

WEST CORRIDOR INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF LAKEWOOD
AND
THE REGIONAL TRANSPORTATION DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (IGA) is made and entered into this ____ day of _____, 2006, by and between the CITY OF LAKEWOOD ("Lakewood"), and the REGIONAL TRANSPORTATION DISTRICT ("RTD" or "the District"). RTD and Lakewood are collectively referred to herein as the "Parties".

RECITALS:

Whereas, RTD, a political subdivision of the State of Colorado, is authorized, pursuant to C.R.S. 32-9-101, *et seq.* to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the District; and

Whereas, Lakewood is authorized under the authority of its Charter and C.R.S. 29-1-201, *et. seq.* to enter into intergovernmental agreements; and

Whereas, pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a), and C.R.S. 29-1-203, *et. seq.* the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for sharing of costs; and

Whereas, the West Corridor light rail project (Project) is described in Exhibit A, is identified in RTD's FasTracks plan approved by the voters of the District on November 2, 2004, and is approved by the Denver Regional Council of Governments as per the requirements of C.R.S. 32-9-107.7. Based on voter approval and contingent on the Federal Transit Administration issuing a grant for the Project, essential elements of the Project and a source of funding have been identified; and

Whereas, the FasTracks financial plan assumed a 2.5% local agency contribution from local jurisdictions in the District in consideration for the construction of transit improvements that will benefit them and their citizens and Lakewood now desires to provide for its local agency contribution; and

Whereas, Lakewood supports RTD's efforts to design and construct the Project and has agreed to cooperate with RTD in regard to its efforts, in exchange for RTD's undertaking certain duties and obligations in regard to the design, construction, operation and maintenance of the Project in the City of Lakewood; and

Whereas, the Parties have determined the necessity for this IGA concerning Lakewood's cooperation and contribution to RTD for its local agency contribution for the design and construction of the Project, and RTD's obligation to Lakewood.

NOW THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the Parties hereto agree as follows:

ARTICLE 1

GENERAL

- A. The recitals set forth above are incorporated herein by reference.
- B. The purposes of this IGA are to set forth the rights, duties and obligations of Lakewood to fund a portion of the Project cost, as defined herein, and the obligations of RTD or assignees to design, construct, own, operate and maintain that portion of the Project performed within the boundaries of Lakewood. Lakewood and RTD agree that each will fully cooperate and coordinate with the other in all such activities as are covered by this IGA.
- C. This IGA does not commit any present funding by either Party. Implementation of this IGA implies future financial commitments by both Parties subject to future RTD Board of Directors and Lakewood City Council approvals, and subject to each respective agency's legally required budgeting, authorization and appropriation process. Nothing herein shall be construed as a multiple fiscal year obligation by either Party.
- D. Each Party affirms that it has fulfilled every lawful requirement to execute this IGA.
- E. This IGA shall not be binding on the Parties until each has executed this IGA.
- F. The Parties pledge to each other to cooperate and exercise their best efforts to fulfill each of their respective obligations under this IGA.

- G. This IGA consists of __ pages and includes:
- ◆ Exhibit A – West Corridor Light Rail Project Description
 - ◆ Exhibit B – Description of South Platte Drainage Improvements
 - ◆ Exhibit C – Estimate of Lakewood Full Time Equivalent Costs
 - ◆ Exhibit D – Description of Richey Park Drainage Improvements
 - ◆ Exhibit E – Description of West 13th Avenue Sewer Line Relocation
 - ◆ Exhibit F – Description of the Carr/Zephyr Drainage Improvements
 - ◆ Exhibit G - Description of the Harlan/Dry Gulch Drainage Improvements
 - ◆ Exhibit H – Lakewood Building Codes
 - ◆ Exhibit I – Trackway Clearance Envelope

ARTICLE 2

LOCAL AGENCY CONTRIBUTION

- A. The total local agency contribution required for the Project is 2.5% of the cost of the Project. The cost of the Project has been established to be \$ 511.8 million in Year of Expenditure dollars; therefore, the total local agency contribution is \$ 12.8 million. The local agency contribution will be shared by the City and County of Denver, the City of Lakewood, Jefferson County and the City of Golden. A portion of the cost of certain South Platte drainage improvements, including the removal of tracks from the 100-year flood plain, in the area of Lakewood Gulch, as generally shown on Exhibit B, will be credited toward the Project total local agency contribution thereby reducing each local government’s liability, provided however that credit for the South Platte drainage improvements shall equal \$ 4.4 million. The amount of the local agency contribution by the City of Lakewood must have a value of \$ [3,780,000]. This amount will not change whether or not the actual Project cost changes over time. In the event that the South Platte drainage improvements are not constructed, the minimum value of

Lakewood's local agency contribution shall be increased to \$ [5,760,000].
[SINGLE NUMBER WAITING ON DENVER IGA.]

- B. RTD agrees that Lakewood may pay its local agency contribution via a lump sum payment, annual payments, the value of construction projects, certain work performed by Lakewood staff and/or contractors as described in this IGA, or other proposed payment schedule that has been mutually agreed to by both Parties. Lakewood shall make its total agency contribution payment to RTD by no later than December 31, 2013 or before the opening of any light rail service to Lakewood, whichever occurs first.
- C. All other expenditures required to complete the Project or other costs associated with the Project are the sole responsibility of RTD or parties other than Lakewood. It is the Parties' intent that the monetary sum remitted to RTD by Lakewood, if any, shall be used only for the Project as defined in this IGA.

ARTICLE 3

LOCAL AGENCY CONTRIBUTION CREDIT

Lakewood agrees to provide or perform the following in exchange for local agency contribution credit:

- A. Permit Review and Inspection – Full Time Equivalent Costs in lieu of Permit Fees. RTD and/or its contractors shall apply for all permits, inspections and approvals required by Lakewood codes, Building Codes (as defined in Article 5), ordinances, or regulations, in accordance with Article 5.D. Lakewood shall waive all permit fees associated with permits required for the Project and, in exchange, RTD shall credit as local agency contribution a lump sum of [\$1,977,757], which represents the annual salary, including benefits and regularly scheduled reasonable salary increases, of the full-time equivalents ("FTEs") to perform those activities necessary for such permits, inspections and approvals; provided, however, that FTE costs shall not exceed the approved Schedule of Full-Time Equivalent Costs, attached hereto as Exhibit

C, and provided that this number of FTEs represents the total number of FTEs performing activities for the Project throughout the life of the Project.

1. Activities performed by FTEs shall include all activities typically performed by Lakewood employees for review, approval and permitting. Such activities shall include, but not be limited to, review, comment and approval of design plans; processing, reviewing, providing comments and approving permit applications; technical coordination with RTD, RTD's consultants, Lakewood citizens, Lakewood property owners, contractors, contracted design consultants, and/or other agencies and Lakewood staff; inspection, materials testing, notices of deficiencies, punch lists; installation or modification of traffic signals; construction coordination; and additional activities as set forth herein or as required by Lakewood in its discretion, provided however, all work that Lakewood deems necessary shall be performed in accordance with Exhibit C.

2. Lakewood shall have the right of designating the FTEs and may re-designate those persons as staff activities for different phases of the Project and Project approval require.

3. RTD credit for FTEs shall be in lieu of permit fees and staff costs that otherwise would have been charged by Lakewood for the Project.

4. Staff costs attributable to the final design and construction of any of the improvements described herein shall be considered FTE costs. FTE credit shown on Exhibit C shall not duplicate any costs credited for local agency contribution improvements, including construction contracts or the payment of any design consultants employed by Lakewood.

5. Nothing herein shall construe or commit Lakewood to accept any plans, construction or other related work or work product that does not meet all applicable codes, Building Codes, ordinances and regulations.

B. Lakewood Design and Construction of Richey Park Drainage Improvements. Lakewood shall arrange and pay for the final design and construction of an expanded detention area, as necessary, from the west right-of-way line of

Carr Street to the westerly limit of Richey Park, as described on Exhibit D, attached hereto and incorporated herewith (the "Richey Park Drainage Improvements"). Work required for the relocation or replacement of existing park amenities shall be eligible for credit towards local agency contribution. No credit shall be given for and the estimate provided for the Richey Park Drainage Improvements shall not include the cost of relocation or replacement of any park amenities not relocated or replaced as a result of these improvements. It is anticipated that Lakewood will enter into an intergovernmental agreement with the Urban Drainage & Flood Control District ("UDFCD") to provide for matching funds from UDFCD for the Richey Park Drainage Improvements. RTD will not participate in the intergovernmental agreement between Lakewood and UDFCD. Upon completion of the Richey Park Drainage Improvements, Lakewood shall be credited a lump sum of \$ 519,552 toward its local agency contribution for its external design consultant and construction costs relating thereto, regardless of whether UDFCD or Lakewood contributed all or part of the funds for the Improvements. Any and all Lakewood staff non-construction activities to be performed by Lakewood on the Richey Park Drainage Improvements, including, but not limited to, design, review, approval or permitting, must be completed by RTD-credited FTEs in accordance with Exhibit C and no additional local agency contribution shall be credited for these activities.

1. Lakewood shall be responsible for the following:
 - (a) Preparing 100 % final design plans and construction documents for the Richey Park Drainage Improvements in accordance with the West Corridor final design schedule, and in coordination with the RTD West Corridor design and construction team.
 - (b) Coordinating utility improvements and relocations with the RTD West Corridor Utility Engineer.

(c) Defining the limits of construction required for the construction of Richey Park Drainage Improvements, subject to review and approval by RTD.

(d) Work required for the relocation or replacement of existing park amenities.

(e) Obtaining bids, engaging a contractor and managing construction of the Richey Park Drainage Improvements.

(f) After construction has been inspected and accepted, Lakewood shall assume ownership and maintenance of the Richey Park Drainage Improvements. The Parties agree that the Richey Park Drainage Improvements shall be designed and constructed in accordance with UDFCD requirements for UDFCD maintenance eligibility.

(g) Providing as-built drawings of the completed Richey Park Drainage Improvements to RTD within 90 days of completion, inspection and acceptance.

2. RTD will be responsible for the following:

(a) Inclusion of Richey Park Drainage Improvements construction impacts in the West Corridor 404 Permit.

(b) Obtaining a Conditional Letter of Map Revision) (CLOMR) and a final Letter of Map Revision (LOMR) for the Richey Park Drainage Improvements. The Parties agree that construction of the Richey Park Drainage Improvements shall not begin prior to the Federal Emergency Management Agency issuing a CLOMR.

(c) Crediting \$ 519,552 toward Lakewood's local agency contribution for the cost of constructing the Richey Park Drainage Improvements and the Lakewood design consultant cost.

C. West 13th Avenue Sanitary Sewer Relocation. Lakewood's sanitary sewer line within West 13th Avenue between Harlan Street and Balsam Street, as

generally shown on Exhibit E, is in conflict with the Project's planned light rail facilities and shall be relocated ("West 13th Ave. Sanitary Sewer Relocation"). Lakewood shall arrange and pay for the final design and construction of the West 13th Ave. Sanitary Sewer Relocation; provided, however, that construction contract costs for the West 13th Ave. Sanitary Sewer Relocation shall be allocated as follows:

1. Lamar/Balsam. Upon completion of the West 13th Ave. Sanitary Sewer segment between Lamar Street and Balsam Street, Lakewood shall be credited \$ [1,518,318] toward its local agency contribution for the construction cost of the Lamar/Balsam relocation. The Parties hereto covenant that this local agency contribution credit excludes the cost of any Betterment work, as defined in Article 13, that Lakewood elects to perform on the Lamar/Balsam segment. Any and all Lakewood staff non-construction activities to be performed by Lakewood on this segment, including, but not limited to, design, review, approval or permitting, must be completed by RTD-credited FTEs in accordance with Exhibit C and no additional local agency contribution shall be credited for these activities.

2. Harlan/Lamar. RTD shall be responsible to reimburse Lakewood for the actual construction costs for relocation of the West 13th Ave. Sanitary Sewer segment between Harlan Street and Lamar Street. Lakewood shall be responsible to pay the contractor performing the relocation and shall forward a copy of the contractor invoice to RTD as soon as is possible. Within 30 days of receipt of the contractor's invoice from Lakewood, RTD shall reimburse Lakewood for the cost shown on the invoice within 30 days of RTD's review and approval of Lakewood's contractor invoice.

3. For the West 13th Ave. Sanitary Sewer Relocation, Lakewood shall be responsible for the following:

(a) Preparing 100 % final design plans and construction documents for the West 13th Ave. Sanitary Sewer Relocation in accordance with the RTD West Corridor final design schedule and coordinating with the RTD West Corridor design and construction team.

(b) Coordinating utility relocations necessary for the West 13th Ave. Sanitary Sewer Relocation with the RTD West Corridor Utility Engineer and affected utility owners.

(c) Defining the limits of construction required for the construction of West 13th Ave. Sanitary Sewer Relocation, subject to review and approval by RTD.

(d) Obtaining bids and engaging a contractor for construction of the West 13th Ave. Sanitary Sewer Relocation.

(e) Coordinating construction work on the West 13th Ave. Sanitary Sewer Relocation through RTD's Construction Manager/General Contractor from an overall coordination and schedule standpoint, and adhering to a construction schedule mutually established and agreed to by the Parties.

(f) Paying the costs of design, bidding, testing, and inspection of the West 13th Ave. Sanitary Sewer Relocation.

(g) Paying the costs of the construction contract for the Lamar/Balsam segment of the West 13th Ave. Sanitary Sewer Relocation.

(h) Forwarding to RTD, within 30 days of Lakewood's receipt, copies of the Lakewood contractor invoices for construction contract costs of the Harlan/Lamar segment of the West 13th Ave. Sanitary Sewer Relocation.

(i) Providing as-built drawings of the completed West 13th Ave. Sanitary Sewer Relocation to RTD within 90 days of completion, inspection and acceptance.

4. RTD will be responsible for

(a) Crediting [\$1,518,318] toward Lakewood's local agency contribution for the cost of designing the West 13th Ave. Sanitary Sewer Relocation and of constructing the Lamar/Balsam segment of

the West 13th Ave. Sanitary Sewer Relocation, provided that no such costs shall duplicate any FTE costs shown on Exhibit C.

(b) Reimbursing Lakewood for the costs of the construction contract for the Harlan/Lamar segment of the West 13th Ave. Sanitary Sewer Relocation within 30 days of RTD approval of the Lakewood contractor invoice provided by Lakewood.

D. Miscellaneous Credits.

1. Utility Relocation Credit. If relocation of public utilities (including, but not limited to, electric, gas, sewer, water, cable or telephone lines) is necessitated by the Project, RTD shall notify Lakewood. Lakewood shall cooperate with RTD to seek such relocation at no or minimal cost to RTD and Lakewood, including exercising any rights not inconsistent with existing utility agreements that Lakewood may have under franchises with affected public utilities. RTD shall credit as Lakewood local agency contribution those utility relocation costs that would have otherwise been the legal obligation of RTD wherever Lakewood succeeds in reducing RTD's budgeted utility relocation costs by causing utility owners along the Project ROW in Lakewood to relocate at no cost to RTD. If RTD and the utility owner have included items in the terms of the relocation to be paid for by the utility owner, those items shall not be credited to Lakewood. Lakewood's utility relocation credit shall not include the cost to the utility to construct Betterments. Activities necessary to coordinate and cooperate with either RTD or utility companies in securing relocation of public utilities shall be undertaken by FTEs, in accordance with Exhibit C. Utility relocation credit to Lakewood shall not exceed the actual cost to the relocating utility, less the cost of any Betterments.

2. Easements and Land Acquisition. Lakewood shall provide temporary easements on property it owns or controls that are necessary for the construction of the Project and shall provide permanent easements, if necessary, on Lakewood-owned or controlled property for purposes of operation and maintenance of the Project. All conveyance of temporary or

permanent easements and/or land by and between RTD and Lakewood pursuant to the intergovernmental agreement governing land exchange contemplated by the Parties shall be conveyed at no cost or credit.

RTD shall be responsible for the cost of acquiring any land owned or controlled by persons other than RTD or Lakewood that is necessary to accommodate Project implementation. Any such land acquired by RTD shall be conveyed to Lakewood at no cost and shall be dedicated as public right-of-way. The acquisition of third-party property shall be handled in accordance with the following:

a. RTD shall be responsible to hire relocation coordinators to negotiate acquisition with third-party landowners. Lakewood shall be copied on all correspondence with such landowners, including, but not limited to any land appraisals. Additionally, RTD shall provide Lakewood copies of legal descriptions of land to be acquired, which descriptions shall be based upon 100 % right-of-way design plans for that location. Lakewood shall have 10 days to review and comment on legal descriptions. Any continuing dispute shall be resolved in accordance with Article 17 herein.

b. For any third-party property to be acquired that will ultimately be owned by Lakewood, eminent domain proceedings, if necessary to implement the Project, shall be conducted by Lakewood and RTD as co-petitioners. RTD and Lakewood shall be jointly represented in any such proceedings by Lakewood's eminent domain counsel, currently the law firm of Murray Dahl Kuechenmeister Renaud LLP. Any change in Lakewood's eminent domain counsel must be approved in advance by RTD. RTD shall be lead petitioner in any eminent domain proceedings and shall be solely responsible for attorneys' fees, court costs, filing fees, damages awarded, and other costs associated with litigating any such proceedings.

c. The acquisition of any third-party property shall be conducted in accordance with 49 CFR Part 24 and C.R.S. 38-1-101, *et. seq.* and shall be subject to federal, state and Lakewood home rule regulations.

3. Other improvements that add value to the Project may be considered for local agency contribution subject to mutual agreement of both Parties, including, but not limited to, the value of any environmental remediation that Lakewood performs under an Environmental Protection Agency grant of any Project property in the area between Collins Street and Quail Street along West 13th Avenue, provided that any such value will be credited only if RTD would have been legally required to undertake such remediation as a prerequisite to implementing the Project.

4. For any unforeseen work necessitated by the Project that Lakewood elects to do and pay for with the agreement of RTD, local agency contribution credit shall be given at actual cost as provided by Lakewood and approved by RTD.

E. Local agency contribution credit shall be given in the amount described in this Article for each agreed-upon item of work performed by Lakewood. Once the Lakewood work has been performed equal in value to the local agency contribution shown in Article 3A, no further local agency contribution is required. If the local agency contribution credits described above do not equal \$ [to be determined], the balance shall be paid in cash by Lakewood to RTD no later than December 31, 2013 or before the opening of any light rail service to Lakewood, whichever occurs first.

F. Lakewood expenses in excess of local agency contribution credits described in Article 2, above, are non-refundable.

ARTICLE 4

ADDITIONAL IMPROVEMENTS

A. Carr/Zephyr Drainage Improvements. RTD shall be responsible for design and construction of drainage improvements from the west right-of-way line of Carr Street to the outfall east of Zephyr Street, as depicted on Exhibit F,

attached hereto and incorporated herewith. The Carr/Zephyr Drainage Improvements shall be designed and constructed in accordance with UDFCD requirements for UDFCD maintenance eligibility. Upon completion of construction and acceptance by UDFCD, RTD shall convey, at no cost to Lakewood, and Lakewood shall assume ownership of these improvements, provided that RTD shall grant to Lakewood an easement mutually agreeable to both Parties for Lakewood's access to and maintenance of these improvements. Lakewood staff activities directly relating to these improvements must be performed by RTD-credited FTEs, in accordance with Exhibit C. No local agency contribution shall be credited for this work.

- B. Harlan/Dry Gulch Drainage Improvements. RTD shall be responsible for design and construction of drainage improvements to North Dry Gulch and Dry Gulch from upstream of Harlan Street to and including an open channel outfall downstream of Harlan Street, as depicted on Exhibit G, attached hereto and incorporated herewith. The Harlan/Dry Gulch Drainage Improvements shall be designed and constructed in accordance with UDFCD requirements for UDFCD maintenance eligibility. Upon completion of construction and acceptance by UDFCD, RTD shall convey, at no cost to Lakewood, and Lakewood shall assume ownership of these improvements, provided that RTD shall grant to Lakewood an easement mutually agreeable to both Parties for Lakewood's access to and maintenance of these improvements. Lakewood staff activities directly relating to these improvements must be performed by RTD-credited FTEs, in accordance with Exhibit C. No local agency contribution shall be credited for this work.

ARTICLE 5

REVIEW OF PROJECT PLANS

- A. RTD shall provide Lakewood with 4 total sets of Project plans, consisting of 3 hard-copies (half-size) and 1 electronic copy containing Adobe Portable Document Format (PDF) files. Lakewood shall have the opportunity to review and comment on the design plans and specifications at specified milestones (65% plan completion and 90% plan completion) for each portion

of the Project to be performed within the boundaries of Lakewood. The Parties will provide one another the opportunity to review major changes to the design that occur at times other than specified milestones, as appropriate. Each Party shall have 21 calendar days to submit review comments.

- B. Lakewood shall provide RTD the opportunity to review and comment on the design plans of the Richey Park Drainage Improvements and West 13th Ave. Sanitary Sewer improvements as each is described in Article 3. RTD shall have 21 calendar days to submit comments to Lakewood. Lakewood shall provide RTD 4 total sets of Project plans, consisting of 3 hard-copies (half-size) and 1 electronic copy containing Adobe Portable Document Format (PDF) files. RTD shall have the opportunity for review after preliminary design and at 90% completion.
- C. In the event of an objection by Lakewood or RTD to the design plans and specifications, RTD and Lakewood shall meet in timely manner and in good faith attempt to resolve the objection. Disputes will be treated in accordance with Article 17.
- D. RTD shall be obligated to implement design changes required by Lakewood codes, ordinances and regulations in effect at the time of 90 % design review. In addition, RTD shall comply with any post-design-review changes made to Lakewood codes, Building Codes, ordinances and regulations that are necessary for fire/life safety compliance at the time of permitting. For the purposes of this IGA, Lakewood Building Codes shall be limited to the building codes listed on the attached Exhibit H, as those building codes are amended as of the time of 90 % design, provided that RTD shall comply with any post-design-review changes necessary for fire/life safety compliance at the time of permitting.

ARTICLE 6

DESIGN AND CONSTRUCTION CONTRACT CRITERIA

- A. All Project construction will be in accordance with construction standards of

the Party responsible for ownership and maintenance of the completed improvement and, in addition, shall comply with all design criteria applicable to permits for such improvements. In the event of incompatibility between the Parties' standards, the issues will be resolved in accordance with Article 17.

- B. Lakewood shall provide RTD with written copies of the design and construction criteria and standards currently being utilized by Lakewood.
- C. Lakewood and RTD shall comply with the requirements of the Americans with Disabilities Act (ADA) and all other applicable federal, state and local mandates and regulations and the costs of complying with the said mandates and regulations for their respective portion of work included in the Project.

ARTICLE 7

BIDDING PROCEDURE

Any construction work undertaken by RTD, which is funded in whole or in part by Lakewood, shall be publicly advertised and awarded on the basis of lowest, responsible, responsive, qualified bidder, best-value selection, or through a Construction Manager/General Contractor process in accordance with RTD procurement policies.

ARTICLE 8

CONSTRUCTION AND FIELD ENGINEERING, REVIEW AND INSPECTION

- A. Each Party will notify the other within 2 business days of the start date of any work that the notifying Party will perform within the boundaries of Lakewood and which affects the Project. RTD and Lakewood shall invite one another to all pre-construction conferences and all weekly construction meetings for the duration of the Project.
- B. RTD and Lakewood shall solicit review and comment from one another on all potential Project change orders. Lakewood and RTD shall each respond

within 7 calendar days to each request from the requesting Party for review and comment on a potential change order.

- C. RTD and its contractor(s) shall comply with applicable Lakewood requirements including submission of documentation as part of Lakewood's permitting process. Lakewood shall not unreasonably withhold any required permits. RTD shall cooperate with Lakewood to comply with all applicable codes, Building Codes, ordinances and regulations, in accordance with Article 5.D. RTD and its contractors shall request inspections from Lakewood at times as required by Lakewood.
- D. Lakewood and RTD will review and approve all construction for purposes of compliance with plans and specifications and/or location, respectively. In the event it appears to either Party that work performed will fail to meet applicable standards or design requirements, the inspecting Party will notify the constructing Party. The issue will be immediately resolved in the field by agreement to change construction and/or location or agreement that work is appropriate. Work will not proceed, unless mutually agreed upon, for the portion in question until compliance with standards or verification of location is acknowledged by the Parties. Delay items paid by either Party as a result of erroneous work stopping will be paid by the inspecting Party.
- E. RTD is responsible for providing public notification in accordance with Article 16.

ARTICLE 9

FINAL INSPECTION AND ACCEPTANCE

- A. Certificates of occupancy for structures, as required by Lakewood code, Building Codes, ordinance or regulation, shall not be issued by Lakewood prior to RTD or RTD contractor completion of all certificate of occupancy requirements, and Lakewood review and approval of completed construction.
- B. RTD shall inform Lakewood in writing when RTD-managed construction affecting Lakewood-owned property or right-of-way has been completed and

this construction is ready for final inspection and acceptance. Final inspection and acceptance of this work may occur in phases as mutually agreed by the Parties. RTD, Lakewood, and RTD's contractor shall attend the final inspection of this work. RTD shall be responsible for directing any corrective work relating to deficiencies found in this work. Once any corrections have been made, Lakewood shall have 20 calendar days after written request from RTD to give written notice of acceptance or rejection of work that has been funded in whole or in part or will be operated or maintained in whole or in part by Lakewood. RTD's contractor shall warranty the materials and workmanship of all work that has been funded or will be operated or maintained in whole or in part by Lakewood for one year past the date of Lakewood's acceptance of said work.

- C. UDFCD shall be present, along with RTD, Lakewood, and RTD's contractor, for final inspection of the Richey Park Drainage Improvements, the Carry/Zephyr Drainage Improvements and the Harlan/Dry Gulch Drainage Improvements. Lakewood shall furnish RTD with 2 total sets of as-built drawings consisting of 1 hard-copy (half-size) and 1 electronic version containing PDF files of the Richey Park Drainage Improvements, the West 13th Ave. Sanitary Sewer within 90 days of completion, inspection and acceptance of the Project.
- D. RTD shall furnish Lakewood with 2 total sets of as-built drawings consisting of 1 hard-copy (half-size) and 1 electronic version containing PDF files of all Project items that are outside of the fixed guideway and within Lakewood within a reasonable time after completion, inspection and acceptance of the Project.

ARTICLE 10

TRAFFIC SIGNALS

- A. Proposed modifications or additions to traffic signals located in affected ROW, if any, shall be submitted to Lakewood for approval prior to the modification of the signals.

- B. If it is determined that traffic signals must be installed or modified as a result of the Project, RTD shall supply all software and hardware components required for the traffic signal installation and modification and Lakewood shall install the components into Lakewood traffic signal system. RTD shall submit technical and/or performance specifications for the traffic signal components to Lakewood for review and approval at least 90 calendar days prior to ordering the components.
- C. RTD shall give Lakewood 10 calendar days' notice prior to the needed installation of any traffic signal modifications to allow for coordination by Lakewood FTEs performing the installation. Any such installation or modifications by Lakewood FTEs shall be performed in accordance with Exhibit C.

ARTICLE 11

ASSOCIATED COSTS

- A. All costs for the design and construction of the Project that have not been agreed to be borne by Lakewood as part of its local agency contribution shall be borne by RTD.
- B. Costs associated with changes to Lakewood property that are agreed to between the Parties and are attributed to the implementation of the Project shall be the responsibility of RTD. Such costs include, and are not limited to, all costs related to the reconstruction, realignment or maintenance of Lakewood streets during construction, temporary and permanent traffic control, street lights, Lakewood-owned utilities, and drainage, but such costs shall not include Betterments.

ARTICLE 12

DAMAGES TO LAKEWOOD OR PROJECT PROPERTY

All damages caused by RTD's or its contractor's actions during construction to Lakewood property shall be repaired, or reconstructed by RTD or its contractor to the property's pre-damaged state, to the reasonable satisfaction of Lakewood, at

RTD's or its contractor's sole cost. All damages caused by Lakewood or its contractors during construction to the Project or Project property shall be repaired, replaced or reconstructed by Lakewood or its contractor to its pre-damaged state, to the reasonable satisfaction of RTD, at Lakewood's or its contractor's sole cost.

ARTICLE 13

BETTERMENTS

For purposes of this IGA, a Betterment is defined as an element of work not included in the 90 % Project plan completion documents and not required by Lakewood codes, ordinances or regulations, in effect at the time of permitting for the underlying work. In the event Lakewood requests that RTD construct a Betterment, Lakewood or a third party who has agreed in advance to be responsible for payment shall be responsible to pay all the required costs, including incremental design costs, of the betterment. Before agreeing to construct the Betterment, RTD will evaluate the technical feasibility of the Betterment to ensure there will be no adverse impact to the Project.

ARTICLE 14

ACCESS

- A. Should modification or temporary modification of an access to non-Lakewood or RTD Project property be desired by RTD, RTD shall attempt to negotiate a resolution with the affected property owner. In the event the Project necessitates the closure of any access point, RTD shall complete the appropriate actions to obtain such closure.
- B. RTD will use reasonable efforts to maintain or provide alternate access to operating businesses and residences in the area during construction. This includes providing directional and temporary business identification signs, as appropriate.
- C. To the extent that any compensation of property owners is necessitated by the Project, RTD shall be responsible for such compensation as required by state and federal law.

- D. To the extent permitted by local and federal law and regulations, RTD will obtain needed rights-of-way and easements at locations as necessary for completion of the Project. RTD agrees to convey to Lakewood the land, easements or other access rights required to maintain necessary Lakewood facilities.
- E. The vacation or closure of Lakewood streets, if necessary in order to facilitate implementation of the Project shall be as prescribed in an intergovernmental agreement between RTD and Lakewood governing the exchange or conveyance of land for the Project.

ARTICLE 15

MAINTENANCE OF TRAFFIC DURING PROJECT CONSTRUCTION

- A. RTD and/or its contractor will prepare its traffic maintenance and safety plans in consultation with Lakewood's Traffic Division. The finalized traffic maintenance plans, which are to be approved by Lakewood's Traffic Engineer, will be incorporated into RTD's construction plans. The maintenance and safety plans will include provision for accommodating emergency vehicles, buses, snow plows, refuse pick-up vehicles, service and delivery vehicles, bicycles, and pedestrians.
- B. RTD or its contractors shall notify Lakewood and West Metro Fire Protection District 48 hours in advance of any implementation of traffic detouring and maintenance.

ARTICLE 16

BUSINESS AND RESIDENT INTERRUPTION

- A. RTD agrees to coordinate the construction of the Project with the businesses and residents adjacent to the Project. Such coordination shall consist of the following:
 - 1. Prior to and during construction, the RTD representative responsible for managing construction shall provide public information support, including conducting stakeholder briefings, preparation of information in response to

media requests, and notification of the public of upcoming work by flyers, notices, and regular construction updates, copies of which shall be provided to Lakewood.

2. Sequence the actual construction of the Project so as to minimize the disruption and adverse impact of such construction on the adjacent businesses and residents. Such sequencing plan and the proposed construction schedule shall be incorporated into the plans and specifications for the Project.

ARTICLE 17

DISPUTES

- A. The Parties shall resolve disputes regarding all items in this Agreement at the lowest staff level possible. The escalation process shall be: (i) the Project Manager for RTD and the assigned liaison person for Lakewood, (ii) RTD's Senior Manager for Engineering and Lakewood's City Engineer, (iii) RTD's Assistant General Manager for Planning and Development and Lakewood's Public Works Director, and (iv) RTD's General Manager and Lakewood's City Manager.
- B. Disputes shall be initially resolved between the Project Managers of the Parties. If the respective Project Managers for RTD and Lakewood are unable to resolve the issues in dispute, they shall document the basis for dispute, either independently or together, and forward this information to senior management in accordance with the escalation process described above.

ARTICLE 18

CLAIMS

As between the Parties, and without either Lakewood or RTD waiving any of their rights or protections under the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., each Party hereto shall 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 project, it agrees to give the other Party prompt written notice of such claim or suit.

ARTICLE 19

INSURANCE AND INDEMNIFICATION

- A. RTD may obtain a Rolling Owner Controlled Insurance Package (ROCIP) for the construction phase of the Project. The insurance package would provide coverage for RTD, its contractor and all levels of subcontractors for both Workers' Compensation and Comprehensive General Liability, including premises-operations, completed operations, environmental and builders' risk coverages. If RTD does not obtain a ROCIP, RTD's contractor shall maintain commercial general liability insurance to cover property, casualty, and injury, in the amount of \$ 2 million. RTD's contractor and all subcontractors will be required to obtain and provide proof of Business Auto Insurance Coverage. Lakewood, its officers and employees shall be named an additional insured on the ROCIP and any other construction contract or other insurance certificates covering work performed in Lakewood.

- B. The final contract documents for any RTD Project construction within Lakewood shall require the RTD contractor to:
 - 1. Indemnify and hold harmless the City of Lakewood, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, of any kind whatsoever, which arise out of or are in any manner connected with this Project, if such injury, loss or damage is or is claimed to be caused in whole or in part by the act, omission, or other fault of the contractor, or any officers or employee of the contractor. The contractor agrees to investigate, respond to, and to provide defense for any such liability, claims, or demands at the sole expense of the contractor, and agrees to bear all other costs and expenses related thereto,

including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

2. Name Lakewood, its officers and employees, as additional insureds on RTD construction contract insurance certificates.

3 Warrant for a period of not less than 1 year from the date of acceptance of all work from RTD's contractor that will be owned and maintained by Lakewood. The date of acceptance for all Lakewood improvements described herein that are completed by RTD's contractor shall be the date that the improvement has been completed, accepted by Lakewood and put into operation.

C. The final contract documents for any Lakewood construction undertaken within or affecting RTD Project ROW shall require the Lakewood contractor to:

1. Indemnify and hold harmless RTD, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, of any kind whatsoever, which arise out of or are in any manner connected with this Project, if such injury, loss or damage is or is claimed to be caused in whole or in part by the act, omission, or other fault of the contractor, or any officers or employee of the contractor. The contractor agrees to investigate, respond to, and to provide defense for any such liability, claims, or demands at the sole expense of the contractor, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

2. Maintain commercial general liability insurance to cover property, casualty, and injury, in the amount of \$ 2 million and provide a Certificate of Insurance with RTD, its officers and employees included as additional insured.

ARTICLE 20

PROJECT LIAISONS

All communications required by this IGA shall be made in writing, via U.S. First Class Post, e-mail or facsimile, to the following individuals:

To Lakewood: David A. Baskett
 Traffic Engineer
 City of Lakewood
 Civic Center North
 480 South Allison Parkway
 Lakewood, Colorado 80226
 Phone:
 Facsimile:
 e-mail: DavBas@lakewood.org

To RTD: Dennis Cole
 West Corridor Project Manager
 Regional Transportation District
 1560 Broadway, Suite 700
 Denver, Colorado 80202
 Phone: (303) 299-6946
 Facsimile: (303) 299-2452
 e-mail: dennis.cole@rtd-fastracks.com

Said project liaisons may be changed or additions made at the discretion of each Party by written communication to the other Party.

ARTICLE 21

MODIFICATION

This IGA may be modified, amended, changed, or terminated in whole or in part, only by an Agreement in writing duly authorized and executed by the Parties.

ARTICLE 22

APPROVAL BY CITY COUNCIL AND RTD

This IGA, and each and every of its provisions and terms, is expressly subject to, and shall not be or become effective or binding on Lakewood or RTD until approved by the City Council of the City of Lakewood and the RTD Board of Directors.

ARTICLE 23

APPROPRIATION BY CITY COUNCIL AND RTD BOARD

Any and all obligations of Lakewood and RTD under and pursuant to this IGA which require funding are subject to prior annual appropriations of monies expressly made by Lakewood for the purposes of this IGA and the Board of Directors of RTD for the purposes of this IGA. Nothing herein shall be construed by either Party as a multiple fiscal year obligation as described by Article X section 20 of the Colorado Constitution.

ARTICLE 24

NO TRANSFER, ASSIGNMENT OR ENCUMBRANCE
OF INTEREST BY PARTIES

RTD and Lakewood shall not transfer, sell, assign, encumber, hypothecate, or use as security its interest in this IGA for any purpose whatsoever.

ARTICLE 25

NO INTERFERENCE WITH PROJECT IMPLEMENTATION

- A. Lakewood agrees that, subject to the above provisions of this IGA, it will not conduct or knowingly approve any activities that would unreasonably encumber or compromise the design, construction or operations of the Project without RTD's approval.
- B. Lakewood agrees that, subject to the above provisions of this IGA, it will not construct, or knowingly permit to be constructed, any encumbrances within the Trackway Clearance Envelope of the Project without RTD's approval. RTD's approval shall not be unreasonably withheld. The Trackway Clearance Envelope is defined by attached Exhibit I.

ARTICLE 26

COMPLETE INTEGRATION

- A. This IGA is intended as the complete integration of all understandings between the Parties as to the subject matter hereof. No prior or

contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties. This IGA and amendments shall be binding upon the Parties, their successors and assigns. Notwithstanding anything to the contrary herein, this IGA shall not be deemed to obviate, negate or supersede the provisions of any additional intergovernmental agreements that the Parties have entered into or may enter into in order to address additional matters and issues as between the Parties which involve RTD's FasTracks program and Lakewood.

- B. Separate intergovernmental agreements governing land exchanges between the Parties and operation and maintenance obligations for the Project are contemplated to be concluded between the Parties to this IGA.

ARTICLE 27

TERM AND TERMINATION

This IGA will remain in effect until Project completion, defined as the opening of light rail service to the City, or until final payment by the City to RTD of all local agency contribution obligations agreed to by the City, whichever occurs last. This IGA may not be terminated unless by the mutual written consent of both the Parties or by court order.

ARTICLE 28

REPRESENTATION OF PARTIES

The Parties represent and warrant 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 IGA on behalf of the Parties and to bind the Parties to its terms. The persons executing this IGA warrant that they have full authorization to execute this IGA on behalf of the Party each represents.

ARTICLE 29

SEVERABILITY

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

ARTICLE 30

WAIVER AND BREACH

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

ARTICLE 31

NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall 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 IGA that any person or entity other than the Parties receiving services or benefits under this IGA be deemed an incidental beneficiary only.

ARTICLE 32

APPLICABLE LAWS

This Agreement shall be governed by and construed under the laws of the State of Colorado, the ordinances of the City of Lakewood, the applicable provisions of federal law, and the applicable rules and regulations promulgated under any of them. Venue for any action hereunder shall be in the County of Jefferson, State of Colorado.

ARTICLE 33

CHANGES IN LAW

This IGA is subject to such modifications as may be required by changes in city, state or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this IGA on the effective date of such change as if fully set forth herein.

ARTICLE 34

INDEPENDENT CONTRACTORS

The Parties hereto are independent contractors and not partners or joint venturers of one another.

IN WITNESS WHEREOF, Lakewood and RTD have executed, through their respective lawfully empowered representatives, this IGA as of the day and year above written.

ATTEST:

CITY OF LAKEWOOD

By: _____
Margy Greer, Lakewood City Clerk

By: _____
Michael J. Rock, Lakewood City
Manager

APPROVED AND RECOMMENDED:

APPROVED AS TO FORM:

By: _____
Richard J. Plastino
Director of Public Works

By _____
Lakewood City Attorney

By: _____
Larry Dorr
Director of Finance

REGIONAL TRANSPORTATION DISTRICT

BY: _____
Clarence W. Marsella
General Manager

APPROVED AS TO LEGAL FORM

BY: _____
Jenny Barket, Assistant General Counsel