

INTERGOVERNMENTAL AGREEMENT FOR TRANSPORTATION SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR TRANSPORTATION SERVICES (“agreement”), dated and effective as of the date of execution by both Parties (“Effective Date”), is entered into by and between the City of Commerce City (“City”) and Brighton School District 27J (“District”), both of which are political subdivisions of the State of Colorado (collectively, “Parties”).

WHEREAS, Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourages and authorizes intergovernmental agreements;

WHEREAS, the District owns and operates buses for transportation purposes in connection with District operations and the City, through its Department of Parks, Recreation & Golf, requires transportation services for activities and events;

WHEREAS, the City and District desire to enter into this Agreement to establish the terms and conditions by which the District will provide transportation services to the City;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows

I. SERVICES.

A. Services. The District will provide transportation services using District-owned buses operated by District personnel to transport youth participants and staff to and from field trips, events and activities coordinated through the City’s Department of Parks, Recreation & Golf as set forth in Exhibit A, attached and incorporated by reference (the “Services”). Dates may be modified by mutual agreement. Travel will be between the City’s recreation centers and field trips and programming sites. The City may request additional Services, subject to availability of District equipment and personnel. The City reserves the right to omit any of the Services identified in Exhibit A upon written notice to the District.

B. Controlling Terms. The terms of this Agreement will control if the terms of any exhibit, attachment, or invoice conflict with this Agreement.

C. Non-Exclusivity. The City may engage the services of other persons for the provision of Services that could be performed under this Agreement. The District acknowledges that it is not entitled to perform any work except as assigned under this Agreement and is not guaranteed any amount of work.

D. Standards. All District personnel performing any Services shall be qualified, licensed, trained, and be supervised to perform the Services. The District shall use buses maintained in a good and safe mechanical condition and a clean and sanitary condition at all times while performing any Services. The District and its personnel shall comply with all applicable laws, ordinances, regulations, and codes in the performance of the Services.

II. COMPENSATION.

A. Amount. As compensation for performance of the Services and any other obligations under this Agreement, the City will pay the District for work actually performed at the rate of \$30.68 per hour per driver/bus plus \$2.05 per mile. Time and mileage will start and end at the District’s transportation facility. The compensation established by this Agreement includes all of the District’s costs and expenses to fully perform the Services and other obligations of this Agreement. The City will not consider or be obligated to

pay or reimburse the District any other charges or fees and the District will not be entitled to any additional compensation or reimbursement. The amount owed by the City under this Agreement shall not exceed \$100,000 unless this Agreement is approved by the City Council of the City.

B. Invoices. The District will submit invoices on a monthly basis, in a format approved by the City, and provide verification documentation as requested by the City. Invoices will be submitted to the City not more frequently than monthly. Invoices will identify the specific Services performed for which payment is requested, including a description of the Services, the applicable rates, any costs for which District seeks reimbursement, and the total amount that the District claims is due.

C. Payment. The City will make payment to the District within thirty (30) days after receipt and approval of invoices submitted by the District. The City's obligation to make payment is contingent upon the District's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the Services and conditions of this Agreement. The City may withhold payment of any disputed amounts, and no interest will accrue on any amount withheld pending the resolution of the dispute.

D. Appropriation. Notwithstanding any other term or condition of this Agreement, all obligations of the City or the District under this Agreement, including all or any part of any payment obligations, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the City's or the District's legally required budgeting, authorization, and appropriation process, as applicable. Further, the City and the District, by this Agreement, do not create a multiple fiscal year obligation or debt either within or without this Agreement. The City and the District, by this Agreement, do not bind future legislatures to make such appropriations. This section shall survive the termination of this Agreement.

III. TERM AND TERMINATION.

A. Term. The term of this Agreement will be from the Effective Date until December 31, 2023 ("Term"), unless the Term is extended by validly executed written amendment.

B. Termination.

1. Generally. Either Party may terminate this Agreement without cause if that Party determines that such termination is in the Party's best interest. The terminating Party will effect such termination by giving written notice of termination to the other Party, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination.

2. For Cause. If, through any cause, either Party fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement or violates any applicable law ("Breach"), the other Party may terminate this Agreement for cause immediately upon written notice of termination to the defaulting Party. The defaulting Party will not be relieved of liability to the other Party for any damages sustained by that Party by virtue of any Breach.

3. Effect of Termination. The City will be liable to pay the District for Services performed as of the effective date of termination, but will not be liable to the District for anticipated profits. Unless otherwise instructed in writing, the District will immediately discontinue performance of the Services upon receipt of a notice of termination.

IV. INSURANCE.

A. Required Policies. The District will procure and keep in force the following insurance subject to the conditions below, for the duration of this Agreement:

1. Commercial General Liability Insurance. Comprehensive general liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the performance of the Services with at least **One Million Dollars (\$1,000,000)** each occurrence.

2. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance insuring against any liability for personal injury, bodily injury or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by the District that are used in connection with performance of the Services, whether the motor vehicles are owned, non-owned or hired, with a combined single limit of at least **One Million Dollars (\$1,000,000)**.

3. Other Insurance. Workers' compensation insurance and other insurance required by applicable law.

The limits of any insurance required by this Agreement will not limit the District's liability.

B. Terms of Insurance.

1. Additional Insured. Except for the workers' compensation policy, **all required insurance policies shall name the City as an additional insured** and will provide that the City, although named as an additional insured, will nevertheless be entitled to recovery under said policies for any loss occasioned to the City or its officers, employees or agents by reason of the negligence of the District or its officers, employees, agents, subcontractors or business invitees. The insurance policies will be for the mutual and joint benefit and protection of the District and the City. **Such policies will be written as primary policies not contributing to and not in excess of coverages the City may carry.**

2. Qualification; Deductible. Insurance required by this Section will be with companies qualified to do business in the State of Colorado and may provide for deductible amounts as the District deems reasonable for the Services and the District will be responsible for the payment of any such deductible.

3. Cancellation. No such policies will be cancelable or subject to reduction in coverage limits or other modification unless previously approved by the City in writing.

4. Coverage Type. The District will identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the District changes to "occurrence," the District will carry a twelve (12) month tail. The District will not do or permit to be done anything that will invalidate the policies.

5. Evidence of Coverage. Before commencing work under this Agreement, the District will provide certificates of insurance policies and all necessary endorsements evidencing insurance coverage required by this Agreement. The City will not be obligated under this Agreement until the District provides acceptable such certificates of insurance and endorsements. If the Term extends beyond the period of coverage for any required insurance, the District will, at least ten (10) days before the expiration of any such insurance coverage, provide the City with new certificates of insurance and endorsements evidencing either new or continuing coverage.

V. NOTICES.

Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Director
Parks, Recreation & Golf
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022
Cc: City Attorney's Office
7887 E. 60th Avenue
Commerce City, CO 80022

If to the District:

Brighton School District 27J
Transportation Manager
18551 E. 160th Ave
Brighton, CO 80601

The parties may agree to delivery of notices via electronic mail.

VI. GENERAL PROVISIONS.

A. Independent Contractor. The relationship between the District and the City will be as independent contractors, and neither the City nor the District will be deemed or constitute an employee, servant, agent, partner or joint venturer of the other. **The District is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither the District nor the District's employees, agents or representatives are entitled to workers' compensation benefits, unemployment compensation benefits, sick and annual leave benefits, medical insurance, life insurance, or pension or retirement benefits from the City.**

B. District Employee Status. The Parties agree that District personnel providing any Services under this Agreement shall remain employees of the District and nothing herein shall be deemed to make any such personnel an employee of the City for any purpose, including but not limited to, wages, taxes, workers' compensation benefits, unemployment compensation benefits, sick and annual leave benefits, medical insurance, life insurance, pension or retirement benefits, and other benefits.

C. Nonliability of Officials and Employees. No elected or appointed official, employee, agent, consultant or contractor of either Party will be personally liable to the other Party or any successors or assign for any breach of this Agreement.

D. No Assignment or Subcontracting. The District will not assign or transfer any rights, interests, or obligations, or subcontract any Services, under this Agreement without the City's prior written consent.

E. Venue; Recovery of Costs. For all claims arising out of or related to this Agreement, the Parties agree to the exclusive jurisdiction of and venue in the state courts in the County of Adams, State of Colorado. The prevailing Party in any litigation to resolve a dispute between the Parties arising from this Agreement will be entitled to recover court costs and reasonable attorney fees from the non-prevailing Party.

F. Governmental Immunity. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

G. 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 City and the District will be deemed to be only an incidental beneficiary under this Agreement.

H. 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.

I. 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 City or the District 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.

J. 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.

K. Authority. The Parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement for the Parties and to bind the parties to its terms. The signatories represent and warrant that each has legal authority to execute this Agreement for the Party he or she represents and to bind that party to its terms.

L. Counterparts; Execution. 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. Signature pages may be executed via “wet” signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

M. 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.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF COMMERCE CITY

Jason Rogers, City Manager

ATTEST:

APPROVED AS TO FORM:

Dylan Gibson, City Clerk

John-Patrick Sansom, Assistant City Attorney

BRIGHTON SCHOOL DISTRICT 27J

Printed Name, Title