**INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES**

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("***Agreement***") is entered into by and between the City of Commerce City ("***City***") and the Greater Brighton Fire Protection District ("***District***"). The City and the District are referred to collectively as the "***Parties***" or individually as a "***Party***".

## RECITALS

**WHEREAS**, the City is a home rule municipality of the State of Colorado ("***State***"), and the District is a political subdivision of the State organized pursuant to the Special District Act, C.R.S. § 32-1-101, *et seq*.;

**WHEREAS**, the District was organized to provide fire protection, rescue, and emergency services (collectively, "***Emergency Services***"), as well as other services including fire suppression, public education, hazardous materials, emergency medical, and ambulance services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction, either directly or through third-party providers;

**WHEREAS**, the District obtained an Impact Fee Study dated September 8, 2017, to evaluate the nexus between new development within the District's jurisdictional boundaries and the projected impact that such development has on the District's Capital Facilities ("***Nexus Study***"). The Nexus Study recommended an impact fee schedule for both residential and non-residential development at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities;

**WHEREAS**, the City has adopted, or intends to adopt, by ordinance, an impact fee ("***District Impact Fee***") consistent with the Nexus Study and in accordance with C.R.S. § 29-20-104.5(2)(c) ("***Act***");

**WHEREAS**, in accordance with the Act, the Parties desire to enter into this Agreement to define the District Impact Fee, and the details of assessment, collection, and remittance, all in accordance with the requirements of the Act.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

## AGREEMENT

**1. Definitions.** In addition to the definitions provided elsewhere in this Agreement, the terms "***Development Permit***" and "***Capital Facility(ies)***" shall be defined as provided in the Act, including any amendments thereto, and the terms "***Building Permit***" and "***Dwelling Unit***" shall be defined or used as provided in the City's Land Development Code, and any amendments thereto.

**2. Establishment of District Impact Fee and Impact Fee Area.**

a. The "***Impact Fee Area***" means all area lying within the District's jurisdictional boundaries, as may be modified over time through the inclusion or exclusion of real property, that is subject to the District Impact Fee.

b. In reliance on the Nexus Study and the representations and promises made by the District in this Agreement, the City intends to impose, by ordinance, the District Impact Fee on new development within the Impact Fee Area ("***Fee Ordinance***"). Notwithstanding the foregoing, nothing in this Agreement shall be construed to be a waiver or limitation of the City's police power or its legislative authority to make decisions regarding the regulation of development within the City, including without limitation the enactment, modification, or continuation of the Fee Ordinance. The Parties agree and acknowledge that the imposition of

the District Impact Fee is within the City's sole discretion. All obligations of the City under this Agreement shall be subject to the applicability of the Fee Ordinance.

c. The District will update the Nexus Study no less frequently than every seven years ("***Updated Nexus Study***"). If the Updated Nexus Study recommends any changes to the District Impact Fee, then by September 1 of the then-current calendar year, the District Board shall, after considering such recommendations, adopt a Resolution recommending to the City an updated District Impact Fee at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("***Updated Impact Fee Schedule***"). On or before September 10 of the then-current calendar year, the District shall submit to the City a copy of: (i) the proposed updated District Impact Fee; (ii) the Resolution recommending the updated District Impact Fee; and, (iii) the Updated Nexus Study. The City shall consider the District's request for a modification to the District Impact Fee within 60 days of submission.

**3. Procedures for Assessment, Collection, and Remittance.**

As part of its Building Permit application process, the City shall require the developer of any proposed structure requiring a certificate of occupancy within the Impact Fee Area to confer with the District regarding whether, under the Fee Ordinance, a District Impact Fee is owed and, if owed, the amount of the District Impact Fee based on the proposed development. Before issuing a Building Permit for a proposed new structure subject to the Fee Ordinance, the City will require the developer to provide written confirmation from the District that the District Impact Fee has been paid, or an in-kind contribution has been accepted as evidenced by an executed agreement to provide such contribution, as required by the Fee Ordinance. To the extent authorized by the Fee Ordinance, the developer and the District may mutually determine whether an in-kind contribution, not to exceed the amount of the District Impact Fee that would otherwise apply, or a combination of an in-kind contribution and fee, will be made by the developer in lieu of paying a District Impact Fee ("***In-Kind Contribution***").

a. If the City denies a Building Permit application, the developer shall not be required to pay the District Impact Fee and the District will refund any fee or contribution made to the District.

b. The District shall be solely responsible for collecting any District Impact Fee owed by the developer, or receiving the In-Kind Contribution from the developer, if applicable. The City shall have no responsibility for collecting any District Impact Fee owed by any developer or ensuring a developer makes any In-Kind Contribution to the District.

c. The District will be solely responsible for the proper collection, accounting, reporting, and expenditure of the District Impact Fee and any In-Kind Contribution. No District Impact Fee and any In-Kind Contribution will be used to remedy any deficiency in existing Capital Facilities. District Impact Fees and any In-Kind Contributions collected by the District will be used solely to finance or defray all or a portion of the costs incurred by the District to purchase, construct, improve, or expand Capital Facilities to serve new development for which the District Impact Fee is charged or the In-Kind Contribution is made.

d. No developer shall be required to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the District Impact Fee is imposed, and no District Impact Fee shall be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

e. The District shall account for all District Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes. In addition, the District shall submit a written report to the City on an annual basis reflecting the amounts of the District Impact Fees collected, the balance of any account holding District Impact Fees, any In-Kind Contributions accepted and the value of such contributions, any expenditures of District

Impact Fees and the reasons for such expenditures, a projection of planned capital needs required by known or anticipated future growth, and a description of the impact of new development on District operations.

**4. Effective Date and Term.** This Agreement is effective as of the date the last Party signs this Agreement, and shall continue in effect until terminated in accordance with its terms.

**5. Termination.**

a. The Parties may at any time mutually agree in writing to terminate this Agreement.

b. The District may at any time terminate this Agreement upon 30 calendar days prior written notice to the City.

c. The City may at any time terminate this Agreement upon 180 calendar days prior written notice to the District. If the City provides a notice of termination, the Parties shall promptly meet to determine if they can agree to resolve the basis for the termination within 30 days of the City's notice. Nothing in this provision will limit the City's powers as expressed in this Agreement.

**6. Default.** If either Party defaults in its performance under this Agreement, the non-defaulting Party shall notify the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within 10 calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 10 day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law.

**7. Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq*.

**8. Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto.

**9. Notices and Requests.** Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

| | |
|---|---|
| City of Commerce City | Greater Brighton Fire Protection District |
| Attn: City Manager | Attn: Fire Chief |
| 7887 E. 60th Avenue | 500 S. 4th Avenue |
| Commerce City, CO 80022 | Brighton, CO 80601 |

**10. District Indemnity.** The District acknowledges that the City is voluntarily electing to impose the District Impact Fee based on the representations and promises of the District and the Nexus Study presented by the District. Therefore, to the extent permitted by law, the District will indemnify, defend, and hold harmless the City from and against any claim or lawsuit (and any and all related liability, including costs and reasonable attorneys' fees) challenging the District Impact Fee on its face or as applied to a particular development, including without limitation any claim or lawsuit arising from: any defects in the Nexus Study; the District Impact Fee as enacted by the City; the District Impact Fee or In-Kind Contribution as applied to any development; the collection, accounting, reporting, and expenditure of any District Impact Fee; the negotiation,

calculation, acceptance, and use of any In-Kind Contribution; and any liability relating to the District Impact Fee or In-Kind Contribution arising under C.R.S. 29-20-104.5, and any amendments thereto.

**11. Miscellaneous.** Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Adams County District Court. This Agreement may be amended only by a document signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

**CITY OF COMMERCE CITY**,
a Colorado home rule municipality

By: _____
Sean Ford, Mayor

Date: _____

ATTESTED:

_____
Laura J. Bauer, MMC, City Clerk

APPROVED AS TO FORM:

_____
Robert D. Sheesley, City Attorney

**GREATER BRIGHTON FIRE PROTECTION DISTRICT**, a political subdivision of the State of Colorado

By: _____
Dean Morris, Board President

Date: _____

ATTESTED:

_____
Arlin Riggi, Board Secretary