

**FIRST AMENDMENT TO THE APRIL 26, 2010 INTERGOVERNMENTAL AGREEMENT BETWEEN NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT AND CITY OF COMMERCE CITY**

**THIS FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT DATED APRIL 26, 2010 between the City of Commerce City and the Northern Infrastructure General Improvement District (this “Amendment”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Commerce City, Colorado, (“Commerce City”), a home rule City whose primary offices are at 7887 E. 60<sup>th</sup> Avenue, Commerce City, CO 80022 and the Northern Infrastructure General Improvement District (the “GID”), a general improvement district organized and existing under the laws of the State of Colorado whose primary offices are at 7887 E. 60<sup>th</sup> Avenue, Commerce City, CO 80022, hereinafter referred to collectively as the “Parties.”**

**RECITALS:**

A. The Parties entered into the April 26, 2010 Intergovernmental Agreement (“IGA”) because the Parties determined that the purchase of water with financial resources of the GID is in the best interests not only of the citizens of the GID but also of the citizens of Commerce City.

B. The Parties stated that the intent of the GID is to acquire water as it becomes available in order to assist economic development by sale of water to developers in need of water for economic development or by conveyance to developers as an incentive for economic development.

C. The Parties agreed that Commerce City should act as fiscal agent on behalf of GID for handling of water matters including the expenditure of GID funds, the purchase and holding of title to acquired water and, thereafter, the sale or other conveyance of such water.

D. The Parties agreed that all water acquired pursuant to the authorization given in the IGA shall be used only within the boundaries of the GID.

E. The Parties agreed that in addition to the funding available for acquisition of water, GID has funding available for the acquisition of property required for GID purposes.

F. The Parties agreed that the GID may have a need to acquire for GID purposes certain property located within the GID.

G. The Parties agreed that at the request of GID, Commerce City will act on behalf of GID to expend GID funds and to acquire property including easements and/or fee simple title by negotiations or, if necessary, to exercise the power of eminent domain.

H. The parties now wish to amend the IGA to define the roles and responsibilities of the parties with respect to the purposes herein stated.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and the recitals set forth above, the Parties agree as follows:

1. **Subject Matter of Agreement.** This Amendment sets forth the understanding of the Parties with respect to the purposes recited above.

2. **Designation of Representatives.**

a. The GID designates the following as representative on behalf of the GID:

The GID Treasurer or his authorized representative  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

b. Commerce City designates the following as representative on behalf of Commerce City:

The City Manager or his authorized representative  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Any notice required hereunder shall be given to the above-named representatives.

3. **Obligations of Commerce City.**

a. Commerce City agrees that when any FRICO ERU Credits purchased under the IGA are sold that all the proceeds from such sales shall be remitted to the GID.

b. Commerce City agrees that when any FRICO ERU Credits purchased under the IGA are converted to use in City facilities and/or on City property or uses the FRICO ERU Credits for economic development incentive purposes that the City shall remit the amount equal to one hundred and ten percent (110%) of the purchase price paid by the GID for the FRICO ERU Credits, using the lowest purchase price of the available water rights.

4. **Term of the Agreement.** This Amendment shall become effective upon execution by the Parties and shall continue in full force and effect until written mutual termination thereof.

5. **Severability.** Should any one or more provisions of this Amendment be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a provision that will achieve the original intent of the Parties hereunder.

6. **Intent of Amendment.** Except as provide in this Amendment, all other

provisions of the IGA shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment to the IGA the day and year first above written.

CITY OF COMMERCE CITY, COLORADO,

By: \_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert R. Gehler, City Attorney

NORTHERN INFRASTRUCTURE GENERAL  
IMPROVEMENT DISTRICT,

By: \_\_\_\_\_  
Sean Ford,  
Chairman of the Board of Directors

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, Secretary