

NORTH FIRE STATION REIMBURSEMENT AGREEMENT

(Stapleton North Fire Station)

This NORTH FIRE STATION REIMBURSEMENT AGREEMENT (“North Fire Station Reimbursement Agreement” or “Agreement”) dated as of May 15, 2017, is executed by and between the **CITY AND COUNTY OF DENVER**, a Colorado home rule city and municipal corporation (“City”), the **DENVER URBAN RENEWAL AUTHORITY**, a body corporate organized and existing as an urban renewal authority under the laws of the State of Colorado (“DURA”), and **SCHOOL DISTRICT NO. 1** in the City and County of Denver, State of Colorado, a public school district and body corporate (“DPS”), (collectively “Parties”).

Recitals

A. The City, DPS, Park Creek Metropolitan District (“PCMD”), Forest City Stapleton, Inc. (“Forest City”), and Denver Urban Renewal Authority (“DURA”) are parties to that certain Individual Facilities Development Agreement F-8 dated as of May 15, 2017 (the “IFDA F-8”) where all have agreed on an arrangement to allow for funding for additional infrastructure in Section 10 and other areas of Stapleton, including a new school, a fire station with up to 3 bays located in Filing 44 of Stapleton on Central Park Boulevard at approximately 50th Ave. (“North Fire Station”), and other infrastructure at Stapleton.

B. DPS has built schools to serve development in the Stapleton area and intends to build two additional schools in Section 10 of the Stapleton site north of 56th Avenue (the “New Schools”).

C. DPS has been advised by the City Fire Chief that the national standard for travel response time to an emergency is four minutes and that there is not currently a City fire station located within four minutes’ travel time of the New Schools as well as the Paul Sandoval Campus, home to Northfield High School.

D. The City Fire Chief has strongly recommended that construction of a new fire station in the vicinity of 50th Avenue and Central Park Boulevard is in the interests of the safety of students, staff and visitors to the New Schools as well as the Paul Sandoval campus.

E. In order to help fund a portion of the cost of the North Fire Station, DPS intends to issue Certificates of Participation (the “2017 DPS COPs”) in the net amount of \$16.45 million (“2017 DPS COP Proceeds”).

F. Pursuant to this Agreement and the DPS COP Transaction Documents (as defined in IFDA F-8), including the Indenture of Trust dated May 15, 2017 (“2017 DPS COP

Indenture”), DPS will place \$9,400,000 of the 2017 DPS COP Proceeds in a North Fire Station Construction Fund (as defined herein) with the 2017 DPS COP Trustee (as defined herein) to be used to reimburse the City for advances for the funding the design and construction of the North Fire Station in order to better serve north Stapleton and the schools located there.

G. To effectuate this, the Parties desire to enter into this Agreement.

Agreement

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, DURA, and DPS agree as follows:

1. **Definitions.** In addition to the terms defined in the Recitals above, which Recitals are incorporated herein, the following terms shall have the meanings set forth below.

A. “2017 DPS COP Indenture” means the Indenture of Trust dated as of May 152017, executed and delivered by the DPS Trustee.

B. “2017 DPS COP Proceeds” means the proceeds of the Certificates of Participation as defined in the 2017 DPS COP Indenture.

C. “2017 DPS COP Trustee” means the Trustee as defined in the 2017 DPS COP Indenture.

D. “Actual Development Costs” has the meaning set forth in the Third Supplement to School Funding Agreement and the Amended and Restated School Funding Agreement found in Denver City Clerk File Nos. 2017- 0045 and 2017-0045-001 respectively.

E. “Amended and Restated School Funding Agreement” means the agreement between DPS and DURA found in Denver City Clerk File No. 2017- 0045-001.

F. “Business Day” has the meaning set forth in the 2017 DPS COP Indenture.

G. “Chief Financial Officer” means the Manager of Finance of the City and County of Denver.

H. “City Representatives” means the City’s Chief Financial Officer and Manager of Public Works as described in the 2017 DPS COP Indenture.

I. “IFDA F-8” means the Individual Facilities Development Agreement F-8 between DPS, DURA, Park Creek Metropolitan District, Forest City Stapleton and the City relating to (among other things) the North Fire Station and the CPB Bridge (Phase 2) project.

J. “North Fire Station Construction Fund” means the Construction Fund as defined in the 2017 DPS COP Indenture.

K. “North Fire Station” has the meaning given to such term in the recitals hereof.

L. “Reimbursement Review Request” means the request, with required information, sent by the City to DURA, requesting DURA to perform the duties set forth in Section 4 herein.

M. “Third Supplement to School Funding Agreement” means the Third Supplement to Amended and Restated Stapleton School Funding Agreement between the District and DURA as found in Denver City Clerk File No. 2017-0045.

2. **Creation and Funding of the North Fire Station Construction Fund**

A. Pursuant to the 2017 DPS COP Indenture, DPS shall create the North Fire Station Construction Fund.

B. Pursuant to the 2017 DPS COP Indenture, DPS shall place \$9,400,000 in 2017 DPS COP Proceeds into the North Fire Station Construction Fund to be used to reimburse the City for advances made to fund the design and construction of the North Fire Station.

3. **Requisition Process from the North Fire Station Construction Fund**

A. No more than monthly, the City may submit a requisition (“Requisition”) to the 2017 DPS COP Trustee for payment to the City for reimbursement for advances made to fund the Actual Development Costs of the North Fire Station. The Requisition shall include:

(i) The form of Requisition attached hereto as **Exhibit A** and incorporated herein, with copies of required information attached thereto.

(ii) DURA’s Consent to Disbursement, or if DURA has failed to respond to a Consent to Disbursement request within the time frame described in Section 4 herein, the Deemed Consent to Disbursement, both forms of which are attached hereto as **Exhibit B** and incorporated herein.

(iii) Other information as the DPS Trustee may reasonably request.

B. The DPS Trustee shall pay the City the amount contained in the Requisition within 5 Business Days of receipt of the Requisition.

4. **DURA Consent to Disbursement**

Prior to submitting a Requisition to the DPS Trustee in accordance with the terms herein:

A. The City shall forward to DURA the Requisition, the Consent to Disbursement, and a Reimbursement Review Request containing a copy of contractor invoices and invoices for goods and services purchased for the purposes of the North Fire Station; and a description in detail of the reimbursable costs for which the City seeks reimbursement, the dates such costs were incurred, and the amounts thereof.

B. DURA shall review the Reimbursement Review Request to confirm that the costs contained therein constitute Actual Development Costs of the North Fire Station.

C. If DURA determines that all costs included in any Reimbursement Review Request are Actual Development Costs, DURA shall execute the Consent to Disbursement and return such Consent to the City within 10 Business Days of receipt of such request.

D. If DURA shall determine that any costs included in any Reimbursement Review Request are not Actual Development Costs, such determination shall be communicated to the City within ten (10) Business Days after DURA's receipt of such request, and DURA and the City shall work together to resolve any disputes.

E. If DURA fails to confirm or otherwise respond to the City with respect to a Reimbursement Review Request within fifteen (15) Business Days after its receipt of such request, the costs detailed in the Reimbursement Review Request shall be deemed to be confirmed as Actual Development Costs by DURA and DURA shall be deemed to have consented to disbursement from the Construction Fund and the City shall sign and deliver to the 2017 DPS COP Trustee the Deemed Consent to Disbursement set forth in Exhibit B.

F. If any Reimbursement Review Request is resubmitted after an initial determination by DURA that any cost contained therein did not constitute Actual Development Costs, DURA shall have five (5) Business Days after the DURA's receipt of any such resubmitted request to review. If DURA fails to confirm or otherwise respond to the City with respect to any such resubmitted Reimbursement Review Request within five (5) Business Days after its receipt of such request, the costs detailed in the resubmitted Reimbursement Review Request shall be deemed to be confirmed as Actual Development Costs by DURA, DURA shall be deemed to have consented to disbursement from the Construction Fund and the City shall sign and deliver to the 2017 DPS COP Trustee the Deemed Consent to Disbursement set forth in Exhibit B.

5. **Fire Station Operable and Construction Fund Certificate**

The City shall have an operable fire station ready for use no later than June 1, 2019. No later than December 31, 2019, the City shall provide to DURA, DPS and the 2017 DPS COP Trustee a Construction Fund Certificate, the form of which is attached hereto as **Exhibit C** and incorporated herein. Upon receipt of such Construction Fund Certificate, the parties hereto shall act in accordance with the 2017 DPS COP Indenture.

6. **Miscellaneous**

A. **Mutual Cooperation.** Upon completion and delivery of this Agreement, the City, DURA and DPS covenant and agree that they will mutually cooperate and perform all acts necessary or appropriate to discharge all obligations contained in or contemplated by this Agreement.

B. **No Third Party Beneficiaries.** The City, DURA and DPS intend that this Agreement shall create no third-party beneficiary interest. The City, DURA and DPS are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation constituting a different interest, and, in any event, expressly disclaim any such acts or actions.

C. **Annual Appropriations.** 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 purposes of this Agreement and paid into the Treasury of the City. Failure by the City Council to appropriate funds shall not constitute a default hereunder. All obligations of DPS under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the Board of Education for the purposes of this Agreement. Failure by DPS to appropriate funds shall not constitute a default hereunder.

D. **Default Remedies.** If any party to this Agreement defaults on its obligations expressly provided herein, the non-defaulting party may only seek, to the extent permitted by law, specific performance. The City, DURA and DPS specifically waive the right to recover damages and attorney's fees against each other. In addition, if the 2017 DPS COP Trustee fails to act in accordance with the 2017 DPS COP Indenture in disbursing funds from the North Fire Station Construction Fund, DPS shall exercise all remedies available against the 2017 DPS COP Trustee on behalf of the City.

E. **Right to Inspect Books.** In addition to all rights the City has under Colorado Revised Statutes, Section 24-72-201, *et seq.*, DPS and DURA agree that the City, the

City's Auditor and any authorized representative shall have the right at all reasonable times and after reasonable notice to examine all books and records with respect to this Agreement.

F. Binding Effect. This Agreement will not be binding until executed by all the parties. Once so executed, this Agreement shall inure to the benefit of and shall be binding upon the City, DURA and DPS and their respective successors and permitted assigns.

G. Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided however, that if either party determines, in its sole discretion, that such invalid or unenforceable provision was material, the Parties shall be obligated to use good faith efforts to negotiate and agree upon a replacement provision that is valid and enforceable.

H. Applicable Law. This Agreement shall be governed by and construed in accordance with applicable federal law, the laws of the State of Colorado, the City Charter, the Denver Revised Municipal Code, ordinances and rules and regulations of the City.

I. Captions. The captions herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

J. Amendments and Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, without City Council approval unless City Council approval is required by City Charter. Any modification, amendment, change, or termination shall be in writing executed by the City, DURA and DPS. The parties acknowledge that there are certain restrictions on amending this Agreement contained in IFDA F-8.

K. Waiver. The waiver of a breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by any other party of the same or another provision of this Agreement.

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

M. Notices. Except as otherwise expressly provided herein, all notices, certificates or other communications hereunder shall be deemed given when personally delivered or upon three business days following mailing by registered or certified mail, postage prepaid, addressed as follows:

If to the City:

Manager of Public Works
City and County of Denver
201 W. Colfax Ave. Dept 603
Denver, CO 80202

Chief Financial Officer
City and County of Denver
201 W. Colfax Ave., Dept. 1010
Denver, CO 80202

With copies to:

City Attorney
City and County of Denver
201 W. Colfax Ave, Dept. 1207
Denver, CO 80202
Attn: Municipal Operations

If to DPS:

Denver Public Schools
Emily Griffith Campus
1860 Lincoln Street
11th Floor
Denver, CO 80203
Attention: Chief Financial Officer

With a copies to:

Denver Public Schools
Emily Griffith Campus
1860 Lincoln Street
11th Floor
Denver, CO 80203
Attention: General Counsel

Dee Wisor
Butler Snow LLP
1801 California Street
Suite 5100
Denver, Colorado 80202

If to 2017 DPS COP Trustee:

Zions Bank, a Division of ZB, National Association
Corporate Trust Services
1001 17th Street, Suite 850
Denver, Colorado 80202

If to DURA:

Executive Director
Denver Urban Renewal Authority
1555 California St., Suite 200
Denver, CO 80202

or at other such addresses as the parties may hereafter or from time to time designate by written notice to the other parties given in accordance with this Section.

N. Government Authority. The City, DURA and DPS shall comply with any and all valid state, federal or local laws or regulations applicable to this Agreement, and any and all valid orders, regulations, or licenses issued pursuant to any federal, state, or local law or regulation applicable to this Agreement.

O. Assignment. The City, DURA or DPS shall not assign any of their rights or duties, in whole or in part, under this Agreement without the prior written consent of the other parties.

P. Responsibility. Each party shall be responsible for any and all suits, demands, costs, or actions proximately resulting from its own individual acts or omissions.

Q. Public Officials. No elected official, director, officer, agent, or employee of the City, DURA or DPS, nor any director, officer, employee or personal representative of the City, DURA or DPS shall be charged personally or held contractually liable by or to the other party under any term or provision of Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement.

R. Conflicts. DPS and DURA represent, as to their respective organizations, that, to the best of their information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such officer or employee or as a result of an elected or appointed position such officer or employee holds.

S. Force Majeure. No party shall be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reasons beyond the control of such party, or by reasons of any of the following occurrences; strikes, labor

disputes, failure of any governmental approval required for full performance (except for the City for approvals required by the City), riots, civil disorder or commotion, war, floods, earthquakes, acts of God, explosion or similar occurrences, provided that such party shall exercise its reasonable efforts to provide the best possible alternative performance and to prevent the foregoing occurrences from obstructing full performance.

T. Nondiscrimination. In connection with the performance of work under this Agreement, the City, DURA and DPS agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical and mental disability; and the City, DURA and DPS further agree to insert the foregoing provision in all subcontracts hereunder.

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

V. Tax Exempt Status of DPS COP Proceeds. The City agrees that it will not take any action or omit to take any action with respect to the North Fire Station if such action or omission (i) would cause the interest on the 2017 DPS COPs (or any refunding obligations issued by DPS) to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the 2017 DPS COPs (or any refunding obligations issued by DPS) to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income, or (iii) would cause

interest on 2017 DPS COPs (or any refunding obligations issued by DPS) to lose its exclusion from Colorado taxable income and Colorado alternative minimum taxable income under present state law.

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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:

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A

FORM OF CONSTRUCTION FUND REQUISITION

(Stapleton North Fire Station)

REQUISITION NO. _____

Date:

To: Zions Bank, a Division of ZB, National Association, as Trustee
Attention: Corporate Trust Services
1001 17th Street, Suite 850
Denver, Colorado 80202

The undersigned City Representatives hereby requisition the following sum from the North Fire Station Construction Fund established under the Indenture of Trust, dated as of May 15, 2017 (the "Indenture"), executed and delivered by you, as Trustee, and in connection with such request, certifies as follows:

Amount: \$ _____

Name and Address of Payee: Manager of Finance, City and County of Denver

The City Representatives further certify that the obligation described above has been properly incurred, is a proper charge against the Construction Fund and has not been the basis of any previous withdrawal or requisition.

CITY AND COUNTY OF DENVER, COLORADO

By: _____

Title: Manager of Public Works

By: _____

Title: Chief Financial Officer

EXHIBIT B

CONSENT TO DISBURSEMENT*

(Stapleton North Fire Station)

The undersigned, an authorized representative of Denver Urban Renewal Authority, hereby acknowledges and consents to the disbursement of the amounts from the Construction Fund as provided by Requisition No. _____ and acknowledges that such disbursement will not cause any reduction in the amounts payable by DURA to Denver Public Schools pursuant to the Third Supplement to the Amended and Restated Stapleton School Funding Agreement dated as of May 15, 2017.

DENVER URBAN RENEWAL AUTHORITY

Date: _____

By: _____
Authorized Representative

DEEMED CONSENT TO DISBURSEMENT*

The undersigned City Representatives certify that pursuant to Section 4 of the North Fire Station Reimbursement Agreement, the City has provided the attached Requisition to DURA, and DURA has failed to confirm, within fifteen (15) Business Days after confirmed receipt of such Requisition, the costs detailed in the Requisition. Accordingly, DURA is deemed to have consented to the attached Requisition and disbursement from the Construction Fund.

CITY AND COUNTY OF DENVER, COLORADO

By: _____
Title: Manager of Public Works

By: _____
Title: Chief Financial Officer

*Only one signature is required by Trustee of payment of requisition

EXHIBIT C

CONSTRUCTION FUND CERTIFICATE – NORTH FIRE STATION PROJECT

Date: _____

To: [TRUSTEE and District]

The undersigned each hereby state and certify that each:

1. I am a representative of the City and County of Denver, Colorado (the “City Representative”) and I am familiar with an Indenture of Trust dated May 15, 2017 (the “Indenture”) executed and delivered by you, as trustee, with respect to the use of the Construction Fund construction of a North Fire Station. With respect to the North Fire Station, I am familiar with the facts herein certified and am authorized and qualified to certify the same.

2. With respect to the North Fire Station, the City does not intend to make any additional Requisitions for disbursement from the Construction Fund. This Certificate shall constitute the Construction Fund Certificate for the purposes of the Indenture and the definition of “Construction Fund Certificate” therein.

3. Notwithstanding the foregoing, this Certificate shall not prejudice any rights against third parties which exist at the date hereof or which may subsequently come into being.

CITY AND COUNTY OF DENVER, COLORADO

By: _____

Title: Manager of Public Works

By: _____

Title: Chief Financial Officer