

**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 SECOND CREEK
INFRASTRUCTURE IMPROVEMENTS**

This INTERGOVERNMENTAL AGREEMENT (the “IGA”) is made and entered into effective this ____ day of _____, 2016 (the “Effective Date”), by and between the City of Commerce City, Colorado (“City”), 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 Art. XIV, § 18(2)(a) of the Colorado Constitution, and § 29-1-203, C.R.S., as amended, the Parties may cooperate or contract with each other to provide any function or service lawfully authorized to each; and

WHEREAS, the City anticipates constructing improvements to Potomac Street and 112th Avenue from Highway 2 to Chambers Road, including two new paved travel lanes and installing curbs, gutters, on-street bike lanes, a detached sidewalk, a bike path, a median, street lighting and roundabouts (“City Improvements”); and

WHEREAS, the District’s future master plan identifies a 24-inch irrigation arterial line system along 112th Avenue and a 12-inch irrigation arterial line in Potomac Street in the vicinity of the City Improvements, as shown in the plans for Project No. PW-03-2014 (“District Improvements”); and

WHEREAS, in the interest of efficiency, the District wishes to include the construction of the District Improvements with the City’s construction of the City Improvements; and

WHEREAS, the District Improvements will be used by the District to provide irrigation services to future development, and will be dedicated to the District; and

WHEREAS, the City has solicited construction management/general contractor bids for construction of the Second Creek Infrastructure from its CM/GC contractor, who was selected through the City’s normal procurement process, and

WHEREAS, the City has awarded the contract for that portion of the City Improvements that would include the District Improvements to Pinkard Construction and included the District’s Improvements as an additional item of work in the guaranteed maximum price bidding, subject to the District’s electing to include the District Improvements; and

WHEREAS, the District has reviewed the bids and desires to include the District Improvements with the City’s construction of the City Improvements (collectively the “Project”) in accordance with this IGA; and

WHEREAS, both 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 District Improvements.

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

1. Project Costs and Payment.

a. The District shall pay the City the bid amount for the District Improvements not to exceed \$908,277 as specified in Exhibit A. 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).

b. The District shall use its best efforts to budget funds in the 2017 budget and will provide payment in the amount bid for District Improvements to the City within ninety (90) days of execution of this IGA. In the event that any District funds are not expended for the District Improvements, the City shall return said funds to the District within thirty (30) days following final payment to the contractor.

c. The City shall pay all other costs associated with the Project, including the cost of installation and all related costs of the District Improvements (except for any additional warranty required for the District Improvements by this IGA, which cost shall be paid by the District). The District is not responsible for payment of any costs other than those specified in Section 2.a. or this paragraph unless the District specifically agrees in writing to pay such additional cost.

e. The cost of all minor contract revisions or change orders which relate 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, at the time of the District's approval of the change order.

f. All costs of the Project, other than the District Improvements, shall be the responsibility of the City.

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

a. The District hereby authorizes the City to manage, advertise, contract and construct the Project; provided, however, that the District has the right to review all plans for the District Improvements, to ensure that such improvements will meet or exceed the District's Design and Construction Standards for Water and Wastewater Facilities. All District Improvement construction shall be in compliance with plans approved by the District in writing in advance of construction. 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 3.b. hereof,

the City shall have full control over all aspects of the management, advertisement, contracting, and construction of the Project until construction has been completed.

b. In anticipation of the deposit of the funds required by this IGA, the City shall incorporate the District Improvements into the City's contract through a change order. The District shall have the right to review the change order that will address the District Improvements before execution by the City, and, if the District requests any changes to the change order, the City shall duly consider the District's requests. The District shall also have the right to inspect the final installation of all District Improvements before backfilling.

c. The City's contract and the change order will include a minimum two-year warranty on the District Improvements, guaranteeing that such improvements are free from defects in materials, equipment, and workmanship, which shall name the District as a beneficiary.

d. The District shall provide inspection and approval of the District Improvements and share the results of all inspections with the City in a timely manner so as to not cause a delay to the Project.

e. The District shall inspect the District Improvements and related portions of the Project during and after construction, subject to the Project's safety program. Reasonable changes, including inspection issues identified by the District, will be discussed with the City for evaluation and the possibility of incorporating them into the Project. Requested changes shall be incorporated into the Project at the City's sole discretion; provided, however, that the City shall consider whether the proposed change requests are for work that is mandated by the District's Design and Construction Standards for Water and Wastewater Facilities, specifications, or required by approved plans.

f. The City shall provide the District with portable document format (PDF) and AutoCAD files of the record drawings of the District Improvements within ninety (90) days following final acceptance.

g. The District agrees to designate an agent capable of analyzing construction situations and recommending courses of action that are acceptable to the District, regarding the Utility Improvements and District Improvements. The District's initial designated agent is Abel Moreno, Distribution and Collection Systems Manager for the District.

3. Ownership. Upon its acceptance of the District Improvements for which it is paying, the District will own the District Improvements. All other portions of the Project will remain in the City's ownership upon final acceptance.

4. Operation and Maintenance of Utility Improvements. Following completion of the Project, the District shall have the right to operate and use the District Improvements for its water and wastewater services, and the District shall be responsible, at its sole cost, for operation and maintenance of all District Improvements installed pursuant to the Project. Such operation and maintenance shall be consistent with, and subject to, the Rules and Regulations of the District for operation and maintenance of all water and wastewater facilities owned by the District, with the

District entitled to impose fees and charges upon its users and customers, as set by the Board of Directors of the District.

In the event the District discovers a defect in materials or workmanship, the District shall notify the City in writing. The City will cooperate and coordinate an approach with the District for working with the contractor to remedy the problem. The parties expect that the District will play the lead role in addressing the issue, but in the event the contractor will not work directly with the District, the City will intervene as necessary to press the District's claim; provided, however, that the City's work on behalf of the District in remedying a defect shall be at no cost to the City.

5. Term. The term of this IGA shall be from the date first written above through the final acceptance of the Project.

6. Non-Appropriation – No Remedy.

a. 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. If the District fails to appropriate funds sufficient to perform this IGA, the City may elect to exclude any further work on the District Improvements.

b. The Parties agree and acknowledge that based on the foregoing, this IGA does not constitute a multiple fiscal year debt or financial obligation of the District or the City.

7. No Partnership or Agency. Notwithstanding any language in this IGA, or any representation or warranty to the contrary, neither the District nor the City 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.

8. 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.

9. Governing Law and Venue; Recovery of 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.

10. 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.

11. Authority. The Parties represent and warrant that 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.

12. 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.

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

14. 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 and successors and permitted assigns.

15. Recitals and Exhibits. All recitals and exhibits referred to in this IGA are incorporated herein for all purposes.

16. 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.

17. 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:

Deputy City Manager
Commerce City
7887 East 60th Avenue
Commerce City, CO 80022-5053

If to the District:

District Manager
South Adams County Water and Sanitation District
6595 East 70th Avenue
Commerce City, CO 80037-0597

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 80037-0597

(Signatures contained on next page(s).)

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: _____
Aaron Phillips, President

Attest:

Secretary

CITY OF COMMERCE CITY, COLORADO

By: _____
Sean Ford, Mayor

Attest:

Approved as to Form

Laura J. Bauer, MMC, City Clerk

Robert Sheesley, City Attorney

| | | |
|--------------|-----------|-------------------|
| City Total | \$ | 26,744.00 |
| SACWSD Total | \$ | 908,277.00 |
| TOTAL | \$ | 935,021.00 |

Total Cost including CM

| Item | Cost | Total | |
|---|------|----------------------|------|
| Project Engineer | | \$ 82.00 | City |
| Project Admin & Accountant | | \$ 96.00 | City |
| Civil Contractor- sub-total for the irrigation pipe | | \$ 866,294.16 | |
| Sub-total | | \$ 866,472.16 | |

| | Percent | |
|--------------------------|---------|---------------------|
| Bond | 0.69% | \$ 5,978.66 |
| Liability Insurance | 0.50% | \$ 4,318.63 |
| Warranty | 0.15% | \$ 1,315.15 |
| Builders Risk Insurance | 0.13% | \$ 1,167.85 |
| Fee | 3.95% | \$ 35,529.89 |
| Construction Contingency | 2.25% | \$ 20,238.54 |
| Sub-total | | \$ 68,548.71 |

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| Total | \$ 935,020.87 |
|--------------|----------------------|



Sub-total for the Irrigation Pipe

| Bid Item | Description | Quantity | Unit of Measure | Unit Price | Total |
|------------------|-------------------|----------|-----------------|--------------|----------------------|
| 1000 | 12" Irrigation | 2,595 | FT | \$ 86.58 | \$ 224,675.10 |
| 2000 | 24" Irrigation | 1,828 | FT | \$ 205.43 | \$ 375,526.04 |
| 3000 | Laterals (4") | 110 | FT | \$ 104.43 | \$ 11,487.30 |
| 4000 | Laterals (8") | 55 | FT | \$ 192.38 | \$ 10,580.90 |
| 5000 | 36" Casing | 132 | FT | \$ 635.75 | \$ 83,919.00 |
| 6000 | Air Valve & Vault | 3 | EACH | \$ 8,987.30 | \$ 26,961.90 |
| 7000 | Flushing Hydrant | 2 | EACH | \$ 11,204.55 | \$ 22,409.10 |
| 5300 | Plug & Blowoff | 5 | EACH | \$ 4,281.11 | \$ 21,405.55 |
| Sub-Total | | | | | \$ 776,964.89 |

| | | | Cost Basis | Mark up% | Markup |
|--------------------------------------|--|--|-------------------|----------|---------------------|
| Labor | | | \$ 102,387 | 10% | \$ 10,239 |
| Burden | | | \$ 45,402 | 10% | \$ 4,540 |
| Permanent Materials | | | \$ 430,346 | 10% | \$ 43,035 |
| Construction Materials | | | \$ 46,319 | 10% | \$ 4,632 |
| Subcontractors Equipment Op Expenses | | | \$ 31,501 | 5% | \$ 1,575 |
| Owned Op Expense | | | \$ 48,805 | 10% | \$ 4,881 |
| Owned Equipment | | | \$ 72,197 | 10% | \$ 7,220 |
| Sub-total | | | \$ 776,957 | | \$ 76,121.00 |

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|------------------------|--|--|-------------|--|---------------------|
| Insurance @ 1% of Cost | | | \$ 7,769.57 | | \$ 7,769.57 |
| Bond @ 0.7% of Cost | | | \$ 5,438.70 | | \$ 5,438.70 |
| Sub-total | | | | | \$ 13,208.27 |

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|---|----------------------|
| Sub-total of the Irrigation Pipe | \$ 866,294.16 |
|---|----------------------|

Total Cost including CM

| Item | Cost | Total | |
|---|---------------|----------------------|------|
| Project Engineer | \$ - | \$ - | City |
| Project Admin & Accountant | \$ - | \$ - | City |
| Civil Contractor- sub-total for the irrigation pipe | \$ 841,688.74 | | |
| Sub-total | | \$ 841,688.74 | |

| | Percent | |
|--------------------------|---------|---------------------|
| Bond | 0.69% | \$ 5,807.65 |
| Liability Insurance | 0.50% | \$ 4,195.10 |
| Warranty | 0.15% | \$ 1,277.53 |
| Builders Risk Insurance | 0.13% | \$ 1,134.44 |
| Fee | 3.95% | \$ 34,513.79 |
| Construction Contingency | 2.25% | \$ 19,659.75 |
| Sub-total | | \$ 66,588.27 |

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| Total-SACWSD | \$ 908,277.02 |
|---------------------|----------------------|

Sub-total for the Irrigation Pipe

| Bid Item | Description | Quantity | Unit of Measure | Unit Price | Total |
|------------------|-------------------|----------|-----------------|--------------|----------------------|
| 1000 | 12" Irrigation | 2,595 | FT | \$ 86.58 | \$ 224,675.10 |
| 2000 | 24" Irrigation | 1,828 | FT | \$ 205.43 | \$ 375,526.04 |
| 3000 | Laterals (4") | 110 | FT | \$ 104.43 | \$ - |
| 4000 | Laterals (8") | 55 | FT | \$ 192.38 | \$ - |
| 5000 | 36" Casing | 132 | FT | \$ 635.75 | \$ 83,919.00 |
| 6000 | Air Valve & Vault | 3 | EACH | \$ 8,987.30 | \$ 26,961.90 |
| 7000 | Flushing Hydrant | 2 | EACH | \$ 11,204.55 | \$ 22,409.10 |
| 5300 | Plug & Blowoff | 5 | EACH | \$ 4,281.11 | \$ 21,405.55 |
| Sub-Total | | | | | \$ 754,896.69 |

| | | | Cost Basis | Mark up% | Markup |
|--------------------------------------|--|--|-------------------|----------|---------------------|
| Labor | | | \$ 99,479 | 10% | \$ 9,948 |
| Burden | | | \$ 44,112 | 10% | \$ 4,411 |
| Permanent Materials | | | \$ 418,123 | 10% | \$ 41,812 |
| Construction Materials | | | \$ 45,003 | 10% | \$ 4,500 |
| Subcontractors Equipment Op Expenses | | | \$ 30,606 | 5% | \$ 1,530 |
| Owned Op Expense | | | \$ 47,419 | 10% | \$ 4,742 |
| Owned Equipment | | | \$ 70,146 | 10% | \$ 7,015 |
| Sub-total | | | \$ 754,889 | | \$ 73,958.94 |

| | | | | | |
|------------------------|--|--|-------------|--|---------------------|
| Insurance @ 1% of Cost | | | \$ 7,548.89 | | \$ 7,548.89 |
| Bond @ 0.7% of Cost | | | \$ 5,284.22 | | \$ 5,284.22 |
| Sub-total | | | | | \$ 12,833.11 |

| | |
|---|----------------------|
| Sub-total of the Irrigation Pipe | \$ 841,688.74 |
|---|----------------------|

Total Cost including CM

| Item | Cost | Total | |
|---|---------------------|-------|------|
| Project Engineer | \$ 82.00 | | City |
| Project Admin & Accountant | \$ 96.00 | | City |
| Civil Contractor- sub-total for the irrigation pipe | \$ 24,605.77 | | |
| Sub-total | \$ 24,783.77 | | |

| | Percent | |
|--------------------------|---------|--------------------|
| Bond | 0.69% | \$ 171.01 |
| Liability Insurance | 0.50% | \$ 123.53 |
| Warranty | 0.15% | \$ 37.62 |
| Builders Risk Insurance | 0.13% | \$ 33.40 |
| Fee | 3.95% | \$ 1,016.11 |
| Construction Contingency | 2.25% | \$ 578.80 |
| Sub-total | | \$ 1,960.46 |

| | |
|-------------------|---------------------|
| Total-City | \$ 26,744.23 |
|-------------------|---------------------|

Sub-total for the Irrigation Pipe

| Bid Item | Description | Quantity | Unit of Measure | Unit Price | Total | |
|------------------|-------------------|----------|-----------------|---------------------|--------------|--------|
| 1000 | 12" Irrigation | 2,595 | FT | \$ 86.58 | \$ - | SACWSD |
| 2000 | 24" Irrigation | 1,828 | FT | \$ 205.43 | \$ - | SACWSD |
| 3000 | Laterals (4") | 110 | FT | \$ 104.43 | \$ 11,487.30 | City |
| 4000 | Laterals (8") | 55 | FT | \$ 192.38 | \$ 10,580.90 | City |
| 5000 | 36" Casing | 132 | FT | \$ 635.75 | \$ - | SACWSD |
| 6000 | Air Valve & Vault | 3 | EACH | \$ 8,987.30 | \$ - | SACWSD |
| 7000 | Flushing Hydrant | 2 | EACH | \$ 11,204.55 | \$ - | SACWSD |
| 5300 | Plug & Blowoff | 5 | EACH | \$ 4,281.11 | \$ - | SACWSD |
| Sub-Total | | | | \$ 22,068.20 | | 2.84% |

| | | | Cost Basis | Mark up% | Markup |
|--------------------------------------|--|--|------------------|----------|--------------------|
| Labor | | | \$ 2,908 | 10% | \$ 291 |
| Burden | | | \$ 1,290 | 10% | \$ 129 |
| Permanent Materials | | | \$ 12,223 | 10% | \$ 1,222 |
| Construction Materials | | | \$ 1,316 | 10% | \$ 132 |
| Subcontractors Equipment Op Expenses | | | \$ 895 | 5% | \$ 45 |
| Owned Op Expense | | | \$ 1,386 | 10% | \$ 139 |
| Owned Equipment | | | \$ 2,051 | 10% | \$ 205 |
| Sub-total | | | \$ 22,068 | | \$ 2,162.41 |

| | | | | | |
|------------------------|--|--|-----------|------------------|-----------|
| Insurance @ 1% of Cost | | | \$ 220.68 | | \$ 220.68 |
| Bond @ 0.7% of Cost | | | \$ 154.48 | | \$ 154.48 |
| Sub-total | | | | \$ 375.16 | |

| | |
|---|---------------------|
| Sub-total of the Irrigation Pipe | \$ 24,605.77 |
|---|---------------------|