

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE
CITY, COLORADO AND SOUTH ADAMS COUNTY WATER AND SANITATION
DISTRICT ACTING THROUGH ITS SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT ACTIVITY ENTERPRISE REGARDING TOWER ROAD
IMPROVEMENTS INCLUDING WATER MAIN AND SANITARY SEWER
CONSTRUCTION**

This INTERGOVERNMENTAL AGREEMENT (the "IGA") is made and entered into effective this ____ day of _____, 2016 (the "Effective Date"), by and between the City of Commerce City, Colorado ("City"), and the South Adams County Water and Sanitation District, a Colorado Special District acting through its South Adams County Water and Sanitation District Activity Enterprise ("District") (collectively, the "Parties").

WHEREAS, pursuant to Art. XIV, § 18(2)(a) of the Colorado Constitution, and § 29-1-203, C.R.S., as amended, the Parties may cooperate or contract with each other to provide any function or service lawfully authorized to each; and

WHEREAS, the City anticipates constructing improvements to Tower Road between 81st Avenue and approximately 103rd Avenue, including widening Tower Road from two lanes to four lanes, relocating and burying underground the existing overhead electrical transmission line, constructing regional drainage improvements, and installing curbs, gutters, on-street bike lanes, a detached sidewalk, a bike path, a median, street lighting and traffic signals ("City Improvements"); and

WHEREAS, future development in the vicinity of the City Improvements will require additional water main and sanitary sewer capacity, as shown in the plans for Project No. PW-03-2014, including a 16-inch water main between 81st Avenue and 88th Avenue and a 21-inch sanitary sewer extension from 96th Avenue to 104th Avenue ("Utility Improvements"); and

WHEREAS, in the interest of efficiency, the City wishes to include the construction of the Utility Improvements with the City's construction of the City Improvements and to finance the Utility Improvements; and

WHEREAS, the Utility Improvements will be used by the District to provide water and wastewater services to future development, and, in the future, will be dedicated to the District; and

WHEREAS, the District wishes to finance construction of one water line crossing, as shown in the plans for Project No. PW-03-2014, which will be needed in the future (the "District Improvements"); and

WHEREAS, the City has solicited bids for construction of the Tower Road project through its normal procurement process, and such solicitation included the District Improvements as an additional item of work, subject to the District's electing to include the District Improvements; and

WHEREAS, the City has awarded the contract for the City Improvements and the Utility Improvements to Flatirons Constructors, Inc.; and

WHEREAS, the District has reviewed the bids and desires to include the District Improvements with the City's construction of the City Improvements and the Utility Improvements (collectively the "Project") in accordance with this IGA; and

WHEREAS, both Parties find that it is in the best interest of their residents and the public to enter into this IGA setting forth their agreement as to the Utility Improvements and the District Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. **Project Costs and Payment.**

a. The District shall pay only the actual costs of the District Improvements (including any delays associated with the District Improvements for which the City would otherwise be responsible as owner). The bid amount for the District Improvements is \$100,639.14 consisting of \$61,775.64 for a 42-inch steel casing pipe and \$38,863.50 for a 20-inch non-potable water line. The District shall also be responsible for the costs of the design engineering, construction inspection, construction engineering, and construction management, and warranties as required by this Agreement of the District Improvements (to be conducted by District personnel and District consultants).

b. The District shall use its best efforts to budget funds in the 2017 budget and will provide payment in the amount bid for District Improvements to the City no sooner than January 1, 2017, but no later than January 31, 2017. In the event that any District funds are not expended for the District Improvements, the City shall return said funds to the District within thirty (30) days following final payment to the contractor.

c. The City shall pay all other costs associated with the Project, including the cost of installation and all related costs of the Utility Improvements (except for any additional warranty required for the Utility Improvements by this Agreement, which cost shall be paid by the District). The District is not responsible for payment of any costs other than those specified in Section 2.a. or this paragraph unless the District specifically agrees in writing to pay such additional cost.

d. The City may elect to install sleeves for future water or wastewater line crossings of Tower Road as part of the Project; provided, however, that the City shall pay all costs associated with such construction.

e. The cost of all minor contract revisions or change orders which relate to the District Improvements shall be the responsibility of the District. Any contract revisions or change orders that affect the construction of the District Improvements or increase the cost to the District shall be approved by the District in writing prior to the City including such work in the Project. The District will pay the City for the amount of any increase in the costs of the District Improvements due to such changes, at the time of the District's approval of the change order.

f. All costs of the Project, other than the District Improvements, shall be the responsibility of the City.

2. **Authority to Manage, Advertise, Contract, and Construct.**

a. The District hereby authorizes the City to manage, advertise, contract and construct the Project; provided, however, that the District has the right to review all plans for the Utility Improvements and the District Improvements, to ensure that such improvements will meet or exceed the District's Design and Construction Standards for Water and Wastewater Facilities. All Utility Improvement and District Improvement construction shall be in compliance with plans approved by the District in writing in advance of construction. The City will use reasonable care and act in good faith in managing, advertising, contracting and constructing the Project. The City's contractor shall obtain all required permits and pay all taxes associated with the Project work. Subject to the foregoing and Section 3.b. hereof, the City shall have full control over all aspects of the management, advertisement, contracting, and construction of the Project until construction has been completed.

b. In anticipation of the deposit of the funds required by this IGA, the City shall incorporate the District Improvements into the City's contract through a change order. The District shall have the right to review the change order that will address the District Improvements before execution by the City, and, if the District requests any changes to the change order, the City shall duly consider the District's requests. The District shall also have the right to inspect the final installation of all Utility Improvements and District Improvements before backfilling.

c. The City's contract and the change order will include a minimum two-year warranty on the Utility Improvements and the District Improvements, guaranteeing that such improvements are free from defects in materials, equipment, and workmanship, which shall name the District as a beneficiary.

d. The District shall provide inspection and approval of the Utility Improvements and the District Improvements and share the results of all inspections with the City in a timely manner so as to not cause a delay to the Project.

e. The District shall inspect the Utility Improvements and District Improvements and related portions of the Project during and after construction, subject to the Project's safety program. Reasonable changes, including inspection issues identified by the District, will be discussed with the City for evaluation and the possibility of incorporating them into the Project. Requested changes shall be incorporated into the Project at the City's sole discretion; provided, however, that the City shall consider whether the proposed change requests are for work that is mandated by the District's Design and Construction Standards for Water and Wastewater Facilities, specifications, or required by approved plans.

f. The City shall provide the District with portable document format (PDF) and AutoCAD files of the record drawings of the Utility Improvements and the District Improvements within ninety (90) days following final acceptance.

g. The District agrees to designate an agent capable of analyzing construction situations and recommending courses of action that are acceptable to the District, regarding the Utility Improvements and District Improvements. The District's initial designated agent is Abel Moreno, Distribution and Collection Systems Manager for the District.

3. **Ownership.**

a. Upon its acceptance of the District Improvements for which it is paying, the District will own the District Improvements.

b. The Utility Improvements constructed and installed pursuant to the Project shall remain the sole and separate property of the City until transferred to the District. The City shall transfer ownership of the Utility Improvements associated with the Project by Bill of Sale, free and clear of any encumbrances, to the District, without payment of any transfer charges or any other fees or costs by the District to the City. Until the transfer of ownership, the City hereby grants to the District an irrevocable license to use, operate, maintain, repair, and replace the Utility Improvements, which license shall commence upon the completion of the Utility Improvements and final inspection and approval by the District.

c. All other portions of the Project will remain in the City's ownership upon final acceptance.

d. This section shall survive the expiration or termination of this IGA if the Utility Improvements are constructed.

4. **Operation and Maintenance of Utility Improvements.** Following completion of the Project, the District shall have the right to operate and use the Utility Improvements for its water and wastewater services, and the District shall be responsible, at its sole cost, for operation and maintenance of all Utility Improvements installed pursuant to the Project. Such operation and maintenance shall be consistent with, and subject to, the Rules and Regulations of the District for operation and maintenance of all water and wastewater facilities owned by the District, with the District entitled to impose fees and charges upon its users and customers, as set by the Board of Directors of the District.

5. **Term.** The term of this IGA shall be from the date first written above through the final acceptance of the Project.

6. **Non-Appropriation – No Remedy.**

a. The Parties will use their best efforts to appropriate funds sufficient to make the payment for each of their obligations as contemplated herein. However, if either Party fails to appropriate sufficient funds to make such payments or perform such obligations, the other Party shall have no remedy at law or in equity to enforce the terms of this IGA. If the District fails to appropriate funds sufficient to perform this IGA, the City may elect to exclude any further work on the District Improvements.

b. The Parties agree and acknowledge that based on the foregoing, this IGA does not constitute a multiple fiscal year debt or financial obligation of the District or the City.

7. **No Partnership or Agency.** Notwithstanding any language in this IGA, or any representation or warranty to the contrary, neither the District nor the City shall be deemed or constitute a partner, joint venture, or agent of the other. Any actions taken by the Parties pursuant to this IGA shall be deemed actions as an independent contractor of the other.

8. **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 Parties. It is the express intention of the Parties that any person, other than the Parties, shall be deemed to be only an incidental beneficiary under this IGA.

9. **Governing Law and Venue; Recovery of Costs.** This IGA shall be governed by the laws of the State of Colorado, and venue shall be in Adams County, Colorado. In the event legal action is brought to resolve any dispute among the Parties related to this IGA, the Parties shall pay their own court costs and attorney fees.

10. **Governmental Immunity.** No term or condition of this IGA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

11. **Authority.** The Parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.

12. **Entire Agreement.** This IGA contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of both Parties.

13. **Counterparts.** This IGA may be executed in counterparts, each of which shall constitute one and the same instrument.

14. **Binding Effect.** This IGA can be assigned only with the consent of the other Party. This IGA shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, personal representatives and successors and permitted assigns.

15. **Recitals and Exhibits.** All recitals and exhibits referred to in this IGA are incorporated herein for all purposes.

16. **Severability.** In the event a court of competent jurisdiction holds any provision of this IGA invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this IGA.

17. **Written Notices.** Written notices required under this IGA and formal correspondence between the Parties shall be directed to the following and shall be deemed received as of the date of hand-delivery, or as of the date indicated on the return receipt request of a certified mailing:

If to the City:

Public Works Director
Commerce City
8602 Rosemary Street
Commerce City, CO 80022-5053

With a copy to:

City Attorney, City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

If to the District:

District Manager
South Adams County Water and Sanitation District
6595 East 70th Avenue
Commerce City, CO 80037-0597

With a copy to:

District General Counsel
South Adams County Water and Sanitation District
6595 East 70th Avenue
Commerce City, CO 80037-0597

IN WITNESS WHEREOF, the Parties have caused this IGA to be executed as of the Effective Date.

**SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT ACTING
THROUGH ITS SOUTH ADAMS COUNTY
WATER AND SANITATION DISTRICT
ACTIVITY ENTERPRISE**

By: _____
President

Attest:

Secretary

**CITY OF COMMERCE CITY,
COLORADO**

By: _____
Sean Ford, Mayor

Attest:

Approved as to Form

Laura J. Bauer, MMC, City Clerk

Robert Sheesley, Interim City Attorney