

**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 INFRASTRUCTURE IMPROVEMENTS**

This INTERGOVERNMENTAL AGREEMENT (the “IGA”) is made and entered into effective this _____ day of _____, 2024 (the “Effective Date”), by and between the City of Commerce City, Colorado (“City”), a Colorado home rule municipality, 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 Article XIV, Section 18(2)(a) of the Colorado Constitution and Section 29-1-203 of the Colorado Revised Statutes, as amended, the parties may cooperate or contract with each other to provide any function or service lawfully authorized to each;

WHEREAS, Section 4.13 of the City’s Charter and Section 2-4201(b) of the City’s Revised Municipal Code (“CCRMC”) empower the City to enter into agreements with other governmental entities;

WHEREAS, the City intends to construct improvements to widen East 96th Avenue from Chambers Road to Tower Road (“Project”);

WHEREAS, the District’s 2020 Water and Wastewater Systems Master Plan (“Master Facilities Plan”) calls for the installation of a 2-inch fiber line, a 12-inch irrigation waterline, and a 12-inch potable waterline along the East 96th Avenue corridor from Chambers Road to Tower Road, which facilities are being constructed to complete infrastructure supporting recently constructed and to be constructed development in the northern area of the District (“Northern Area Improvements”) and the Master Facilities Plan also calls for the eventual construction of a 30-inch/36-inch potable water transmission line (“Transmission Main Improvements”) (jointly referred to as “District Improvements”);

WHEREAS, the Parties agree that constructing the District Improvements as part of the Project will be a benefit to their mutual constituents for reasons which include: minimizing traffic delays and disruption, avoiding the digging up and patching of significant lengths of recently constructed concrete roadway, and possible cost savings;

WHEREAS, the District has appropriated funding for the District Improvements;

WHEREAS, the District has requested the City to include the construction of the District Improvements with the City’s construction of the Project;

WHEREAS, the District is agreeing to fund the Transmission Main Improvements pursuant to its Resolution 24-xxx;

WHEREAS, the City has solicited bids for construction of the Project through the City’s normal procurement process and included the District Improvements as an additional item of work in the request for bids; and

WHEREAS, the 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 construction and funding of the District Improvements.

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

I. Project Costs and Payment.

- (a) The City shall select a contractor for the Project in conformance with its procurement policies and ordinances.
- (b) The bid amount for the Northern Area Improvements is \$3,726,355.02. The bid amount for the Transmission Main Improvements is \$7,027,579.83. The District has appropriated in its 2025 budget the bid amounts for both improvements. The District shall pay the City, via reimbursement payments, the bid amount for each improvement, minus any allowances, contingencies, or force account amounts included in such bid amounts that are not used for the improvements. The District shall also pay the City the actual costs of any change orders necessary to complete the District Improvements so long as the construction contract between the City and the contractor requires payment to the contractor for such change order.
- (c) The District shall be responsible for the costs of the design engineering, construction inspection, construction engineering, and warranties as required by this IGA of the District Improvements (to be conducted by District personnel and District consultants).
- (d) The City has determined to hire a construction manager to provide owner's representation services on the Project. The District shall pay the construction manager costs attributable to the District Improvements. The City shall cause this construction manager to track its payment applications based on whether its services are for the City or the District Improvements, and services for the District shall be further divided into services for the Northern Area Improvements and services for the Transmission Main Improvements. Construction manager costs attributable to the District Improvements will be based on the construction manager's rate information approved by the City and shall not exceed the construction manager's estimate for such services of \$370,574 without the prior approval of the District. The District has appropriated such amount in its 2025 budget. The District shall cause its designated agent and the City shall cause its owner's representative to each make a good faith effort to avoid unnecessary duplication of services with regard to the District Improvements, recognizing though that the City's construction manager will have some necessary overview of the District's Improvements in its representation of the City as the "Owner" under the construction contract and also to the extent such improvements may impact the overall Project.
- (e) The City shall cause the contractor's monthly payment application to itemize any cost attributable to the District Improvements and identify those costs attributable to the Northern Area Improvements and those attributable to the Transmission Main Improvements. The City shall review such payment application and then submit it to the District. The District will reimburse the City monthly for the costs attributable to the District Improvements generally within thirty (30) days of the City issuing invoices to the District but potentially up to forty-

five days (45) depending on when the payment application is submitted to the District in relation to when the District Board's monthly meeting occurs.

- (f) The Parties acknowledge that even upon completion of the Transmission Main Improvements District shall not be obliged to use the Transmission Main to serve any development area, including potential large-scale development areas east of the Rocky Mountain Arsenal National Wildlife Refuge and east of the E-470 highway, which areas are located in the District's Pressure Zones 41 and 42. In connection with the preceding sentence, the District references its Resolution 24-xxx.
- (g) The cost of all minor contract revisions or change orders which are attributable 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 pursuant to the payment procedures set forth in this IGA.
- (h) The City shall cause the contractor to add the District and its designated agent as additional insureds on the contractor's insurance policies to a similar extent as the City, its design engineer, and owner's representative are listed as an insured or additional insured.
- (i) All costs of the Project, other than the costs agreed to by the District in this IGA, shall be the responsibility of the City.

II. Authority to Manage, Advertise, Contract, and Construct.

- (a) The District hereby authorizes the City to include the District Improvements in the Project and to manage, advertise, contract, and construct the Project; provided that all District Improvement construction shall be consistent with the plans and specifications referenced in the following sub-paragraph (i).; and further provided that the District has the right to review all shop drawings or modifications to the plans and specifications for the District Improvements. 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 II(d) hereof, the City shall have full control over all aspects of the management, advertising, contracting, and construction of the Project until construction is completed.
 - (i). The District Improvements are described in and set forth and shall be consistent with the following: Drawings consisting of 29 sheets with each sheet bearing the following general title: 96th Avenue Widening (Chambers Rd. to Tower Rd.) – Potable and Irrigation Water System Improvements; and Specifications consisting of 144 pages with each page bearing the following general title in the footer: 96th Avenue Widening – SACWSD Improvements.
- (b) In anticipation of the reimbursement payments required by this IGA, the City shall incorporate the District Improvements into the City's contract with the contractor selected by the City. The

District shall have the right to review the City's contract provisions addressing the District Improvements before execution by the City, and, if the District requests any changes to the portions of the contract addressing the District Improvements, the City shall duly consider the District's requests.

- (c) The City's contract will include a minimum two-year warranty on the District Improvements guaranteeing such improvements are free from defects in materials, equipment, and workmanship, which shall name the District as a beneficiary and shall be at the cost of the District.
- (d) The District shall inspect the District Improvements and related portions of the Project during and after construction, subject to the Project's safety program. The District shall share the results of all inspections with the City in a timely manner so as to not cause delays to the Project. The City shall cause to be remedied during construction any identified construction defect or material discrepancy with the plans and specifications for the district Improvements. The District will discuss reasonable scope changes with the City for evaluation and the possibility of incorporating them in the Project. Requested changes shall be incorporated in the Project at the City's sole discretion. The District shall also have the right to have its designated agent inspect the final installation of all District Improvements before backfilling. The City acknowledges that the District's designated agent is being engaged by the District to ensure that the District Improvements are constructed to meet the plans and specifications for the District Improvements and not for the purpose of inspecting the City portions of the Project. The City does not expect the District's inspector, even though they may be a professionally licensed engineer, to observe construction of the City Improvements or notify or warn the City of any possible or known defect, other non-conformance with plans, or other dangerous or potentially dangerous condition.
- (e) The City shall ensure prior to final acceptance and settlement with the contractor that all District Improvement related items have been resolved, including punchlist and record drawings being delivered (in .pdf format and AutoCAD files) to and accepted by the District.
- (f) The District agrees to designate an agent capable of analyzing construction situations and recommending courses of action acceptable to the District regarding the District Improvements. The District's initial designated agent is Steve Hibbeler with Muller Engineering Company, Inc..

III. Ownership.

The District will own the District Improvements upon acceptance of, and subject to receipt of all payments for, the District Improvements. The City shall cause the contractor to issue a Bill of Sale to the District which will include separate substantiation of the costs of the Northern Area Improvements and the Transmission Main Improvements. All other portions of the Project will remain in the City's ownership upon final acceptance.

IV. Operation and Maintenance of Utility Improvements.

- (a) Following completion of the Project, the Parties acknowledge the District shall have the right to operate and use the District Improvements as part of its water and wastewater system, and the District shall be responsible, at its sole cost, for operation and maintenance of all District Improvements installed pursuant to the Project.
- (b) In the event the District discovers a defect in materials or workmanship, the District shall notify the City in writing and may also notify the contractor in writing. The City will cooperate and coordinate as necessary an approach with the District for working with the contractor to remedy the problem. The parties expect the District will play the lead role in addressing the issue, but in the event the contractor will not work directly with the District, or requires the participation of the City, the City will intervene as necessary to press the District's claim. The City's work on behalf of the District in remedying a defect shall be at no cost to the City and District will reimburse the City for its actual costs in assisting to remedy any identified defect.

V. Term.

The term of this IGA shall be from the date of execution to the final acceptance of the Project by the Parties, except that the City's obligation to cooperate with any District claims shall last for the applicable statute of limitations or repose, whichever is longer.

VI. General Provisions

(a) Non-Appropriation – No Remedy.

- (1) 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, except that District shall be responsible for any costs incurred by the City pursuant to this IGA for District Improvements. Notwithstanding the foregoing, if the District fails to appropriate funds sufficient to perform its obligations under this IGA, the City may elect to exclude any further work on the District Improvements.
- (2) The Parties do not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.

(b) No Partnership or Agency.

Notwithstanding any language in this IGA, or any representation or warranty to the contrary, neither Party 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.

(c) 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.

(d) Governing Law and Venue; Recovery 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.

(e) 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.*

(f) Authority.

The Parties represent and warrant 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.

(g) 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.

(h) Counterparts.

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

(i) 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, agents, successors, and permitted assigns.

(j) Recitals and Exhibits.

All recital and exhibits referred to in this IGA are incorporated herein for all purposes.

(k) 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.

(l) 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

If to the District

Jason R. Rogers, City Manager
City Manager's Office
City of Commerce City
7887 E. 60th Ave.
Commerce City, CO 80022

Abel Moreno, General Manager
South Adams County Water and Sanitation District
6595 East 70th Avenue
Commerce City, CO 80022

With a copy to:

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

District General Counsel
South Adams County Water and Sanitation District
6595 East 70th Avenue
Commerce City, CO 80022

[The remainder of this page is intentionally left blank – Signature page follows.]

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: _____
Rene Bullock, President

Attest:

Vicki Ennis, Secretary

CITY OF COMMERCE CITY

By: _____
Steve J. Douglas, Mayor

Attest:

Approved as to Form:

Dylan A. Gibson, City Clerk

Deanne Durfee, Deputy City Attorney