

**RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL
IMPROVEMENT DISTRICT AND THE URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY RELATING TO WATER RESOURCES FOR THE
REDEVELOPMENT OF THE MILE HIGH GREYHOUND PARK**

NO. NIGID 2020-01

WHEREAS, the Urban Renewal Authority of the City of Commerce City (“Authority”) has undertaken to eliminate and prevent blight and to prevent injury to the public health, safety, morals, and welfare of the residents of the City of Commerce City, Colorado (“City”);

WHEREAS, the Authority has agreed, pursuant to a Purchase and Sale Agreement dated June 17, 2019, to provide certain water resources related to residential development of the Mile High Greyhound Park property;

WHEREAS, the Authority desires to obtain, and the Commerce City Northern Infrastructure General Improvement District (“NIGID”) desires to assign to the Authority, certain water resources purchased by the NIGID known as Farmers Reservoir and Irrigation Company Equivalent Residential Units (“FRICO ERUs”) to perform its obligations under the Purchase and Sale Agreement and to enable the redevelopment of Mile High Greyhound Park property;

WHEREAS, the Authority and the NIGID have negotiated an Intergovernmental Agreement substantially in the form attached to this resolution as Exhibit A to effectuate this transaction (“Intergovernmental Agreement”);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. The Intergovernmental Agreement, substantially in the form attached hereto as Exhibit A, is found to be in the public interest and for a public purpose and is hereby approved.

Section 3. The Chairperson and the Secretary are hereby authorized and directed to sign and attest to the Intergovernmental Agreement on behalf of the NIGID.

Section 4. The Executive Director or his designee is hereby authorized and directed to take all actions necessary for the NIGID to comply with and effectuate the Intergovernmental Agreement, including any actions identified in the Agreement or any exhibit thereto that are not specifically designated as requiring review, approval, or decision by the NIGID Board or required by law to be performed by the NIGID Board.

RESOLVED AND PASSED THIS 6TH DAY OF JANUARY 2020.

COMMERCE CITY NORTHERN
INFRASTRUCTURE GENERAL
IMPROVEMENT DISTRICT

Benjamin A. Huseman, Chairperson

ATTEST

Laura J. Bauer, Secretary

EXHIBIT A TO RESOLUTION

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT AND THE URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY (Mile High Greyhound Park Water Resources)

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made and entered into effective January 6, 2020, by and between the COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT (“NIGID”), general improvement district organized and existing under and by virtue of the laws of the State of Colorado and the URBAN RENEWAL AUTHORITY OF THE CITY OF COMMERCE CITY, COLORADO, a body corporate duly organized and existing as an Urban Renewal Authority under the laws of the State of Colorado (the “Authority”). The NIGID and the Authority may also be referenced herein as a “Party” and jointly as “Parties.”)

RECITALS

WHEREAS, the NIGID, is a general improvement district organized and established by the City of Commerce City (“the City”) pursuant to C.R.S. § 31-25-601, *et seq.*

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its power as an urban renewal authority within the City, all under and pursuant to Colorado Urban Renewal Law, constituting Sections 31-25-101 *et seq.*, Colorado Revised Statutes; and

WHEREAS, in August, 2011, the Authority purchased the approximately 65 acre former Mile High Greyhound Park (“Mile High Greyhound Park”); and

WHEREAS, on June 18, 2018, the City Council of the City of Commerce City approved the “Mile High Greyhound Park Urban Renewal Plan”; and

WHEREAS, in addition to the direct purposes of eliminating blight and preventing injury to the public health, safety, and welfare of the residents of the City, redevelopment of the Mile High Greyhound Park within the boundaries of the City is expected to provide substantial direct and indirect benefits to the City, its citizens and the surrounding region and enhance the economic viability of the City in numerous ways, including but not limited to the creation and retention of new temporary and permanent jobs; by increasing the City’s employment base; by supporting the redevelopment of the former dog track and racing club; by generating increased sales tax, property tax, and other general revenue for the City; and by stimulating further economic development in the City and the surrounding region; and

WHEREAS, the NIGID has purchased water resources known as Farmers Reservoir and Irrigation Company Equivalent Residential Units (“FRICO ERUs”) to provide potable water within the City through the South Adams County Water and Sanitation District (“SACWSD”); and

WHEREAS, the NIGID desires to sell and the Authority desires to purchase FRICO ERUs for use on the Mile High Greyhound Park for the redevelopment purposes identified above.

NOW THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the Parties hereto agree as follows:

1. Purchase and Sale of FRICO ERU's. Based on an estimated total of 474 Equivalent Residential Units ("ERUs") needed for the residential units at the Mile High Greyhound Park development and the Authority already having available a standard allocation of 226 General Service Area ERUs ("GSA ERUs"), the NIGID will sell and assign to the Authority, and the Authority will purchase and accept from the NIGID, a total of 248 FRICO ERUs under the terms and conditions of this IGA. Such sale, purchase, and assignment shall occur within thirty (30) days of the execution of this IGA by both Parties.

2. Consideration for Purchase and Sale of FRICO ERUs. The NIGID has paid an average of \$4,043.53 per FRICO ERU. Based on a "first in first out" accounting method, the Authority will pay the applicable FRICO ERU cost shown on **Exhibit A** hereto, which represents the actual cost of the specific FRICO ERUs to the NIGID. Interest shall accrue at an annual interest rate of 4% commencing on the date that the assignment of the 248 FRICO ERUs from the NIGID to the Authority is approved by SACWCD, notwithstanding the later determination of the actual purchase price. The actual cost of each FRICO ERU shall be determined, and payment of such costs shall be due and payable, as set forth in section 4, below.

3. Source of Funds for Purchase of FRICO ERUs. The Authority intends to use revenues from previously authorized property tax increment financing ("TIF") to purchase the FRICO ERUs and interest thereon. The TIF is anticipated to be collected for 25 years, with the base year being 2018 and the first year of increment being 2019, paid to the Authority by the County Treasurer in 2020.

4. Term for Payment for FRICO ERUs. Notwithstanding the prior assignment of the 248 FRICO ERUs to the Authority, the Authority will pay the NIGID for the 248 FRICO ERUs, pursuant to the terms set forth in paragraph 2 above, as TIF funds become available during the term of the TIF and only for such FRICO ERUs as are actually assigned to a developer and used at the Mile High Greyhound Park. The cost of each FRICO ERU shall be determined, in accordance with **Exhibit A**, at the time of assignment of each FRICO ERU by the Authority to a developer. The timing of the Authority's payments shall depend on the appropriation of funds for such purpose and shall be second in priority to the Authority's obligations under any outstanding obligations existing at the date of this IGA. No late fees will accrue. The Authority's payment obligation under this paragraph 4 shall be limited to the amount of TIF actually received, less other amounts due and owing by the Authority. Nothing in this IGA shall be construed to require the Authority to make any payments to the NIGID in excess of the TIF actually received. NIGID acknowledges that the generation of TIF is significantly dependent upon completion of the development in the Mile High Greyhound Park and agrees that the Authority is in no way responsible for the amount of TIF actually generated. The NIGID further acknowledges that the Property Tax Administrator for the State of Colorado and County Assessor may modify the process

for calculating TIF which may reduce the amount of TIF. The NIGID therefore agrees to assume the entire risk that insufficient TIF will be generated to pay the NIGID for each FRICO ERU.

6. Use of the FRICO ERUs; Return to NIGID. The FRICO ERUs shall be used exclusively for the development of the Mile High Greyhound Park. The Authority is hereby authorized to assign said FRICO ERUs to the developers and property owners of the Mile High Greyhound Park as needed for the development. If fewer than 248 FRICO ERUs are required for said development of the Mile High Greyhound Park within the term of the TIF, the Authority will reassign the remaining FRICO ERUs back to the NIGID. In said event, the Authority shall not be required to pay for those FRICO ERUs assigned back to the NIGID (or any interest thereon) and the NIGID, subject to the appropriation of funds for such purpose, shall refund to the Authority any amounts paid (including interest thereon) by the Authority for those FRICO ERUs assigned back to the NIGID.

6. Default / Breach.

(a) Time of the Essence. Time is of the essence under this IGA, and if any term or condition hereof is not fulfilled, tendered or performed by any of the Parties hereto as provided in this IGA (a "default"), the non-defaulting Party shall have the right to an action for specific performance. In the event performance of a non-payment obligation is delayed by events outside the reasonable control of the Party, the deadline for performance shall be extended for a reasonable period to allow for performance.

(b) Notice of Default; Attorney Fees and Costs. In the event that either Party defaults as to any obligation contained in this IGA, the Party claiming the default shall give the defaulting 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 the 30-day period (or if the default cannot be cured within thirty (30) days, the defaulting Party has commenced corrective action and is diligently proceeding to correct the default), the Party claiming default may use whatever remedies are available at law or in equity to address the circumstances at hand, including, but not by way of limitation, specific performance and/or damages. The non-defaulting Party shall be entitled to recover all damages, expenses and reasonable attorney fees incurred as a result of such default.

7. Miscellaneous Provisions.

(a) Entire Agreement/Amendments. This IGA contains the entire agreement among the Parties as to the subject matter hereof. This IGA and its terms may not be modified in any manner, except by an instrument in writing signed by the Parties.

(b) Paragraph Headings. The paragraph headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this IGA.

(c) Severability and General Cooperation. In case any one or more of the provisions of this IGA shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other

provision hereof, and such provision shall be severed from this IGA, and this IGA shall be construed as if such provision had not been contained herein. However, in the event such a provision is severed, the Parties hereto shall negotiate in good faith to replace such severed provision in order to fulfill the intent of this IGA. The Parties further agree to cooperate generally on matters not expressly addressed herein so as to facilitate the terms and intent of the IGA.

(d) Due Authorization. Each Party to this IGA has been duly authorized by all necessary action and is the valid and enforceable obligation of each Party hereto to the extent that the respective terms, provisions and conditions apply to the respective Party.

(e) Agreement Binding. The provisions of this IGA shall be binding upon the Parties. No assignment of this Agreement shall be made without the written consent of the other Party, which shall not be unreasonably withheld.

(f) No Waiver of Governmental Authority. Nothing contained in this IGA shall constitute or be interpreted as a waiver or abrogation of the legislative or governmental powers or immunities of the NIGID or the Authority; however, the Parties shall not use the foregoing powers or immunities as a defense to complying with the terms of this IGA.

(g) Relationship of Parties. Nothing contained herein shall be construed to create a joint venture or other form of partnership between the Parties, nor is this IGA to be construed as creating any rights in any third parties.

(h) 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.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written.

**COMMERCE CITY NORTHERN
INFRASTRUCTURE GENERAL
IMPROVEMENT DISTRICT**

Benjamin A. Huseman, Chairperson

ATTEST:

Secretary

APPROVED AS TO FORM:

General Counsel

**URBAN RENEWAL AUTHORITY OF THE
CITY OF COMMERCE CITY, COLORADO**

By: _____
Benjamin A. Huseman, Chairperson

ATTEST:

Secretary

Approved as to form:

Special Counsel

EXHIBIT A
Cost per FRICO ERU

Date of NIGID acquisition of FRICO ERU(s):	Number of FRICO ERUs acquired:	Seller to NIGID:	Cost per FRICO ERU paid by NIGID:	Cost per FRICO ERU to be paid by Authority:
11/20/2009	36.33	Buffalo Highlands, LLC	\$ 3,836.08	\$ 3,836.08
11/20/2009	67.47	Buffalo Highlands, LLC	\$ 4,798.86	\$ 4,798.86
11/23/2009	50	Swink, LLC	\$ 4,798.86	\$ 4,798.86
11/20/2009	2	Colorado Community Bank	\$ 3,836.08	\$ 3,836.08
11/20/2009	45.33	SDM Investments, LLC (Dunes)	\$ 3,836.08	\$ 3,836.08
9/16/2010	46.87	Buffalo Highlands/Stacey Hart	\$ 3,836.08	\$ 3,836.08