

**INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF COMMERCE CITY, THE  
COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT  
DISTRICT, THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL  
IMPROVEMENT DISTRICT, THE COMMERCE CITY E-470 RESIDENTIAL AREA  
GENERAL IMPROVEMENT DISTRICT AND SOUTH ADAMS COUNTY WATER AND  
SANITATION DISTRICT AND ITS ENTERPRISE FOR THE PURPOSE OF SERVING  
PROPERTIES WITH WATER AND WASTEWATER FACILITIES**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF COMMERCE CITY, (the "City"), a Colorado municipal corporation whose address is 7887 E. 60th Avenue, Commerce City, CO 80022, the COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT ("NIGID"), the COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT ("ECAGID"), the COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT ("ERAGID"), which are general improvement districts organized and existing under and by virtue of the laws of the State of Colorado whose addresses are 7887 E. 60<sup>th</sup> Avenue, Commerce City, CO 80022, and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT ("SACWSD"), a special district organized and existing under the laws of the State of Colorado whose address is 6595 East 70<sup>th</sup> Avenue, Commerce City, CO 80022, also acting in an enterprise capacity pursuant to its SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT ACTIVITY ENTERPRISE ("SACWSD Enterprise"). (The City, the NIGID, ERAGID, ECAGID and SACWSD may also be referenced herein as a "Party" and jointly as "Parties.")

**RECITALS**

WHEREAS, the NIGID, ECAGID and ERAGID are general improvement districts organized and established by the City of Commerce City ("the City") pursuant to C.R.S. § 31-25-601, *et seq.*

WHEREAS, SACWSD is a special district organized and existing under and by virtue of the laws of the State of Colorado to provide water and wastewater services, and SACWSD provides such services by and through its water activity enterprise, the SACWSD Enterprise, pursuant to C.R.S. § 37-45.1-101, *et seq.*;

WHEREAS, the City passed Ordinances Nos. 1212 Series 1997, 1952 and 1966, establishing and creating the NIGID, ECAGID and ERAGID respectively in order to provide water, sewer and other improvements within the boundaries of the City;

WHEREAS, the NIGID, ECAGID and ERAGID have provided direct or indirect financial consideration, or are anticipated to provide direct or indirect financial consideration, for the acquisition, construction, installation, operation, and maintenance of water lines and wastewater lines, lift stations, pumping stations and associated facilities as well as other improvements ("Facilities");

WHEREAS, SACWSD is currently and is expected to be the public water and sewer service provider to lands served by said Facilities, following proper inclusion of such land into the boundaries of SACWSD;

WHEREAS, the Parties are empowered to enter into contracts and intergovernmental agreements with one another to provide for public facilities and services pursuant to C.R.S. §§ 29-1-203, 31-25-611(1)(d) and (1)(f) and 32-1-1001(1)(d)(I), and Article XIV, Section 18 of the Colorado Constitution;

WHEREAS, the Parties share a common interest in facilitating, expediting and accomplishing the construction of the Facilities for development of properties within the City and the City's Comprehensive Plan that are not currently annexed into the City ("Properties" or "Property") and find and declare that their constituents and the public will derive benefits from construction of these public improvements; and

WHEREAS, in order to provide for the Facilities to help accomplish development of the Properties, the Parties have determined that this IGA is necessary and in the public interest.

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

1. Facilities. The City, the NIGID, ECAGID, ERAGID and the SACWSD Enterprise have determined the Facilities are needed for development of the Properties which are or will be served by the Facilities.

2. Consent Required for Service. The Parties agree that no Property shall be provided a water supply or wastewater service as a result of new development or new or improved connections to serve existing development through any Facilities acquired, constructed, installed, operated or maintained with any direct or indirect financial consideration from the City, the NIGID, ECAGID or the ERAGID unless the service is first approved by the City, or the NIGID, ECAGID or the ERAGID, as applicable, and SACWSD. Such owner of such Property must agree to be bound by the following:

(a) The terms and conditions required by the City or the NIGID, ECAGID or ERAGID, as applicable, and SACWSD for such services, which may include, but not be limited to, payment of rebate and recapture costs to the NIGID, ECAGID or ERAGID for construction and installation of the Project;

(b) SACWSD's Rules and Regulations (the "Regulations"), as they presently exist or may be amended in the future.

(c) The terms and conditions required by the NIGID, ECAGID or ERAGID pursuant to Resolutions Nos. 2016-\_\_\_\_\_, 2016-\_\_\_\_\_ or 2016-\_\_\_\_\_ respectively, which terms and conditions include but are not limited to inclusion of properties into the ECAGID, the ERAGID, or the NIGID, and annexation into the City pursuant to the terms therein. A copy of said Resolution is attached hereto as Exhibit A and incorporated by reference herein.

3. Project Representatives.

(a) Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, and addressed to the addressee as shown below.

(b) The NIGID, ECAGID and ERAGID initially designate the following as its Project Representatives and address for purposes of notices.

Executive Director (of applicable GID)  
7887 E. 60th  
Commerce City, CO 80022

With a copy to:

Chief Financial Officer (of applicable GID)  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO 80022

(c) SACWSD and SACWSD Enterprise initially designate the following as their Project Representative and address for purposes of notices:

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

With a copy to:

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

(d) The City initially designates the following as its Project Representative and address for purposes of notices:

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

With a copy to:

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

4. Other Matters. All other matters not expressly addressed herein including but not limited to the ownership, warranties, operation and maintenance of NIGID, ECAGID or ERAGID Facilities are or shall be addressed in a separate IGA or IGAs by and between the requisite Parties. However, the terms and conditions set forth in Section 2 hereof shall survive any conveyance of ECAGID Facilities to any other entity including but not limited to SACWSD.

5. Default / Breach.

(a) Time of the Essence. Time is of the essence under this IGA, and if any term or condition hereof is not fulfilled, tendered or performed by any of the Parties hereto as provided in this IGA (a “default”), each non-defaulting Party shall have the right to an action for specific performance. In the event performance of a non-payment obligation is delayed by events outside the reasonable control of the Party, the deadline for performance shall be extended for a reasonable period to allow for performance.

(b) Notice of Default; Attorney Fees and Costs. In the event that any Party defaults as to any obligation contained in this IGA, the Party claiming the default shall give the defaulting 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 the 30-day period (or if the default cannot be cured within thirty (30) days, the defaulting Party has commenced corrective action and is diligently proceeding to correct the default), the Party claiming default may use whatever remedies are available at law or in equity to address the circumstances at hand, including, but not by way of limitation, specific performance and/or damages. The non-defaulting Parties shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

6. Miscellaneous Provisions.

(a) Entire Agreement/Amendments. This IGA contains the entire agreement among the Parties as to the subject matter hereof. This IGA and its terms may not be modified in any manner, except by an instrument in writing signed by all Parties. This IGA is the result of an arms-length transaction jointly drafted by counsel for each Party and therefore cannot be construed against one Party.

(b) Paragraph Headings. The paragraph headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this IGA.

(c) Severability and General Cooperation. In case any one or more of the provisions of this IGA shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such provision shall be severed from this IGA, and this IGA shall be construed as if such provision had not been contained herein. However, in the event such a provision is severed, the Parties hereto shall negotiate in good faith to replace such severed provision in order to fulfill the intent of this IGA. The Parties further agree to cooperate generally on matters not expressly addressed herein so as to facilitate the terms and intent of the IGA.

(d) Due Authorization. Each Party to this IGA has been duly authorized by all necessary action and is the valid and enforceable obligation of each Party hereto to the extent that the respective terms, provisions and conditions apply to the respective Parties.

(e) Agreement Binding. The provisions of this IGA shall be binding upon the Parties. No assignment of the rights or obligations of the Parties hereunder shall be made without the written consent of the other Parties, which shall not be unreasonably withheld.

(f) No Waiver of Governmental Authority. Nothing contained in this IGA shall constitute or be interpreted as a waiver or abrogation of the legislative or governmental powers or immunities of the City, ECAGID, SACWSD, or the SACWSD Enterprise; however, the Parties shall not use the foregoing powers or immunities as a defense to complying with the terms of this IGA.

(g) Relationship of Parties. Nothing contained herein shall be construed to create a joint venture or other form of partnership among the Parties, nor is this IGA to be construed as creating any rights in any third parties.

(h) 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.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written.

**CITY OF COMMERCE CITY**

By: \_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, City Clerk

Approved as to form:

\_\_\_\_\_  
Robert Sheesley, General Counsel

**COMMERCE CITY NORTHERN  
INFRASTRUCTURE GENERAL IMPROVEMENT  
DISTRICT**

\_\_\_\_\_  
Sean Ford, Chair, Board of Directors

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, CMC, Secretary

Approved as to form:

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Robert Sheesley, General Counsel

**COMMERCE CITY E-470 COMMERCIAL AREA  
GENERAL IMPROVEMENT DISTRICT**

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Sean Ford, Chair, Board of Directors

ATTEST:

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Laura J. Bauer, CMC, Secretary

Approved as to form:

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Robert Sheesley, General Counsel

**COMMERCE CITY E-470 RESIDENTIAL AREA  
GENERAL IMPROVEMENT DISTRICT**

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Sean Ford, Chair, Board of Directors

ATTEST:

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Laura J. Bauer, CMC, Secretary

Approved as to form:

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Robert Sheesley, General Counsel

**SOUTH ADAMS COUNTY WATER AND  
SANITATION DISTRICT**

By: \_\_\_\_\_  
President and Chairman of the Board

ATTEST:

\_\_\_\_\_  
Secretary

**SOUTH ADAMS COUNTY WATER AND  
SANITATION DISTRICT ACTIVITY  
ENTERPRISE**

By: \_\_\_\_\_  
President and Chairman of the Board

ATTEST:

\_\_\_\_\_  
Secretary