

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COMMERCE CITY E-470
COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE CITY OF
COMMERCE CITY REGARDING INFRASTRUCTURE PROJECTS**

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND CITY OF COMMERCE CITY REGARDING INFRASTRUCTURE PROJECTS (the "IGA") is made and entered into effective this ___ day of _____, 2013 (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "City"), and the Commerce City E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado, principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "ECAGID").

WHEREAS, the parties have determined that it is in their best interests to construct, install and maintain certain infrastructure improvements within the anticipated future boundaries of the ECAGID (the "Projects"), which anticipated future boundaries encompass the area between the eastern border of the Commerce City Northern Infrastructure General Improvement District and the Denver International Airport, from the Denver city limits on the south to 120th Avenue on the north, as generally depicted on the map attached hereto as Exhibit A and incorporated herein by this reference (the "ECAGID Inclusion Boundaries");

WHEREAS, the purposes of the Projects are to provide water and sewer services and to provide regional roadway improvements to relieve traffic congestion, improve safety for motorists, commuters and pedestrians, improve access to the commercial and residential developments and improve access to parks, trails, open space and recreation facilities within the ECAGID Inclusion Boundaries;

WHEREAS, the Projects include the installation of new water and sewer mains, construction of new streets, reconstruction and widening of existing two-lane roadways to four-lane or six-lane roadways, parks, trails, open space and recreation facilities including the acquisition of certain real property interests therefor;

WHEREAS, the ECAGID and the City have agreed that unless the City Council appropriates funds for the Projects, the ECAGID shall pay all costs associated with the design and construction of the Projects and shall acquire such real property interests as are necessary to complete the Projects;

WHEREAS, the ECAGID has no employees to provide administration or record keeping;

WHEREAS, the City and the ECAGID are governmental entities authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a), of the Colorado Constitution and C.R.S. §§ 29-1-203; and

WHEREAS, the parties now wish to enter into this IGA to define their roles and responsibilities with respect to the Projects.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the sufficiency of which is expressly acknowledged, the parties hereby agree as follows:

1. PROJECTS. The City anticipates that the Projects will be initiated in multiple phases commencing in 2013. The Projects may involve or include any one or more of the following:

- a. The construction, reconstruction and/or expansion of roadways and the related improvements including, but not limited to, bridges, traffic signals, sidewalk, curb and gutter, medians, street lighting, drainage structures and landscaping.
- b. The design and construction of water and sanitary sewer mains and related improvements including, but not limited to: lift stations, pump stations, reservoirs, taps and all necessary, incidental and appurtenant properties and facilities necessary to provide for water distribution and sewage collection.
- c. The potential design and construction of parks, trails, open space and recreation facilities.
- d. The acquisition of certain real property interests in certain phases of the Projects including right-of-way (fee simple), as well as permanent and temporary easements, (collectively, the "Property Interests") from private parties owning land adjacent to the Projects.

2. PROJECT IMPLEMENTATION AND COSTS. The City agrees that it will cause to be performed all work required for completion of the design and construction of the Projects including work required to acquire the Property Interests (collectively, the "Project Costs") as such work is approved by the ECAGID Board of Directors.

- a. The ECAGID shall be responsible for timely payment for all Project Costs including, but not limited to, the following:
 - i. The costs of engineers, consultants, attorneys and vendors required to complete the design of the Projects including the production of design drawings, specifications and contracts;
 - ii. The costs of engineers, consultants, attorneys, vendors and construction materials and supplies required to complete the Projects including the preparation and production of construction drawings, specifications and contracts and the construction of the Projects to completion;
 - iii. Costs related to the acquisition of the Property Interests including:
 - (a) The consideration to be paid to the property owners and any amount of claims by property owners related to the acquisition of the Property Interests; and
 - (b) All costs of consultants, appraisers and attorneys retained by the City to negotiate acquisition of the Property Interests, pursue acquisition of the Property Interests through the power of eminent domain and defend against any claims arising based on the acquisition process, appraise the Property Interests, provide title searches and title policies for the Property Interests and prepare documents necessary for the conveyance of the Property Interests to the City.

b. Upon receiving an invoice for Project Costs that has been approved by the City, the ECAGID shall pay such invoice within thirty (30) days of receipt. In the event the City shall pay for any Project Costs directly, the ECAGID will reimburse the City for such costs within thirty (30) days of receipt of a copy of the paid invoice regardless of whether such invoice predates the Effective Date.

c. The ECAGID shall not be responsible for payment of salary and benefit costs relating to City staff involved in the design, construction and acquisition tasks. The ECAGID shall not be responsible for the payment of the costs related to the operation and maintenance of City facilities used during the design and construction of the Projects.

3. PROJECTS FUNDING. The ECAGID plans to rely upon its bond proceeds and property tax revenue to provide for its payment obligations hereunder.

4. OWNERSHIP; MAINTENANCE; OPERATION. The City shall maintain ownership of the Projects and the Property Interests. The City shall be responsible at its sole cost for operation and maintenance of all facilities constructed and installed pursuant to the Projects.

5. STAFF AND ADMINISTRATION. The City shall provide for the proper administration of all affairs of the ECAGID, including the use of City staff as necessary.

6. TERM. This IGA shall become effective upon execution by the parties and shall continue in effect through the satisfactory completion of the Projects and final payment to the City by the ECAGID for Project Costs.

7. NOTICE; PROJECT REPRESENTATIVES. Any notice required hereunder shall be given to the above named Projects' representatives. The parties initially designate the following as Project representatives:

For the ECAGID:

Chief Financial Officer
7887 E. 60th Avenue
Commerce City, CO 80022

For the City:

City Engineer
8602 Rosemary Street
Commerce City, CO 80022

8. MISCELLANEOUS PROVISIONS.

a. Best Efforts. The City and the ECAGID agree to work diligently together and in good faith, using their best efforts to resolve any unforeseen issues and disputes, to expeditiously review and approve invoices and effect the prompt and expeditious payment of fees and charges for accepted work. The intent of the parties is to expedite and not to delay the completion of the Projects.

b. Examination of Records. The parties agree that, for a period of at least three (3) years from the completion of the acquisition of the Property Interests, any duly authorized representative of either party shall have access to and the right to examine any directly pertinent books, documents, papers and records of the parties involving the Projects and other activities related to this IGA.

- c. Applicable Law. The parties agree to comply with all applicable federal, state and local statutes, charter provisions, ordinances, rules, regulations and standards as are in effect at the time this IGA is executed.
- d. No Third Party Beneficiaries. It is expressly understood and agreed 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 City and the ECAGID; and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person. It is the express intention of the City and the ECAGID that any person other than the City and the ECAGID receiving services or benefits under this IGA shall be deemed to be an incidental beneficiary only.
- e. Liability. Nothing in this IGA shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the parties may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or to any other defenses, immunities or limitations of liability available to the parties by law.
- f. No Waiver. The parties shall not be excused from complying with any provision of this IGA by the failure of any party to insist upon or to seek compliance with such provisions. The parties shall be entitled to review and audit the Projects. The parties agree that payment of any erroneous or improper billings shall not constitute acceptance, waiver or approval of such billing, and reimbursement shall be made for any erroneous billings.
- g. Severability. Should any one or more provisions of this IGA 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 term that will achieve the original intent of the parties hereunder.
- h. Amendment. This IGA may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties hereto.
- i. Enforcement. The parties agree that this IGA may be enforced in law or in equity for specific performance, injunctive or other appropriate relief, including damages, as may be available according to the laws and statutes of the State of Colorado. It is specifically understood that, by executing this IGA, each party commits itself to perform pursuant to these terms contained herein and that any breach hereof which results in any recoverable damages shall not cause the termination of any obligations created by this IGA unless such termination is declared by the party not in breach hereof.
- j. No Assignment. No party shall assign its rights or delegate its duties hereunder without the prior written consent of the other party.
- k. Headings. Headings and titles contained herein are intended for the convenience and reference of the parties only and are not intended to combine, limit or describe the scope or intent of any provision of this IGA.
- l. Entire Agreement. This IGA constitutes the entire agreement of the parties with regard to the subject matter of this IGA. The parties agree there have been no representations made other than those contained herein, that this IGA constitutes the entire agreement, and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

m. Authority. Each party represents and warrants that it 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. The person(s) executing this IGA on behalf of each of the parties warrants that they have full authorization to execute this IGA.

n. Notice of Default/Breach; Attorney Fees. In the event either party defaults in the performance of any term or provision of this IGA, the party claiming the breach/default shall give the other party notice of the claimed breach/default, and request that the breach/default be corrected or cured within thirty (30) days. If the breach/default is not corrected or cured within the thirty-day period, the party claiming breach/default may use whatever remedies are available at law or in equity to address the circumstances at hand, including, but not limited to, specific performance and/or damages. Any non-breaching/non-defaulting party shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

o. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[Remainder of this page intentionally left blank – signature page(s) follow.]

IN WITNESS WHEREOF, the parties have executed this IGA the day and year first written above.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Roger Tinklenberg, Director
Department of Finance

**COMMERCE CITY E-470 COMMERCIAL
AREA GENERAL IMPROVEMENT
DISTRICT**

Sean Ford, Chair, Board of Directors

ATTEST:

Laura J. Bauer, CMC, Secretary

Approved as to form:

Gregory D. Graham, Assistant General Counsel

Recommended for approval:

Roger Tinklenberg, Chief Financial Officer