

AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD, COLORADO
480 S. ALLISON PARKWAY, 80226
HYBRID MEETING
DECEMBER 11, 2023
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: [Lakewood.org/CouncilVideos](https://lakewood.org/CouncilVideos)

or

Lakewood Speaks: Lakewoodspeaks.org

How to Connect to Provide Public Comment:

By Computer: <https://lakewood.zoom.us/j/84957320840>

By iPad, iPhone, or Android device on the Zoom App, enter webinar ID: 849 5732 0840

By Telephone: 720-707-2699

Webinar ID: 849 5732 0840, #

Participant ID: #

Press *9 to Request to Speak, you will be prompted when to speak.

Press *6 to Unmute

The City of Lakewood does not discriminate on the basis of race, age, national origin, color, creed, religion, sex, sexual orientation or disability in the provision of services. People with disabilities needing reasonable accommodation to attend or participate in a City service program, can call 303-987-7080 or TDD 303-987-7057. Please give notice as far in advance as possible so we can accommodate your request.

In accordance with City Council Policy 5.1(A), all virtual meeting participants are advised that technological issues, whether caused by the City's equipment or the user's equipment, shall not be grounds for cancelling a public meeting.

ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – STATEMENT OF CONFLICT OF INTEREST

ITEM 5 – INDUCTION CEREMONY

ITEM 6 – RECESS – RECEPTION FOR INCOMING CITY COUNCIL MEMBER

CONSENT AGENDA

ITEM 7 – RESOLUTION 2023-58 – APPROVING THE NOMINATION OF BRENT FITCH TO THE BOARD OF DIRECTORS OF THE LAKEWOOD-WEST COLFAX BUSINESS IMPROVEMENT DISTRICT

ITEM 8 – RESOLUTION 2023-59 – AUTHORIZING THE TERMINATION OF AN IGA BETWEEN CITY OF LAKEWOOD AND GREEN TREE METRO DISTRICTS

ITEM 9 – RESOLUTION 2023-60 – RELINQUISHING EMERGENCY RESPONSE AUTHORITY FOR HAZARDOUS SUBSTANCE INCIDENTS OCCURRING WITHIN THE CORPORATE LIMITS OF THE CITY OF LAKEWOOD

ITEM 10 – RESOLUTION 2023-61 – APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH JEFFERSON COUNTY FOR USE OF INFRASTRUCTURE INVESTMENT AND JOBS ACT/SAFE STREETS FOR ALL GRANT TO DEVELOP A COMPREHENSIVE SAFETY ACTION PLAN

ITEM 11 – RESOLUTION 2023-62 – APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE MILE HIGH FLOOD DISTRICT FOR DESIGN AND CONSTRUCTION OF DRAINAGE, CHANNEL, AND PARK IMPROVEMENTS FOR DRY GULCH IN TWO CREEKS PARK

END OF CONSENT AGENDA

ITEM 12 – PUBLIC COMMENT

Anyone who would like to address the Council on any matter other than an agenda item will be given the opportunity. Speakers should limit their comments to three minutes.

ITEM 13 – GENERAL BUSINESS

ITEM 14 – EXECUTIVE REPORT

A. CITY MANAGER

ITEM 15 – MAYOR AND CITY COUNCIL REPORTS

A. COUNCIL MEMBERS BY WARD
B. MAYOR

ITEM 16 – ADJOURNMENT

STAFF MEMO

DATE OF MEETING: DECEMBER 11, 2023 / AGENDA ITEM NO. 7

To: Mayor and City Council
From: Laura Moody, Sr. Economic Development Spec
Subject: **New Board Member for Lakewood-West Colfax Business Improvement District**

SUMMARY STATEMENT: Business Improvement Districts (BIDs) are primarily self-governing entities with significant authority, including the authority to incur debt and impose fees on commercial property owners within the district. However, Title 31 of the Colorado Revised Statutes grants the City oversight authority and requires the City to review and approve each BID's Board of Directors. This oversight role is critical to ensuring a positive public perception of BID activities.

BACKGROUND INFORMATION: Business Improvement Districts (BIDs) fill a significant role in Lakewood's vibrancy. Lakewood is home to two BIDs, the Lakewood-West Colfax Business Improvement District and the Alameda Corridor Business Improvement District. BIDs are defined areas where businesses elect to pay an additional tax to fund projects, only within the BID's boundaries. BIDs are governed by an independent board of directors made up of property and business owners in the defined area.

BUDGETARY IMPACTS: None.

STAFF RECOMMENDATIONS: Staff recommends the City Council approves the resolutions approving the appointment of Brent Fitch to the Board of Directors of the Lakewood-West Colfax BID.

ALTERNATIVES: The City Council may decide not to approve the resolution, or may table the resolution to a future date certain.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: None.

ATTACHMENTS: Resolution 2023-58

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2023-58

A RESOLUTION

APPROVING THE NOMINATION OF BRENT FITCH TO THE BOARD OF DIRECTORS OF THE LAKEWOOD-WEST COLFAX BUSINESS IMPROVEMENT DISTRICT

WHEREAS, at a meeting of the Board of Directors of the Lakewood-West Colfax Business Improvement District (the "BID") the board voted to submit the nomination of Brent Fitch of The Rocky Mountain College of Art and Design for a four-year term; and

WHEREAS, Brent Fitch of The Rocky Mountain College of Art and Design was unanimously nominated at a meeting of the Board of Directors of the Lakewood-West Colfax BID on June 27, 2023 and was approved at a meeting of the Board of Directors on August 29, 2023; and

WHEREAS, the City Council has reviewed and desires to approve the appointment of Brent Fitch of The Rocky Mountain College of Art and Design to the West Colfax BID's Board of Directors.

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

SECTION 1. The appointment of Brent Fitch of The Rocky Mountain College of Art and Design to the West Colfax BID's Board of Directors is hereby approved.

SECTION 2. The City Clerk shall transmit a copy of this Resolution to the Board of Directors of the BID.

SECTION 3. This Resolution shall become effective immediately upon its adoption.

INTRODUCED, READ AND ADOPTED by a vote of ___ for and ___ against at a virtual regular meeting of the City Council on September 25, 2023, at 7 o'clock p.m. at Lakewood City Hall, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: DECEMBER 11, 2023 / AGENDA ITEM NO. 8

To: Mayor and City Council
From: Alison McKenney Brown, City Attorney
Subject: **Terminating an IGA with Green Tree Metro District**

SUMMARY STATEMENT: Resolution 2023-59 authorizes the City Council of the City of Lakewood to terminate a 2007 Intergovernmental Agreement (“IGA”) with the Green Tree Metro Districts No. 1 and No. 2.

BACKGROUND INFORMATION: The IGA was entered into between the City of Lakewood and Green Tree Metro Districts No. 1 and No. 2 in 2007 concerning potential re-imbusement of partial funding provided by Lakewood for construction of the C-470 and Alameda Avenue interchange.

The sole mechanism for reimbursement was through proceeds of a potential bond issuance, authorized by an election, by the metro district. There has been no bond issuance and there is no anticipation of any future bond issuance.

Lastly, the IGA is silent as to any automatic termination date or procedure and that is why the resolution is necessary.

BUDGETARY IMPACTS: None.

STAFF RECOMMENDATIONS: Adoption of the resolution.

ALTERNATIVES: The City Council may decide not to approve the resolution.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If adopted, the resolution will give authority to the City Manager, or her designee, to terminate the IGA.

ATTACHMENTS: Resolution 2023-59
Resolution 2007-54 Green Tree Metro District
Intergovernmental Agreement regarding Green Tree Metro District

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

A RESOLUTION

AUTHORIZING THE TERMINATION OF AN IGA BETWEEN CITY OF LAKEWOOD AND GREEN TREE METRO DISTRICTS

WHEREAS, § 29-1-203, C.R.S. provides that governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt;

WHEREAS, the City of Lakewood approved Resolution 2007-54 authorizing an Agreement with Green Tree Metropolitan Districts No. 1 and No. 2 regarding construction of an interchange at C-470 and Alameda Avenue, and authorized the City Manager to execute and agreement to carry out that Resolution (Exhibit 1);

WHEREAS, pursuant to Resolution 2007-54 an Intergovernmental Agreement (an "IGA") was entered into between the City of Lakewood ("Lakewood") and Green Tree Metro Districts No. 1 and No. 2 ("Green Tree") in 2007 concerning potential re-imbusement of partial funding provided by Lakewood for construction of the C-470 and Alameda Avenue interchange (Exhibit 2);

WHEREAS, the sole mechanism for which there would be re-imbusement was through proceeds of a potential bond issuance, authorized by an election, by Green Tree;

WHEREAS, Green Tree Metro Districts has requested that this IGA be terminated because there has been no bond issuance to date and there is no anticipation of a bond issuance for this completed project; and

WHEREAS, the IGA is silent as to any automatic termination date or procedure so the parties have agreed to terminate the IGA through action of governing bodies of the participating entities.

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

1. Authority to terminate the 2007 IGA. The City Council of the City of Lakewood, being authorized by § 29-1-203, C.R.S. and other laws of the State of Colorado to enter into and terminate IGAs, hereby authorizes the City Manager, or designee, to take all measures necessary to terminate the Intergovernmental Agreement entered into by and between the City of Lakewood and Green Tree Metro Districts No. 1 and No. 2 on October 22, 2007, concerning potential re-imbusement of partial funding provided by Lakewood for construction of the C-470 and Alameda Avenue interchange (Exhibit 2);.

2. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the City Council

INTRODUCED, READ AND ADOPTED by a vote of __ for and __ against at a hybrid regular meeting of the City Council on December 11, 2023, at 7 o'clock p.m. at Lakewood City Hall, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

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.

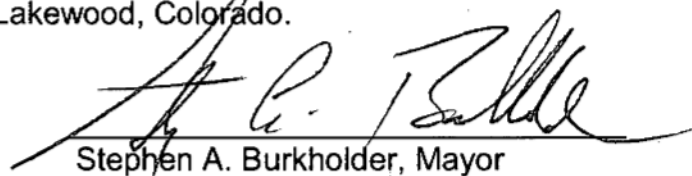
NOW, THEREFORE, BE IT RESOLVED by the City Council of Lakewood, Colorado, that:

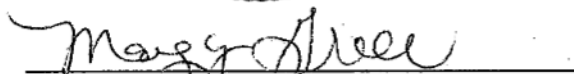
SECTION 1. The City Manager is hereby authorized to execute and the City Clerk attest an agreement, in form approved by the City Attorney, with Green Tree Metropolitan District No. 1 and Green Tree Metropolitan District No. 2 for the purpose of providing \$3 million toward an interchange at C-470 and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


Stephen A. Burkholder, Mayor


Margy Greer, City Clerk

**CITY OF LAKEWOOD
STANDARD CONTRACT COVER SHEET**

Contract Number 07-07036 Date 10/2/07

Title or Purpose of Contract Partial Funding for C-470/Clarenda Interchange

Amount \$ 3,000,000

Contractor's Name Duan Inc Metropolitan District No. 1 & No. 2

Address c/o White, Bear & Ankele Professional Corp., 1805 Shea Center Dr. Ste. 100, Highlands Ranch, CO 80129

Authorizing Resolution _____ Responsible Department PW

Contract Administrator Jay Hutchinson Phone 7916

Name of Reviewing Attorney Paul Kurbuck & Hardy Funk

Mark the Signatures Needed

- City Attorney
- Department Head
- Outside Party/Parties
- City Manager (NS) O.K. to Sign
- City Clerk (S)
- Finance Director (\$5,000 & over)

Signature Received (initials)

Done

JK 10/18/07

Outside Signatures Last No Yes (Requested by _____)

Lawful Presence Documentation – Individual Persons (Not needed for LLC's, Corporations or Partnerships)

- _____ ID verified by _____ (Employee Name)
- _____ Lawful Presence Affidavit attached (don't write personal info on the affidavit!)
- _____ Copy of ID attached

Type of Agreement/Contract

- Intergovernmental Agreement
- Professional Services
- Public Improvement Agreement
- Maintenance Agreement
- Contractual Services
- Construction Agreement
- Performance
- Room Rental or Facility Rental
- Lease
- Other (specify type) _____

Contract should be reviewed by Jay Hutchinson Next review date 10/2010
 (Contract Administrator)

Contract Termination Date _____, if applicable

City Clerk's Office Only:
 SAVE verification attached
 Copy of ID destroyed

**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

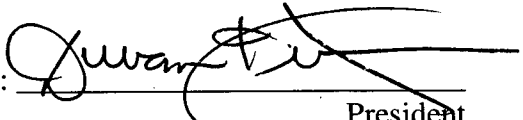
so executed, shall constitute one Agreement, binding on the Parties even though the Parties have not signed the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all the Parties, shall be deemed a fully executed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

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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

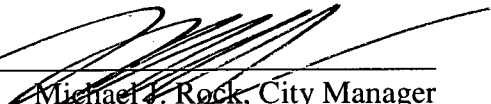
GREEN TREE METROPOLITAN DISTRICT NO. 1

By: 
President

GREEN TREE METROPOLITAN DISTRICT NO. 2

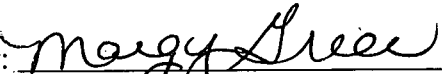
By: 
President

CITY OF LAKEWOOD, COLORADO

By: 
Michael J. Rock, City Manager

Attest:

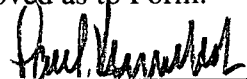


By: 
Margy Greer, City Clerk

Approved:

By: 
Larry Dorr, Director of Finance

Approved as to Form:

By: 
City Attorney's Office

STAFF MEMO

DATE OF MEETING: DECEMBER 11, 2023 / AGENDA ITEM NO. 9

To: Mayor and City Council
From: Philip Smith, Chief of Police
Subject: **Relinquishing Authority for Hazardous Substance Incidents**

SUMMARY STATEMENT: Resolution 2023-60 authorizes the City of Lakewood to recognize West Metro Fire as the designated emergency response authority for hazardous materials incidents in conformance with C.R.S. § 29-22-102(3)(a).

BACKGROUND INFORMATION: In 1984 the Lakewood City Council passed a resolution declaring the Lakewood Police Department as the designated emergency response authority for hazardous substance incidents within the corporate limits of the City of Lakewood. This resolution was done pursuant to statute CRS § 29-22-102, which at the time mandated a very generalized requirement that an agency designate themselves as the emergency response authority for hazardous substance incidents. In 2016 the Colorado Legislature modified CRS § 29-22-102 and specifically identified the fire protection district for any city, town, or county as the designated emergency response authority unless another agency had been previously designated. In recognition of the updates to the Colorado statutes and the special training necessary to respond to hazardous substance spills, the Lakewood Police Department recognizes that the West Metro Fire Protection District has far more resources and equipment designed for response to hazardous substance incidents.

BUDGETARY IMPACTS: Adopting this resolution would not impact the budget as it simply removes an outdated designation as emergency response authority for hazardous material incidents.

STAFF RECOMMENDATIONS: Staff recommends that the City of Lakewood adopt the proposed resolution.

ALTERNATIVES: If the City Council chooses not to approve the resolution the Lakewood Police Department will remain the designated emergency response authority for hazardous substance incidents.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: If adopted, the City of Lakewood will recognize West Metro Fire as the designated emergency response authority for hazardous materials incidents in conformance with C.R.S. § 29-22-102(3)(a).

ATTACHMENTS: Resolution 2023-60

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2023-60

A RESOLUTION

RELINQUISHING EMERGENCY RESPONSE AUTHORITY FOR HAZARDOUS SUBSTANCE INCIDENTS OCCURRING WITHIN THE CORPORATE LIMITS OF THE CITY OF LAKEWOOD

WHEREAS, the General Assembly of the State of Colorado enacted legislation in 2016 which modified response to hazardous substance incidents;

WHEREAS, the City of Lakewood passed Resolution 84-38 (1984) designating the Chief of Police, or his designee, as the Emergency Response Authority for hazardous materials incidents occurring in the City of Lakewood;

WHEREAS, C.R.S. § 29-22-102(3)(a) now denotes the fire authority responsible for the corporate limits of a city, town, or county as the de facto designated emergency response authority for hazardous substance incidents; and

WHEREAS, the West Metro Fire Protection District is both the de facto designated emergency response authority and the agency best suited to respond to hazardous substance incidents within the corporate limits of the City of Lakewood.

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

Section 1. The City Council of the City of Lakewood hereby rescinds Resolution 84-38 (1984) and relinquishes the designation of emergency response authority for hazardous materials incidents occurring within the corporate boundaries of the City of Lakewood.

Section 2. The City of Lakewood hereby recognizes West Metro Fire as the designated emergency response authority for hazardous materials incidents in conformance with C.R.S. § 29-22-102(3)(a).

INTRODUCED, READ AND ADOPTED by a vote of for and against at a hybrid regular meeting of the City Council on December 11, 2023, at 7 o'clock p.m. at Lakewood City Hall, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: DECEMBER 11, 2023 / AGENDA ITEM NO. 10

To: Mayor and City Council
From: Max Kirschbaum, Public Works Director
Subject: **IGA with Jefferson County for Safe Streets**

SUMMARY STATEMENT: Executing an IGA with Jefferson County to accept overall grant funding from USDOT in the amount of \$681,250. Lakewood was co-applicant on the final application to USDOT for the Safe Streets for All (SS4A) grant.

BACKGROUND INFORMATION: Lakewood originally submitted a SS4A grant application for \$450,000 to the USDOT due to some lack of coordination from staffing changes at Jefferson County. During the grant review process, USDOT asked Jefferson County and Lakewood to combine their grant applications. The approved grant is to Jefferson County with Lakewood being a primary agency for the "plains" portion of the proposed county wide plan. The IGA is necessary to outline the various responsibilities for the grant performance and for Lakewood to pay the consultant for our portion of the required local match. The SS4A plan will be developed and a required step is for the City Council to adopt the plan. Having an adopted plan enables the agency to apply for future SS4A implementation grants, which are currently funded for the next 4 years. Lakewood will pay our required local "match" funds directly to the chosen project consultant.

BUDGETARY IMPACTS: IGA will commit Lakewood to a maximum of \$80,000 match for the \$681,250 grant.

STAFF RECOMMENDATIONS: Accept the IGA with Jefferson County.

ALTERNATIVES: Reject the IGA with Jefferson County and not participate in the SS4A plan development.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council. Additionally, the SS4A grant work requires several public meetings and outreach as the SS4A plan is developed to guide the final plan and policies that the city council will eventually be asked to adopt or reject near the end of the process.

NEXT STEPS: Start consultant selection with Jefferson county, public outreach and plan development.

ATTACHMENTS: Resolution 2023-61
Funding IGA City of Lakewood

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2023-61

A RESOLUTION

APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH JEFFERSON COUNTY FOR USE OF INFRASTRUCTURE INVESTMENT AND JOBS ACT/SAFE STREETS FOR ALL GRANT TO DEVELOP A COMPREHENSIVE SAFETY ACTION PLAN

WHEREAS, pursuant to C.R.S. § 29-1-203 and § 29-1-203.5 as amended, the City of Lakewood (the “City”) and Jefferson County (the “County”) have the authority to enter into intergovernmental agreements (IGAs);

WHEREAS, the City and County jointly applied for an Infrastructure Investment and Jobs Act/Safe Streets for All (“IIJA/SS4A” or “SS4A”) grant and the County, as fiscal agent for this grant, has been awarded \$545,000.00 from the United States Department of Transportation;

WHEREAS, these funds will be used to support the National Roadway Safety Strategy and the Department of Transportation’s goal of zero deaths and serious injuries on our nation’s roadways;

WHEREAS, the City and County will use the SS4A grant funds to develop a comprehensive Safety Action Plan (“Plan”) including infrastructure, behavioral, and operational initiatives to prevent death and serious injury on roads and streets that involve all roadway users, including pedestrians, bicyclists, public transportation, personal conveyance, micro-mobility users, motorists, and commercial vehicle operators;

WHEREAS, the Plan will equip the City and County with specific recommendations on mitigating crash patterns and reducing crash potential, prioritizing underserved and historically underrepresented areas, costs, opportunities, and barriers, resulting in safer mobility within the City and County;

WHEREAS, the terms of the SS4A grant require a local match in funding;

WHEREAS, the County requires, and the City agrees to pay the consultant directly for the City’s share of the required cost of its local share of the Plan in the amount of \$80,000.00; and

WHEREAS, the City’s anticipated contribution was previously approved by City Council in the 2023 Annual Budget.

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

Section 1. The City Council hereby finds and determines that authorizing the IGA to fund the City’s local share of the Plan is in the best interest of the residents of the City.

Section 2. The IGA is hereby approved, and the City Manager is hereby authorized to execute said agreement on behalf of the City.

Section 3. The City Council hereby authorizes a contribution of up to eighty thousand dollars (\$80,000.00) for the City's local share of the Plan as accounted for in the IGA.

Section 4. The City's Chief Financial Officer is hereby authorized and directed to pay amounts not to exceed eighty thousand dollars (\$80,000.00) for the City's local share associated with the funding of the Plan.

SECTION 5. This Resolution shall become effective immediately upon its adoption.

INTRODUCED, READ AND ADOPTED by a vote of __ for and __ against at a hybrid regular meeting of the City Council on December 11, 2023, at 7 o'clock p.m. at Lakewood City Hall, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

INTERGOVERNMENTAL FUNDING AGREEMENT

THIS INTERGOVERNMENTAL FUNDING AGREEMENT (this “Agreement”), dated for reference purposes only this ___ day of November 2023, is made and entered into by and between the COUNTY OF JEFFERSON, STATE OF COLORADO, a body politic and corporate (the “County”), and the CITY OF LAKEWOOD (the “City”).

RECITALS

A. Whereas, pursuant to C.R.S. § 29-1-203 and § 29-1-203.5 as amended, the County and the City have the authority to enter into intergovernmental agreements.

B. Whereas, the County and the City jointly applied for an Infrastructure Investment and Jobs Act/Safe Streets for All (“IIJA/SS4A” or “SS4A”) grant and the County, as fiscal agent for this grant, has been awarded \$545,000.00 from the United States Department of Transportation. These funds will be used to support the National Roadway Safety Strategy and the Department of Transportation’s goal of zero deaths and serious injuries on our nation’s roadways.

C. Whereas, the parties will use the SS4A grant funds to develop a comprehensive Safety Action Plan (“Plan”) including infrastructure, behavioral, and operational initiatives to prevent death and serious injury on roads and streets that involve all roadway users, including pedestrians, bicyclists, public transportation, personal conveyance, micro-mobility users, motorists, and commercial vehicle operators. The Plan will equip the County with specific recommendations on mitigating crash patterns and reducing crash potential, prioritizing underserved and historically underrepresented areas, costs, opportunities, and barriers, resulting in safer mobility within the county.

D. Whereas, the terms of the SS4A grant require a local match in funding.

E. Whereas, the County requires, and the City agrees to pay the consultant directly for the City’s share of the required cost of its local share of the Plan as more fully set forth herein.

F. Whereas, the County and the City have agreed to participate in this grant opportunity as set forth below.

G. Whereas, the County anticipates retaining the services of a consultant to prepare the Plan.

H. Whereas, the City and the County desire to enter into this Agreement to memorialize their understanding relating to the funding of the Plan.

AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Plan. The City has reviewed and approved the Statement of Work with respect to the Plan and agrees that the County may include the Statement of Work in its bid package for the consultant for the Plan.

2. The Consultant Contract. The County shall comply with applicable federal procurement requirements for the Consultant Contract. The City shall be a third-party beneficiary of the Consultant Contract and agrees that it shall be the Consultant's responsibility to carry out and complete the Project work on the Plan in accordance with the Consultant Contract. The County shall administer and manage the Project work.

3. Payment for the City's Portion of the Plan. The City and the County agree that the local cost sharing for the work on the Plan is \$136,250 and that the County's local share match is \$56,250.00 and the City's local share match is \$80,000.00. As a third-party beneficiary of the Consultant Contract, the City agrees that it shall pay Consultant directly and on a timely basis, as billed by the Consultant for the City's local match share.

4. The City's Contact with the Consultant. The County, as fiscal agent of the grant, in coordination with the City, will supervise, direct, or otherwise control the Consultant. The City may meet with the Consultant and communicate its concerns to the Consultant provided that the County Representative or designee is also present at such meetings. The parties acknowledge, however, that all formal direction, supervision and control of the Consultant remains exclusively with the County.

5. Change Orders. With the exception of the City's local match share, the County shall be responsible for making all Consultant Contract payments to the Consultant and for issuing change orders for the Plan. Regardless of the amount by which a change order increases the amount of the City's Share, a Key Notice of all change orders shall be submitted to the City for review, comment and written approval at least ten (10) days prior to the proposed issuance by the County. The County shall have the final authority to make payments and issue change orders, subject to the City's rights of approval set forth herein.

6. Completion of the Plan. The County will notify the City once the Consultant has notified the County that the Plan is complete. The City shall review the Plan with the County Representative and an agent of the Consultant at a time agreed to by the County, City and Consultant. The County and the City will meet with the Consultant to identify in writing any deficiencies in the Plan.

7. Term. This Agreement shall remain in effect until completion of the Consultant Contract services.

8. Authorized Representatives. The County designates _____ as the County Representative under this Agreement. The City designates _____ as the City Representative under this Agreement. Each party shall be notified of any change by the other in its authorized representatives.

9. No Waiver of Immunity. Each party, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations

or any other rights, defenses, immunities, and protections provided by the Colorado Governmental Immunity Act, as amended, or otherwise available to it, its officers and employees. Each party will be responsible for its own negligent or intentional acts or omissions and for those of its employees, officers, agents and volunteers. The parties agree that in the event any claim or suit is brought against either or both parties by any third party as a result of the operation of this Agreement, both parties will cooperate with each other, and with the insuring entities of both parties, in defending such claim or suit.

10. Governing Law and Venue. This Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Each party shall have and may, from time to time, exercise any and all remedies available at law or in equity in order to enforce its rights under this Agreement. Venue for any and all legal actions arising hereunder shall lie in the City Court in and for the County of Jefferson, State of Colorado.

11. No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

12. Officials Not to Benefit. No member of the City or County government, commissioners or individual elected officers shall receive any share or part of this Agreement or any benefit that may arise therefrom.

13. Non-Appropriation. The payments of either party's obligations in fiscal years subsequent to the current year are contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any subsequent year, this Agreement shall terminate. As of the date of execution of this Agreement, it is the intent and expectation of the parties to budget and appropriate the funds required for its full and complete performance.

14. Notices.

(i) "Key Notices" under this Agreement are notices regarding any default, contractual dispute or termination of the Agreement. Key Notices shall be given in writing and shall be deemed received if given by: (A) confirmed electronic transmission (as defined in subsection (ii) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission, (B) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail, or (C) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic transmission with a hard copy of the communication by the means described in subsection 13(i)(B) or 13(i)(C) above. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses:

The City:
City of Lakewood
480 S. Allison Pkwy, Lakewood, CO 80226-3127
Attn: City Transportation Engineer
Tel: 303-987-7981

Email: mikwhi@lakewood.org

with a copy to:

City of Lakewood Attorney Office
480 S. Allison Pkwy, Lakewood, CO 80226-3127
Attn: Gus Schenck
Tel: 303-987-7454
E-mail: GusSch@lakewood.org

The County:

Director of Transportation & Engineering
100 Jefferson County Pkwy., Suite 3500
Golden, CO 80419-3500
Tel: (303) 271-8495
Email: TEDContracts@jeffco.us

with a copy to:

Jefferson County Attorney
100 Jefferson County Parkway, #5500
Golden, Colorado 80419
Tel: (303) 271-8900
E-mail: CAOContracts@jeffco.us

All Key Notices to the County shall include a reference to the Agreement and the date of the Contract.

(ii) Electronic Transmissions. The parties agree that: (A) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (B) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (C) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Contract, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.

15. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

16. Execution by Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures

for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Funding Agreement.

COUNTY OF JEFFERSON
STATE OF COLORADO

By: _____
Joseph M. Kerby, County Manager

APPROVED AS TO FORM:

Deputy County Attorney
Carey Taylor Markel

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing Intergovernmental Funding Agreement was acknowledged before me this _____ day of _____ 2023 by Joseph M. Kerby, County Manager for the County of Jefferson, State of Colorado.

WITNESS my hand and official seal.

Notary Public

ATTEST:

CITY OF LAKEWOOD

By: _____
Jay R. Robb, City Clerk

Kathleen E. Hodgson, City Manager

Date: _____

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

By: _____
Max E. Kirschbaum,
Public Works Director

By: _____
Gus Schenck,
Senior Assistant City Attorney

By: _____
Holly Bjorklund,
Chief Financial Officer

STAFF MEMO

DATE OF MEETING: DECEMBER 11, 2023 / AGENDA ITEM NO. 11

To: Mayor and City Council
From: Kit Newland, Director of Community Resources
Subject: **Dry Gulch at Two Creeks Park IGA with MHFD**

SUMMARY STATEMENT: This Resolution would authorize the City Manager to enter into an intergovernmental agreement (IGA) with the Mile High Flood District (“MHFD”) for design and construction of drainage, channel, and park improvements of Dry Gulch in Two Creeks Park (the “Project”). Funding for this Project is provided by MHFD, the City of Lakewood’s Stormwater Management Utility, and the City of Lakewood Community Resources Department through capital improvement (CIP) funding.

BACKGROUND INFORMATION: Two Creeks Park is located between Wadsworth Boulevard on the west, Vance Street and homes on the east, 10th Avenue on the south and 12th Avenue on the north. Dry Gulch bisects and flows through the park. The Dry Gulch drainage channel originates upstream at roughly West Colfax Avenue and Quail Street and travels eastward through Two Creeks Park until it converges with Lakewood Gulch just upstream of West 12th Avenue and Newton Street.

To meet demand for park space in the Two Creeks neighborhood, the City has been acquiring properties for over twenty (20) years to compile the current 3.7 acre park site. The City collaborated with partners including Jefferson County Open Space, Great Outdoors Colorado, the Colorado Department of Transportation and received donations from adjacent businesses to provide a new park for the Two Creeks neighborhood.

During the public engagement phase of this master plan update, Community Resources and Public Works partnered with MHFD to fund improvements to the highly incised and erosive stretch of Dry Gulch. Funding was approved by MHFD in November 2022. Technical and management representatives from MHFD have been integrated into the Project team. The City is currently in the final design phase of the Project which is nearly complete.

The current master plan confirmed, as did the previous plan in 2013, that interaction with Dry Gulch should be an important feature of the new park. The proposed design includes a low-water trail crossing and playful boulder crossings as main features of the park, along with traditional park improvements like trails, shade, playgrounds, and seating. The stream crossings can only be constructed and used safely following necessary channel improvements. To deliver the channel improvements and park features in the most efficient manner, the City of Lakewood agreed to combine both projects and partner with MHFD. This allows the City and MHFD to engage a single contractor to assist with budget and design. It also allows both parties to streamline workflow and save costs and time by combining two projects into one.

BUDGETARY IMPACTS: Funding for the Project is estimated at two million, six hundred thousand dollars (\$2,600,000). The proposed IGA establishes the City’s contribution to the project at up to two million, two hundred thousand dollars (\$2,200,000) and MHFD’s contribution to the Project at up to four hundred thousand dollars (\$400,000). Funds for the City’s portion of the contribution will come from the City’s Stormwater Management Utility and Community Resources CIP funding (\$200,000 and \$2,000,000, respectively). Use of

the funds will be for design, construction, and completion of the proposed improvements, which will be managed by MHFD in cooperation with City staff from the Public Works and Community Resources Departments.

STAFF RECOMMENDATIONS: Approval of the Resolution.

ALTERNATIVES: City Council could choose not to approve the Resolution resulting in the indefinite postponement of the Project or reduction of scope for channel and park improvements of Two Creeks Park and Dry Gulch.

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council and funding was allocated during the 2022 budget process. Additionally, Community Resources engaged with the Two Creeks community and neighborhood at two public events and two neighborhood meetings of the Two Creeks Neighborhood Organization (TCNO) to allow residents to give input for the design of their new park. Learn more at LakewoodTogether.org/TwoCreeksParkPlan.

NEXT STEPS: The proposed IGA will be executed, and construction activities for the proposed project are expected to commence in early 2024.

ATTACHMENTS: Resolution 2023-62
Dry Gulch at Two Creeks Park IGA with MHFD

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2023-62

A RESOLUTION

APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE MILE HIGH FLOOD DISTRICT FOR DESIGN AND CONSTRUCTION OF DRAINAGE, CHANNEL, AND PARK IMPROVEMENTS FOR DRY GULCH IN TWO CREEKS PARK

WHEREAS, the City of Lakewood (the “City”) enacted floodplain management regulations and regularly reviews areas of the City that may necessitate floodplain improvements;

WHEREAS, the Mile High Flood District (“MHFD”) has expressed its intent to assist the City in the implementation of said regulations and improvements;

WHEREAS, as the result of strategic planning, the City identified an area in Two Creeks Park that necessitates floodplain improvements;

WHEREAS, the City and MHFD desire to enter into an Intergovernmental Agreement (IGA) to fund the design and construction of drainage, channel, and park improvements for Dry Gulch in Two Creeks Park at West 12th Avenue and Wadsworth Boulevard (the “Project”);

WHEREAS, the proposed IGA includes a contribution by the City of up to two million, two hundred thousand dollars (\$2,200,000), and a contribution by MHFD of up to four hundred thousand dollars (\$400,000) to complete the Project; and

WHEREAS, the City’s anticipated contribution was previously approved by City Council in the 2023 budget.

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

SECTION 1. The City Council hereby authorizes a contribution of up to two million, two hundred thousand dollars (\$2,200,000) for final design and construction of drainage, channel, and park improvements for Dry Gulch in Two Creeks Park.

SECTION 2. The contribution will serve a public purpose and is in the best interests of the residents of the City.

SECTION 3. The City’s Chief Financial Officer is hereby authorized and directed to pay amounts not to exceed two million, two hundred thousand dollars (\$2,200,000) for the project upon receipt of appropriate documentation.

SECTION 4. The City Manager or designee is hereby authorized to execute the IGA and any other documents necessary to complete the Project.

SECTION 5. This Resolution shall become effective immediately upon its adoption.

INTRODUCED, READ AND ADOPTED by a vote of __for and __against at a hybrid regular meeting of the City Council on December 11, 2023, at 7 o'clock p.m. at Lakewood City Hall, 480 South Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

AGREEMENT REGARDING
CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
DRY GULCH AT TWO CREEKS PARK
CITY OF LAKEWOOD

Agreement No. 23-06.05
Project No. 109714

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and CITY OF LAKEWOOD (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, the CITY enacted floodplain management regulations and regularly reviews areas of the CITY that may necessitate floodplain improvements; and

WHEREAS, the DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Dry Gulch Major Drainageway Plan" dated 2017 (hereinafter called "PLAN"); and

WHEREAS, as the result of strategic planning and the PLAN, the CITY identified an area in Two Creeks Park that necessitates floodplain improvements; and

WHEREAS, the PARTIES now desire to proceed with design and construction of drainage and flood control improvements and adjacent park-related improvements for Dry Gulch at Two Creeks Park (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 93, Series of 2022) for drainage and flood control facilities in which PROJECT was included in the 2023 calendar year; and

WHEREAS, DISTRICT has heretofore adopted a Special Revenue Fund Budget for calendar year 2023 subsequent to public hearing (Resolution No. 90, Series of 2022) which includes funds for PROJECT; and

WHEREAS, the CITY's contribution was previously budgeted for calendar year 2023 which includes funds from the CITY's Stormwater Management Utility and the Community Resources CIP; and

WHEREAS, the DISTRICT's Board of Directors has authorized DISTRICT financial participation for PROJECT (Resolution No. 51, Series of 2023); and

WHEREAS, the City Council of the CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

PROJECT shall include construction by DISTRICT of the drainage and flood control improvements and adjacent park-related improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Construction of improvements, including construction engineering services;
2. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed two million, six hundred thousand dollars (\$2,600,000) without amendment to this Agreement. PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Construction	\$ 2,340,000
2. Contingency	\$ 260,000
Grand Total	\$ 2,600,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	15.4%	\$400,000
CITY	84.6%	\$2,200,000
TOTAL	100%	\$2,600,000

5. MANAGEMENT OF FINANCES

- A. As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior DISTRICT approval.
- B. Payment of each party's share (CITY - \$2,200,000; DISTRICT - \$400,000) shall be made to DISTRICT subsequent to execution of this Agreement and within thirty (30) days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).
- C. Within one (1) year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at CITY request, CITY share of remaining monies shall be transferred to another special fund held by DISTRICT.

6. FINAL DESIGN

CITY shall contract with a design consultant of its choosing and shall supervise and coordinate the final design for the PROJECT including right-of-way delineation. Payment for final design shall be made by CITY as the work progresses. Funding for the final design is solely the responsibility of CITY and is not included as part of the PROJECT funds included in Section 4 of this Agreement. Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications; and
- D. Preparation of an appropriate construction schedule.

CITY shall provide the final design, which includes items A through D under this heading, and any written work product created by the design consultant to DISTRICT. Should construction engineering services be required, DISTRICT shall contract for such services with the design consultant selected by CITY.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

PARTIES acknowledge that CITY owns the property on which PROJECT is constructed either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for

drainage and flood control purposes. CITY may not dispose of or change the use of the properties to diminish or preclude its use for drainage and flood control purposes without approval of DISTRICT, which shall not be unreasonably withheld.

If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use to diminish or preclude its use for drainage and flood control purposes of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed to diminish or preclude its use for drainage and flood control purposes pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT. However, CITY shall not be responsible for the actions of third parties that would violate the provisions of this Paragraph who may have legal rights in the property as long as CITY has taken reasonable action to stop those actions. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the concurrence of CITY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with concurrence of CITY, shall select and award construction contract(s).
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY upon request.
4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall ensure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis upon request. DISTRICT shall retain an engineer to perform all or a part of these duties

not inclusive of the duties related to preparation of the final design described in Section 6.

5. DISTRICT, with concurrence of CITY, shall contract with and provide the services of the design consultant selected by the City in Section 6 above for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.
 8. DISTRICT, with concurrence of CITY, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of Dry Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of Dry Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.C. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for CITY shall be the City Manager, 480 South Allison Parkway, Lakewood, Colorado 80226.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 West Bayaud Avenue Lakewood, Colorado 80228.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with CITY the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from CITY needed to complete PROJECT in a timely manner. CITY agree to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to CITY.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged 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.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the CITY where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected design consultant. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender,

age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

25. 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, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

27. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of CITY, DISTRICT or any other entity not a party hereto.

28. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT D/B/A
MILE HIGH FLOOD DISTRICT

By _____

Name Laura A. Kroeger

Title Executive Director

Date _____

Checked By

CITY OF LAKEWOOD

Kathleen E. Hodgson, City Manager

ATTEST:

Jay Robb, City Clerk

Attestation Date

Approved as to form:

Gus Schenck, Senior Assistant City Attorney

Recommended and approved as to content:

Kit Newland, Director
Department of Community Resources

Max Kirschbaum, Director
Department of Public Works

Approved as to funding (if \$5,000 or greater):

Holly Björklund, Chief Financial Officer

AGREEMENT REGARDING
CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
DRY GULCH AT TWO CREEKS PARK
CITY OF LAKEWOOD

Agreement No. 23-06.05
Project No. 109714

Exhibit A

