

**FIRST AMENDMENT
TO
INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
E-470 PUBLIC HIGHWAY AUTHORITY
AND
CITY OF COMMERCE CITY
REGARDING
FUNDING RELATED TO TOWER ROAD/PENA BOULEVARD INTERCHANGE**

This **FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** (the “First Amendment”) is made and entered into effective the ____ day of _____, 2018 (the “Effective Date”), by and between the **CITY OF COMMERCE CITY**, a Colorado home rule municipality whose principal business address is 7887 E. 60th Avenue, Commerce City, CO 80022 (the “City”) and the **E-470 PUBLIC HIGHWAY AUTHORITY**, a body corporate and political subdivision of the State of Colorado, whose principal business address is 22470 East 6th Parkway, Suite 100, Aurora, CO 80018 (the “Authority”), (collectively referred to herein as the “Parties” or each individually as a “Party”).

RECITALS

WHEREAS, the City is a municipal corporation organized and existing as a home rule city under Article XX of the Colorado Constitution and the Home Rule Charter of the City; and

WHEREAS, the Authority was created and organized pursuant to Sections 45-43-4-501 *et seq.*, C.R.S. (the “Act”) for the purpose of financing constructing, operating, and/or maintaining E-470, and in this regard to carry out all or any part of those functions or activities permitted by the Act and the Authority’s establishing contract; and

WHEREAS, the Authority and the City, as Colorado governments, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18 and Sections 29-1-201, *et seq.*, C.R.S. to cooperate or contract via intergovernmental agreement with one another to provide functions, services or facilities authorized to each cooperating government; and

WHEREAS, the City and the Authority are parties to that certain Intergovernmental Agreement Regarding Funding Related to Tower Road/Pena Boulevard Interchanges dated April 10, 2014 (the “Agreement”) relating to the funding of the Northwest Ramp, as defined in the Agreement;

WHEREAS, the City has entered into an agreement with the City and County of Denver to construct the Northwest Ramp and relocate the existing off-ramp on the northeast side of the Interchange (“Northeast Ramp”), as defined in the Agreement, to align with the intersection of the Northwest Ramp with Tower Road and has awarded a contract for the construction of the Northwest Ramp and the Northeast Ramp as shown in for-construction design documents by Felsburg Holt & Ullevig, Inc., dated October 6, 2017 (“Plans”); and

WHEREAS, the City has asked to amend the amount and use of the Authority Funds in the Agreement and the Authority is willing to entertain such as amendment under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

COVENANTS AND AGREEMENTS

The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.

1. **Northwest Ramp.** Paragraph 2 of the Agreement is hereby amended and restated as follows and all other references to the “Northwest Ramp” in the Agreement shall include the Northeast Ramp:

2. NORTHWEST & NORTHEAST RAMPS.

A. **Authority Funds.** In order to facilitate the timely construction of the Northwest Ramp, the Authority agrees to pay costs incurred by the City in connection with the design and construction of the Northwest Ramp and the design and reconstruction of a portion of the Northeast Ramp, as shown in the Plans, in an amount up to, but not exceeding, Four Million Two Hundred Thirty Thousand Three Hundred Dollars (\$4,230,300) (the “Authority Funds”), provided, however, that no more than Fifty-One Thousand Three Hundred and Twenty-Two Dollars (\$51,322) of the Authority Funds may be used on permitting-related environmental services (“Permitting Services”) and no Authority Funds may be used on any other aspect of permitting or any aspect of approvals or consents. The Authority Funds shall be provided as follows: (1) within thirty (30) days of the Effective Date the Authority shall deposit the Authority Funds into a designated and segregated Authority account used solely for the purpose of this Agreement (the “Escrow”); and (2) the Authority shall release funds from the Escrow to the City upon the presentation to the Authority and mutual approval by the Authority and the City of progress invoices for the design and construction of the Northwest Ramp and Northeast Ramp. Any interest which may accrue on the Authority Funds shall be the property of the Authority and shall not increase the Authority Funds available under this Agreement.

2. **Full Force and Effect.** Except as expressly modified by this First Amendment, terms and conditions contained within the Agreement remain unmodified and all continue to remain in full force and effect.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Tim Stewart
Its: Executive Director

ATTEST:

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Tim Stewart and _____, as Executive Director and _____ of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPROVED AS TO FORM:

ICENOGLE SEAVER POGUE
A Professional Corporation

General Counsel

Director of Finance

DATE APPROVED BY THE BOARD OF DIRECTORS: December 14, 2017

By: Brian McBroom
Its: City Manager

By: Laura Bauer
Its: City Clerk

Robert D. Sheesley, City Attorney

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____ and _____, as City Manager and City Clerk of the City of Commerce City.

My commission expires: _____

Notary Public