

## 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, a municipal corporation of the State of Colorado ("Board"), and the City and County of Denver, a home rule city and municipal corporation of the State of Colorado ("City").

### RECITALS

1. The City intends to construct street improvements along South Broadway from Arizona Avenue to Kentucky Avenue and in Mississippi Avenue from Logan Street to Acoma Street ("Project").
2. The street improvements require the relocation of portions of the Board's distribution mains along with various appurtenances associated with the distribution system in South Broadway and in Mississippi Avenue. The street improvements also will require the relocation of the Board's Conduit No. 61 located in Mississippi Avenue from Santa Fe Drive to South Broadway.
3. 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 Manager of Public Works ("Manager") is the City's authorized representative for purposes of performing the City's obligations under this Agreement. The Manager may change his authorized representative at any time by providing written notice to the Board of such change. The Manager hereby designates the City Engineer as the Manager's authorized representative for purposes of directing and administering the City's activities under this Agreement. The City Engineer may designate a Project Manager to oversee the Project and coordinate with the Board for the Work as defined below. The City Engineer hereby designates Mike Harmer as the Project Manager to generally oversee the construction and act as a liaison between the Board and the City's construction contractor.

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 Director of Engineering has designated Vincent Gaiter to generally oversee the construction and act as a liaison between the Board and the City. The Board's Director of Engineering may change its authorized representative at any time by providing written notice to the Manager of such change.

#### 2. THE WORK.

The relocations of Board utilities necessitated by the Project include three separate work segments as described in Exhibit "A," attached and incorporated. Each segment shall be as shown on the plans titled "South Broadway - Arizona Ave. to Kentucky Ave. Domestic Water Plan" City Project Number PWC2012-8003/2010-0165-05 approval date of 12-13-2013 and "Conduit 61 Relocation of 30" steel pipeline in Mississippi Ave. from Santa Fe Dr. to South Broadway" City Project Number PWC2012-8003/2010-0165-05 approval date of 12-13-2013.

These segments shall generally consist of but not be limited to the design, construction, and close-out of each segment phase ("Work").

3. **PROJECT DESIGN AND CONSTRUCTION.**

A. **Board Responsibilities**

(1) As requested by the City, Board representatives shall attend any Pre-Bid Conference, 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 Project and the Work.

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

(3) In performing its construction-related obligations, the Board's representative may direct the City's Project Manager and construction contractor for all Work as defined in Exhibit "A" as it pertains to the relocation of the Board's facilities. The Board's representative may also provide direction to the City's Project Manager and construction contractor for all other work that is not part of this Agreement but may impact the Board's facilities. The Board's representative shall notify the City's Project Manager of all changes to the Work in writing or through the Board's representative's daily reports.

B. **City Responsibilities**

(1) The City has contracted with NV5, a sub-consultant to Felsburg Holt and Ullevig to design the Project. The design of the Project shall meet all requirements set forth in the Board's Operating Rules, Engineering Standards, and Capital Project Construction Standards ("CPCS").

(2) The City shall select a construction contractor that either self-performs the Work or is a general contractor with a subcontractor that performs the Work. The contractor or the subcontractor performing the Work **must be** on the Board's approved list or be approved by the Board prior to the start of any Work.

4. **REIMBURSEMENT.**

A. The Board agrees to reimburse the City for the **actual** approved costs associated with each segment of the Work as outlined in Exhibit "A." The City has prepared a cost estimate for the Work, which has been reviewed and accepted by the Board's Director of Engineering. The cost estimate is attached hereto as Exhibit "B" and incorporated herein. The total estimated cost to the Board for the Work is **\$1,145,149.82 (ONE MILLION ONE HUNDRED FORTY-FIVE THOUSAND ONE HUNDRED FORTY-NINE DOLLARS AND EIGHTY-TWO CENTS)** ("**estimated Amount**"). The cost to be paid by the Board shall be allocated to each segment as shown in Exhibit "A."

B. The City shall invoice the Board for the Work that has been completed and accepted by the Board on a quarterly basis. The Board shall review all invoices with supporting documentation, and unless disputing an amount in an invoice, shall pay invoices within thirty days of the receipt of the invoice.

C. At the conclusion of the Work, the City shall provide the Board a detailed accounting of the actual costs expended for the Work by the City.

D. In the event the City's Project Manager determines that the cost of a segment of the Work will exceed the cost estimate for that segment, the City's Project Manager shall provide notice to the Board's Representative and shall work with the Board to develop a Change Order cost that is mutually agreed upon by both parties. The Project Manager shall then submit to the Board a Change Order document prepared in accordance with City procedures, which shall be sufficient evidence of record to fund any additional cost of the Work.

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 City shall provide quarterly invoices verifying that the expenditures made by the City and the requested reimbursements are in accordance with this Agreement. The parties agree that, for a period of at least 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. GOOD FAITH EFFORTS.

The City and the Board agree to work diligently together and in good faith to resolve any unforeseen issues and disputes regarding the design, construction, completion, and acceptance of the Work.

7. INSPECTION AND ACCEPTANCE.

A. The Board's representatives will be allowed to and shall undertake inspections as the Board deems necessary to verify that the Work is being constructed in accordance with the approved plans. If the Board's representative observes that the Work is not being constructed in accordance with the approved plans and/or Denver Water's Operating Rules, Engineering Standards, and CPCS, then the Board's representative shall provide timely notice of these observations to the City's Project Manager. If the City fails to take action on these concerns, the Board's representative may stop all Work on its facilities.

B. The City or its contractor shall provide to the Board within 30 days, or at an agreed-upon specified time frame, after completion of the Work a final **"Record Drawing Package."** This package must clearly indicate all changes, additions, deletion, deviations from the approved plans, or any additional information discovered or determined to be relevant (e.g., unknown interference that was discovered but not shown on the "Final for Construction" drawings). This package will also include any changes or clarifications made via the contractor's Request for Information, Field Modifications, Work Change Directive, Change Order, or Contract/IGA Amendment. All Record Drawings shall meet the Board's latest AutoCAD standards, Engineering Standards, and/or CPCS. The Record Drawing Package must include but shall not be limited to the following items:

- PDF hard copy redline markups

- PDF hard copy As-Built Drawings
- AutoCAD (Water Only) drawing file with all information and changes shown

**8. OWNERSHIP AND MAINTENANCE.**

Upon completion, inspection, and acceptance of the Work, the Board shall own and operate the completed Work. The City's contractor shall be responsible for all costs associated with the maintenance, repair, and replacements of the Work for a period of **one year** from acceptance by the Board.

**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, (b) 7 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: Mike Harmer, City and County of Denver Dept. of Public Works, Engineering Division, Capital Projects Management, 201 W. Colfax Avenue, Dept. 506, Denver, Colorado 80202, email: [mike.harmer@denvergov.org](mailto:mike.harmer@denvergov.org)

If sent to the Board: Vincent Gaiter, Distribution Engineering, Denver Water, 1600 West 12th Avenue, Denver, Colorado 80204, email [Vincent.Gaiter@denverwater.org](mailto:Vincent.Gaiter@denverwater.org)

Or other persons or addresses to receive notices may be designated in writing by each party.

**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 of \$350,000 per person, \$990,000 per occurrence, 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 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 City's Project that are not within the scope of this Agreement (e.g., other utility relocations) that may require submittal, review, approval, and licensing by the Board; such activities shall be governed by the Board's Operating Rules, Engineering Standards, and CPCS.

**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.

**18. EFFECTIVE DATE AND TERMINATION.**

This Agreement shall become effective as of the date set out on the City's signature page, upon execution by both parties. This Agreement shall expire, unless earlier terminated or otherwise stated herein, upon completion of the Work. Either party may terminate the Agreement on 30 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.

20. APPROPRIATION.

All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purpose of this Agreement and paid into the Treasury of the City.

[END OF PAGE]

**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 \_\_\_\_\_

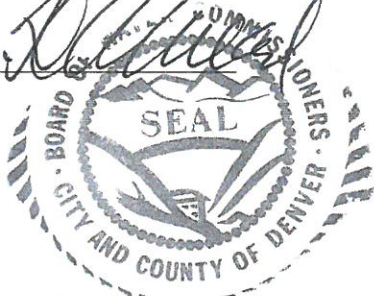
By \_\_\_\_\_



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

ATTESTED:

By: *Ann S. DeWitt*  
Secretary



The seal is circular with a double border. The outer border contains the text "BOARD OF WATER COMMISSIONERS" at the top and "CITY AND COUNTY OF DENVER" at the bottom. In the center, there is a shield with a mountain range and a river, with the word "SEAL" written across it.

By: *Ray Gust*  
President

DATE: MAY 14 2014

APPROVED:

By: *Robert J. Mphay*  
Director of Engineering

REGISTERED AND COUNTERSIGNED:  
Dennis J. Gallagher, Auditor  
CITY AND COUNTY OF DENVER

By: *D. Beckman*  
Deputy Auditor

APPROVED AS TO FORM:

By: *Michel P. J.*  
Legal Division





**Contract Control Number:** 201100951

**Vendor Name:** Board of Water Commissioners

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**EXHIBIT "A"**

	<b>Work description</b>	<b>Board's cost responsibility</b>	<b>Estimated amount of reimbursement by Board to City</b>
<b>Segment I</b>	<p>This segment shall include the relocation of approximately 1340 linear feet of the Board's 12-inch distribution main and its appurtenances that lie in South Broadway from the north right-of-way line of Mississippi Avenue to the north right-of-way line of Kentucky Avenue. This segment shall include the replacement, relocation, and/or abandonment of all service and fire lines, including appurtenances such as meter pits, valves, and stop boxes.</p>	<p>50% of design and construction costs</p>	<p>\$115,362.03</p>
<b>Segment II</b>	<p>This segment shall include the relocation of approximately 750 linear feet of the Board's 12-inch distribution main and its appurtenances located in South Broadway from Arizona Avenue to the north right-of-way line of Mississippi Avenue. This segment will also include the relocation of 100 linear feet of 12-inch main located in Mississippi Avenue from Acoma Street to South Broadway. This segment will also include the relocation of 70 linear feet of 8-inch main located in Mississippi Avenue from Sherman Street to Logan Street. This segment shall include the replacement, relocation, and/or abandonment of all service and fire lines, including appurtenances such as meter pits, valves, and stop boxes.</p>	<p>100% of design and construction costs</p>	<p>\$195,674.93</p>
<b>Segment III</b>	<p>This segment shall include the relocation of approximately 1200 linear feet of Conduit 61 located in Mississippi Avenue from Santa Fe Drive to South Broadway. This shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>a) The relocation of the Board's 30-inch steel Conduit No. 61 and all appurtenances.</li> <li>b) The removal and/or abandonment of a portion of the existing Conduit No. 61 and all appurtenances.</li> <li>c) The relocation of all service line taps on Conduit 61 to the new 12-inch distribution main in Mississippi Avenue between Acoma Street and South Broadway.</li> </ul>	<p>100% of design and construction costs</p>	<p>\$834,112.86</p>

# EXHIBIT "B"

## CE 93007 Summary of Costs for Conduit 61 and Domestic Water

	Segment 2 - Arizona to Mississippi DW Segment III - Conduit 61 Design			Segment 2 - Arizona to Mississippi DW Segment III - Conduit 61 Redesign			Segment 1 - Mississippi to Kentucky DW Segment I - Domestic Water (TIP PROJECT)			Segment 2 - Arizona to Mississippi DW Segment II - Domestic Water			Overall Total
	Fee for Basic Services (Labor)	Reimbursable Expenses	Total	Fee for Basic Services (Labor)	Reimbursable Expenses	Total	Fee for Basic Services (Labor)	Reimbursable Expenses	Total	Fee for Basic Services (Labor)	Reimbursable Expenses	Total	
Felsberg Hoyt & Ulevly	\$12,270.23	\$122.70	\$12,392.93	\$12,270.23	\$122.70	\$12,392.93	\$10,879.76	\$169.50	\$11,049.26	\$12,311.32	\$123.11	\$12,434.43	\$48,208.86
Goodbee & Associates, Inc. (MWBE)	\$40,487.00		\$40,487.00	\$8,844.00	\$6,776.00	\$15,620.00	\$27,395.50		\$27,395.50	\$27,395.50		\$27,395.50	\$15,620.00
NWS	\$52,707.23	\$122.70	\$52,830.00	\$37,904.23	\$6,898.70	\$44,802.93	\$36,275.26	\$168.80	\$36,444.06	\$39,706.82	\$123.11	\$39,829.93	\$112,048.00
<b>Design Totals</b>			<b>\$97,652.86</b>			<b>\$736,450.00</b>			<b>\$192,340.00</b>			<b>\$155,845.00</b>	
<b>Construction Totals</b>			<b>\$334,112.86</b>			<b>\$220,724.06</b>			<b>\$220,724.06</b>			<b>\$195,674.93</b>	
Compensation from Denver Water			100% of Cost			100% of Cost			50% of Cost			100% of Cost	
<b>Total Estimated Cost</b>			<b>\$834,112.86</b>			<b>\$957,174.06</b>			<b>\$413,064.06</b>			<b>\$351,519.93</b>	
													<b>\$1,145,149.82</b>

Payment will be made by Denver Water on an actual cost basis. Changes in scope, and field revisions will affect the final cost.