

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
COMMERCE CITY AND THE BUFFALO RIDGE METROPOLITAN  
DISTRICT- 120TH AVENUE PROJECT**

**and**

**AMENDMENTS TO AGREEMENT FOR PUBLIC IMPROVEMENTS (VILLAGES AT  
BUFFALO RUN EAST, FILING NO. 7), AGREEMENT FOR PUBLIC  
IMPROVEMENTS (VILLAGES AT BUFFALO RUN EAST, FILING NO. 6), AND  
AGREEMENT FOR PUBLIC IMPROVEMENTS (VILLAGES AT BUFFALO RUN  
EAST, FILING NO. 3)**

This **INTERGOVERNMENTAL AGREEMENT** ("**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 ("**Effective Date**"), by and between BUFFALO RIDGE METROPOLITAN DISTRICT ("**Buffalo Ridge**"), a Colorado special district and the CITY OF COMMERCE CITY, a Colorado home rule municipality ("**City**") (collectively, "**Parties**").

**RECITALS**

A Property within the boundaries of Buffalo Ridge exists along the current alignment of 120th Avenue from west of Chambers Road (commencing approximately at the east side of the highway overpass over I-76) to east of High Plains Parkway, as further depicted and set forth in Exhibit A, attached hereto and incorporated by this reference;

B. The Parties have determined it appropriate to work together to cause the installation and construction of public improvements necessary for expansion of 120th Avenue, consisting of a principal arterial cross section being built as further set forth in Exhibit B , attached hereto and incorporated by this reference, and including without limitation, undergrounding of existing overhead, relocation of an existing sanitary sewer line and drainage infrastructure for roadway improvements (the "Project");

C. The location of the installation and construction for the Project is located within a Right of Way that has been previously deeded or otherwise dedicated to the City and for which the City has responsibility for maintenance and repair.

D. The Parties desire to enter into this Agreement to establish terms for the payment of costs related to the Project and the Parties' respective cost allocation, as further set forth herein as well as the rights and responsibilities of the Parties with respect to the Project; and

E. Article XIV, Section 18 of the Colorado Constitution authorizes the City and Buffalo Ridge to enter into cooperative agreements such as this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the sufficiency of which is expressly acknowledged, the Parties agree as follows:

## **1. Design and Permitting.**

a. Buffalo Ridge will undertake and complete the survey, engineering, design, plan preparation and permitting associated with the Project (the "Design Work"). Such Design Work may include without limitation, the following:

- (i) Title Commitments.
- (ii) Design and Utility Surveys;
- (iii) Property Surveys and Base Mapping preparation;
- (iv) Geotechnical Engineering;
- (v) Traffic Studies and Engineering;
- (vi) Environmental Engineering and Permitting;
- (vii) Roadway Design and Plans;
- (viii) Traffic Signal Design and Plans;
- (ix) Signage, Striping and Lighting Plans;
- (x) Drainage Design and Plans;
- (xi) Stormwater Management Design and Plans;
- (xii) Demolition and restoration of existing improvements design and plans;
- (xiii) Landscaping and Irrigation Design and Plans;
- (xiv) Electric Relocation Design and Plans;
- (xv) Gas Line Relocation Design and Plans;
- (xvi) Telecommunication Relocation Design and Plans;
- (xvii) Preparing Legal Descriptions for Easement and Right-of-Way Acquisition;
- (xviii) Drainage Studies and Stormwater Management Reports;
- (xix) Right-of-Way Plans; and
- (xx) Cost Estimates.

b. In its contract with a contractor for the Design Work, Buffalo Ridge shall include the following:

(i) Insurance requirements as are standard to Buffalo Ridge design contracts, and that specifically name the City and its elected and appointed officials, employees, and agents as "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any);

(ii) Expressly naming the City as a third-party beneficiary of the contract with respect to Design Work relating to the Property Rights, as defined below, that the City is obligated to acquire pursuant to this Agreement;

(iii) Provisions for Buffalo Ridge's contractor to indemnify, defend, and hold harmless, the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees;

(iv) To expressly name the City as a third-party beneficiary of the contract with respect to the insurance, indemnity and defense, warranty, and standard of care provisions.

## **2. Construction Terms**

a. Buffalo Ridge shall commence construction of the Project upon City approval of the final plans and specifications, issuance of the final permits, and the acquisition of any and all necessary property rights and other property interests required for the construction of each portion of the Project. Such construction shall be completed substantially in accordance with all such City-approved plans and specifications.

b. The Parties each agree that in connection with real property under their respective control or ownership, if any, they will provide all necessary property interests, easements, licenses, and/or rights of ways deemed necessary for construction of the Project, at no cost to the other Party hereto. All requisite property interests as are necessary for construction of the Project shall be referred to herein as the "Property Rights." The City shall acquire, and/or obtain, at its cost, all the Property Rights on the both the north half and the south half of 120<sup>th</sup> Avenue. To be completed as soon as possible, but no later than such time as construction of the Project warrants acquisition of such Property Rights.

c. Buffalo Ridge has or will publicly bid the Project in accordance with its standard construction practices and all applicable legal requirements. Upon the Parties' determination of the lowest most qualified and responsive bidder in accordance with Colorado law, upon reasonable conferral of the Parties, based upon such bid results, Buffalo Ridge shall be authorized to enter into a construction contract with such contractor (the "District Contractor"), subject to the requirements of this Agreement, and to issue a notice to proceed. All executed construction documents shall be provided to the City for its records.

d. The Parties agree that the form of the construction contract shall be at Buffalo Ridge's discretion, subject to the City's review upon request, notwithstanding however, that the construction contract shall include the following terms:

(i) Insurance requirements as are standard to Buffalo Ridge construction projects, and specifically naming the City and its elected and appointed officials, employees, and agents as an "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any). All references to Buffalo Ridge and its "directors, officers, employees and agents" with respect to any insurance shall also be made applicable to the City and its elected and appointed officials, employees, and agents, respectively. Buffalo Ridge shall require the District Contractor to provide copies of any and all certificates of insurance to the City;

(ii) Terms of payment and surety to include performance bonds and a minimum one-year warranty from Final Acceptance of all components of the Project;

(iii) Provision for the construction contractor to indemnify, defend, and hold harmless the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees (specifically, modifying General Condition 5.9 to name said parties); and

(iv) Expressly naming the City as a third-party beneficiary/obligee of the contract with respect to all provisions relating to the obligation to perform the work, insurance (including without limitation General Conditions 5.2, 5.3, 5.4, 5.6, 5.7, and 5.8), indemnity and defense (including without limitation General Conditions 5.9, 9.8, and 11.6), performance and payment bonds (including without limitation General Condition 5.1), and warranty provisions for any part of the work to be owned by or dedicated to the City.

e. Buffalo Ridge shall also be authorized to enter into construction management, quality assurance, and geotechnical engineering contracts with qualified contractors, subject to the requirements of this Agreement, and to issue a notice to proceed. Copies of all executed contracts shall be provided to the City for its records. In all such contracts, Buffalo Ridge shall include the following:

(i) Insurance requirements as are standard to Buffalo Ridge construction projects, specifically naming the City and its elected and appointed officials, employees, and agents as an "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any). Buffalo Ridge shall require the District Contractor to provide a certificate or certificates of insurance to the City;

(ii) Provisions to indemnify, defend, and hold harmless the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees; and

(iii) To expressly name the City as a third-party beneficiary of the contract with respect to the insurance, indemnity and defense, warranty, and standard of care provisions.

f. Any property of the City damaged or destroyed by Buffalo Ridge or any of its contractors or subcontractors incident to this Agreement, excluding any property intended to be affected by the work, shall be promptly repaired or replaced by Buffalo Ridge to the City's satisfaction, or in lieu of such repair or replacement, Buffalo Ridge shall pay to the City money in an amount sufficient to compensate for the actual damages sustained by the City by reason of damage to or destruction of City property, including all costs associated with the repair or replacement of such property, plus an administrative fee of 10%.

### **3. Project Cost Allocation**

#### **a. Buffalo Ridge Cost Allocation**

(i) Buffalo Ridge has already paid approximately \$300,000 for design work on both the south and north half of the Project. In addition to such amount, Buffalo Ridge shall contribute a total of **\$4,100,000.000** ("Buffalo Ridge Contribution") for the Project. The Buffalo Ridge Contribution shall include the following costs to be paid by Buffalo Ridge:

(1) Any and all remaining Design Work occurring on the south half of 120th Avenue (the south half of 120th Avenue is further depicted in **Exhibit A**) (the "South Half"), as such Design Work is further defined in Paragraph 1;

(2) All project management costs associated with the South Half, including without limitation, construction management, administration and supervision;

(3) All landscaping installation on the South Half until the Buffalo Ridge Contribution is exhausted. In the event that any additional landscaping installation costs exceed Buffalo Ridge's Contribution, the City shall pay for such additional costs, upon reasonable conferral of the Parties as to the remaining costs; and

(4) All improvements located in the South Half from west of Chambers Road to east of High Plains Parkway, including: earthwork, erosion control, contractor mobilization, construction traffic control, roadway drainage, traffic signal improvements, dry utility relocation work including, without limitation, United Power, and soft costs including State permit fees, sales and use taxes as may be required, payment and performance bonds, construction surveying, materials testing, and construction management. In addition, Buffalo Ridge shall fund the roadway improvements including demolition, curb, gutter, concrete sidewalks, access roads, ramps, asphalt, striping, signage, streetlights, fence, subgrade reconditioning, non-potable waterlines that service the adjacent development, landscape and irrigation within the tree lawn

adjacent to the adjoining properties, SACWSD water and tap fees for the tree lawn adjacent to adjacent development, if any.

b. City Cost Allocation.

(i) The City shall contribute a total of **\$4,900,000.000** (the "**City Contribution**") for the Project. The City Contribution shall include the following costs paid by the City:

(1) All Design Work occurring or that has already occurred on the north half of 120th Avenue (the north half of 120th Avenue is further depicted in **Exhibit A**) (the "North Half"), as such Design Work is further defined in Paragraph 1;

(2) All Project management costs associated with the North Half, including without limitation, construction management, administration and supervision;

(3) All Project costs related to the portion of the Project occurring adjacent to the properties located in unincorporated Adams County

(4) All overhead electrical undergrounding along 120th Avenue. The Parties agree that the City will utilize its 1% Franchise Agreement funds with United Power to fund these costs;

(5) All Project costs associated with the relocation of the sanitary sewer line for wet utility work;

(6) All improvements occurring in the North Half consisting of the approved section of 120th Avenue from west of Chambers Road to east of High Plains Parkway, including: Earthwork, erosion control, contractor mobilization, construction traffic control, roadway drainage, traffic signal improvements, dry utility relocation work (outside of existing ROW) including, without limitation, United Power, and soft costs including State permit fees, sales and use taxes as may be required, payment and performance bonds, construction surveying, materials testing, and construction management. In addition, the City will fund the roadway improvements including demolition, curb, gutter, concrete sidewalks, access roads, ramps, asphalt, striping, signage, streetlights, fence, subgrade reconditioning, where appropriate as determined by the City, SACWSD water and tap fees for the associated with tree lawns, where necessary, for and property rights; and

(7) Costs for installation of native seeding occurring on the North Half.

c. The Project costs shall not exceed the respective cost allocations set forth as the Buffalo Ridge Contribution or City Contribution, unless this Agreement is amended upon mutual agreement.

d. For change orders exceeding \$5,000, upon reasonable conferral with the City and then upon receipt of written approval from the City as to an individual change order, Buffalo Ridge shall have the authority to approve such change orders as long as (1) such change

order does not exceed a 5% contingency allotted for costs identified in the respective bid schedules; and (2) such change order is consistent with all approved plans and specifications. The Parties agree that for any non-emergency change orders proposed related to the City's Contribution, exceeding \$5,000, Buffalo Ridge shall present the same to the City for review and consideration. The City shall have five (5) business days to consider non-emergency change orders and if no objection is made within the allotted time period, the same shall be deemed approved. In the event of an emergency change order, the City shall respond within twenty-four (24) hours of receipt of such change order request. If the City objects to such change order, the Parties shall meet and work in good faith to resolve the issue. An "emergency" shall involve events that impact immediate public safety concerns or other events of an emergent nature, such as water or gas line breaks.

e. Buffalo Ridge agrees to submit a detailed, itemized monthly statement to the City for review. The statement will show cost information for the South Half and the North Half, and make specific references to the work performed for the Project. The City agrees to reimburse Buffalo Ridge within ninety (90) days of receiving each invoice. The City may object to any errors related to an amount identified in the invoice and the Parties shall reasonably confer in an effort to resolve any such invoice objections. The Parties acknowledge that in order to avoid unnecessary delays and costs for the Project, each Party must make available personnel who are empowered to act and make decisions on behalf of such Party in an expeditious manner. For all matters to be determined by the City pursuant to this Agreement, and for all matters as shall be permissible pursuant to existing City procedures, the City shall designate a representative (the "**City Representative**"), who shall be available for immediate consultation on matters related to change orders, and any other matter to be determined by the City in connection with this Agreement. Unless subsequently notified otherwise, the name and contact information of the City Representative shall be:

City Representative: Mike McGoldrick, P.E.

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

#### 4. **Amendments to Existing Public Improvement Agreements.**

##### a.. **July 12, 2016 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 7).**

i. Northwood Village Associates, Ltd. entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing No. 7 with the City on July 12, 2016, attached hereto as Exhibit C (the "Filing 7 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 7, more specifically described in the legal description in Exhibit A, attached thereto. Buffalo Ridge is the successor in interest to Northwood Village Associates, Ltd. with regard to the Filing 7 PIA. Exhibit B attached thereto, required Buffalo Run

(as successor in interest to Northwood Village Associates, Ltd.), to complete certain infrastructure improvements and share in the costs of certain improvements.

ii. The Parties hereby agree that as part of Buffalo Ridge's cost allocation for the Project, the Parties hereby deem the following infrastructure improvement obligations set forth in Exhibit B to the Filing 7 PIA to be waived and hereby amend the Filing 7 PIA by the deletion of Paragraphs 1, 2, 3, 4, 5, and 6 of Exhibit B.

ii. The Parties hereby amend Filing 7 PIA by the addition of the following language:

A. Owner shall construct and pave the concrete drive referenced herein using the same material used on other paved portions of the golf course.

iii. The remainder of the Filing 7 PIA shall remain in full force and effect.

**b. March 23, 2016 Agreement for Public Improvements (Villages at Buffalo Run east, Filing No. 6).**

i. Buckley Associates, Ltd., entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing 6 with the City on March 23, 2016, attached hereto as Exhibit D (the "Filing 6 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 6, more specifically described in the legal description in Exhibit A, attached thereto. Buffalo Ridge is the successor in interest to Buckley Associates, Ltd. with regard to the Filing 6 PIA. Paragraph 5 of Exhibit B attached thereto requires Buffalo Ridge (as successors in interest to Buckley Associates, Ltd.) to "reimburse the City for 50% of the reasonable costs of the materials and installation of a traffic signal located at 118<sup>th</sup> Avenue and High Plains Parkway."

ii. The Parties hereby agree that as part of Buffalo Ridge's cost allocation, the Parties hereby deem such payment contribution to be satisfied or otherwise waived and hereby amend the Filing 6 PIA by the deletion of Paragraph 5 of Exhibit in its entirety. The remainder of the Filing 6 PIA shall remain in full force and effect.

**c. August 2, 2018 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 3).**

i. 120<sup>th</sup> and Buckley Associates, Ltd., entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing No. 3 with the City on August 2, 2018, attached hereto as Exhibit E (the "Filing 3 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 3, more specifically described in the legal description in Exhibit A, attached thereto.

Buffalo Ridge is the successor in interest to 120<sup>th</sup> and Buckley Associates, Ltd. With regard to the Filing 3 PIA. Exhibit B attached thereto contains a requirement that Buffalo Ridge (as successor in interest to 120<sup>th</sup> and Buckley Associates, Ltd.), "pay three hundred thousand and five hundred dollars (\$305,500), which constitutes fifty percent of the cost of the traffic signal to be placed at 118<sup>th</sup> Ave. and High Plains Parkway, including costs for materials, design and installation."

ii. The Parties hereby agree to amend the third paragraph of Exhibit B to Filing 3 PIA, to read as follows:

The Owner shall pay three hundred five thousand and five hundred dollars (\$305,500), which constitutes fifty (50%) of the cost of the traffic signal to be placed at 118<sup>th</sup> Ave. and High Plains Parkway, including costs for materials, design and installation, at such time when the full build-out of High Plains Parkway occurs and the actual costs incurred for construction are submitted to and verified by the City.

The remainder of the Filing 3 PIA shall remain in full force and effect.

## **5. Certification of the Project and Final Payments.**

a. After Initial Acceptance of the Project by the City and Buffalo Ridge from the construction contractor, Buffalo Ridge will provide written certification to the City ("**Certification**"), which will include an accounting of all costs related to construction of the Project, exclusive of the Design Work. The Certification shall include the final amount of the Parties' respective costs, The City may object to any errors related to amount identified in the Certification within thirty (30) days of the date of the Certification (the "**Reporting Period**"). The City shall reimburse Buffalo Ridge for any underpayment not later than sixty (60) days after the Reporting Period and if not paid within such time period, interest shall accrue on the City Reimbursement Amount at the rate of six percent (6.0%) per annum until paid in full to Buffalo Ridge. Buffalo Ridge shall return any overpayment to the City not later than sixty (60) days after the Reporting Period and if not paid within such time period, interest shall accrue at the rate of six percent (6.0%) per annum until paid in full to the City.

b. At any time, the City shall have the right to audit Buffalo Ridge's records concerning the design and construction of the Project. The right to request an audit of such records shall be made within three (3) years from the date upon which the Certification is provided and shall be in writing. The audit request shall include a reasonably detailed description of the scope of documents requested for audit by the City.

## **6. Operation and Maintenance of Project upon Completion.**

a. The Parties agree that maintenance of 120th Avenue shall be the responsibility of the City.

b. Operation and Maintenance of the tree, lawn, landscaping, and irrigation system along the north side of 120th Avenue adjacent to development shall be the responsibility of the City.

c. Operation and Maintenance of the tree, lawn, landscaping, and irrigation system along the south side of 120th Avenue adjacent to development shall be the responsibility of Buffalo Ridge.

#### **7. City License to Buffalo Ridge for Construction.**

a. Pursuant to a license agreement to be executed prior to the commencement of construction, the City shall grant a temporary non-exclusive license to Buffalo Ridge and its contractors and subcontractors for the construction of the Project upon those portions of the Property Rights held by the City and where Buffalo Ridge may need access for the Project (the "**Temporary Construction License**"). All costs and expenses of activities conducted by Buffalo Ridge shall be at no cost to the City except as may otherwise be specifically provided in this Agreement and the non-exclusive license to access Buffalo Ridge. Subject to the provisions of this Agreement and the project cost allocations set forth in Paragraph 3, Buffalo Ridge shall be solely responsible for locating all overhead, above ground, and underground utilities, including without limitation, electrical, sewer, water, communication, and other utilities. The City is not under a duty to inspect for the precautions to avoid damage to, or injury from, such utilities. Buffalo Ridge agrees to be solely responsible for any such damage to or injury from, any such utilities on the licensed property which result from the activities conducted by or for Buffalo Ridge.

b. The City shall reserve all rights of ownership, use and occupancy of any licensed property subject only to the rights granted to Buffalo Ridge for the Temporary Construction License.

c. The term associated with such Temporary Construction License shall commence as of the date of this Agreement and terminate upon the earlier of (a) the date upon which Buffalo Ridge provides written notice of termination of the license to the City; (b) the date upon which the Parties mutually agree in writing to terminate the license; (c) the date upon which the City provides written notice of termination of the license for cause to Buffalo Ridge; or (d) the date upon which construction of the Project has been completed, as evidenced by a written notice of final acceptance to the contractor and the dedication of improvements to the City.

**8. Binding Effect; Assignment.** This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment. Neither Party shall assign its obligations or rights under this Agreement without the other Party's prior written consent and any attempted assignment in violation hereof shall be null and void. Any successor or assign of the whole, or of any part, of this Agreement will be jointly and severally liable for performance of such portion succeeded to or assigned.

#### **9. Representations and Warranties of Buffalo Ridge.**

a. Buffalo Ridge represents and warrants to the City that: (i) Buffalo Ridge is a special district duly organized and validly existing under the laws of the State of Colorado, is authorized to conduct business as it is presently being conducted, is not in violation of its governing documents or the laws of the State of Colorado, has the power and legal right to enter into this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement;

(ii) The consummation of the transactions contemplated by this Agreement will not violate any provisions of its governing documents or constitute a default or result in the breach of any term of provision of any contract or agreement to which Buffalo Ridge is a party or by which it is bound; and

(iii) There is no litigation, proceeding, or investigation contesting the authority of Buffalo Ridge or its officers with respect to this Agreement, and Buffalo Ridge is unaware of any such litigation, proceeding, or investigation being threatened.

**10. Representations and Warranties of the City.**

a. The City represents and warrants to Buffalo Ridge that: (i) The City is a municipality duly organized and validly existing under the laws of the State of Colorado, is authorized to conduct business as it is presently being conducted, is not in violation of its governing documents or the laws of the State of Colorado, has the power and legal right to enter into this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement;

(ii) The consummation of the transactions contemplated by this Agreement will not violate any provisions of its governing documents or constitute a default or result in the breach of any term of provision of any contract or agreement to which the City is a party or by which it is bound; and

(iii) There is no litigation, proceeding, or investigation contesting the authority of the City or its officers with respect to this Agreement, and the City is unaware of any such litigation, proceeding, or investigation being threatened.

**11. Term.** This Agreement will be effective from the Effective Date until the date the City Reimbursement Amount, or alternatively, any amount payable to the City by the District, as the case may be, pursuant to Section 3(b) and any interest has been paid. The termination of this Agreement shall not affect any warranty, indemnity, insurance, or bond obligations of Buffalo Ridge or any District Contractor or any related right accruing to the City's benefit.

**12. Notice.** Any notice given pursuant to this Agreement will be sent by certified mail, return receipt requested, overnight delivery service, or hand delivery to the address given above or to any other address given in writing by an addressee to the other party. Notice to the City shall be given to the City Manager and copied to the City Attorney. Such notice, if given by mail, shall be deemed received three (3) days after mailing in accordance with this Section. Reports on the progress of the work and notifications of significant changes in the work may be sent by e-mail to addresses designated by the City.

### **13. General Provisions.**

a. **Incorporation by Reference.** The recitals to this Agreement and all exhibits to this Agreement are incorporated by reference.

b. **No Third-Party Beneficiaries.** The parties expressly intend that any person other than the City and Buffalo Ridge will be deemed to be only an incidental beneficiary under this Agreement.

c. **No Waiver.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor shall any such waiver be a continuing waiver. A party's failure to insist upon strict performance of any of the terms, covenants, conditions, or agreements contained in this Agreement shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained in this Agreement by the same party. Except as expressly provided in this Agreement, no waiver shall be binding on any party unless executed in writing by the party making such waiver.

d. **Governmental Immunity.** No term or condition of this Agreement will 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.*

e. **Non-liability of Officials and Employees.** No elected or appointed official, employee, agent, consultant or contractor of the City or Buffalo Ridge shall be personally liable to the other Party or any successors or assign for any breach of this Agreement.

f. **Non-Appropriation.** Notwithstanding any other term or condition of this Agreement, all obligations of the City or Buffalo Ridge under this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the City's or Buffalo Ridge's legally required budgeting, authorization, and appropriation process, as applicable. Further, the City and Buffalo Ridge, by this Agreement, do not create a multiple fiscal year obligation or debt either within or without this Agreement. The City and Buffalo Ridge, by this Agreement, do not bind future legislatures to make such appropriations.

g. **Governing Law; Jurisdiction and Venue; Attorneys' Fees.** This Agreement will be governed by the laws of the State of Colorado. Venue for any litigation arising out of or relating to this Agreement will be in the 17th Judicial District in Adams County, Colorado. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover from the non-prevailing party court costs, reasonable third-party expenses, and reasonable attorney fees incurred in prosecuting or defending such action and enforcing any judgment, order,

ruling or award. The prevailing party shall be determined based upon an assessment of which party's arguments or positions could fairly be said to have prevailed over the other party's arguments or positions on major disputed issues at trial. Such assessment should include evaluation of the following: the amount of the net recovery; the primary issues disputed by the parties; whether the amount of the award comprises a significant percentage of the amount sought by the claimant; and the most recent settlement positions of the parties, which the parties agree shall be admissible for purposes of determining the prevailing party. Any obligation of the City to pay court costs or attorney fees pursuant to this Section shall be subject to the appropriation of funds by the City Council for such purpose.

h. No Partnership or Agency – Independent Contractor Relationship. Notwithstanding any language in this Agreement or any representation or warranty to the contrary herein, the relationship between Buffalo Ridge and the City will be as independent contractors, and neither the City nor Buffalo Ridge will be deemed or constitute an employee, servant, agent, partner, or joint venture of the other.

i. Counterparts. This Agreement may be executed in several counterparts each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via "wet" signature or electronic mark and executed copies hereof may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

j. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable.

k. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Buffalo Ridge on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Section headings used in this Agreement are for convenience of reference only.

l. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

m. Acknowledgement of Open Records Act – Public Document. The Parties hereby acknowledge that the City and Buffalo Ridge are public entities subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and as such, this Agreement may be subject to public disclosure thereunder.

n. Nothing in this Agreement shall be construed to be a waiver by the City of its police power or its legislative authority to make decisions regarding the exercise of its eminent domain authority. Nothing in this Agreement shall bind the City or Buffalo Ridge to exercise their respective powers of eminent domain, or to in any other manner be precluded from making a legislative determination regarding how their respective eminent domain authority is exercised.

IN WITNESS WHEREOF, the City and Buffalo Ridge execute this Agreement as of the Effective Date.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Roger Tinklenberg, City Manager

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Matthew R. Hader, Interim City Attorney

**BUFFALO RIDGE METROPOLITAN DISTRICT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_