

## INTERGOVERNMENTAL AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_, 2012, (the "Effective Date") by and between THE CITY OF COMMERCE CITY, (the "City") the COMMERCE CITY URBAN RENEWAL AUTHORITY, (the "URA") and the SOUTH ADAMS COUNTY WATER & SANITATION DISTRICT, (the "District"). The City, the URA, and the District are hereinafter referred to collectively as the "**Parties**."

### RECITALS

A. On June 21, 2004, the City acquired from the United States of America approximately 917 acres of real property, which was formerly part of the Rocky Mountain Arsenal, and is more particularly described in the attached Quit Claim Deed given by the United States of America to the City, which is attached hereto as **Exhibit A**, and incorporated herein by this reference. The real property described in Exhibit A, shall be referred to herein as the "Property."

B. The City and the URA executed that certain Master Development Agreement dated October 25, 2004 (the "MDA") pursuant to which the City, the Prairie Gateway Authority, Inc., and the URA jointly agreed with Kroenke Soccer Stadium, LLC ("Kroenke Soccer") to develop a soccer facility, now known as Dick's Sporting Goods Park, and club/youth fields and surface parking, practice fields, and other related improvements ("Stadium Complex"), on a portion of the Property. Prairie Gateway Authority, Inc. was subsequently dissolved. In accordance with the MDA, the City and Kroenke Stadium Services, Inc. ("KSS") entered into that certain Stadium Management Agreement dated January 9, 2006. KSS and Kroenke Soccer are hereinafter collectively referred to as "Kroenke."

C. In addition, the City, the URA and Kroenke caused the construction of related infrastructure and roadway improvements to Quebec Street, Quebec Parkway, 56<sup>th</sup> Avenue, 60<sup>th</sup> Avenue, Prairie Parkway, State Highway 2, Rosemary Street, South Campus, offsite as well as open space grading, and landscape/irrigation installations on the roadways, as well as the open space. The Stadium Complex and all of these improvements shall be referred to in this Agreement collectively as the "Project."

D. In 2006 a petition to include the Property into the District was filed and preliminarily approved by the District's Board, but has not been finalized and submitted to the Adams County District Court due to the property line discrepancy discussed below.

E. Although the Project was substantially completed in 2008, the District contends that some of the Project work was not completed in accordance with appropriate District specifications, and the District has therefore requested that the City perform additional work in order to make portions of the Project conform to those specifications. This additional work shall be referred to herein as the "Punch List."

F. On April 24, 2012, the District obtained an estimate from Muller Engineering Company, Inc., attached hereto as **Exhibit B** and incorporated herein by this reference,

estimating the cost of completing the Punch List, and the District desires to accept that estimate, and contract for completion of the Punch List.

G. The District has indicated its desire to finalize the inclusion of the Property into the District (the "Inclusion".)

H. The City and the URA, the legal owners of the Property, desire to cooperate with the District, in connection with the Inclusion, to resolve outstanding issues relating to the Punch List, and to correct an apparent discrepancy in the legal description of property previously conveyed to the District known as the Klein Water Treatment Plant property (the "Property Line Discrepancy").

I. Governmental entities like the City, the URA and the District, are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S.

J. The Parties now wish to enter into this Agreement, in order to facilitate the resolution of all outstanding issues related to the Punch List, the Inclusion, and the correction of the Property Line Discrepancy.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and recitals as set forth above, the parties hereby agree as follows:

1. Complete Understanding. This Agreement sets forth the complete understanding of the Parties with respect to the matters expressed herein.

2. Incorporation of Recitals. The Recitals set forth above are incorporated by reference and made a part of this Agreement.

3. Punch List, Payment, Completion, and Release. Not later than 15 days after execution of this Agreement by all Parties, the City shall pay and the District shall accept the sum of \$145,500, for the District's use in contracting for and completing the Punch List. By accepting that payment, the District agrees that it will complete the Punch List, substantially in accordance with Exhibit B, within one year of the Effective Date of this Agreement. In addition, by accepting said payment, the District releases and discharges the City, the URA, Kroenke, and their contractors, subcontractors, engineers, consultants, and suppliers, as well as their successors, assigns, parent corporations and entities, subsidiaries, divisions and affiliates, elected officials and employees, officers, directors, members, agents, and insurers (collectively, the "Released Parties"), from any and all actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, accounts, sums of money, bonds, bills, demands, damages, losses, cost or expenses, whether direct or derivative, or of any nature whatsoever, arising from or related to the Project, or the Punch List, which are specifically and directly based on, arise from or relate to the Project or the Punch List, it being the intention of the Parties that the payment provided for hereunder shall fully and finally compensate the District for any claims it has for defective or non-conforming work relating to or arising out of the construction of the Project.

4. The Inclusion. The City and URA agree that they will cooperate with the District in the finalization of the Inclusion of the Property, with the goal of completing the Inclusion of the Property within one year of the Effective Date of this Agreement.

5. The Property Line Discrepancy. The City and the District agree that they will cooperate and exchange information and execute such documents as may be reasonably necessary to correct the Property Line Discrepancy, it being the intention of those Parties that the Property Line Discrepancy be resolved and completely addressed to the mutual satisfaction of the District and the City, not later than December 31, 2012.

6. Fees and Costs, Dispute Procedures, and Attorneys' Fees. Each of the Parties to this Agreement shall bear its own attorney fees, costs and expenses incurred in connection with the claims released herein and the negotiation, drafting and execution of this Agreement. Any claim or dispute pertaining to this Agreement shall be submitted to mediation among the Parties under the auspices of the Judicial Arbiter Group in Denver, Colorado. Any dispute not so resolved shall be resolved by the filing of an appropriate action in the District Court of the County of Adams, State of Colorado and no place else. In any such litigation, the prevailing party will be entitled to an award of attorney fees, expenses and costs incurred.

7. Execution of Documents. Each Party shall cooperate and promptly execute any and all documents, and perform any and all acts necessary to fulfill the provisions of this Agreement. This Agreement may be executed in counterparts, and all counterparts shall be deemed to constitute a single Agreement. The execution and delivery of such counterpart shall have the same force and effect as if that person had executed all other counterparts. In addition, this Agreement may be executed by facsimile or copy of electronic signature, which shall be deemed binding on the Parties.

8. Applicable Law. The interpretation and enforcement of this Agreement shall be governed by and construed under the laws of the State of Colorado.

9. Third Party Beneficiaries. The Released Parties are third party beneficiaries, and shall be entitled to interpose this Agreement as a defense to any action by the District against them asserting released claims. However, the Parties alone shall be entitled to enforce the provisions of this Agreement, in accordance with the provisions contained in Section 6 above.

10. Severability. Should any one or more of the provisions of this Agreement be determined to be illegal or unenforceable, all other provisions shall nevertheless remain effective; provided, however, in that event 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.

11. Amendment. This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties hereto.

12. Force Majeure. The parties hereto shall not be liable for failure to perform hereunder if such failure is the result of *force majeure* and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. “*Force majeure*” shall mean causes beyond the reasonable control of a Party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

13. No Assignment. No Party hereto shall assign its rights or delegate its duties hereunder without the prior written consent of the other Parties.

14. Headings for Convenience. Headings and titles 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 Agreement.

15. Further Assurances. At any time, and from time to time, upon request of any Party, the other Parties agree to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of the Parties under this Agreement.

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

17. 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 Agreement on behalf of the Parties and to bind the Parties to its terms. The person(s) executing this Agreement on behalf of each of the Parties warrants that they have full authorization to execute this Agreement.

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SIGNATURE PAGES TO FOLLOW

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

SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT

ATTEST:

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John Ennis, Secretary

APPROVED AS TO FORM:

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Timothy J. Beaton, Counsel to the District

By: \_\_\_\_\_  
JoAnn M Stevenson, President

RECOMMENDED AND APPROVED:

By: \_\_\_\_\_  
Larry L. Ford, Director  
JoAnn Moss, Director

CITY OF COMMERCE CITY,  
COLORADO, a home rule City

ATTEST:

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Laura Bauer, Clerk

APPROVED AS TO FORM:

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Robert R. Gehler, City Attorney

By: \_\_\_\_\_  
Sean Ford, Mayor

RECOMMENDED AND APPROVED:

By: \_\_\_\_\_  
Gregg Clements, Director of Public Works

