

Intergovernmental Agreement
between
The Regional Transportation District
and
The City and County of Denver
for
16th Street Mall Intersection Improvements

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made effective as of _____ (hereinafter “Effective Date”) by and between the REGIONAL TRANSPORTATION DISTRICT, 1600 Blake Street, Denver, CO 80202, a political subdivision of the State of Colorado (“RTD”) and the CITY and COUNTY OF DENVER, a municipal corporation of the State of Colorado (“City”). RTD and the City 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 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.
- C. In 1982, RTD constructed the downtown Denver 16th Street Pedestrian Mall (the “16th Street Mall” or “Mall”).
- D. The 16th Street Mall is located in and benefits the CCD.
- E. The Parties desire to repave and make improvements to the City right-of-way at the 16th Street Mall intersections with Cleveland Place, Court Place, Lawrence Street, Larimer Street and Market Street, as depicted in **EXHIBIT A**. The graphical depiction of a typical intersection is depicted in **Exhibit B**.

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. **The Project and RTD's Construction Contract:** The "Project," as used herein, refers to the improvements to be designed, constructed, and installed to repave and improve portions of City right-of-way at the 16th Street Mall intersections with Cleveland Place, Court Place, Lawrence Street, Larimer Street and Market Street, as depicted in **EXHIBIT A**. RTD will contract for completion of the work, and the City will pay the cost of the Project on the terms and conditions of this IGA. RTD will perform or cause to be performed all work items necessary to satisfactorily complete the Project in accordance with the terms and conditions of this IGA. RTD will procure a Contractor for the construction of the rehabilitation of the granite transit lanes and the insitu resurfacing portions of the sidewalk up to three and a half blocks of the 16th Street Mall (the RTD Construction Contract)(depending on the bid price). The Project will be incorporated into RTD's Construction Contract.

2. **City Payment and Related Responsibilities:**

A. As consideration for the performance of RTD under this IGA, the City shall pay all capital costs incurred by the Project including, but not limited to, costs associated with Project's construction, Project management, furnishings, and equipment, up to a maximum amount of \$1,845,149. If the bid price for the Project exceeds the maximum amount, the Parties may agree to reduce the Project's Scope of Work. At no time will RTD contribute funds to the Project.

B. RTD shall provide the Contractor's invoices monthly to the City with supporting documentation demonstrating the amount due to the Contractor for the Project work. The City will review the invoices and pay to RTD the amounts listed on all of the Contractor's invoices for the Project that are not disputed by the City within fifteen (15) calendar days of receipt. RTD, in turn, will pay to the Contractor all of its undisputed invoices minus the required retainage. RTD shall hold the retainage from the Contractor as required by statute and release the retainage upon the completion of the Project and CCD's written release. Provided RTD is not in breach of any obligation under this IGA, the City shall make payments to RTD on the basis of actual costs invoiced for approved work in an amount not to exceed \$1,845,149. RTD's final invoice to the City shall be paid within 15 calendar days after (i) City's final inspection, approval and acceptance of the Project, and (ii) RTD's submission of fully executed

releases and lien waivers from all subcontractors and suppliers associated with the Project of which RTD becomes aware through the administration of RTD's Construction Contract as evidenced by affidavit from RTD's Construction Project Manager.

C. The City shall waive Public Works transportation related plan review fees for the Project and the RTD Construction Contract work. Additionally, the City shall issue right of way related permits for the Project and the RTD Construction Contract work without permit fees.

3. **RTD Responsibilities:** Except as otherwise provided in this IGA, RTD shall have sole responsibility with respect to undertaking and completing the Project in accordance with this IGA.

A. Prior to the Construction Contract solicitation, RTD shall obtain the City's written approval of design plans and specifications for the Project work. The City shall provide all comments within 14 calendar days of receipt of the design plans and specifications or they shall be deemed reviewed and approved without comment.

RTD shall use its standard Invitation for Bids (IFB) which includes its solicitation documents for contracts involving Federal funds including RTD's Attachments that relate to Federal Requirements, Civil Rights and DBEs. Prior to the Construction Contract solicitation, RTD shall obtain the City's approval of the IFB documents for compliance with Denver City Charter and Denver Revised Municipal Code requirements, as well as other applicable federal, state and local laws. The City shall provide all comments within fourteen (14) calendar days of receipt of the IFB solicitation documents or they shall be deemed reviewed and accepted without comment. However, should the City make some objection(s) to the IFB and it becomes obvious that discussions over the objection(s) will further delay the RTD Construction Contract, RTD reserves the right to immediately terminate this Agreement and proceed with the procuring of the granite work in the Mall lanes and sidewalks without including the Project in the RTD Construction Contract.

The IFB will require the bidders to separate the cost of the Project from RTD's granite work. RTD's solicitation for bids for the RTD Construction Contract shall be publicly advertised and the contract awarded to the lowest, responsive, qualified bidder. RTD shall obtain the City's approval of the Construction Contract for compliance with Denver City Charter and Denver Revised Municipal Code requirements, as well as other applicable federal, state and local laws,

before the Construction Contract is awarded or executed. The City shall provide all comments within fourteen (14) calendar days of receipt of the Construction Contract or it shall be deemed reviewed and accepted without comment; provided, however, that the City shall make good faith efforts to provide written comments within seven (7) calendar days of receipt of the construction Contract.

B. Final contract documents shall require the contractor to comply with all City standards, warrant all work for a period of not less than 2 years from the date of final acceptance, provide insurance approved by the City naming the City as an additional insured, name the City as a third - party beneficiary of the contract and bond, and indemnify the City in accordance with the City's standard construction indemnification clause.

C. Final contract documents shall require payment of prevailing wages as set forth in the Federal regulations and related documents (Davis-Bacon Act).

D. Final contract documents shall require compliance with RTD's Disadvantaged Business Enterprise ("DBE") Program, including the obligation to maintain throughout the term of this contract the levels of DBE participation upon which the contract is initially awarded. Prior to the issuance of the IFB, the RTD Civil Rights Office shall establish a DBE goal for the total amount of the entire RTD Construction Contract including the Project. Before the DBE goal is included in the IFB documents, RTD shall allow the City to review the DBE and to make comments. If the City objects to the DBE goal the Parties shall meet with the FTA Officer for this Federal Region to discuss the goal. The only reasonable objection being that the proposed goal is clearly erroneous under the Federal Code of Regulations. The City shall provide all comments within 14 calendar days of receipt of the proposed DBE goal or it shall be deemed reviewed without comment. RTD will monitor the Contractor's compliance of the DBE goal.

E. Subsequent to approval by the City, RTD shall make no changes in the plans, specifications or contract or change orders to the contract which affect the Project work without written approval from the City. Any such changes in the plans, specifications or contract, or proposed change orders to the contract that affect the Project shall be provided to the City for its written approval. Each change order shall be approved or disapproved with the reasons for any disapproval being stated, within fourteen (14) calendar days of receipt. Changes shall be deemed approved if the City fails to disapprove such within the 14 day period.

F. RTD is the contracting entity and is the contact with the Contractor on the RTD Construction Contract. In the Contract, RTD shall require that the Contractor ensure right of entry to any City inspector or other authorized agent of the City to the Project work site at all reasonable hours to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved design plans and specifications. The City shall not contact the Contractor directly but shall communicate any issues to the RTD Project Manager. If it is determined that the work is not being properly performed, the City may ask RTD to order the cessation of the work until there is satisfactory evidence that the work conforms to the approved design plans and specifications. If the City determines that the work is not being performed in accordance with this IGA, the City may order that the RTD stop and suspend the work until there is satisfactory evidence that the work will be performed in accordance with this IGA.

G. As between the Parties, RTD shall be responsible for assuring that all phases of the Project are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) and City standards.

H. The RTD construction contract shall require that the Contractor and subcontractors pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State and the City on any tangible property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City.

I. The Project shall be substantially completed at approximately the same time that the work performed under the RTD Construction Contract is substantially completed. RTD will establish all construction milestones with input from the City.

J. Once construction of the Project is completed, (except for any repairs required by the Contractor's warranty under the RTD Construction Contract) RTD shall not have an ongoing maintenance obligation with respect to the Project work (concrete pavements and signal systems referenced in Section 1 above and Exhibit B attached). Maintenance obligations for the balance of the work done under the Construction Contract (granite transit lanes and the insitu resurfacing portions of the sidewalk on three and a half blocks of the 16th Street Mall referenced in Section 1 above) are established by a separate Intergovernmental Agreement between the City and RTD.

4. **Term.** This IGA shall become effective upon the Effective Date and will terminate upon completion and final acceptance of the Project by the City and payment by the City to RTD, unless sooner terminated by mutual consent of both the Parties in writing, the material default of either Party after a cure period of 30 calendar days beginning with the written notification of default (subject to a mutual extension of time) or by court order. All provisions of this IGA that provide rights or create responsibilities for the Parties after termination will survive termination of this IGA.

5. **Disputes.** Disputes shall be initially resolved between the Project Managers, as identified in the pre-construction meeting. 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.

6. **Liability.** As between the Parties, and without either the City or RTD waiving any of the rights and protections provided under the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101 to 120, each Party will 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 design or construction of the Project, it agrees to give the other Party prompt written notice of such claim or suit.

7. **Amendments.** No amendment to this IGA shall be made or deemed to have been made unless embodied in writing properly executed by the Parties.

8. **Assignment.** Each Party agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the other Party.

9. **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.

10. **Independent Contractors.** The Parties expressly agree that RTD and the City do not intend to act for or in the place of the other, and each shall be an independent contractor.

11. **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.

12. **Severability.** To the extent that this IGA may be executed and that the 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.

13. **Waiver.** In no event shall any performance by a Party hereunder constitute or be construed to be a waiver by that Party of any breach of term, covenant, or condition or any default which may then exist on the part of the other Party, and the tender of any such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to a Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

14. **Conflict of Interest.** The Parties agree that no employee of either Party shall have any personal or beneficial interest whatsoever in the services or property described herein and RTD further agrees not to hire, or contract for services with, any employee or officer of Denver

which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provision 1.2.9.

15. **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 of this IGA 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 expressly incorporated into this IGA as if fully set out by this reference.

16. **Examination of Records.** The Parties agree that any duly authorized representative of a Party, including the City Auditor or his or her representatives, shall, until the latter of three (3) years after the final payment under this IGA or expiration of the applicable statute of limitations, have access to and the right to examine any pertinent books, documents, and records of the other Party involving matters related to this IGA.

17. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures by each Party. The IGA, and any other documents requiring a signature hereunder, may be signed electronically. 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.

18. **Execution of Agreement.** This Agreement shall not take effect until approved by Denver City Council and RTD's Board of Directors, respectively, and signed by all appropriate RTD and Denver officials, including RTD's General Manager and legal counsel, and, for Denver, the Mayor, the Clerk and Recorder, the Chief Financial Officer and the Auditor.

19. **Appropriation by City Council and the RTD Board.** The obligations of the Parties under this Agreement or any renewal shall extend only to monies appropriated for the purpose of this Agreement (1) by Denver's Board of Councilmen, paid into the Denver Treasury, and encumbered for the purposes of this Agreement, and (2) by RTD's Board of Directors and

paid into RTD's Treasury for the purposes of this Agreement. The Parties acknowledge that (i) they do not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Parties. No penalties shall inure to either party for failure to budget or appropriate funding.

20. **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: City and County of Denver
Department of Public Works,
Capital Project Management
Attn: Dennis Ohlrogge
201 W. Colfax Avenue, Dept. 506
Denver CO 80202

With a copy for legal notices to:
Denver City Attorney
1437 Bannock Street, Room 353
Denver CO 80202

To RTD: Regional Transportation District
Henry Stoppelcamp
Senior Manager of Engineering
Civic Center Plaza
1560 Broadway, Suite 700
Denver, CO 80202

With a copy for legal notices to:
Marla Lien, General Counsel

Regional Transportation District
1600 Blake Street
Denver, CO 80202

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Contract Control Number: PWADM-201519996-00

Contractor Name: Regional Transportation District

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:

D. Scott Martinez, Attorney for the
City and County of Denver

By _____

By _____

By _____



Contract Control Number: PWADM-201519996-00

Contractor Name: Regional Transportation District

By: _____

Name: _____
(please print)

Title: _____
(please print)

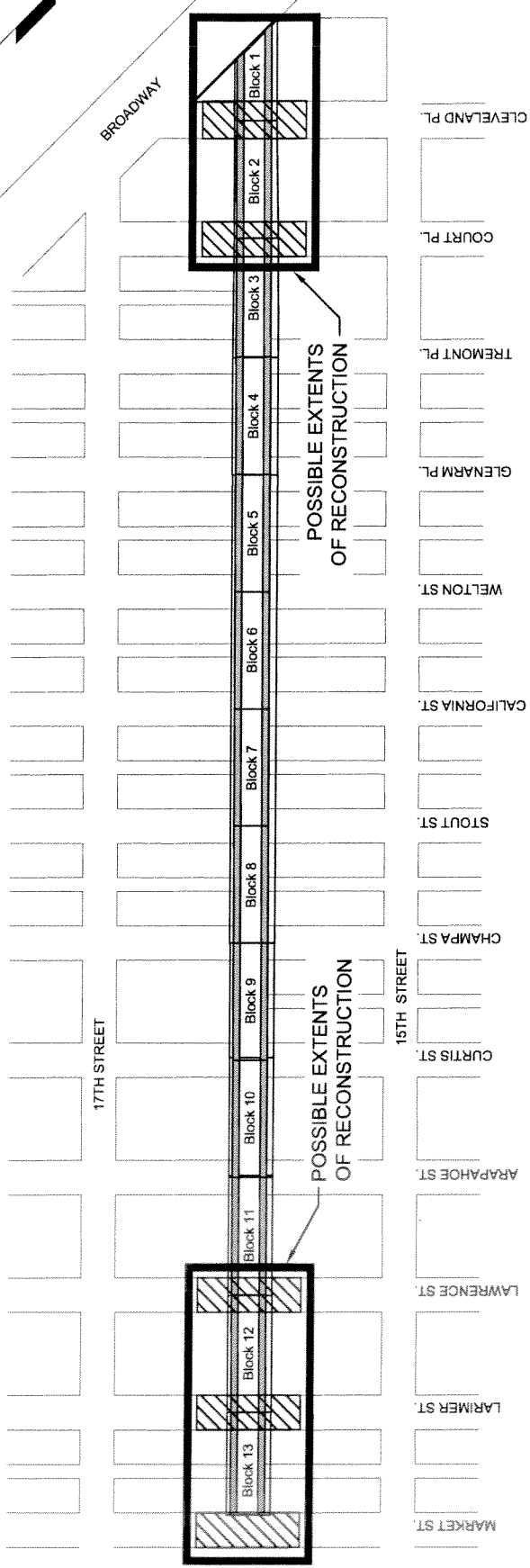
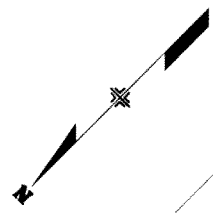
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)





LEGEND

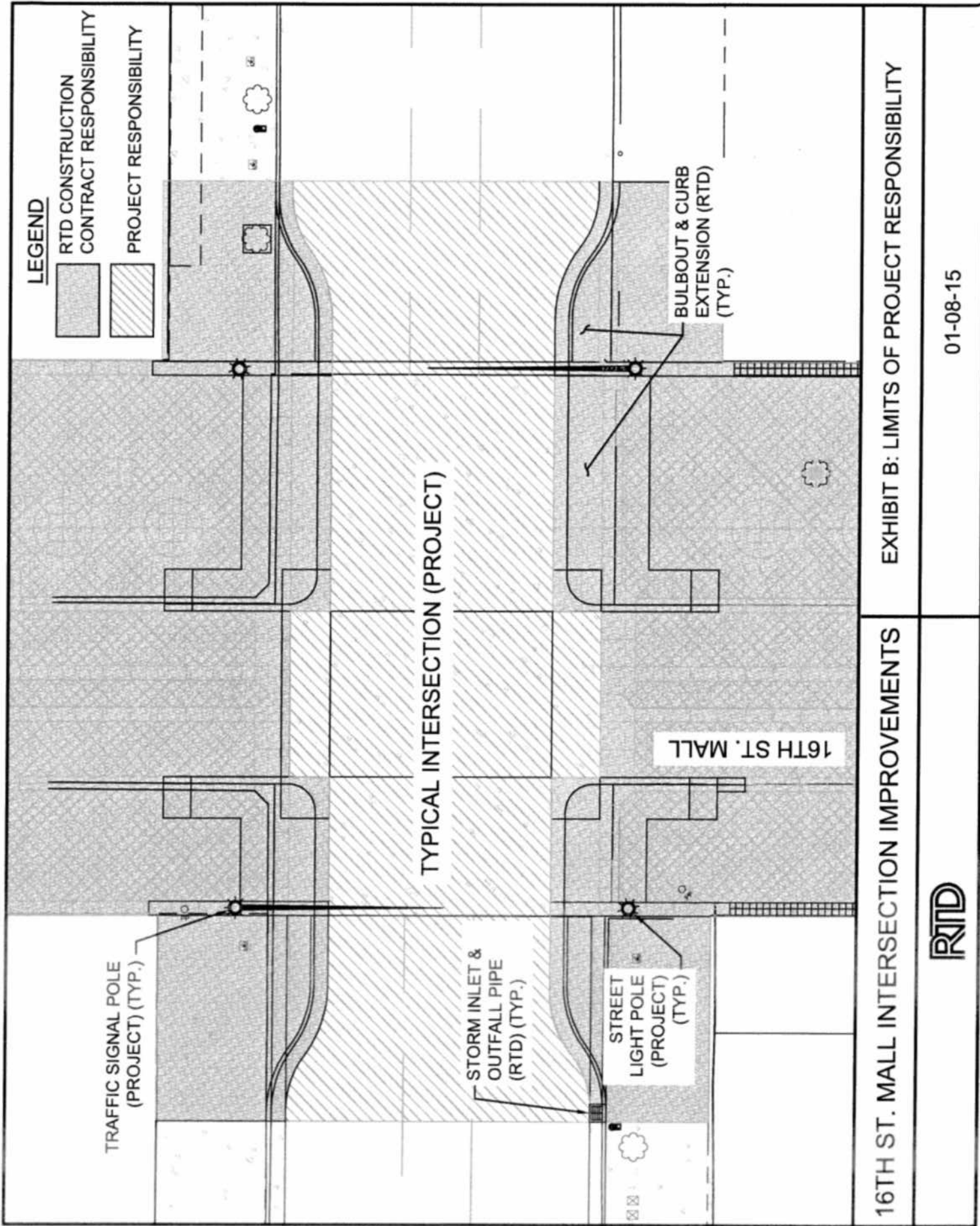
 POSSIBLE 16TH STREET MALL INTERSECTION IMPROVEMENTS

16TH ST. MALL INTERSECTION IMPROVEMENTS

EXHIBIT A: PROJECT LOCATION



01-08-15



16TH ST. MALL INTERSECTION IMPROVEMENTS

EXHIBIT B: LIMITS OF PROJECT RESPONSIBILITY



01-08-15