

Contract #17149A

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into between the City and County of Denver, acting by and through its Board of Water Commissioners (“Board”), a municipal corporation of the State of Colorado, and the City and County of Denver (“City”), a municipal corporation of the State of Colorado.

RECITALS

1. The City is planning to contract for the reconstruction of Brighton Boulevard between 29th Street and 44th Street (the “Project”). The Project will include the relocation of approximately 6,946 linear feet of the Board’s distribution mains (the “Work”). The total estimated cost for the Work is **THREE MILLION SIX HUNDRED THIRTY SEVEN THOUSAND SIXTY AND 00/100 DOLLARS (\$3,637,060.00)** as shown on Exhibit A attached hereto and incorporated herein by this reference.

2. In accordance with the Colorado Constitution and the Charter of the City and County of Denver, the City and the Board are authorized to enter into agreements of this nature.

NOW, THEREFORE, the Board and the City agree as follows:

1. COORDINATION AND LIAISON.

A. The Executive Director of Public Works is the City’s authorized representative for purposes of performing the City’s obligations under this Agreement. The Executive Director of Public Works hereby designates the City Engineer as the Executive Director’s authorized representative for purposes of directing and administering the City’s activities under this Agreement. The City Engineer has designated Brian McLaren as the Project Manager to oversee construction and act as a liaison between the Board and the City’s construction contractor for the Project. The City may change its authorized representatives at any time by providing written notice to the Board of such change.

B. The Board’s Director of Engineering is the Board’s authorized representative for purposes of directing and administering the Board’s activities under this Agreement. The Board may change its authorized representative at any time by providing written notice to the City of such change.

2. THE WORK.

A. If the City proceeds with the Project, subject to the terms and conditions of this Agreement, the City’s consultant will provide engineering services for the Work. Furthermore, the City’s contractor will relocate the waterline mains, in accordance with plans and specifications approved by the Board and by the City prior to the commencement of construction on the Project. The Board hereby authorizes the City’s contractor to exercise the Board’s rights with regard to service line replacements pursuant to the Denver Water Operating Rules.

B. Per Chapter 12.02 of the Denver Water Operating Rules the Board shall pay the City for the work as follows and as shown on Exhibit A:

Total Cost: \$3,637,060.00

3. **DESIGN AND CONSTRUCTION.**

A. **Board Responsibilities**

(1) As requested by the City, Board representatives shall attend any pre-bid conference scheduled by the City, assist in the preparation of any required addenda, attend the pre-construction meeting, and attend regularly scheduled construction meetings to address issues related to the Work.

(2) The Board shall participate in a final inspection of the Work to verify Work completion and acceptance.

(3) In performing its construction-related obligations, the Board, unless otherwise directed by the City's Project Manager, shall not direct the City's construction contractor, but shall instead provide such direction to the City's Project Manager.

B. **City Responsibilities**

(1) The City, through its contractor, shall complete the Work in accordance with the Board's Operating Rules and Engineering Standards.

4. **REIMBURSEMENT.**

A. The Board agrees to reimburse the City for actual costs associated with the Work. For budgeting purposes, and not as a limit on the Board's obligation, the parties estimate the total amount to be \$3,637,060.00. The Board represents that it has budgeted funds in at least that amount, and subject to the terms and condition of this Agreement shall reimburse the City for costs associated with the Work, of **THREE MILLION SIX HUNDRED THIRTY SEVEN THOUSAND SIXTY AND 00/100 DOLLARS (\$3,637,060.00)**

B. **In the event the City determines that the cost of the Work will exceed the preceding cost estimate, the City shall provide notice to the Board and shall have no obligation to proceed further with the Work until the parties amend this Agreement to fund any additional costs of the Work.**

C. The City shall invoice the Board upon completion of the Work or quarterly for Work completed. The invoice shall include a detailed accounting of the actual costs expended for the Work by the City. The Board shall review the invoice and, unless disputing the invoice or the Work as completed, shall pay the invoice in one lump sum payment within thirty (30) days of the receipt of the invoice.

5. **RECORDS AND AUDITS.** The City shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Work under this Agreement, which shall be made available for audit and reproduction by the Board at the Board's request. The parties agree that, for a period of at least three (3) years from the final scheduled payment under this Agreement, any duly authorized representative of the City or the Board, including the City Auditor or the City Auditor's designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the parties involving the transactions and other activities related to this Agreement.

6. **BEST EFFORTS.** The City and the Board agree to work diligently together, and in good faith, using their best efforts to resolve any unforeseen issues and disputes regarding the design, construction, completion, and acceptance of the Work.

7. **INSPECTION AND ACCEPTANCE.**

A. The Board will be allowed to and shall undertake such inspections as it deems necessary to verify that the Work is being constructed in accordance with the accepted Work plans. If the Board observes that the Work is not being constructed in accordance with the accepted plans, then the Board shall provide timely notice of these observations to the City. If the City fails to take action on these concerns, the Board's representative may stop all work on the Board's facilities.

8. **OWNERSHIP AND MAINTENANCE.** Upon completion, inspection, and acceptance of the Work by the City, the Board shall own and operate the completed Work except as set forth in the Operating Rules with regard to service lines. The City shall ensure its contractor is responsible for all costs associated with the maintenance, repair, and replacements of the Work for a period of one year following the Board's acceptance.

9. **LIABILITY.** Each party shall be liable for the errors and omissions of its agents and employees to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of the Agreement.

10. **NOTICES.** All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven days after posting in the United States mail, first-class postage prepaid, and properly addressed as follows; or (c) when sent by email transmission and the receipt is confirmed by return email transmission.

If sent to the City: Brian McLaren, City and County of Denver Dept. of Public Works, Engineering Division, Capital Projects Management, 201 W. Colfax Ave., Dept. 506, Denver, Colorado 80202; brian.mclaren@denvergov.org

If sent to the Board: Ray Batts, Distribution Engineering, Denver Water, 1600 West 12th Avenue, Denver, Colorado 80204; raphael.batts@denverwater.org

or such other persons or addresses as the parties may have designated in writing.

11. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, the parties 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 or mental disability. The parties further agree to insert the foregoing or a similar provision in all contracts entered into in furtherance of this Agreement.

12. **CONFLICT OF INTEREST.** The parties agree that no official, officer, or employee of the City or of the Board shall have any personal or beneficial interest whatsoever in the Work, related services, or property described herein.

13. **SUBJECT TO LOCAL LAWS; VENUE.** Each and every term, provision, or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to

time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

14. **GOVERNMENTAL IMMUNITY ACT.** The parties understand and agree that the parties are relying upon and have not waived the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Board and the City as to the subject matter hereof, and it replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument. However, the parties acknowledge there are aspects of the Work not within the scope of this Agreement (e.g., utility relocations) that will require submittal, review, approval, and licensing by the Board; such activities shall be governed by the Board's Operating Rules and Engineering Standards.

16. **NO THIRD PARTY BENEFICIARIES.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the City and the Board; nothing contained in this Agreement shall give or allow any such claim or right of action by any other person or third party.

17. **EXECUTION OF AGREEMENT.** This Agreement is expressly subject to, and shall not be or become effective or binding on the City and the Board until fully executed by all signatories of the Board and the City and County of Denver.

18. **EFFECTIVE DATE AND TERMINATION.** This Agreement shall become effective as of the date signed by the Board. This Agreement shall expire, unless earlier terminated or otherwise stated herein, upon completion of the Work. Either party may terminate the Agreement on thirty days' written notice for cause in the event the other party fails to comply with any term or condition contained herein.

19. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Board consents 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, 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, an electronic signature, that it is not in its original form, or is not an original.

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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 _____



Contract Control Number: PWADM-201736412-00

Contractor Name: Board of Water Commissioners

By: SEE ATTACHED SIGNATURE PAGE

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTESTED:

DocuSigned by:
By: *James S. Lochhead*
James S. Lochhead, Secretary

DocuSigned by:
By: *John P. Lucero for Paula Herzmark*
Paula Herzmark, President

Date: 6/14/2017

APPROVED AS TO FORM:

DocuSigned by:
By: *Kristi Kiegle*
Office of General Counsel

APPROVED:

DocuSigned by:
By: *Robert J. Mahoney*
Robert J. Mahoney
Chief Engineering Officer

ATTEST:

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

CITY AND COUNTY OF DENVER
a Municipal Corporation of the State of
Colorado

By: _____
Clerk and Recorder

By: _____
Michael B. Hancock, Mayor

APPROVED AS TO FORM:
Kristin Bronson, Attorney for the
City and County of Denver

RECOMMENDED AND APPROVED:

By: _____
Assistant City Attorney

By: _____
Jose Cornejo, Manager of Public Works

{ S E A L }

By: _____
Director of Asset Management

REGISTERED AND COUNTERSIGNED:

DocuSigned by:
By: *Timothy M. O'Brien* ^{DS} *JAG*
Timothy M. O'Brien, Auditor

Contract Control No. _____
"CITY"

Date: 6/25/2017



EXHIBIT "A"

	Work Description	Board's Cost Responsibility	Estimated Amount of Reimbursement by Board to City
Segment 1	This segment shall include the relocation of approximately 5,032 linear feet of the Board's 12-inch distribution main and its appurtenances that lie in Brighton Boulevard from the southerly right-of-way line of 29 th Street to the northerly right-of-way line of 40 th Street. This segment shall include the replacement, relocation, and/or abandonment of all fire lines, including appurtenances such as meter pits, valves, and stop boxes.	100% of design and construction costs for the waterline replacement.	\$ 2,819,300.00
Segment 2	This segment shall include the relocation of approximately 1,914 linear feet of the Board's 20-inch distribution main and its appurtenances that lie in Brighton Boulevard from 40 th Street to 44 th Street.	100% of design and construction costs for the waterline replacement.	\$ 817,760.00
TOTAL			\$ 3,637,060.00