

**FIRST AMENDMENT TO AGREEMENT FOR THE PURPOSE OF
CONSTRUCTION, INSTALLATION AND MAINTENANCE OF WATER LINES,
WASTEWATER LINES, ACCESSORIES AND APPURTENANCES THERETO**

This **FIRST AMENDMENT TO AGREEMENT FOR THE PURPOSE OF CONSTRUCTION, INSTALLATION AND MAINTENANCE OF WATER LINES, WASTEWATER LINES, ACCESSORIES AND APPURTENANCES THERETO** (“Amendment”) is made and entered into effective the ___ day of _____, 2013, by and between **THE CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT** (“NIGID”), a general improvement district whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022, and **SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT** (“SACWSD”), a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6595 E. 70th Avenue, Commerce City, Colorado 80022, also acting in its enterprise capacity pursuant to its Water and Sewer Enterprise (“SACWSD Enterprise”), collectively the “Parties.”

RECITALS

WHEREAS, the Parties previously entered into that certain Agreement between Northern Infrastructure General Improvement District and South Adams County Water and Sanitation District and its Enterprise for the Purpose of Construction, Installation, and Maintenance of Water Lines, Wastewater Lines, Accessories and Appurtenances thereto, dated April 27, 1998 (the “Agreement”);

WHEREAS, Section 5 of the Agreement sets forth various requirements for lands to receive a water supply or wastewater service from or through any facilities or capacity constructed as part of the Project defined therein;

WHEREAS, the Parties recognize that the City of Commerce City (“City”) has formed a new general improvement district, the E-470 Commercial Area General Improvement District (“ECAGID”), which will provide infrastructure to various lands that may also utilize certain improvements financed by the NIGID as part of the Project;

WHEREAS, the Parties agree that lands included into the ECAGID are not required to include into the NIGID unless explicitly required by the City and that lands included into the ECAGID may utilize facilities or capacity funded by the NIGID, in addition to facilities funded by the ECAGID, provided that the landowner is approved by the ECAGID and SACWSD, subject to such terms and conditions as the ECAGID and SACWSD may impose;

WHEREAS, the Parties have determined that Section 5(d) of the Agreement, which required landowners who used facilities funded as part of the Project to comply with the “Declaration of Covenants and Restrictions” between the landowner and United Power, Inc., is no longer relevant;

WHEREAS, Section 10 of the Agreement provided that when all indebtedness incurred for construction and installation of the Project was paid and satisfied in full, ownership of the Project would be transferred to SACWSD;

WHEREAS, the NIGID issued bonds to pay for the water and wastewater facilities of the Project in 1998 (the "Original Bonds"), with an initial maturity date of December 1, 2017;

WHEREAS, the NIGID refinanced the Original Bonds in 2002, which consequently extended the maturity date until 2031;

WHEREAS, the NIGID changed the bond debt schedule again when the NIGID redeemed \$2,100,000 of the bonds and converted the remaining bonds to variable interest rate reset on a weekly mode at the time the NIGID issued additional bonds in 2006 to fund road improvements for the NIGID;

WHEREAS, according to the reasonable estimate provided by the NIGID, the indebtedness for the Project would have been paid in full in 2019, but for the refinance and the use of NIGID revenue to pay for other public improvements;

WHEREAS, the Parties agree that the Project will be conveyed to South Adams no later than December 31, 2019, as initially intended;

WHEREAS, Section 15 of the Agreement states, in part, that once all indebtedness incurred for construction and installation of the Project are paid in full and ownership thereof has been transferred to SACWSD, the NIGID and SACWSD jointly shall confer regarding whether the NIGID will continue to exist;

WHEREAS, the NIGID and SACWSD have determined that the NIGID should continue in existence until the purposes of the NIGID, as determined by its Board, have been fulfilled;

WHEREAS, in consideration of the foregoing, the Parties have determined that certain amendments to the Agreement should be made at this time; and

WHEREAS, the Agreement provides that any such amendments must be in writing and by mutual agreement of the Parties.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AMENDMENTS

1. Amendments.

a. The first paragraph of Section 5 of the Agreement is hereby amended to read as follows:

5. Consent Required for Service. The GID and SACWSD agree that no land located within or without the boundaries of the GID shall receive a water supply or wastewater services from or through any facilities or capacity constructed as part of the Project, unless the landowner is first approved by the GID or the E-470 Commercial Area General Improvement District (the “ECAGID”) and SACWSD therefor. The landowner must agree to be bound by such terms as may be required by the GID, the ECAGID or SACWSD, which may include:

- b. Section 5(d) of the Agreement is hereby deleted in its entirety.
- c. Section 10 of the Agreement is hereby amended to read as follows:

Ownership of Project. The facilities constructed and installed pursuant to the Project shall remain the sole and separate property of GID until December 2019, the reasonably estimated date on which the GID would have repaid the bonds originally issued for the Project but for a refinancing to finance new, unrelated improvements. No later than December 31, 2019, the GID will transfer ownership of the Project by Bill of Sale, in an “as is” condition without warranty, express or implied, to SACWSD without payment of any transfer charges or any other fees or costs by SACWSD to the GID; and

- d. The last sentence of Section 15 of the Agreement is hereby amended to read as follows:

The GID shall continue in existence until the purposes of the GID, as they may be determined in the discretion of the GID Board of Directors, have been fulfilled.

2. Remainder of Agreement Unchanged. Except as expressly amended herein, the Agreement shall remain unchanged and in full force and effect.

3. No Precedent. The provisions of this Amendment are deemed to be unique and special and do not create a precedent for future agreements or other matters pertaining to other properties or to the NIGID and SACWSD.

[The remainder of this page intentionally left blank. Signature page(s) follow(s).]

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

SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a Colorado special district and quasi-municipal corporation

JoAnn Stevenson, President

ATTEST:

B. JoAnn Moss, Secretary

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