

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
COMMERCE CITY AND THE CITY OF BRIGHTON REGARDING COST-
SHARING FOR US 85 AND 120TH AVENUE PROJECT**

This **INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made and entered into effective the _____, 2025, (the “Effective Date”), by and between the **CITY OF COMMERCE CITY**, a Colorado home rule municipality located at 7887 East 60th Avenue, Commerce City, CO 80022 (the “City”) and the **CITY OF BRIGHTON, COLORADO**, a Colorado home rule municipality located at 500 S. 4th Avenue, Brighton, CO 80601 (“Brighton”) (collectively referred to herein as the “Parties” or each individually as a “Party”).

RECITALS

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the U.S. Department of Transportation, Federal Railroad Administration (“FRA”) awarded the City a Fiscal Year 2021 Consolidated Rail Infrastructure and Safety Improvements Grant (“CRISI Grant”) for the construction of a grade separated crossing at US 85 and Union Pacific Railroad at 120th Avenue (the “Project”); and

WHEREAS, the City and FRA previously executed a Grant Agreement dated September 9, 2024, attached as **Exhibit A** to this Agreement and incorporated herein by reference, to which Brighton is not a party, wherein the City accepted the CRISI Grant in the amount of Nine Million Five Hundred Eighty-Nine Thousand Dollars (\$9,589,000.00) and requires a local contribution in the total amount of Eleven Million One Hundred Ninety-Two Thousand Dollars (\$11,192,000) (the “Total Local Match”) towards the cost of the Project; and

WHEREAS, in recognition of the regional benefits of the Project to the citizens of both Parties, the City has requested, and Brighton agrees, that Brighton will contribute Two Million One Hundred Seventeen Thousand Dollars (\$2,117,000) (the “Brighton Local Match”) to the City for the design and construction of the Project as part of the Total Local Match; and

WHEREAS, the Brighton Local Match shall be made in one payment by February 28, 2027; and

WHEREAS, in recognition of the regional benefits of the Project to the citizens of both Parties, the City will contribute Three Million Four Hundred Thousand Thirty Dollars (\$3,430,000) as a portion of the Total Local Match; and

WHEREAS, in recognition of the regional benefits of the Project to the citizens of Adams County, Colorado (“Adams”), the City has requested, and Adams agrees, that Adams will contribute Five Million Six Hundred Thousand Forty-Five Dollars (\$5,645,000) to the City as a portion of the Total Local Match pursuant to a separate intergovernmental agreement; and

WHEREAS, the Parties wish to enter into this Agreement to formalize and establish the terms of Brighton’s funding commitment of the Brighton Local Match for the Project.

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 hereby acknowledged, the Parties do hereby agree as follows:

- 1. Agreement.** Subject to the terms and conditions set forth in this Agreement, Brighton hereby agrees to contribute the Brighton Local Match of Two Million One Hundred Seventeen Thousand Dollars (\$2,117,000) to the City for the design and construction of the Project, which funds shall be used by the City to partially fulfill the Total Local Match obligations for the Project.
- 2. Brighton’s Contribution - Payment.** Subject to final approval by the Brighton City Council, Brighton shall pay the Brighton Local Match in one payment by February 28, 2027.
- 3. Assignment.** Neither Brighton nor the City may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Party.
- 4. Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of this Agreement.
- 5. No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the City nor Brighton shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.
- 6. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement 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 City and Brighton shall be deemed to be only an incidental beneficiary under this Agreement.
- 7. Notices.** Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

Brighton:

City of Brighton
500 South 4th Avenue
Brighton, CO 80601
Attn: Director of Public Works

With a copy of any such notice to:

City Attorney
City of Brighton
500 South 4th Avenue
Brighton, CO 80601

The City:
City of Commerce City
8602 Rosemary Street
Commerce City, CO 80022
Attn: CIP Manager

With a copy of any such notice to:

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

Either Party may change its address for the purpose of this Section by giving written notice of such change to the other Party in the manner provided in this Section.

8. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

9. Controlling Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement to be provided hereunder shall lie in Adams County, Colorado.

10. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

11. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

12. Entire Contract. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

13. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

14. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

15. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16. Accessibility.

a. The Parties will comply with all applicable provisions of §§ 24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability (“Accessibility Standards”), as established by the State of Colorado Office of Information and Technology (“OIT”) pursuant to § 24-85-103(2.5) C.R.S. The Parties will also comply with all State of Colorado technology standards related to technology accessibility with Level AA of the most current version of the Web Content Accessibility Guidelines (“WCAG”), incorporated in the State of Colorado technology standards.

17. Electronic Signatures and Electronic Records. Brighton consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF BRIGHTON, COLORADO

By: _____

ATTEST:

City Clerk

Assistant City Attorney

CITY OF COMMERCE CITY

Steven J. Douglas, Mayor

ATTEST:

Dylan A. Gibson, City Clerk

Kwali M. Farbes, Senior Assistant City Attorney

EXHIBIT A

Intergovernmental Agreement between the City and FRA dated September 6, 2024