

**INTERGOVERNMENTAL AGREEMENT BETWEEN ADAMS COUNTY,  
COLORADO, AND THE CITY OF COMMERCE CITY REGARDING  
KENWOOD OUTFALL STORM SEWER AND ROADWAY IMPROVEMENTS –  
PHASE 3 – HIGHWAY 85 TO UPRR**

This INTERGOVERNMENTAL AGREEMENT (“IGA”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 2016, by and between the COUNTY OF ADAMS, a body politic and corporate of the State of Colorado whose principal business address is 4430 South Adams County Parkway, 5<sup>th</sup> Floor – Suite C5000A, Brighton, Colorado 80601-8218 (“County”), and the CITY OF COMMERCE CITY, a Colorado municipal corporation whose principal business address is 7887 East 60<sup>th</sup> Avenue, Commerce City, Colorado 80022-4199 (“City”). The County and the City are referred to collectively herein as 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;

WHEREAS, the County will be completing the design and will be constructing drainage and roadway improvements project in the Dupont Neighborhood, known as the ***KENWOOD DAHLIA OUTFALL STORM SEWER AND ROADWAY IMPROVEMENTS – PHASE 3 – HIGHWAY 85 TO UPRR*** (“Project”), the plans for which are attached hereto as **Exhibit A**, and incorporated herein by reference;

WHEREAS, the Project includes storm sewer and drainage and roadway improvements that are generally described as follows:

1. Storm sewer and drainage improvements in East 76<sup>th</sup> Avenue, Kenwood Street and East 77<sup>th</sup> Avenue;
2. Roadway improvements to East 76<sup>th</sup> Avenue from UPRR to Kenwood Street;
3. Roadway improvements to Kenwood Street from East 76<sup>th</sup> Avenue to East 77<sup>th</sup> Avenue;
4. Roadway improvements to East 77<sup>th</sup> Avenue from Highway 85 to Kenwood Street;

WHEREAS, while the Project is located largely within unincorporated areas of the County, numerous properties and rights-of-way in and adjacent to the Project are located within the City’s jurisdiction;

WHEREAS, the City agrees that the properties and rights-of-way within the City’s jurisdiction in and adjacent to the Project will benefit from the Project;

WHEREAS, the County has requested, and the City is agreeable, that the County be responsible to manage, engineer, advertise, contract, construct and inspect the Project;

WHEREAS, the County has requested, and the City is agreeable, that the City reimburse the County for user-delay and the right of way permit fees collected by the City that are associated with the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. Authority to Manage, Engineer, Advertise, Contract, Construct and Inspect.

a. The City hereby authorizes the County to manage, engineer, advertise, contract, construct and inspect the Project, including those portions of the Project within the City's jurisdiction; provided, however, that any portions of the Project constructed within the City's jurisdiction shall meet or exceed the City's Engineering Construction Standards and Specifications. Prior to construction, the County's contractor shall obtain a City Right-of-Way Permit and during construction shall pay all applicable user-delay fees and the right of way permit fee. The City shall waive all inspection fees required for the construction of the project within the City's jurisdiction. Subject to the foregoing, the County shall have full control over all aspects of the management, engineering, advertisement, contracting, construction and inspection for the Project until construction has been completed. Once construction has been completed, each Party shall own and maintain the portions of the Project lying within their respective jurisdictions.

b. Prior to beginning construction, the County shall provide design plans and design reports to the City for its review. The City shall provide comments, if any, to the County in writing within fourteen (14) days of the City's receipt of the design plans and design reports. The County shall incorporate into the Project any and all reasonable City comments and requested changes.

c. The City may inspect the Project during construction, subject to the Project's safety program. Reasonable changes identified by the City will be discussed with the County for evaluation and the possibility of incorporation into the Project. Any such changes shall be at the County's sole discretion; provided, however, that any changes mandated by the City's Engineering Construction Standards and Specifications shall be compulsory.

d. The County shall provide the City with a portable document format (PDF) file and AutoCAD file of the as-built plans within ninety (90) days following the completion of construction.

2. Reimbursement of City Fees Collected.

a. The City will reimburse to the County the City's user-delay fees and right of way permit fees payable and remitted to the City by or on behalf of the County or the Contractor that are directly generated from the construction of Project, and will be reimbursed to the County within 60 days of invoice, provided such user-delay and right of way permit fees have been paid. An estimate of the user-delay fees and right of way permit fees for the Project are approximately twentyone thousand and fifty Dollars (\$21,050.00), the details of which are attached hereto as **Exhibit B**, and incorporated herein by reference.

b. If the City determines that the City has paid any amounts not properly payable to the County, the County will reimburse such amounts to the City within 60 days of written notice to the County.

3. Term. The Term of this IGA shall be from the date first written above through the earlier of: the completion of the Project; or December 31, 2017, unless extended in writing.

4. Sales and Use Taxes. Unless specifically exempt under the City's Sales and Use Tax Code, all construction within the City is taxable, including construction performed on behalf of the City or the County. The contractor for the Project (the "Contractor") will be subject to the tax

on all purchases, fabrication, manufacture or other production of tangible personal property used, stored or consumed on the Project. Prior to or on the date the Contractor locates equipment within the City, the Contractor will be required to file with the City an Equipment Declaration on forms provided by the City describing each anticipated piece of equipment the purchase price of which was two thousand five hundred dollars (\$2,500.00) or greater, stating the dates on which the Contractor anticipates the equipment to be located within and removed from the boundaries of the City and stating the actual or anticipated purchase price of each such anticipated piece of equipment along with any other information deemed necessary by the City.

5. Agreement Subject to Appropriations. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the Parties, and either Party may terminate this Agreement on account of non-appropriation of funds. The Parties acknowledge that they have made no promise to continue to budget funds beyond the current fiscal year and that the Parties have and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis.

6. No Partnership or Agency. Notwithstanding any language in this IGA or any representation or warranty to the contrary, neither the City nor the County 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.

7. 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.

8. 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, each party shall pay its own attorney fees and court costs.

9. 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.*

10. 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.

11. 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.

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

13. Binding Effect. This IGA shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, personal representatives, successors and assigns.

14. Notices. Written notices required under this Agreement and formal correspondence among 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:  
City of Commerce City  
City Manager  
7887 East 60th Avenue  
Commerce City, CO 80022  
Phone: 303-289-3612

If to the County:  
Adams County  
Transportation Director  
4430 South Adams County Parkway  
Brighton, Colorado 80601  
Phone: 720-523-6875; Fax: 720-523-6996

15. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

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

IN WITNESS WHEREOF, the Parties hereto have caused this IGA to be executed on the day and year first above written.

[Two signature pages follow]

**CITY OF COMMERCE CITY**

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Sean Ford, Mayor

ATTEST:

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Laura J. Bauer, MMC, City Clerk

Approved as to form:

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Robert D. Sheesley, Senior Assistant City Attorney

**BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, COLORADO**

By: \_\_\_\_\_  
Steve O'Dorisio, Chairman of the Board

Attest:

Approved as to Legal Form

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\_\_\_\_\_  
County Attorney