

**INTERGOVERNMENTAL AGREEMENT BETWEEN SOUTH ADAMS COUNTY
FIRE PROTECTION DISTRICT NO. 4 AND CITY OF COMMERCE CITY
REGARDING PROVISION OF FIRE PROTECTION SERVICES**

THIS AGREEMENT (the “**Agreement**”) is made and entered into this ____ day of _____, 2016 by and between the South Adams County Fire Protection District No. 4 (the “**District**”) and the City of Commerce City, Colorado (the “**City**”). The District and the City are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the District is a special district organized and existing under Colorado’s Special District Act, C.R.S. §32-1-101 *et seq.* (the “**Act**”) and has the powers and duties enumerated in the Act;

WHEREAS, the District provides fire protection services to all areas within its boundaries;

WHEREAS, a large portion, but not all, of the area presently located within the boundaries of the City is also located within the boundaries of the District;

WHEREAS, a portion of the area presently located within the boundaries of the City is located within the boundaries of the Greater Brighton Fire Protection District or is otherwise subject to that certain Intergovernmental Agreement dated November 8, 2000 and any amendments thereto between the Parties and the Greater Brighton Fire Protection District (collectively the “**Greater Brighton Property**”) and, therefore, this Agreement is not intended to be applicable to such property;

WHEREAS, a portion of the area presently located within the boundaries of the City is located within the boundaries of the Sable-Altura Fire Protection District;

WHEREAS, there are no agreements between the District and the Sable-Altura Fire Protection District which would prohibit the exclusion of property from the Sable-Altura Fire Protection District and inclusion of that property into the District;

WHEREAS, the City is a home rule municipality organized and existing pursuant to Article XX of the Colorado Constitution and various provisions found in the Colorado Revised Statutes, including C.R.S. §§31-15-601 and 31-30-101 *et seq.* which grant the City various powers regarding building and fire regulations;

WHEREAS, the District and the City have a common and compelling interest in providing and planning for adequate fire protection services and emergency preparedness for their existing and future property owners and residents;

WHEREAS, pursuant to the Act, including those certain provisions found in C.R.S. §32-1-1002, the District is empowered to provide fire protection services to the City;

WHEREAS, the City has adopted the International Fire Code (the “Code”) and, by ordinance, the City has authorized the District to cooperatively administer and enforce the Code in those areas of the City located within the boundaries and jurisdiction of the District;

WHEREAS, by ordinance, the City has adopted an Emergency Operations Plan pursuant to which the City has provided general guidelines and principles for planning, managing and coordinating the overall response and recovery activities of the City before, during and after major emergencies and disaster events;

WHEREAS, the District is responsible for various elements of the Emergency Operations Plan which are expressly enumerated therein;

WHEREAS, the City has annexed and may in the future annex land located outside the boundaries of the District and, except for areas located or to be located within the boundaries of the Greater Brighton Fire Protection District, the City desires that such property be made part of the District and that the District provide fire protection services to such areas located within the boundaries of the City;

WHEREAS, the District desires to provide fire protection services to areas located within the boundaries of the City except for areas located or to be located within the boundaries of the Greater Brighton Fire Protection District;

WHEREAS, pursuant to C.R.S. §29-1-203, the District and the City may contract with one another to provide any function, service or facility lawfully authorized to be provided by the District or the City;

WHEREAS, the Parties agree that it is in the best interests of the District and the City and will promote the public health, safety and welfare of their mutual residents and property owners to provide for cooperative efforts by both the City and District for the provision of uniform fire protection services, uniform emergency preparedness, and the uniform enforcement of the Code in the District and the City;

WHEREAS, the Parties have previously entered into that certain Intergovernmental Agreement Between South Adams County Fire Protection District and City of Commerce City Regarding Provisions for Fire Protection Services, dated February 19, 1996 (the “**Original IGA**”); and

WHEREAS, the Parties desire to amend and replace the Original IGA and to set forth in writing their understandings and agreements in regard to the cooperative efforts by and between them for the provision of high quality fire protection services and emergency preparedness in this new Intergovernmental Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, the agreements, promises and covenants set forth herein, together with other good and valuable consideration, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby incorporate the Recitals into this Agreement as if fully set forth herein.

2. Definitions. For purposes of this Agreement, and in addition to the defined terms identified in the Recitals above, the Parties define the following terms as follows:

a. **“Fire protection services”** refers to all proper and mandated services, functions and activities of a fire protection district as authorized in the Colorado Revised Statutes and the Act, including, without limitation, fire suppression, fire prevention, related investigatory activities, emergency medical services and enforcement and administration of the Code, as well as any other fire or safety codes and policies which have been or may be adopted by the District or the City.

b. **“Code”** refers to the International Fire Code, and any modifications, amendments or successor codes thereto which may be adopted by the City from time to time.

c. **“Emergency Operations Plan”** refers to the City of Commerce City Emergency Operations Plan found in Section 23 of the Commerce City, Colorado, Code of Ordinances.

3. Obligation to provide fire protection services within District boundaries. The District agrees and understands that it is obligated to provide fire protection services to property within the City’s boundaries and jurisdiction which is also within the District’s boundaries and jurisdiction.

4. Provision of fire protection services outside District boundaries. In the event the District and the City shall hereafter agree that the District shall provide fire protection services for areas within the City but not within the District, such agreement shall be in writing and shall provide for: (a) fair and reasonable compensation for such services, which shall include consideration for the use of the District’s facilities, equipment and personnel; and (b) adequate funding to the District for any expansion of facilities, equipment and personnel which might be needed as a result of such services.

5. Enforcement of the Code. The Parties acknowledge and agree that the City is empowered to enact and adopt a Code, and to amend the Code, as it deems necessary for the protection of the health, safety and welfare of its citizens. The District agrees to enforce the Code as adopted by the City within that portion of the City which is also within the District boundaries. The City shall include the District in the adoption process, as well as any amendments to the Code.

6. Emergency preparedness. The Parties acknowledge and agree that the City’s Comprehensive Emergency Operations Plan is essential for the protection of the health, safety

and welfare of the City's citizens, and that the Emergency Operations Plan should be implemented and maintained through the joint efforts and contributions of the Parties and others to assure centralized organization and elimination of duplication of services to the areas served by the Parties. To that end, the Parties and others have in the past worked together to develop the City's Emergency Operations Plan, and the Parties agree to continue working together to develop uniform goals and objectives for continued implementation and maintenance of that plan.

7. Annexation, exclusion and inclusion of property.

a. Inclusion of property already annexed into the City. The Parties agree that each shall assert its best reasonable efforts to include within the boundaries and jurisdiction of the District all property mutually agreed upon and designated by the Parties which is not presently within the boundaries and jurisdiction of the District but which is now within the boundaries and jurisdiction of the City, except for property located within the boundaries of the Greater Brighton Fire Protection District.

b. Inclusion of property being annexed into the City. The Parties agree that each shall assert its best reasonable efforts to include within the boundaries and jurisdiction of the District all property which is not presently within the boundaries and jurisdiction of the District but which is hereafter sought to be annexed and included within the boundaries and jurisdiction of the City except for property located or to be located within the boundaries of the Greater Brighton Fire Protection District. For purposes of this subsection 7(b), the City's "best reasonable efforts" shall include, but are not limited to, making express requirements regarding inclusion into the District part of any annexation agreement entered into during the term of this IGA. Such annexation agreement shall set a deadline for an annexing landowner(s) to petition for inclusion in the District and shall require the annexing landowner(s) to bear the cost of such proceeding or any related proceeding. If the annexing landowner(s) property is currently part of another fire district other than the Greater Brighton Fire Protection District at the time that it is annexed into the City, the City shall exercise its best reasonable efforts to facilitate exclusion of the annexing property from the other fire district so that it can then be included into the District. The City agrees that the City Manager or his designee shall notify the Fire Chief of the District within five (5) business days of the receipt of any petition for annexation of property not located in the Greater Brighton Fire Protection District or the District so that the parties to this Agreement may discuss application of this Agreement to the proposed annexation.

c. Cooperation of effort and allocation of costs. Notwithstanding the requirement found in subsection 7(b) that annexing landowner(s) must bear the cost of any proceedings necessary to include the property into the District's boundaries, the Parties agree that they shall each assist the other and cooperate fully in all respects to undertake and pursue to conclusion all actions and/or initiate and prosecute to conclusion all legal proceedings, including appellate proceedings, which are necessary or desirable in order to accomplish the purposes of this Agreement. The Parties shall agree, on a case by case basis, as to the allocation of payment of all legal and other expenses associated with such actions or legal proceedings related to the annexation, inclusion or exclusion of land as agreed upon pursuant to the Agreement. Absent such agreement, each party shall pay its own attorneys' fees and costs.

d. No limitation on annexation, exclusion, or inclusion of additional property. Nothing herein shall prevent the District from including within its boundaries and jurisdiction land not within the boundaries of the City and nothing herein shall prevent the City from including within its boundaries and jurisdiction land not within the boundaries of the District; provided, however, each party recognizes and agrees that each shall first satisfy itself that it has complied with the terms and intent of this Agreement prior to proceeding with any annexation or inclusion of land within its boundaries and jurisdiction not within or to be included within the boundaries and jurisdiction of the other.

e. No effort to exclude property from District. While the City may seek to exclude property from other fire protection districts to facilitate the inclusion of such property into the District, the City agrees that during the term of this Agreement, it shall not seek to exclude any property without prior written approval of the District from the boundaries and jurisdiction of the District.

f. Contingencies for District performance. The Parties understand that the District's current operational status, including its present facilities, equipment and personnel, is designed primarily to provide services within the District's present boundaries and jurisdiction as they exist as of the date of this Agreement. It is understood and agreed that the District's ability to provide fire protection services potentially required hereunder to land annexed to the City in the future may be contingent upon expansion of its facilities, equipment and personnel. Therefore, it is understood and agreed that the District's potential need for expansion of its facilities, equipment and personnel is a paramount financial consideration which must be adequately accounted for in any action, agreement or proceeding which will or may result in the annexation of land to the City which would come within the provisions of this Agreement.

g. No application to the Greater Brighton Property. It is specifically provided that the requirements found in this Section 7 of the Agreement, shall not apply to the Greater Brighton Property.

8. Original IGA amended and replaced. The Original IGA is hereby superseded and replaced in its entirety by the terms of this Agreement.

9. Term and extension of Agreement.

a. The term of this Agreement shall be twenty (20) years.

b. This Agreement shall automatically renew for subsequent periods of five (5) years after the initial term of this Agreement unless the District or the City shall give written notice of its intent not to renew a minimum of one (1) year prior to the expiration of a term including, as applicable, the initial term and any renewal term.

10. Notices. All notices and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement

of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission or confirmed electronic mail delivery. All notices shall be deemed effective when actually delivered as documented in a delivery receipt or confirmation. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices required to be delivered hereunder shall be delivered to the following addresses:

To District:

Fire Chief
South Adams Fire Protection District
6550 East 72nd Avenue
Commerce City, CO 80022

To City:

Office of the City Manager
7887 E. 60th Avenue
Commerce City, CO 80022

11. Severability. If any portion of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unconstitutional, such determination shall not affect the validity of the remainder of this Agreement.

12. Planning for performance. The Parties each acknowledge and understand that the other will henceforth engage in financial and other necessary planning and will otherwise act in expectation of and reliance upon complete good faith and reasonable performance of the terms hereof by the other.

13. Amendment. This Agreement may be modified or amended only by written instrument signed by both parties.

14. Binding effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

15. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement 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 City and District shall be deemed to be only an incidental beneficiary under this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands effective the day and year first above written.

DISTRICT:

CITY:

SOUTH ADAMS FIRE PROTECTION DISTRICT NO.4:

CITY OF COMMERCE CITY, COLORADO:

By: _____
President

By: _____
Sean Ford, Mayor

ATTEST:

ATTEST:

Secretary

Laura J. Bauer, MMC, City Clerk

Approved as to form:

Approved as to form:

Thomas E. Merrigan

Robert R. Gehler, City Attorney