

RESOLUTION NO. R - 015 - 031

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

ORIGINAL

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LONE TREE AND THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,
REGARDING COST SHARING TO CONSTRUCT THE
SOUTHEAST LIGHT RAIL EXTENSION PROJECT**

WHEREAS, the City of Lone Tree ("City") and the Board of County Commissioners of the County of Douglas, State of Colorado, ("Douglas County"), desire to enter into an Intergovernmental Agreement regarding cost sharing to construct the Southeast Light Rail Extension Project; and

WHEREAS, Douglas County is willing to enter into such an agreement in accordance with the terms and conditions set forth in the Intergovernmental Agreement attached hereto; and

WHEREAS, the City and Douglas County are governmental entities authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, by the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO**, that the Intergovernmental Agreement by and between the City and Douglas County, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 24th day of February, 2015, in Castle Rock, Douglas County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

By: _____

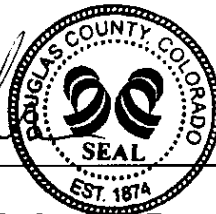
Jill E. Repella

JILL E. REPELLA, Chair

ATTEST: _____

Melissa Pelletier

MELISSA PELLETIER, Clerk to the Board



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LONE TREE AND
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO, REGARDING COST SHARING TO CONSTRUCT THE
SOUTHEAST LIGHT RAIL EXTENSION PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT, ("Agreement"), is made and entered into this _____ day of _____, **2015**, by and between the City of Lone Tree, Colorado, a Colorado home rule municipality (the "City"), and the Board of County Commissioners of Douglas County, State of Colorado, (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County and the City desire to cooperate and share in the funding to construct the Southeast Light Rail Extension Project, hereinafter collectively referred to as the "Project" which is proposed to be constructed by the Regional Transportation District ("RTD") and construction of the Project is anticipated to begin in **March 2016**. The Project is located in Douglas County; and is more specifically described in **Exhibit A**, attached hereto and referenced herein; and

WHEREAS, the partial funding provided by the County shall be used for constructing the Project, which includes the Project costs associated with final design, utility relocation costs, construction, construction management services, construction inspection and material testing; and

WHEREAS, the County is willing to make a contribution to fund a portion of the cost to advance the construction of the Project, according to the terms and conditions stated in this Agreement; and

WHEREAS, the County plans to set aside its contribution in a designated Douglas County business unit that is set up specifically for the Project; and the County plans to set aside a portion of its contribution annually over a three year period, beginning in **January 2015**; and

WHEREAS, the City is willing to contribute funding for the Project, and plans to enter into a separate intergovernmental agreement with RTD since RTD is responsible for managing the design and construction of the Project, and RTD plans to use the funds mutually provided by the County and City to construct the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Term.** This Agreement shall commence upon execution by both Parties (the "Effective Date") and shall continue until the funds provided by the County have been provided to the City and the City has properly transferred the County contribution to RTD for advancing construction of the Project, or up to sixty (60) months after the Effective Date of this Agreement.

2. **County Contribution.** The County agrees to pay the City a sum of funds not to exceed **Seven Million, Three Hundred Thirty-Five Thousand Dollars and No Cents (\$7,335,000.00)**. Based on the current Project schedule, RTD anticipates awarding a design-build contract in fall 2015 and construction is anticipated to begin on or around March 2016. Therefore, at this time, it is anticipated the County Contribution shall be payable as follows:

The first County installment payment shall be payable to the City on or before December 1, 2015, in an amount of One Million, Seven Hundred Thirty Thousand Dollars and No Cents (\$1,730,000.00); and

The second County installment payment shall be payable to the City on or before March 1, 2016, in an amount of Three Million, One Hundred Sixty Thousand, Dollars and No Cents (\$3,160,000.00).

The third County installment payment shall be payable to the City on or before December 1, 2017, in an amount of Two Million, Four Hundred Forty-Five Thousand, Dollars and No Cents (\$2,445,000.00).

Options to Accelerate County Contributions - In its sole discretion, the County may elect to accelerate its third installment payment to the City by either of the following options: (a) combining the County's second and third installment payments to the City for a total of \$5,605,000.00 to on or before March 1, 2016 or (b) the County may elect to accelerate the third County installment payment to the City on or before December 31, 2016.

3. **County Contribution Contingencies.** The County Contribution is contingent on the following conditions as set forth below:

- a. The City is responsible for notifying the County and requesting payment from the County for each installment payment in writing (invoice). The County agrees to pay the City the invoiced installment payment within forty-five (45) days after a written request (invoice) has been provided to the County Manager, with copies of the invoice provided to the Public Works Engineering Director and the County Attorney, and provided the City has executed a separate agreement with RTD and RTD has requested funding from the City.
- b. Said installment payments from the County shall amount to the County's total contribution for a portion of the cost to advance the construction of the Project for a total amount not to exceed **\$7,335,000.00**; and the County Contribution identified above as the first installment payment may be used for design, utility relocations or construction, whereas the County Contribution identified above as the second and third installment payments shall be used solely for constructing the Project and will be used for no other purpose unless agreed to by both parties via a written executed amendment to this Agreement.

- c. For the purpose of this Agreement, RTD's award of the proposed design-build contract, which initially authorizes the design phase or utility relocation phase, shall not be sufficient to trigger payment of the County's second and third installment payments to the City.
- d. The County's obligation to fund the second and third installment payments of the County Contribution shall be contingent on RTD awarding a contract for the completion of the Project to a qualified design-build team, following a competitive design-build selection process; and RTD issuing a notice to proceed to a qualified design-build team selected for the Project. The City shall provide the County with written confirmation that the qualified design-build team has been awarded a contract from RTD and the design-build team has been issued a notice to proceed with construction.
- e. If the RTD terminates the Project or fails to achieve revenue service (which is based on RTD providing light-rail transit service to its proposed **FasTracks** extension customers between the existing Lincoln Station and the proposed RidgeGate Station), then the County is entitled to be reimbursed its pro-rata share of the total Local Agency contribution, which is currently estimated to be Twenty-Five Million Dollars and No Cents (\$25,000,000.00), and whereas the County Contribution pro-rata share is equal to 29.34% (\$7,335,000.00) of the total Local Agency contribution. However, no reimbursement shall be owed the County so long as RTD is making diligent progress on the Project or if the cause of termination or failure to achieve revenue service is force majeure.
- f. The Parties understand that RTD is responsible to the Federal Transportation Administration (FTA) for maintaining Project documents and records in accordance with FTA requirements which is for a minimum of three (3) years. Pursuant to its intergovernmental agreement with RTD, the City may inspect and obtain copies of those documents and records. Pursuant to this Agreement, the City agrees to exercise that right and obtain such documents and records from RTD if requested by the County. In addition, the City will maintain records of the transfer of the County Contribution to RTD in accordance with generally accepted accounting principles and will provide such records to the County upon request. The County reserves the right to audit the City's financial records related to the Project during construction of the Project and up to six (6) years after completion of the Project.
- g. The County shall have no obligation to commit any additional funds in the event that the actual Project costs exceed the estimated Project costs. This Agreement establishes the County's maximum contribution toward the completion of the Project for an amount not to exceed **\$7,335,000.00**.

4. **Remedies.** The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity or such other legal or equitable relief as may be

available, including but not limited to a return of the funds as provided for in Section 3.e of this Agreement if RTD fails to complete the Project.

5. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Lone Tree: City of Lone Tree
9220 Kimmer Drive, Suite 100
Lone Tree, Colorado 80124
Attention: Seth Hoffman, City Manager
Copies to: City Attorney & Public Works Director

Douglas County: Douglas County
100 Third Street
Castle Rock, Colorado 80104
Attention: Doug DeBord, County Manager
Copies to: County Attorney & Public Works Engineering Director

6. Appropriation. It is the Parties intent to appropriate the funds described in this Agreement. However, pursuant to section 29-1-110, C.R.S., any financial obligations of the City and the County contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis.

7. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

8. Colorado Law. The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.

9. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

10. No Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

11. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, and

the City, its council members, officials, officers, directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the County and the City.

12. **Entirety.** This Agreement merges and supercedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

CITY OF LONE TREE, COLORADO

James Gunning, Mayor

ATTEST:

APPROVED AS TO FORM:

Jennifer Pettinger,
CMC, City Clerk

_____,
Assistant City Attorney

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY**

Jill E. Repella, Chair

ATTEST:

APPROVED AS TO CONTENT:

Melissa Ann Pelletier,
Deputy Clerk to the Board

Douglas J. Debord,
County Manager

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Nick Pijoan,
Assistant County Attorney

Andrew Copland,
Director of Finance

Exhibit A

The Project consistent of completing the RTD's Southeast Rail Extension Project, which involves extending transit services from the current end of the line station (referred to as the Lincoln Station) to the proposed end of the line station to be located south of RidgeGate Parkway, adjacent to I-25 and South Havana Street (the I-25 East Frontage Road).

The Project is part of RTD's voter approved **FasTracks** program and requires constructing approximately **2.3 miles** of double track and providing three (3) new transit stations, one located at approximate Station 835+00 (the Sky Ridge Station), one located at approximate Station 865+00 (the City Center Station) and one located at approximate Station 892+00 (the RidgeGate Station). Additionally, the Project requires building grade separations for the light rail to cross over Lincoln Avenue, over I-25, and over RidgeGate Parkway, as further identified in the **FasTracks** plans and as more fully described in the Southeast Rail Extension Environmental Assessment.

The Project shall be managed by RTD or its assigns and shall be constructed in accordance with the final approved environmental documents and in accordance with the final design plans approved by the RTD and local agencies and CDOT (where applicable). The Project will likely be constructed over more than one fiscal year and will likely require multiple construction phases. RTD anticipates awarding a design-build contract for this Project in the fall of 2015 and the initial construction phase is currently estimated to begin in March 2016 and to be completed on or around December 2018.