

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE CITY AND
THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT
DISTRICT FOR THE FUNDING OF CERTAIN WATER IMPROVEMENTS**

This INTERGOVERNMENTAL AGREEMENT (the “IGA”) is made and entered into effective this ____ day of October, 2014, by and between the CITY OF COMMERCE CITY, a municipal corporation and political subdivision of the State of Colorado whose principal business address is 7887 East 60th Avenue, Commerce City, Colorado 80022 (the “City”) and the COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized under Colorado law whose principal business address is 7887 East 60th Avenue, Commerce City, Colorado 80022 (the “ECAGID”).

WHEREAS, Denver Water has offered to sell three million gallons per day (3MGD) of permanent capacity in the connection between the Denver Water system and the South Adams County Water and Sanitation District (“SACWSD”) water system within the City (the “Connection”) located at East 72nd Avenue and Tower Road;

WHEREAS, Denver Water will increase the price on the permanent capacity effective January 1, 2015;

WHEREAS, SACWSD has committed to purchase two million gallons per day (2MGD) of permanent capacity in the connection between the Denver Water system and the South Adams County Water and Sanitation District (“SACWSD”) water system;

WHEREAS, the ECAGID plans to purchase one million gallons per day (1MGD) of permanent capacity in the connection between the Denver Water system and the South Adams County Water and Sanitation District (“SACWSD”) water system within the City;

WHEREAS, the ECAGID was formed in 2012 for the purpose of acquiring, constructing and funding various improvements within the ECAGID inclusion area, including the purchase of permanent water capacity, (“Improvements”);

WHEREAS, the ECAGID Improvements include the purchase of the 1 MGD of permanent water capacity to serve the ECAGID inclusion area;

WHEREAS, the ECAGID is responsible for acquisition and construction of the Improvements, but is currently not capable of financing such construction; and

WHEREAS, the parties have entered into this IGA to provide for the present funding of the Improvements for the benefit of the residents and taxpayers of the ECAGID and the City.

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

I. IMPROVEMENTS

A. Project Overview. The following is a general description of the nature of the Improvements. The Improvements covered by this Agreement consist of the following “Water Improvement.”

The Water Improvement covered by this agreement consists of the purchase of a 1 MGD permanent water connection between the Denver Water system and the SACWSD water system necessary for the development of property within the ECAGID.

B. Water Improvement.

1. The ECAGID shall purchase 1 million gallons per day of permanent Denver Water capacity at 72nd and Tower Road to ensure the availability of water for the future development of property within the ECAGID inclusion area.
2. The ECAGID shall purchase the Water Improvement at its sole cost and expense (except as otherwise expressly provided herein).
3. The purchase of the Water Improvement shall be completed by December 26, 2014.
4. Purchase of the Water Improvement shall be completed such that final acceptance thereof by the City and South Adams County Water and Sanitation District ("SACWSD") may, as appropriate, occur in accordance with City Standards and SACWSD Standards, as applicable.

II. PROJECT MANAGEMENT

A. Construction Management. The ECAGID shall manage all aspects of purchase of the Water Improvement.

B. Design. The ECAGID shall design the Project and prepare Project design plans for review and approval by the City in accordance with City Standards and SACWSD Standards, as appropriate.

C. Land Dedication. The ECAGID shall acquire and dedicate all rights-of-way and easements deemed necessary by the City or SACWSD prior to the start of construction.

D. Inspection; Final Acceptance of Improvements.

1. All inspections shall be conducted by both City staff and SACWSD staff, as appropriate.
2. Final inspection and final acceptance of the Project shall be made only upon completion of the entire Project and in accordance with the City Standards and the SACWSD Standards, as appropriate.

III. FUNDING

A. Loan. Pursuant to C.R.S. Title 29, Article 1, Part 2, the City shall loan unencumbered funds to the ECAGID an amount currently estimated at \$1,240,000.00 (the "Loan") for the sole purpose of funding the purchase of the Connection. The actual loan amount may vary, depending upon the cost of completing the purchase of the Connection.

B. Terms. The terms of the Loan are set forth in that certain Loan Agreement between the City and the ECAGID executed concurrently with this IGA (the "Loan Agreement"). It shall be a condition of this IGA that the Loan Agreement is executed as herein provided, and the failure to enter into the Loan Agreement in compliance herewith shall constitute a material and irreconcilable breach of this IGA.

C. Disbursement. As set forth in the Loan Agreement, the ECAGID may draw upon the Loan in increments necessary to fund the purchase of the Connection. Such draws shall occur as payments are

approved by the ECAGID as evidenced by the execution of the requisitions by the representatives of the ECAGID as required by the Loan Agreement, and as processed in accordance with the terms and conditions of the Loan Agreement.

D. Repayment. The ECAGID shall repay the Loan in accordance with the terms and conditions of the Loan Agreement. Failure to adhere to such terms and conditions shall constitute a material breach of this IGA.

E. Discrepancies. In the event of any discrepancy between the loan disbursement or repayment provisions set forth herein and the terms and conditions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

IV. MISCELLANEOUS

A. Notices. Written notices required under this IGA and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

City Manager
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

If to the ECAGID:

Executive Director
E-470 Commercial Area GID
7887 East 60th Avenue
Commerce City, CO 80022

With a copy to:

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

With a copy to:

Chief Financial Officer
E-470 Commercial Area GID
7887 East 60th Avenue
Commerce City, CO 80022

B. Miscellaneous Legal Provisions.

1. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this IGA or any representation or warranty to the contrary, the relationship between the City and the ECAGID shall be as independent contractors, and neither the ECAGID nor the City shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.

2. 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 ECAGID and the City shall be deemed to be only an incidental beneficiary under this IGA.

3. No Assignment. The ECAGID shall not assign this IGA without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

4. 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.

5. 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 the 17th Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the 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.
6. 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.*
7. 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 heirs, personal representatives, successors and assigns.
8. Time of the Essence. The ECAGID acknowledges that time is of the essence in the performance of this IGA. The ECAGID failure to complete any of the obligations contemplated herein during the term of this IGA, or as may be more specifically set forth in an exhibit hereto, shall be deemed a breach of this IGA.
9. 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.
10. 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.
11. 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.
12. 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 intentionally left blank. Signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have caused this IGA to be executed on the day and year first written above.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Robert Gehler, City Attorney

Recommended for approval:

Roger Tinklenberg, Administrative Services Officer

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

Sean Ford, Chair, E-470 Commercial Area GID

Attest:

Approved as to Legal Form

Laura J. Bauer, CMC, Secretary

Robert Gehler, General Counsel