

INTERGOVERNMENTAL AGREEMENT
(Noxious Weed Management Services)

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into and effective as of the date of execution by the last party to approve and execute this Agreement ("Effective Date") by and between the ADAMS COUNTY BOARD OF COUNTY COMMISSIONERS ("County") and the CITY OF COMMERCE CITY, COLORADO, a Colorado home rule municipality (the "City").

WHEREAS, pursuant to Art. XIV, §18(2)(a) of the Colorado Constitution, and § 29-1-203, C.R.S., as amended, the parties may cooperate or contract with each other to provide any function or service lawfully authorized to each;

WHEREAS, the County, through its Open Space and Parks Department, provides noxious weed control services on County property;

WHEREAS, the City has requested that the County provide, and the County is agreeable to providing, herbaceous noxious weed management services for approximately 857 acres of open space and 218 acres of right of way owned or used by the City;

NOW THEREFORE, the County and the City, for the consideration and mutual covenants contained in this Agreement, agree as follows:

1. Weed Management. The County will provide herbaceous noxious weed management services to the City by spraying noxious weed-infested areas on City-owned property ("Services"). The County will provide all resources, including without limitation staff, equipment, and materials, to provide the Services.

- a. Locations. The County will provide the Services at locations in the City to be determined by mutual agreement of the staffs of the City and the County annually before any spraying occurs.
- b. Frequency & Method. The County will control the timing, frequency, and method of the Services. The County will provide the Services on an as needed basis. The County will comply with all applicable laws and regulations in the performance of the Services and will perform the Services in a safe manner.
- c. Employees. All personnel performing the Services will have licenses and certifications as required by law or regulation.
- d. Materials. The County will use herbicides appropriate to control herbaceous noxious weeds that provide broadleaf weed control, will provide coverage up to water's edge, and provide residual effects for season long control.
- e. Training. The County will provide limited weed identification training to City personnel as requested by the City.

2. Compensation. The City will pay the County on a time and materials basis for the performance of Services on City-owned property as agreed to by the County and the City. The labor rate (including equipment costs) will be \$50.00 per hour, but may be increased to \$100.00 per hour for right of way applications where two applicators are used. The materials rate will be \$30.00 per acre. The City will not be obligated to pay or reimburse the County any other charges or fees.

3. Term. This term of the Agreement will be from the Effective Date through December 31, 2021. The parties may renew this Agreement for an additional three (3) years by written agreement. Either party may terminate this Agreement by giving written notice to the other party.

4. Access. The City authorizes the County to access City property to be treated under this Agreement for the purpose of performing the Services. The County will take reasonable care to avoid damaging any City property in the performance of the Services.

5. Appropriation. All obligations of either party are subject to the prior appropriation and deposit or encumbrance of funds expressly made through each party's legally required budgeting, authorizing, and appropriation process. The parties acknowledge that they do not, through this Agreement, irrevocably pledge present cash reserved for payments in future years and that this Agreement is not intended to create a multiple fiscal year direct or indirect debt or obligation of the Parties.

6. Liabilities & Insurance. The County will, at its own expense, keep in full force and effect during the term of this Agreement insurance in such amount as necessary to comply with the limitations set forth in the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, seq. to insure against any liability attributable to the County arising from this Agreement. The County will name the City as an additional insured in any policy of insurance applicable to this Agreement.

7. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, limitations, and protections that any party may have under the Colorado Governmental Immunity Act (§§ 24-10-101, C.R.S., et. seq.) or to any other defenses, immunities or limitations of liability available to a party by law.

8. No Assignment. No party shall assign its rights or delegate its duties hereunder without the prior written consent of the other party.

9. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the parties. Any person other than the County and the City will be deemed to be only an incidental beneficiary under this Agreement.

10. No Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, will not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

11. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the County or the City on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and will in no way control or affect the meaning or interpretation of any provision of this Agreement.

12. Severability. A holding by a court of competent jurisdiction that any term of this Agreement is invalid or unenforceable will not invalidate or render unenforceable any other term of this Agreement.

13. Authority. Each party represents that it has taken all actions that are necessary or that are required by its charter, ordinances, procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of such party. The persons signing this Agreement on behalf of each of the parties have full authorization to execute this Agreement.

14. Electronic Signatures and Electronic Records. The parties consent to the use of electronic signatures by any of the parties. The parties agree not to deny the legal effect or enforceability of this 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, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

15. Counterparts. This Agreement may be executed in any number of counterparts, each deemed to be an original, and, taken together will constitute one and the same instrument.

16. Entire Agreement; Modification; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as expressly provided, may not be modified or amended except by validly executed written agreement of the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement. This Agreement will be binding upon, and will inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the County and the City have caused this Agreement to be executed as of the Effective Date.

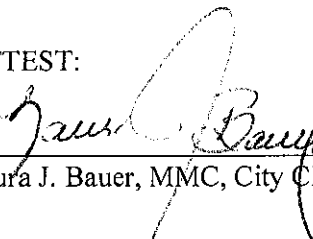
CITY OF COMMERCE CITY



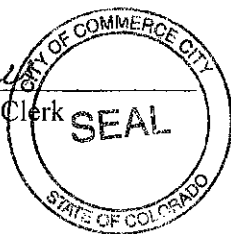
Brian K. McBroom, City Manager

Date: 1-24-19

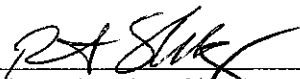
ATTEST:



Laura J. Bauer, MMC, City Clerk



Approved as to form:



Robert Sheesley, City Attorney

BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO

Chairperson

Date: _____

ATTEST:

Clerk

Approved as to form:

County Attorney