

PROJECT FUNDING AGREEMENT

BETWEEN THE CITY OF COMMERCE CITY, THE CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT REGARDING:

TOWER ROAD IMPROVEMENTS

THIS PROJECT FUNDING AGREEMENT BETWEEN THE CITY OF COMMERCE CITY, THE CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT REGARDING TOWER ROAD IMPROVEMENTS (the "IGA") is made and entered into effective this 3rd day of March, 2014 (the "Effective Date"), by and between the CITY OF COMMERCE CITY a home rule city 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 "City"), the CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE 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 "NIGID"), 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"), and the COMMERCE CITY E-470 RESIDENTIAL 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 "ERAGID"), collectively the "Parties".

WHEREAS, the Parties' current and/or anticipated future boundaries converge at certain locations within the City, at which locations, the construction and installation of certain infrastructure improvements, such as 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, are required by the City;

WHEREAS, the City and the parties have entered into intergovernmental agreements to provide for the construction and installation of City-required infrastructure improvements;

WHEREAS, due to the location of and need for the infrastructure improvements, the Parties concur that it is in their best interests, and in the best interests of the residents of each party and of the City, to jointly contribute to the design, construction and installation of the infrastructure improvements;

WHEREAS, the NIGID funded infrastructure improvements to provide water and sewer services and regional roadway improvements to relieve traffic congestion, improve safety for motorists, commuters and pedestrians and to improve access to commercial and residential developments;

WHEREAS, the NIGID, the ECAGID and the ERAGID 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, rights and obligations with respect to funding the infrastructure improvements to Tower Road.

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. THE INFRASTRUCTURE IMPROVEMENTS.

a. The Parties anticipate that the Tower Road infrastructure improvements from 103rd Avenue to 80th Avenue will be initiated in multiple phases commencing in 2014. The infrastructure improvements may involve or include any one or more of the following:

i. 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.

ii. 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.

iii. The acquisition of certain real property interests in certain phases of the infrastructure improvements 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 infrastructure improvements.

b. One or more phases of the Tower Road infrastructure improvements will be constructed by the City.

2. JOINT PROJECT IMPLEMENTATION AND PAYMENT OF COSTS. The Parties shall cause to be performed, whether or not pursuant to an agreement identified in Section 1 above, all work required for completion of the design and construction of the infrastructure improvements, including the acquisition of the Property Interests, as such work is approved by the Parties' respective boards of directors, and to pay all costs associated therewith (the "Project Costs").

a. The Project Costs may include, but not be 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 Joint Project including the preparation and production of construction drawings, specifications and contracts and the construction of the Joint Project 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. The Tower Road Project Costs shall be allocated to each party using the following allocation:

Jurisdiction & Percentage Allocation	Project Costs*
City = 15%	\$9,000,000
NIGID = 33%	\$19,285,714
ECAGID = 31%	\$18,000,000
ERAGID = 21%	\$12,214,286
Total	\$58,500,000

* Project Costs are estimates only and the final amount allocated to each entity will be determined by the final cost using the percentages shown.

4. ISSUANCE OF BONDS. The City is authorized to issue bonds on behalf of all members of the Parties. This Project Financing Agreement to issue bonds shall obligate the NIGID, the ECAGID and the ERAGID as if each general improvement district as if it issued its own General Obligation bonded indebtedness.

5. OWNERSHIP; MAINTENANCE; OPERATION. With the exception of water and sewer infrastructure and the property interests associated therewith, the City shall maintain ownership of the Tower Road infrastructure improvements and the Property Interests.

6. TERM. This IGA shall become effective upon execution by the parties and shall continue in effect through the satisfactory repayment of the allocated Project Costs for the Tower Road infrastructure improvements.

7. NOTICE. Any notice required hereunder shall be given to the above named Parties' representatives. The Parties initially designate the following as representatives with respect to this Project Financing Agreement:

For the City:
 Director of Finance
 7887 E. 60th Avenue
 Commerce City, CO 80022

For the ECAGID:
 Chief Financial Officer
 7887 E. 60th Avenue
 Commerce City, CO 80022

For the ERAGID:
Chief Financial Officer
7887 E. 60th Avenue
Commerce City, CO 80022

For the NIGID:
Treasurer
7887 E. 60th Avenue
Commerce City, CO 80022

8. MISCELLANEOUS PROVISIONS.

a. Best Efforts. The Parties agree to work diligently together and in good faith, using their best efforts to resolve any unforeseen issues and disputes, to arrange the necessary funding 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 infrastructure improvements and Joint Projects.

b. Examination of Records. The Parties agree that, for a period of at least three (3) years from the completion of the project funding, any duly authorized representative of any party shall have access to and the right to examine any directly pertinent books, documents, papers and records of the parties involving the bond issuance, payment of the costs of the infrastructure improvements and Joint 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 Parties; 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 Parties that any person other than the City, NIGID, the ECAGID and the ERAGID 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 bond issuance, payment of the costs of the infrastructure improvements and Joint Projects.

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 of the Parties.

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 parties.

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 persons executing this IGA on behalf of the Parties warrant that they have full authorization to execute this IGA.

n. Notice of Default; Attorney Fees. In the event any party defaults in the performance of any term or provision of this IGA, the party claiming the default shall give the other party notice of the claimed default and request that the default be corrected or cured within thirty (30) days. If the default is not corrected or cured within such thirty-day period, the party claiming 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. The non-defaulting party or parties shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

o. Counterparts. This IGA 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 follows.]

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

CITY OF COMMERCE CITY

Sean Ford, Chair, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Roger Tinklenberg, Director 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

**COMMERCE CITY E-470 RESIDENTIAL
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

**CITY OF COMMERCE CITY
NORTHERN INFRASTRUCTURE
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, Treasurer