

**INTERGOVERNMENTAL AGREEMENT
FOR THE CAPITAL CONSTRUCTION OF TRANSIT FACILITIES [LOCAL FUNDS]
60TH/TRENTON ST. AND PRAIRIE PKWY/VICTORY WAY
(COMMERCE CITY – RTD)**

This INTERGOVERNMENTAL AGREEMENT (“IGA” or “Agreement”) is made and entered into as of the Effective Date between the City of Commerce City, a Colorado home rule municipal corporation (the “City”), and the Regional Transportation District (“RTD”), a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, *et seq.* The City and RTD may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

RECITALS AND PURPOSE

- A. The City and RTD have determined a need for certain improvements to facilities serving transit patrons are necessary to improve the transit services RTD provides within the City limits or to improve access to RTD’s transit services;
- B. The City and RTD have agreed to certain terms in order to fund, design, construct and implement the improvement; and
- C. In accordance with the Colorado Constitution authorizing the Parties to enter into intergovernmental agreements the Parties therefore intend to enter into an intergovernmental agreement to deliver such improvements in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GENERAL.

1.1 Recitals. The recitals set forth above are incorporated herein by this reference.

1.2 Purpose. The purpose of this Agreement is to set forth the terms and conditions under which certain transit facilities serving RTD transit services within the bounds of the City.

1.3 Effective Date. This Agreement will be effective on December 1, 2016, or the last date that either Party executes this Agreement, whichever is later.

1.4 Definitions. Capitalized terms will have the meanings prescribed to them in this Agreement.

a. Betterment means any element of the Transit Facilities that is: (i) requested by the City (whether on its behalf or on behalf of a third party); (ii) not included in or requires modifications to the design plans reviewed and approved by RTD; (iii) above and beyond requirements of the RTD standard design requirements, (iv) improvements for aesthetic reasons, and (v) is not otherwise required by state or federal law.

b. Transit Facilities means collectively the following improvements: (i) curb modifications to 60th Ave. and Trenton St.; (ii) bus stop on Trenton St. southbound between 60th Ave. and Prairie Pkwy.; (iii) bus stop on Prairie Pkwy. eastbound far side of Victory Way; and (iv) bus stop on Prairie Pkwy. westbound near side of Victory Way, all as depicted in **Exhibit A**, and their related appurtenances.

1.5 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A –RTD-Approved Design Plans for the Transit Facilities

Exhibit B – Cost estimates for the Transit Facilities

2. Schedule of Delivery of the Transit Facilities. The City shall ensure that the Transit Facilities are substantially complete no later than January 15, 2017.

3. Ownership and Maintenance. The City shall own and maintain the Transit Facilities to allow the continued use of the improvements for transit purposes for no less than 25 years. The City shall ensure that the Transit Facilities are operated and maintained to the same standards substantially similar to RTD's other transit facilities and shall conduct its obligations in accordance with all applicable laws. If the City determines that its activities concerning the Transit Facilities are reasonably likely to adversely affect RTD's transit services, the City shall notify RTD at least two calendar days prior to beginning the activity. If the City determines that it will not maintain the Transit Facilities, the City shall promptly notify RTD in writing and reimburse the RTD Funding, defined below, to RTD.

4. Funding.

4.1 RTD Funding. RTD shall reimburse the City for costs incurred to construct the Transit Facilities up to \$21,000 substantially in accordance with the cost estimates attached as **Exhibit B** ("RTD Funding"). The City shall be responsible for any additional costs necessary to complete the Transit Facilities. Administrative costs are not reimbursable.

4.2 Payment and Invoicing. To obtain payment of the RTD Funding, the City shall submit an invoice to RTD seeking reimbursement of expenses. Each invoice must include an itemized list of services and/or goods supplied, with the contractor's invoice and evidence of payment by the City attached. RTD will reimburse the City for all approved invoices within 60 calendar days after RTD receives the invoice.

5. Design. The City shall construct the Transit Facilities in accordance with Exhibit A, the design plans and specifications approved by RTD. The City shall submit a written request to RTD for any change from Exhibit A, and RTD shall approve or deny the request. No

variance shall be deemed approved by RTD without RTD's written approval. If the City requests any Betterments, the City shall be solely responsible for the additional costs for such changes

6. Construction.

6.1 Construction Contract. The City shall separately and competitively procure the construction contract in compliance with all applicable federal, state and local laws, rules and regulations. The City shall include the following terms and conditions in the construction contract.

a. **Insurance.** The City's contractor shall obtain and maintain at its sole cost and expense public liability insurance with limits of not less than \$1,000,000 per occurrence in which RTD is named as an additional insured. The contractor shall furnish to RTD, in a form satisfactory to RTD, a copy of said policy or a certificate indicating that such insurance has been issued.

b. **Indemnification.** The City's construction contractor shall indemnify, defend and hold RTD, including its directors, employees, and each of their agents and employees harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work described in this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, but only to the extent caused by the act or omission of, or breach of contract by, the indemnifying contractor, any of its subcontractors or sub-subcontractors, suppliers of equipment or materials, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Nothing herein shall be construed to be a waiver of either Party's immunity pursuant to the CGIA. Such obligation will not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

6.2 Right to Inspect. RTD may have an inspector present in the construction area whenever construction activities are being performed. RTD inspectors will be required to adhere to all safety requirements of the City or its contractor. RTD shall not give direction to the contractor except that RTD or its inspectors may communicate directly with the contractor and order the contractor to stop work in those emergency circumstances where it is necessary to prevent an imminent adverse impact to RTD property or improvements or where there is an imminent safety risk.

6.3 Final Inspection and Acceptance. The City, with its contractor, shall inform RTD when the Transit Facilities have been completed and are ready for final inspection. Final inspections will be attended by RTD and the City or its contractor. RTD will have the right of acceptance or rejection of all such construction work, which acceptance shall not be unreasonably withheld, conditioned or delayed. RTD will provide specific detail concerning the basis upon which any work is rejected. Such notice will be in writing and in sufficient detail to

identify the defect and the correction required by RTD. If RTD rejects any work, the City, with its contractor, shall be responsible for directing the contractor to perform corrective work relating to deficiencies, provided the City with its contractor will give such direction in writing and will provide a copy to RTD. Once corrective work is complete, the City, with its contractor, shall notify RTD and RTD will have 14 calendar days to give written notice of acceptance or rejection of the applicable work. If RTD does not accept or reject the corrective work within such 14 calendar-day period, such work will be deemed accepted by RTD.

6.4 Permits. The City shall be solely responsible to obtain permits necessary to implement the Transit Facilities.

6.5 Environmental Work. The City shall perform, at its sole cost, the management, removal, disposal or remediation (as applicable) of solid and hazardous materials encountered on property that is or will be owned or controlled by the City, including: any property purchased by the City for the Transit Facilities. Environmental work performed by the City or its contractors and will not be reimbursed by RTD.

6.6 Utilities and Restoration. The City shall locate and relocate any utilities on the property. The City shall coordinate with RTD the placement of utilities that are necessary to serve the Transit Facilities.

6.7 Real Property. The City shall obtain all necessary property rights to construct, operate and maintain the Transit Facilities in compliance with applicable federal, state and local laws, rules and regulations.

7. Remedies. If the City fails to deliver the Transit Facilities as set forth in this Agreement, RTD may not reimburse the City for its costs or RTD may not provide service to the area where the Transit Facilities were intended to be installed.

8. Examination of Records. Any duly authorized representative of the City or RTD shall, have access to and the right to examine any documents or records, electronic or otherwise, involving transactions related to this Agreement.

9. Taxes and Charges. The City and RTD will not be liable for the payment of taxes, late charges or penalties of any nature to each other.

10. Appropriation by City Council and the Board. Any and all obligations of the City and RTD under and pursuant to this Agreement that require funding are subject to prior annual appropriations of funds expressly made by the City Council and the Board, respectively, for the purposes of this Amendment. Nothing herein will be construed by either Party as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

11. Liability. As between the Parties, and without either the City or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §§ 24-10-101 to 120, each Party hereto will be responsible for its own negligence and that of its agents and employees in the performance of this Agreement. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this Agreement or the design or construction of the Gold Line, it agrees to give the other Party prompt written

notice of such claim or suit. Nothing in this Agreement will be deemed or construed as a waiver by either Party of its rights and protections under the CGIA, as amended.

12. Dispute Resolution. Disputes will be initially resolved between the Project Liaisons. If the Project Liaisons are unable to resolve the dispute, they will document the basis for the dispute, either independently or collectively, and forward such information to their senior management in accordance with the following escalation priorities: (i) RTD's Chief Engineer and the City's Public Works Director, (ii) RTD's Assistant General Manager for Capital Programs and the Deputy City Manager; and (iii) RTD's General Manager and the City Manager. Prior to the filing of any legal action, the Parties will attempt to resolve the dispute through non-binding mediation before an objective third party to be selected by mutual agreement of the Parties.

13. Notice. Any notice required to be given by the terms and provisions of this Agreement or by any law or governmental regulation, by the Parties, shall be in writing (unless otherwise required by such law or regulation) and (a) shall be deemed to have been served and given upon personal delivery or (b) shall be deemed to have been served and given upon receipt if sent by electronic mail transmission or (c) shall be deemed to have been served and given two (2) business days after deposited by either registered or certified mail in a United States mail chute or general or branch United States post office with postage fully prepaid thereon with return receipt requested or (d) shall be deemed to have been served and given on (1) business day after being sent by overnight delivery from a location in the United States with a nationally recognized overnight courier service providing for written receipt. Notice shall be delivered or addressed to the Project Liaisons as follows:

City: Maria D'Andrea
Director of Public Works
8602 Rosemary Street
Commerce City, CO 80022
mdandrea@c3gov.com

RTD: Chief Engineer
1560 Broadway, Suite 700
Denver, CO 80202
Jyotsna.vishwakarma@rtd-denver.com

The Parties may designate different addresses for the mailing of notices, by notice given pursuant to this Section.

14. Miscellaneous.

14.1 Merger. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements, understandings or negotiations with respect to the subject matter of this Agreement will be deemed merged herein. No representations, warranties, promises or agreements, express or implied, will exist between the Parties, except as stated herein.

14.2 Amendment. No amendment to this Agreement will be made or deemed to have been made unless in writing duly executed and delivered by the Party to be bound thereby.

14.3 Governing Law. This Agreement will be interpreted and enforced according to the Laws of the State of Colorado, the ordinances of the City, the applicable provisions of federal Law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder will be in Denver District Court.

14.4 Term and Termination. This Agreement will commence on the Effective Date and will remain in effect until terminated (a) in writing by the Parties, (b) by court order, or (c) upon Final Acceptance and final payment. All provisions of this Agreement that provide rights or create responsibilities for the Parties after termination will survive termination of this Agreement.

14.5 Authority. The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable Law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties.

14.6 Severability. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of the Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure will not affect the validity of any other terms or provision hereof.

14.7 Waiver. The waiver of any breach of a term hereof will not be construed as a waiver of any other term, or the same term upon a subsequent breach.

14.8 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties hereto, and nothing contained in this Agreement will give or allow any such claim or right of action by any other or third person under this IGA. It is the express intention of the Parties to this Agreement that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed an incidental beneficiary only.

14.9 Conflict of Interest. The Parties agree that no official, officer or employee of RTD or the City will have any personal or beneficial interest whatsoever in this Agreement or the work performed pursuant to this Agreement in conflict with that Party's ethical standards.

14.10 Changes in Law. This Agreement is subject to such modifications as may be required by changes in city, state or federal Law, or their implementing regulations other than changes in city law enacted following execution of this Agreement and which will increase RTD's cost of the Transit Elements. Any such required modification will automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.

14.11 Independent Contractors. The Parties hereto are independent contractors and not partners or joint venturers of one another. Nothing herein shall be deemed to be a

guarantee of the performance of the other Party nor constitute that either Party is an agent or representative of the other.

14.12 Waiver of Liability. The boards, and their agents and employees, shall not be individually liable in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission acting in their respective capacities.

14.13 Paragraph Headings. The captions and headings set forth in this Agreement are for convenience of reference only and will not be construed so as to define or limit its terms and provisions.

14.14 Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals will constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures will constitute original signatures.

(Signature Pages to Follow)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Date

Brian McBroom
City Manager

APPROVED AS TO FORM:

City Attorney

REGIONAL TRANSPORTATION DISTRICT

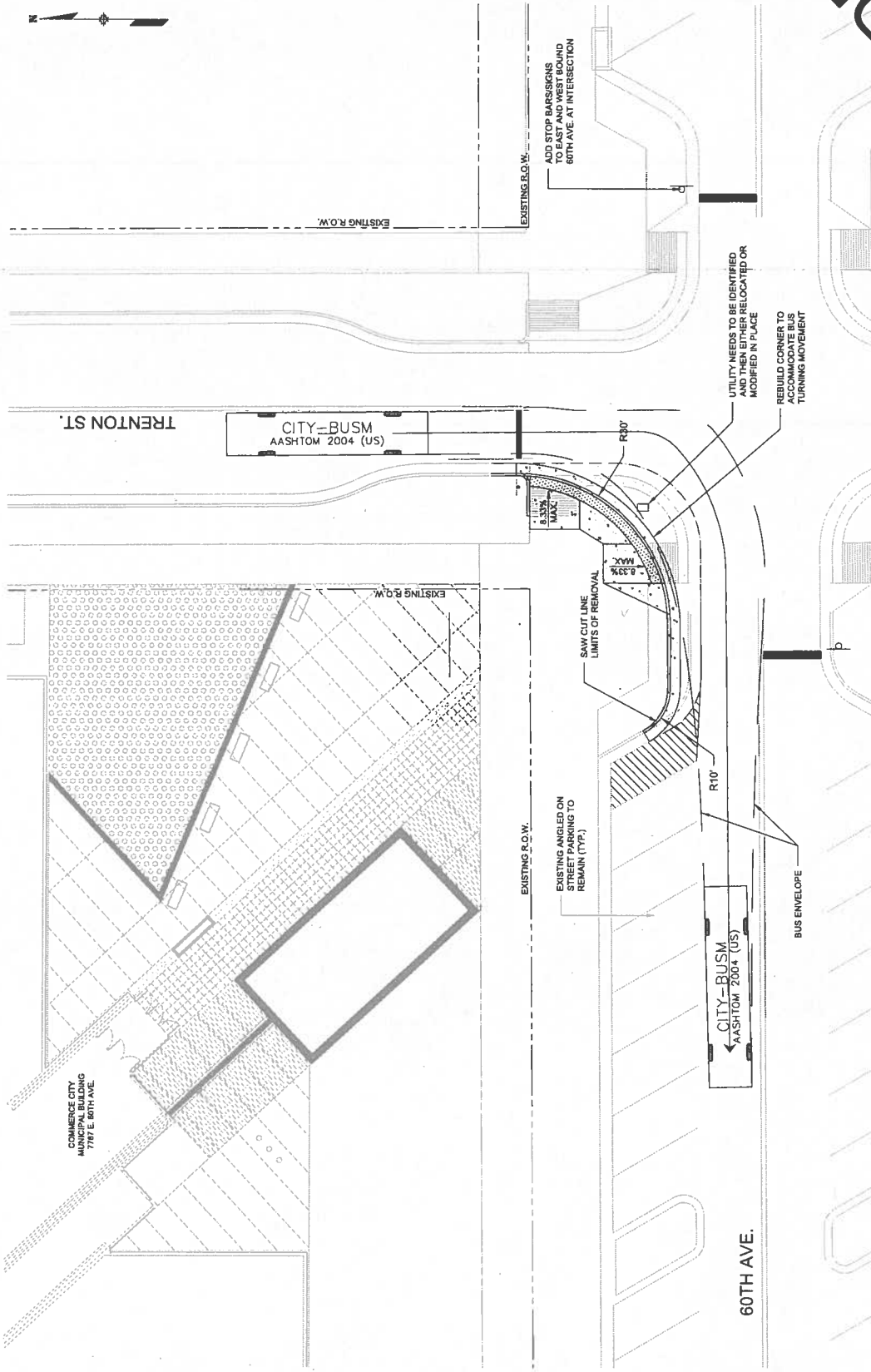
Date

By: _____
David A. Genova
General Manager & CEO

Approved as to Legal Form
for RTD:

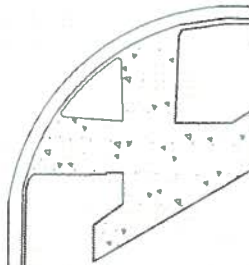
Jenifer Ross-Amato
Deputy General Counsel

Exhibit A
Depiction of the Transit Facilities or RTD-Approved Design Plans for the Transit Facilities
(pages to follow)

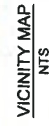


DRAFT

SHEET REFERENCE NUMBER: 1 1 OF 1		PROPOSED RADIUS MODIFICATIONS 60TH AND TRENTON SB TO WB		 REGIONAL TRANSPORTATION DISTRICT 1600 BLAKE STREET DENVER, COLORADO 80202 (303) 622-4000	
FILE NAME: C3 Corner modification 3.dwg DATE: 5/17/18 DATE: 5/25/18 T = 20'		NO. SCALE 1" = 20' 0 10 20 30		REVISIONS NO. BY DATE	



1. PERFORM ALL WORK IN ACCORDANCE WITH CONTRACT NO.33QMD005
2. IMMEDIATELY REPORT TO DTD'S ENGINEERING DEPARTMENT ANY DISCREPANCIES BETWEEN SITE PLAN, EXISTING FIELD CONDITIONS, AND CONTRACT REQUIREMENTS AND SPECIFICATIONS
3. PROTECT EXISTING LANDSCAPE MATERIAL
4. ADJUST/MODIFY IRRIGATION AS NEEDED
5. SLEEVE ALL EXISTING IRRIGATION LINES BENEATH ALL PROPOSED CONCRETE
6. REPLACE ANY DISTURBED GRASS, MULCH, OR ANY GROUND COVER MATCHING EXISTING TO SITE IF NECESSARY FOR CONSTRUCTION
7. EXISTING RTD SIGN TO BE REMOVED AND LEFT ON SITE IF NECESSARY FOR CONSTRUCTION
8. ALL CONSTRUCTION MATERIAL SHALL COMPLY WITH CONTRACT SPECIFICATIONS
9. COORDINATE TEMPORARY BUS SERVICE WITH RTD BUS OPERATIONS AND ENGINEERING, INCLUDING TEMPORARY
10. DOWEL, ALL NEW CONCRETE PAVEMENT INTO EXISTING CONCRETE PER RTD OR LOCAL MUNICIPALITY STANDARDS.
11. CONTRACTOR TO REPAIR AND SLEEVE ALL SPRINKLER LINES IMPACTED BY CONSTRUCTION.



IGA EXHIBIT PRAIRIE PKWY @VICTORY WAY CIVIL	SHEET REFERENCE NUMBER: 1 1 OF 1
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Exhibit B
Cost Estimate for the Transit Facilities
(page to follow)

Exhibit B

Trenton Way, Prairie Parkway at Victory Circle, Trenton Way and 60th & Trenton Bus Infrastructure Improvements			Noraa Concrete	
Item	Unit	QTY	Unit Price	Extended Value
Mobilization	EA	1	\$ 3,200.00	\$ 3,200.00
Traffic Control	LS	1	\$ 1,800.00	\$ 1,800.00
Materials Testing	EA	1	\$ 850.00	\$ 850.00
C&G Removal	LF	45	\$ 9.00	\$ 405.00
Concrete Walkway Removal (including flagstone walkway)	SY	73	\$ 68.00	\$ 4,964.00
Vertical Curb Removal, incl. flagstone curb	LF	8	\$ 15.00	\$ 120.00
Adjust Manhole (Rim)	EA	2	\$ 450.00	\$ 900.00
Aggregate Base Course, Class 6 (Recycled Concrete)	TON	10	\$ 25.00	\$ 250.00
Hot Mix Asphalt Patching (SX)	TON	20	\$ 120.00	\$ 2,400.00
Construct Sidewalk (6")	SY	119	\$ 65.00	\$ 7,735.00
Concrete Curb Ramp	EA	2	\$ 1,200.00	\$ 2,400.00
ADA Cast Iron or Fiberglass Composite Cast-in-Place Panels	SF	70	\$ 35.00	\$ 2,450.00
Curb Type 2 (Special) (integral with pavement) HES	LF	8	\$ 35.00	\$ 280.00
Curb & Gutter Type 2, (IIB) (Special) HES	LF	25	\$ 26.00	\$ 650.00
Total				\$ 28,404.00