

**Intergovernmental Agreement
between
The Regional Transportation District
and
The City and County of Denver
for
The 16th Street Mall Transit Lane Paver Maintenance**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made effective as of January 1, 2013 (“Effective Date”) by and between the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202, a political subdivision of the State of Colorado, (“RTD” or the “District”) and the CITY and COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado (“CCD”). RTD and CCD may hereinafter be referred to collectively as “Parties” or individually as “Party.”

WHEREAS:

- A. RTD is authorized under C.R.S. §32-9-101, *et seq.*, to develop, maintain and operate a mass transportation system for the benefit of the inhabitants of the District.
- B. Pursuant to C.R.S. §32-9-119(q), RTD is authorized to enter into agreements with the federal government and state governments, or any political subdivision thereof.
- C. Pursuant to the Colorado Constitution, Article XIV, § 18(2)(a), and C.R.S. §29-1-203, *et seq.*, the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for sharing of costs.
- D. CCD and RTD entered into the “Master Agreement Between The Regional Transportation District and the City and County of Denver for the Mall Project” dated February 2, 1980, as amended (hereinafter, “Mall Master Agreement”) for the construction and maintenance of the 16th Street pedestrian and transit mall for a period of 30 years from the date of commencement of construction wherein RTD agreed to construct the mall project and CCD agreed to perform maintenance thereon for the term of the Mall Master Agreement.
- E. In 1982, RTD constructed the original portion of the 16th Street pedestrian and transit mall between Broadway and Market Street in Downtown Denver (hereinafter, “16th Street Mall” or “Mall”) utilizing granite pavers.

- F. CCD and RTD amended the Mall Master Agreement on August 10, 1987, wherein RTD agreed to accept responsibility for repair and maintenance of the transit path of the 16th Street Mall as a result of a settlement of *RTD, et al. v. Weaver, et al.*, Civil Action No. 83-CU-8819, involving the design and construction of the 16th Street Mall.
- G. The Parties acknowledge that the current 16th Street pedestrian and transit mall has been extended beyond the original granite paver segment between Broadway and Market, and that the Mall transit vehicles now operate between Civic Center Station and Denver Union Station on 16th Street City right-of-way, as depicted in **Exhibit A**.
- H. As a general rule, to the extent that any portion of the 16th Street Mall is a CCD street or CCD public right-of-way, CCD is responsible for maintenance from curb line to curb line as with any other street or right-of-way as required in Denver Revised Municipal Code (DRMC) Chapter 49. In addition, adjacent property owners, occupants, or lessees of any real property abutting the right-of-way, are responsible for the continuing care, maintenance, repair and replacement of all improvements installed in any right-of-way area between their property line and the curb line adjoining their property, as specifically set forth in DRMC [49-551.1](#).
- I. This IGA only applies to the 16th Street Mall granite paver portion between Broadway and Market as currently constructed.
- J. The 16th Street Mall is located in the CCD and benefits the CCD and RTD by providing a pedestrian amenity and a transit facility for those persons and businesses in the Downtown Denver area.
- K. The 16th Street Mall reached 30 years of age since its opening in October, 1982 in October, 2012. Continued maintenance of the 16th Street Mall is required for the safety and operation of RTD's Mall shuttle buses, for the pedestrians and businesses with access to the Mall, and for the potential viability of the businesses and residents residing on or adjacent to the Mall.
- L. The terms of the Mall Master Agreement no longer reflect the current needs of the Mall maintenance and the desires of the Parties to fulfill those requirements.

- M. A new Mall maintenance agreement is required to define Mall granite paver transit lane maintenance responsibilities for the 16th Street Mall and sources of funding to support those maintenance activities from January 1, 2013, going forward.
- N. RTD is willing to continue to perform routine repairs and maintenance of the granite pavers on the transit lanes of the Mall from Market Street to Broadway and CCD wishes to contribute funding to support such efforts by RTD.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RTD shall be responsible for the routine repair and maintenance of the granite pavers in the Mall transit lanes for the 16th Street Mall between Market Street and Broadway (Blocks 1 – 13 as shown on **Exhibit A**), as well as for the adjacent granite curb heads as depicted in **Exhibit B**. Such routine repair and maintenance shall be limited to inspection of the pavers in the transit lanes, removal of damaged or loose pavers therein at the discretion of RTD, repair and reconstruction of the paver sub-base under removed pavers, resetting of rehabilitated or replacement pavers, repointing and grouting of areas around replaced pavers and related tasks immediately incidental thereto and the similar inspection, repair and maintenance of the granite curb heads adjacent to the transit lanes (hereinafter, “Paver Maintenance” or the “Project”). The Parties expressly acknowledge and agree that Paver Maintenance **does not** include any other routine care or maintenance of the transit path such as cleaning, snow or ice removal, utility access and repair, or any other custodial or operational maintenance required for the Mall nor does it apply to any future improvements or additional elements installed in the public right-of-way, including the addition any of pavers outside of the transit lanes between Market Street and Broadway.
2. The Parties agree that this IGA shall supersede any previous agreements entered into by the Parties with regard to Paver Maintenance, and that the Mall Master Agreement and any amendments thereto is hereby terminated. The Parties recognize that there are numerous agreements entered into between them on a variety of topics. This IGA shall not affect any of those agreements related to topics other than Paver Maintenance.

3. As set forth in DRMC Chapter 49, CCD, or adjacent property owners, occupants, lessees, or their agents, shall remain responsible for all other operations, care, snow removal, sweeping, maintenance, security and repair of the transit lanes and the remainder of the 16th Street Mall.
4. The Parties acknowledge and agree that this IGA does not apply to construction work included in the scope of the “Bus & Bus Facilities Application – 16th Street Mall Reconstruction Project” and that any funds owed to RTD under CCD’s matching funds IGA for the work covered by that reconstruction grant are separate and distinct from the work anticipated by the Parties under this maintenance IGA. However, after such reconstruction project is complete, Paver Maintenance shall apply to such work and the affected sections of the Mall.
5. The Parties acknowledge and agree that Paver Maintenance includes damage to the Mall transit lanes caused by normal wear and tear, including wear and tear caused by RTD’s normal bus operations, but damage cause by parties other than RTD or its contractors, including damage caused by acts of God, is expressly not considered Paver Maintenance under this IGA. However, costs to repair damage caused by RTD’s negligence shall be borne by RTD.
6. CCD agrees to reimburse RTD for thirty percent (30%) of RTD’s costs and expenses directly related to the Paver Maintenance, up to three hundred thousand dollars (\$300,000.00) annually (“CCD Maintenance Contribution”).
7. RTD shall submit eligible invoices to CCD’s Project Manager, to be named by the City’s Manager of Public Works, for review and CCD’s approval of RTD’s request for reimbursement for permissible expenses for Paver Maintenance work performed on the Project subsequent to January 1, 2013.
8. Permissible expenses may include RTD’s employee costs for designers, reviewers, and inspectors who perform work on the Project. In such instances, the employee’s costs may include RTD’s burdened staff time for an allowable employee. The Parties agree that burdened staff time shall be no more than 32% of an allowable employee’s base salary. RTD shall not be reimbursed for general operational costs, advertising, promotion, administration, office expenses, time for senior or project managers or any item other than permissible direct costs for the design, oversight and performance of Paver Maintenance. All of the allowable employee costs defined in this section, together with RTD’s outside contractors including designers, suppliers, constructors, materials and all other eligible

expenses and costs related to the Project, may be referred to as “Project Costs” herein. CCD agrees to the waiver of permit fees associated with permits required for the design, construction and performance of Paver Maintenance and such fees shall not be considered a Project Cost eligible for reimbursement.

9. RTD shall submit RTD’s internally approved and fully documented invoices for Project Costs to CCD no more frequently than monthly. CCD shall complete its review and approval of RTD’s submitted invoices within fifteen (15) business days of receipt of each invoice. In the event CCD disputes certain amounts on an invoice, it shall pay any undisputed amounts, and shall timely notify RTD of such dispute and work with RTD to resolve such dispute. RTD shall provide any reasonably requested backup documentation to the CCD.
10. CCD shall make payments to RTD for approved invoices for Project Costs for work performed within the approved Project scope within 45 days after CCD’s receipt of the RTD invoice. Such reimbursements shall not exceed \$300,000.00 (Three Hundred Thousand Dollars) per calendar year.
11. RTD shall require its contractors to add CCD as a named insured to any applicable insurance policies covering Paver Maintenance work performed under this IGA on behalf of RTD.
12. RTD shall have the right to control the performance of the Paver Maintenance in its sole discretion.
13. CCD agrees to use reasonable efforts to coordinate and assist RTD and its contractors with the performance of Paver Maintenance, including the timely issuance and inspection of permits, traffic control, and other CCD responsibilities.
14. **APPROVAL BY CITY COUNCIL AND THE RTD BOARD. This IGA is expressly subject to, and shall not be or become effective or binding on CCD or RTD until approved by the Denver City Council (“City Council”) and the RTD General Manager acting under delegation of authority from the RTD Board of Directors (“RTD Board”), respectively.**
15. **APPROPRIATION BY CITY COUNCIL AND THE RTD BOARD. Implementation of this IGA implies future financial commitments by both Parties subject to approval by the RTD Board and the City Council and subject to each entity’s legally required budgeting, authorization, and appropriation process. Any and all obligations of CCD and RTD under and pursuant to this IGA which require funding are subject to prior annual appropriations of funds expressly made by the City Council and the RTD Board, respectively, for the**

purposes of this IGA. No penalties shall inure to either party for failing to budget or appropriate funding. Nothing herein shall be construed by either Party as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution.

16. MISCELLANEOUS

16.1. Term and Termination. This IGA shall commence on January 1, 2013 and shall continue for a period of ten (10) years therefrom, expiring December 31, 2022, unless otherwise terminated as set forth herein. All portions of this IGA that by their terms require extension beyond the contract period, including those for review of financial documentation, shall be construed to extend until their purposes are fulfilled. Either Party may terminate the IGA at any time on ninety (90) days' prior written Notice for material breach or default of this IGA. In the event RTD ceases to operate its transit activities on the Mall, this IGA shall automatically terminate. If either Party does not receive annual appropriation for funding sufficient to fully perform its obligations hereunder, the Parties agree to negotiate in good faith for a period of six (6) months to determine which Project activities will be completed with the reduced funding. If the Parties are unable to reach a mutually agreeable resolution during that time, the Parties agree to the following:

- a. If CCD does not request or receive sufficient annual appropriation from the City Council to fund its obligations under this IGA, RTD reserves the right to: (i) reduce the scope of its Paver Maintenance obligations under this IGA during the year or years of the funding deficiency, or (ii) terminate this IGA.
- b. If RTD does not request or receive sufficient annual appropriation from the RTD Board to fund its obligations under this IGA, CCD reserves the right to: (i) terminate this IGA.

16.2. Disputes. Disputes shall be initially resolved between the Project managers. If the respective Project managers are unable to resolve the dispute, they shall document the basis for dispute, either independently or together, and forward such information to senior management in accordance with the following escalation process: (i) RTD Chief Engineer and CCD City Engineer; (ii) RTD Assistant General Manager, Capital Programs and CCD Manager of Public Works; and (iii) RTD General Manager and CCD Mayor's Chief Projects Officer.

16.3. Liability. As between the Parties, and without either CCD or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, Sections 24-

10-101 to 120, C.R.S., each Party hereto shall be responsible for its own negligence and that of its agents and employees in the performance of this IGA. If either Party is given notice of claim or suit against or involving the other arising from the implementation of this IGA or the Paver Maintenance, it agrees to give the other Party prompt written notice of such claim or suit.

16.4. Amendments. No amendment to this IGA shall be made or deemed to have been made unless in writing executed and delivered by the Party to be bound thereby.

16.5. No Effect on RTD Service. Nothing in this Agreement shall be construed to limit RTD's right to establish routes, frequencies or services or perform any functions authorized by C.R.S. § 32-9-101 *et seq.*

16.6. Assignment. The Parties agree that they will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the other Party.

16.7. No Third-Party Beneficiary. The Parties expressly agree that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in the IGA shall give or allow any such claim or right of action by any other or third person under this IGA. The Parties expressly intend that any person other than the Parties to this IGA shall be deemed to be an incidental beneficiary only.

16.8. Independent Contractors. It is expressly understood and agreed that RTD and CCD do not intend to act for or in the place of the other, and do intend to be and shall each be an independent contractor.

16.9. Authority. The Parties represent that each has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.

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

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

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

16.13. Conflict of Interest. No officer employee or agent of CCD or RTD nor any member of the RTD Board or City Council, during his or her tenure, or for one (1) year thereafter, shall have any personal pecuniary or property interest, direct or indirect, in this IGA or the proceeds hereof. RTD and CCD each represent that to the best of its information and belief no officer or employee of RTD or CCD nor any member of its Board or City Council, is either directly or indirectly a party to or in any manner interested in this IGA except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee during his or her tenure, or for one (1) year thereafter.

16.14. Compliance with Laws. The Parties shall each be responsible for complying with all applicable laws, regulations and ordinances in their construction of any improvements or provision of any services or work performed in fulfillment of the Parties' obligations hereunder. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

16.15. Notices. Except as may be specifically required herein, all communications required by this IGA shall be made in writing, via US first Class Post, e-mail or facsimile transmittal to the following individuals (or their delegates), who shall be the project liaisons for their respective organizations:

To the City: Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

Manager of Public Works
201 W. Colfax Avenue, Dept. 608

Denver, Colorado 80202

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

To RTD: Philip A. Washington
General Manager
Regional Transportation District
1600 Blake Street
Denver, CO 80202

Henry J. Stoppolecamp, P. E.
Senior Manager, Engineering/Chief Engineer
Regional Transportation District
1560 Broadway, Suite 700
Denver, CO 80202

Marla Lien
General Counsel
Regional Transportation District
1600 Blake Street
Denver, CO 80202

Project liaisons may be changed or additions made at the discretion of each Party by written notice to the other Party.

16.16. Electronic Signatures and Electronic Records. The IGA, and any other documents requiring a signature hereunder, may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the IGA solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the IGA in the form of an electronic record, or a paper copy of the IGA on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201414871-00

Contractor Name: RTD

By: RTD will sign last

Name: _____
(please print)

Title: _____
(please print)

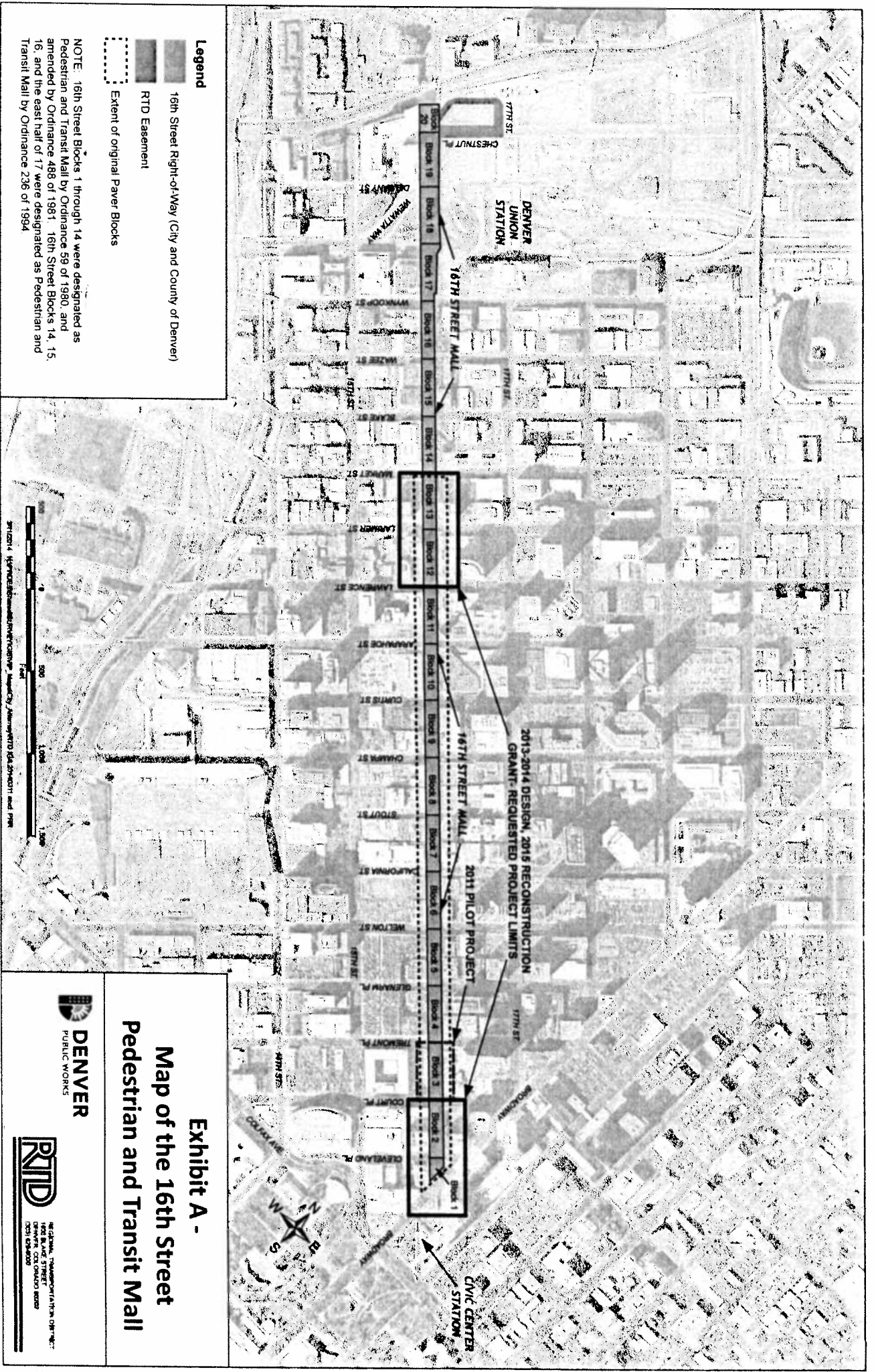
ATTEST: [if required]

By: _____

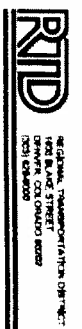
Name: _____
(please print)

Title: _____
(please print)





**Exhibit A -
Map of the 16th Street
Pedestrian and Transit Mall**



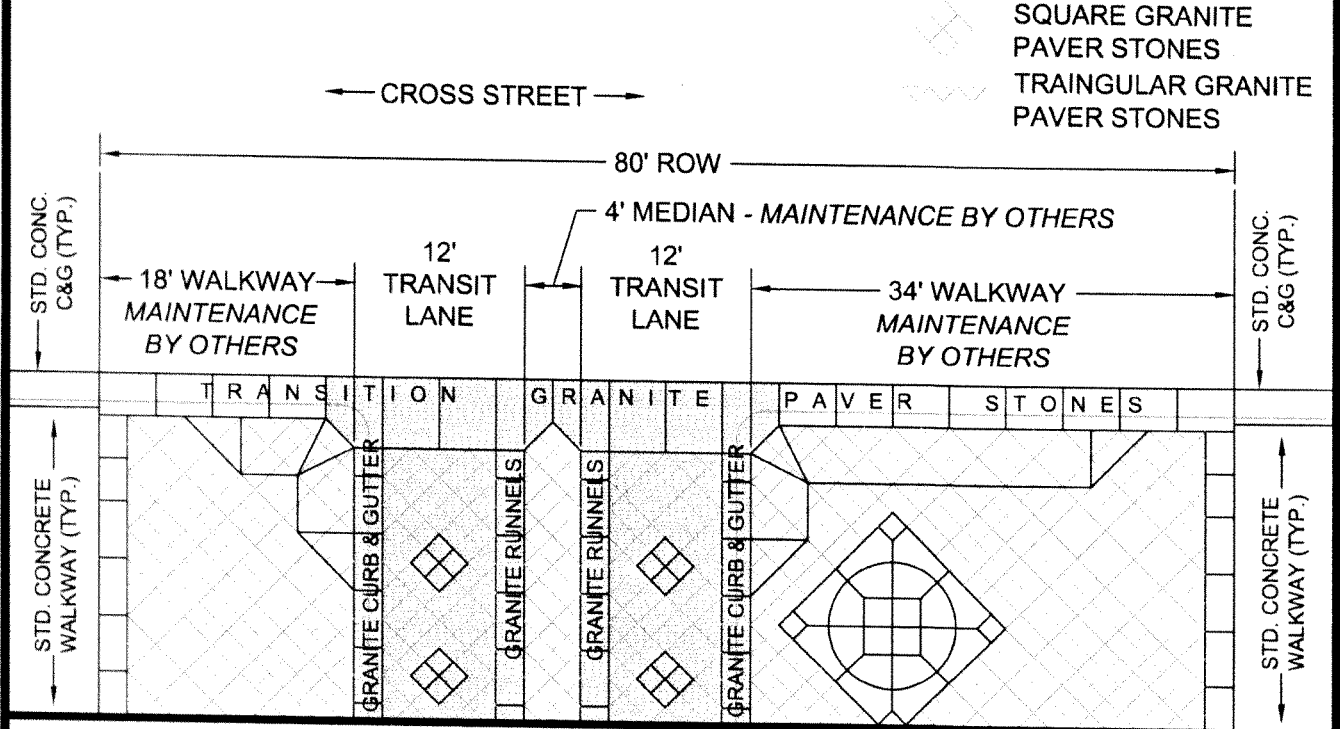
Legend

- 16th Street Right-of-Way (City and County of Denver)
- RTD Easement
- Extent of original Paver Blocks

NOTE: 16th Street Blocks 1 through 14 were designated as Pedestrian and Transit Mall by Ordinance 59 of 1980, and amended by Ordinance 488 of 1981. 16th Street Blocks 14, 15, 16, and the east half of 17 were designated as Pedestrian and Transit Mall by Ordinance 236 of 1994.

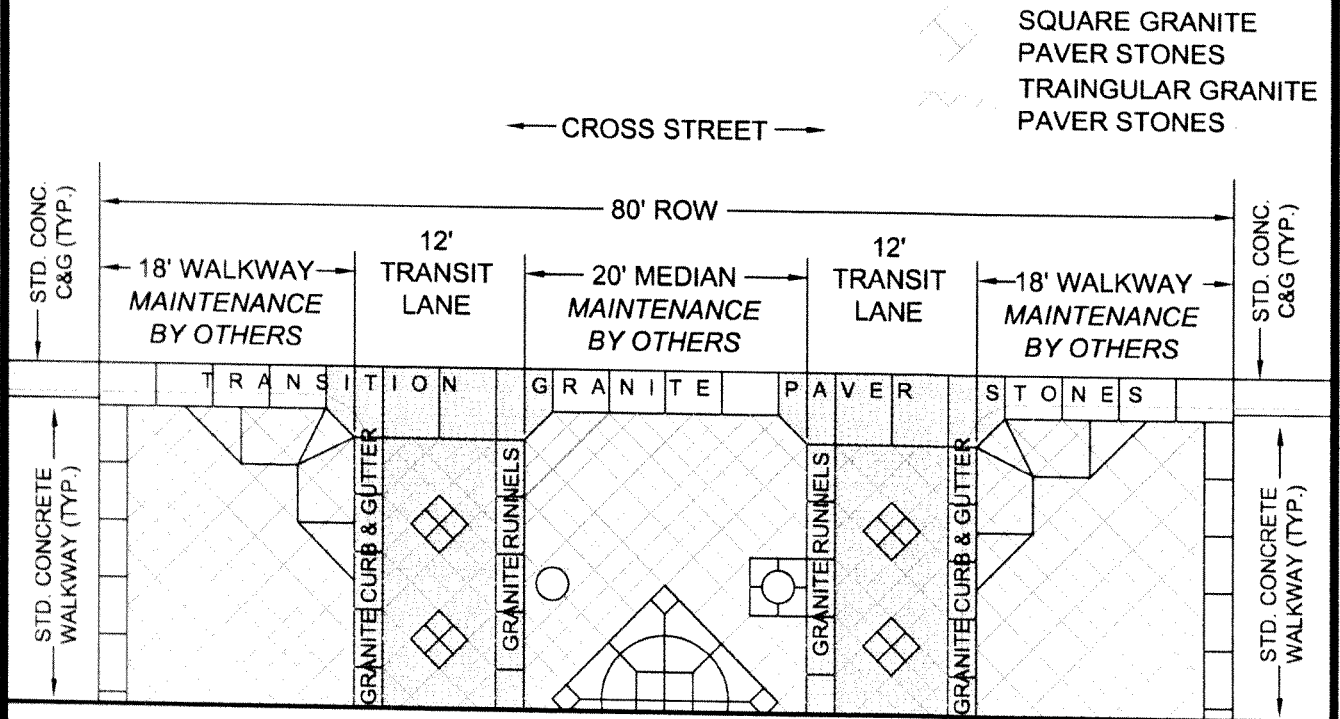
ASYMMETRIC BLOCK

N.T.S.



SYMMETRIC BLOCK

N.T.S.



RTD

16TH ST. MALL PAVER MAINT.

TYPICAL PLAN VIEWS PER DESIGN PLANS

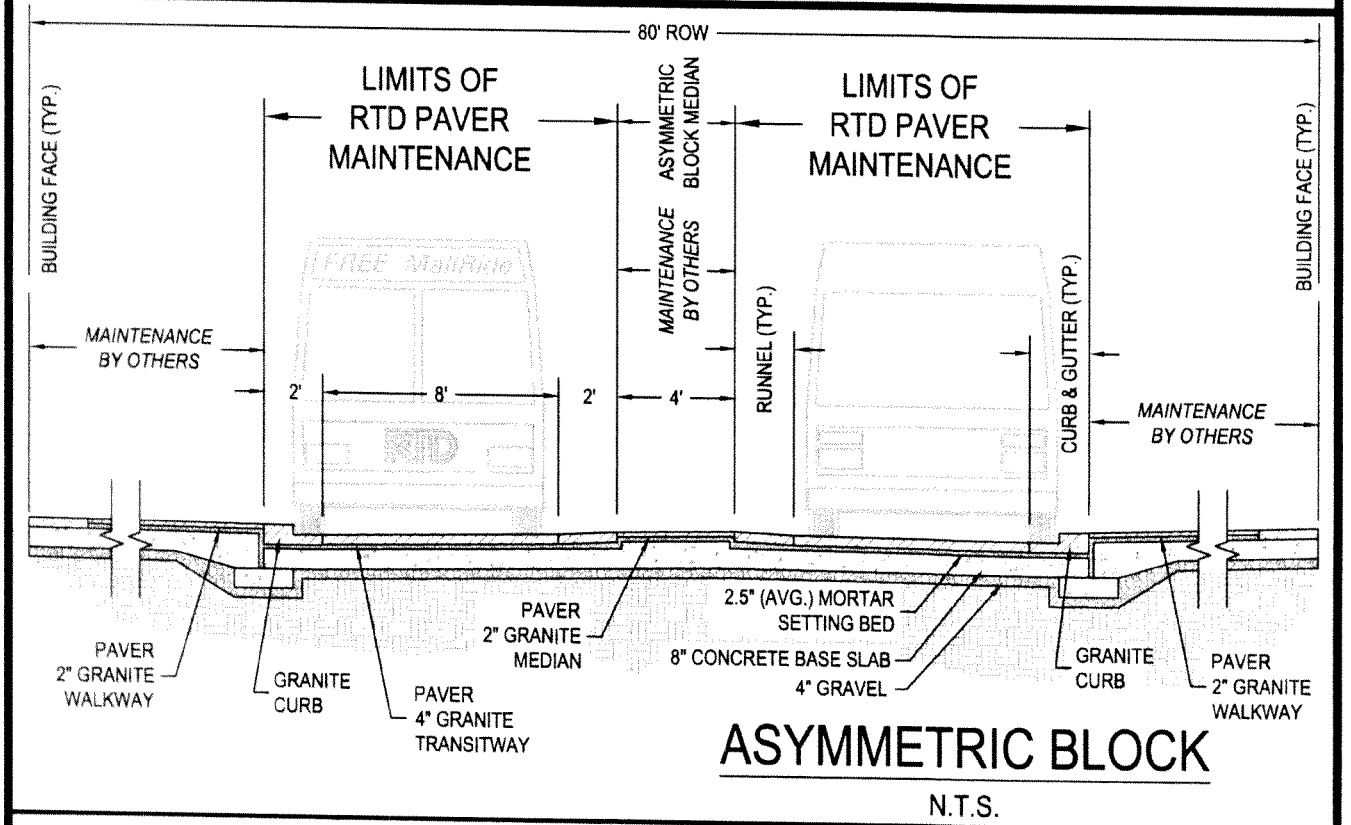
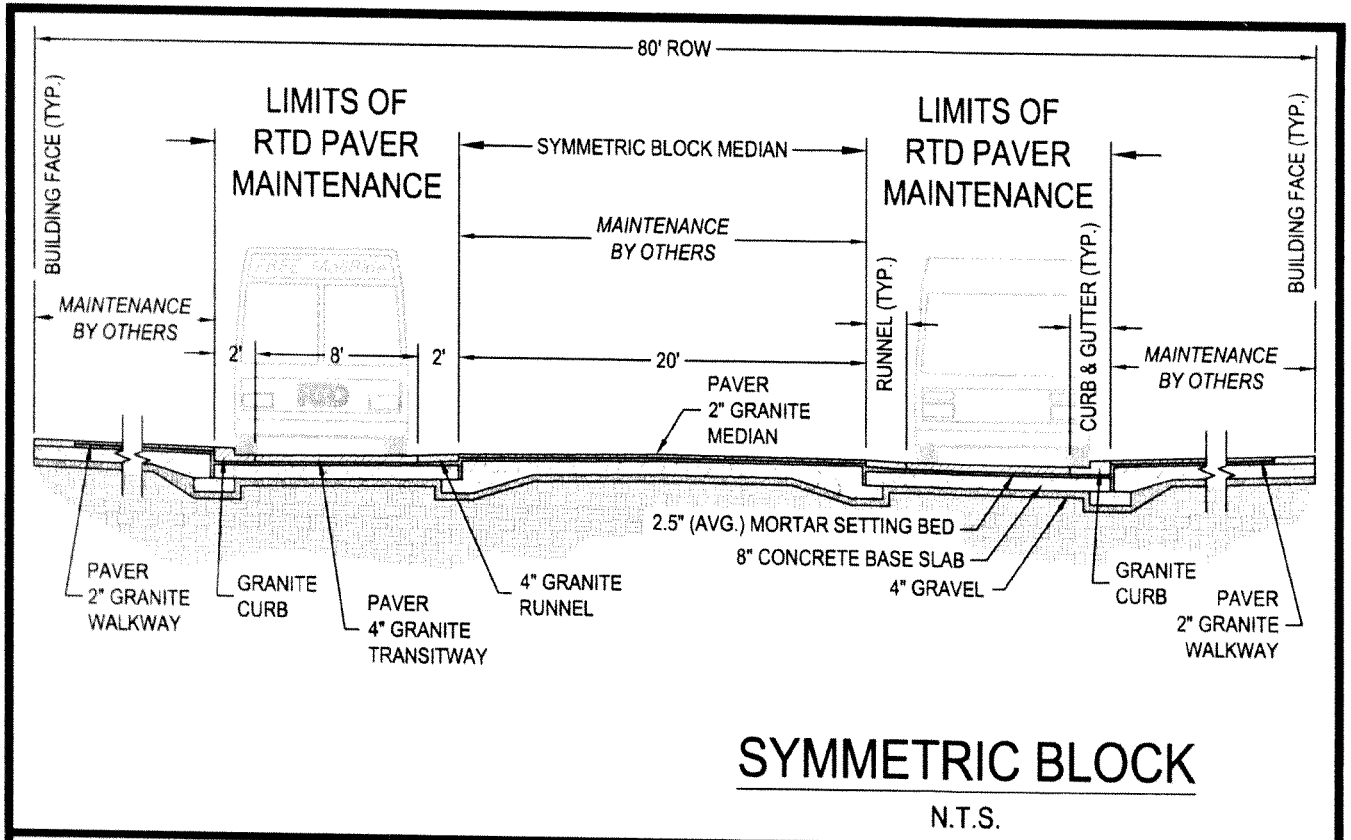
EXHIBIT B (1 OF 2)

01-24-14

FIGURE: B-1

HOR. SCALE: = NTS

K:\Engineering Projects\RTD (GAs)\16th St Mall\16th St Mall - Exhibit B2.dwg, 1/24/2014 3:13:08 PM, R19495, Bluebeam PDF



16TH ST. MALL PAVER MAINT.
TYPICAL CROSS-SECTIONS PER DESIGN PLANS

EXHIBIT B (2 OF 2)

01-24-14

FIGURE: B-2

HOR. SCALE: = NTS