

PLANNING AND DEVELOPMENT MEMORANDUM
#12-6

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William Simmons, City Manager *WAS*
Brook Svoboda, Director of Planning and Development *BS*

DATE: Feb 23rd, 2012

SUBJECT: CR-22, Memorandum of Understanding (MOU) regarding FasTracks North Metro communities' local match

SUMMARY OF ISSUE:

The purpose of this memorandum is to provide background information on the attached Memorandum of Understanding (MOU) between the Regional Transportation District (RTD) and the communities of the North Metro FasTracks line.

BACKGROUND:

The goal of the MOU is to memorialize the mutually agreed upon equitable share(s) of the 2½% local match between the local jurisdictions and RTD for the North Metro Corridor. This MOU will create an "agree to agree" understanding that identifies how each jurisdiction will meet their 2½% match. However, the MOU does not financially obligate the local jurisdictions to their respective amounts. This would be accomplished at the time an IGA is drafted. By establishing the local match commitment for the entire North Metro corridor, through this MOU, will enable the project to petition and compete for federal grant opportunities that the corridor has been unable to competitively compete to date.

Other tenets of the MOU are as follows:

- The MOU is premised on a full build-out scenario of the North Metro Line and the circumstances regarding funding, timing, etc may change.
- Establishes a \$22.725 Million collective "cap" on the required 2½% local match for FasTracks North Metro communities at \$22.725 million (\$909 million total project costs).
 - Northglenn's portion = \$2.52 Million
 - Defines an "includes but is not limited to" list of expenditures that can be counted as part of a local jurisdiction's in-kind local match – breakdown of Northglenn's match is detailed below.
- Provides that each jurisdiction shall negotiate a separate Inter-Governmental Agreement (IGA) with RTD to formalize the details of each jurisdiction's in-kind local match.
- Includes ability for jurisdictions to individually renegotiate their respective IGA's under augmented build-out scenarios, recognizing that the 2½% match will never exceed the negotiated amount established in the MOU.
- The MOU establishes negotiated shares of the distribution of DRCOG (TIP Funding) monies set aside for each of the North Metro communities for projects, related to FasTracks, in their local area.

Establishment of Local Match:

As part of the creation of the MOU, staff has recently undertaken negotiations with the other jurisdictions along the North Metro FasTracks line to establish equitable shares of the overall 2.5% required match by local governments. Current negotiations have yielded an anticipated in-kind contribution for Northglenn at **\$2.52M**, estimated from the following sources:

Staff time - (\$100K) - This reflects an estimate of staff time allocated for various meetings and reviews regarding the project from kickoff in early 2006 through the present. Additionally, the estimate includes staff time for future meetings and reviews that may occur through project completion.

Anticipated Use Tax- (\$750K) - This estimate is based on RTD's estimate of the "hard cost" of materials associated with the construction of the NM line within the boundaries of each jurisdiction. Northglenn's estimated \$27M dollar cost would yield approximately \$750K in Use Tax that we may waive as an in-kind contribution. A portion of our Use Tax is dedicated to specific funds within our capital programs and cannot be waived or rebated.

Capital Projects - (~\$1.67M residual) - Two main components will make up the City's contribution to its Capital Projects portion of the local match. It is anticipated that significant stormwater improvements will be required to address drainage issues in proximity to the 112th Station Area and Grange Hall Creek. A deficiency in addressing the drainage issue was documented in our comments regarding the Final Environmental Impact Statement (FEIS). As the project moves forward staff anticipates further negotiations and mitigation to address drainage issues that fall outside the scope of the FEIS. Additionally, numerous roadway and intersection improvements (112th Ave) are deemed necessary by the City that were not fully addressed by the FEIS. These will contribute to the Capital Projects cost and subsequently our portion of the local match.

If the City exceeds their estimate of Capital Projects applied to the local match or is able to further leverage funds from other sources to construct the Capital Projects, the City could elect to capture the Use Tax and have a larger portion of Capital Projects count towards our share of the local match.

DRCOG Monies

There is a \$7.4M of DRCOG monies that may be allocated to the North Metro FasTracks Line. DRCOG has indicated that the monies can be used to pay for improvements identified under the local jurisdictions match. This would provide the City of Northglenn with an approximate \$822K towards capital projects as defined above, and will count towards the overall \$2.52M local match.

BUDGET/TIME IMPLICATIONS:

Capital projects used for local match credit will largely come from current or future programmed Capital Improvement Projects (CIP). City staff will aim to leverage as much funding from third party grantees as possible to lessen CIP expenditures, and at the same time, optimizing the capture of Use Tax. Adoption of the MOU in the near term will enhance the corridor's ability to compete for federal funding for the project and speed the allocation of the \$7.4M DRCOG funds to local governments.

RECOMMENDATION:

Staff recommends for Council's consideration: a Motion to approve of CR-22, a resolution approving the Memorandum of Understanding between the City of Northglenn and the Regional transportation District, the Cities of Commerce City, Thornton, the City and County of Denver, and Adams County, regarding the local agency contribution for Fastracks.

STAFF REFERENCE:

If Council members have any questions they may contact Brook Svoboda, Director of Planning and Development at 303-450-8937 or by e-mail at bsvoboda@northglenn.org.

ATTACHMENTS

- Memorandum of Understanding

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-22
Series of 2012

Series of 2012

A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NORTHGLENN AND THE REGIONAL TRANSPORTATION DISTRICT, THE CITIES OF COMMERCE CITY, THORNTON, THE CITY AND COUNTY OF DENVER, AND ADAMS COUNTY REGARDING THE LOCAL AGENCY CONTRIBUTION FOR FASTRACKS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Memorandum of Understanding between the City of Northglenn and the Regional Transportation District, the Cities of Commerce City, Thornton, the City and County of Denver, and Adams County, attached hereto as **Exhibit 1**, regarding local agency contribution for FasTracks is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**NORTH METRO CORRIDOR
MEMORANDUM OF UNDERSTANDING
AMONG THE REGIONAL TRANSPORTATION DISTRICT, THE CITIES OF COMMERCE CITY, NORTHGLENN,
THORNTON, THE CITY AND COUNTY OF DENVER, AND ADAMS COUNTY REGARDING THE LOCAL
AGENCY CONTRIBUTION FOR FASTRACKS.**

THIS NORTH METRO CORRIDOR MEMORANDUM OF UNDERSTANDING REGARDING THE LOCAL AGENCY CONTRIBUTION ("MOU") is made and entered into this ____ day of _____, 2012 ("Effective Date") by and among the REGIONAL TRANSPORTATION DISTRICT ("RTD"), a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. 32-9-101, et. seq.; the CITIES OF COMMERCE CITY, NORTHGLENN, AND THORNTON ("Cities"), home rule municipal corporations of the State of Colorado organized pursuant to Article XX of the Colorado Constitution; the CITY AND COUNTY OF DENVER ("Denver"), a home rule municipal corporation of the State of Colorado organized pursuant to Article XX of the Colorado Constitution; and ADAMS COUNTY ("Adams County"), a political subdivision of the State of Colorado, hereinafter referred to collectively as "Local Jurisdictions"; with all parties to this agreement including RTD hereinafter referred to collectively as the "Parties".

RECITALS:

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

WHEREAS, RTD's FasTracks transit expansion plan approved by the voters of the District on November 2, 2004 requires that local governments to be served by FasTracks to contribute matching funds to the construction of the FasTracks projects ("Local Agency Contribution"); and

WHEREAS, the North Metro Corridor is identified in RTD's FasTracks plan approved by the voters of the District on November 2, 2004, and is approved by the Denver Regional Council of Governments pursuant to the requirements of C.R.S. 32-9-107.7; and

WHEREAS, RTD has identified funds to complete the first segment of the North Metro Corridor to the Denver National Western Stock Show Station; and

WHEREAS, if RTD takes to the ballot and if voters approve an additional sales and use tax effective January 1, 2013, a source of funding is anticipated to be identified to complete the North Metro Corridor from the Denver National Western Stock Show Station to the end-of-line station at 162nd Street and Colorado Boulevard as early as 2020; and

WHEREAS, the Parties desire to set forth their understanding with regard to the Local Agency Contribution among the jurisdictions in the North Metro Corridor, subject to subsequent individual Intergovernmental Agreements between RTD and the individual Local Jurisdictions in the future as funding becomes available and final design plans are completed.

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

1. GENERAL PROVISIONS:

a. The recitals set forth above are incorporated herein by reference.

b. The purposes of this MOU are to set forth the understandings of the Parties as regards the allocation of the local agency contribution among the Local Jurisdictions in the North Metro Corridor and allocation of the funds set aside by the Denver Regional Council of Governments to the North Metro Corridor among the Local Jurisdictions.

c. This MOU does not commit any present or future funding or specific commitments by any Party, as such shall be further set forth in individual Local Match Intergovernmental Agreements between each of the Local Jurisdictions and RTD ("Local Match IGA's").

2. LOCAL AGENCY CONTRIBUTION:

a. The Local Jurisdictions agree to contribute their proportionate share of the Local Agency Contribution towards North Metro Corridor project costs. To arrive at a fair and equitable determination of such proportionate share, the Parties agree that the cost of the North Metro Corridor, for the purpose of establishing the Local Agency Contribution, shall be based on actual cost but shall not exceed \$909 million in Year of Expenditure dollars¹. The total Local Agency Contribution to be shared by and among the cities of Commerce City, Northglenn, Thornton, the City and County

¹ Source: FasTracks Capital Cost Estimates by Corridor, 2010 Annual Program Evaluation dated January 5, 2010 prepared by RTD. Year of Expenditure refers to the year in which the expenditure occurs.

of Denver, and Adams County is 2.5% of the actual cost of the Project, but shall not exceed \$22.725 million. The Parties further agree that the \$22.725 million maximum Local Agency Contribution for the North Metro Corridor shall be allocated among the Local Jurisdictions in an amount not to exceed the following stated amounts: City of Commerce City \$4,700,000; City of Northglenn \$2,525,000; City of Thornton \$7,500,000; City and County of Denver \$5,000,000; and Adams County \$3,000,000.

b. Each of the Local Jurisdictions' obligations towards their respective Local Agency Contribution shall be set forth in a separate Local Match IGA with RTD as funding for the entire North Metro Corridor or sections of the North Metro Corridor becomes available and as final design is completed such that each Party's obligations may be defined.

c. The Parties agree that each Jurisdictions' Local Match IGA will specify how its Local Agency Contribution is met, which may include, but not be limited to, the following in-kind contributions: 1) customary fees for plan review, permits, inspections and approvals required by codes, ordinances, regulations, or resolutions of the Local Jurisdiction; 2) Local Jurisdiction staff time required to perform necessary activities associated with environmental clearances, planning, design, construction and inspection of the project; 3) utility relocation credits if relocation of public utilities is necessitated by construction of the North Metro Corridor; 4) the value of real property interests owned or controlled by the Parties that are identified by RTD and the Local Jurisdiction as required for the North Metro Corridor project and provided to RTD as part of the project; 5) the value of traffic signals and railroad crossing signal components installed or modified by the Local Jurisdiction and required as part of the project; 6) other improvements as may be agreed to by the Parties in the Local Match IGA; 7) use taxes that are legally required to be paid by RTD/contractors; and 8) customary fees including storm water utility fees and water tap fees.

d. The Parties agree that because the Local Agency Contribution allocation among the Parties was based on the assumption that RTD would build out the North Metro Corridor in its entirety, in the event RTD builds and extends the North Metro Corridor in segments and the construction of such segments creates an interim "end-of-line" station within any of the individual Local Jurisdictions, that Local Jurisdiction and RTD may renegotiate the amount of the Local Agency Contribution within the Local Jurisdiction's individual Local Match IGA with RTD. However, the Parties agree the Local Jurisdictions' Local Agency Contributions will be capped at the amounts identified in Section 2.a. above.

3. ALLOCATION OF DENVER REGIONAL COUNCIL OF GOVERNMENTS 'SECOND COMMITMENT POOL' FOR THE NORTH METRO CORRIDOR OF \$7,451,000:

a. The Parties agree that the \$7,451,000 currently allocated to the North Metro Corridor by the Denver Regional Council of Governments (DRCOG) in 2012-2017 Transportation Improvement Program (TIP Project #2012-1010) shall be allocated among the Local Jurisdictions consistently with each Local Jurisdiction's percentage of the Local Agency Contribution, i.e., as follows: City of Commerce City \$1,542,000; City of Northglenn \$827,000; City of Thornton \$2,459,000; City and County of Denver \$1,639,000; and Adams County \$984,000.

b. The Parties agree that to the extent these funds are used by a Local Jurisdiction to construct improvements required for the North Metro Corridor project, the Local Jurisdiction's match toward the DRCOG funds, and other amounts as further provided in an IGA, will be considered as part of such Local Jurisdiction's Local Agency Contribution.

c. The Parties agree to develop a specific plan which sets forth specific projects identified in the North Metro Corridor project, including associated costs and schedule; to prepare and submit one or more TIP Amendments to DRCOG to transfer funds from the DRCOG Unallocated Second Commitment Pool for FasTracks corridors to these individual projects; and to support these amendments as they move through the process at DRCOG.

d. The Parties agree that the project funding requests to DRCOG shall give priority to the City and County of Denver project to provide funding to coincide with the opening of Phase One of the North Metro Corridor (from Denver Union Station to the Stock Show Station).

e. The Parties recognize that the Commitment Pool amounts set aside by DRCOG for FasTracks assumes that the federal government will fully fund such amounts, and that the amount of funds that are available each year through FY 2018 may therefore fluctuate in accordance with federal funding availability. The Parties agree to cooperate and to work with DRCOG in such event.

4. TERM OF AGREEMENT: The term of this MOU shall begin upon the date of execution and extend until December 31, 2042 or upon the commencement of revenue service (first paying passenger) of the entire North Metro Corridor, whichever occurs earlier.

5. TERMINATION OF AGREEMENT: At such time as each of the Cities, Denver, or Adams County executes a Local Match IGA with RTD pertaining to its Local Agency Contribution for the North Metro Corridor, that Local Match IGA rather than this MOU shall operate to define the amounts and

eligible in-kind sources for such Local Agency Contribution. This MOU shall otherwise be terminated prior to its term as to any or all of the Parties, upon mutual written agreement of all current Parties to the MOU.

6. **NOTICES:** Any notices required by this MOU shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, to the Parties at the following addresses:

- Denver:** City and County of Denver
Manager of Public Works
201 W. Colfax Avenue, Dept. 608
Denver, Colorado 80202
- Commerce City:** City of Commerce City
City Managers Office
7887 E. 60th Avenue
Commerce City, Colorado 80022
- Northglenn:** City of Northglenn
City Manager's Office
11701 Community Center Drive
Northglenn, Colorado 80233
- Thornton:** City of Thornton
City Manager's Office
9500 Civic Center Drive
Thornton, Colorado 80229
- Adams County:** Adams County
Board of County Commissioners
4430 South Adams County Parkway
Brighton, Colorado 80601
- RTD:** North Metro Corridor Project Manager
Regional Transportation District
1560 Broadway, Ste. 650
Denver, Colorado 80202

7. APPROPRIATIONS: The Parties acknowledge that this MOU does not appropriate any monies, and that the Parties do not by this MOU irrevocably pledge present cash reserves for payments in future fiscal years, and do not intend to create a multiple fiscal year direct or indirect debt or financial obligation of the Parties.

8. MORAL COMMITMENT: This MOU is intended solely as a memorandum outlining the understandings of the Parties regarding the Local Jurisdictions' respective shares of the North Metro Corridor Local Agency Contribution and DRCOG Commitment Pool amounts, the types of in-kind contributions that may be eligible to satisfy Local Agency Contributions, and RTD's commitment to honor these provisions in their individual Local Match IGAs.

9. EXECUTION OF AGREEMENT: This MOU shall not take effect until approved by all the Parties and signed by appropriate officials.

10. COUNTERPARTS: This MOU shall be executed in counterparts each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this MOU to be duly executed and delivered as of the date first above written.

DATED at Northglenn, Colorado, this ____ day of _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney