

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A COST SHARING AGREEMENT WITH BNSF RAILWAY COMPANY FOR THE CONSTRUCTION OF THE BNSF CROSSING OF E. 96TH AVENUE**

**NO. 2023-006**

WHEREAS, the City of Commerce City (“City”), along with the BNSF Railway Company (“BNSF,” together with the City, “Parties”), intend to reconstruct the existing railway crossing with E. 96<sup>th</sup> Avenue;

WHEREAS, the City and BNSF have agreed to share the cost of construction (“Design Services”) for the Project, with the City and BNSF each agreeing to contribute 50% of the final cost of the of the construction;

WHEREAS, funding for the construction has been made available through the Railroad Crossing Reconstruction Fund, and the City has agreed to reimburse BNSF for the City’s share in accordance with the terms and conditions of the agreement between the Parties;

WHEREAS, the cost to the City of the Project will exceed \$250,000 and, pursuant to the City’s procurement policies and the City Manager’s commitment to the City Council, the City Council must approve any procurement in excess of \$250,000; and

WHEREAS, the City Council has determined that there is a compelling public need and purpose for the Project, and that the construction is necessary and required for the completion of the Project and the public health, safety, and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1. Findings.** The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

**SECTION 2. Approval of Agreement.** The cost sharing agreement between the Parties is hereby approved subject to successful finalization of an appropriate agreement on terms acceptable to the City Manager. This agreement shall not be deemed to grant any right or interest in the award of a contract to BNSF. All rights and interests shall be defined exclusively by the terms and conditions set forth in the written agreement.

**SECTION 3. Authorization to Negotiate.** The City Manager is hereby authorized to negotiate and finalize the details of an agreement with BNSF, including final pricing and payment terms, consistent with the services agreement with BNSF.

**SECTION 4. Execution and Attestation.** Upon successful finalization of the cost sharing agreement and approval as to form by the City Attorney, the City Manager is hereby authorized to execute, and the City Clerk to attest, the cost sharing agreement on behalf of the City.

RESOLVED AND PASSED THIS 6TH DAY OF MARCH, 2023.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk