

INTERGOVERNMENTAL AGREEMENT  
REGARDING THE UNION AVENUE BRIDGE/BELLEVUE STATION TRANSIT  
ENHANCEMENTS

This INTERGOVERNMENTAL AGREEMENT REGARDING THE UNION AVENUE BRIDGE/BELLEVUE STATION TRANSIT ENHANCEMENTS ("Agreement") is made, effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, (the "Effective Date") by and among the SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("SPIMD"); the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD"); MADRE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("Madre"); GOLDSMITH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Goldsmith"); and THE CITY AND COUNTY OF DENVER, a home rule municipal corporation of the State of Colorado ("City"). RTD, SPIMD, the City, Madre and Goldsmith are also referred to herein as a "Party" or collectively as the "Parties".

WHEREAS, the Parties are legally empowered under Article XIV, Section 18(2)(a) of the Colorado Constitution, Section 29-1-201, et seq., C.R.S. and their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the Parties wish to cooperate in order to ensure the completion of final design and construction of improvements for the proposed Union Avenue Bridge/Bellevue Station Transit Enhancements project, located at the crossing of Union Avenue over I-25 in the City (the "Project"); and

WHEREAS, the scope and nature of the Project is as more particularly described in the preliminary design plans (reference drawings) prepared by Huitt Zollars and dated March 3, 2009, incorporated herein by this reference but not attached due to size (the "Preliminary Plans"); and

WHEREAS, the Parties wish to contribute to the funding of the Project, as defined herein, in the amounts agreed to below; and

WHEREAS, the Parties wish to provide for a mechanism for Madre ("Project Manager") to design, contract for and cause the construction and completion of the Project and for certain of the Parties to convey certain of their interests in the Project to the City and RTD as set forth herein, and for the City and RTD to participate in all aspects of the Project, including the approval of the Project design and budgets, and review, negotiation and award of construction contracts. The Parties also desire to establish the terms and conditions under which the Parties will provide funding for the construction costs of the Project. The Parties also desire to provide for acceptance of the completed Project as set forth herein.

NOW THEREFORE, as full consideration for and in furtherance of the goals and intents and purposes of this Agreement, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to identify and agree upon the administration of and allocation of costs to perform the Project as among the Parties, to establish the process by which such payment of this cost sharing will be accomplished, and to provide for the final design and construction of the Project substantially in accordance with the Plans.

2. Cost. The total costs for agreed-upon elements of the Project, as shown on Exhibit A, attached hereto and incorporated herein by this reference (the "Project Costs") are estimated at SEVEN MILLION FIVE HUNDRED THIRTY-FIVE THOUSAND SEVEN HUNDRED SIXTY-EIGHT AND 13/100 DOLLARS (\$7,535,768.13). Project Costs shall include payment of contractors, consultants, final engineering, surveying, testing, permit fees, bonds, insurance and all other attendant expenses, but shall not include the plan and document review by any party, attorney fees, overhead or other internal costs and expenditures of any Party. None of the Parties will be entitled to include in kind costs for credit or project cost purposes.

3. Allocated Shares of Project Estimated Cost. The Parties each agree to contribute the following amounts towards the Project Costs:

	Each Party's Funding	Percentage of Available Funding
City :	\$ 700,000.00	9.24%
SPIMD:	\$ 700,000.00	9.24%
RTD :	\$5,635,768.13	74.92%
Madre:	\$ 250,000.00	3.30%
Goldsmith:	\$ 250,000.00	3.30%
Total Funds Available:	\$7,535,768.13	100%

4. Funding.

a. All Parties hereby represent that they have budgeted, appropriated and have on hand the amounts necessary to fund each of their obligations under this Agreement, whether such obligation is finite or contingent. Taken together, the allocated shares amounting to \$7,535,768.13 shall be referred to herein as the "Project Funds."

b. If all Parties agree to proceed with the Project according to Section 5(a) below, each Party will, within thirty (30) days of award of a contract to the general contractor and invoice from the Project Manager, deposit its share of the Project Funds, and Madre will deposit the Deed (as defined below) into two escrow accounts (one to fund all expenses associated with the Consultant, PB Americas, Inc. (no funds delivered by RTD shall be used to fund this escrow account) and one to fund all other costs associated with the Project) (collectively, the "Escrow Accounts") subject to the terms of the Escrow Agreements substantially in the form attached hereto as Exhibit B, from which draws shall be made by Project Manager after approval by the City and RTD, in accordance with the terms of this Agreement and the Escrow Agreements. Such approval, or notification of issues related thereto, shall be provided by the City and RTD within fifteen (15) days of submittal of the draw request by the Project Manager. City designates

Jim Barwick to review and authorize such draw requests on behalf of the City and RTD designates Stan Szabelak to review and authorize such draw request on behalf of RTD. The City and RTD may replace their designee upon written notice to the Project Manager. If the Parties agree to proceed with the Project and deposit sums into the escrow account, Project Manager's costs to prepare and advertise the proposal selection process in the amount itemized and set forth in **Exhibit A** shall be included in the Project Costs, which may be reimbursed to Project Manager through the escrow account. If the Parties determine that they will not proceed with the Project, Project Manager shall be solely responsible for all costs it incurred in the preparation, advertisement, administration, and solicitation of proposals for the Project.

c. The Parties acknowledge that PB Americas, Inc. ("PB") may be retained by the Project Manager to work on the Project to act as the Project Manager Consultant (the "Consultant"). Funds contributed by RTD shall not be used to pay PB's costs. All Parties, other than RTD, agree that their funds can be used to pay Project costs associated with PB.

d. Project Manager will maintain full and complete records of actual costs incurred in completion of the Project (the "Actual Costs") in accordance with generally accepted accounting principles. All Parties reserve the right to audit Project Manager's financial records with respect to the Project at any time.

e. The Parties agree to cooperate with each other to keep the Project costs within the Project Funds. Upon completion of the Project, including final advertisement, settlement, and acceptance, any unspent portion of the Project Funds remaining in the Escrow Accounts shall be disbursed as follows:

- (i) Up to the first \$500,000 remaining in the Escrow Accounts shall be disbursed equally between Madre and Goldsmith;
- (ii) Up to the next \$1,400,000 remaining in the Escrow Accounts shall be disbursed equally between the City and SPIMD; and
- (iii) Any remaining funds in the Escrow Account funded in part by RTD shall be disbursed to RTD.

f. Maximum Funding Obligations and Appropriations.

(i) The Parties shall participate in all aspects of the Project, including the approval of the Project design and budgets, and review, negotiation and award of construction contracts. Notwithstanding any other provision of the Agreement, each Party's maximum payment obligation will not exceed the amounts identified for each Party as set forth in Paragraph 3. No Party is obligated to execute an agreement or any amendments or approve any change orders that would increase any Party's funding obligations beyond that specifically described in Paragraph 3. Any additional services performed beyond those contemplated in this Agreement in the design-build construction contract or not agreed to by each of the Parties in advance by change order, are performed at Project Manager's risk and without authorization under the Agreement subject to the limitation set forth in Section 4(f)(ii) below.

(ii) The Parties agree that any payment obligation of any Party associated with this Agreement, whether direct or contingent, shall extend only to funds that have been duly appropriated and encumbered by the Denver City Council, RTD's Board of Directors, and the Boards of Directors for SPIMD, Madre or Goldsmith, respectively, for the purpose of this Agreement, and with respect to the City's obligation, paid into the Treasury of the City. The Parties acknowledge and agree that no Party assumes any responsibility or liability whatsoever for cost over runs.

5. Project Implementation.

a. The Parties anticipate that the Project will begin in 2011 and take approximately eighteen (18) months to complete. Project Manager will coordinate the implementation and oversight of the Project, inclusive of the retention of any necessary consultants, construction managers and contractors to perform the work necessary to complete the Project within the aforementioned time period. The Project Manager published a Request for Qualifications (the "RFQ"), and a "Review Committee," consisting of representatives from each of the Parties, approved a shortlist of prospective contractors. The Project Manager distributed a request for proposals (the "RFP") to the short list of prospective contractors for a lump sum proposal. Upon receipt of the submitted proposals, the Review Committee shall review all submitted proposals to determine the lowest responsive, responsible proposer. The Parties agree that there shall be no scope reductions related to the Project when evaluating the submitted proposals in order to allow the proposals to come in under budget. If none of the responses received are within the Project Funds, the Parties agree that the Review Committee shall meet within thirty (30) days to discuss possible value engineering which could bring the Project within the Project Funds. If the Review Committee is unable to unanimously determine a way to bring the Project within the Project Funds that is acceptable to all the Parties, this Agreement shall automatically terminate.

b. Project Manager shall award a design-build lump sum construction contract (the "Lump Sum Contract") to a design-build team using an open and fair public bidding process. Each Party will be included in the review of qualifications and proposals and will be a part of the selection team. The Parties must unanimously approve the design-build team and the lump sum price. Each Party represents that they have reviewed the Preliminary Plans and approve of the scope of the Project contained therein. Each Party shall have the opportunity to review and comment on the Lump Sum Contract prior to final selection of a contractor. Once final drawings and schedule for the Project have been completed, each Party shall have the right to review and comment on the design and schedule of the Project prior to construction. The selected contractor (the "Design-Builder") shall be responsible for obtaining all permits and approvals required for completion of the Project. Project Manager may assist in any and all permit or approval processes, including coordination with the Colorado Department of Transportation ("CDOT"). Each Party shall be notified of and shall have a right to attend all design and construction meetings and to audit all records pertaining to the Project. RTD and Denver agree to work in good faith with Contractor and Project Manager to eliminate or minimize, to the greatest extent possible, the cost of any and all of their fees for permits, reviews, eligible operational costs, or other approvals otherwise required as they relate to the Project; all such costs will be paid for as a Project Cost. The Parties agree to discuss and negotiate with CDOT to waive, or reduce, all of

its fees for permits, reviews, and other approvals required as they relate to the Project; all such costs shall be paid for as a cost to the Project. Madre shall ensure that Madre Investment Co. LLC conveys property in fee for the footprint of the elevator, stairs and a ten foot (10') buffer around such footprint substantially in accordance with **Exhibit C** (the "Elevator Property") to the RTD at no cost via special warranty deed in substantially the form attached hereto as **Exhibit D** (the "Deed"); however, Madre shall have the ability to design and locate the elevator elements, in accordance with local, state and federal law, including without limitation landings, stairs, elevator tower, access buffer around the elevator footprint, and sidewalks (the "Elevator Elements") in such a way as to minimize the land required for conveyance and to minimize conflicts with proposed buildings located adjacent to the Elevator Property, so long as all of the Elevator Elements are completed. The Deed shall be deposited into one of the Escrow Accounts with **Exhibit C** attached to them indicating the Elevator Property; provided that if the Parties agree to modify the Elevator Property, Madre shall provide the Escrow Agent with replacement exhibits. The Escrow Agreement shall provide that the Escrow Agent shall record the Deed upon approval of the final plans by all the Parties for the Elevator Elements. In addition, all weather and maintenance access issues related to the Elevator Elements shall be satisfied initially via a roll-over curb, or other method mutually agreed upon by Madre and RTD. In the event the development plan for the property adjacent to the Elevator Property provides for it, a fire/parking access lane may be used for long term access to the Elevator Elements.

c. Any construction contract or subcontract that includes work on the Project shall require that City and RTD be designated third party beneficiaries of the contract with rights of enforcement, that all warranties for the Project improvements shall be assigned to the City and RTD, respectively, and that City and RTD shall be named insureds on all insurance policies, named on all performance and payment bonds required for such contracts. All such contracts shall state specifically that payment to the contractor is dependent upon the funding described herein.

d. If the Project Manager determines that it is necessary to call a meeting of the Review Committee to discuss the Project or any issue related to the coordination thereof, the Project Manager shall give at least three (3) days written notice thereof to each of the Parties, in accordance with Section 5(i), setting forth the time and place of the meeting and a brief general statement of the reason(s) therefore. Each of the Parties shall have a representative attend such meeting and written minutes thereof shall be kept and circulated among the Parties by the representative from the Project Manager.

e. Project Manager shall assure that the Project is completed in accordance with the applicable laws, rules, regulations of the federal government, State of Colorado, City and County of Denver, and any other agencies or authorities having jurisdiction over the implementation of the Project. The Parties agree that the Lump Sum Contract shall require the selected contractor to comply with prevailing wage requirements and policies of the City (Sections 20-76 through 20-79 of the Denver Revised Municipal Code). The Parties also agree that in lieu of applying the City's small business enterprise, equal employment opportunity and minority and women business enterprise participation ordinance, the Project will be subject to RTD's Small Business Enterprise (SBE) requirements, including without limitation, RTD's IGA Requirements for Union Avenue Bridge attached hereto as **Exhibit E** and incorporated herein by this reference.

The Parties further agree that the Consultant and the Design-Builder will be required to develop a quality management plan (the "QMP"), which shall include minimum requirements submitted by RTD. The QMP must be approved by the Review Committee prior to implementation.

f. All invoices for payment of Actual Costs, including a final invoice resulting from any completion or termination of a contract with the contractor(s) for the Project, shall require the approval of all Parties. Upon receipt of any contractor invoice, Project Manager will confirm quantities and provide the contractor invoice to each Party's designated representative for review. The Parties shall have fifteen (15) calendar days to review the contractor invoices and raise any objections thereto in writing to Project Manager. In the event a Party, or Parties, object to a contractor invoice in writing within the fifteen (15) calendar day period, the objecting Party, or Parties, shall meet with Project Manager and attempt to resolve such objections within fifteen (15) calendar days of submitting the written objection. If the Parties are unable to resolve the objection within fifteen (15) calendar days of meeting on such objection, the Parties shall resolve the objection pursuant to the Disputes Section of this Agreement. In the event no written objections are received by Project Manager in such fifteen (15) calendar day period, the contractor invoices shall be deemed approved by the Parties. Project Manager shall apply for draws pursuant to the Escrow Agreement, and Project Manager shall make payment to the contractor from the Project Funds less any required retention. Project Manager shall assure that only Project Costs are paid from Project Funds and will maintain full and complete records of all items of Actual Cost incurred in accordance with generally accepted accounting principles.

g. Project Manager shall keep accurate records of the progress of the Project and shall provide status reports to each Party's designated representative on a monthly basis, including progress updates, notice of any problems with the Project or any consultant, contractor, or subcontractor and a record of the payments made to any consultant, contractor, or subcontractor. Said status reports shall include updates to the Actual Costs expended and remaining to be expended and any variance from the Project Costs, as well as any adjustments to the time schedule for Project completion.

h. Prior to the preliminary acceptance of the Project Improvements by Project Manager, and prior to approval of any final payment request under the terms of any construction contract, Project Manager shall consult with the City and RTD with respect to the Project. Project Manager may approve final payment only after the City and RTD agree that the Project has been completed in accordance with the Plans and the applicable contract documents and has issued its acceptance of the Project, conditioned only upon the City and RTD's standard warranty requirements. Final payment shall be further conditioned upon receipt by Project Manager of lien waivers or other evidence satisfactory to Project Manager that all contractors, subcontractors and materialmen have been fully paid for the Project. Any CDOT final acceptance, if required, shall be obtained prior to final payment. In addition, prior to approval of final payment, the Project Manager shall produce the following:

- (i) Certification by Project Manager that publication of a notice of final payment has been made pursuant to C.R.S. Section 38-26-107 for the applicable Work, and no claims were filed for payment of labor or materials prior to the published final payment date; or if claims were filed, such claims have been settled;

(ii) As built drawings, soils tests and reports, compaction test results, and all related information for said Work as required by the City, RTD and CDOT, if required; and

(iii) Written verification that the collateral requirements to secure the Parties' warranty obligations during the warranty periods of the City, RTD and CDOT, if required for the applicable Work has been posted with the City or RTD.

j. For the purpose of receiving the information described above, and of all other communications between the Parties, the Parties have designated the following individuals (or their designee) to serve on the selection team and to be the liaison with the other Parties for coordination of the Project:

RTD: Stan Szabelak  
[stan.szabelak@rtd-denver.com](mailto:stan.szabelak@rtd-denver.com)  
With copies to:  
Thomas Henrikson  
[thomas.henrikson@rtd-fastracks.com](mailto:thomas.henrikson@rtd-fastracks.com)  
Cory Granrud  
[cory.granrud@rtd-denver.com](mailto:cory.granrud@rtd-denver.com)

City: Jim Barwick  
[James.barwick@denvergov.org](mailto:James.barwick@denvergov.org)  
City and County of Denver  
201 W. Colfax Ave. Dept. 506  
Denver, Colorado 80202  
720-913-4535  
With copies to: Terry Ruiter  
[terry.ruiter@denvergov.org](mailto:terry.ruiter@denvergov.org)

SPIMD: Patrick Mulhern  
2 Inverness Drive East, Ste 200  
Englewood, CO 80112  
303-649-9857  
[pat@mulhernmre.com](mailto:pat@mulhernmre.com)

Madre: Brooke Maloy  
650 Cherry Street, Suite 1005  
Glendale, Colorado 80246  
303-320-6778  
[brookermaloy@columbiner.com](mailto:brookermaloy@columbiner.com)

Goldsmith: Doug Scott  
6380 S Fiddler's Green Circle, Ste 400  
Greenwood Village, CO 80111  
303-773-1700  
[doug.scott@sheaproperties.com](mailto:doug.scott@sheaproperties.com)

6. Character of Project Manager Role. Project Manager will be responsible for the day to day management of the Project and the design-build team and for the facilitation of all communications and approvals necessary among the Parties, and for the completion of the Project; provided these responsibilities shall be subject to the funding limitations under Section 4(f)(ii).
7. Ownership and Maintenance. The Parties agree that upon completion of the Project satisfactory to the City and acceptance by the City of the Project, the City shall accept ownership of the Project improvements, exclusive of all transit elements, as defined on **Exhibit F** ("Transit Elements"), attached hereto and incorporated herein by this reference, and be responsible for the maintenance, repair and replacement of such improvements as such maintenance, repair and replacement may be determined by the City, in its sole discretion, to be reasonably necessary and within the City's authority and its budget and funding priorities. The Parties agree that upon completion of the Project satisfactory to RTD, RTD shall accept ownership of the Transit Elements, which shall include, but not be limited to the elevator, stairs, stair tower, shelters, light fixtures, trash receptacles, and benches and shall exclude roadway and bridge work, and RTD shall be solely responsible for the maintenance, repair and replacement of the Transit Elements as such maintenance, repair and replacement may be determined by RTD, in its sole discretion, to be reasonably necessary and within RTD's authority and its budget and funding priorities. The City and RTD may enter into one or more agreements with each other or with third parties for the performance of such maintenance, repair, or replacement as deemed necessary or desirable by the City and/or RTD.
8. Disputes. Disputes shall be initially resolved at the staff level of the Parties. If the respective staff are unable to resolve the dispute within thirty (30) days, they shall document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process:
- a. RTD Civil Engineering Project Manager, the City Engineer, and the District Engineers for SPIMD, Madre and Goldsmith shall meet within thirty (30) days of receiving the referral from the staff level. If they are unable to resolve the dispute within thirty (30) days, they shall document the basis for dispute and forward such information to the parties in 8(b) below,
  - b. Assistant General Manager, Capital Programs for RTD, the City Manager of Capital Projects, the Managers for SPIMD, Madre and Goldsmith shall meet within thirty (30) days of receiving the referral. If they are unable to resolve the dispute within thirty (30) days, they shall document the basis for dispute and forward such information to the parties in 8(c) below, and
  - c. The RTD General Manager, the City Manager of Public Works, the Presidents of SPIMD, Madre and Goldsmith shall meet within thirty (30) days of receiving the referral.
9. Insurance. The Lump Sum Contract shall require the general contractor to carry insurance as set forth in the attached **Exhibit G**.



10. Term and Termination. This Agreement shall remain in effect until the earlier of: i) completion and final acceptance of the Project elements by RTD and the City, as appropriate and release of all funds in escrow; or, ii) the Agreement is terminated by operation of this Agreement or as otherwise agreed by the Parties.

a. Any Party may withdraw its participation in the Agreement by providing written notice to the remaining Parties of the Party's intent to withdraw, effective thirty (30) days after date of notice. Withdrawal by a Party shall not terminate the Agreement with respect to the remaining Parties. No Party withdrawing from the Agreement shall be entitled any refund or return of any portion of funds being held in the Escrow Accounts for the Project.

b. In the event of termination, Project Manager shall settle all accounts with the Design-Builder, close out the contract with such contractor and then remit any money recovered from or refunded by contractor(s), along with unspent portion of the Project Costs remaining in the Escrow Accounts, as follows:

- (i) Up to the first \$500,000 remaining the in Escrow Accounts shall be disbursed equally among Madre and Goldsmith;
- (ii) Up to the next \$1,400,000 remaining in the Escrow Accounts shall be disbursed equally among the City and SPIMD; and
- (iii) Any remaining funds in the Escrow Accounts shall be disbursed to RTD.

c. Project Manager's obligation to return any refund or recovery of Project Funds, Project Manager's accounting and payment obligations, Project Manager's reporting of compliance with various laws, and Project Manager's preservation of records and any warranties obtained from the Project contractor shall survive termination of this Agreement.

11. Assignment. No Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Parties. Any attempt to assign this Agreement or parts hereof in the absence of such written consent shall be null and void *ab initio*. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

12. Preliminary Design Plans. RTD shall provide Project Manager with the Preliminary Plans, surveys and other related documents within five (5) calendar days of execution of this Agreement.

13. Examination of Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Project Manager, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

14. Miscellaneous.

- a. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture or agency of any kind.
- b. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the venue for the dispute resolution shall be the District Court for and in the City and County of Denver, Colorado.
- c. This Agreement shall inure to the benefit of, and be binding upon the parties to this Agreement and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of the Parties, and no design consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.
- d. This Agreement contains the entire agreement of the Parties with respect to its subject matter; and it cannot be amended or supplemented except by a writing signed by both parties. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding
- e. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- f. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to any Party hereto, by the other Parties shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, upon receipt in the United States' mail, first-class postage prepaid, addressed to the address on file with the Colorado Division of Local Government.
- g. The Parties are political subdivisions of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against the Parties, nor against any property lying within the boundaries of the Parties in the event of nonpayment of any amount due under this Agreement.
- h. The Parties, their elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as the same may be amended from time to time.
- i. No elected official, director, officer, agent or employee of any Party shall be charged personally or held contractually liable 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.

j. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

k. The Parties consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

***[REST OF PAGE INTENTIONALLY BLANK – SINGLE SIGNATURE PAGES FOLLOW]***

**ATTEST:**


**CITY AND COUNTY OF DENVER**

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and  
Recorder, Ex-Officio Clerk of the  
City and County of Denver

By: \_\_\_\_\_  
MAYOR

**APPROVED AS TO FORM:**  
DAVID W. BROADWELL, City Attorney  
for the City and County of Denver

**RECOMMENDED AND APPROVED:**

By:   
for Manager of Public Works

By: \_\_\_\_\_  
Assistant City Attorney

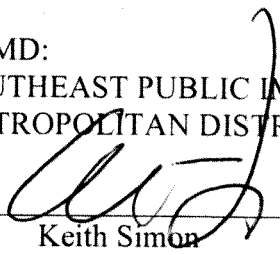
**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No.: CE02012


By: \_\_\_\_\_  
DENNIS GALLAGHER, Auditor  
City and County of Denver

**"CITY"**

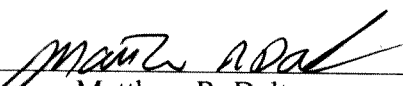
SPIMD:  
SOUTHEAST PUBLIC IMPROVEMENT  
METROPOLITAN DISTRICT

  
By: Keith Simon  
Its: President

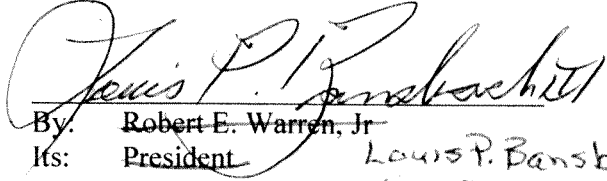
ATTEST

  
By: Patrick F. Mulhern  
Its: Secretary/Treasurer

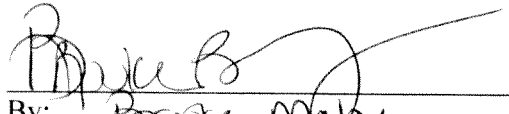
APPROVED AS TO FORM  
FOR SPIMD

  
By: Matthew R. Dalton  
Its: Counsel

MADRE:  
MADRE METROPOLITAN DISTRICT  
NO. 1

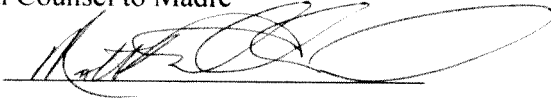
  
By: Robert E. Warren, Jr.  
Its: President Louis P. Bansbach III  
Vice President

ATTEST

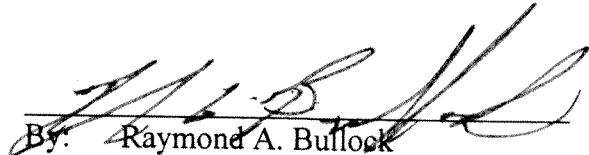
  
By: Brooke Mabry  
Title: Secretary/Treasurer

APPROVED AS TO FORM  
MILLER & ASSOCIATES LAW OFFICES, LLC  
General Counsel to Madre

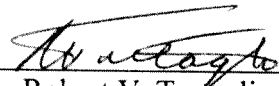
By:



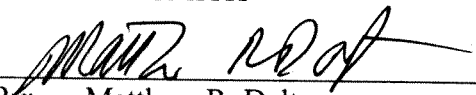
GOLDSMITH:  
GOLDSMITH METROPOLITAN  
DISTRICT

  
By: Raymond A. Bullock  
Its: President

ATTEST

  
By: Robert V. Tartaglia  
Its: Secretary

APPROVED AS TO FORM  
FOR GOLDSMITH

  
By: Matthew R. Dalton  
Its: Counsel

# EXHIBIT A Project Costs

Union Bridge Transit Enhancements Budget Exhibit "A"		
Total Budget		<u>\$7,535,768.13</u>
Design Build Contract	(1) (2)	<u>\$7,110,000.00</u>
Soft Cost Allowance:		
Escrow Fee		\$1,500.00
PM / Procurement		\$175,000.00
CM/ Inspection		\$215,000.00
Testing		\$30,000.00
Total		<u>\$421,500.00</u>
Current Contingency		\$4,268.13
3% Target Contingency	(3)	<u>\$206,991.96</u>
Minimum Value Engineering		<u>\$202,723.83</u>
Value engineering items Accepted		
RTD Bus Bridge Reductions		\$15,000.00
Bus Shelter count reduction (2)		\$32,000.00
Landscape Revisions (no tree replacement)		\$7,200.00
Sidewalk detailing Revisions		\$30,000.00
Denver Street Occupancy Permit Reductions		\$85,000.00
Speding of trees prior to project		\$6,800.00
Denver transit enhancement ppm (2) shelters		\$30,000.00
Total Current VE		<u>\$206,000.00</u>
Total Current Contingency		<u>\$210,268.13</u>
Total Current Contingency as a % of project		<u>3.05%</u>

## Notes -

- (1) Successful Low-bid value for contract at time of conditional award.
- (2) Contract award is conditional on minimum Value Engineering(VE) savings
- (3) Project contingency to be developed from Value Engineering (VE) of the D/B Contract.



EXHIBIT B  
Escrow Agreement

**EXHIBIT B**  
(Form of Escrow Instructions)

**ESCROW AGREEMENT**

Pursuant to this escrow agreement (the "Escrow Agreement"), the undersigned principals wish to establish an escrow account with UMB Bank N.A., hereinafter referred to as Escrow Agent, for the purposes established herein.

FIRST: the assets to be deposited into escrow are the "Deposits" set forth in Schedule B, attached hereto, and further described in that certain Intergovernmental Agreement Regarding the Union Avenue/Belleview Station Transit Enhancements (the "IGA") is made, effective as of the \_\_\_\_ day of \_\_\_\_\_, 2011 which is attached hereto as Schedule A.

SECOND: Specific instructions to the Escrow Agent are detailed in the attached Schedule B which is attached hereto and is hereby incorporated into this Escrow Agreement.

THIRD: The provisions of this Escrow Agreement may only be supplemented, altered, amended, modified or revoked in writing signed by all of the parties hereto and after payment of all fees, costs and expenses of the Escrow Agent.

FOURTH: No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this escrow shall be binding upon the Escrow Agent unless written notice thereof shall be served upon the Escrow Agent and all fees, costs and expenses incident thereto shall have been paid and then only upon the Escrow Agent's assent thereto in writing.

FIFTH: Any notice required or desired to be given by the Escrow Agent to any party to this Escrow Agreement may be given by mailing the same addressed to such party at the address given below the signature of such party or the most recent address of such party shown on the records of the Escrow Agent, and notice so mailed shall for all purposes hereof be as effectual as though served upon such party in person at the time of depositing such notice in the mail.

SIXTH: The Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own attorneys shall be conclusive evidence of such good faith.

SEVENTH: Not Used.

EIGHT: The Escrow Agent shall be under no duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers of payments deposited or called for hereunder, and assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or papers or payments deposited or called for hereunder.

NINTH: The Escrow Agent shall not be liable for the outlawing of any rights under any Statute of Limitation or by reason of laches in respect to these instructions or any documents or papers deposited.

TENTH: In the event of any dispute between the parties hereto as to the facts of default, the validity or meaning of these instructions or any other fact or matter relating to the transaction between the parties, the Escrow Agent is instructed as follows:

That it may in its sole and absolute discretion, deposit the Deposits or so much thereof as remains in its hands with the then Clerk, or acting Clerk, of the District Court of the City and County of Denver, State of Colorado, interplead the parties hereto, and upon so depositing such property and filing its complaint in interpleader it shall be relieved of all liability under the terms hereof as to the property so deposited, and furthermore, the parties hereto for themselves, their heirs, legal representatives, successors and assigns do hereby submit themselves to the jurisdiction of said court. The institution of any such interpleader action shall not impair the rights of the Escrow Agent under ninth paragraph above.

ELEVENTH: Any expenses to transfer any instruments or other assets deposited hereunder may be paid by the Escrow Agent from funds held in escrow, or if none then the undersigned will pay or reimburse for any such expense, subject to appropriation.

TWELFTH: The provisions of these instructions shall be binding upon the legal representatives, heirs, successors and assigns of the parties hereto.

THIRTEENTH: Any income produced from investments held under this Escrow Agreement and remaining shall be returned to the principals in proportion to their contributed deposits. Any principal amounts remaining under this Escrow Agreement upon completion of the Project shall be returned to the principals as described in **Schedule B**.

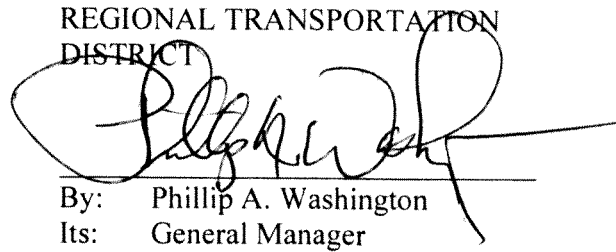
FOURTEENTH: This Escrow Agreement shall be construed under the laws of the State of Colorado.

FIFTEENTH: The undersigned principals hereby agree to pay the Escrow Agent a one-time One Thousand Five Hundred Dollar (\$1,500) escrow fee to be paid from the Deposits in accordance with **Schedule B** and the IGA.

SIXTEENTH: The undersigned principals consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The undersigned principals agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The undersigned principals agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

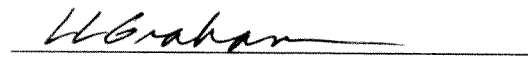
IN WITNESS WHEREOF the undersigned have hereunto affixed their signatures on the \_\_\_\_ day of \_\_\_\_\_, 2011.

REGIONAL TRANSPORTATION  
DISTRICT



By: Phillip A. Washington  
Its: General Manager

APPROVED AS TO FORM  
FOR RTD



By: Lori L. Graham  
Its: Associate General Counsel

ADDRESS FOR THE REGIONAL TRANSPORTATION AUTHORITY:  
1600 Blake Street  
Denver, Colorado 80202

THE CITY AND COUNTY OF  
DENVER

---

Mayor

ATTEST:

---

Clerk and Recorder, Ex-Officio  
Clerk of the City and County  
of Denver

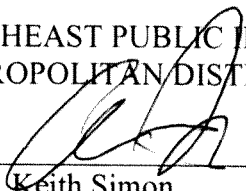
APPROVED AS TO FORM:  
DENVER CITY ATTORNEY

---

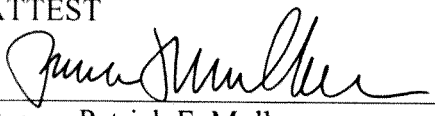
By: Deanne R. Durfee  
Title: Assistant City Attorney

ADDRESS FOR THE CITY AND COUNTY OF DENVER:  
1437 Bannock  
Denver, Colorado 80202

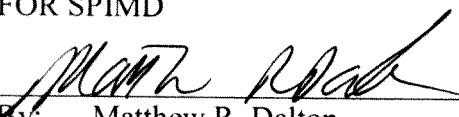
SOUTHEAST PUBLIC IMPROVEMENT  
METROPOLITAN DISTRICT

  
By: Keith Simon  
Its: President

ATTEST

  
By: Patrick F. Mulhern  
Its: Secretary/Treasurer

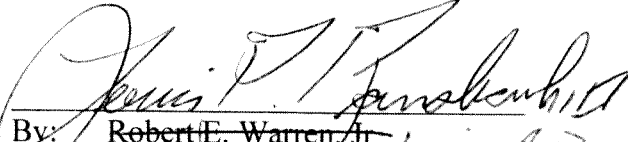
APPROVED AS TO FORM  
FOR SPIMD

  
By: Matthew R. Dalton  
Its: Counsel

ADDRESS FOR THE SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN  
DISTRICT:

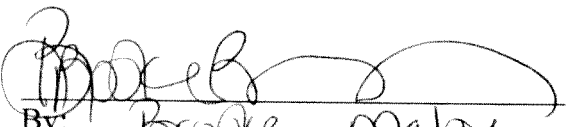
Raymond A. Bullock, District Manager  
6380 South Fiddlers Green Circle, Suite 400  
Greenwood Village, CO 80111

MADRE METROPOLITAN  
DISTRICT NO. 1

By:   
Its: Vice President

  
Louis B. Bensbach, Jr.

ATTEST

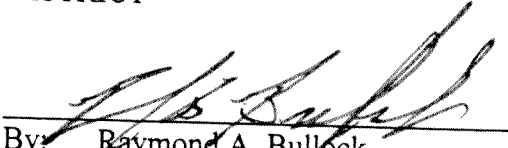
  
By: Brooke Malay  
Title: Secretary/Treasurer

APPROVED AS TO FORM  
MILLER & ASSOCIATES LAW OFFICES, LLC  
General Counsel to Madre

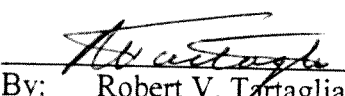
By: 

ADDRESS FOR THE MADRE METROPOLITAN DISTRICT NO. 1:  
8390 E. Crescent Parkway, Suite 500  
Greenwood Village, Colorado 80111  
Attention: Bob Blodgett, Manager

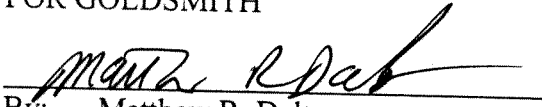
GOLDSMITH METROPOLITAN  
DISTRICT

  
By: Raymond A. Bullock  
Its: President

ATTEST

  
By: Robert V. Tartaglia  
Its: Secretary

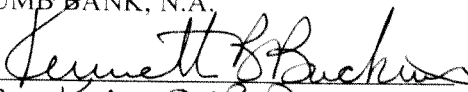
APPROVED AS TO FORM  
FOR GOLDSMITH

  
By: Matthew R. Dalton  
Its: Counsel

ADDRESS FOR THE GOLDSMITH METROPOLITAN DISTRICT:  
Doug Scott, District Manager  
6380 South Fiddlers Green Circle, Suite 400  
Greenwood Village, CO 80111



ESCROW BANK  
UMB BANK, N.A.

  
By: KENNETH B. BUCKIUS  
It: Trust Officer

**SCHEDULE A  
TO ESCROW AGREEMENT**

**IGA**

**SCHEDULE B  
TO ESCROW AGREEMENT  
(SPECIFIC INSTRUCTIONS)**

**ESCROW INSTRUCTIONS**

THESE ESCROW INSTRUCTIONS (the "Instructions") are dated \_\_\_\_\_, 2011, and are from the SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("SPMID"); the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado ("RTD"); MADRE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("Madre"); GOLDSMITH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Goldsmith"); and THE CITY AND COUNTY OF DENVER, a home rule municipal corporation of the State of Colorado ("City") and are to UMB BANK, N.A. (the "Escrow Agent"). The above are sometimes individually referred to as a "Party" and collectively as the "Parties."

**RECITALS:**

A. The Parties to these Instructions are also parties to the IGA that is attached as Schedule A to the Escrow Agreement of which these instructions are a part. All phrases, terms, and words that are initially capitalized and not otherwise defined herein have the same meaning that such initially capitalized phrases, terms, and words have in the IGA.

B. In the IGA, the Parties agreed that they would deliver the following cash amounts and special warranty deeds to the Escrow Agent (the "Deposits"):

RTD:	\$5,635,768.13
City:	\$ 700,000.00
SPIMD:	\$ 700,000.00
Madre:	\$ 250,000.00
Goldsmith:	\$ 250,000.00

Special warranty deed from Madre Investment Co. LLC to RTD as described in the IGA (the "Deed").

The Parties intend that the Escrow Accounts shall be held and disbursed by the Escrow Agent in accordance with these Escrow Instructions.

C. These Instructions are (1) the Escrow Instructions contemplated by the Parties in the IGA and (2) delivered by the Parties in satisfaction of their obligations set forth in the IGA.

## COVENANTS AND INSTRUCTIONS:

For good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto instruct the Escrow Agent as follows:

1. Establishment of Escrow; Acceptance of Escrow. The Escrow Agent hereby acknowledges receipt of a copy of the IGA and the Parties agree to transfer the Deposits to the Escrow Agent within thirty (30) days of award of a contract to the general contractor, pursuant to the IGA. The Escrow Agent will hold the Deposits in accordance with and subject to the terms, conditions, and provisions of these Instructions. The Escrow Agent shall set up two (2) separate escrow accounts. The first escrow account shall contain Three Hundred Ninety Thousand Dollars (\$390,000.00) of the Deposits and is intended to fund all expenses associated with the Consultant, PB Americas, Inc. (the "Consultant Escrow Account"). No funds delivered by RTD shall be used to fund the Consultant Escrow Account. The second escrow account shall contain all Deposits not used to fund the Consultant Escrow Agreement and is intended to fund all other costs associated with the Project (the "Project Escrow Account"). The Consultant Escrow Account and the Project Escrow Account may be referred to individually as a "Escrow Account" and collectively as the "Escrow Accounts"). The Escrow Accounts shall be interest-bearing accounts in which all interest earned thereon will be added to the respective Escrow Account and disbursed in accordance with Section 2., below.

2. Instructions Regarding Disbursement Requests. The Escrow Agent shall receive, hold and disburse the Deposits as follows:

a. Special Warranty Deed. The Deed shall be recorded by the Escrow Agent in accordance with the IGA.

b. Disbursement Requests from Project Manager as Construction Progresses. Project Manager may obtain disbursements from the Escrow Accounts by a written request (a "Disbursement Request") to the Escrow Agent no more than monthly. Each such Disbursement Request shall include a properly completed monthly pay application and voucher for payment which has been approved by the City, RTD and Madre pursuant to the IGA.

b. Final Disbursement. Once the Project has been completed as set forth in the IGA (paragraph 5(h)) and upon receipt of a final disbursement request from the Project Manager in accordance with the IGA and if and to the extent the Escrow Agent is still holding funds in the Escrow Accounts the Escrow Agent shall disburse said funds to the Parties within ten (10) business days after receipt as follows: Up to the first \$500,000 remaining the in Escrow Accounts shall be disbursed equally among Madre and Goldsmith. Up to the next \$1,400,000 remaining in the Escrow Accounts shall be disbursed equally among the City and SPIMD. Any remaining funds in the Escrow Accounts shall be disbursed to RTD.

3. Retainage. Notwithstanding any term, covenant or provision hereof to the contrary, Project Manager will comply with all retainage provisions relating to the Project prior to submitting a final disbursement request pursuant to the IGA.

4. Interest. Any income produced from investments held under this Escrow Agreement and remaining shall be returned to the principals in proportion to their contributed deposits.

5. Audit. Each Party shall have the right, at their respective sole expense and at reasonable times, to conduct or to cause to be conducted an audit of the Escrow Accounts and all disbursements for the Project.

6. Special Instructions to Escrow Agent. The Parties agree that the escrow established hereby shall be subject to the following:

a. Release of Escrow Agent. The Parties release the Escrow Agent from any loss, damage, liability, or claim resulting from the Escrow Agent performing its duties and obligations pursuant to the provisions hereof.

b. Compliance with Orders. The Escrow Agent is hereby expressly authorized to comply with and obey any and all orders, judgments, or decrees of any court relating to this transaction and the Deposits, and in case the Escrow Agent obeys or complies with any such order, judgment, or a decree of any court it shall not be liable to any of the Parties hereto or to any other person, firm, or corporation by reason of such compliance, notwithstanding any such order, judgment, or decree be subsequently reversed, modified, annulled, set aside, or vacated, or found to have been in it without jurisdiction.

c. Dispute; Interpleader. If at any time a dispute shall exist as to the duty of the Escrow Agent under the terms hereof, the Escrow Agent may deposit the Deposits (or so much or so many thereof as may remain in Escrow) in its hands with the Clerk of the District Court in and for the City and County of Denver, State of Colorado, and may interplead the Parties. Upon so depositing the Deposits and filing its compliant in interpleader, the Escrow Agent shall be released from all liability as to the Deposits so deposited. The Parties hereto, for themselves, their heirs, successors, representatives, and assigns, do hereby submit themselves to the jurisdiction of said court.

d. Resignation. The Escrow Agent reserves the right, in its sole discretion, to resign as escrow agent by giving thirty (30) days prior written notice thereof to the Parties.

7. Not used.

8. Construction. The Recitals to these Instructions shall, to the extent appropriate, be interpreted as covenants of the Parties. Captions to paragraphs are for convenience and reference purposes only and shall not affect the construction of the meaning of the terms and provisions of these Instructions. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine, and neuter shall be freely interchangeable. If the date for the performance of any term or obligation of this Instructions is scheduled to occur on a date upon which national banks are not open for business, then such date shall be extended to the next day upon which national banks are open for business and such a day shall be referred to in these Instructions as a "business day."

9. Severability of Terms of Instructions. All terms and conditions of these Instructions shall be deemed severable. Should any one or more of the terms and conditions hereof be deemed void or unenforceable, then the remaining provisions shall have full force and effect and those provisions deemed void or unenforceable shall be interpreted, to the extent possible, so as to render such provisions enforceable and in a way consistent with the original intent of the Parties.

10. Notices. All approvals, consents, notices, or other communications (collectively,

"Notices") required or permitted hereunder or under any related agreement or instrument will be (a) in writing and (b) deemed delivered when delivered personally or mailed, via recognized overnight courier, to the Parties at the addresses set forth in the IGA, or to such addresses as the respective Parties may in writing hereafter direct, and to the Escrow Agent, at the following address (or such address as the Escrow Agent may in writing hereafter direct:

To Escrow Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Successors and Assigns. The terms, conditions, and provisions of these Instructions shall be binding upon the Parties hereto, the Escrow Agent, and their respective successors and assigns.

12. Governing Law. The terms, conditions, and provisions of these Instructions shall be governed by and construed in accordance with the laws of the State of Colorado.

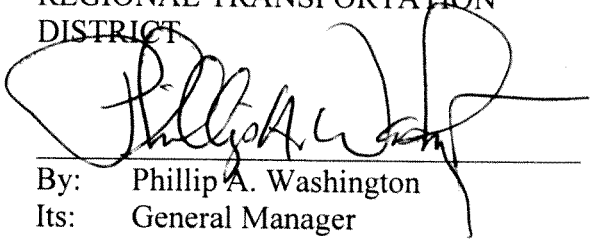
13. Counterparts; Facsimile. These Instructions may be signed in any number of counterparts, each of which together shall constitute the entire instructions given by the Parties to the Escrow Agent and may be signed in facsimile and such facsimile signatures shall be accepted as original signatures.

14. Electronic Signatures and Records. The undersigned principals consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The undersigned principals agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The undersigned principals agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

THESE INSTRUCTIONS have been executed by the Parties and accepted by the Escrow Agent as of the date set forth above.


**[REST OF PAGE INTENTIONALLY BLANK – SINGLE SIGNATURE PAGES FOLLOW]**

RTD:  
REGIONAL TRANSPORTATION  
DISTRICT



By: Phillip A. Washington  
Its: General Manager

APPROVED AS TO FORM  
FOR RTD



By: Lori L. Graham  
Its: Associate General Counsel

CITY:  
THE CITY AND COUNTY OF  
DENVER

---

Mayor

ATTEST:

---

Clerk and Recorder, Ex-Officio  
Clerk of the City and County  
of Denver

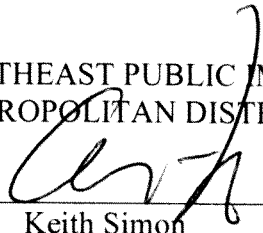
APPROVED AS TO FORM:  
DENVER CITY ATTORNEY

---


By: Deanne R. Durfee  
Title: Assistant City Attorney



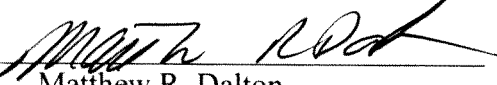
SOUTHEAST PUBLIC IMPROVEMENT  
METROPOLITAN DISTRICT

  
By: Keith Simon  
Its: President

ATTEST

  
By: Patrick F. Mulhern  
Its: Secretary/Treasurer

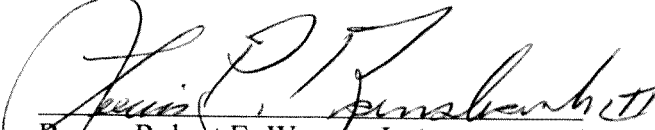
APPROVED AS TO FORM  
FOR SPIMD

  
By: Matthew R. Dalton  
Its: Counsel

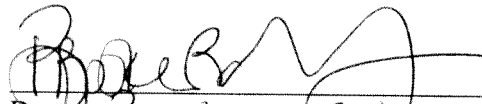
ADDRESS FOR THE SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN  
DISTRICT:

Raymond A. Bullock, District Manager  
6380 South Fiddlers Green Circle, Suite 400  
Greenwood Village, CO 80111


MADRE:  
MADRE METROPOLITAN DISTRICT  
NO. 1

  
By: ~~Robert E. Warren, Jr~~ Louis P. Barsbach III  
Its: President Vice President

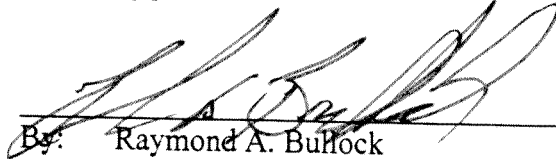
ATTEST

  
By: ~~Brooke Malby~~  
Title: ~~Secretary/Treasurer~~


APPROVED AS TO FORM  
MILLER & ASSOCIATES LAW OFFICES, LLC  
General Counsel to Madre

By: 

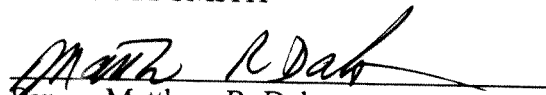
GOLDSMITH:  
GOLDSMITH METROPOLITAN  
DISTRICT

  
By: Raymond A. Bullock  
Its: President

ATTEST

  
By: Robert V. Tartaglia  
Its: Secretary

APPROVED AS TO FORM  
FOR GOLDSMITH

  
By: Matthew R. Dalton  
Its: Counsel

ESCROW BANK  
UMB BANK, N.A.

By: \_\_\_\_\_  
It: \_\_\_\_\_

# EXHIBIT C Property Conveyance

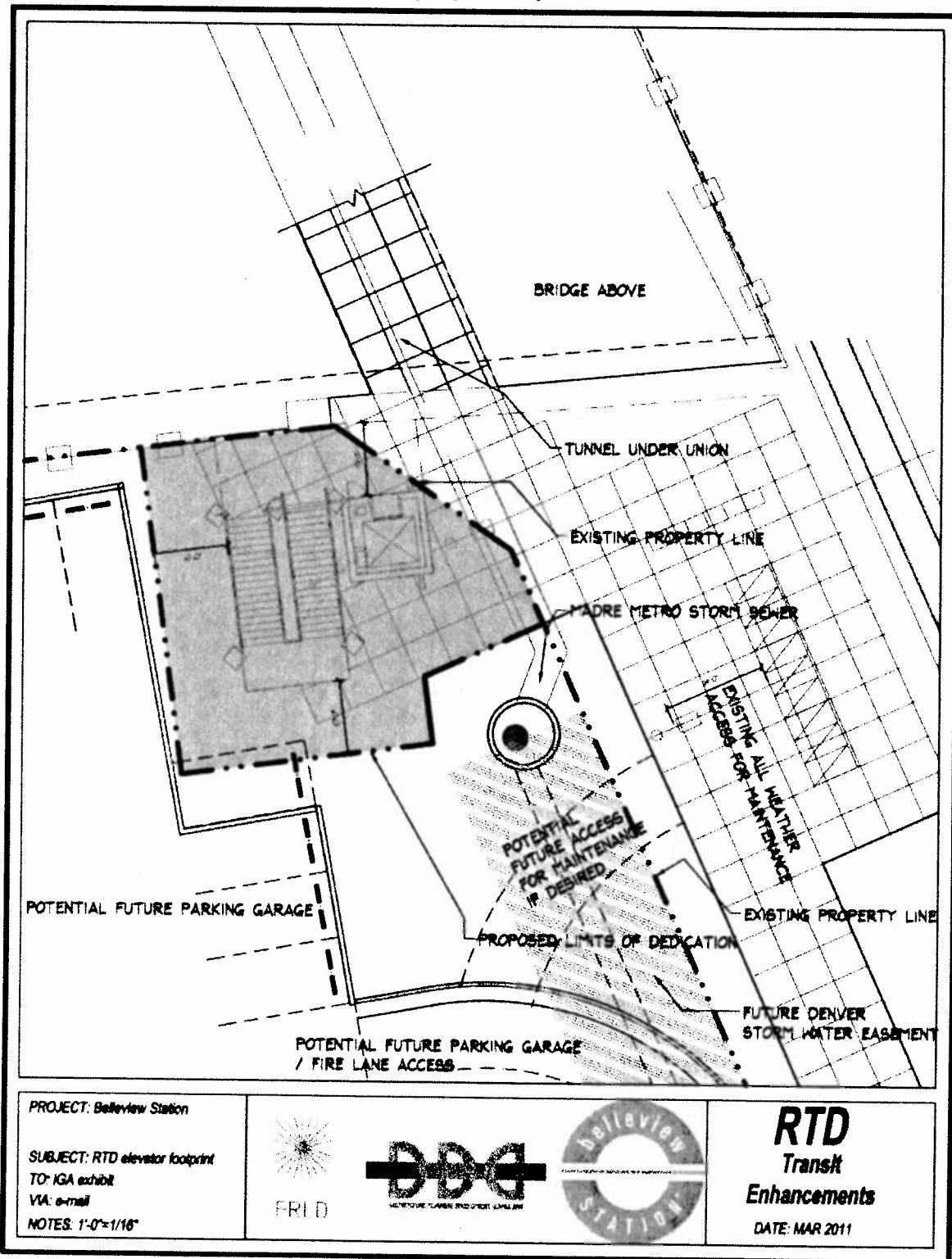


EXHIBIT D  
Form Deed

**After recording return to:**

Regional Transportation District  
Attn: Manager of Real Property  
1560 Broadway  
Denver, Colorado 80202

**SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, between Madre Investment Co., LLC, a Colorado Limited Liability Company, as "Grantor", and Regional Transportation District, a political subdivision of the State of Colorado, whose legal address is 1600 Blake Street, Denver, Colorado 80202, as "Grantee."

**WITNESSETH**, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, and its successors forever, all the real property, together with improvements, if any, situate, lying and being in the County of Denver, State of Colorado, described as follows:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN**

**TOGETHER** with all and singular hereditaments and appurtenances thereto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

**TO HAVE AND TO HOLD** the said premises above bargained and described with the appurtenances, unto Grantee and its heirs and assigns forever. Grantor, for itself, and its successors and assigns, does covenant and agree that it shall and will warrant and forever defend the above bargained premises in the quiet and peaceable possession of Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof by through or under Grantor; except taxes and assessments for the current year and all subsequent years; and except inclusion of the property in any special taxing district; and except rights of third parties not shown by the public records of which Grantee had actual knowledge; and except easements, restrictions, liens, reservations, leases, covenants and other instruments of record.

**IN WITNESS WHEREOF**, Grantor has executed this deed on the date set forth above.

**GRANTOR:**

**Madre Investment Co., LLC, a Colorado Limited Liability Company**

By: \_\_\_\_\_

**STATE OF COLORADO**           )  
  ) ss.  
**COUNTY OF DENVER**        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as Authorized Representative of Madre Investment Co., LLC, a Colorado Limited Liability Company, on its behalf.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public

**Exhibit A**

(Property)

**[SEE ATTACHED]**



EXHIBIT E  
SBE Requirements

IGA Requirements for Union Avenue Bridge  
Small Business Opportunity Office

It shall be the responsibility of MADRE Metropolitan District NO. 1 to provide RTD's Small Business Opportunity Office with a copy of all proposals at least two weeks in advance of selection of the successful Prime Contractor. MADRE shall also designate a SBE liaison for RTD's Small Business Opportunity Office. The SBE liaison will be the point of contact and submit the compilation of various compliance reports and forms (listed below) to RTD's Small Business Opportunity Office. MADRE acknowledges that:

It shall be the responsibility of the awarded **Prime Contractor** to provide RTD's Small Business Opportunity Office:

- a. Copies of any subcontract agreements, promptly after execution.
- b. All Prime contractors, bidders and proposers must complete and return all enclosures comprised in the Attachment A of the bid documents.
- c. All extensions, amendments and change orders to the contract are subject to the review of RTD's Small Business Opportunity Office. At the time of execution of extensions, amendments or change orders, the Prime Contractor is required to submit *Enclosure 2- Schedule of Participation* and *Enclosure 3- Letters of Intent to Perform as a Subcontractor* found in the Attachment A of the bid documents.
- d. On a monthly basis, the Prime contractor will provide RTD's Small Business Opportunity Office with the *Prime Contractor Monthly Report of DBE/SBE Participation Form E Report*.
- e. RTD's Small Business Opportunity Office will directly contact SBE subcontractors and require a monthly submission of a *DBE/SBE Subcontractor Monthly Form E-2 Report*.
- f. The Prime Contractor must provide proof of good faith efforts using RTD's documentation process should it prove unable to meet the SBE goal.
- g. The RTD established SBE goal for this project is undetermined at this time until the cost estimate is reviewed.
- h. All forms are to be submitted by mail to RTD's Small Business Opportunity Office 1600 Blake Street BLK 31 Denver CO 80202.

## EXHIBIT F

### RTD Transit Elements

The following Transit Elements will be installed and constructed as part of the design-build contract. Ownership of these elements will be conveyed to RTD at Final Acceptance. RTD will be responsible for the maintenance and repair of these elements.

- Elevator/Stair Tower
- Elevator Cab and Mechanical Equipment
- At-Grade Landings
- Adjoining Sidewalks and Walkways on RTD property
- Bus Shelters, Benches, Trash Cans
- Transit Signage
- Utility Service Lines

## EXHIBIT G

### Insurance Requirements for Design Build Contract

(1) **General Conditions:** The Design-Builder agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Design-Builder shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be cancelled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202, RTD, Robert Medina, 1600 Blake Street, Denver, 80202, Madre Metropolitan District, c/o Brooke Maloy, 650 Cherry Street, Suite 1005, Glendale, Colorado 80246. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, the Design-Builder shall provide written notice of cancellation, non-renewal and any reduction in coverage to the addresses above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City, RTD and Madre must be notified by the Design-Builder. The Design-Builder shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Design-Builder. The Design-Builder shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(2) **Proof of Insurance:** The Design-Builder shall provide a copy of this Agreement to its insurance agent or broker. The Design-Builder may not commence services or work relating to the Agreement prior to placement of coverage. The Design-Builder certifies that the certificate of insurance attached to the contract, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City, RTD and Madre request that the contract number be referenced on the Certificate. Acceptance by City, RTD and/or Madre of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Design-Builder's breach of this Agreement or of any of the rights or remedies of City, RTD and/or Madre under this Agreement. The City, RTD and/or Madre may require additional proof of insurance, including but not limited to policies and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, the Design-Builder and subcontractor's insurer(s) shall name each of the City, RTD and Madre, their elected and appointed officials, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages, the Design-Builder's insurer shall waive subrogation rights against the City, RTD and Madre.

(5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Design-Builder. The Design-Builder shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. The Design-Builder agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City, RTD or Madre.

(6) **Workers' Compensation/Employer's Liability Insurance:** The Design-Builder shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The Design-Builder expressly represents to Madre, as a material representation upon which Madre is relying in entering into this Agreement, that none of the the Design-Builder's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the Design-Builder executes this Agreement.

(7) **Commercial General Liability:** The Design-Builder shall maintain a Commercial General Liability insurance policy with limits of \$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.

(8) **Business Automobile Liability:** The Design-Builder shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

(9) **Excess/Umbrella Liability:** The Design-Builder shall maintain excess liability limits of \$5,000,000. Coverage must be written on a "follow form" basis. Any combination of primary and excess coverage may be used to achieve required limits.

(10) **Builders Risk:** The Design-Builder shall maintain limits equal to the initial contract amount plus additional coverage equal to contract amount for all subsequent change orders.

(11) **Professional Liability:** The Design-Builder shall maintain professional liability limits of \$1,000,000.00 per claim and \$1,000,000.00 aggregate policy limit.

**(12) Additional Provisions:**

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City, RTD and Madre.

(b) For claims-made coverage:

- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the Madre, whichever is earlier.

(c) If any aggregate limit is reduced by twenty five percent (25%) or more by paid or reserved claims, the Design-Builder shall notify the Parties within ten (10) days and reinstate aggregates required.