

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") by and between the City of Commerce City, a Colorado municipal corporation ("Commerce City") and the South Adams County Water & Sanitation District, a special district and a political subdivision of the State of Colorado ("South Adams") is made to be effective on this 18 day of April, 2004.

WITNESSETH

WHEREAS, Section 29-1-201, *et seq.*, C.R.S. as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation in contracting through the adoption of Colorado Constitution Article XIV 18(2); and

WHEREAS, South Adams provides the citizens of Commerce City with public water and sewer services, and has regulatory responsibility over matters pertaining to the provision of those services; and

WHEREAS, Commerce City provides other governmental services for its citizens and has regulatory responsibility over matters pertaining to land use planning and development within the City; and

WHEREAS, the parties desire to enter into this Intergovernmental Agreement ("Agreement") in the discharge of their respective governmental and regulatory responsibilities to provide for the efficient development of necessary public water and wastewater services within certain areas of Commerce City and to provide a comprehensive framework between the Parties for the acquisition of water resources and wastewater treatment capacity; and

WHEREAS, South Adams has identified raw water supplies currently available for development of the lands subject hereto; and

WHEREAS, South Adams adopted a resolution on October 9, 2002 (October 2002 Resolution) dealing with the availability of water resources to some of the lands in the Commerce City area; and

WHEREAS, it is the intention of South Adams and Commerce City that in the exercise of their respective governmental roles, Commerce City shall have responsibility and authority of matters pertaining to land use planning and development and South Adams shall have responsibility for the provision of public water and wastewater service in the Commerce City area; and

WHEREAS, the Parties have each considered this Agreement at duly convened public meetings.

NOW, THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the receipt whereof is hereby acknowledged, the parties agree as follows:

1. Lands Subject to Agreement. The two areas of land which are primarily involved in and subject to this Agreement are specified in the map attached hereto as Exhibit A. Those lands are generally described as (1): areas north of Sand Creek to 112th Avenue and east of the South Platte River to that portion of Quebec Street extending north to 78th Avenue and then northerly along Highway 2 to 112th Avenue, which shall be known for purposes of this Agreement as the general service area ("GSA"), and (2) approximately 917 acres located on the western tier of the Rocky Mountain Arsenal which will be purchased by Commerce City ("RMA Lands"). It is recognized that none of the RMA lands and some of the lands in the GSA have not yet been included into the boundaries of South Adams, nor have the RMA Lands or some of the GSA lands been annexed to Commerce City.

2. Amendments to Ordinances, Rules, Regulations, Policies and Resolutions. Commerce City and South Adams hereby agree to amend any existing ordinances, rules, regulations, policies or resolutions to implement the terms of this Agreement. Specifically, South Adams agrees to amend the October 9, 2002 Resolution as necessary.

3. Water Available for Development of the GSA. As of the effective date of this Agreement, South Adams has determined that it can commit 2,547 acre feet of water supplies for development within the GSA, subject to the conditions of this Agreement. Said water supplies shall be allocated as follows:

- a. Water Allocation. South Adams will make raw water supplies to the extent of 2,547 acre feet available for development in the GSA as that development is planned and permitted by Commerce City, without the dedication of additional water resources.
- b. Current Water Resources. Of the 2,547 acre feet currently available for development within the GSA by South Adams, 1,316 acre feet are subject to existing Water Resources Agreements which shall be fully honored under this Agreement. A summary of those agreements is attached hereto as Exhibit B. South Adams will continue to make the remaining 1,231 acre feet available to development in the GSA.

4. Water Available for Development of RMA Lands. South Adams and Commerce City have worked together for many years to secure a practical plan for the cleanup and remediation of the Rocky Mountain Arsenal. These plans now include, among other things, the provision of 4,000 acre feet of an alternative water supply for South Adams in the form of a potable water lease from the Denver Water Board (Denver Water). These plans have also provided for the acquisition by Commerce City and the subsequent development of the RMA lands. Thus, South Adams and Commerce City have contemplated the development of the RMA lands for some time and the provision of water resources is, therefore, consistent with South

Adams' policies and regulations relating to "transitional" lands expressed in the October 2002 Resolution.

- a. Potable Water. South Adams hereby commits 400 acre feet of Denver Water for potable water use on the RMA Lands, deliverable from South Adams' blended supplies, which shall be available immediately upon the construction of facilities necessary to deliver the water from South Adams to the RMA Lands. No dedication of additional water resources shall be required for use of said water. All water connection fees shall be paid when water taps for said potable water service are purchased from South Adams. Said water is not transferable to other properties by Commerce City. However, in the event that 400 acre feet of potable water is not required at full development of the RMA Lands, South Adams may determine appropriate uses for any remaining Denver Water.
- b. Temporary Non-Potable Water. South Adams shall make 1,250 acre feet per year of non-potable water available for a period of three (3) years from the execution hereof on a temporary basis. Said temporary water shall be reduced to 900 acre feet per year for the fourth and fifth years following execution hereof. Said water will be utilized for numerous purposes including construction, dust control, and irrigation. Commerce City shall not be required to convey any permanent augmentation water for use of said temporary water. Commerce City shall provide written notice to South Adams of the amount of water which it plans to use by March 1 every year while this Section 4.b. is in effect. Commerce City shall lease from South Adams temporary augmentation water in the form of consumptive use credits currently available to South Adams, and Commerce City agrees to lease said temporary augmentation water for \$40.00 per acre foot per year for depletions from the amount of water set forth in the written notice from Commerce City, which depletions are defined as 85% of said amount or pursuant to other financial arrangements mutually agreed upon by the Parties. Water will be provided from an existing South Adams well and no water connection fees will be required for the temporary use of non-potable water. Water rates for water actually used by Commerce City under this Section 4.b. shall be the then current rates charged by South Adams for multi-family and commercial water, or, the then current rates for non-potable irrigation water if such rates are adopted, unless otherwise agreed upon by the Parties hereto.
- c. Separate Permanent Non-Potable Irrigation. South Adams has determined that 900 acre feet of raw ground water supply is available from its southern alluvial system which can be utilized for irrigation and other non-potable uses on the RMA Lands. In order to utilize this ground water for irrigation purposes, Commerce City hereby agrees to provide augmentation water to South Adams in the form of consumptive use water credits ultimately required for permanent irrigation of the RMA Lands, which is defined as 85% of the amount of groundwater applied to such irrigation purposes or, in the alternative, Commerce City agrees to provide a new source of irrigation water. Commerce City shall convey to South Adams sufficient augmentation water or a new source of water,

both of which must be acceptable to South Adams, within five (5) years from the execution hereof. South Adams will make up to 900 acre feet of separate permanent irrigation water available to the RMA Lands in proportion to Commerce City's conveyance of augmentation water over that five-year time period. South Adams' obligation to provide temporary water set forth in Section 4.b above shall be reduced in the amounts and at the times that permanent irrigation water is made available under this Section 4.c. Water connection fees shall be paid when water taps for said permanent irrigation water are purchased from South Adams. In calculating said water connection fees, South Adams shall apply credits for the water which Commerce City conveys to South Adams pursuant to this Section 4.c. and the installation of the separate irrigation system within the RMA Lands.

5. Drought Conditions. The Parties hereto recognize that the 3,847 acre feet currently available for development of the GSA and the RMA Lands is based upon average year yields. During droughts, all water uses, including, but not limited to outdoor irrigation (including parks, dust control and the installation of new landscaping) served by South Adams, not just the lands subject to this Agreement, will be required to conserve water according to South Adams' existing Rules and Regulations or resolutions, or as adopted or amended in the future.

6. Provisions of Service Subject to Available Water and Wastewater Capacity for GSA. Additional water supplies and wastewater treatment capacity necessary to serve the GSA will be pursued by South Adams. Provision of public water and wastewater service is subject to construction of public water and wastewater facilities necessary to provide such service. Additional facilities will be needed to provide the water supplies contemplated herewith, such as wells, transmission facilities, raw water storage and treatment facilities and wastewater collection and treatment facilities, including the regional wastewater treatment facility. Pursuant to its planning, South Adams believes that it can provide such facilities. While South Adams will use its best efforts, it cannot guarantee that such water supplies or wastewater treatment capacity will be secured in accordance with a particular schedule of projected development. South Adams currently has sufficient wastewater treatment capacity to meet wastewater demands for the 2,547 acre feet allocated for development of the GSA, provided that the regional wastewater treatment facility is constructed by 2009. However, if South Adams reaches development thresholds of 1,800 equivalent single family residential units ("ERUs") per year average or 2,266 ERUs in a maximum year, development within the GSA will be limited to 250 ERUs per year, unless additional wastewater treatment capacity is made available. South Adams and Commerce City shall negotiate in good faith with Metro Wastewater Reclamation District ("Metro") to provide wastewater treatment services to other areas within the GSA in order to increase the wastewater treatment capacity available within Commerce City. Commerce City shall pay all costs necessary to acquire said wastewater service from Metro. Wastewater treatment capacity in a like amount shall then become available at South Adams' facilities and Commerce City shall have the right to allocate said capacities for development of properties specified by Commerce City, subject to the application of South Adams' Rules and Regulations, including, but not limited to dedication of senior water resources for such development.

7. Wastewater Treatment Capacity Available for Development of RMA Lands. Currently there is no wastewater treatment capacity available from South Adams for development of the RMA Lands. Therefore, development of the RMA Lands will be contingent upon the prior commitment by Metro to provide wastewater service for the RMA lands, or the availability of other alternatives mutually acceptable to South Adams and Commerce City. South Adams hereby agrees that wastewater services for the RMA Lands may be able to be provided by Metro. South Adams and Commerce City shall use best efforts to negotiate and execute necessary agreements to provide said wastewater services to the RMA Lands to allow development to commence in 2005.

8. Water and Wastewater Fees and Compliance with Rules and Regulations. All applicants requesting public water and wastewater service for properties to be developed or redeveloped hereunder will be required to pay all fees, rates, and charges required by South Adams' Rules and Regulations, including, but not limited to, connection fees, inspection fees, and construction fees. Any of such fees paid to Metro will be credited against the fees due to South Adams to the extent applicable, for the development or redevelopment of properties served by Metro. All applicants, including landowners and/or developers shall also be required to comply with all provisions of South Adams' Rules and Regulations, and any amendments thereto, including, but not limited to, the landowner's obligations to extend water and wastewater facilities to their properties, except as provided herein.

9. Assurance of Availability for Currently Included Lands. In order to ensure that properties located within the GSA which are currently included within South Adams will have sufficient water available for development, the Parties hereto agree that no taps will be sold for development of Commerce City annexed lands in the GSA and of the RMA lands which utilize water resources in excess of 3,000 acre feet until additional water supplies are under contract and determined to be feasible for use by South Adams, or a determination is made by South Adams that all lands in the GSA which were included in South Adams prior to the execution hereof have sufficient water resources remaining available for their reasonable development.

10. Additional Water Resources. The Parties recognize that 3,847 acre feet committed in this Agreement are not expected to be sufficient for the full development and build-out of Commerce City and the South Adams service area. Water resources have previously been committed for areas in the Northern Infrastructure General Improvement District ("G.I.D.") as contemplated by the agreement of April 27, 1998 and pursuant to South Adams' Resolution of August 28, 2002. The development of additional water resources has been initiated and committed under the Frico Participation Agreements. Even with these sources of water, significant additional amounts are needed for full build-out. While South Adams has committed to provide separate irrigation water to Commerce City in the amount of 400 acre feet, South Adams and Commerce City anticipate that an additional 450 acre feet may be necessary for the irrigation of Commerce City parks in the GID area. The Parties agree to cooperate with each other in the pursuit and development of additional water supply projects, including exploring the possibility of financing options. Any additional obligations for irrigation of parks in the GID or for any other uses beyond the commitments contained herein cannot be made unless and until such additional water supplies have been obtained. The sufficiency and

acceptability of all such projects shall be determined, after consultation with Commerce City, in South Adams sole judgment.

11. Fees for Additional Water Resources and Wastewater Treatment Capacity. South Adams recognizes that Commerce City may pay for any additional water resources or wastewater treatment capacity through fees charged to landowners and/or developers, at Commerce City's sole discretion. It is Commerce City's intent that developers will ultimately pay for all additional water resources and wastewater treatment capacity which is purchased for the development of the RMA Lands (and GSA). It is intended that such fees charged by Commerce City will ultimately be credited against the connection fees charged by South Adams. Fees to be charged by Commerce City shall be reviewed and commented upon by South Adams before they are authorized to avoid any controversy about the amounts of such fees and South Adams' credit therefor.

12. Annexation to Commerce City. Based upon the commitments herein to make additional water resources and wastewater treatment capacity available to the RMA Lands and the GSA, South Adams will require that properties to be served in these two areas be annexed to Commerce City to the extent allowed by law. It is recognized that South Adams already has included properties into its boundaries that are not annexed into Commerce City, and the application of the annexation requirement of these properties may result in some cases which must be individually reviewed and determined by South Adams and Commerce City. Any new water or wastewater service which is provided to lands within the GSA after the execution hereof, which lands were previously included within South Adams, but not annexed into Commerce City, shall be deducted from the water and wastewater treatment capacity available to the GSA pursuant to Sections 3 and 6 above. As to any and all annexation petitions which are filed, Commerce City shall retain the final determination as to whether lands shall be annexed to the City. If a controversy or litigation arises with respect to a required annexation, Commerce City agrees to indemnify and hold harmless South Adams.

13. City Approval of Development. South Adams hereby agrees that it shall only issue water and sewer taps to property within the GSA or the RMA Lands with prior City approval of development of those lands in the form of a building permit, and after South Adams makes a determination that the development is in compliance with South Adams' Rules and Regulations. The requirement for prior approval by Commerce City is subject to the existing Water Resource Agreements summarized in Exhibit B and any special circumstances arising under case by case review set forth in Section 12 above. Commerce City hereby agrees to take the lead in discussions with developers in the GSA, the RMA Lands, and the GID concerning development issues.

14. Collaborative Efforts. South Adams acting in its role as water and wastewater provider and Commerce City, acting in its role as planning and development coordinator, hereby agree to coordinate the implementation of this Agreement, and shall explore additional collaborative efforts regarding future growth and its associated water and wastewater needs.

15. Rights-of-way and Easements for Additional Water and Wastewater Facilities. To provide the water and wastewater services contemplated in this Agreement, South Adams

must have the ability to install and operate critical infrastructure. Some of these installations will be on public rights-of-way controlled by Commerce City, and some on Commerce City land or easements. These infrastructure improvements may include water and wastewater lines, wells, buildings for pump stations and lift stations. Commerce City agrees to cooperate with South Adams in requests to secure and provide such rights-of-way, easements, or facility sites, in order to complete these projects in a timely manner. Critical needs which are currently contemplated include: easements for irrigation well sites and irrigation transmission lines; rights-of-way or easements for future transmission lines from the O'Brien Canal to the Dunes Reservoir and from the Dunes Treatment Plant to the Sable Pump Station.

16. Amendments. This Agreement contains the entire agreement between South Adams and Commerce City. Any amendments to this Agreement shall be in writing and shall take place only upon approval by the respective governing bodies of Commerce City and South Adams.

17. Severability. If any portion of this Agreement is held by a Court in a final, non-appealable decision to be invalid or unenforceable as to either party, the remaining portions of this Agreement shall remain in full force and effect.

18. Beneficiaries. Commerce City and South Adams, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of this Agreement, and no other person or entity is so intended or may bring any action, including a derivative action, to enforce this Agreement.

19. Breach, Notice of Breach and Remedies. South Adams or Commerce City may enforce this Agreement as follows.

- a. In the event of default by a Party as to any terms and conditions of this Agreement, the non-defaulting party shall give written notice of the default to the defaulting Party. The notice of default shall specify the existence, nature and extent of the default. Upon receipt of the notice of default, the defaulting Party shall immediately take all steps necessary to cure the alleged default as promptly and completely as possible. In the event that any Party shall dispute an asserted default by it, then such Party shall specify in writing the reasons for such dispute within 10 business days of receiving notice of the alleged default.
- b. If the Parties cannot agree as to whether a default exists, the dispute shall be addressed through non-binding alternative dispute resolution prior to initiating litigation. All notices, demands, and actions regarding performance, defaults and other matters hereunder shall be resolved in accordance with the following procedure. If an objection notice is submitted, the Parties shall meet promptly to resolve the matters at issue. If the Parties are unable to resolve their differences within a reasonable period of time (not to exceed 10 [ten] business days), the Parties shall meet and agree on the appointment of a mediator or other professional consultant as appropriate to address the matters

subject to the disagreement. If the Parties are unable to agree on a mediator within 10 business days, any Party, by giving five (5) business days prior written notice to the other can apply to a judge of the District Court for the County of Adams, Colorado, for selection of the mediator. Each Party involved in the dispute will bear its own share of the cost of appointing the mediator and of paying the fees of such mediator. The mediator must be a person who has not acted in any capacity for any of the Parties within the 24 months prior to the date of the selection. Within 20 business days after the selection of the mediator, the mediator is required to submit a non-binding report to the Parties involved in the dispute.

- c. No suit concerning a breach for enforcement of this Agreement shall be filed, unless: (i) the notice has been given to the defaulting Party, and (ii) default has not been cured within one month after receipt of said notice by the defaulting Party, and (iii) there has been compliance with the non-binding alternative dispute resolution proceeding outlined above; except that a suit may be commenced if an emergency circumstance exists which requires injunction or other immediate relief.
- d. In addition to any other remedies available to the Parties in law or in equity, after compliance with the above conditions, the Parties shall have the right to seek specific performance of the terms of this Agreement. No other person or entity, other than the parties to this Agreement, shall have any right to enforce the provisions of this Agreement.

20. Governmental Immunity. Nothing in this Agreement waives or is intended to waive any general protections that may be applicable to the Parties under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any other law, except that the Parties are entitled to commence actions for specific performance, injunctive relief, damages, and all other relief or remedies available under Colorado law for breach of this Agreement, subject to the provisions of Section 21 herein. If any person allegedly aggrieved by any provision of this Agreement and who is not a party to this Agreement shall sue Commerce City or South Adams under this Agreement or because of claims asserted to arise as a result of policy changes associated with this Agreement, the other party shall be notified promptly. Defense costs shall be paid by the party so sued, except as to those claims described above or as provided in Section 12 herein.

21. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Adams.

22. Term and Effective Date of Agreement. This Agreement shall become effective upon execution by Commerce City and South Adams and shall remain in effect until mutually terminated in writing by the Parties.

23. Party Representatives. Any notices hereunder shall be made to the following parties' representatives:

Commerce City:

City Manager
5291 E. 60th Avenue
Commerce City, CO 80022

City Attorney:

Robert R. Gehler, Esq.
6755 E. 72nd Avenue
Commerce City, CO 80022

South Adams:

General Manager
South Adams County Water & Sanitation District
6595 E. 70th Avenue
Commerce City, CO 80022

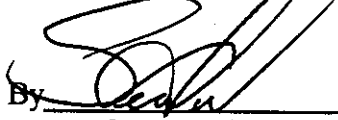
South Adams Attorney:

Timothy J. Beaton, Esq.
Moses, Wittemyer, Harrison and Woodruff, P.C.
P.O. Box 1440
Boulder, CO 80306-1440

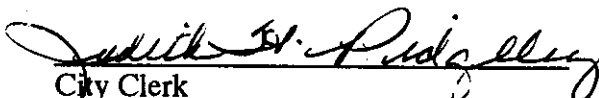
Name and address changes for representatives shall be made in writing, mailed to the other representatives at the then current addresses.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF COMMERCE CITY

By 
Sean Ford, Mayor

ATTEST:


City Clerk

SOUTH ADAMS COUNTY WATER &
SANITATION DISTRICT

By 
Jean Klein, President

ATTEST:

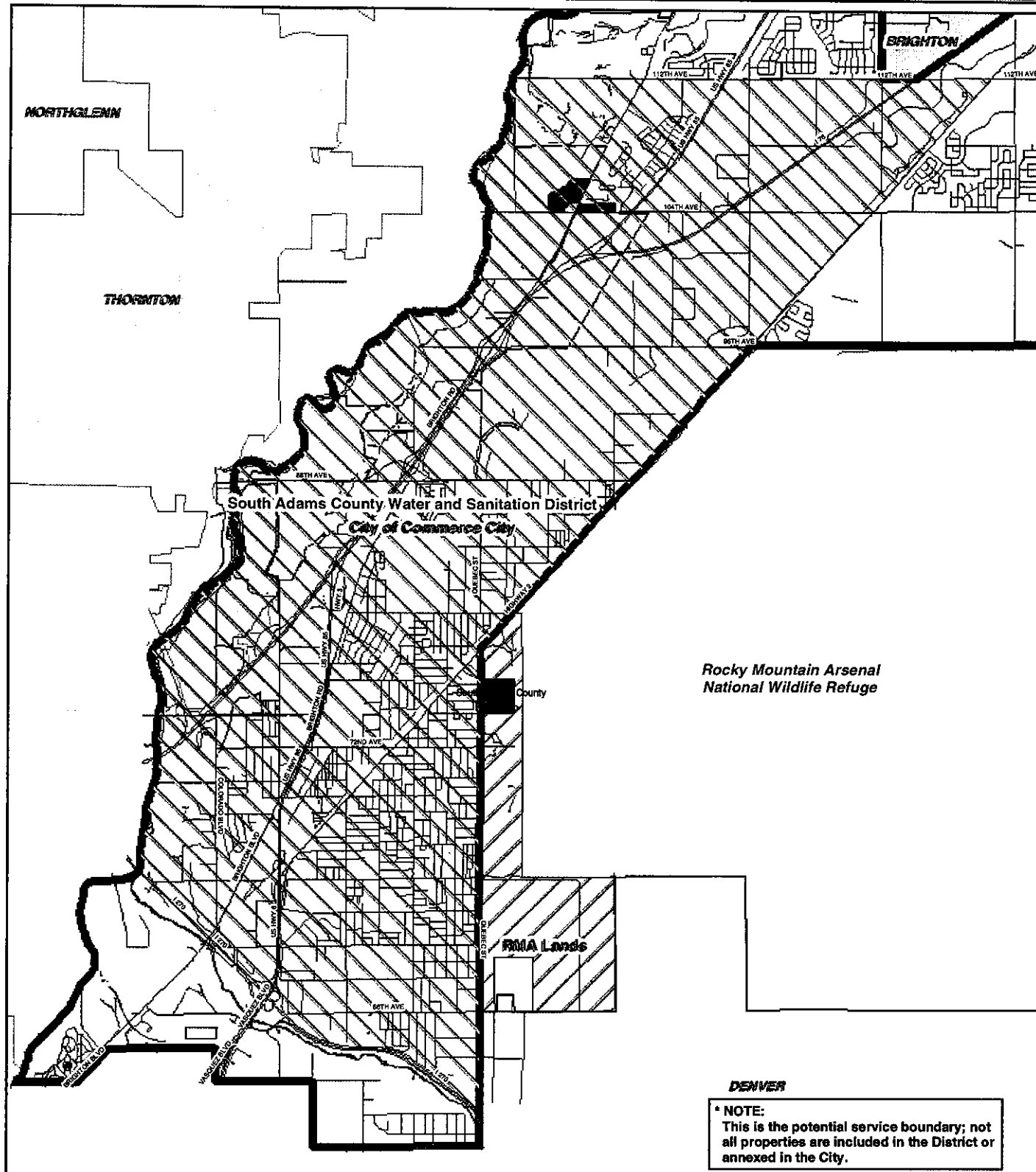

Secretary



South Adams County Water and Sanitation District & City of Commerce City

General Service Area & Rocky Mtn. Arsenal Lands

Lands Subject to IGA - April 2004



Legend

- SACWSD Service Area*
- General Service Area (GSA)
- RMA Lands (Prairie Gateway)
- Hazletine Water District
- City Limits

Prepared for: Joint Working Group - SACWSD & City of Commerce City
Prepared by: Kirk Hayer, GIS Administrator
City of Commerce City
MapDoc: Final_IGAMap_(A-Sz).mxd
April 14, 2004

Source Data:
SACWSD District Service Area - SACWSD, August 2002 *
RMA/Prairie Gateway - Rocky Mtn. Arsenal, 2004
City Limits - Public Works, March 2004
Street Centerlines - Merrick/Public Works, December 2004

Exhibit B
Existing Water Resource Agreements in the General Service Area

| DATE | ENTITY | ERU's | ACRE FEET |
|--------------|------------------|-----------------|------------------|
| 12/11/02 | Groupos Cementos | 201.00 | 106.53 |
| 12/12/02 | Blitt/GHA | 1,350.00 | 715.50 |
| 02/12/03 | NS Properties | 17.25 | 9.14 |
| 02/12/03 | Claybar Creek | 15.00 | 7.95 |
| 08/29/03 | Adams Square | 510.00 | 270.30 |
| 10/08/03 | Marty Farms | 197.00 | 104.41 |
| 01/14/04 | Dig | 103.00 | 54.59 |
| In Progress | Aigaki, LLC | 90.00 | 47.70 |
| TOTAL | | 2,483.25 | 1,316.12 |