

**MASTER COOPERATION INTERGOVERNMENTAL AGREEMENT AMONG THE
CITY OF COMMERCE CITY, THE CITY OF COMMERCE CITY NORTHERN
INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, THE COMMERCE
CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE
COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT
DISTRICT REGARDING JOINT AND/OR MUTUALLY BENEFICIAL
INFRASTRUCTURE IMPROVEMENTS**

THIS MASTER COOPERATION INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF COMMERCE CITY, THE CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT REGARDING JOINT AND/OR MUTUALLY BENEFICIAL PROJECTS (the "IGA") is made and entered into effective this 4th day of November, 2013 (the "Effective Date"), by and among the CITY OF COMMERCE CITY, a home rule city organized and existing under and by virtue of the laws of the State of Colorado whose principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "City"), the CITY OF COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado whose principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "NIGID"), the COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado whose principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "ECAGID"), and the COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado whose principal business address is 7887 East 60th Avenue, Commerce City, CO 80022 (the "ERAGID") (collectively referred to hereinafter as the "Parties" or individually as a "Party").

WHEREAS, the Parties' current and/or anticipated future boundaries converge at certain locations within the City, at which locations, the construction and installation of certain infrastructure improvements, such as the construction and installation of new water and sewer mains, construction of new streets, reconstruction and widening of existing two-lane roadways to four-lane or six-lane roadways, the construction of parks, trails and recreation facilities and the provision of open space, are required by the City (collectively, the "Infrastructure Improvements");

WHEREAS, the City and the Parties have entered into intergovernmental agreements to provide for the construction and installation of the Infrastructure Improvements;

WHEREAS, due to the location of and need for the Infrastructure Improvements, the Parties concur that it is in their best interests, and in the best interests of the residents of each party and of the City, to jointly contribute to the design, construction and installation of the Infrastructure Improvements;

WHEREAS, the NIGID has funded various infrastructure improvements to provide water and sewer services and regional roadway improvements to relieve traffic congestion, improve safety for motorists, commuters and pedestrians and to improve access to commercial and residential developments (the "NIGID Improvements");

WHEREAS, the ECAGID and the ERAGID desire to connect to the NIGID Improvements, and the NIGID has agreed to allow access to NIGID Improvements;

WHEREAS, the NIGID, the ECAGID and the ERAGID are governmental entities authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a), of the Colorado Constitution and C.R.S. § 29-1-203; and

WHEREAS, the Parties now wish to enter into this IGA to define their roles, rights and obligations with respect to access to the NIGID Improvements.

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

1. THE INFRASTRUCTURE IMPROVEMENTS.

a. The Parties anticipate that the Infrastructure Improvements will be initiated in multiple phases commencing in 2013. The Infrastructure Improvements may involve or include any one or more of the following:

i. The construction, reconstruction and/or expansion of roadways and the related improvements including, but not limited to: bridges, traffic signals, sidewalk, curb and gutter, medians, street lighting, drainage structures and landscaping.

ii. The design and construction of water and sanitary sewer mains and related improvements including, but not limited to: lift stations, pump stations, reservoirs, taps and all necessary, incidental and appurtenant properties and facilities necessary to provide for water distribution and sewage collection.

iii. The design and construction of parks and recreation facilities and related improvements including, but not limited to: parks, trails, open space and recreation facilities.

iv. The acquisition of various real property interests in certain phases of the City-Required Improvements including right-of-way (fee simple), as well as permanent and temporary easements (collectively, the "Property Interests"), from private parties owning land along, coextensive with and adjacent to the Infrastructure Improvements.

b. One or more phases of the Infrastructure Improvements may be constructed by one or more of the Parties, or by property owners within the boundaries of one or more of the Parties or metropolitan districts associated with such property owners pursuant to the City's development requirements and as authorized under agreements between such property owners or metropolitan districts and the Parties.

2. ACCESS TO NIGID IMPROVEMENTS.

a. The Parties are authorized under C.R.S. § 29-1-203 and part 6 of Article 25, Title 31, C.R.S., to enter into agreements to fund joint projects.

- b. The hereby NIGID grants access to the NIGID Improvements so that the Infrastructure Improvements may be attached thereto.
 - c. The Parties agree to cooperate by allowing mutual access to all Infrastructure Improvements.
3. JOINT PROJECTS IMPLEMENTATION AND FUNDING. The Parties shall cause to be performed all work required for completion of the design and construction of the Infrastructure Improvements, including the acquisition of the Property Interests, as such work is approved by the Parties' respective boards of directors, and to pay all costs associated therewith (the "Project Costs").
- a. Prior to the construction of Infrastructure Improvements benefiting two or more Parties (a "Joint Project"), the Parties shall enter into an intergovernmental agreement establishing, among other issues, the Party that will have primary responsibility for funding of the Joint Project and determining the portion of the Joint Project cost to be allocated to the other Party or Parties.
 - b. The Project Costs may include, but not be limited to, the following:
 - i. The costs of engineers, consultants, attorneys and vendors required to complete the design of the Joint Projects including the production of design drawings, specifications and contracts;
 - ii. The costs of engineers, consultants, attorneys, vendors and construction materials and supplies required to complete the Joint Projects including the preparation and production of construction drawings, specifications and contracts and the construction of the Joint Projects to completion;
 - iii. Costs related to the acquisition of the Property Interests including:
 - (a) The consideration to be paid to the property owners and any amount of claims by property owners related to the acquisition of the Property Interests; and
 - (b) All costs of consultants, appraisers and attorneys retained by the City to negotiate acquisition of the Property Interests, pursue acquisition of the Property Interests through the power of eminent domain and defend against any claims arising based on the acquisition process, appraise the Property Interests, provide title searches and title policies for the Property Interests and prepare documents necessary for the conveyance of the Property Interests to the City.
 - c. During construction of the infrastructure improvements, the Parties shall periodically, at the request of any one Party, reconcile the Project Costs to determine the financial impact of the Joint Project attributable to each Party.
4. ISSUANCE OF BONDS. Each Party is authorized to issue bonds on behalf of any one or more Parties pursuant to mutual agreement ("Project Financing Agreements"). Project Financing Agreements shall be structured to establish the same binding effect as bonded indebtedness.

5. OWNERSHIP; MAINTENANCE; OPERATION. With the exception of water and sewer infrastructure and the property interests associated therewith, the ownership of which shall be pursuant to one or more agreements among the ECAGID, the ERAGID and/or the NIGID and the local water and sewer district, the City shall maintain ownership of the Infrastructure Improvements and the Property Interests.

6. TERM. This IGA shall become effective upon the Effective Date and shall continue in effect through the satisfactory completion of the Infrastructure Improvements or until a subsequent intergovernmental agreement is entered into between the Parties addressing the ongoing obligations of the Parties with respect to the Infrastructure Improvements.

7. NOTICE; PROJECT REPRESENTATIVES. Any notice required hereunder shall be given to the Joint Projects' representatives. The Parties initially designate the following as representatives with respect to the Infrastructure Improvements and Joint Projects:

For the City:

Director of Finance
7887 E. 60th Avenue
Commerce City, CO 80022

For the ECAGID:

Chief Financial Officer
7887 E. 60th Avenue
Commerce City, CO 80022

For the ERAGID:

Chief Financial Officer
7887 E. 60th Avenue
Commerce City, CO 80022

For the NIGID:

Treasurer
7887 E. 60th Avenue
Commerce City, CO 80022

8. MISCELLANEOUS PROVISIONS.

a. Best Efforts. The Parties agree to work diligently together and in good faith, using their best efforts to resolve any unforeseen issues and disputes, to expeditiously review and approve invoices and effect the prompt and expeditious payment of fees and charges for accepted work. The intent of the Parties is to expedite and not to delay the completion of the Infrastructure Improvements.

b. Examination of Records. The Parties agree that, for a period of at least three (3) years from the completion of the acquisition of the Property Interests, any duly authorized representative of any party shall have access to and the right to examine any directly pertinent books, documents, papers and records of the parties involving the Infrastructure Improvements and other activities related to this IGA.

c. Applicable Law. The Parties agree to comply with all applicable federal, state and local statutes, charter provisions, ordinances, rules, regulations and standards as are in effect at the time this IGA is executed.

d. 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, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person. It is the express intention of the Parties that any person other than the City, the NIGID, the

ECAGID and the ERAGID receiving services or benefits under this IGA shall be deemed to be an incidental beneficiary only.

e. Liability. Nothing in this IGA shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or to any other defenses, immunities or limitations of liability available to the parties by law.

f. No Waiver. The Parties shall not be excused from complying with any provision of this IGA by the failure of any party to insist upon or to seek compliance with such provisions. The Parties shall be entitled to review and audit the Infrastructure Improvements. The Parties agree that payment of any erroneous or improper billings shall not constitute acceptance, waiver or approval of such billing, and reimbursement shall be made for any erroneous billings.

g. Severability. Should any one or more provisions of this IGA be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the Parties hereunder.

h. Amendment. This IGA may be amended, modified, or changed, in whole or in part, only by written agreement of the Parties.

i. Enforcement. The Parties agree that this IGA may be enforced in law or in equity for specific performance, injunctive or other appropriate relief, including damages, as may be available according to the laws and statutes of the State of Colorado. It is specifically understood that, by executing this IGA, each Party commits itself to perform pursuant to these terms contained herein and that any breach hereof which results in any recoverable damages shall not cause the termination of any obligations created by this IGA unless such termination is declared by the party not in breach hereof.

j. No Assignment. No Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other parties.

k. Headings. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit or describe the scope or intent of any provision of this IGA.

l. Entire Agreement. This IGA constitutes the entire agreement of the Parties with regard to the subject matter of this IGA. The Parties agree there have been no representations made other than those contained herein, that this IGA constitutes the entire agreement, and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

m. Authority. Each party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms. The persons executing this IGA on behalf of the Parties warrant that they have full authorization to execute this IGA.

n. Notice of Default; Attorney Fees. In the event any party defaults in the performance of any term or provision of this IGA, the Party claiming the default shall give the other Party notice of the claimed default and request that the default be corrected or cured within thirty (30) days. If the default is not corrected or cured within such thirty-day period, the Party claiming default may use whatever remedies are available at law or in equity to address the circumstances at hand, including, but not limited to, specific performance and/or damages. The non-defaulting Party or Parties shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

o. 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.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this IGA the day and year first written above.

CITY OF COMMERCE CITY

Sean Ford, Chair, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Roger Tinklenberg, Director of Finance

**COMMERCE CITY E-470 COMMERCIAL
AREA GENERAL IMPROVEMENT
DISTRICT**

Sean Ford, Chair, Board of Directors

ATTEST:

Laura J. Bauer, CMC, Secretary

Approved as to form:

Gregory D. Graham, Assistant General Counsel

Recommended for approval:

Roger Tinklenberg, Chief Financial Officer

**COMMERCE CITY E-470 RESIDENTIAL
AREA GENERAL IMPROVEMENT
DISTRICT**

Sean Ford, Chair, Board of Directors

ATTEST:

Laura J. Bauer, CMC, Secretary

Approved as to form:

Gregory D. Graham, Assistant General Counsel

Recommended for approval:

Roger Tinklenberg, Chief Financial Officer

**CITY OF COMMERCE CITY
NORTHERN INFRASTRUCTURE
GENERAL IMPROVEMENT DISTRICT**

Sean Ford, Chair, Board of Directors

ATTEST:

Laura J. Bauer, CMC, Secretary

Approved as to form:

Gregory D. Graham, Assistant General Counsel

Recommended for approval:

Roger Tinklenberg, Treasurer