

REQUEST FOR COUNCIL ACTION

RESOLUTION: 2007-54

SUBJECT: Agreement with the Green Tree Metropolitan Districts for the City to provide partial funding for construction of an interchange at C-470 and Alameda Avenue.

RECOMMENDATION: Approval

FUNDING SOURCE: Capital Improvement Fund

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Construction of an interchange at C-470 and Alameda has been supported by Lakewood since approximately 1990. It is a needed transportation system link that will benefit existing and future Lakewood residents by providing an alternative route to C-470, I-70, Sixth Avenue and the mountains. It will decrease pressure on the Union Boulevard corridor and the Union/Sixth interchange. It will also support primary job creation in the Rooney Valley by improving access to the commercial portions of the Valley within Lakewood.

The project is estimated to cost approximately \$20 million and is not eligible for state or federal funding. In 2006, the City Council approved an agreement with Jefferson County to provide \$3 million to the interchange project with the County providing \$6 million. As discussed at the August 20 budget study session, the City and County will provide the funds to the Green Tree Metropolitan Districts. The metropolitan districts will hire the contractor, manage construction and obtain the required additional funding. The interchange will open to traffic in 2008.


RESOLUTION ADOPTION DATE: October 8, 2007

ORIGINATED BY: Department of Public Works

STAFF PERSON RESPONSIBLE: Jay N. Hutchison, City Engineer, 303-987-7916

DOCUMENTS ATTACHED: Resolution 2007-54

SUBMITTED BY:


Richard J. Plastino
Director of Public Works

REVIEWED BY:


Joni Jarman, Director
Mayor and City Manager's Office


Michael J. Reck
City Manager

2007-54

A RESOLUTION

AUTHORIZING AN AGREEMENT WITH GREEN TREE METROPOLITAN DISTRICTS NO. 1 AND NO. 2 REGARDING CONSTRUCTION OF AN INTERCHANGE AT C-470 AND ALAMEDA AVENUE

WHEREAS, the Colorado Department of Transportation has approved a locally funded diamond-shaped interchange at the intersection of Highway C-470 and Alameda Avenue; and

WHEREAS, the interchange will provide significant benefits to Lakewood and Jefferson County residents through improved access for existing and future developments in the area; and

WHEREAS, Lakewood and Jefferson County have previously agreed to providing partial funding for the interchange and cooperate in its construction; and

WHEREAS, said agreement commits the City to providing \$3 million for the interchange project estimated to cost approximately \$20 million; and

WHEREAS, Jefferson County has approved formation of, and a service plan for the Green Tree Metropolitan Districts and said service plan includes construction of the interchange.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lakewood, Colorado, that:

SECTION 1. The City Manager is hereby authorized to execute and the City Clerk attest an agreement, in form approved by the City Attorney, with Green Tree Metropolitan District No. 1 and Green Tree Metropolitan District No. 2 for the purpose of providing \$3 million toward an interchange at C-470 and Alameda Avenue.

INTRODUCED, READ AND ADOPTED by a vote of 11 for and 0 against at a regular meeting of the City Council on October 8, 2007, at 7 o'clock p.m. at Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

ATTEST




Margy Greer, City Clerk


Stephen A. Burkholder, Mayor

**INTERGOVERNMENTAL AGREEMENT REGARDING
PARTIAL FUNDING
FOR THE C-470/ALAMEDA INTERCHANGE**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING PARTIAL FUNDING FOR THE C-470/ALAMEDA INTERCHANGE ("IGA") is made and entered into this 22nd day of October, 2007 by and between the **CITY OF LAKEWOOD, COLORADO**, a home rule municipal corporation (the "City") and **GREEN TREE METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado and **GREEN TREE METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado (collectively, the "District"). The parties hereto shall be referred to collectively as the "Parties."

WHEREAS, on April 24, 2007, the Board of County Commissioners of Jefferson County, Colorado approved the Consolidated Service Plan for the District (the "Service Plan"), under which the District is authorized to construct improvements, including the Interchange (as defined below); and

WHEREAS, at an election to be conducted on November 6, 2007, the eligible electors of the District will be presented with a ballot issue to authorize the District to issue bonds to construct improvements authorized by the Service Plan, including the Interchange (the "Election"); and

WHEREAS, the Colorado Department of Transportation ("CDOT") has approved as a locally funded project, the construction of a diamond shaped highway interchange, at the intersection of Highway C-470 and Alameda Avenue (the "Interchange"); and

WHEREAS, the Interchange will provide significant benefits to the District, the City, the County and residents and property owners in surrounding areas through improved access for existing and future developments within the area; and

WHEREAS, pursuant to an Intergovernmental Agreement, dated August 20, 2007, between the City and Jefferson County, Colorado (the "County"), the City and the County have agreed to cooperate in the planning, design and construction of the Interchange and to cooperate in the acquisition of property rights necessary for completion of the Interchange; and

WHEREAS, the District will be the entity responsible for contracting for the planning, design and construction of the Interchange; and

WHEREAS, the parties expect to enter into a separate agreement with CDOT, the County and potentially others to provide for the maintenance of the Interchange and related improvements; and

WHEREAS, the District, City, County and CDOT have been cooperating to construct the Interchange including: receiving approval from the Colorado Transportation Commission on February 15, 2007; receiving approval of an environmental assessment update from CDOT on

February 26, 2007; utilizing consultants under contract to the District to complete design of the Interchange; prequalifying contractors on July 20, 2007; and, the District is acquiring property rights necessary for the Interchange (the planning, environmental assessment update, design, property rights acquisition, and construction for the Interchange shall sometimes herein be referred to as the "Project"); and

WHEREAS, the City desires to provide funding, in full compliance with the requirements of Article X, Section 20 of the Colorado Constitution ("TABOR"), for construction of the Interchange in order to facilitate the prompt completion of such construction; and

WHEREAS, in addition to the funding provided by the City to the District for the Interchange construction, funding also will be provided to the District by the County and by Carma Colorado, Inc. ("Carma"); and

WHEREAS, City funding is to be provided as follows:

\$2,000,000 on November 1, 2007 and
\$1,000,000 on February 1, 2008;

and

WHEREAS, the District desires to reimburse the City, County and Carma from bond proceeds if a bond issue is approved by the Election; and

WHEREAS, the bond amount that will be proposed in the Election will be sufficient to pay the District's estimated costs to construct the infrastructure identified in the Service Plan, including the Interchange, and is expected to be sufficient to reimburse the City, County and Carma; and

WHEREAS, the Parties acknowledge that the District cannot guarantee reimbursement to the City, County and Carma because the Election has not occurred and actual construction costs may vary from current estimates; and

WHEREAS, to the extent the City, County and Carma are reimbursed, such reimbursement will be proportional to the amount of funding provided by each entity for the Interchange; and

WHEREAS, the Parties desire to set forth the basis upon which the City will provide funding to the District for the Interchange and the basis upon which the District may reimburse the City for such funding under the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the City and the District hereby agree as follows:

COVENANTS AND AGREEMENTS

1. The District shall be the contracting party for construction of the Interchange. The District shall ensure the Interchange is constructed in accordance with all applicable requirements of the City, CDOT and County. The District agrees to make all documents pertaining to each element of the Project available to the City at its request for review and comment, inclusive of construction bid proposal information and all invoices pertaining to the Project as they are received by the District. The District will coordinate regular update meetings that shall involve the contractor, the City, the County and CDOT representatives.

2. The City hereby agrees to pay to the District a total amount of \$3,000,000 (the "Payment") as follows: \$2,000,000 not later than November 1, 2007 and the remaining \$1,000,000 not later than February 1, 2008. Such Payment shall be used by the District only for Project costs incurred subsequent to the effective date of this Agreement.

3. The District will be deemed to have incurred an obligation hereunder to repay the City ("Repayment Obligation") in accordance with the provisions hereof at such time as the City has deposited any portion of an Payment in immediately available funds with the District for the purpose of funding the Project. The District shall record the applicable amount of the Payment made to the District on its accounting records to be maintained by the District for such purpose, showing the amount of the Repayment Obligation, the date incurred, and the total amount of Repayment Obligations owed to the City under this Agreement. The District shall retain such records, which records shall be made available to the City upon reasonable request.

With respect to Repayment Obligations incurred under this Agreement, such Repayment Obligations shall bear simple interest at the rate of 7% from the date any such Repayment Obligation is incurred (as set forth on the schedules maintained by the District) to the date of repayment of such amount. The City shall be entitled to said interest and such interest amount shall be considered part of the Repayment Obligation.

The District agrees to pay any Repayment Obligations due hereunder solely from the proceeds of bonds, if any, issued by the District, net of any costs of issuance, underwriter's discount, or reasonably required reserves related to such bonds (the "Net Proceeds"); and such Net Proceeds are hereby pledged for such purpose; provided, however, that the District may, in its sole discretion, elect to apply any other legally available revenues to the payment of Repayment Obligations at any time. At such time as the District has issued all bonds that it is legally permitted to issue in accordance with the Service Plan and the Election and has exhausted all Net Proceeds of said bonds, or at such time as otherwise agreed to by the District and the City in writing, any Repayment Obligations remaining unpaid hereunder shall be deemed City contributions to the Project and the District's obligation to repay such amounts hereunder shall be discharged. The Parties hereby recognize that the District's payment of any Repayment Obligations from legally available revenues shall be subordinate in all respects to the District's obligation regarding payment on any bonds that are issued and outstanding from time to time.

The District agrees that it shall use its best efforts to issue bonds as is contemplated pursuant to Exhibit E of the Service Plan of the District. Notwithstanding, the District shall not

be required to issue bonds in accordance with the schedule contemplated in the Financing Plan, as is attached to the Service Plan, but rather may issue bonds at times when it is feasible to do so based upon development and revenues available to the District.

The Parties acknowledge that in addition to the Payment provided hereunder, additional funding for the Project shall be provided to the District by the County and by other entities. The City, County and other entities providing funding to the District for the Project shall sometimes herein be referred to collectively as the "Funding Parties." Reimbursement to the Funding Parties shall occur concurrently from available Net Proceeds with each Funding Party receiving an amount proportional to that party's share of the total funding received by the District from the Funding Parties for the Project. Reimbursement to the Funding Parties may be made in full by a single payment to each Funding Party or from time to time in multiple partial payments to each Funding Party on the proportional basis described herein.

Notwithstanding other provisions of this Agreement, in the event that the District does not contract for construction of the Interchange by June 1, 2008, the District's Repayment Obligation shall be immediately due and payable to the City with interest regardless of whether the District has issued bonds. In such event, the District shall not be required to pay 7% interest on the Repayment Obligation, but shall be required to pay the amount of interest as has accrued on the Payment on deposit in the District's account.

4. The Parties acknowledge and intend to fully comply with the requirements of TABOR and this Agreement shall not constitute a multi-fiscal year financial obligation of either Party. Any expenditure of funds by either Party shall be subject to voter approval or an annual appropriation of such funds for such purpose by the governing body of such Party.

5. The District shall provide to the City an annual accounting of (a) all amounts expended in connection with the Project, (b) funding received from the City, from the County and from other entities for the Project, (c) reimbursements paid to the City, to the County and to other entities, (d) bond amount issued to date by the District, and (e) maximum bond amount that may still be issued as allowed by the District's Service Plan. The District shall also provide to the City annually a copy of all District Service Plan and Financing Plan amendments approved during the preceding calendar year.

6. Any notices, demands, or other communications required or permitted to be given by any provision of this IGA shall be given in writing, delivered personally, sent by facsimile with a hard copy sent immediately thereafter by first class certified mail, or sent by first class certified mail, postage prepaid and return receipt requested, addressed to the Parties at the addresses set forth below, or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given when personally delivered, transmitted by facsimile or mailed by first class mail, return receipt requested, and shall be considered received on the earlier of the day on which such notice is actually received by the party to whom it is addressed, or the third day after such notice is mailed.

Notices to the District: Green Tree Metropolitan District No. 1 and Green Tree
Metropolitan District No. 2
c/o White, Bear & Ankele Professional Corporation
Attn: Kristen D. Bear, Esq.
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

Notices to the City: City of Lakewood
480 South Allison Parkway
Lakewood, CO 80226
Attn: City Manager

With a copy to: City of Lakewood
480 South Allison Parkway
Lakewood, CO 80226
Attn: City Attorney

7. Amendments. This Agreement may only be amended or modified by a writing executed by each Party.

8. Severability. If any clause or provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole, and all other clauses or provisions shall be given full force and effect.

9. Applicable Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Parties, and any attempt to assign this Agreement in violation hereof shall be null and void.

11. Authority. By execution hereof, each Party hereto represents and warrants that its representative signing hereunder has full power and lawful authority to execute this Agreement and to bind the respective party to the terms hereof.

12. Entire Agreement and Effective Date. This Agreement constitutes and represents the entire, integrated agreement between the District and the City with respect to the matters set forth herein, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the later of (a) the date of execution of this Agreement as set forth above, or (b) the date of execution of an agreement between the District and County in which the County commits to providing funding to the District for construction of the Interchange in amounts no less than \$4,000,000 in 2007 and \$2,000,000 in 2008.

13. Counterpart Execution. This Agreement may be executed in counterparts and, as

so executed, shall constitute one Agreement, binding on the Parties even though the Parties have not signed the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all the Parties, shall be deemed a fully executed instrument for all purposes.

14. Successors and Assigns. The terms of this Agreement shall be binding upon, and inure to the benefit of the Parties as well as their respective successors and permitted assigns.

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IN WITNESS WHEREOF, the Parties hereto have executed this IGA on the date and year first above written.


GREEN TREE METROPOLITAN DISTRICT NO. 1

By: 
President

GREEN TREE METROPOLITAN DISTRICT NO. 2

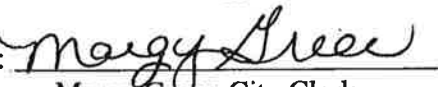
By: 
President

CITY OF LAKEWOOD, COLORADO

By: 
Michael J. Rock, City Manager



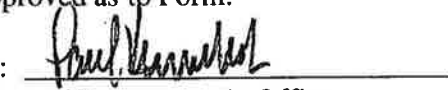
Attest:

By: 
Margy Greer, City Clerk

Approved:

By: 
Larry Dorr, Director of Finance

Approved as to Form:

By: 
City Attorney's Office