

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF COMMERCE CITY AND
THE E-470 PUBLIC HIGHWAY AUTHORITY
REGARDING FUNDING OF TRAFFIC SIGNALS AT 120TH AVENUE/E-470**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2019 (the “Effective Date”), by and between the City of Commerce City, a Colorado home rule municipality (the “City”), and the E-470 Public Highway Authority (the “Authority”), hereinafter individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, the City is a municipal corporation organized and existing as a home rule city under Article XX of the Colorado Constitution and the Home Rule Charter of the City; and

WHEREAS, the Authority was created and organized pursuant to Sections 43-4-501 *et seq.*, C.R.S. (the “Act”) for the purpose of financing, constructing, operating, and/or maintaining the E-470 Public Highway (“E-470”), and in this regard to carry out all or any part of those functions or activities permitted by the Act and the Authority’s establishing contract; and

WHEREAS, the Parties, as Colorado governments, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18 and Sections 29-1-201, *et seq.*, C.R.S. to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government; and

WHEREAS, the Parties and their residents, taxpayers, and customers will jointly benefit from the construction, maintenance, and operation of traffic signals and related equipment and appurtenances necessary thereto to be located at the intersection of E-470 and 120th Avenue (the “120th Intersection”) at the on/off ramps located on the southbound and northbound E-470 ramps as generally depicted in Exhibit A attached hereto and incorporated herein by this reference (the “Project”); and

WHEREAS, the Parties have determined to jointly participate in the design, construction, maintenance, and operation of the Project due to the shared benefit the Project will provide to the Parties; and

WHEREAS, the City is currently engaged in a project to design and construct traffic signals within the City, and the Authority is willing to contribute toward the cost of design and construction of the Project to allow the City to include it in the City’s larger project work to achieve economies of scale and other efficiencies and cost savings for the Parties; and

WHEREAS, in light of these shared interests, the Parties further desire to memorialize their understanding regarding the sharing of costs and the Parties’ funding, design, construction, operation and maintenance obligations for the Project.

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

AGREEMENTS

1. CITY RESPONSIBILITY FOR PROJECT DESIGN AND CONSTRUCTION.

A. Design. Subject to the receipt of acceptable proposals, the availability of funds, and the terms and conditions of this Agreement, the City will contract with one (1) or more qualified and experienced consultants to provide preliminary and final design services for the development of the Project ("Final Design"). The Authority shall be afforded the opportunity to review and comment on the design during development of the Final Design at the sixty percent (60%) and ninety percent (90%) stages of completion, as well upon full completion of the Final Design. The Authority shall have fifteen (15) days from the date the review is provided to it to review the Final Design at each such stage and to and offer comments. If redesign and re-engineering specifications become necessary after construction of the Project has begun, the City shall provide the Authority with said specifications for review and acceptance as provided above. The City will consider all comments and will cooperate to cure any such objections but will retain final approval authority regarding the Final Design and any changes. The Parties hereby acknowledge and agree that the Authority's review, acceptance and/or request for revisions to the Final Design shall not create any liability for the Authority.

B. Construction. Subject to the receipt of acceptable bids, the availability of funds, and the terms and conditions of this Agreement, the City will perform or cause to be performed all work effort required to construct the Project and will contract with one (1) or more qualified and experienced contractors to construct the Project in accordance with the approved Final Design, as may be modified through change orders, including, but not limited to, obtaining all necessary permits, consents, and approvals in accordance with applicable federal, state, and local statutes, ordinances, codes, rules and regulations.

C. Procurement & Contract Standards. The City will procure the contracts for the design and construction for the Project in accordance with the City's laws and policies regarding soliciting, selecting, contracting, and administering contracts with any consultant or contractor. The construction of the Project will be completed in accordance with all applicable laws, ordinances, codes, rules and regulations, and design standards, and the City shall ensure that the design and construction of the Project are performed in a workmanlike manner. Acknowledging that the City is designing and constructing the Project as a part of a larger traffic signal installation project and that the City shall have the obligation to own and operate the Project once constructed, the City shall have full control over all aspects of the management, advertisement, contracting, and construction of the Project except as otherwise provided in this Agreement. The City shall ensure that the Authority is named as an additional insured under all contracts for the design and construction of the Project and that the contractors maintain insurance during design and construction pursuant to the City's standard insurance requirements. The City agrees the

Authority has the right to request and receive a certified copy of any such insurance policy and any endorsement thereto.

D. Project Administration; Modifications. The City will perform or cause to be performed all Project administration and management functions required for the Project, including awarding, letting and administration of all Project contracts. The City will apprise the Authority of the status of the Project throughout the work. The Authority will not direct the City's contractor or the work in any manner; provided, however, the Authority may comment on the Final Design pursuant to Section 1.A above and coordinate with the City regarding the timing of the signals pursuant to Section 5 below.

2. AUTHORITY CONTRIBUTIONS.

A. Funding. The Authority shall provide the City with funding for the costs of the design, construction, and construction management to complete the Project in accordance with the Final Design in an amount up to but not exceeding **\$750,000.00**. The City shall not be required to incorporate any design elements into the Final Design or any changes to the Final Design required by the Authority unless the Authority agrees to fully pay for such elements or changes. The Authority shall provide funding as follows: (1) within thirty (30) days of the Effective Date, the Authority shall deposit the Authority Funds into a designated and segregated Authority account to be used solely for the purpose of this Agreement ("Escrow"); and (2) the Authority shall release funds from the Escrow to the City upon the presentation to the Authority and mutual approval by the Authority and the City of progress invoices for the design, construction and construction management of the Project. Any interest that may accrue on the Authority Funds shall be the property of the Authority and shall not increase the Authority Funds available under this Agreement.

B. Excess Costs. If the actual total cost of the design, construction and construction management of the Project exceeds the amount of Authority Funds, the City shall be solely responsible for all such excess costs excluding only any design elements and changes required by the Authority.

C. Property Access; Permitting. The Authority will grant access to the City to its property necessary to construct the Project and will grant a perpetual easement to any of its property on which the Project is located for access and maintenance of the Project. The Parties will waive any permitting and review fees applicable to the Project and any maintenance work.

D. Construction Deadline and Release of Funds. If construction of the Project is not substantially complete before December 31, 2020, all Authority Funds remaining in Escrow shall be released to the Authority. After such date, the Authority shall have no remaining obligation under this Agreement. If at initial acceptance of the Project by the City the actual costs of the Project are less than the Authority Funds, the remaining Authority Funds in Escrow shall be released to the Authority.

3. **FINAL ACCEPTANCE.** Upon substantial completion of the Project, the City shall provide notice of the same to the Authority, and the Authority shall have the right to inspect the Project for consistency with the Final Design plans. Nothing herein shall be construed as granting to the City or any other party any rights, property or otherwise, in or to the Authority's right-of-way or multi-use easement except as otherwise granted herein.

4. **CITY PROJECT OPERATION AND MAINTENANCE OBLIGATIONS.** The City shall be the owner of the traffic signals and related equipment and appurtenances constructed during the Project and shall be solely responsible for its operation and maintenance in perpetuity. The City will coordinate the timing of the signals with the Authority to ensure toll-road appropriate traffic flow on the northbound and southbound 120th Avenue ramps and on E-470 itself.

5. **ANTICIPATED COMPLETION OF THE PROJECT.** The City will use reasonable efforts to complete the Project by December 31, 2020, but no failure by the City to complete the Project by December 31, 2020 shall constitute a breach of this Agreement.

6. **BREACH AND ENFORCEMENT.** The failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

7. **INDEMNIFICATION.** To the extent permitted by law, the City hereby agrees to indemnify, defend and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party to the Authority's establishing contract, and each of the Authority's directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to any claim arising directly or indirectly, in whole or in part, from the actions or inactions of the City and its employees related this Agreement or the Project. Nothing in this Agreement or in any actions taken by the Authority or the City pursuant to this Agreement shall be deemed a waiver of the Authority's or the City's respective sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Further, the City shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of the Authority, its directors, employees, agents and consultants. The obligations of the indemnifications extended by the City to the Authority under this Paragraph shall survive termination or expiration of this Agreement.

8. **MISCELLANEOUS.**

A. **Assignment.** Neither of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Party.

B. **Appropriation.** Notwithstanding any other term or condition of this Agreement, all obligations of either Party under this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through each party's legally required budgeting, authorization,

and appropriation process. Further, neither Party, by this Agreement, creates a multiple fiscal year obligation or debt either within or without this Agreement. It is anticipated that appropriations for the purpose of this Agreement, if made at all, will be made on an annual basis. Neither Party, however, by this Agreement binds future governing bodies to make such appropriations.

C. Time is of the Essence. The Parties acknowledge that time is of the essence in the performance of this Agreement.

D. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the Parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

E. 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 the Authority shall be deemed to be only an incidental beneficiary under this Agreement.

F. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Parties pursuant to this Agreement 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, Sections 24-10-101, *et seq.*, C.R.S.

G. No Personal Liability. No elected official, director, officer, agent or employee of the Authority or the City shall be charged personally or held contractually liable by or to another Party under any term or provision of this Agreement or because of any breach thereof, or for their errors or omissions in the performance thereof, or because of its or their execution, approval or attempted execution of this Agreement.

H. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

If to the City:

City of Commerce City
Attn: Director of Public Works
8602 Rosemary Street
Commerce City, CO 80022

If to the Authority:

E-470 Public Highway Authority
Attention: Executive Director
Administrative Headquarters Facility
22470 E. 6th Parkway
Aurora, CO 80018

Either Party may change its address for the purpose of this Section by giving written notice of such change to the other Party in the manner provided in this Section.

I. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

J. Controlling Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement to be provided hereunder shall lie in the state courts of the State of Colorado and that Colorado law shall govern.

K. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

L. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

M. Entire Contract. This Agreement constitutes the entire agreement between the Parties with regard to the Project and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Project are of no force and effect.

N. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

O. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

P. Counterpart Execution; Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an

electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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E-470 PUBLIC HIGHWAY AUTHORITY

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CITY OF COMMERCE CITY, COLORADO

By: Sean Ford, Mayor

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ as _____ of _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

APPROVED AS TO FORM:

Robert Sheesley, City Attorney

ATTEST:

Laura J Bauer, City Clerk

EXHIBIT A

Project Vicinity Map