

**INTERGOVERNMENTAL AGREEMENT BY AND AMONG
THE CITY OF COMMERCE CITY
AND
THE CITY OF BRIGHTON
AND
BRIGHTON SCHOOL DISTRICT 27J
REGARDING
CONSTRUCTION AND MAINTENANCE OF SIDEWALK ON 120TH AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT (the "IGA") is made and entered into effective this ___ day of _____, 2012 by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose principal business address is 7887 East 60th Avenue, Commerce the City, Colorado 80022 ("Commerce City") and the CITY OF BRIGHTON, a Colorado municipal corporation whose principal business address is 500 South 4th Avenue, Brighton, CO 80601 ("Brighton"), and BRIGHTON SCHOOL DISTRICT 27J, a Colorado School District and political subdivision of the State of Colorado whose principal business address is 18551 East 160th Avenue, Brighton, Colorado 80601 (the "School District").

WHEREAS, the parties desire to cooperate in the construction and maintenance of a public sidewalk to be installed along the north side of 120th Avenue (the "Sidewalk") from the intersection of 120th Avenue and Peoria Street to the western driveway entrance to Prairie View High School, which is located at 12909 East 120th Avenue, Brighton, Colorado;

WHEREAS, the parties are desirous of having the Sidewalk constructed to provide a safe walkway for students walking between the intersection of 120th Avenue and Peoria Street and Prairie View Middle School and Prairie View High School; and

WHEREAS, the parties have agreed in good faith to enter into this IGA to establish the rights and obligations of the parties related to such construction and maintenance.

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

1. Location. Brighton shall acquire, at its sole cost and expense, an easement, upon which the Sidewalk shall be constructed, along the northern boundary of the 120th Avenue right-of-way extending from the intersection of 120th Avenue and Peoria Street to the western driveway entrance to Prairie View High School.

2. Construction. Brighton shall cause the Sidewalk to be constructed to provide an eight foot wide asphalt surface between the entrance of Prairie View High School and Peoria Street.

3. Funding. Upon completion of the construction, Brighton shall prepare a detailed itemization, including quantities and costs, of all materials incurred in completing the Sidewalk and shall forward the same in the form of an invoice to Commerce City for reimbursement the cost of which shall not exceed \$50,000 without prior written approval. Within thirty (30) days after receipt and approval of said invoice from Brighton, Commerce City shall reimburse Brighton for the actual costs of materials used in the construction of the Sidewalk. Such invoices shall contain detailed itemization, including quantities and costs, of all materials for which Brighton seeks reimbursement.

4. Maintenance. The School District shall, at its sole cost and expense, assume snow removal responsibilities.

5. Expiration/Termination. The rights and obligations under this IGA shall terminate or expire as follows:

a. Brighton's obligations hereunder, but not its rights of enforcement, shall terminate upon completion of the construction of the Sidewalk and receipt of full reimbursement from Commerce City.

b. Commerce City's obligations hereunder, but not its rights of enforcement, shall terminate upon making final payment to Brighton under Section 3 herein.

c. The School District's obligations hereunder shall terminate, only as to those portions of the Sidewalk not on or within School District-owned property frontage on East 120th Avenue, at such time as:

i. the property upon which the Sidewalk is located is annexed to the City of Brighton; and

ii. the Sidewalk is removed and replaced as a result of development of said annexed land.

d. The School District's obligations, as to the portion of the Sidewalk on or within School District property, shall not cease or terminate and such obligations shall survive the expiration of this IGA.

e. Upon annexation to the City of Brighton of the property upon which the Sidewalk is located, any enforcement rights of Brighton and Commerce City existing by virtue of this IGA shall terminate, and this IGA shall expire.

6. General Provisions.

a. No Partnership or Agency. Notwithstanding any language in this IGA or any representation or warranty to the contrary, no party hereto shall be deemed or constitute a partner, joint venturer or agent of any other party. Any actions taken by the parties pursuant to this IGA shall be deemed actions as an independent contractor of the other.

b. 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 hereto shall be deemed to be only an incidental beneficiary under this IGA.

c. No Waiver. The waiver of any breach of a term, provision or requirement of this IGA shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this IGA.

d. Governing Law and Venue; Recovery of Costs. This IGA shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in Adams County, Colorado, and venue for federal actions shall be in United States District Court for the District of

Colorado. In the event legal action is brought to resolve any dispute among the parties related to this IGA, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.

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. Entire Agreement; Binding Effect. 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 the parties. This IGA shall be binding upon, and shall inure to the benefit of, the parties and their respective personal representatives, successors and assigns.

g. 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.

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.

i. Headings. Paragraph headings used in this IGA are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this IGA.

j. 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.

[The remainder of this page is intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the City and the District have executed this Agreement as of the date first written above.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Daren A. Sterling, P.E., Interim Director
Department of Public Works

CITY OF BRIGHTON

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approved as to form:

Margaret R. Brubaker, City Attorney

BRIGHTON SCHOOL DISTRICT 27J

Joan Kniss, Board President

ATTEST:

Secretary

Approved as to form:

Janet K. Wyatt, Esq.
Chief Legal Officer