of the date first above written.

DENVER URBAN RENEWAL AUTHORITY

By: 
Name: PATRICIA GAGE
Title: CHAIR

ATTEST: (if required)

By: 
Name: Tracy Higgins
Title: Executive Director



IN WITNESS WHEREOF, the parties have caused this Project Funding Agreement for Downtown Denver Projects to be executed by their duly authorized officers, as of the date first above written.

DENVER URBAN RENEWAL AUTHORITY

By: _____
Name: _____
Title: _____

Attest: _____
By: _____

EXHIBIT 1

EXPENDITURE CERTIFICATION

City Project: _____

Date: _____

Project: _____

Payment Request No: _____

Amount Requested: \$ _____

The following documents are attached to this certification are;

1. 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.

I, _____ (name) _____, as _____ (title) _____ of the City and County of Denver, as of _____ (date) _____ certify the following:

The items of costs for which payment is certified herein (i) are or were necessary in connection with, and are reasonably attributable to, the above referenced City Project and (ii) have not formed the basis for any previous payment to the person receiving payment as described herein.

No event has occurred and is continuing which constitutes an Event of Default of the City and County of Denver, as defined in the Project Funding Agreement for Downtown Denver Improvements (the "Project Funding Agreement"), or would constitute an Event of Default but for the requirement that notice be given or time elapsed or both.

The City Project Costs certified herein were incurred pursuant to the Project Funding Agreement for Downtown Denver Improvements.

Dated: _____ 20____

City and County of Denver

By: _____

Name: _____

Title: _____

EXHIBIT 2

CERTIFICATION OF COSTS ELIGIBLE FOR PAYMENT

Date: _____

Project: City Project: _____

Payment Request No.: _____

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

By signing below, the City and DURA hereby approve the above amount of City Project Costs as Eligible to be reimbursed by DURA to the City, pursuant to the Project Funding Agreement for Downtown Denver Improvements _____ .

Dated: _____, 20__

City and County of Denver

Denver Urban Renewal Authority

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 3

Priority Fee Pursuant to Section 2.5

2014	\$882,997
2015	885,040
2016	887,144
2017	889,312
2018	791,544
2019	793,843
2020	796,212

EXHIBIT 4

DENVER URBAN RENEWAL AUTHORITY

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

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 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

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

**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
City Project Information Packet:

Per section 3.2(a) of the Project Funding Agreement for Downtown Improvements, the City will submit to DURA the information required in the City Project Information Packet and any other information DURA deems to be necessary to review and approve the proposed Project. The City shall submit a City Project Information Packet for each Project for which it intends to seek reimbursement from the PFA Pledged Revenues before June 30, 2020.

Information included within the City Project Information Packet shall include at a minimum:

- Detailed description of Project
- Project Development Team:
 - The responsibilities, names, addresses, telephone and fax numbers of the Project lead and key team members
 - The member(s) of the team who will be making decisions and with whom the Authority will negotiate. It is desirable to have a single contact point and this person should be identified.
 - Identification of consultants and/or other parties who will be involved in the Project
 - Information regarding lead agency if the Project is contracted with an outside entity
 - Description of the legal relationship between the members of the Development Team and the legal entity with whom the Authority would negotiate
 - Description of the role the City will play.
- Detailed budget broken out between hard and soft costs and eligible and non-eligible costs. This information will be used to complete Schedule A which will be an exhibit to the Expenditure Certification.
- Proposed schedule, including critical dates, construction timeline, and anticipation of drawdown of funds.
- If Project is contracted with an outside agency, a description of how the Project will benefit the agency and the City and how the Project will be operated following completion.
- Is the Project a continuation of a previously funded Project or implementation of a previously funded study?
- If the Project is one phase of a larger Project a detailed description of how this phase fits into the larger Project both in terms of function and budget.
- Renderings or other illustrated documents showing the proposed Project at completion.