

**CHAPTER 13 – METROPOLITAN DISTRICTS****ARTICLE I. – GENERAL PROVISIONS****Sec. 13-1000. – Purpose and policy preferences.**

- (a) The purpose and intent of this chapter is to establish review processes, service plan requirements, decision criteria, and oversight standards for the regulation of metropolitan districts organized under Title 32 of the Colorado Revised Statutes that include property within the boundaries of the city.
- (b) The city is receptive to district formation and continued existence as an instrument to provide competitive financing for projects, to build better and enhanced infrastructure and, where needed, to provide essential and beneficial services that are otherwise not available and could not be practically provided by the city or any other existing municipal or quasi-municipal entity, including existing special districts, within a reasonable time and on a comparable basis.
- (c) The city prefers service plans and modifications to existing service plans that meet the standards and goals set forth in this chapter and the requirements of the Special District Act, use the city's model service plan, provide a demonstrated public benefit, and conform to the city's model service plan.
- (d) The city does not prefer service plans or modifications to existing service plans that:
  - (1) provide no extraordinary public benefits or fund only basic infrastructure;
  - (2) rely on fees, other than a limited one-time capital improvements fee, for the payment of costs of public improvements;
  - (3) restrict or inhibit the election of end users to district boards or the decision-making of future boards controlled by end users through the use of onerous intergovernmental agreements or revenue pledge agreements, control or managing districts, or other mechanisms;
  - (4) provide for the taxation of property owners for more than **thirty-five (35) years** for the purpose of paying costs of public improvements, including any refunding or refinancing of existing debt unless a majority of the district board are end users who vote in favor of a refunding of a part or all of the district's debt that will result in a net present value savings;
  - (5) provide for an original issuance of debt by the district that require the imposition of a mill levy exceeding fifty (50) mills for repayment;
  - (6) rely on property taxes as a primary revenue source if the future assessed value of all property within the district at full build-out is projected to be less than five million

**Commented [ZPW1]:** Most jurisdictions allow for 40 years. Bond holders typically require a 30 year maturity and a 40 year discharge date to allow cushion in the event that development is slower than projected. 35 years will limit the proceeds available for construction of public improvements.

dollars (\$5,000,000.00), subject to adjustment for increases in the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics; or

- (7) rely on financing mechanisms that involve private reimbursements to developers instead of independent, market-based options; or
- (8) permit the reimbursement of a developer of property in the district on unfair or unreasonable terms.

#### **Sec. 13-1001. – Definitions.**

*Debt* means bonds or other obligations for the payment of which a district has promised to impose an ad valorem property tax mill levy and/or collect fee revenue. *Debt* includes an intergovernmental agreement that contains a pledge of an ad valorem property tax mill levy and/or fee revenue between the District and any other governmental or quasi-governmental entity.

*District activities agreement* means the intergovernmental agreement between any district and the city for the purpose of implementing the service plan.

*End user* means any owner, or tenant of any owner, of any taxable improvement within a district's boundaries who is intended to become burdened by the imposition of ad valorem property taxes imposed by the district, provided a person or entity that entitles or develops property or constructs residential or commercial structures for the purpose of sale to another person is not an end user.

*Extraordinary public benefits* means development outcomes that benefit the public in an extraordinary manner, including without limitation by: exceeding minimum requirements and standards; delivering or facilitating the delivery of infrastructure or services that addresses significant challenges or strategic priorities previously identified by the city; providing systemic solutions that deliver a greater benefit to the community; or any other factor deemed relevant by the city.

*Financial plan* means, in addition to the requirements of the Special District Act, a description of the manner in which the public improvements will be financed with a schedule of debt and operating financial projections, including debt issuance and service schedules, prepared by an investment banking firm or qualified financial advisor establishing the maximum debt capacity of the district based on assumptions of a projected interest rate not to exceed twelve percent (12%), projected assessed valuation of property to be included in the district, and the project rate of absorption of the assessed valuation. The financial plan must use market-based, market comparable valuation and absorption data with an annual inflation rate not to exceed the lesser of three percent (3%) or the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics. The financial plan must also include the regional improvement mill levy and detailed projections of the revenue to be generated by the imposition

**Commented [ZPW2]:** Including pledge agreements in the definition of debt may impact multiple districts' ability to coordinate financing of public improvements. Including pledge agreements requires the same debt issuance to be counts more than once.

of the regional improvement mill levy for a period of forty (40) years following the year in which the regional improvement mill levy is implemented.

*Inactive special district* has the meaning assigned in the Special District Act.

*Material modification* or *materially modifies* (or any variation thereof), when used with respect to a service plan, means a change to a service plan of a basic or essential nature as provided in C.R.S. 32-1-207(2)(a), an action or omission of a district that is materially inconsistent with the service plan, or a provision of a service plan that is specifically designated as a material modification if changed or not complied with in any manner. Departures from a service plan that constitute a material modification include without limitation:

- (1) actions or failures to act that create materially greater financial risk or burden to the taxpayers of the district;
- (2) an alteration or revision of the proposed schedule of debt issuance set forth in the financial plan;
- (3) performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function, or facility authorized in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council, provided that non-material modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall not be considered material modifications;
- (4) failure to perform a service or function, construct an improvement, or acquire a facility as provided in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council;
- (5) the issuance of any Debt with a mill levy pledge, or which results in a mill levy pledge, that exceeds the maximum combined mill levy, maximum debt mill levy, or maximum debt imposition term authorized by the district's service plan;
- (6) the conversion of any taxable real property within the district to a tax-exempt status if such property was included in the district's financial plan unless the district demonstrates to the city council that the tax-exempt use of the property does not materially impact the district's ability to meet its annual debt service obligations;
- (7) the exclusion of any real property within the district without a prior resolution of the city council approving such exclusion;
- (8) failure to provide an essential public improvements or services described in its service plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the district;

- (9) failure to receive authorization for the regional improvement mill levy, or failure to impose, collect, or remit the regional improvement mill levy, or the issuance of any debt prior to the authorization of the regional improvement mill levy;
- (10) failure to comply with any of the preconditions, prohibitions, limitations and restrictions of the service plan.

*Metropolitan district* or *district* has the meaning assigned to the term “metropolitan district” in the Special District Act but does not include the Greater Brighton Fire Protection District, the South Adams County Fire Protection District, or the South Adams County Water & Sanitation District.

*Operate and Maintain* or *Operation and Maintenance* means (a) the ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of any public improvements or the provision of services related thereto; and (b) the reasonable and necessary costs of ongoing administrative, accounting and legal services to a district.

*Public Improvements* means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as authorized by a service plan that benefit the district and serve the future residents and taxpayers of the district.

*Regional improvement mill levy* means a mill levy to be imposed, collected, and remitted to the city by a district on an annual basis to pay costs related to the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs of such regional improvements as identified in accordance with the service plan, subject to change as planning, design, acquisition, funding, construction, installation, relocation, and redevelopment occurs, as the city in its sole reasonable discretion believes are public in nature, have a benefit to privately-owned properties paying the mill levy, and are permitted by state law to be paid for from revenues derived from the district, including operations and maintenance thereof.

*Residential district* means a metropolitan district with a proposed service plan considered by the city council after the January 1, 2022, in which district more than ten percent (10%) of the property to be included in the district is expected to be residential development.

*Special District Act* means Article 1 of Title 32 of the Colorado Revised Statutes, as amended from time to time.

*Special district* has the meaning assigned in the Special District Act.

**Sec. 13-1002. – Authority.**

- (a) The city council retains full discretion and authority regarding the approval or disapproval of any matters relating to metropolitan districts, including without limiting the terms, conditions, and limitations of any service plan, the approval, conditional approval,

disapproval of any service plan or modification thereof, or any other application by a metropolitan district. This chapter is not intended, and shall not be construed to, to limit the discretion or authority of the city and the city council.

- (b) In the manner and to the extent provided in this article, the city council shall maintain continuing jurisdiction over the operations and affairs of any district operating within and shall exercise its rights in relation thereto, as deemed appropriate by the city council, pursuant to the Special District Act and this article.
- (c) No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the city council's determination pursuant to this article, whether based upon irregularities or jurisdictional defects, shall be maintained unless commenced within thirty (30) days after final action of the city council or else be thereafter perpetually barred.

**Sec. 13-1003. – Fees.**

- (a) *Application fees.* Any application under this article or any other request by a metropolitan district for city consideration shall be accompanied by a fee in the amount established by resolution of the city council to defray the costs of the city's review and, if applicable, a deposit of funds to reimburse the city for the costs of third-party legal, financial or other consulting services retained by the city in its sole discretion related to the application or inquiry, including without limitation review and analysis of proforma analysis, district financial plans, original service plan applications and proposed service plan amendments. The city council may establish a tiered fee structure to account for the complexity of an application, including applications proposing modifications to the model service plan established pursuant to this article. Any application or inquiry fees, other than unspent deposited funds, shall be nonrefundable.
- (b) *Annual oversight fee.* All metropolitan districts organized wholly or partially within the city's boundaries shall pay to the city an annual fee for review of metropolitan district operations and service plan compliance in an amount established by resolution of the city council. The city council may establish a tiered fee structure to account for unique considerations, including district population, relationships with other metropolitan districts, consolidated service plans, or outstanding debt. Annual oversight fees shall be nonrefundable. Neither the city's review, nor any communications from the city to a district regarding its service plan shall be construed as (1) approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

**Sec. 13-1004. – Sanctions.**

Should any district undertake any act without obtaining the prior approval of the city as required by the district's service plan or district activities agreement or this article that constitutes a

material modification, the city council may impose one (1) or more of the following sanctions, as it deems appropriate:

- (1) exercise any applicable remedy under the Special District Act;
- (2) withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the district's development or construction or operation of improvements or provision of services;
- (3) exercise any legal remedy under the terms of any intergovernmental agreement under which the district is in default; or
- (4) exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the district, to ensure compliance with the provisions of the service plan or applicable law.

**Commented [ZPW3]:** What happens if a homeowner controlled district takes an action without City approval, will an unrelated builder be punished when they have no control over what the district does or does not do?

**Sec. 13-1005. – Application to existing metropolitan districts.**

This article shall apply to all metropolitan districts organized wholly or partially within the city's boundaries, including any metropolitan district organized before the effective date of this article to the extent not inconsistent with such district's service plan.

**ARTICLE II. – SERVICE PLANS.**

**Sec. 13-2100. – Service plans.**

(a) *Model service plan.*

- (1) The city manager shall develop a model service plan consistent with this article for approval by the city council by resolution. The approval of a model service plan shall not be construed to limit the discretion or authority of the city council to approve modifications to the model service plan in its consideration of any application. Pending the approval of a model service plan by the city council, the city manager may designate a model service plan consistent with this article.
- (2) The model service plan will include the following at a minimum:
  - (i) a prohibition on the use of eminent domain without prior authorization of the city council;
  - (ii) a prohibition on the inclusion or exclusion of property from the district without prior authorization of the city council;
  - (iii) a prohibition on the imposition of fees, rates, tolls, penalties, or charges on end users for the payment of debt or for the costs of any public improvements;

- (iv) a prohibition on the execution of any intergovernmental agreement or reimbursement agreement that is likely to cause a substantial increase in the district's budget if not described in the service plan without prior authorization of the city council;
- (v) a prohibition on the execution any agreement establishing an authority or other separate entity under Section 29-1-201, et seq., C.R.S. without prior authorization of the city council;
- (vi) a prohibition on the invocation or exercise of any actual or perceived city sales and use tax exemption;
- (vii) a prohibition on the execution of any extraterritorial service agreement not described in the service plan without prior authorization of the city council;
- (viii) a prohibition on the consolidation with any other special district or the formation of any subdistrict without prior authorization of the city council;
- (ix) a prohibition on shifting district costs (including public improvement costs and operation and maintenance costs) to undeveloped property in the district in such a manner so as to inequitably burden such property to the benefit of developed property in the district;
- (x) a prohibition on the reimbursement of any developer of property in the district more than eighty percent (80%) of the actual costs of public improvements, more than \$25,000 of the costs of organizing the district; or any development security expenses;
- (xi) a restriction of the total debt authorization to no more than the lesser of one hundred percent (100%) of the maximum projected debt capacity or one hundred percent (100%) of the estimated costs of the public improvements, as shown in the district's financial plan;
- (xii) a limitation of the total mill levy authorization to fifty (50) mills for both debt service and operations and maintenance, with no more than ten (10) mills being used for operations and maintenance even if the debt service mill levy becomes unlimited, provided that the service plan may allow for unlimited mill levy for the payment of debt if the total amount of the district's debt is equal to or less than fifty percent (50%) of the district's assessed valuation;
- (xiii) no provision authorizing the adjustment of any mill levy to account for changes in the changes in the method of calculating assessed valuation (including any change in the ratio of actual valuation) or any constitutionally mandated tax credit, cut or abatement;

**Commented [ZPW4]:** Not all IGA's are known at the organization of the District, and coordination among districts is encouraged under statute. Approval of agreement by the City puts the City in the line of fire if there are disputes about the agreements later on.

**Commented [ZPW5]:** Special districts are formed for the primary purpose of financing public improvements, and should have the authority under the service plan to pay all costs that the special district is able to finance under statute, without limitation. These are legitimate costs and should be payable by the district if funds are available.

- (xiv) a limitation on the term for the repayment of debt to thirty-five (35) years for residential districts unless a majority of the district board are residents of the district and have voted in favor of a refunding that will result in a net present value savings as set forth in C.R.S. 11-56-101 *et seq.*;
- (xv) a limitation of the maximum voted interest rate on any debt to twelve percent (12%) and of the maximum underwriting discount for any debt to three percent (3%).
- (xvi) a prohibition of compounding interest in any reimbursement agreement with any owner of property or developer of land in the district;
- (xvii) a limitation of the purchase price of any land acquired by the district from any developer of property within the district's boundaries to no more than the current fair market value at the time of purchase;
- (xviii) sufficient independent controls to ensure the reasonableness of interest rates for any debt obligations of the district, including any repayment or reimbursement agreement related to public improvements;
- (xix) sufficient independent controls to ensure that expenditures reimbursable to any developer are reasonable;
- (xx) sufficient independent controls to ensure that district expenditures are properly allocated if public improvements as part of an overall project including private improvements or improvements benefiting other property;
- (xxi) a prohibition on the district's cooperation with or support of the conversion of any real taxable property within the district to a tax-exempt status, if such property was included in the district's financial plan;
- (xxii) provisions requiring the submittal to the city for review and comment of agreements involving any pledge of revenue or promise to reimburse any person or entity from district revenue and any proposed debt issuance or refinancing of outstanding debt;
- (xxiii) a provision requiring the dissolution of the district after the district's debts and financial obligations have been paid or defeased, and, if the district has been authorized to operate and maintain any part of the public improvements under a district activities agreement, the district shall retain only the powers necessary for ongoing operations and maintenance as authorized in its district activities agreement;
- (xxiv) restrictions on the issuance of debt by the district until the developer of the property within the district's boundaries agrees to provide a disclosure notice, approved by the city, to each potential end user of a residential lot or dwelling

**Commented [ZPW6]:** Same comment as above.

**Commented [ZPW7]:** If the City is involved in the review and approval of agreements, it may open the City to challenge if there is a dispute about the agreement.



before the end user enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

(xxv) provisions implementing the governance and transparency requirements of this article and the Special District Act, as each may be amended.

(b) *Contents.* In addition to those contents required by the C.R.S. 32-1-202(b), the Special District Act and otherwise provided in this article, all service plans shall include the following:

- (1) a description of the relationship between the organizer of the district and the developer and owner of any property to be included in the district's boundaries;
- (2) a specific identification of all fees that the district can impose;
- (3) a description of the services that will be provided by the district;
- (4) a financial plan;
- (5) a description of the public improvements that will be built, acquired, or financed by the district, including at a minimum a map or maps and preliminary construction drawings of such improvements, a written narrative and description of the public improvements, and a general description of the district's role with regard to the public improvements;
- (6) a description of the material terms of and justification for any intergovernmental agreement or reimbursement agreement which is required or known at the time of district formation that is likely to be required to fulfill the purposes of the district;
- (7) a description of the material terms of and justification for any extraterritorial service agreements known at the time of district formation; and
- (8) a district activities agreement.

**Sec. 13-2101. – Regional improvement mill levy.**

- (a) All service plans approved after the January 1, 2022, shall provide for the authorization of and require the imposition, collection, and remittance of a regional improvement mill levy applicable to all properties within the district to ensure that properties benefiting from improvements funded through such mill levy pay a reasonable share of costs associated with such improvements.
- (b) The service plan shall require that, as part of the district's initial TABOR election, the district seek authority to impose the regional improvement mill levy and the authority under TABOR to enter into an intergovernmental agreement with the city obligating the district to pay as a multiple-fiscal year obligation the proceeds from the regional

improvement mill levy to the city. The district shall not issue debt or impose any mill levy or fee for the repayment of debt until the district has complied with this subsection.

- (c) The regional improvement mill levy shall be in addition to and not subject to any limitation on the mill levy for debt service or operations and maintenance.
- (d) When imposed by a district, a regional improvement mill levy shall not exceed a term of forty (40) years from December 31 of the tax collection year after which the regional improvement mill levy is first imposed.

### **ARTICLE III. – REVIEW.**

#### **Sec. 13-3100. – Applications.**

Applications pursuant to this article shall be filed with the Department of Community Development on forms approved by the City Manager and shall be accompanied by any materials required by this article or deemed necessary by the City Manager to carry out the provisions of this chapter or applicable law and all required fees and deposits. Applications must identify all deviations from the model service plan and the requirements of this article. The City Manager may require the submission of additional information at the time of application or at any time during the review process at the applicant's cost. No application will be considered complete until all fees and deposits have been paid and all known requested information has been submitted.

#### **Sec. 13-3101. – Service plans.**

- (a) *Approval required.* Approval of a service plan by the city council shall be required for the organization of any metropolitan district wholly or partially within the city's boundaries.
- (b) *Conceptual review.*
  - (1) *Purpose.* The conceptual review process in this subsection is intended to provide information to the applicant for use in determining whether it will submit an application for a service plan and the contents of such application. Any comments, suggestions, and recommendations by the city, including the city council and city staff, is not binding or limiting on the city in any manner. No service plan application will be accepted unless a conceptual review under this subsection has been completed within the preceding twelve (12) months for the same or substantially similar property and purpose as would be subject to the proposed service plan.
  - (2) *Concept letter.* To propose a new service plan, an applicant must pay the applicable fee and provide a concept letter including the following:
    - (i) a summary narrative of the proposed service plan and the development it will serve, including the current status of the development;

- (ii) a detailed proposal for the metropolitan district, including: a clear justification of the need for the district, including a proforma analysis or other appropriate documentation demonstrating that no other entities (including the applicant) consider it desirable, feasible or practical to undertake the public improvements or demonstrating that it is more economically advantageous to the future end users of the proposed metropolitan district for the district to undertake the public improvements; an explanation of the public benefits that the district will provide; anticipated modifications to the model service plan; proposed district powers; estimated costs to be financed; anticipated fees and purposes; anticipated proposed mill levy rates; anticipated repayment term; proposed timeline for district formation; and anticipated build-out period;
  - (iii) a sketch plan detailing the property location and boundaries; surrounding land uses; proposed use(s); proposed public improvement(s) (including structures, infrastructure, parks, drainage; and landscaping); and significant natural features (including irrigation ditches and canals); known utility locations; and
  - (iv) a detailed description of the services that the district will provide.
- (3) *Preliminary staff meeting.* The city manager or their designee will review the concept letter and meet with the applicant to discuss the proposal, initial staff feedback, potential public benefits, and procedural and fee requirements.
- (4) *Council review; notice.* Following the preliminary staff meeting, the city council will review the concept letter at an informal public hearing scheduled by the city manager at which the applicant, staff, and the public may be heard and the city council may provide informal, non-binding comments. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (B) all special districts in which the property subject to the application is included.
- (c) *Service plan review.*
- (1) *Timing.* Applicants are advised to submit applications for service plans by no later than the first of December for a spring election in the year following the submittal or by no later than the first day of May for an election in the fall of the year of submittal.
  - (2) *Staff review.* The city manager or their designee will conduct a staff review of service plan applications. Staff will refer applications to the Development Review Team, the city attorney, and any special districts in which the subject property is included. The city attorney may engage special counsel and the city manager may retain consultants having pertinent experience, at the applicant's cost, to assist in the city's review. Applicants may expect multiple rounds of review and comment on the application.

(3) *Staff report and hearing.* Upon completion of the staff review, the city manager will schedule the application for a public hearing before the city council and provide a report to the city council. No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election. The city manager's report will include:

- (i) an assessment of public benefits and extraordinary public benefits, including value of basic infrastructure against the public benefits;
- (ii) a financial assessment of the proposed district's debt capacity and servicing ability, based on the applicant's financing plan;
- (iii) an assessment of any proposed fees and the proposed debt authorization and mill levy;
- (iv) a report of proposed changes to the model service plan, the applicant's justifications for such changes, and recommendations regarding each proposed change;
- (v) an assessment of any intergovernmental agreements or inter-district relationships and any proposed extra-territorial service identified in the proposed service plan; and
- (vi) any additional information relevant to the proposed service plans conformity with this article and the Special District Act.

(4) *Notice of hearing.*

- (i) At least thirty (30) days prior to the hearing, the applicant must cause written notice of the hearing to be:
  - (A) delivered by first-class mail to: (I) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (II) all special districts in which the property subject to the application is included; and
  - (B) published once in a newspaper of general circulation in the city.
- (ii) Mailed and published notices shall include the date, time, and location of the public hearing and the following information:
  - (A) a description of the general nature of public improvements and services to be provided by the proposed district;

- (B) a description of the property to be included in the district and any future inclusion area, with the description being given by street address, by reference to a subdivision plat, or by use of a metes and bounds legal description if the property is not subdivided;
- (C) a statement of the maximum amount of property tax mill levy that can be imposed on property in the district;
- (D) a statement of the maximum debt authorization proposed in the service plan;
- (E) a statement that property owners within the proposed boundaries may request that the city council consider excluding their property from the proposed district boundaries by filing a petition for exclusion in the city clerk's office at least ten (10) days before the hearing;
- (F) a statement that the proposed service plan and a map of the proposed district and its preliminary plans can be reviewed in the city manager's office; and
- (G) a statement that advance registration may be required and the hearing may be conducted virtually, as stated in the published meeting agenda.

(5) *Hearing.*

- (i) The City Council will consider the application, the city manager's report, and any other testimony at a public hearing and after the hearing, shall approve, approve with conditions, or deny the application, based on the approval criteria in this article. The hearing will be conducted as a legislative proceeding but shall include a staff presentation, a presentation and rebuttal by the applicant, public testimony, and council questions.
- (ii) No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election.

(6) *Action on application.*

- (i) The city council shall disapprove a proposed service plan unless evidence satisfactory to the city council of each of the following is presented:
  - (A) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
  - (B) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.

- (C) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
- (D) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.
- (ii) Subject solely to the city council's discretion, the city council may disapprove a proposed service plan if the city council determines that the formation of the proposed district is not necessary for development to occur in the area to be served by the proposed district or that formation of the district would not be in the best interests of the city or its current or future residents and property owners, including those of the area to be served. The city council may consider any factor that the city council deems relevant to its consideration, including without limitation whether:
  - (A) Adequate service is, or will be, available to the area to be served through other existing governmental or quasi-governmental entities within a reasonable time and on a comparable basis;
  - (B) the facility and service standards of the proposed district are not compatible with the facility and service standards of the city or another governmental or quasi-governmental entity providing service to the area to be served;
  - (C) the proposed service plan is not in substantial compliance with the comprehensive plan or any adopted area plan;
  - (D) the proposal is not in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area to be served;
  - (E) the district's performance of ongoing operations or maintenance, if included, are in the best interests of the city and the existing or future residents and taxpayers of the district;
  - (F) the proposed district does not provide extraordinary public benefits;
  - (G) the service plan involves a multi-district structure and the projected project absorption and public improvements to be financed by the districts are not reasonably projected to occur over an extended period of time or the project does not involve varying projected uses;
  - (H) the service plan does not satisfactorily detail the mechanics of a proposed multi-district structure or such mechanics do not comply with this article;
  - (I) the proposed modifications to the model service plan are not justified to the city council's satisfaction or are not consistent with this article;

- (iii) As an alternative to denial of a proposed service plan, the city council may conditionally approve a service plan by requiring specific changes to the proposed service plan or on the provision of additional information.
- (iv) Before acting on a service plan application, the city council may, in its discretion, exclude territory from the area to be served by the proposed special district based on the petition of a property owner in the area to be served by the proposed district no later than ten (10) days prior to the hearing unless the applicant establishes to the city council's satisfaction that the exclusion of the property is not in the best interests of the proposed district

**Sec. 13-3102. – Material modifications; amendments.**

- (a) *Approval required.* Approval of any material modification or amendment to an existing service plan by the city council shall be required. Review of any material modification or amendment shall follow the procedure established by this article for the review of service plans and the city council is not limited to only reviewing the requested material modification or amendment. The city council reserves the right to propose and approve amendments or modifications to any section of an existing service plan in connection with the review of any material modification or amendment. The city manager may require a conceptual review of any material modification or amendment in their sole discretion.
- (b) *Notice of certain actions that may constitute material modifications.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any material modification.
- (c) *Restriction on certain actions.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any notice given pursuant to C.R.S. 32-1-207(3)(b) and shall not undertake the action described in such notice until the city council approves such action by resolution. If the city fails to respond to such notice, the district shall apply for an amendment to its service plan to authorize such action.

**Sec. 13-3103. – Other applications.**

- (a) *Scope.* This section shall apply to all applications, inquiries, or requests with respect to a metropolitan district other than an application for a service plan for a new district or a modification to an existing service or an action initiated by the city.
- (b) *Application.* To submit an application, inquiry, or request under this section, the applicant shall submit the application including:
  - (1) A discrete statement of the action that the city is requested to take;
  - (2) A legal and factual justification for the action, including specific citations to applicable provisions of the service plan, any applicable agreement, this article, or the Special District Act;

- (3) A copy of the minutes or other record of formal action of the district's board authorizing the application, inquiry, or request;
- (4) Any additional information required by the service plan or the city manager.
- (c) *Authority.* The city council will have authority to determine any application, inquiry, or request under this section except to the extent such authority is vested in another official or body pursuant to the service plan. The decision on the application, inquiry, or request shall be in the sole discretion of the city council or other official or body, as applicable, unless a different standard is established by the service plan, any applicable agreement, this article, or the Special District Act.
- (d) *Hearing; notice.* For any determination by the city council or another body under this section, the application, inquiry, or request will be considered at a public meeting after an informal public hearing at which the applicant, staff, and the public may be heard. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (B) all special districts in which the property subject to the application is included.

**Sec. 13-3104. – Inactive applications.**

If an applicant, having been notified that additional information or corrected materials are required, fails to submit such information or materials within thirty (30) days of the request, or an applicant fails to attend any scheduled meeting or public hearing, the director may notify the applicant that the application is considered inactive and unless corrective action is taken within thirty (30) days, the application shall be considered withdrawn.

**Sec. 13-3105. – Withdrawal of applications.**

After an application is withdrawn by an applicant or by failure of the applicant to take corrective action on an inactive application, no further action on the application shall take place. To re-initiate review, the applicant shall resubmit the application, which in all respects shall be treated as a new application for purposes of review, scheduling, and fees.

**ARTICLE IV. – GOVERNANCE.**

**Sec. 13-4000. – Board meetings and membership.**

(a) *Board meetings.*

- (1) All special and regular meetings of district's board of directors shall be open to the public and shall be held at a location that is within the city's boundaries.
- (2) All meetings shall include remote access participation and public comment options.

**Commented [ZPW8]:** Given the digital age we are in and the fact that most jurisdictions now hold electronic meetings, it just doesn't make sense to require in person meetings. We have seen better turnout and participation in meetings by holding them virtually rather than in person.



- (b) *Board membership.* No district shall enter into any agreement or approve any rule or regulation by which the ability of end users to be elected to or appointed to the district's board of directors is removed or diminished.
- (c) *Notices.* In addition to any notices required by the Special District Act, the district shall provide notices of any meeting and any call for nominations through social media accessible to end users of the district.

**Sec. 13-4001. – Transparency.**

- (a) *Website.* All districts shall maintain a website as required by the Special District Act to be used primarily for the purpose of the district's operations and transparency and shall include district formation documents, debt documents, budgets, audits, contracts involving the expenditure of district funds, and meeting minutes.
- (b) The website shall not contain marketing materials or ads of any kind promoting the development, developers or homebuilders within the district's boundaries.
- (c) *Annual reports.*
  - (1) *Requirement.* All metropolitan districts (other than inactive special districts) shall file and distribute an annual report as required by the Special District Act and shall post the annual report to the district's website by no later than October 1 of each year.
  - (2) *Contents.* Annual reports shall include all contents required by the Special District Act and any additional information required by the service plan, including at a minimum the following information unless waived by the city council:
    - (i) a narrative summary of the progress of the district in implementing its service plan for the report year;
    - (ii) the current year budget of the district, including a description of the public improvements to be constructed by the district in each year;
    - (iii) except when exemption from audit has been granted for the report year under state law, the audited financial statements of the district for the report year prepared in accordance with generally accepted accounting principles, including a statement of financial condition (i.e. balance sheet) as of December 31 of the report year and a statement of operation (i.e. revenue and expenditures) for the report year;
    - (iv) unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the district in development of improvements in the report year;

- (v) unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the district at the end of the report year, including the amount of outstanding debt, the amount and terms of any new district debt issued in the report year, the total assessed valuation of all taxable property within the district's service area as of January 1 of the report year and the current total district mill levy pledged to debt retirement in the report year.
  - (vi) the names and contact information of the current directors on the district's board, any district manager, and the attorney for the district; and
  - (vii) the district's current office address, phone number, email address and any website address.
- (3) *Review.* The city manager shall cause the annual report to be provided to the city council and to be posted on the city's website within ten (10) days of the receipt of the annual report. The city council may elect to review the annual report and to require the presence of a representative of a district to discuss the annual report at a regular or special meeting or study session. Neither the city council's review, nor any discussion with the district regarding its annual report shall be construed as (1) approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

**Sec. 13-4002. – Disclosures to purchasers and buyers.**

- (a) *Disclosure to purchasers.* Districts shall use reasonable efforts and due diligence to cause any home builder or developer of residential property within the district's boundaries to provide to all initial purchasers of property within the district's boundaries, before execution of a purchase contract, written notice of disclosure that includes the information required by C.R.S. 38-35.7-110(2). The district shall record such notice of disclosure with the Adams County Clerk and Recorder at the time the subdivision plat is recorded or, if the subdivision plat has already filed, provide the City with a copy of the recorded notice of disclosure. The notice of disclosure shall include the maximum mill levy that may be assessed and the associated taxes that may be imposed on the residential property for each year the District is in existence.
- (b) *Disclosure to potential residential buyers.* The district shall use reasonable efforts and due diligence to provide information to potential residential buyers by: (i) furnishing to any developer of property or home builders within the district's boundaries information describing the key provisions of the service plan for prominent display at all sales offices; and (ii) inspecting the sales offices within the district's boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the information required by C.R.S. 38-35.7-110(2).

**Sec. 13-4003. – District default.**

- (a) If a district fails to pay its debt when due or defaults in the performance of any obligation that has been agreed to between the district and the city, which obligation has been identified by the city in writing as a material obligation, and such default is continuing after the delivery of notice of such default to the district and the expiration of any cure periods, the district shall not issue additional debt, except refunding bonds issued to avoid or to cure a payment default, without the prior authorization of the city council.
- (b) If a court of competent jurisdiction has made a final determination that a district has defaulted on any of its financial obligations, and such determination is not subject to further appellate review, the district shall be precluded from issuing additional debt, except to refund or refinance a financial obligation for the purpose of avoiding or curing a default without prior authorization of the city council.
- (c) The city shall not be liable for any debt or default of any district by virtue of the city's review or approval of any service plan or district activities agreement.

**SERVICE PLAN  
FOR  
[ ] METROPOLITAN DISTRICT**

**CITY OF COMMERCE CITY, COLORADO**

Approved: [ ]

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**LIST OF EXHIBITS**

<b>EXHIBIT A-1</b>	Legal Description and Map of [Initial] District Boundaries
<b>EXHIBIT A-2</b>	Legal Description and Map of Inclusion Area [if applicable]
<b>EXHIBIT B</b>	Commerce City Vicinity Map
<b>EXHIBIT C</b>	District Activities IGA
<b>EXHIBIT D</b>	Description of Public Improvements
<b>EXHIBIT E</b>	Financial Plan
<b>EXHIBIT F</b>	Description of Regional Improvements

## **I. DEFINITIONS**

In this Service Plan, the following terms shall have the following meanings, unless the context clearly requires otherwise:

**Board:** the board of directors of the District.

**City:** the City of Commerce City, Colorado.

**City Approvals:** means, collectively, (a) the final plat for the area within the District, (b) the final development plans and/or landscape plans for the areas within the District, (c) the construction plans for the public improvements within the District, (d) the development agreement a/k/a subdivision improvement agreement or public improvement agreement applicable to the area within the District, (e) any other agreements between the City and the District relating to the area within the District, and (f) any amendments made to any of the foregoing documents.

**City Code:** the City of Commerce City Revised Municipal Code, as amended from time to time.

**City Council:** the City Council of the City of Commerce City, Colorado.

**Debt:** bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy and/or collect Fee revenue. The definition of Debt shall include an intergovernmental agreement that contains a pledge of an *ad valorem* property tax mill levy and/or Fee revenue between the District and any other governmental or quasi-governmental entity.

**Commented [A1]:** Including pledge agreements in the definition of debt may impact multiple districts' ability to coordinate financing of public improvements. Including pledge agreements requires the same debt issuance to be counts more than once.

**District:** the [ ] Metropolitan District.

**District Activities IGA:** an intergovernmental agreement between the District and the City regarding certain limitations of the District's activities, substantially in the form attached hereto as **Exhibit C**.

**District Boundaries:** the boundaries of the District described in the District Boundaries Map and any property subsequently included into the District Boundaries from the Inclusion Area.

**District Boundaries Map:** the map attached hereto as part of **Exhibit A-1**, describing the District's boundaries.

**End User:** any owner, or tenant of any owner, of any taxable improvement within the District Boundaries who is intended to become burdened by the imposition of *ad valorem* property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. A business entity that entitles or develops property, or constructs residential or commercial structures is not an End User.

**External Financial Advisor:** a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance with respect to such securities; (ii) is an underwriter, investment banker or individual listed as a public finance advisor in the Bond Buyer's Municipal Market

Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Fees: any fee, rate, toll, penalty or charge imposed by the District for services, programs or facilities provided by the District, as described in Section V.F.7.

Financial Plan: the Financial Plan described in Section VI and **Exhibit E** prepared by an External Financial Advisor in accordance with the requirements and limitations of this Service Plan that describes: (i) the manner in which the Public Improvements are to be financed; (ii) the manner in which the Debt is expected to be incurred; and (iii) the estimated operating revenue to be derived from property taxes and any Fees for the first budget year through the year in which all Debt is expected to be defeased or paid in the ordinary course. Without limitation, the Financial Plan must include the anticipated schedule for incurring Debt, a schedule of all anticipated revenues of the District from property taxes, including property taxes and specific ownership taxes, Fees, and other anticipated legally available revenues

**Commented [A2]:** With this there should be clarification that the board can issue debt in a schedule and terms that best meet the needs of the districts.

Inclusion Area Boundaries: the boundaries of the area described in the Inclusion Area Boundary Map intended to be included into the District Boundaries. **[Delete this definition if there is no anticipated inclusion area.]**

Land Use Approval: an entitlement plan as approved by the City pursuant to the City Code for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Boundaries.

Maximum Combined Mill Levy: means the maximum combined Maximum Debt Mill Levy and Operations and Maintenance Mill Levy that may be imposed by the District, as identified in Section VI.D.

Maximum Debt Mill Levy: the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VI.D.

Maximum Debt Mill Levy Imposition Term: a maximum of thirty-five (35) years after the year of the initial imposition of such mill levy unless a majority of the Board are End Users and have voted in favor of a refunding of a part or all of the Debt that will result in a net present value savings as set forth in 11-56-101 *et seq.*, C.R.S. and that has been determined by an External Financial Advisor to be in the best interests of the District;

**Commented [A3]:** Most jurisdictions allow for 40 years. Bond holders typically require a 30 year maturity and a 40 year discharge date to allow cushion in the event that development is slower than projected. 35 years will limit the proceeds available for construction of public improvements.

Maximum Operation and Maintenance Mill Levy: means the maximum mill levy the District is permitted to impose for the payment of Operation and Maintenance Costs, as set forth in Section VI.D.

Operate and Maintain or Operation and Maintenance: means (a) the ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of the Public Improvements or the provision of services related thereto; and (b) the reasonable and necessary costs of ongoing administrative, accounting and legal services to a District; all in accordance with the provisions and requirements of, as applicable, the Special District Act, this Service Plan, the District Activities IGA, the City Code and the City Approvals.



Project: a portion of the development or property commonly referred to as [\_\_\_\_\_].

Public Improvements: a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act, except as specifically limited herein, that benefit the District and serve the future residents and taxpayers of the District, as determined by the Board.

Regional Improvements: means any regional public improvement identified by the City, as provided in Section VII of this Service Plan, for funding, in whole or part, by a Regional Improvement Mill Levy levied by the District, including, without limitation, the public improvements described in **Exhibit F**.

Regional Improvement Mill Levy: means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section VII of this Service Plan.

Reimbursement Agreement: means any agreement of the District to repay, from any bond proceeds or other revenue of the District whether or not subject to annual appropriation, any person for any amounts expended on behalf of the District, including without limitation any costs of organization, operation of the District or the provision of services or Public Improvements, but does not include any Debt.

Service Plan: this service plan for the District approved by City Council.

Service Plan Amendment: an amendment to the Service Plan approved by City Council in accordance with the City Code and applicable state law.

South Adams: the South Adams County Water & Sanitation District.

Special District Act: Sections 32-1-101, *et seq.*, of the Colorado Revised Statutes, as amended from time to time, including additional requirements imposed by future amendments to the Special District Act.

State: the State of Colorado.

TABOR: Section 20 of Article X of the Colorado Constitution also known as the Colorado Taxpayer's Bill of Rights.

Taxable Property: real or personal property within the District Boundaries subject to ad valorem taxes imposed by the District.

## **II. PURPOSE AND OBJECTIVES OF DISTRICT**

A. Purpose and Intent. The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Service Plan, its activities are subject to review by the City only insofar as they may deviate in a material manner from the requirements of the Service Plan or as provided in the Special

District Act or City Code. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated residents and taxpayers of the District. The primary purpose of the District is to finance the construction of the Public Improvements. The District is not being created to provide ongoing Operation and Maintenance activities other than as specifically set forth in this Service Plan or the District Activities IGA.

B. Need for the District. There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project as related to the District Boundaries. The applicant for the District has demonstrated through proforma analysis or other appropriate documentation that there are no other entities, including the applicant, that consider it desirable, feasible or practical to undertake, or that it is more economically advantageous to the future End Users residing within the District Boundaries for the District to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project as related to the District Boundaries. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economical manner possible.

C. Relationship of Organizer and Developer/Owner. **[Describe the relationship between the organizer of the district and the developer and owner of any property to be included in the district's boundaries].**

D. Public Benefit. **[Describe public benefit of the Project and the Public Improvements].**

E. Objective of City Regarding Service Plan

1. The City's objective in approving the Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term (as it relates to residential property), subject to the Maximum Debt Mill Levy, and/or repaid by Fees as limited by Section V.F.7.

2. This Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs pursuant to the City Approvals. Operation and Maintenance activities are allowed only as specified in this Service Plan or the District Activities IGA.

3. The District shall dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and, if the District has been authorized to Operate or Maintain any part of the Public Improvements under the District Activities IGA, to retain only the power necessary to impose and collect taxes or Fees to pay for costs associated therewith.

4. The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Fees or from tax revenues collected from a mill levy, subject to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term.

5. Except as specifically provided in this Service Plan, all Debt is expected to be repaid by taxes and Fees, as limited by this Service Plan, imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties, and at a tax mill levy no higher than the Maximum Debt Mill Levy. Fees imposed for the payment of Debt shall be due no later than upon the issuance of a building permit. Generally, the costs of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District. Debt which is issued within these parameters, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt, will be of limited duration even under bankruptcy or other unusual situations, and will result in a timely and reasonable discharge of the Debt.

### **III. DISTRICT BOUNDARIES**

The area within the initial District Boundaries includes [ ] ([ ]) acres and the total area proposed to be included into the District (the Inclusion Area Boundaries) is approximately [ ] [ ] acres. A legal description and map of the initial District Boundaries and the Inclusion Area Boundaries are attached hereto as **Exhibits A-1 and A-2** respectively. A vicinity map is attached hereto as **Exhibit B**. **[modify this language if there is no Inclusion Area anticipated]**

### **IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION**

A. The District Boundaries [and the Inclusion Area Boundaries **[delete if not applicable]**] consist of approximately [ ] ([ ]) acres of [insert type of use] land. The current assessed valuation of the property within the District Boundaries [and the Inclusion Area Boundaries; delete if not applicable] is \$0 for purposes of this Service Plan and, at build out, is expected to be \$[ ]. These amounts are expected to be sufficient to reasonably discharge all Debt as set forth in the Financial Plan.

B. The population of the District at build-out is estimated to be approximately [ ] ([ ]) people.

C. **[Describe the nature of the Project, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify all plans, including without limitation applicable City and South Adams plans, that apply to any portion of the District Boundaries and describe how the Project is consistent with these plans. Please state if the District is to be located within an urban renewal area and if the Project anticipates using tax increment financing. If the District intends to pursue TIF, provide information on how TIF financing will interact with the District's financing.]**

D. Approval of this Service Plan by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or

the total site/floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within the City Approvals.

**V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

A. Powers of the District and Service Plan Amendment. The District shall have the power and authority to provide the Public Improvements and related Operation and Maintenance activities within and without the District Boundaries as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations of this Service Plan. Notwithstanding the foregoing, if, after the Service Plan is approved, any State law is enacted or interpreted to grant additional powers or authority to metropolitan districts, such powers and authority shall not be deemed to apply to the District unless this Service Plan is amended. The restrictions in this Service Plan are being voluntarily acquiesced to by the District and shall not be interpreted in any way as a limitation on the District's sovereign power and shall not negatively affect the District's status as a political subdivision of the State.

B. Services. The District is authorized to and will provide the following services: **[identify all with specificity]**.

C. Public Improvements.

1. The District is authorized to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing [identify if ongoing ownership or maintenance of any is included] of the following Public Improvements, as more specifically identified in **Exhibit D** and as may be more specifically defined in the City Approvals, from its revenues and by and through the proceeds of Debt to be issued by the District in accordance with the requirements of State law and this Service Plan: **[identify all with specificity]**.

2. The costs of such Public Improvements, based on a preliminary engineering survey as shown in Exhibit D, is estimated to be approximately \$[\_\_\_\_\_], including construction costs together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. The cost, scope, and definition of such Public Improvements may vary over time.

3. Changes in the Public Improvements or cost, which are approved by the City in a City Approval, shall require a Service Plan Amendment or amendment to such City Approval to be approved by the City Council by prior resolution.

4. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District shall obtain the City's approval of civil engineering plans and shall obtain applicable permits for construction and installation of the Public Improvements prior to performing work thereon.

5. The District shall implement the following independent controls to ensure the proper allocation of District expenditures to the Public Improvements if the Public Improvements are planned, designed, acquired, constructed, installed, relocated, redeveloped, or financed, or

maintained as part of an overall project including private improvements or improvements benefiting other property: **[identify all with specificity]**.

6. No District costs, including costs of Public Improvements or Operations and Maintenance, shall be shifted to undeveloped property in the District Boundaries in such a manner so as to inequitably burden such property to the benefit of developed property in the District Boundaries.

7. Public Improvements shall be certified as to inventory and cost by an independent professional engineer for acquisition or financing by the District. Public Improvements conveyed to the City shall be free and clear of all liens and encumbrances and shall comply with any other conveyance prerequisites required in the City Code, unless otherwise approved by the City Manager prior to conveyance.

8. The City shall not be bound by this Service Plan in reviewing or determining any development or construction application.

D. Intergovernmental Agreements, Reimbursement Agreements, & Privately Placed Debt.

1. In addition to the District Activities IGA, the District is authorized to enter the following intergovernmental agreements to fulfill the purposes of the District: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each]**.

2. The District anticipates entering the following Reimbursement Agreements related to the organization or operation of the District or the provision of services or Public Improvements: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each]**.

3. Unless specifically described in this Service Plan or without receiving approval of the City Council by prior resolution, the District shall not enter into any intergovernmental agreement or Reimbursement Agreement that would either be likely to cause a substantial increase in the District's budget or involve the pledge of any mill levy or other District revenue.

4. The District shall implement the following independent controls to ensure the reasonableness of expenditures to be reimbursed to any owner of property or developer of land within the District Boundaries, or any person or entity affiliated with any such owner or developer: **[identify all with specificity]**.

5. Prior to the issuance of any privately placed Debt, or the execution of any owner or developer Reimbursement Agreement, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the

**Commented [A4]:** Not all IGA's are known at the organization of the District, and coordination among districts is encouraged under statute. Approval of agreement by the City puts the City in the line of fire if there are disputes about the agreements later on.

designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. No Reimbursement Agreement by which the District would reimburse any owner of property or developer of land within the District Boundaries, or any person or entity affiliated with any such owner or developer, shall: (a) allow for the accrual of compound interest; (b) permit the reimbursement of more than 80% of the actual costs of the Public Improvements; (c) permit the reimbursement of more than \$25,000 of the costs of organizing the District; or (d) permit the reimbursement of any development security expenses.

7. If the District is to receive reimbursement from any source for the cost of any Public Improvement funded, any and all resulting reimbursements received by the District for that improvement shall be deposited into the District's debt service fund and used for the purpose of retiring the Debt of the District.

E. Extraterritorial Service Agreements.

1. The District anticipates entering into the following agreements for the provision of services to properties or persons outside of the District Boundaries: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each]**.

2. Unless specifically described in this Service Plan or without receiving approval of the City Council by prior resolution, the District shall not enter into any agreement to provide services to properties or persons outside of the District Boundaries.

F. Limitations & Restrictions on District Authority. In addition to any limitations and restrictions established by applicable law or elsewhere in this Service Plan, any powers and authority of the District shall be limited and restricted as provided in this section.

1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements and for the financing of the Regional Improvements. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners association in a manner consistent with the City Approvals. The District is not authorized to Operate or Maintain any part of the Public Improvements unless provision therefor has been made pursuant to the District Activities IGA, except that the District may be required and obligated to Operate and Maintain certain park and recreation improvements within the District Boundaries and shall Operator and Maintain any other part of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity. Unless otherwise specified in the District Activities IGA, all parks and trails shall be open to the general public free of charge.

2. Fire Protection Limitation. The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or

**Commented [A5]:** Special districts are formed for the primary purpose of financing public improvements, and should have the authority under the service plan to pay all costs that the special district is able to finance under statute, without limitation. These are legitimate costs and should be payable by the district if funds are available.

**Commented [A6]:** This limitation is likely to require multiple amendments to the District Activities IGA over time as the need/desire to provide services arises.

services, unless such facilities and services are provided pursuant to the District Activities IGA. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

3. Public Safety Services Limitation. The District is not authorized to provide policing or other security services. However, the District may, pursuant to § 32-1-1004(7), C.R.S. as amended, furnish security services pursuant to an intergovernmental agreement with the City.

4. Water Rights/Resources Limitation. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to the District Activities IGA. Water and sanitary sewer facilities shall be conveyed to South Adams. The District's powers with regard to water and sanitary sewer service are limited to financing, designing, constructing and installing facilities and then conveying ownership of the same to South Adams pursuant to the then-applicable rules, regulations and policies of South Adams. The District is not authorized to operate or maintain water facilities or sanitary sewer facilities, except as may be authorized by South Adams and the City. The District shall consent to the overlap of the District Boundaries by South Adams (in the event such property is not already included within the service area of South Adams) and shall execute a resolution of consent to the same as may be requested by South Adams.

5. Initial Debt and Mill Levy Limitation. The District shall not issue any Debt, impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service fund, impose or collect any Fees used for the purpose of repayment of Debt, until each of the following conditions have occurred: (a) the Land Use Approval, including a developer agreement to provide related Public Improvements, has been made effective; (b) the District and the City have executed the District Activities IGA; (c) the District has received voter authorization for the Regional Improvement Mill Levy and for the District's entry into an intergovernmental agreement with the City obligating the District to pay the proceeds from the Regional Improvement Mill Levy to the City; and (d) a covenant or agreement, running with the land and enforceable by the City, has been recorded against all property within the District Boundaries obligating any owner of property within the District Boundaries, other than an End User, to provide a disclosure notice identifying at a minimum the maximum mill levy and associated taxes and fees that may be imposed on each property for each year the District is in existence as well as the Public Improvements that are or have been paid for by the District, in a form approved by the City, to each potential End User of a residential lot or dwelling unit before the End User enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

6. Total Debt Issuance Limitation. The District shall not issue Debt in excess of \$[ ] total principal amount, which is [is less than] the lesser of: (a) 100% of the estimated costs of the Public Improvements; or (b) the anticipated maximum bonding capacity of the District, which was derived from the Financial Plan using the following assumptions: (i) the interest rate is not less than 150 basis points more than the 30 Year AAA MMD Index (as of the date of the submission of the Service Plan); (ii) inflation on completed structures does not exceed a 4% biennial growth rate; (iii) the bonds amortize over a period of 35 years; and (iv) debt service coverage is no less than 100%; and (v) the levying by the District of [ ] ( ) mills. The

Total Debt Issuance Limitation shall apply to bonds, loans, notes, or other instruments issued for the purpose of refunding, refinancing, reissuing or restructuring outstanding Debt.

7. Fee Limitation.

a. General. No Fee related to repayment of Debt shall be authorized to be imposed upon or collected from Taxable Property owned or occupied by an End User subsequent to the issuance of a certificate of occupancy for such Taxable Property and no such Fee shall be imposed upon or collected from an End User. Notwithstanding any of the foregoing, the restrictions of this paragraph shall not apply to any Fee imposed upon or collected from Taxable Property for the purpose of funding the Operation and Maintenance costs of the District.

b. Anticipated Fees. The District anticipates imposing the following Fees: **[identify all]**. Any Fee not identified in this Service Plan shall require a Service Plan Amendment prior to imposition.

c. Public Improvements Fee Limitation. The District shall not receive, spend or pledge to any Debt any fee, assessment, tax or charge that is collected by a retailer on the sale of goods or services by such retailer and that is measured by the sales price of such goods or services, except as provided pursuant to the District Activities IGA.

d. Nontaxable Property. The District shall not cooperate with or support the conversion of any Taxable Property to a tax-exempt status if such Taxable Property was included in the Financial Plan except as provided in this Service Plan. Prior to any sale of real property within the District Boundaries for a nontaxable use, the seller shall demonstrate to the satisfaction of the City Council that the tax-exempt use of the property will not materially impact the District's ability to meet its annual debt service obligations. If the seller cannot satisfy this burden, the District shall impose a fee on the purchaser in an amount comparable to the revenue that would have been generated by an equivalent property tax from the property until such time as the District's outstanding Debt has been paid off. Such fee revenue shall be used for the repayment of outstanding Debt. The City Council may, by resolution, waive this provision.

8. Grants Limitation. The District shall not apply for grant funds distributed by any agency of the United States Government or the State without the prior written approval of the City Manager. This does not restrict the collection of Fees for services provided by the District to the United States Government or the State.

9. Sales and Use Tax. The District shall not invoke or exercise any actual or perceived City sales and use tax exemption.

10. Television Relay and Translation Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to the District Activities IGA.



11. Telecommunication Facilities. The District agrees that no telecommunication facilities owned, operated or otherwise allowed by the District shall affect the ability of the City to expand its public safety telecommunication facilities or impair existing telecommunication facilities.

12. Zoning and Land Use Requirements. The District shall be subject to all of the City's zoning, subdivision, building code and other land use requirements.

13. Growth Limitations. The District acknowledges that the City shall not be limited in implementing City Council or voter-approved growth limitations, even though such actions may reduce or delay development within the District and the realization of District revenue.

14. Eminent Domain Limitation. The District shall not exercise the power of eminent domain without a prior resolution of the City Council consenting to the exercise of such power.

15. Inclusion Limitation. [Except for the inclusion of property within the Inclusion Area Boundaries, the] The District may not include property into the District Boundaries without a prior resolution of the City Council approving such inclusion.

16. Exclusion Limitation. The District may not exclude property from the District Boundaries without a prior resolution of the City Council approving such exclusion. Notwithstanding the foregoing, the District shall promptly hear and determine any request for exclusion by any property owner in accordance with § 32-1-501, C.R.S.

17. Overlap Limitation. The District shall not consent to the organization of any additional metropolitan district organized under the Special District Act that will overlap the District Boundaries [or the Inclusion Area intended for inclusion into the District Boundaries] unless the aggregate mill levy for payment of Debt will not at any time exceed the Maximum Debt Mill Levy of the District.

19. Consolidation and Subdistrict Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without a prior resolution of the City Council approving such consolidation. The District shall not form a subdistrict without a prior resolution of the City Council approving the formation of such subdistrict.

20. Bankruptcy Limitation. All limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a service plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

a. shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

b. are, together with all other requirements of Colorado law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

21. Authorities. The District shall not enter into any agreement establishing an authority or other separate entity under Section 29-1-201 *et seq.*, C.R.S., without a prior resolution of the City Council approving the District's participating in the establishment of such authority or separate entity.

22. Land Acquisition. The purchase price of any land acquired by the District from a developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal. All conveyances by the District to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City at the District's cost, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code. Land and easements conveyed to the City shall be free and clear of all liens, encumbrances, easements, and covenants, unless otherwise approved by the City Manager prior to conveyance.

## **VI. FINANCIAL PLAN**

### **A. General**

1. The District's Financial Plan, attached as **Exhibit E**, reflects the District's anticipated schedule for issuing such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Fees and other legally available revenues, subject to the limitations of this Service Plan. The Financial Plan is based on economic, political and industry conditions as they presently exist and reasonable projections and estimates of future conditions. These projections and estimates are not to be interpreted as the only method of implementation of the District's goals and objectives but rather a representation of one feasible alternative. Other financial structures may be used so long as they are in compliance with this Service Plan. Based upon the assumptions contained in the Financial Plan, the Financial Plan projects the issuance of Debt to fund the Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property within the District Boundaries by End Users. The Financial Plan anticipates that the District will acquire, construct, and complete all Public Improvements.

2. The Financial Plan demonstrates that the District will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the District will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the District at the time of issuance.

### **B. Debt Issuance**

1. The total Debt the District shall be permitted to issue shall not exceed \$[\_\_\_\_\_], as detailed in Section V.F.6. The District shall be permitted to issue Debt on a schedule and in such year or years as the District determines shall meet its needs and the financing shall be phased to serve development as it occurs.

2. All Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes and Fees to be imposed upon all Taxable Property within the District, as limited by this Service Plan. The District will also rely

upon various other revenue sources authorized by law to the extent consistent with this Service Plan. The District shall not issue Debt with a lien that is subordinate or junior to any outstanding District Debt.

3. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law.

4. The District shall not issue or undertake any Debt or enter into any Reimbursement Agreement if, in the opinion of the External Financial Advisor, the terms of such Debt or Reimbursement Agreement are not reasonable and in the best interest of the District and its future End Users based upon the status of development in the District, the projected tax base increase in the District, the security offered, and other considerations as may be identified by the External Financial Advisor.

5. Prior to the District issuing any Debt or refinancing any outstanding Debt, bond counsel engaged by the District shall submit the proposed financing documents to the City Manager no less than 30 days prior to issuance. The City may, in its sole discretion, comment on such proposed issuance or refinancing but its comment shall not be relied on by the District or any third party. Neither this provision nor City's comment, or failure to do so, shall be construed as approval or consent to such issuance or refinancing. The City agrees to provide comments, if any, within thirty (30) days of receipt of the proposed financing documents. The submission shall include the proposed dollar amount of the issue, the interest rate and other financing costs, all sources of revenue to be pledged to repayment, including the proposed debt service mill levy, and a description of the credit enhancements, together with any preliminary official statement, if available, or other prospectus for the Debt issue. No less than three (3) days prior to the Debt issuance closing date, bond counsel for the District shall submit to the City Manager: (a) a final offering document; (b) an opinion of the District's counsel that the proposed issuance or refinance of District Debt is authorized by and in compliance with the Service Plan; and (c) a written opinion of an External Financial Advisor as to whether the proposed Debt issuance and its terms (including Debt amount, interest, underwriting discount, cost of issuance, repayment term, redemption feature, couponing, credit spreads, payment, closing date) are reasonable and in the best interest of the District based upon the status of development within the District, the projected tax base increase in the District, the security offered, and other considerations as may be identified by the External Financial Advisor.

6. At least thirty (30) days before their execution, the District shall submit to the City Manager the terms of any agreement that includes a pledge of revenue to an entity or a promise to reimburse funds to another metropolitan district or an entity associated with or controlled by a developer of property within the District Boundaries. The City Manager may, in its sole discretion, comment on such proposed agreement or use any remedy available to the City. Neither this provision nor City Manager's comment or the City's action, or failure to do so, shall be construed as approval or consent to the proposed agreement. The City Manager agrees to provide comments, if any, within thirty (30) days of receipt of the proposed terms. The submission shall include the proposed amount of revenue pledged, the term of the pledge, any applicable interest rate and other financing costs, sources of revenue to be pledged for repayment, and the amount of any proposed mill levy to be pledged. A Debt issuance subject to Section VI.B.5, shall not be subject to this section.

**Commented [A7]:** If the City is involved in the review and approval of agreements, it may open the City to challenge if there is a dispute about the agreement.

C. Maximum Voted Interest Rate and Maximum Underwriting Discount. The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The maximum interest rate on any Debt and Reimbursement Agreement shall not exceed twelve percent (12%), including any rate applicable upon the occurrence of an event of default. The maximum underwriting discount will be three percent (3%). Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities.

D. Maximum Debt Mill Levy, Operation and Maintenance Mill Levy and Maximum Combined Mill Levy.

1. The Maximum Combined Mill Levy, which includes both the Maximum Debt Mill Levy and the Maximum Operation and Maintenance Mill Levy, shall not exceed fifty (50) mills. The Regional Improvement Mill Levy shall not be counted against the Maximum Combined Mill Levy.

2. The District may impose an ad valorem tax (a mill being equal to 1/10th of 1 cent) upon the Taxable Property within the District for the purpose of paying the debt service requirements on District Debt, subject to the Maximum Combined Mill Levy. The Maximum Debt Mill Levy shall not exceed [ ] ( ) mills, provided the Maximum Debt Mill Levy shall not apply for any period when the total amount of the District's Debt is equal to or less than fifty percent (50%) of the District's assessed valuation;

3. The District may impose an ad valorem tax (a mill being equal to 1/10th of 1 cent) upon the Taxable Property within the District for the purpose of paying Operation and Maintenance costs, subject to the Maximum Combined Mill Levy. The Maximum Operation and Maintenance Mill Levy shall not exceed ten (10) mills even if the Maximum Debt Mill Levy does not apply or if the District has no mill levy for the payment of debt service requirements.

4. No mill levy imposed by the District shall be adjusted to account for changes in the method of calculating assessed valuation (including any change in the ratio of actual valuation) or any constitutionally mandated tax credit, cut or abatement, without a Service Plan Amendment.

5. To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S. the term "District" shall be deemed to refer to the District and to each such subdistrict collectively, so that the limitations contained in this Service Plan will apply to the District and to each subdistrict on a collective basis, including but not limited to the limitation on total Debt, Maximum Combined Mill Levy, Maximum Debt Mill Levy and Maximum Operation and Maintenance Mill Levy. For example, if a subdistrict levies twenty mills on property within its boundaries for Debt service, then the District is only permitted to levy up to the Maximum Debt Mill Levy less twenty mills on the same property for Debt service so that the Maximum Debt Mill Levy is not exceeded with respect to the property within the subdistrict's boundaries.

E. Maximum Debt Mill Levy Imposition Term. The District shall not impose a levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) on any property developed for residential use which exceeds the Maximum Debt Mill Levy Imposition

Term. Each instrument evidencing Debt and each Reimbursement Agreement that is privately placed with a developer or owner of the property to be benefitted with Public Improvements shall provide that the District's obligations thereunder shall be discharged at the end of the Maximum Debt Mill Levy Imposition Term regardless of whether such obligation is paid in full.

F. Debt Instrument Disclosure Requirement. In the text of each instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Debt agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this [bond or other obligations for payment] contained herein, in the resolution of the District authorizing the issuance of this [bond or other obligations for payment] and in the Service Plan for the District.

Similar language describing the limitations with respect to the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the District Boundaries.

G. Security for Debt. The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. TABOR Compliance. The District shall comply with TABOR. With prior approval of the City Council, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services and programs. To the extent allowed by law, any entity created by the District will remain under the control of the District's Board, and any such entity shall be subject to and bound by all terms, conditions, and limitations of the Service Plan and the District Activities IGA.

I. District Operating Costs.

1. The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be approximately Fifty Thousand Dollars (\$50,000), which will be eligible for reimbursement from Debt proceeds.

2. In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The [ ] operating budget for the District is estimated to be approximately Twenty-Five Thousand Dollars (\$25,000) which is anticipated to be derived from ad valorem property taxes and other revenues.

**VII. REGIONAL IMPROVEMENT MILL LEVY**

A. General. The District shall be authorized to provide for the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs related to the provision of Regional Improvements, and the Operation and Maintenance thereof.

B. Regional Improvement Mill Levy Authority. The District shall seek the authority to impose an additional Regional Improvement Mill Levy of ***[select number based on type of District: five (5) mills for a residential District; one and one half (1.5) mills for a commercial District; ten (10) mills for an industrial District]*** as part of the District's initial TABOR election. The District shall also seek from the electorate in that election the authority under TABOR to enter into an intergovernmental agreement with the City obligating the District to pay as a multiple-fiscal year obligation the proceeds from the Regional Improvement Mill Levy to the City.

C. Regional Improvement Mill Levy Imposition.

- 1) **[For a Residential District]** The District shall impose the Regional Improvement Mill Levy at a rate of five (5) mills for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.
- 2) **[For a Commercial District]** The District shall impose the Regional Improvement Mill Levy at a rate of (i) one (1) mill for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the twentieth (20th) year; and (ii) one and one-half (1.5) mills from the twenty-first (21st) year through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.
- 3) **[For an Industrial District]** The District shall impose the Regional Improvement Mill Levy at a rate of (i) five (5) mills for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the twentieth (20th) year; and (ii) ten (10) mills from the twenty-first (21st) year through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.

D. Lump Sum. The City may, in its sole discretion, require a cash lump sum payment for Regional Improvements in addition to, or as an alternative to, imposing the Regional Improvement Mill Levy.

E. Regional Improvements that Benefit Adjacent Planned Developments. The City shall make a good faith effort to require planned developments that (1) are adjacent to the District's Boundaries and (2) will benefit from the Regional Improvement to also impose a Regional Improvement Mill Levy, to the extent possible.

F. Regional Improvements Authorized Under Service Plan. If so notified by the City Manager, the Regional Improvements shall be considered Public Improvements that the District

would otherwise be authorized to design, construct, install redesign, re-construct, repair or replace pursuant to this Service Plan and applicable law.

G. Expenditure of Regional Improvement Mill Levy Revenues. Revenue collected through the imposition of the Regional Improvement Mill Levy shall be paid to the City, for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of Regional Improvements, and the Operation and Maintenance thereof, which benefit the End Users of the District as prioritized and determined by the City, unless the City and the District agree to another manner of expenditure through an intergovernmental agreement approved by the City Council.

H. Regional Improvement Mill Levy Term. The imposition of the Regional Improvement Mill Levy shall not exceed a term of forty (40) years from December 31 of the tax collection year after which the Regional Improvement Mill Levy is first imposed.

## **VIII. ANNUAL REPORT**

A. General. The District shall be responsible for submitting an annual report to the City Manager no later than October 1 of each year following the year in which the Order and Decree creating the District has been issued. The annual report may be made available to the public by the City, including through the City's website.

B. Annual Report Contents. In addition to the requirements of the Special District Act, the annual report shall include information as to the following:

1. Narrative Summary. A narrative summary of the progress of the District in implementing its Service Plan for the report year.

2. Budget. The current year budget of the District, including a description of the Public Improvements to be constructed in such year.

3. Financial Statements. Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year prepared in accordance with generally accepted accounting principles, including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

4. Capital Expenditures. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.

5. Financial Obligations. Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the District's Boundaries as of January 1 of the report year and the current total District mill levy pledged to Debt retirement in the report year.

6. Board Contact Information. The names and contact information of the current directors on the District's Board, any District manager and the attorney for the District shall be listed in the report. The District's current office address, phone number, email address and any website address shall also be listed in the report.

C. Reporting of Significant Events. The annual report also shall include information as to any of the following:

1. Boundary changes made or proposed to the District Boundaries as of December 31 of the prior year.

2. Intergovernmental agreements with other governmental entities either entered into or proposed as of December 31 of the prior year.

3. Copies of the District's rules and regulations, if any, as of December 31 of the prior year (or information on how to access such information on the District's website).

4. A summary of any litigation to which the District is a party or has knowledge that involves the Public Improvements as of December 31 of the prior year.

5. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

6. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

## **IX. DISSOLUTION**

Upon an independent determination by the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution pursuant to applicable State law. In no event shall dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law or while continuing Operation and Maintenance obligations exist. The District shall dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and, if the District has been authorized to Operate or Maintain any part of the Public Improvements under the District Activities IGA, the District shall retain only the power necessary to impose and collect taxes or Fees to pay for costs associated therewith.

## **X. DISTRICT TRANSPARENCY**

A. Disclosure to Purchasers. The District shall use reasonable efforts and due diligence to cause any home builder or developer of residential property within the District Boundaries to provide to all initial purchasers of property within the District Boundaries written notice of disclosure that describes the impact of the District's mill levy and fees on each residential property along with the purchase contract. The District shall record such notice of disclosure with the Adams County Clerk and Recorder at the time the subdivision plat is recorded or, if the subdivision plat has already filed, provide the City with a copy of the recorded notice of disclosure. The notice



of disclosure shall include the maximum mill levy that may be assessed and the associated taxes that may be imposed on the residential property for each year the District is in existence.

B. Disclosure to Potential Residential Buyers. The District shall also use reasonable efforts and due diligence to provide information to potential residential buyers by: (i) furnishing to any developer of property or home builders within the District Boundaries information describing the key provisions of the Service Plan for the approved District for prominent display at all sales offices; and (ii) inspecting the sales offices within the District Boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the maximum mill levy and associated taxes and fees that may be imposed on each property for each year the District is in existence as well as the Public Improvements that are or have been paid for by the District.

C. Annual Notices. In addition to the requirements of the Special District Act, the District shall send the annual notice required by Section 32-1-809, C.R.S. by mail to all property owners within the District Boundaries no later than January 31 of each year.

D. Website. The District shall maintain a website as required by the Special District Act. The website shall be used primarily for the purpose of District operations and transparency. The website shall not contain marketing materials or ads of any kind promoting the development, developers or homebuilders within the District Boundaries.

## **XI. DISTRICT GOVERNANCE**

A. Board Meetings. All special and regular District meetings shall be open to the public and shall be held at a location within the City limits that is within twenty miles of the District Boundaries. Upon the first sale to an End User: (1) the Board shall meet no less than on a quarterly basis; (2) all meetings shall include remote access participation and public comment options; and (3) the Board shall meet on a weekday evening no less than once a year, including any meeting including its annual budget hearing, consideration of any agreement pledging District revenue or requiring the District to reimburse the expenses of any person or entity, consideration of any request for a modification to the Service Plan, consideration of Debt issuance or refinancing, and consideration of any action implicating this Section V.F.7.d of this Service Plan.

**Commented [A8]:** Given the digital age we are in and the fact that most jurisdictions now hold electronic meetings, it just doesn't make sense to require in person meetings. We have seen better turnout and participation in meetings by holding them virtually rather than in person.

B. Board Membership. The Board shall be comprised of persons who are qualified "eligible electors" of the District as provided by State law. The District shall not enter into any agreement or approve any rule or regulation by which the ability of End Users to be elected to or appointed to the Board is removed or diminished.

C. City Fees. The District will pay an annual oversight fee to the City and other fees established for the processing, review, and consideration of District requests, as required by the City Code.

## **XII. MATERIAL MODIFICATIONS**

A. Material modifications to this Service Plan may be made only in accordance with Section 32-1-207, C.R.S., as a Service Plan Amendment. No modification shall be required for an action of the District that does not materially depart from the provisions of this Service Plan, unless

otherwise provided in this Service Plan. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and Public Improvements under evolving circumstances without the need for numerous amendments, provided that the modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall be permitted to accommodate development needs if consistent with the then-current City Approvals, this Service Plan, and the District Activities IGA. Actions of the District that violate the limitations of this Service Plan shall be deemed to be material modifications to this Service Plan and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

B. Any notice given by the District pursuant to Section 32-1-207(3)(b), C.R.S. shall, in addition to the requirements set forth in such section, be mailed by first class mail, postage pre-paid, to the office of the City Attorney for the City and the action described in such notice shall not be undertaken by the District until the City Council approves such action by resolution. If the City fails to respond to such notice, the District shall petition the City for an amendment to this Service Plan.

C. Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of the District;

2. An alteration or revision of the proposed schedule of debt issuance set forth in the Financial Plan;

3. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function, or facility authorized in the Service Plan, except as authorized by an amendment to the District Activities IGA approved by the City Council, provided that non-material modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall not be considered material modifications;

4. Failure to perform a service or function, construct an improvement, or acquire a facility required by the Service Plan, except as authorized by an amendment to the District Activities IGA approved by the City Council;

5. Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Maximum Combined Mill Levy, the Maximum Debt Mill Levy, or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment;

6. The conversion of any Taxable real property within the District to a tax-exempt status if such property was included in the District's financial plan unless the District demonstrates to the City Council that the tax-exempt use of the property does not materially impact the District's ability to meet its annual debt service obligations;

**Commented [A9]:** This is inconsistent with Section VI.A.1 - "These projections and estimates are not to be interpreted as the only method of implementation of the District's goals and objectives but rather a representation of one feasible alternative. Other financial structures may be used so long as they are in compliance with this Service Plan"

The district should have the flexibility to finance improvements on a schedule that best fits the needs of the district, and not a prescribed timeline.

7. The exclusion of any real property within the District without a prior resolution of the City Council approving such exclusion;

8. Failure to provide an essential Public Improvement or service described this Service Plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the District;

9. Failure to receive authorization for the Regional Improvement Mill Levy, or failure to impose, collect, or remit the Regional Improvement Mill Levy at the direction of the City, or the issuance of any Debt prior to the authorization of the Regional Improvement Mill Levy; and

10. Failure to comply with any of the preconditions, prohibitions, limitations and restrictions of this Service Plan.

### **XIII. DISTRICT ACTIVITIES IGA**

The form of the District Activities IGA, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit C**. The District shall approve the District Activities IGA in substantially the form attached as **Exhibit C**, with any additional details, terms and conditions deemed necessary by the City and the District if consistent with this Service Plan, at its first Board meeting after its organizational election. Failure of the District to execute the District Activities IGA shall constitute a material modification and shall require a Service Plan Amendment. The City Council will approve the District Activities IGA in the form attached as **Exhibit C** simultaneously with approval of the Service Plan or at the time of the District's approval, at its sole discretion.

### **XIV. SANCTIONS**

Should the District undertake any act without obtaining prior City Council approval or consent or City Manager approval or consent under this Service Plan, that constitutes a material modification to this Service Plan requiring a Service Plan Amendment or under the Special District Act, or that does not otherwise comply with the provisions of this Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;
2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District's development or construction or operation of improvements or provision of services;
3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
4. Exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

**Commented [A10]:** What happens if a homeowner controlled district takes an action without City approval, will an unrelated builder be punished when they have no control over what the district does or does not do?

### **XV. RESOLUTION OF APPROVAL**

The District agrees to incorporate the City Council's resolution approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in Adams County, Colorado.

**XVI. CONCLUSION**

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S. establishes the following:

A. There is sufficient existing and projected need for organized service in the area to be serviced by the District.

B. The existing service in the area to be served by the District is inadequate for present and projected needs.

C. The District is capable of providing economical and sufficient service to the area within the District Boundaries.

D. The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

E. Adequate service is not, and will not be, available to the area through the City or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

F. The facility and service standards of the District are compatible with the facility and service standards of the City within which the District is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.

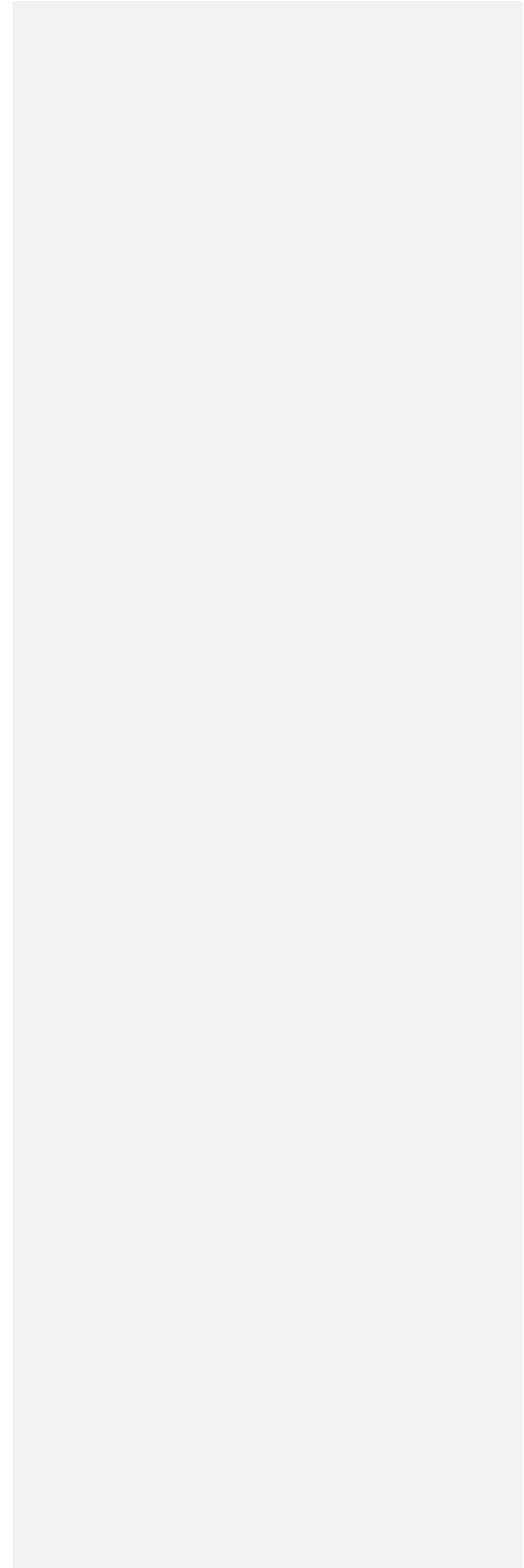
G. The Service Plan is in substantial compliance with a comprehensive plan adopted pursuant to Section 30-28-106, C.R.S. and the City Code.

H. The Service Plan is in compliance with any duly adopted City, county, regional or State long-range water quality management plan for the area.

I. The creation of the District is in the best interests of the area proposed to be served.

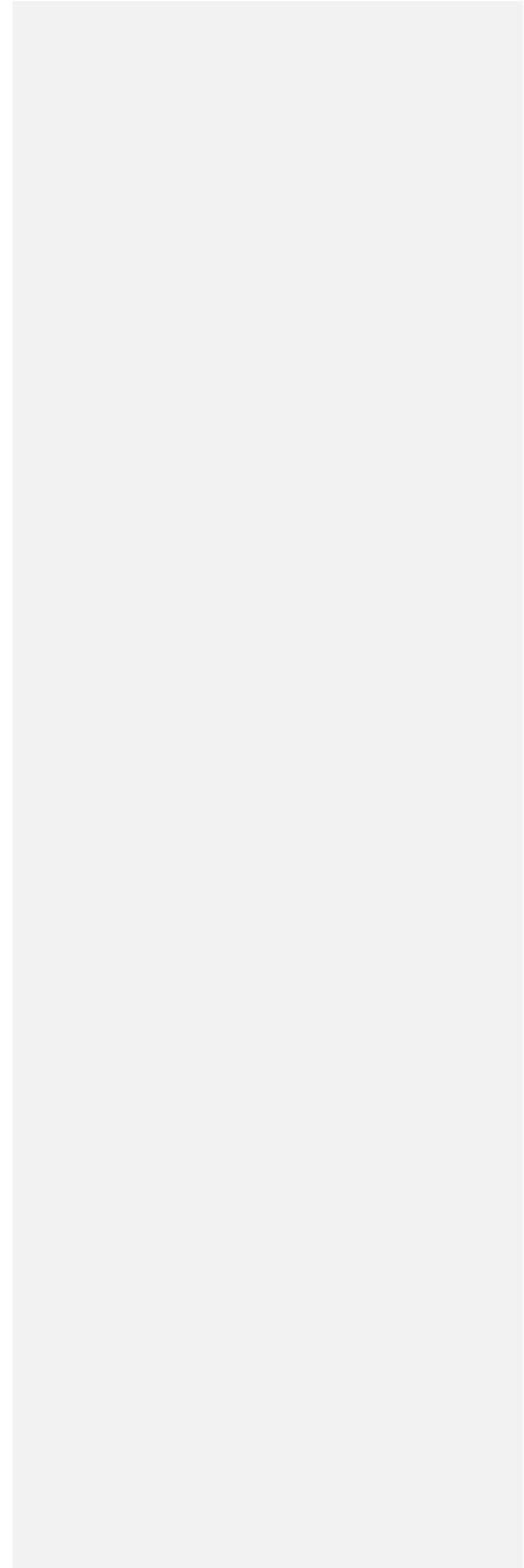
**EXHIBIT A-1**

Legal Description and Map of [Initial] District Boundaries



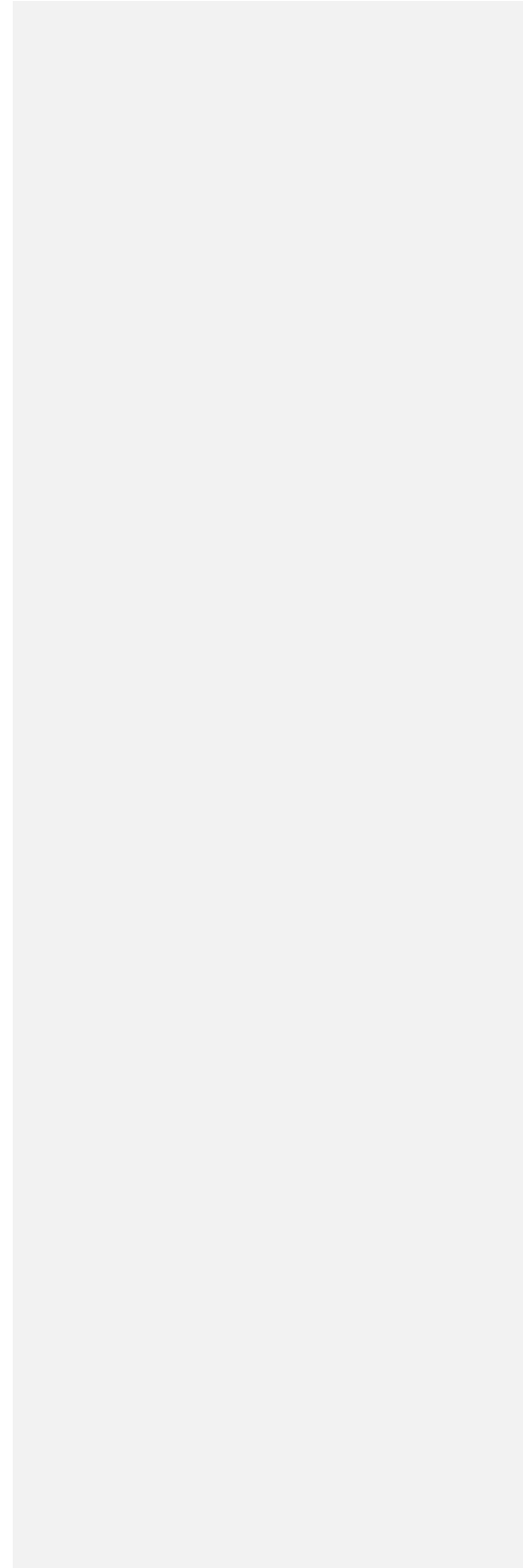
**EXHIBIT A-2**

Legal Description and Map of Inclusion Area



**EXHIBIT B**

Commerce City Vicinity Map



**EXHIBIT C**

Form District Activities IGA



## **EXHIBIT D**

### Description of Public Improvements

Must include:

- A written narrative and description of the Public Improvements
- A map/maps
- Preliminary construction drawings
- Preliminary engineering survey
- Estimated costs

**EXHIBIT E**  
Financial Plan

**EXHIBIT F**

Description of Regional Improvements

## MEMORANDUM

To: Commerce City Staff and Council  
From: Laci Knowles, Managing Director of the Special District Group at D.A. Davidson & Co.  
Date: May 2, 2022  
Re: Commerce City's Proposed Revised Model Service Plan

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The comments below apply specifically to the Single District Model Service Plan, but also substantively to Chapter 13 of the municipal code.

### **Single District Model Service Plan**

- 35-year maximum debt levy imposition term is shorter than the standard 40-year imposition term throughout model Service Plans in the state. The shorter imposition term reduces the amount of available tax revenue and will shorten the term of bonds, which will reduce the amount of net proceeds available for public infrastructure improvements.
- Section V(C)3 requires City Council approval for changes in public improvements. Development plans need sufficient flexibility and this is a burdensome requirement.
- Section V(D)6 prohibits compound interest on developer reimbursements. Additionally, the provision prohibits the reimbursement of more than 80% of the actual costs of public infrastructure. Unsure of the source of the prohibition of full costs of installation of infrastructure, but this is a disincentive to making the very best communities for our state.
- Section V(E)5 requires infrastructure plans to be approved prior to issuance of bonds, which could prevent access to capital at the earliest stages of development, when Districts need it most.
- Section V(E)6's determination of the debt limit uses methodology that sets an artificially low limit.
  - o The cost of public improvements is likely to be the lesser amount.
    - This ceiling does not account for any inflation in the cost of public improvements
    - The cost of public improvements would more accurately be characterized as a net proceeds amount as opposed to a principal amount. The way this is drafted in the proposed Model Service Plan does not take into account the necessity of a debt service reserve fund, capitalized interest or other factors that create the delta between principal amount and bond proceeds in typical financings
  - o The restrictions set forth in the proposed Model Service Plan financial model are overly conservative.
    - The restriction on the interest rate used will force lower principal amounts in tighter markets, which means some districts will see lower limits if they happen to seek service plan approvals at a time of higher interest rates.
    - The metro area has seen inflation on existing structures at levels higher than 4% in recent years
    - The 35 year debt service imposition term has been addressed above
- Section VI(B)2 appears to prohibit the issuance of subordinate or junior lien bonds, necessary instruments that allows public infrastructure to be financed throughout the state.

- Section VI(D)4 prohibits Gallagher adjustment. Although Gallagher was partially repealed, risks remain and bondholders need the promise of revenue neutrality
- Why does the regional mill levy get 40 years and District debt levy get 35 years?
- Section XII(C)
  - o Paragraph 2 includes alterations of debt issuance as material modification of the SP. This provision is overly burdensome and inconsistent with the idea of establishing debt limits and other controls on the issuance of debt throughout the proposed Model Service Plan. Districts need the flexibility to issue when the market conditions are best, to raise capital on the terms most favorable to taxpayers within the District, without having to get Council approval which costs time.
  - o Paragraph 6 – Districts typically have no control over the tax-status of property within its boundaries.
  - o Paragraph 7 – property excluded is followed by the debt levy via state statute. It is overly burdensome to require City Council approval of every exclusion.

**From:** Laci Knowles <lknowles@dadco.com>

**Sent:** Friday, May 6, 2022 3:36 PM

**To:** Tinklenberg, Roger - CM <rtinklenberg@c3gov.com>

**Subject:** Gallagher Adjustment / Model SP

Hi Roger,

It's been a while since we refinanced the GID, and I hope you are well

We have a handful of clients that are working through the Service Plan approval process for Commerce City. I know that Council is in the process of revising the Model Service Plan. Davidson submitted comments on the draft last week.

I'm writing regarding the mill levy adjustment language. As drafted, it doesn't allow for levies to be adjusted in the event the legislature changes the assessment rate in the future. While the repeal of Gallagher helped make this less of an issue, the legislature can still change the assessment rate, and we don't believe there is a market for debt backed by a mill levy that doesn't adjust with changes in the assessment rates (whether commercial or residential). I'm hoping that the Council will consider including the historical adjustment language in the revisions to Commerce City's Model Service Plan, so the financing tool remains viable. The goal is only to keep revenue generation neutral in case assessment rates change in the future.

I submitted some comments prior to last week's Council meeting that included additional comments, but this one issue is critical to preserving the ability to bond against both debt service mill levies and the regional improvement levy.

Happy to discuss further if that would help, or discuss with staff or any of the lawyers involved in drafting the language. Again, hope you are well!

Best,  
Laci

**LACI KNOWLES | Managing Director, Public Finance Banker**

[lknowles@dadco.com](mailto:lknowles@dadco.com) | 303.764.5764

D.A. Davidson & Co.

1550 Market Street, Suite 300, Denver, CO 80202



**D|A DAVIDSON**  
FIXED INCOME CAPITAL MARKETS

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## CHAPTER 13 – METROPOLITAN DISTRICTS

### ARTICLE I. – GENERAL PROVISIONS

#### Sec. 13-1000. – Purpose and policy preferences.

- (a) The purpose and intent of this chapter is to establish review processes, service plan requirements, decision criteria, and oversight standards for the regulation of metropolitan districts organized under Title 32 of the Colorado Revised Statutes that include property within the boundaries of the city.
- (b) The city is receptive to district formation and continued existence as an instrument to provide competitive financing for projects, to build better and enhanced infrastructure and, where needed, to provide essential and beneficial services that are otherwise not available and could not be practically provided by the city or any other existing municipal or quasi-municipal entity, including existing special districts, within a reasonable time and on a comparable basis.
- (c) The city prefers service plans and modifications to existing service plans that meet the standards and goals set forth in this chapter and the requirements of the Special District Act, use the city's model service plan, provide a demonstrated public benefit, and conform to the city's model service plan.
- (d) The city does not prefer service plans or modifications to existing service plans that:
  - (1) provide no extraordinary public benefits or fund only basic infrastructure [THIS IS A VERY SUBJECTIVE CRITERIA AND DOES NOT PROVIDE DIRECTION OR CERTAINTY FOR DEVELOPERS WITHIN THE CITY. IT MAY LEND ITSELF TO CHALLENGE OF FAVORITISM OR CLAIMS OF UNFAIRNESS] ;
  - (2) rely on fees, other than a limited one-time capital improvements fee, for the payment of costs of public improvements [PLEASE CLARIFY IF THIS APPLIES TO OPERATIONAL FEES TO MAINTAIN PUBLIC IMPROVEMENTS – IF IT IS INTENDED THAT THIS APPLY TO OPERATIONAL FEES, THEN, THE ABILITY TO HAVE THE DISTRICT SERVE IN LIEU OF AN HOA WILL BE SEVERELY LIMITED. THERE ARE MANY BENEFITS TO ONLY HAVING ONE ENTITY PERFORMING THESE SERVICES, SUCH AS EFFICIENCY AND SAVING ON DUPLICATIVE COSTS FOR INSURANCE, LEGAL AND ACCOUNTING. ];
  - (3) restrict or inhibit the election of end users to district boards or the decision-making of future boards controlled by end users through the use of onerous intergovernmental agreements or revenue pledge agreements, control or managing districts, or other mechanisms;
  - (4) provide for the taxation of property owners for more than thirty-five (35) years for the purpose of paying costs of public improvements, including any refunding or refinancing of existing debt unless a majority of the district board are end users who



vote in favor of a refunding of a part or all of the district's debt that will result in a net present value savings [A 35 YEAR MAXIMUM MILL LEVY IMPOSITION TERM IS NOT STANDARD IN MOST JURISDICTIONS IN COLORADO. MOST ALLOW 40 YEARS. ALTHOUGH IT IS ONLY A DIFFERENCE OF 5 YEARS, THIS 5 YEAR DIFFERENCE MAY MAKE THE DEBT TO BE ISSUED BY THE DISTRICT NOT MARKET REASONABLE, RESULTING IN A HIGHER INTEREST RATE, WHICH WOULD DIRECTLY IMPAIR THE RESIDENTS, INCLUDING THE RESIDENTS' DETERMINATION TO REFUND EXISTING DEBT OR ISSUE DEBT IN THE FUTURE TO HELP PAY FOR NEW IMPROVEMENTS THE RESIDENTS MAY DESIRE, SUCH AS NEW PLAYGROUND EQUIPMENT, REFRESHED LANDSCAPING, PERIMETER FENCING, ETC. IN ADDITION, IT MAY LEAD TO THE CREATION OF MORE DISTRICTS FOR PROJECTS THAT HAVE MULTIPLE PHASES];

- (5) provide for an original issuance of debt by the district that require the imposition of a mill levy exceeding fifty (50) mills for repayment;
- (6) rely on property taxes as a primary revenue source if the future assessed value of all property within the district at full build-out is projected to be less than five million dollars (\$5,000,000.00), subject to adjustment for increases in the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics; or
- (7) rely on financing mechanisms that involve private reimbursements to developers instead of independent, market-based options [AT THE EARLY STAGE OF DEVELOPMENT, IT IS COMMON THAT THE DEVELOPER PAY FOR PUBLIC IMPROVEMENT COSTS WITH THE ABILITY TO BE REPAID FROM THE DISTRICT. SAFE GAURDS ARE BEING PROPOSED THAT PROVIDE FOR EXTERNAL FINANCIAL ADVISOR CONFIRMATION THAT ANY REPAYMENT IS REASONABLE AS WELL AS VERIFICATIONS BY INDEPENDENT ENGINEERS ENGAGED BY THE DISTRICT THAT THE PUBLIC IMPROVEMENTS WERE ALLOWED BY THE SERVICE PLAN AND ARE REASONABLE IN COST FOR THE COMMERCE CITY METROPOLITAN AREA]; or
- (8) permit the reimbursement of a developer of property in the district on unfair or unreasonable terms. [SEE OUR COMMENT TO NUMBER 7 ABOVE]

### **Sec. 13-1001. – Definitions.**

*Debt* means bonds or other obligations for the payment of which a district has promised to impose an ad valorem property tax mill levy and/or collect fee revenue. *Debt* includes an intergovernmental agreement that contains a pledge of an ad valorem property tax mill levy and/or fee revenue between the District and any other governmental or quasi-governmental entity.

*District activities agreement* means the intergovernmental agreement between any district and the city for the purpose of implementing the service plan.

*End user* means any owner, or tenant of any owner, of any taxable improvement within a district's boundaries who is intended to become burdened by the imposition of ad valorem property taxes imposed by the district, provided a person or entity that entitles or develops property or constructs residential or commercial structures for the purpose of sale to another person is not an end user.

*Extraordinary public benefits* means development outcomes that benefit the public in an extraordinary manner, including without limitation by: exceeding minimum requirements and standards; delivering or facilitating the delivery of infrastructure or services that addresses significant challenges or strategic priorities previously identified by the city; providing systemic solutions that deliver a greater benefit to the community; or any other factor deemed relevant by the city. [THIS IS A VERY SUBJECTIVE CRITERIA AND DOES NOT PROVIDE DIRECTION OR CERTAINTY FOR DEVELOPERS WITHIN THE CITY]

*Financial plan* means, in addition to the requirements of the Special District Act, a description of the manner in which the public improvements will be financed with a schedule of debt and operating financial projections, including debt issuance and service schedules, prepared by an investment banking firm or qualified financial advisor establishing the maximum debt capacity of the district based on assumptions of a projected interest rate not to exceed twelve percent (12%), projected assessed valuation of property to be included in the district, and the project rate of absorption of the assessed valuation. The financial plan must use market-based, market comparable valuation and absorption data with an annual inflation rate not to exceed the lesser of three percent (3%) or the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics. The financial plan must also include the regional improvement mill levy and detailed projections of the revenue to be generated by the imposition of the regional improvement mill levy for a period of forty (40) years following the year in which the regional improvement mill levy is implemented [WE NOTE THAT THE DISTRICT IS LIMITED TO AN IMPOSITION PERIOD OF 35 YEARS, YET THE REGIONAL MILL LEVY IS ALLOWED TO RUN FOR 40 YEARS].

*Inactive special district* has the meaning assigned in the Special District Act.

*Material modification* or *materially modifies* (or any variation thereof), when used with respect to a service plan, means a change to a service plan of a basic or essential nature as provided in C.R.S. 32-1-207(2)(a), an action or omission of a district that is materially inconsistent with the service plan, or a provision of a service plan that is specifically designated as a material modification if changed or not complied with in any manner. Departures from a service plan that constitute a material modification include without limitation:

- (1) actions or failures to act that create materially greater financial risk or burden to the taxpayers of the district;
- (2) an alteration or revision of the proposed schedule of debt issuance set forth in the financial plan [FINANCIAL PLANS ARE DONE AT THE TIME THE DISTRICT IS FORMED. THEY ARE DONE WITH BEST INFORMATION AVAILABLE, BUT AS A RESULT OF MARKET

CONDITIONS, ARE CERTAINLY SUBJECT TO VARIATION IN THE FUTURE. THE HOUSING CRASH OF 2008 IS A PRIME EXAMPLE OF MARKET FORCES CREATING VARIATIONS IN FINANCIAL AND BUILD OUT PLANS. THERE SHOULD BE SOME LATITUDE IN REVISION OR ALTERATION TO THE DEBT SCHEDULE TO ACCOUNT FOR THESE MATTERS, I.E., AN ALTERATION OR REVISION OF THE PROPOSED SCHEDULE OF DEBT ISSUANCE BY MORE THAN 5 YEARS.];

- (3) performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function, or facility authorized in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council, provided that non-material modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall not be considered material modifications;
- (4) failure to perform a service or function, construct an improvement, or acquire a facility as provided in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council;
- (5) the issuance of any Debt with a mill levy pledge, or which results in a mill levy pledge, that exceeds the maximum combined mill levy, maximum debt mill levy, or maximum debt imposition term authorized by the district's service plan;
- (6) the conversion of any taxable real property within the district to a tax-exempt status if such property was included in the district's financial plan unless the district demonstrates to the city council that the tax-exempt use of the property does not materially impact the district's ability to meet its annual debt service obligations [THE DISTRICT HAS NO CONTROL OVER WHETHER A TAX EXEMPT USER ACQUIRES PROPERTY WITHIN ITS BOUNDARIES. THIS CREATES A MATERIAL MODIFICATION FOR SOMETHING THAT IS NOT IN THE CONTROL OF THE DISTRICT];
- (7) the exclusion of any real property within the district without a prior resolution of the city council approving such exclusion;
- (8) failure to provide an essential public improvements or services described in its service plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the district;
- (9) failure to receive authorization for the regional improvement mill levy, or failure to impose, collect, or remit the regional improvement mill levy, or the issuance of any debt prior to the authorization of the regional improvement mill levy;
- (10) failure to comply with any of the preconditions, prohibitions, limitations and restrictions of the service plan.

*Metropolitan district or district* has the meaning assigned to the term “metropolitan district” in the Special District Act but does not include the Greater Brighton Fire Protection District, the South Adams County Fire Protection District, or the South Adams County Water & Sanitation District.

*Operate and Maintain or Operation and Maintenance* means (a) the ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of any public improvements or the provision of services related thereto; and (b) the reasonable and necessary costs of ongoing administrative, accounting and legal services to a district.

*Public Improvements* means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as authorized by a service plan that benefit the district and serve the future residents and taxpayers of the district.

*Regional improvement mill levy* means a mill levy to be imposed, collected, and remitted to the city by a district on an annual basis to pay costs related to the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs of such regional improvements as identified in accordance with the service plan, subject to change as planning, design, acquisition, funding, construction, installation, relocation, and redevelopment occurs, as the city in its sole reasonable discretion believes are public in nature, have a benefit to privately-owned properties paying the mill levy, and are permitted by state law to be paid for from revenues derived from the district, including operations and maintenance thereof.

*Residential district* means a metropolitan district with a proposed service plan considered by the city council after the January 1, 2022, in which district more than ten percent (10%) of the property to be included in the district is expected to be residential development.

*Special District Act* means Article 1 of Title 32 of the Colorado Revised Statutes, as amended from time to time.

*Special district* has the meaning assigned in the Special District Act.

#### **Sec. 13-1002. – Authority.**

- (a) The city council retains full discretion and authority regarding the approval or disapproval of any matters relating to metropolitan districts, including without limiting the terms, conditions, and limitations of any service plan, the approval, conditional approval, disapproval of any service plan or modification thereof, or any other application by a metropolitan district. This chapter is not intended, and shall not be construed to, to limit the discretion or authority of the city and the city council.
- (b) In the manner and to the extent provided in this article, the city council shall maintain continuing jurisdiction over the operations and affairs of any district operating within and

shall exercise its rights in relation thereto, as deemed appropriate by the city council, pursuant to the Special District Act and this article.

- (c) No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the city council's determination pursuant to this article, whether based upon irregularities or jurisdictional defects, shall be maintained unless commenced within thirty (30) days after final action of the city council or else be thereafter perpetually barred.

#### **Sec. 13-1003. – Fees.**

- (a) *Application fees.* Any application under this article or any other request by a metropolitan district for city consideration shall be accompanied by a fee in the amount established by resolution of the city council to defray the costs of the city's review and, if applicable, a deposit of funds to reimburse the city for the costs of third-party legal, financial or other consulting services retained by the city in its sole discretion related to the application or inquiry, including without limitation review and analysis of **proforma analysis [THE CITY'S DETERMINATION OF WHAT IS A REASONABLE PROFIT FOR A DEVELOPER TO MAKE IS SUBJECTIVE AND IS NOT COMMON PLACE IN MOST JURISDICTIONS IN COLORADO. IT WILL NOT TAKE INTO CONSIDERATION ALL OF THE POTENTIAL RISKS THE DEVELOPER TAKES RESULTING FROM INFLATION, INCREASES IN CONSTRUCTION COSTS AND MATERIALS, CHANGES IN THE MARKET, ALL OF WHICH COULD MAKE A PROJECT THAT ONCE WAS POTENTIALLY PROFITABLE TO ONE THAT CANNOT BE BUILT]**, district financial plans, original service plan applications and proposed service plan amendments. The city council may establish a tiered fee structure to account for the complexity of an application, including applications proposing modifications to the model service plan established pursuant to this article. Any application or inquiry fees, other than unspent deposited funds, shall be nonrefundable.
- (b) *Annual oversight fee.* All metropolitan districts organized wholly or partially within the city's boundaries shall pay to the city an annual fee for review of metropolitan district operations and service plan compliance in an amount established by resolution of the city council. The city council may establish a tiered fee structure to account for unique considerations, including district population, relationships with other metropolitan districts, consolidated service plans, or outstanding debt. Annual oversight fees shall be nonrefundable. Neither the city's review, nor any communications from the city to a district regarding its service plan shall be construed as (1) approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

#### **Sec. 13-1004. – Sanctions.**

Should any district undertake any act without obtaining the prior approval of the city as required by the district's service plan or district activities agreement or this article that constitutes a

material modification, the city council may impose one (1) or more of the following sanctions, as it deems appropriate:

- (1) exercise any applicable remedy under the Special District Act;
- (2) withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the district's development or construction or operation of improvements or provision of services [WE ASSUME THAT THIS PERTAINS SOLELY TO PERMITS OR APPROVALS OF THE DISTRICT AND NOT OF THIRD PARTIES DOING BUSINESS WITHIN THE BOUNDARIES OF THE DISTRICT. TO BE ABLE TO PULL A PERMIT FROM A THIRD PARTY THAT HAS NO RELATIONSHIP TO THE DISTRICT WOULD BE PUNITIVE AND UNFAIR TO THAT THIRD PARTY. AN EXAMPLE IS A DEVELOPMENT THAT HAS MULTIPLE HOMEBUILDERS, BUT THE BOARD OF THE DISTRICT IS COMPRISED OF HOMEOWNERS, THE ABILITY OF A HOMEOWNER CONTROLLED BOARD TO INTENTIONALLY DO SOMETHING WRONG TO STOP DEVELOPMENT IS TROUBLESOME. ADDITIONALLY, PULLING PERMITS AND STOPPING DEVELOPMENT MAY HURT EXISTING HOMEOWNERS THAT ARE RELYING ON THE REST OF THE COMMUNITY TO BE COMPLETED. THE FIRST HOMEOWNERS TO CLOSE COULD BE NEGATIVELY IMPACTED BY A HALF-BUILT COMMUNITY IF PERMITS WERE STOPPED];
- (3) exercise any legal remedy under the terms of any intergovernmental agreement under which the district is in default; or
- (4) exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the district, to ensure compliance with the provisions of the service plan or applicable law.

**Sec. 13-1005. – Application to existing metropolitan districts.**

This article shall apply to all metropolitan districts organized wholly or partially within the city's boundaries, including any metropolitan district organized before the effective date of this article to the extent not inconsistent with such district's service plan.

**ARTICLE II. – SERVICE PLANS.**

**Sec. 13-2100. – Service plans.**

(a) *Model service plan.*

- (1) The city manager shall develop a model service plan consistent with this article for approval by the city council by resolution. The approval of a model service plan shall not be construed to limit the discretion or authority of the city council to approve modifications to the model service plan in its consideration of any application. Pending the approval of a model service plan by the city council, the city manager may designate a model service plan consistent with this article.

(2) The model service plan will include the following at a minimum:

- (i) a prohibition on the use of eminent domain without prior authorization of the city council;
- (ii) a prohibition on the inclusion or exclusion of property from the district without prior authorization of the city council;
- (iii) a prohibition on the imposition of fees, rates, tolls, penalties, or charges on end users for the payment of debt or for the costs of any public improvements [CONFIRM WHETHER THIS APPLIES TO OPERATIONAL FEES; SEE PRIOR NOTE];
- (iv) a prohibition on the execution of any intergovernmental agreement or reimbursement agreement that is likely to cause a substantial increase in the district's budget if not described in the service plan without prior authorization of the city council;
- (v) a prohibition on the execution any agreement establishing an authority or other separate entity under Section 29-1-201, et seq., C.R.S. without prior authorization of the city council;
- (vi) a prohibition on the invocation or exercise of any actual or perceived city sales and use tax exemption;
- (vii) a prohibition on the execution of any extraterritorial service agreement not described in the service plan without prior authorization of the city council;
- (viii) a prohibition on the consolidation with any other special district or the formation of any subdistrict without prior authorization of the city council;
- (ix) a prohibition on shifting district costs (including public improvement costs and operation and maintenance costs) to undeveloped property in the district in such a manner so as to inequitably burden such property to the benefit of developed property in the district;
- (x) a prohibition on the reimbursement of any developer of property in the district more than eighty percent (80%) of the actual costs of public improvements, more than \$25,000 of the costs of organizing the district; or any development security expenses [THESE LIMITATIONS ARE NOT COMMON IN OTHER JURISDICTIONS];
- (xi) a restriction of the total debt authorization to no more than the lesser of one hundred percent (100%) of the maximum projected debt capacity or one hundred percent (100%) of the estimated costs of the public improvements, as shown in the district's financial plan [THIS DOES NOT ALLOW FOR INFLATION OR INCREASES IN CONSTRUCTION COSTS. AS THE CITY IS AWARE, CONSTRUCTION

COSTS HAVE INCREASED SUBSTANTIALLY IN THE LAST 24 MONTHS. IN ADDITION, IT DOES NOT ACCOUNT FOR THE COSTS TO ACTUAL ISSUE BONDS, INCLUDING CAPITALIZED INTEREST, RESERVE FUNDS, COST OF ISSUANCE, ALL OF WHICH REDUCE THE AMOUNTS AVAILABLE TO PAY FOR PUBLIC IMPROVEMENTS];

- (xii) a limitation of the total mill levy authorization to fifty (50) mills for both debt service and operations and maintenance, with no more than ten (10) mills being used for operations and maintenance [THESE LIMITS ARE NOT COMMON PLACE IN MANY JURISDICTIONS IN COLORADO. CAPPING THE OPERATIONS AND MAINTENANCE MILL LEVY MAY SET A DISTRICT UP FOR FAILURE IF IT IS NOT ABLE TO PAY ITS OPERATIONAL EXPENSES] even if the debt service mill levy becomes unlimited, provided that the service plan may allow for unlimited mill levy for the payment of debt if the total amount of the district's debt is equal to or less than fifty percent (50%) of the district's assessed valuation;

1. no provision authorizing the adjustment of any mill levy to account for changes in the changes in the method of calculating assessed valuation (including any change in the ratio of actual valuation) or any constitutionally mandated tax credit, cut or abatement [THIS WILL SEVERLY IMPACT THE DISTRICT'S ABILITY TO ISSUE DEBT. NO BOND INVESTOR WILL BUY DEBT THAT HAS A REDUCING REVENUE STREAM THAT IS BEYOND THE CONTROL OF THE DISTRICT. THERE ARE NO PROTECTIONS IN THE EVENT THE DISTRICT'S REVENUE DECLINES DUE TO A REDUCTION IN THE ASSESSMENT RATIO. THE ADJUSTMENT IS INTENDED TO BE REVENUE NEUTRAL AND CAN BE WORDED AS SUCH. AN EXAMPLE OF HOW THIS WORKS IS AS FOLLOWS:

#### ***Reduction in Residential Assessment Ratio***

<b>Tax Collection Year</b>	<b>Actual Value (V)</b>	<b>Assessment Ratio (R)</b>	<b>Assessed Value (AV) [V x R = AV]</b>	<b>Mill Levy<sup>1</sup>/Rate<sup>2</sup> (M)</b>	<b>Amount of District Tax Due [AV x M]</b>
(b) 2018	\$600,000	7.20%	\$43,200	50.00/0.05000	\$2,160
(c) 2019-2020	\$600,000	7.15%	\$42,900	50.349/.050349	\$2,160

<sup>1</sup> Based on a projected mill levy, not a representation of any actual current or future mill levy.

<sup>2</sup> Each mill is equal to 1/1000<sup>th</sup> of a dollar.

(a) If in 2018 the Actual Value of the Property was \$600,000, and the Residential Assessment Ratio established by the State Legislature for that year was 7.20%, the Assessed Value of the Property was \$43,200 (i.e., \$600,000 x 7.20% = \$43,200). Therefore, the District's certified debt service of 50.000 mills generated approximately \$2,160 in revenue for the District.

- (xiii) If in 2019 and 2020 the Actual Value of the Property remains at \$600,000, based upon the State Legislature's determination to change the Residential Assessment Ratio for 2019 and 2020 (for collection in 2020 and 2021, respectively) to 7.15%, the Assessed Value would be \$42,900 (i.e., \$600,000 x 7.15% = \$42,900). Therefore, the District needs to certify a debt service mill levy of 50.349 mills in



order to generate the same revenue in 2019 and 2020 that it received from the 2018 debt service mill levy.];

- (xiv) a limitation on the term for the repayment of debt to thirty-five (35) years for residential districts [AGAIN, THIS IS NOT COMMON AND MAY MAKE DEBT DIFFICULT TO ISSUE RESULTING IN HIGHER INTEREST RATES WHICH WOULD BURDEN THE RESIDENTS. IT MAY ALSO RESULT IN THE NEED FOR MORE DISTRICTS TO BE FORMED IN MULTI-PHASE PROJECTS] unless a majority of the district board are residents of the district and have voted in favor of a refunding that will result in a net present value savings as set forth in C.R.S. 11-56-101 *et seq.*;
- (xv) a limitation of the maximum voted interest rate on any debt to twelve percent (12%) and of the maximum underwriting discount for any debt to three percent (3%).
- (xvi) a prohibition of compounding interest in any reimbursement agreement with any owner of property or developer of land in the district;
- (xvii) a limitation of the purchase price of any land acquired by the district from any developer of property within the district's boundaries to no more than the current fair market value at the time of purchase;
- (xviii) sufficient independent controls to ensure the reasonableness of interest rates for any debt obligations of the district, including any repayment or reimbursement agreement related to public improvements;
- (xix) sufficient independent controls to ensure that expenditures reimbursable to any developer are reasonable;
- (xx) sufficient independent controls to ensure that district expenditures are properly allocated if public improvements as part of an overall project including private improvements or improvements benefiting other property [CLARIFY, MANY DEVELOPMENTS ARE REQUIRED TO MAKE IMPROVEMENTS OF A REGIONAL NATURE, I.E., DRAINAGE IMPROVEMENTS, ROAD IMPROVEMENTS THAT BENEFIT OTHER PROPERTIES OUTSIDE THE DISTRICT, HOW CAN AN ALLOCATION BE MADE IF THE CITY MANDATES SUCH IMPROVEMENTS TO BE MADE AS PART OF THE APPROVAL PROCESS FOR THE COMMUNITY?];
- (xxi) a prohibition on the district's cooperation with or support of the conversion of any real taxable property within the district to a tax-exempt status, if such property was included in the district's financial plan;
- (xxii) provisions requiring the submittal to the city for review and comment of agreements involving any pledge of revenue or promise to reimburse any person

or entity from district revenue and any proposed debt issuance or refinancing of outstanding debt;

(xxiii) a provision requiring the dissolution of the district after the district's debts and financial obligations have been paid or defeased, and, if the district has been authorized to operate and maintain any part of the public improvements under a district activities agreement, the district shall retain only the powers necessary for ongoing operations and maintenance as authorized in its district activities agreement;

(xxiv) restrictions on the issuance of debt by the district until the developer of the property within the district's boundaries agrees to provide a disclosure notice, approved by the city, to each potential end user of a residential lot or dwelling before the end user enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

(xxv) provisions implementing the governance and transparency requirements of this article and the Special District Act, as each may be amended.

(b) *Contents.* In addition to those contents required by the C.R.S. 32-1-202(b), the Special District Act and otherwise provided in this article, all service plans shall include the following:

- (1) a description of the relationship between the organizer of the district and the developer and owner of any property to be included in the district's boundaries;
- (2) a specific identification of all fees that the district can impose;
- (3) a description of the services that will be provided by the district;
- (4) a financial plan;
- (5) a description of the public improvements that will be built, acquired, or financed by the district, including at a minimum a map or maps and preliminary construction drawings of such improvements, a written narrative and description of the public improvements, and a general description of the district's role with regard to the public improvements;
- (6) a description of the material terms of and justification for any intergovernmental agreement or reimbursement agreement which is required or known at the time of district formation that is likely to be required to fulfill the purposes of the district;
- (7) a description of the material terms of and justification for any extraterritorial service agreements known at the time of district formation; and
- (8) a district activities agreement.

**Sec. 13-2101. – Regional improvement mill levy.**

- (a) All service plans approved after the January 1, 2022, shall provide for the authorization of and require the imposition, collection, and remittance of a regional improvement mill levy applicable to all properties within the district to ensure that properties benefiting from improvements funded through such mill levy pay a reasonable share of costs associated with such improvements. [HOW WILL THE CITY EVIDENCE THAT THEY ARE APPLYING THIS REVENUE TO REGIONAL IMPROVEMENTS DIRECTLY BENEFITTING THE PROPERTY? WHAT IF THERE ARE NO REGIONAL IMPROVEMENTS DIRECTLY IMPACTING THE PROPERTY?. WHAT IF THE SURROUNDING PROPERTY USES ARE NOT KNOWN AT THE TIME, THEREBY MAKING IT IMPOSSIBLE TO KNOW WHETHER THE SURROUNDING PROPERTIES WILL RECEIVE A BENEFIT?]
- (b) The service plan shall require that, as part of the district's initial TABOR election, the district seek authority to impose the regional improvement mill levy and the authority under TABOR to enter into an intergovernmental agreement with the city obligating the district to pay as a multiple-fiscal year obligation the proceeds from the regional improvement mill levy to the city. The district shall not issue debt or impose any mill levy or fee for the repayment of debt until the district has complied with this subsection.
- (c) The regional improvement mill levy shall be in addition to and not subject to any limitation on the mill levy for debt service or operations and maintenance.
- (d) When imposed by a district, a regional improvement mill levy shall not exceed a term of forty (40) years from December 31 of the tax collection year after which the regional improvement mill levy is first imposed. [AGAIN, NOTE THE DISTRICT DEBT IS CURRENTLY LIMITED TO 35 YEARS, BUT THE REGIONAL MILL LEVY GOES FOR 40 YEARS. WE WOULD SUGGEST BOTH RUN FOR 40 YEARS]

**ARTICLE III. – REVIEW.****Sec. 13-3100. – Applications.**

Applications pursuant to this article shall be filed with the Department of Community Development on forms approved by the City Manager and shall be accompanied by any materials required by this article or deemed necessary by the City Manager to carry out the provisions of this chapter or applicable law and all required fees and deposits. Applications must identify all deviations from the model service plan and the requirements of this article. The City Manager may require the submission of additional information at the time of application or at any time during the review process at the applicant's cost. No application will be considered complete until all fees and deposits have been paid and all known requested information has been submitted.

**Sec. 13-3101. – Service plans.**

(a) *Approval required.* Approval of a service plan by the city council shall be required for the organization of any metropolitan district wholly or partially within the city's boundaries.

(b) *Conceptual review.*

(1) *Purpose.* The conceptual review process in this subsection is intended to provide information to the applicant for use in determining whether it will submit an application for a service plan and the contents of such application. Any comments, suggestions, and recommendations by the city, including the city council and city staff, is not binding or limiting on the city in any manner. No service plan application will be accepted unless a conceptual review under this subsection has been completed within the preceding twelve (12) months for the same or substantially similar property and purpose as would be subject to the proposed service plan. [DOES THIS MEAN THAT IF THERE IS NO SIMILAR PROJECT WITHIN 12 MONTHS, THE CITY WILL NEVER APPROVE ANOTHER SERVICE PLAN???]

(2) *Concept letter.* To propose a new service plan, an applicant must pay the applicable fee and provide a concept letter including the following:

- (i) a summary narrative of the proposed service plan and the development it will serve, including the current status of the development;
- (ii) a detailed proposal for the metropolitan district, including: a clear justification of the need for the district, including a proforma analysis [IF THE CITY POLICY LIMITS REIMBURSEMENT TO 80% OF THE PUBLIC IMPROVEMENT COSTS, WHY DOES THE CITY NEED TO SEE A PROFORMA? THIS IS NOT CUSTOMARY IN MOST JURISDICTIONS] or other appropriate documentation demonstrating that no other entities (including the applicant) consider it desirable, feasible or practical to undertake the public improvements or demonstrating that it is more economically advantageous to the future end users of the proposed metropolitan district for the district to undertake the public improvements; an explanation of the public benefits that the district will provide; anticipated modifications to the model service plan; proposed district powers; estimated costs to be financed; anticipated fees and purposes; anticipated proposed mill levy rates; anticipated repayment term; proposed timeline for district formation; and anticipated build-out period;
- (iii) a sketch plan detailing the property location and boundaries; surrounding land uses; proposed use(s); proposed public improvement(s) (including structures, infrastructure, parks, drainage; and landscaping); and significant natural features (including irrigation ditches and canals); known utility locations; and
- (iv) a detailed description of the services that the district will provide.

- (3) *Preliminary staff meeting.* The city manager or their designee will review the concept letter and meet with the applicant to discuss the proposal, initial staff feedback, potential public benefits, and procedural and fee requirements.
- (4) *Council review; notice.* Following the preliminary staff meeting, the city council will review the concept letter at an informal public hearing scheduled by the city manager at which the applicant, staff, and the public may be heard and the city council may provide informal, non-binding comments. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (B) all special districts in which the property subject to the application is included.

(c) *Service plan review.*

- (1) *Timing.* Applicants are advised to submit applications for service plans by no later than the first of December for a spring election in the year following the submittal or by no later than the first day of May for an election in the fall of the year of submittal.
- (2) *Staff review.* The city manager or their designee will conduct a staff review of service plan applications. Staff will refer applications to the Development Review Team, the city attorney, and any special districts in which the subject property is included. The city attorney may engage special counsel and the city manager may retain consultants having pertinent experience, at the applicant's cost, to assist in the city's review. Applicants may expect multiple rounds of review and comment on the application.
- (3) *Staff report and hearing.* Upon completion of the staff review, the city manager will schedule the application for a public hearing before the city council and provide a report to the city council. No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election. The city manager's report will include:
  - (i) an assessment of public benefits and extraordinary public benefits, including value of basic infrastructure against the public benefits;
  - (ii) a financial assessment of the proposed district's debt capacity and servicing ability, based on the applicant's financing plan;
  - (iii) an assessment of any proposed fees and the proposed debt authorization and mill levy;
  - (iv) a report of proposed changes to the model service plan, the applicant's justifications for such changes, and recommendations regarding each proposed change;

- (v) an assessment of any intergovernmental agreements or inter-district relationships and any proposed extra-territorial service identified in the proposed service plan; and
- (vi) any additional information relevant to the proposed service plans conformity with this article and the Special District Act.

(4) *Notice of hearing.*

- (i) At least thirty (30) days prior to the hearing, the applicant must cause written notice of the hearing to be:
  - (A) delivered by first-class mail to: (I) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (II) all special districts in which the property subject to the application is included; and
  - (B) published once in a newspaper of general circulation in the city.
- (ii) Mailed and published notices shall include the date, time, and location of the public hearing and the following information:
  - (A) a description of the general nature of public improvements and services to be provided by the proposed district;
  - (B) a description of the property to be included in the district and any future inclusion area, with the description being given by street address, by reference to a subdivision plat, or by use of a metes and bounds legal description if the property is not subdivided;
  - (C) a statement of the maximum amount of property tax mill levy that can be imposed on property in the district;
  - (D) a statement of the maximum debt authorization proposed in the service plan;
  - (E) a statement that property owners within the proposed boundaries may request that the city council consider excluding their property from the proposed district boundaries by filing a petition for exclusion in the city clerk's office at least ten (10) days before the hearing;
  - (F) a statement that the proposed service plan and a map of the proposed district and its preliminary plans can be reviewed in the city manager's office; and
  - (G) a statement that advance registration may be required and the hearing may be conducted virtually, as stated in the published meeting agenda.

(5) *Hearing.*

- (i) The City Council will consider the application, the city manager's report, and any other testimony at a public hearing and after the hearing, shall approve, approve with conditions, or deny the application, based on the approval criteria in this article. The hearing will be conducted as a legislative proceeding but shall include a staff presentation, a presentation and rebuttal by the applicant, public testimony, and council questions.
- (ii) No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election.

(6) *Action on application.*

- (i) The city council shall disapprove a proposed service plan unless evidence satisfactory to the city council of each of the following is presented:
  - (A) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
  - (B) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
  - (C) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
  - (D) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.
- (ii) Subject solely to the city council's discretion, the city council may disapprove a proposed service plan if the city council determines that the formation of the proposed district is not necessary for development to occur in the area to be served by the proposed district or that formation of the district would not be in the best interests of the city or its current or future residents and property owners, including those of the area to be served. The city council may consider any factor that the city council deems relevant to its consideration, including without limitation whether:
  - (A) Adequate service is, or will be, available to the area to be served through other existing governmental or quasi-governmental entities within a reasonable time and on a comparable basis;
  - (B) the facility and service standards of the proposed district are not compatible with the facility and service standards of the city or another governmental or quasi-governmental entity providing service to the area to be served;

- (C) the proposed service plan is not in substantial compliance with the comprehensive plan or any adopted area plan;
  - (D) the proposal is not in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area to be served;
  - (E) the district's performance of ongoing operations or maintenance, if included, are in the best interests of the city and the existing or future residents and taxpayers of the district;
  - (F) the proposed district does not provide extraordinary public benefits [THIS IS VERY SUBJECTIVE];
  - (G) the service plan involves a multi-district structure and the projected project absorption and public improvements to be financed by the districts are not reasonably projected to occur over an extended period of time or the project does not involve varying projected uses;
  - (H) the service plan does not satisfactorily detail the mechanics of a proposed multi-district structure or such mechanics do not comply with this article;
  - (I) the proposed modifications to the model service plan are not justified to the city council's satisfaction or are not consistent with this article;
- (iii) As an alternative to denial of a proposed service plan, the city council may conditionally approve a service plan by requiring specific changes to the proposed service plan or on the provision of additional information.
- (iv) Before acting on a service plan application, the city council may, in its discretion, exclude territory from the area to be served by the proposed special district based on the petition of a property owner in the area to be served by the proposed district no later than ten (10) days prior to the hearing unless the applicant establishes to the city council's satisfaction that the exclusion of the property is not in the best interests of the proposed district

**Sec. 13-3102. – Material modifications; amendments.**

- (a) *Approval required.* Approval of any material modification or amendment to an existing service plan by the city council shall be required. Review of any material modification or amendment shall follow the procedure established by this article for the review of service plans and the city council is not limited to only reviewing the requested material modification or amendment. The city council reserves the right to propose and approve amendments or modifications to any section of an existing service plan in connection with the review of any material modification or amendment. The city manager may require a conceptual review of any material modification or amendment in their sole discretion.



- (b) *Notice of certain actions that may constitute material modifications.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any material modification.
- (c) *Restriction on certain actions.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any notice given pursuant to C.R.S. 32-1-207(3)(b) and shall not undertake the action described in such notice until the city council approves such action by resolution. If the city fails to respond to such notice, the district shall apply for an amendment to its service plan to authorize such action.

**Sec. 13-3103. – Other applications.**

- (a) *Scope.* This section shall apply to all applications, inquiries, or requests with respect to a metropolitan district other than an application for a service plan for a new district or a modification to an existing service or an action initiated by the city.
- (b) *Application.* To submit an application, inquiry, or request under this section, the applicant shall submit the application including:
  - (1) A discrete statement of the action that the city is requested to take;
  - (2) A legal and factual justification for the action, including specific citations to applicable provisions of the service plan, any applicable agreement, this article, or the Special District Act;
  - (3) A copy of the minutes or other record of formal action of the district's board authorizing the application, inquiry, or request;
  - (4) Any additional information required by the service plan or the city manager.
- (c) *Authority.* The city council will have authority to determine any application, inquiry, or request under this section except to the extent such authority is vested in another official or body pursuant to the service plan. The decision on the application, inquiry, or request shall be in the sole discretion of the city council or other official or body, as applicable, unless a different standard is established by the service plan, any applicable agreement, this article, or the Special District Act.
- (d) *Hearing; notice.* For any determination by the city council or another body under this section, the application, inquiry, or request will be considered at a public meeting after an informal public hearing at which the applicant, staff, and the public may be heard. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (B) all special districts in which the property subject to the application is included.

**Sec. 13-3104. – Inactive applications.**

If an applicant, having been notified that additional information or corrected materials are required, fails to submit such information or materials within thirty (30) days of the request, or an applicant fails to attend any scheduled meeting or public hearing, the director may notify the applicant that the application is considered inactive and unless corrective action is taken within thirty (30) days, the application shall be considered withdrawn.

**Sec. 13-3105. – Withdrawal of applications.**

After an application is withdrawn by an applicant or by failure of the applicant to take corrective action on an inactive application, no further action on the application shall take place. To re-initiate review, the applicant shall resubmit the application, which in all respects shall be treated as a new application for purposes of review, scheduling, and fees.

**ARTICLE IV. – GOVERNANCE.**

**Sec. 13-4000. – Board meetings and membership.**

(a) *Board meetings.*

(1) All special and regular meetings of district's board of directors shall be open to the public and shall be held at a location that is within the city's boundaries.

(2) All meetings shall include remote access participation and public comment options.

(b) *Board membership.* No district shall enter into any agreement or approve any rule or regulation by which the ability of end users to be elected to or appointed to the district's board of directors is removed or diminished.

(c) *Notices.* In addition to any notices required by the Special District Act, the district shall provide notices of any meeting and any call for nominations through social media [DOES THIS MEAN, FACEBOOK, NEXTDOOR, OR IS POSTING ON DISTRICT WEBSITE ACCEPTABLE? IS THERE A DEFINITION OF WHAT CONSTITUTES SOCIAL MEDIA?] accessible to end users of the district.

**Sec. 13-4001. – Transparency.**

(a) *Website.* All districts shall maintain a website as required by the Special District Act to be used primarily for the purpose of the district's operations and transparency and shall include district formation documents, debt documents, budgets, audits, contracts involving the expenditure of district funds, and meeting minutes.

(b) The website shall not contain marketing materials or ads of any kind promoting the development, developers or homebuilders within the district's boundaries.

(c) *Annual reports.*

- (1) *Requirement.* All metropolitan districts (other than inactive special districts) shall file and distribute an annual report as required by the Special District Act and shall post the annual report to the district's website by no later than October 1 of each year.
- (2) *Contents.* Annual reports shall include all contents required by the Special District Act and any additional information required by the service plan, including at a minimum the following information unless waived by the city council:
  - (i) a narrative summary of the progress of the district in implementing its service plan for the report year;
  - (ii) the current year budget of the district, including a description of the public improvements to be constructed by the district in each year;
  - (iii) except when exemption from audit has been granted for the report year under state law, the audited financial statements of the district for the report year prepared in accordance with generally accepted accounting principles, including a statement of financial condition (i.e. balance sheet) as of December 31 of the report year and a statement of operation (i.e. revenue and expenditures) for the report year;
  - (iv) unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the district in development of improvements in the report year;
  - (v) unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the district at the end of the report year, including the amount of outstanding debt, the amount and terms of any new district debt issued in the report year, the total assessed valuation of all taxable property within the district's service area as of January 1 of the report year and the current total district mill levy pledged to debt retirement in the report year.
  - (vi) the names and contact information of the current directors on the district's board, any district manager, and the attorney for the district; and
  - (vii) the district's current office address, phone number, email address and any website address.
- (3) *Review.* The city manager shall cause the annual report to be provided to the city council and to be posted on the city's website within ten (10) days of the receipt of the annual report. The city council may elect to review the annual report and to require the presence of a representative of a district to discuss the annual report at a regular or special meeting or study session. Neither the city council's review, nor any discussion with the district regarding its annual report shall be construed as (1)

approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

**Sec. 13-4002. – Disclosures to purchasers and buyers.**

- (a) *Disclosure to purchasers.* Districts shall use reasonable efforts and due diligence to cause any home builder or developer of residential property within the district's boundaries to provide to all initial purchasers of property within the district's boundaries, before execution of a purchase contract, written notice of disclosure that includes the information required by C.R.S. 38-35.7-110(2). The district shall record such notice of disclosure with the Adams County Clerk and Recorder at the time the subdivision plat is recorded or, if the subdivision plat has already filed, provide the City with a copy of the recorded notice of disclosure. The notice of disclosure shall include the maximum mill levy that may be assessed and the associated taxes that may be imposed on the residential property for each year the District is in existence.
- (b) *Disclosure to potential residential buyers.* The district shall use reasonable efforts and due diligence to provide information to potential residential buyers by: (i) furnishing to any developer of property or home builders within the district's boundaries information describing the key provisions of the service plan for prominent display at all sales offices; and (ii) inspecting the sales offices within the district's boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the information required by C.R.S. 38-35.7-110(2).

**Sec. 13-4003. – District default.**

- (a) If a district fails to pay its debt when due or defaults in the performance of any obligation that has been agreed to between the district and the city, which obligation has been identified by the city in writing as a material obligation, and such default is continuing after the delivery of notice of such default to the district and the expiration of any cure periods, the district shall not issue additional debt, except refunding bonds issued to avoid or to cure a payment default, without the prior authorization of the city council.
- (b) If a court of competent jurisdiction has made a final determination that a district has defaulted on any of its financial obligations, and such determination is not subject to further appellate review, the district shall be precluded from issuing additional debt, except to refund or refinance a financial obligation for the purpose of avoiding or curing a default without prior authorization of the city council.
- (c) The city shall not be liable for any debt or default of any district by virtue of the city's review or approval of any service plan or district activities agreement.



## MEMORANDUM

To: City of Commerce City

From: McGeady Becher P.C.

Date: May 6, 2022

Re: Comments to City of Commerce City's Proposed Metropolitan District Policy and New Model Service Plan

Thank you for the opportunity to provide comment on the City of Commerce City's proposed Regulations Regarding Metropolitan Districts, including the proposed Model Service Plan.

Our office specializes in the formation and representation of Metropolitan Districts in the Front Range and represents both developers in the formation process as well as Metropolitan Districts whose Board of Directors consists solely of homeowners in the community. In our role as general counsel to over 200 Metropolitan Districts, we see the vital role these entities play in development in Colorado as well as vehicles for mature communities to refresh and complete new or needed capital repairs within their boundaries.

We support the City's efforts to further transparency and education of potential homeowners as to the effect a potential Metropolitan District may have on their homeownership. We do, however, have a concern that the City's efforts to protect homeowners and taxpayers through the Regulations and new Model Service Plan may have some unintended consequences that will directly affect the individuals the City is trying to protect.

Our major concerns are with respect to additional restrictions placed on the mill levy imposition term, inability to adjust the mill levy for changes in the assessment ratio and other restrictions. We are fully in support of a 50 mill levy for debt, which can be adjusted only to offset changes in the assessment ratio that would result in a decrease in revenue. However, additional restrictions will make the issuance of debt difficult and potentially result in higher interest rates for the District. Further, if the District is unable to issue debt as a result of these restrictions, the cost of public improvements will need to be paid for through the cost of the house, creating difficulty for attainable housing.

May 6, 2022

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For ease of review, we have annotated the proposed Regulations and Model Service with our comments. Copies of such annotated documents are attached hereto.

We thank you for your consideration and we are happy to answer any questions you may have.

Sincerely,

McGeady Becher P.C.

**SERVICE PLAN**  
**FOR**  
**[ ] METROPOLITAN DISTRICT**

**CITY OF COMMERCE CITY, COLORADO**

Approved: [ ]

TABLE OF CONTENTS



**LIST OF EXHIBITS**

<b>EXHIBIT A-1</b>	Legal Description and Map of [Initial] District Boundaries
<b>EXHIBIT A-2</b>	Legal Description and Map of Inclusion Area [if applicable]
<b>EXHIBIT B</b>	Commerce City Vicinity Map
<b>EXHIBIT C</b>	District Activities IGA
<b>EXHIBIT D</b>	Description of Public Improvements
<b>EXHIBIT E</b>	Financial Plan
<b>EXHIBIT F</b>	Description of Regional Improvements

## **I. DEFINITIONS**

In this Service Plan, the following terms shall have the following meanings, unless the context clearly requires otherwise:

Board: the board of directors of the District.

City: the City of Commerce City, Colorado.

City Approvals: means, collectively, (a) the final plat for the area within the District, (b) the final development plans and/or landscape plans for the areas within the District, (c) the construction plans for the public improvements within the District, (d) the development agreement a/k/a subdivision improvement agreement or public improvement agreement applicable to the area within the District, (e) any other agreements between the City and the District relating to the area within the District, and (f) any amendments made to any of the foregoing documents. **[IF THE INTENT IS NOT TO APPROVE A SERVICE PLAN UNTIL A PLAT IS APPROVED, THIS MAY RESULT IN A PROLIFERATION OF METROPOLITAN DISTRICTS BECAUSE MULTI PHASE PROJECTS WILL HAVE MULTIPLE PLATS AND WILL HAVE A NEED FOR INFRASTRUCTURE AT THE TIME THE FIRST PLAT IS RECORDED. FURTHER THERE MAY BE INFRASTRUCTURE THAT IS NEEDED FOR ALL PHASES AND CANNOT BE BORNE BY JUST THE FIRST PLAT WHICH COULD RESULT IN THE INABILITY TO FINANCE NEEDED IMPROVEMENTS]**

City Code: the City of Commerce City Revised Municipal Code, as amended from time to time.

City Council: the City Council of the City of Commerce City, Colorado.

Debt: bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy and/or collect Fee revenue. The definition of Debt shall include an intergovernmental agreement that contains a pledge of an *ad valorem* property tax mill levy and/or Fee revenue between the District and any other governmental or quasi-governmental entity.

District: the [ ] Metropolitan District.

District Activities IGA: an intergovernmental agreement between the District and the City regarding certain limitations of the District's activities, substantially in the form attached hereto as **Exhibit C**.

District Boundaries: the boundaries of the District described in the District Boundaries Map and any property subsequently included into the District Boundaries from the Inclusion Area.

District Boundaries Map: the map attached hereto as part of **Exhibit A-1**, describing the District's boundaries.

End User: any owner, or tenant of any owner, of any taxable improvement within the District Boundaries who is intended to become burdened by the imposition of *ad valorem* property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter,

commercial property owner or commercial tenant is an End User. A business entity that entitles or develops property, or constructs residential or commercial structures is not an End User.

External Financial Advisor: a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance with respect to such securities; (ii) is an underwriter, investment banker or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Fees: any fee, rate, toll, penalty or charge imposed by the District for services, programs or facilities provided by the District, as described in Section V.F.7.

Financial Plan: the Financial Plan described in Section VI and **Exhibit E** prepared by an External Financial Advisor in accordance with the requirements and limitations of this Service Plan that describes: (i) the manner in which the Public Improvements are to be financed; (ii) the manner in which the Debt is expected to be incurred; and (iii) the estimated operating revenue to be derived from property taxes and any Fees for the first budget year through the year in which all Debt is expected to be defeased or paid in the ordinary course. Without limitation, the Financial Plan must include the anticipated schedule for incurring Debt, a schedule of all anticipated revenues of the District from property taxes, including property taxes and specific ownership taxes, Fees, and other anticipated legally available revenues

Inclusion Area Boundaries: the boundaries of the area described in the Inclusion Area Boundary Map intended to be included into the District Boundaries. **[Delete this definition if there is no anticipated inclusion area.]**

Land Use Approval: an entitlement plan as approved by the City pursuant to the City Code for identifying, among other things, Public Improvements necessary for facilitating development for property within the District Boundaries.

Maximum Combined Mill Levy: means the maximum combined Maximum Debt Mill Levy and Operations and Maintenance Mill Levy that may be imposed by the District, as identified in Section VI.D.

Maximum Debt Mill Levy: the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VI.D.

Maximum Debt Mill Levy Imposition Term: a maximum of thirty-five (35) years after the year of the initial imposition of such mill levy **[THIS IS NOT COMMON IN MOST JURISDICTIONS AND COULD MAKE THE DEBT LESS MARKETABLE, AS WELL AS REDUCE THE ABILITY TO PAY FOR NECESSARY PUBLIC IMPROVEMENTS. THIS IS FURTHER DIFFICULT WITH MULTIPLE PHASE PROJECTS, WITH A LONGER BUILD OUT TERM, RESULTING IN THE NEED FOR THE CREATION OF ADDITIONAL DISTRICTS]** unless a majority of the Board are End Users and have voted in favor of a refunding of a part or all of the Debt that will result in a net present value savings as set forth in 11-56-101 *et seq.*, C.R.S. and that has been determined by an External Financial Advisor to be in the best interests of the District;

Maximum Operation and Maintenance Mill Levy: means the maximum mill levy the District is permitted to impose for the payment of Operation and Maintenance Costs, as set forth in Section VI.D. [WHAT DRIVES THE AMOUNT OF THE MILL LEVY THAT NEEDS TO BE IMPOSED BY DISTRICT IS BASED ON THE LEVEL OF OPERATIONS BEING DONE BY THE DISTRICT. FOR A DISTRICT THAT HAS LITTLE TO NO OPERATIONS AND MAINTENANCE OF IMPROVEMENTS, THIS CAP MAY BE SUFFICIENT. FOR DISTRICT'S THAT NEED TO OPERATE AND MAINTAIN IMPROVEMENTS, A CAP ON THE ABILITY OF THE DISTRICT TO RAISE NECESSARY REVENUE TO OPERATE IS TROUBLING, AS IT MAY RESULT IN THE IMPOSITION OF RECURRING FEES TO HOMEOWNERS THAT ARE LESS EFFICIENT TO COLLECT AND CANNOT BE DEDUCTED BY HOMEOWNER'S ON THEIR TAX RETURNS]

Operate and Maintain or Operation and Maintenance: means (a) the ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of the Public Improvements or the provision of services related thereto; and (b) the reasonable and necessary costs of ongoing administrative, accounting and legal services to a District; all in accordance with the provisions and requirements of, as applicable, the Special District Act, this Service Plan, the District Activities IGA, the City Code and the City Approvals.

Project: a portion of the development or property commonly referred to as [\_\_\_\_\_].

Public Improvements: a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act, except as specifically limited herein, that benefit the District and serve the future residents and taxpayers of the District, as determined by the Board.

Regional Improvements: means any regional public improvement identified by the City, as provided in Section VII of this Service Plan, for funding, in whole or part, by a Regional Improvement Mill Levy levied by the District, including, without limitation, the public improvements described in **Exhibit F**.

Regional Improvement Mill Levy: means the property tax mill levy imposed on Taxable Property for the purpose of planning, designing, acquiring, funding, constructing, installing, relocating and/or redeveloping the Regional Improvements and/or to fund the administration and overhead costs related to the Regional Improvements as provided in Section VII of this Service Plan.

Reimbursement Agreement: means any agreement of the District to repay, from any bond proceeds or other revenue of the District whether or not subject to annual appropriation, any person for any amounts expended on behalf of the District, including without limitation any costs of organization, operation of the District or the provision of services or Public Improvements, but does not include any Debt.

Service Plan: this service plan for the District approved by City Council.

Service Plan Amendment: an amendment to the Service Plan approved by City Council in accordance with the City Code and applicable state law.

South Adams: the South Adams County Water & Sanitation District.

Special District Act: Sections 32-1-101, *et seq.*, of the Colorado Revised Statutes, as amended from time to time, including additional requirements imposed by future amendments to the Special District Act.

State: the State of Colorado.

TABOR: Section 20 of Article X of the Colorado Constitution also known as the Colorado Taxpayer's Bill of Rights.

Taxable Property: real or personal property within the District Boundaries subject to ad valorem taxes imposed by the District.

## **II. PURPOSE AND OBJECTIVES OF DISTRICT**

A. Purpose and Intent. The District is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Service Plan, its activities are subject to review by the City only insofar as they may deviate in a material manner from the requirements of the Service Plan or as provided in the Special District Act or City Code. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated residents and taxpayers of the District. The primary purpose of the District is to finance the construction of the Public Improvements. The District is not being created to provide ongoing Operation and Maintenance activities other than as specifically set forth in this Service Plan or the District Activities IGA.

B. Need for the District. There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project as related to the District Boundaries [THE CONNECTION OF THE IMPROVEMENTS TO THE DISTRICT BOUNDARIES CREATES A POTENTIAL BENEFIT ANALYSIS THAT MAY BE DIFFICULT WITH RESPECT TO THE ABILITY TO IMPOSE TAXES FOR THE PAYMENT OF REGIONAL IMPROVEMENTS BECAUSE IT READS MORE LIKE AN ASSESSMENT ANALYSIS THAN A TAXATION ANALYSIS]. The applicant for the District has demonstrated through proforma analysis [THIS PUTS THE CITY IN THE POSITION OF DETERMINING HOW MUCH PROFIT A DEVELOPER CAN MAKE AND WHETHER IT IS FEASIBLE FOR THE DEVELOPER, THIS IS NOT COMMON IN MOST JURISDICTIONS. THE DEVELOPER IS TAKING A SIGNIFICANT RISK IN MOST PROJECTS THAT HAVE BUILD OUT TIMES OVER SEVERAL YEARS THAT CHANGES IN MARKET, BORROWING, CONSTRUCTION AND OTHER CONDITIONS MAY GREATLY REDUCE THE INITIAL PROFORMA PROJECTIONS. THE DETERMINATION AS TO WHETHER THE DEVELOPMENT IS FEASIBLE WITHOUT PUBLIC FINANCING CANNOT BE KNOWN BY LOOKING AT THE PROFORMA GIVEN MARKET RISK AND FLUCUATIONS THAT WILL OCCUR. FOR EXAMPLE, CONSTRUCTION COSTS HAVE INCREASED SUBSTANTIALLY IN THE PAST 24 MONTHS, FURTHERMORE, IS SUCH ANALYSIS NEEDED IF THE DEVELOPER IS ALREADY LIMITED TO 80% OF THE COST OF THE IMPROVEMENTS] or other appropriate documentation that there are no other entities, including the applicant, that consider it desirable, feasible or practical to undertake, or that it is

more economically advantageous to the future End Users residing within the District Boundaries for the District to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment and financing of the Public Improvements needed for the Project as related to the District Boundaries. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economical manner possible.

C. Relationship of Organizer and Developer/Owner. **[Describe the relationship between the organizer of the district and the developer and owner of any property to be included in the district's boundaries].**

D. Public Benefit. **[Describe public benefit of the Project and the Public Improvements].**

E. Objective of City Regarding Service Plan

1. The City's objective in approving the Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term (as it relates to residential property), subject to the Maximum Debt Mill Levy, and/or repaid by Fees as limited by Section V.F.7.

2. This Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs pursuant to the City Approvals. Operation and Maintenance activities are allowed only as specified in this Service Plan or the District Activities IGA.

3. The District shall dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and, if the District has been authorized to Operate or Maintain any part of the Public Improvements under the District Activities IGA, to retain only the power necessary to impose and collect taxes or Fees to pay for costs associated therewith.

4. The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Fees or from tax revenues collected from a mill levy, subject to the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term.

5. Except as specifically provided in this Service Plan, all Debt is expected to be repaid by taxes and Fees, as limited by this Service Plan, imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term for residential properties, and at a tax mill levy no higher than the Maximum Debt Mill Levy. Fees imposed for the payment of Debt shall be due no later than upon the issuance of a building permit. Generally, the costs of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District. Debt which is issued within these parameters, as further described in the Financial Plan, will insulate property owners from excessive tax and Fee burdens to support the servicing of the Debt, will be of limited duration even under bankruptcy or other unusual situations, and will result in a timely and reasonable discharge of the Debt.

### **III. DISTRICT BOUNDARIES**

The area within the initial District Boundaries includes [ ] ([ ]) acres and the total area proposed to be included into the District (the Inclusion Area Boundaries) is approximately [ ] [ ] acres]. A legal description and map of the initial District Boundaries and the Inclusion Area Boundaries are attached hereto as **Exhibits A-1 and A-2** respectively. A vicinity map is attached hereto as **Exhibit B**. **[modify this language if there is no Inclusion Area anticipated]**

### **IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION**

A. The District Boundaries [and the Inclusion Area Boundaries **[delete if not applicable]**] consist of approximately [ ] ([ ]) acres of [insert type of use] land. The current assessed valuation of the property within the District Boundaries [and the Inclusion Area Boundaries; delete if not applicable] is \$0 for purposes of this Service Plan and, at build out, is expected to be \$[ ]. These amounts are expected to be sufficient to reasonably discharge all Debt as set forth in the Financial Plan.

B. The population of the District at build-out is estimated to be approximately [ ] ([ ]) people.

C. **[Describe the nature of the Project, timeline for development, estimated assessed value after 5 and 10 years and estimated sales tax revenue. Also, please identify all plans, including without limitation applicable City and South Adams plans, that apply to any portion of the District Boundaries and describe how the Project is consistent with these plans. Please state if the District is to be located within an urban renewal area and if the Project anticipates using tax increment financing. If the District intends to pursue TIF, provide information on how TIF financing will interact with the District's financing.]**

D. Approval of this Service Plan by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within the City Approvals.

### **V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

A. Powers of the District and Service Plan Amendment. The District shall have the power and authority to provide the Public Improvements and related Operation and Maintenance activities within and without the District Boundaries as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations of this Service Plan. Notwithstanding the foregoing, if, after the Service Plan is approved, any State law is enacted or interpreted to grant additional powers or authority to metropolitan districts, such powers and authority shall not be deemed to apply to the District unless this Service Plan is amended. The restrictions in this Service Plan are being voluntarily acquiesced to by the District and shall not be interpreted in any way as a limitation on the District's sovereign power and shall not negatively affect the District's status as a political subdivision of the State.

B. Services. The District is authorized to and will provide the following services: **[identify all with specificity]**.

C. Public Improvements.

1. The District is authorized to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing [identify if ongoing ownership or maintenance of any is included] of the following Public Improvements, as more specifically identified in **Exhibit D** and as may be more specifically defined in the City Approvals, from its revenues and by and through the proceeds of Debt to be issued by the District in accordance with the requirements of State law and this Service Plan: **[identify all with specificity]**.

2. The costs of such Public Improvements, based on a preliminary engineering survey as shown in Exhibit D, is estimated to be approximately \$[\_\_\_\_\_], including construction costs together with estimates of costs such as land acquisition, engineering services, legal expenses and other associated expenses. The cost, scope, and definition of such Public Improvements may vary over time.

3. Changes in the Public Improvements or cost, which are approved by the City in a City Approval, shall require a Service Plan Amendment or amendment to such City Approval to be approved by the City Council by prior resolution **[THIS COULD BE COSTLY TO THE DISTRICT IF IT CONTINUALLY NEEDS TO SEEK SERVICE PLAN AMENDMENTS AS A RESULT OF CHANGES IN THE PUBLIC IMPROVEMENTS OR COSTS THEREOF. COST ESTIMATES ARE ALWAYS SUBJECT TO CHANGE AS A RESULT OF INFLATION, CONSTRUCTION COST INCREASES, UNKNOWN SITE CONDITIONS, ETC. AT THE VERY LEAST, THERE SHOULD BE AN ALLOWANCE MADE FOR COST INCREASES. WE ARE ALSO CONCERNED THAT ANY CHANGE IN THE PUBLIC IMPROVEMENTS COULD TRIGGER A SERVICE PLAN AMENDMENT, FOR EXAMPLE IF THE CITY DETERMINES A TRAFFIC SIGNAL IS NEEDED OR THERE IS A CHANGE IN DESIGN]**.

4. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District shall obtain the City's approval of civil engineering plans and shall obtain applicable permits for construction and installation of the Public Improvements prior to performing work thereon.

5. The District shall implement the following independent controls to ensure the proper allocation of District expenditures to the Public Improvements if the Public Improvements are planned, designed, acquired, constructed, installed, relocated, redeveloped, or financed, or maintained as part of an overall project including private improvements or **improvements benefiting other property** **[SEE PRIOR NOTE]: [identify all with specificity]**.

6. No District costs, including costs of Public Improvements or Operations and Maintenance, shall be shifted to undeveloped property in the District Boundaries in such a manner so as to inequitably burden such property to the benefit of developed property in the District Boundaries.



7. Public Improvements shall be certified as to inventory and cost by an independent professional engineer for acquisition or financing by the District. Public Improvements conveyed to the City shall be free and clear of all liens and encumbrances and shall comply with any other conveyance prerequisites required in the City Code, unless otherwise approved by the City Manager prior to conveyance.

8. The City shall not be bound by this Service Plan in reviewing or determining any development or construction application.

D. Intergovernmental Agreements, Reimbursement Agreements, & Privately Placed Debt.

1. In addition to the District Activities IGA, the District is authorized to enter the following intergovernmental agreements to fulfill the purposes of the District: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each].**

2. The District anticipates entering the following Reimbursement Agreements related to the organization or operation of the District or the provision of services or Public Improvements: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each].**

3. Unless specifically described in this Service Plan or without receiving approval of the City Council by prior resolution, the District shall not enter into any intergovernmental agreement or Reimbursement Agreement that would either be likely to cause a substantial increase in the District's budget or involve the pledge of any mill levy or other District revenue.

4. The District shall implement the following independent controls to ensure the reasonableness of expenditures to be reimbursed to any owner of property or developer of land within the District Boundaries, or any person or entity affiliated with any such owner or developer: **[identify all with specificity].**

5. Prior to the issuance of any privately placed Debt, or the execution of any owner or developer Reimbursement Agreement, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. No Reimbursement Agreement by which the District would reimburse any owner of property or developer of land within the District Boundaries, or any person or entity affiliated with any such owner or developer, shall: (a) allow for the accrual of compound interest; (b) permit the reimbursement of more than 80% of the actual costs of the Public Improvements; (c) permit the reimbursement of more than \$25,000 of the costs of organizing the District **[THESE ARE NOT COMMON IN OTHER JURISDICTIONS AND SEEM ARBITRARY IN NATURE. THIS MAY CREATE A DISINCENTIVE TO DEVELOPMENT WITHIN THE CITY]**; or (d) permit the reimbursement of any development security expenses.

7. If the District is to receive reimbursement from any source for the cost of any Public Improvement funded, any and all resulting reimbursements received by the District for that improvement shall be deposited into the District's debt service fund and used for the purpose of retiring the Debt of the District.

E. Extraterritorial Service Agreements.

1. The District anticipates entering into the following agreements for the provision of services to properties or persons outside of the District Boundaries: **[identify all with specificity with indication of material terms (including parties, costs, revenue pledges, duration, repayment terms, and penalties) and justification for each].**

2. Unless specifically described in this Service Plan or without receiving approval of the City Council by prior resolution, the District shall not enter into any agreement to provide services to properties or persons outside of the District Boundaries.

F. Limitations & Restrictions on District Authority. In addition to any limitations and restrictions established by applicable law or elsewhere in this Service Plan, any powers and authority of the District shall be limited and restricted as provided in this section.

1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements and for the financing of the Regional Improvements. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners association in a manner consistent with the City Approvals. The District is not authorized to Operate or Maintain any part of the Public Improvements unless provision therefor has been made pursuant to the District Activities IGA, except that the District **may be required and obligated** to Operate and Maintain certain park and recreation improvements within the District Boundaries and shall Operator and Maintain any other part of the Public Improvements not otherwise conveyed or dedicated to the City or another appropriate governmental entity **[IF THE DISTRICT IS OBLIGATED TO OPERATE AND MATAIN PARK AND RECREATION IMPROVEMENTS, WHAT HAPPENS IF IT DOES NOT HAVE SUFFICIENT REVENUE TO DO SO AS A RESULT OF THE MILL LEVY CAP?]**. Unless otherwise specified in the District Activities IGA, all parks and trails shall be open to the general public free of charge.

2. Fire Protection Limitation. The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to the District Activities IGA.

The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

3. Public Safety Services Limitation. The District is not authorized to provide policing or other security services. However, the District may, pursuant to § 32-1-1004(7), C.R.S. as amended, furnish security services pursuant to an intergovernmental agreement with the City.

4. Water Rights/Resources Limitation. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to the District Activities IGA. Water and sanitary sewer facilities shall be conveyed to South Adams. The District's powers with regard to water and sanitary sewer service are limited to financing, designing, constructing and installing facilities and then conveying ownership of the same to South Adams pursuant to the then-applicable rules, regulations and policies of South Adams. The District is not authorized to operate or maintain water facilities or sanitary sewer facilities, except as may be authorized by South Adams and the City. The District shall consent to the overlap of the District Boundaries by South Adams (in the event such property is not already included within the service area of South Adams) and shall execute a resolution of consent to the same as may be requested by South Adams.

5. Initial Debt and Mill Levy Limitation. The District shall not issue any Debt, impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service fund, impose or collect any Fees used for the purpose of repayment of Debt, until each of the following conditions have occurred: (a) the Land Use Approval, including a developer agreement to provide related Public Improvements, has been made effective; (b) the District and the City have executed the District Activities IGA; (c) the District has received voter authorization for the Regional Improvement Mill Levy and for the District's entry into an intergovernmental agreement with the City obligating the District to pay the proceeds from the Regional Improvement Mill Levy to the City; and (d) a covenant or agreement, running with the land and enforceable by the City, has been recorded against all property within the District Boundaries obligating any owner of property within the District Boundaries, other than an End User, to provide a disclosure notice identifying at a minimum the maximum mill levy and associated taxes and fees that may be imposed on each property for each year the District is in existence as well as the Public Improvements that are or have been paid for by the District, in a form approved by the City, to each potential End User of a residential lot or dwelling unit before the End User enters into a written agreement for the purchase and sale of that residential lot or dwelling unit.

6. Total Debt Issuance Limitation. The District shall not issue Debt in excess of \$[ ] total principal amount, which is [is less than] the lesser of: (a) 100% of the estimated costs of the Public Improvements [THIS CREATES AN ISSUE IF THERE ARE COST INCREASES DUE TO INFLATION OR CONSTRUCTION COST INCREASES, IT ALSO DOES NOT TAKE INTO ACCOUNT THE COST TO ACTUALLY ISSUE THE BONDS, INCLUDING RESERVE FUNDS, COST OF ISSUANCE, ETC]; or (b) the anticipated maximum bonding capacity of the District, which was derived from the Financial Plan using the following assumptions: (i) the interest rate is not less than 150 basis points more than the 30 Year AAA MMD Index (as of the date of the submission of the Service Plan); (ii) inflation on completed

structures does not exceed a 4% biennial growth rate [THIS CONFLICTS WITH THE PROPOSED REGULATIONS WHICH STATE 3%]; (iii) the bonds amortize over a period of 35 years; and (iv) debt service coverage is no less than 100%; and (v) the levying by the District of [\_\_\_\_ ( )] mills. The Total Debt Issuance Limitation shall apply to bonds, loans, notes, or other instruments issued for the purpose of refunding, refinancing, reissuing or restructuring outstanding Debt.

7. Fee Limitation.

a. General. No Fee related to repayment of Debt shall be authorized to be imposed upon or collected from Taxable Property owned or occupied by an End User subsequent to the issuance of a certificate of occupancy for such Taxable Property and no such Fee shall be imposed upon or collected from an End User. Notwithstanding any of the foregoing, the restrictions of this paragraph shall not apply to any Fee imposed upon or collected from Taxable Property for the purpose of funding the Operation and Maintenance costs of the District.

b. Anticipated Fees. The District anticipates imposing the following Fees: [identify all]. Any Fee not identified in this Service Plan shall require a Service Plan Amendment prior to imposition. [IF THE DISTRICT MUST IMPOSE A FEE IN ORDER TO OPERATE BECAUSE THE REVENUE GENERATED FROM 10 MILLS IS NOT SUFFICIENT, HAVING TO SEEK A SERVICE PLAN AMENDMENT WILL BE COSTLY TO THE DISTRICT AND THE REVENUE NEEDED TO PAY FOR SUCH SERVICE PLAN AMENDMENT WILL TAKE AWAY FROM THE OTHER OPERATIONAL NEEDS OF THE DISTRICT. IS THERE ANOTHER APPROVAL PROCESS, SUCH AS CONSENT OF CITY MANAGER THAT WOULD BE LESS ONEROUS?]

c. Public Improvements Fee Limitation. The District shall not receive, spend or pledge to any Debt any fee, assessment, tax or charge that is collected by a retailer on the sale of goods or services by such retailer and that is measured by the sales price of such goods or services, except as provided pursuant to the District Activities IGA.

d. Nontaxable Property. The District shall not cooperate with or support the conversion of any Taxable Property to a tax-exempt status if such Taxable Property was included in the Financial Plan except as provided in this Service Plan. Prior to any sale of real property within the District Boundaries for a nontaxable use, the seller shall demonstrate to the satisfaction of the City Council that the tax-exempt use of the property will not materially impact the District's ability to meet its annual debt service obligations. If the seller cannot satisfy this burden, the District shall impose a fee on the purchaser in an amount comparable to the revenue that would have been generated by an equivalent property tax from the property until such time as the District's outstanding Debt has been paid off. Such fee revenue shall be used for the repayment of outstanding Debt. [THE DISTRICT DOES NOT HAVE THE POWER TO FORCE A PRIVATE PARTY TO PROVIDE SUCH INFORMATION TO CITY COUNCIL OR AGREE TO THE IMPOSITION OF A COVENANT ON ITS PROPERTY. THIS WOULD INTEREFERE WITH PRIVATE PROPERTY RIGHTS. IT COULD ALSO BE VIEWED AS A VIOLATION OF PUBLIC POLICY AND POTENTIALLY UNCONSTITUTIONAL] The City Council may, by resolution, waive this provision.

8. Grants Limitation. The District shall not apply for grant funds distributed by any agency of the United States Government or the State without the prior written approval of the City Manager. This does not restrict the collection of Fees for services provided by the District to the United States Government or the State.

9. Sales and Use Tax. The District shall not invoke or exercise any actual or perceived City sales and use tax exemption.

10. Television Relay and Translation Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to the District Activities IGA.

11. Telecommunication Facilities. The District agrees that no telecommunication facilities owned, operated or otherwise allowed by the District shall affect the ability of the City to expand its public safety telecommunication facilities or impair existing telecommunication facilities.

12. Zoning and Land Use Requirements. The District shall be subject to all of the City's zoning, subdivision, building code and other land use requirements.

13. Growth Limitations. The District acknowledges that the City shall not be limited in implementing City Council or voter-approved growth limitations, even though such actions may reduce or delay development within the District and the realization of District revenue.

14. Eminent Domain Limitation. The District shall not exercise the power of eminent domain without a prior resolution of the City Council consenting to the exercise of such power.

15. Inclusion Limitation. [Except for the inclusion of property within the Inclusion Area Boundaries, the] The District may not include property into the District Boundaries without a prior resolution of the City Council approving such inclusion.

16. Exclusion Limitation. The District may not exclude property from the District Boundaries without a prior resolution of the City Council approving such exclusion. Notwithstanding the foregoing, the District shall promptly hear and determine any request for exclusion by any property owner in accordance with § 32-1-501, C.R.S.

17. Overlap Limitation. The District shall not consent to the organization of any additional metropolitan district organized under the Special District Act that will overlap the District Boundaries [or the Inclusion Area intended for inclusion into the District Boundaries] unless the aggregate mill levy for payment of Debt will not at any time exceed the Maximum Debt Mill Levy of the District.

19. Consolidation and Subdistrict Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without a prior resolution of the City Council approving such consolidation. The District shall not form a subdistrict without a prior resolution of the City Council approving the formation of such subdistrict.

20. Bankruptcy Limitation. All limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a service plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

a. shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

b. are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

21. Authorities. The District shall not enter into any agreement establishing an authority or other separate entity under Section 29-1-201 *et seq.*, C.R.S., without a prior resolution of the City Council approving the District’s participating in the establishment of such authority or separate entity.

22. Land Acquisition. The purchase price of any land acquired by the District from a developer shall be no more than the then-current fair market value as confirmed by an independent MAI appraisal. All conveyances by the District to the City shall be by special warranty deed, shall be conveyed at no cost to the City, shall include an ALTA title policy issued to the City at the District’s cost, shall meet the environmental standards of the City and shall comply with any other conveyance prerequisites required in the City Code. Land and easements conveyed to the City shall be free and clear of all liens, encumbrances, easements, and covenants, unless otherwise approved by the City Manager prior to conveyance.

## **VI. FINANCIAL PLAN**

### **A. General**

1. The District’s Financial Plan, attached as **Exhibit E**, reflects the District’s anticipated schedule for issuing such Debt as the District can reasonably pay within the Maximum Debt Mill Levy Imposition Term from revenues derived from the Maximum Debt Mill Levy, Fees and other legally available revenues, subject to the limitations of this Service Plan. The Financial Plan is based on economic, political and industry conditions as they presently exist and reasonable projections and estimates of future conditions. These projections and estimates are not to be interpreted as the only method of implementation of the District’s goals and objectives but rather a representation of one feasible alternative. Other financial structures may be used so long as they are in compliance with this Service Plan. Based upon the assumptions contained in the Financial Plan, the Financial Plan projects the issuance of Debt to fund the Public Improvements and anticipated Debt repayment based on the development assumptions and absorptions of the property within the District Boundaries by End Users. The Financial Plan anticipates that the District will acquire, construct, and complete all Public Improvements.

2. The Financial Plan demonstrates that the District will have the financial ability to discharge all Debt to be issued as part of the Financial Plan on a reasonable basis. Furthermore, the District will secure the certification of an External Financial Advisor who will provide an opinion as to whether such Debt issuances are in the best interest of the District at the time of issuance [IF THIS IS THE STANDARD FOR A REFINANCE OR REFUNDING, THIS MAY BE ACHIEVABLE, HOWEVER, FOR INITIAL ISSUANCES, MANY FINANCIAL ADVISORS WILL NOT OPINIE WITH RESPECT TO BEST INTEREST, AS A RESULT, THIS COULD MAKE IT DIFFICULT FOR THE DISTRICT TO ACHIEVE ITS PURPOSE OF ISSUING DEBT TO PAY FOR PUBLIC IMPROVEMENTS. CONSIDER AN OPINION WITH RESPECT TO STUCTURE AND TERMS ARE MARKET REASONABLE INSTEAD] .

B. Debt Issuance.

1. The total Debt the District shall be permitted to issue shall not exceed \$[\_\_\_\_\_], as detailed in Section V.F.6. The District shall be permitted to issue Debt on a schedule and in such year or years as the District determines shall meet its needs and the financing shall be phased to serve development as it occurs.

2. All Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes and Fees to be imposed upon all Taxable Property within the District, as limited by this Service Plan. The District will also rely upon various other revenue sources authorized by law to the extent consistent with this Service Plan. The District shall not issue Debt with a lien that is subordinate or junior to any outstanding District Debt. [THIS LIMITS THE ABILITY OF THE DISTRICT TO STUCTURE DEBT ISSUANCES. CONSIDER LIMITING SUBORDINATE OR JUNIOR LIEN DEBT ONLY TO THE EXTENT IT IS PURCHASED BY THE DEVELOPER. IF IT IS ISSUED AS PART OF A THIRD PARTY ISSUANCE AND COMPLIES WITH THE OTHER SAFE GUARDS CONTAINED IN THE SERVICE PLAN, WE DON'T UNDERSTAND THE NEED FOR THIS PROHIBITION]

3. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law.

4. The District shall not issue or undertake any Debt or enter into any Reimbursement Agreement if, in the opinion of the External Financial Advisor, the terms of such Debt or Reimbursement Agreement are not reasonable and in the best interest [SEE NOTE ABOVE] of the District and its future End Users based upon the status of development in the District, the projected tax base increase in the District, the security offered, and other considerations as may be identified by the External Financial Advisor.

5. Prior to the District issuing any Debt or refinancing any outstanding Debt, bond counsel engaged by the District shall submit the proposed financing documents to the City Manager no less than 30 days prior to issuance. The City may, in its sole discretion, comment on such proposed issuance or refinancing but its comment shall not be relied on by the District or any third party. Neither this provision nor City's comment, or failure to do so, shall be construed as approval or consent to such issuance or refinancing. The City agrees to provide comments, if any, within thirty (30) days of receipt of the proposed financing documents. The submission shall include the

proposed dollar amount of the issue, the interest rate and other financing costs, all sources of revenue to be pledged to repayment, including the proposed debt service mill levy, and a description of the credit enhancements, together with any preliminary official statement, if available, or other prospectus for the Debt issue. No less than three (3) days prior to the Debt issuance closing date, bond counsel for the District shall submit to the City Manager: (a) a final offering document; (b) an opinion of the District's counsel that the proposed issuance or refinance of District Debt is authorized by and in compliance with the Service Plan; and (c) a written opinion of an External Financial Advisor as to whether the proposed Debt issuance and its terms (including Debt amount, interest, underwriting discount, cost of issuance, repayment term, redemption feature, couponing, credit spreads, payment, closing date) are reasonable and in the best interest of the District based upon the status of development within the District, the projected tax base increase in the District, the security offered, and other considerations as may be identified by the External Financial Advisor.

6. At least thirty (30) days before their execution, the District shall submit to the City Manager the terms of any agreement that includes a pledge of revenue to an entity or a promise to reimburse funds to another metropolitan district or an entity associated with or controlled by a developer of property within the District Boundaries. The City Manager may, in its sole discretion, comment on such proposed agreement or use any remedy available to the City. Neither this provision nor City Manager's comment or the City's action, or failure to do so, shall be construed as approval or consent to the proposed agreement. The City Manager agrees to provide comments, if any, within thirty (30) days of receipt of the proposed terms. The submission shall include the proposed amount of revenue pledged, the term of the pledge, any applicable interest rate and other financing costs, sources of revenue to be pledged for repayment, and the amount of any proposed mill levy to be pledged. A Debt issuance subject to Section VI.B.5, shall not be subject to this section.

C. Maximum Voted Interest Rate and Maximum Underwriting Discount. The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The maximum interest rate on any Debt and Reimbursement Agreement shall not exceed twelve percent (12%), including any rate applicable upon the occurrence of an event of default. The maximum underwriting discount will be three percent (3%). Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities.

D. Maximum Debt Mill Levy, Operation and Maintenance Mill Levy and Maximum Combined Mill Levy.

1. The Maximum Combined Mill Levy, which includes both the Maximum Debt Mill Levy and the Maximum Operation and Maintenance Mill Levy, shall not exceed fifty (50) mills. The Regional Improvement Mill Levy shall not be counted against the Maximum Combined Mill Levy.

2. The District may impose an ad valorem tax (a mill being equal to 1/10th of 1 cent) upon the Taxable Property within the District for the purpose of paying the debt service requirements on District Debt, subject to the Maximum Combined Mill Levy. The Maximum Debt Mill Levy shall not exceed [\_\_\_\_\_] ( ) mills, provided the Maximum Debt Mill Levy shall not apply for



any period when the total amount of the District's Debt is equal to or less than fifty percent (50%) of the District's assessed valuation;

3. The District may impose an ad valorem tax (a mill being equal to 1/10th of 1 cent) upon the Taxable Property within the District for the purpose of paying Operation and Maintenance costs, subject to the Maximum Combined Mill Levy. The Maximum Operation and Maintenance Mill Levy shall not exceed ten (10) mills even if the Maximum Debt Mill Levy does not apply or if the District has no mill levy for the payment of debt service requirements. **[THE CAPPED MILL LEVY MAY INTERFERE WITH THE DISTRICT'S ABILITY TO OPERATE AND MEET STATUTORY COMPLIANCE]**

4. No mill levy imposed by the District shall be adjusted to account for changes in the method of calculating assessed valuation (including any change in the ratio of actual valuation) or any constitutionally mandated tax credit, cut or abatement, without a Service Plan Amendment. **[THIS WILL SEVERLY IMPACT THE DISTRICT'S ABILITY TO ISSUE DEBT. NO BOND INVESTOR WILL BUY DEBT THAT HAS A REDUCING REVENUE STREAM THAT IS BEYOND THE CONTROL OF THE DISTRICT. THERE ARE NO PROTECTIONS IN THE EVENT THE DISTRICT'S REVENUE DECLINES DUE TO A REDUCTION IN THE ASSESSMENT RATIO. THE ADJUSTMENT IS INTENDED TO BE REVENUE NEUTRAL AND CAN BE WORDED AS SUCH. AN EXAMPLE OF HOW THIS WORKS IS AS FOLLOWS:**

***Reduction in Residential Assessment Ratio***

<b>Tax Collection Year</b>	<b>Actual Value (V)</b>	<b>Assessment Ratio (R)</b>	<b>Assessed Value (AV) [V x R = AV]</b>	<b>Mill Levy<sup>1</sup>/Rate<sup>2</sup> (M)</b>	<b>Amount of District Tax Due [AV x M]</b>
<b>(b) 2018</b>	\$600,000	7.20%	\$43,200	50.00/0.05000	\$2,160
<b>(c) 2019-2020</b>	\$600,000	7.15%	\$42,900	50.349/.050349	\$2,160

<sup>1</sup> Based on a projected mill levy, not a representation of any actual current or future mill levy.

<sup>2</sup> Each mill is equal to 1/1000<sup>th</sup> of a dollar.

(a) If in 2018 the Actual Value of the Property was \$600,000, and the Residential Assessment Ratio established by the State Legislature for that year was 7.20%, the Assessed Value of the Property was \$43,200 (i.e., \$600,000 x 7.20% = \$43,200). Therefore, the District's certified debt service of 50.000 mills generated approximately \$2,160 in revenue for the District.

(b) If in 2019 and 2020 the Actual Value of the Property remains at \$600,000, based upon the State Legislature's determination to change the Residential Assessment Ratio for 2019 and 2020 (for collection in 2020 and 2021, respectively) to 7.15%, the Assessed Value would be \$42,900 (i.e., \$600,000 x 7.15% = \$42,900). Therefore, the District needs to certify a debt service mill levy of 50.349 mills in order to generate the same revenue in 2019 and 2020 that it received from the 2018 debt service mill levy.

5. To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S. the term "District" shall be deemed to refer to the District and to each such subdistrict collectively, so that the limitations contained in

this Service Plan will apply to the District and to each subdistrict on a collective basis, including but not limited to the limitation on total Debt, Maximum Combined Mill Levy, Maximum Debt Mill Levy and Maximum Operation and Maintenance Mill Levy. For example, if a subdistrict levies twenty mills on property within its boundaries for Debt service, then the District is only permitted to levy up to the Maximum Debt Mill Levy less twenty mills on the same property for Debt service so that the Maximum Debt Mill Levy is not exceeded with respect to the property within the subdistrict's boundaries.

E. Maximum Debt Mill Levy Imposition Term. The District shall not impose a levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) on any property developed for residential use which exceeds the Maximum Debt Mill Levy Imposition Term. Each instrument evidencing Debt and each Reimbursement Agreement that is privately placed with a developer or owner of the property to be benefitted with Public Improvements shall provide that the District's obligations thereunder shall be discharged at the end of the Maximum Debt Mill Levy Imposition Term regardless of whether such obligation is paid in full.

F. Debt Instrument Disclosure Requirement. In the text of each instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Debt agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this [bond or other obligations for payment] contained herein, in the resolution of the District authorizing the issuance of this [bond or other obligations for payment] and in the Service Plan for the District.

Similar language describing the limitations with respect to the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the District Boundaries.

G. Security for Debt. The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. TABOR Compliance. The District shall comply with TABOR. With prior approval of the City Council, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services and programs. To the extent allowed by law, any entity created by the District will remain under the control of the District's Board, and any such entity shall be subject to and bound by all terms, conditions, and limitations of the Service Plan and the District Activities IGA.

I. District Operating Costs.

1. The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be approximately Fifty Thousand Dollars (\$50,000), which will be eligible for reimbursement from Debt proceeds [THIS IS CONTRADICTIONARY TO THE PROVISION THAT ALLOWS \$25K FOR ORGANIZATIONAL EXPENSES TO BE REIMBURSED. INITIAL OPERATIONS ARE NOT CAPABLE OF BEING REIMBURSED BY DEBT PROCEEDS UNDER TAX LAW].

2. In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The [ ] operating budget for the District is estimated to be approximately Twenty-Five Thousand Dollars (\$25,000) which is anticipated to be derived from ad valorem property taxes and other revenues.

## VII. REGIONAL IMPROVEMENT MILL LEVY

A. General. The District shall be authorized to provide for the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs related to the provision of Regional Improvements, and the Operation and Maintenance thereof.

B. Regional Improvement Mill Levy Authority. The District shall seek the authority to impose an additional Regional Improvement Mill Levy of *[select number based on type of District: five (5) mills for a residential District; one and one half (1.5) mills for a commercial District; ten (10) mills for an industrial District]* as part of the District's initial TABOR election. The District shall also seek from the electorate in that election the authority under TABOR to enter into an intergovernmental agreement with the City obligating the District to pay as a multiple-fiscal year obligation the proceeds from the Regional Improvement Mill Levy to the City.

### C. Regional Improvement Mill Levy Imposition.

- 1) **[For a Residential District]** The District shall impose the Regional Improvement Mill Levy at a rate of five (5) mills for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.
- 2) **[For a Commercial District]** The District shall impose the Regional Improvement Mill Levy at a rate of (i) one (1) mill for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the twentieth (20th) year; and (ii) one and one-half (1.5) mills from the twenty-first (21st) year through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.
- 3) **[For an Industrial District]** The District shall impose the Regional Improvement Mill Levy at a rate of (i) five (5) mills for collection beginning in the first year of collection of the District's Debt service mill levy and continuing in each year thereafter through the twentieth (20th) year; and (ii) ten (10) mills from the twenty-

first (21st) year through the fortieth (40th) tax collection year after which the Regional Improvement Mill Levy is first imposed.

D. Lump Sum. The City may, in its sole discretion, require a cash lump sum payment for Regional Improvements in addition to, or as an alternative to, imposing the Regional Improvement Mill Levy [REQUIRING A LUMP SUM PAYMENT MAY BE DIFFICULT AND IMPAIR THE DISTRICT'S ABILITY TO PAY FOR BOTH THE REGIONAL IMPROVEMENTS AND OTHER PROJECT IMPROVEMENTS WITH FINANCING ESPECIALLY SINCE THE AMOUNT OF AVAILABLE FINANCING IS LIMITED TO WHAT IS SECURED BY 50 MILLS AND DOES NOT INCLUDE THE REGIONAL MILL LEVY OF 5 MILLS].

E. Regional Improvements that Benefit Adjacent Planned Developments. The City shall make a good faith effort to require planned developments that (1) are adjacent to the District's Boundaries and (2) will benefit from the Regional Improvement to also impose a Regional Improvement Mill Levy, to the extent possible. [WILL THE CITY REMIT THE REVENUE BACK TO THE DISTRICT IF IT PAID FOR THE REGIONAL IMPROVEMENT?]

F. Regional Improvements Authorized Under Service Plan. If so notified by the City Manager, the Regional Improvements shall be considered Public Improvements that the District would otherwise be authorized to design, construct, install redesign, re-construct, repair or replace pursuant to this Service Plan and applicable law.

G. Expenditure of Regional Improvement Mill Levy Revenues. Revenue collected through the imposition of the Regional Improvement Mill Levy shall be paid to the City, for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of Regional Improvements, and the Operation and Maintenance thereof, which benefit the End Users of the District as prioritized and determined by the City, unless the City and the District agree to another manner of expenditure through an intergovernmental agreement approved by the City Council.

H. Regional Improvement Mill Levy Term. The imposition of the Regional Improvement Mill Levy shall not exceed a term of forty (40) years [SEE PRIOR NOTE REGARDING DISTRICT MILL LEVY IMPOSITION TERM BEING 35 YEARS] from December 31 of the tax collection year after which the Regional Improvement Mill Levy is first imposed.

## **VIII. ANNUAL REPORT**

A. General. The District shall be responsible for submitting an annual report to the City Manager no later than October 1 of each year following the year in which the Order and Decree creating the District has been issued. The annual report may be made available to the public by the City, including through the City's website.

B. Annual Report Contents. In addition to the requirements of the Special District Act, the annual report shall include information as to the following:

1. Narrative Summary. A narrative summary of the progress of the District in implementing its Service Plan for the report year.

2. Budget. The current year budget of the District, including a description of the Public Improvements to be constructed in such year.

3. Financial Statements. Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year prepared in accordance with generally accepted accounting principles, including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operation (i.e., revenue and expenditures) for the report year.

4. Capital Expenditures. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year.

5. Financial Obligations. Unless disclosed within a separate schedule to the financial statements, a summary of financial obligations of the District at the end of the report year, including the amount of outstanding Debt, the amount and terms of any new District Debt issued in the report year, the total assessed valuation of all Taxable Property within the District's Boundaries as of January 1 of the report year and the current total District mill levy pledged to Debt retirement in the report year.

6. Board Contact Information. The names and contact information of the current directors on the District's Board, any District manager and the attorney for the District shall be listed in the report. The District's current office address, phone number, email address and any website address shall also be listed in the report.

C. Reporting of Significant Events. The annual report also shall include information as to any of the following:

1. Boundary changes made or proposed to the District Boundaries as of December 31 of the prior year.

2. Intergovernmental agreements with other governmental entities either entered into or proposed as of December 31 of the prior year.

3. Copies of the District's rules and regulations, if any, as of December 31 of the prior year (or information on how to access such information on the District's website).

4. A summary of any litigation to which the District is a party or has knowledge that involves the Public Improvements as of December 31 of the prior year.

5. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

6. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

## **IX. DISSOLUTION**

Upon an independent determination by the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution pursuant to applicable State law. In no event shall dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State law or while continuing Operation and Maintenance obligations exist. The District shall dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and, if the District has been authorized to Operate or Maintain any part of the Public Improvements under the District Activities IGA, the District shall retain only the power necessary to impose and collect taxes or Fees to pay for costs associated therewith.

## **X. DISTRICT TRANSPARENCY**

A. Disclosure to Purchasers. The District shall use reasonable efforts and due diligence to cause any home builder or developer of residential property within the District Boundaries to provide to all initial purchasers of property within the District Boundaries written notice of disclosure that describes the impact of the District's mill levy and fees on each residential property along with the purchase contract. The District shall record such notice of disclosure with the Adams County Clerk and Recorder at the time the subdivision plat is recorded or, if the subdivision plat has already filed, provide the City with a copy of the recorded notice of disclosure. The notice of disclosure shall include the maximum mill levy that may be assessed and the associated taxes that may be imposed on the residential property for each year the District is in existence.

B. Disclosure to Potential Residential Buyers. The District shall also use reasonable efforts and due diligence to provide information to potential residential buyers by: (i) furnishing to any developer of property or home builders within the District Boundaries information describing the key provisions of the Service Plan for the approved District for prominent display at all sales offices; and (ii) inspecting the sales offices within the District Boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the maximum mill levy and associated taxes and fees that may be imposed on each property for each year the District is in existence as well as the Public Improvements that are or have been paid for by the District.

C. Annual Notices. In addition to the requirements of the Special District Act, the District shall send the annual notice required by Section 32-1-809, C.R.S. by mail to all property owners within the District Boundaries no later than January 31 of each year.

D. Website. The District shall maintain a website as required by the Special District Act. The website shall be used primarily for the purpose of District operations and transparency. The website shall not contain marketing materials or ads of any kind promoting the development, developers or homebuilders within the District Boundaries.

## **XI. DISTRICT GOVERNANCE**

A. Board Meetings. All special and regular District meetings shall be open to the public and shall be held at a location within the City limits that is within twenty miles of the District

Boundaries. Upon the first sale to an End User: (1) the Board shall meet no less than on a quarterly basis; (2) all meetings shall include remote access participation and public comment options; and (3) the Board shall meet on a weekday evening no less than once a year, including any meeting including its annual budget hearing, consideration of any agreement pledging District revenue or requiring the District to reimburse the expenses of any person or entity, consideration of any request for a modification to the Service Plan, consideration of Debt issuance or refinancing, and consideration of any action implicating this Section V.F.7.d of this Service Plan.

B. Board Membership. The Board shall be comprised of persons who are qualified “eligible electors” of the District as provided by State law. The District shall not enter into any agreement or approve any rule or regulation by which the ability of End Users to be elected to or appointed to the Board is removed or diminished.

C. City Fees. The District will pay an annual oversight fee to the City and other fees established for the processing, review, and consideration of District requests, as required by the City Code.

## **XII. MATERIAL MODIFICATIONS**

A. Material modifications to this Service Plan may be made only in accordance with Section 32-1-207, C.R.S., as a Service Plan Amendment. No modification shall be required for an action of the District that does not materially depart from the provisions of this Service Plan, unless otherwise provided in this Service Plan. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and Public Improvements under evolving circumstances without the need for numerous amendments, provided that the modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall be permitted to accommodate development needs if consistent with the then-current City Approvals, this Service Plan, and the District Activities IGA. Actions of the District that violate the limitations of this Service Plan shall be deemed to be material modifications to this Service Plan and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

B. Any notice given by the District pursuant to Section 32-1-207(3)(b), C.R.S. shall, in addition to the requirements set forth in such section, be mailed by first class mail, postage pre-paid, to the office of the City Attorney for the City and the action described in such notice shall not be undertaken by the District until the City Council approves such action by resolution. If the City fails to respond to such notice, the District shall petition the City for an amendment to this Service Plan.

C. Departures from the Service Plan that constitute a material modification requiring a Service Plan Amendment include, without limitation:

1. Actions or failures to act that create materially greater financial risk or burden to the taxpayers of the District;

2. An alteration or revision of the proposed schedule of debt issuance set forth in the Financial Plan [FINANCIAL PLANS ARE DONE AT THE TIME THE DISTRICT IS FORMED. THEY ARE DONE WITH BEST INFORMATION AVAILABLE, BUT AS A RESULT OF

MARKET CONDITIONS, ARE CERTAINLY SUBJECT TO VARIATION IN THE FUTURE. THE HOUSING CRASH OF 2008 IS A PRIME EXAMPLE OF MARKET FORCES CREATING VARIATIONS IN FINANCIAL AND BUILD OUT PLANS. THERE SHOULD BE SOME LATITUDE IN REVISION OR ALTERATION TO THE DEBT SCHEDULE TO ACCOUNT FOR THESE MATTERS, I.E., AN ALTERATION OR REVISION OF THE PROPOSED SCHEDULE OF DEBT ISSUANCE BY MORE THAN 5 YEARS.];

3. Performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function, or facility authorized in the Service Plan, except as authorized by an amendment to the District Activities IGA approved by the City Council, provided that non-material modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall not be considered material modifications;

4. Failure to perform a service or function, construct an improvement, or acquire a facility required by the Service Plan, except as authorized by an amendment to the District Activities IGA approved by the City Council;

5. Any Debt issued with a mill levy pledge, or which results in a mill levy pledge, that exceeds the Maximum Combined Mill Levy, the Maximum Debt Mill Levy, or the Maximum Debt Mill Levy Imposition Term, shall be deemed a material modification of this Service Plan and shall not be an authorized issuance of Debt unless and until such material modification has been approved by a Service Plan Amendment;

6. The conversion of any Taxable real property within the District to a tax-exempt status if such property was included in the District's financial plan unless the District demonstrates to the City Council that the tax-exempt use of the property does not materially impact the District's ability to meet its annual debt service obligations[THE DISTRICT HAS NO CONTROL OVER WHETHER A TAX EXEMPT USER ACQUIRES PROPERTY WITHIN ITS BOUNDARIES. THIS CREATES A MATERIAL MODIFICATION FOR SOMETHING THAT IS NOT IN THE CONTROL OF THE DISTRICT];

7. The exclusion of any real property within the District without a prior resolution of the City Council approving such exclusion;

8. Failure to provide an essential Public Improvement or service described this Service Plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the District;

9. Failure to receive authorization for the Regional Improvement Mill Levy, or failure to impose, collect, or remit the Regional Improvement Mill Levy at the direction of the City, or the issuance of any Debt prior to the authorization of the Regional Improvement Mill Levy; and

10. Failure to comply with any of the preconditions, prohibitions, limitations and restrictions of this Service Plan.

### **XIII. DISTRICT ACTIVITIES IGA**



The form of the District Activities IGA, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit C**. The District shall approve the District Activities IGA in substantially the form attached as **Exhibit C**, with any additional details, terms and conditions deemed necessary by the City and the District if consistent with this Service Plan, at its first Board meeting after its organizational election. Failure of the District to execute the District Activities IGA shall constitute a material modification and shall require a Service Plan Amendment. The City Council will approve the District Activities IGA in the form attached as **Exhibit C** simultaneously with approval of the Service Plan or at the time of the District's approval, at its sole discretion.

#### **XIV. SANCTIONS**

Should the District undertake any act without obtaining prior City Council approval or consent or City Manager approval or consent under this Service Plan, that constitutes a material modification to this Service Plan requiring a Service Plan Amendment or under the Special District Act, or that does not otherwise comply with the provisions of this Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Special District Act;
2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District's development or construction or operation of improvements or provision of services ]**WE ASSUME THAT THIS PERTAINS SOLELY TO PERMITS OR APPROVALS OF THE DISTRICT AND NOT OF THIRD PARTIES DOING BUSINESS WITHIN THE BOUNDARIES OF THE DISTRICT. TO BE ABLE TO PULL A PERMIT FROM A THIRD PARTY THAT HAS NO RELATIONSHIP TO THE DISTRICT WOULD BE PUNITIVE AND UNFAIR TO THAT THIRD PARTY. AN EXAMPLE IS A DEVELOPMENT THAT HAS MULTIPLE HOMEBUILDERS, BUT THE BOARD OF THE DISTRICT IS COMPRISED OF HOMEOWNERS, THE ABILITY OF A HOMEOWNER CONTROLLED BOARD TO INTENTIONALLY DO SOMETHING WRONG TO STOP DEVELOPMENT IS TROUBLESOME. ADDITIONALLY, PULLING PERMITS AND STOPPING DEVELOPMENT MAY HURT EXISTING HOMEOWNERS THAT ARE RELYING ON THE REST OF THE COMMUNITY TO BE COMPLETED. THE FIRST HOMEOWNERS TO CLOSE COULD BE NEGATIVELY IMPACTED BY A HALF-BUILT COMMUNITY IF PERMITS WERE STOPPED**];
3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
4. Exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

#### **XV. RESOLUTION OF APPROVAL**

The District agrees to incorporate the City Council's resolution approving this Service Plan, including any conditions on any such approval, into the copy of the Service Plan presented to the District Court for and in Adams County, Colorado.

#### **XVI. CONCLUSION**

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S. establishes the following:

A. There is sufficient existing and projected need for organized service in the area to be serviced by the District.

B. The existing service in the area to be served by the District is inadequate for present and projected needs.

C. The District is capable of providing economical and sufficient service to the area within the District Boundaries.

D. The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

E. Adequate service is not, and will not be, available to the area through the City or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

F. The facility and service standards of the District are compatible with the facility and service standards of the City within which the District is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.

G. The Service Plan is in substantial compliance with a comprehensive plan adopted pursuant to Section 30-28-106, C.R.S. and the City Code.

H. The Service Plan is in compliance with any duly adopted City, county, regional or State long-range water quality management plan for the area.

I. The creation of the District is in the best interests of the area proposed to be served.

## **EXHIBIT A-1**

Legal Description and Map of [Initial] District Boundaries

## **EXHIBIT A-2**

### Legal Description and Map of Inclusion Area

## **EXHIBIT B**

### Commerce City Vicinity Map

## **EXHIBIT C**

Form District Activities IGA

## **EXHIBIT D**

### Description of Public Improvements

Must include:

- A written narrative and description of the Public Improvements
- A map/maps
- Preliminary construction drawings
- Preliminary engineering survey
- Estimated costs

## **EXHIBIT E**

### Financial Plan



## **EXHIBIT F**

### Description of Regional Improvements



Special District Association of Colorado  
*Supporting Community-Based Government*

May 12, 2022

City of Commerce City  
Members of City Council  
7887 E. 60th Avenue  
Commerce City, CO 80022

Dear Members of the Commerce City Council:

The Colorado Special District Association (SDA) submit this letter to document our comments on Ordinance No. 2379 (Series 2022) for Commerce City ("City") under consideration by the City Council.

The SDA is a Colorado non-profit corporation that was established in 1975 to provide better communication, research, legislative input, administrative support, and training opportunities for its member districts. SDA's membership consists of 2,467 special districts located throughout the State of Colorado. Including those members, the total number of special districts in the State of Colorado is in excess of 3,300.

In law and practice, metropolitan districts work closely with their local government partners to establish and deliver the infrastructure and services set forth and approved in the service plan. Our concern is that Ordinance No. 2379 would establish a legal framework that would set up metropolitan districts to fail.

Ordinance No. 2379 undermines the separate, but collaborative, relationship that must exist between metropolitan districts and their local government counterparts. The respectful relationship between local governments is not promoted, for example, by Subsection (2) of Section 13-2100 (Service plans) of the proposed Ordinance. This Subsection (2) sets forth specific limitations, restrictions, or prohibitions for all service plans which will impair a metropolitan district from taking any regular, advisable, or common actions. Section 13-2100(2)(i), (ii), (iv), (v), (vii), and (viii) each prohibit a metropolitan district from taking regular actions of a district without prior authorization of the City (and (xxii) requiring review and comment). This on-going micro-management of regular business after the service plan is approved does not allow metropolitan districts to govern as a separate local government.

Ordinance No. 2379 will be very costly and may make establishing new metropolitan districts impossible. For example, Subsection (2) includes eighteen subsections restricting, dictating, or otherwise limiting the revenue, expenditure, taxing, fiscal, or debt authority of a metropolitan district. Of these restrictions, the most troubling is the limitation set forth in subsection (xiii), impairing the tax authority of the metropolitan district by dictating that a mill levy may not be

adjusted for changes in assessed valuation or similar. Considering that there were no fewer than sixteen (16) state-wide initiatives filed earlier in 2022 that proposed to place restrictive limits on property taxes collected or the growth of the assessed value of property, the restriction in subsubsection (xiii) seems designed to ensure that no debt could be issued under the City's model service plan. Other restrictions in these subsubsections dictate debt financing by methods and manners that are not common for other local governments, nor common in the bond market.

For the sake of brevity of this letter, I will list other areas of concern that are appropriate for significant stakeholder vetting and discussion. Some of these topics will require engagement of experts on the particular topic area, which we will be happy to make available.

Additional areas of concern:

- Section 13-1003 – The description of charges imposed by the City as application and oversight fees are general, and refer to separate, later action by Resolution. This section refers to fees to “defray” costs to the City, including engaging third-party professionals. Typical fee language is absent from this Section (i.e. offset reasonable administrative or regulatory costs or burdens); therefore, when these fees are set, they may be unreasonable and exceed reasonable costs.
- Section 13-1005 – How will this Ordinance apply to existing metropolitan districts? Will all existing metropolitan districts be required to modify their service plans to conform with the Ordinance? How will the requirements of the Ordinance affect issued debt and operational plans?
- Section 13-1004 – The sanctions set forth in this Section are punitive, especially considering that “material modifications” are defined so broadly.
- Section 13-2100(2)(xiv) – The limitation to 35 years on bonds is not typical and will make planning and building infrastructure more expensive.
- Section 13-2100(2)(xii) – The limitation on operation and maintenance mills to 10 mills is not reasonable and will impair the flexibility metropolitan districts need to serve their residents.
- Section 13-2101 – Regional Improvement Mill Levy of the Ordinance.
- Sections 13-1001 and 13-3102 – The definition and operational sections pertaining to “material modifications” is so broad that modifications may be required without merit, creating operational and financial risks for metropolitan districts.
- Sections 13-4000 and 13-4001 – The required meeting notices overlap with current law; restating them in this section is redundant. Also, the use of social media by public entities raises significant legal risks, and should be carefully considered, rather than ordered. Please see this [memo](#) on the subject.
- Section 13-4001 – Transparency – Overlaps current law.

We have observed numerous municipal model service plan modifications and proposed modifications along the front range in recent months. Some are intended to sincerely reform the way in which a municipality reviews and approves proposed metro district service plans, while

others are intended to limit or stop growth. Colorado is a desired destination for many people to seek housing and a better way of life, our concern is that the proposed changes to the city's model metro district service plan will limit and at the same time will drive the costs of homes beyond today's record highs and push the cost of renting beyond the limits of many people moving to or currently living in Colorado.

We offer these comments in an effort to become part of the conversation and help Commerce City carefully consider changes to the model service plan that are meaningful and do not create unintended consequences.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Terry", with a stylized, flowing script.

Ann Terry  
Executive Director  
Special District Association

cc: Roger Tinklenberg, City Manager  
Annette Peters, Executive Administrator, Mayor & City Council

## Gibson, Dylan - CM

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**From:** Jennifer Gruber Tanaka <jtanaka@wbapc.com>  
**Sent:** Friday, May 13, 2022 9:59 AM  
**To:** Gibson, Dylan - CM  
**Subject:** Commerce City - Model Service Plan for Districts

**Importance:** High

Good morning, Mr. Gibson.

I am writing with regard to the City's updated Model Service Plan that is currently on the agenda for consideration by Council Monday night.

I am a special district attorney and I am also the Vice Chair of the Metro District Education Coalition. I have personally worked with many jurisdictions over the last several years to update their model service plans and to educate councils and staff on the consequences of various provisions contained therein. In doing so, we have been able to hear the concerns of those municipalities and address those concerns while continuing to uphold the integrity of the tool to ensure development can occur in the most cost-effective manner. I strongly agree that responsible guardrails in service plans can achieve a municipality's goals to ensure property owners and residents are protected while providing sufficient flexibility for the districts to achieve their intended goals. I would welcome the opportunity to participate in a stakeholder process with the City and/or staff to walk through the various provisions to explain in greater detail the concerns we have with the updated model, and, more importantly, to hear the City's concerns that it is trying to address. In doing so I feel we can come to a mutually agreeable solution that can be viewed as a win-win.

To this end, there are a variety of concerns with the current draft of the updated model. However, the top 3 concerns that will have the greatest detrimental impact are:

- **No mill levy adjustment:** If assessment ratios are reduced in the future, as they have the past two legislative sessions, revenue to pay for infrastructure and to repay debt drops. The uncertainty in the value of the future property tax revenue stream makes it nearly impossible to sell district debt. When investors are considering purchasing debt, they need assurances that they will be repaid pursuant to the schedule outlined in the financial plan. When that certainty is removed, they lose interest in the investment and/or interest rates skyrocket as a result of this uncertainty and volatility. Ultimately, mill levy adjustment allows for a district to adjust the mill levy so that the impact of the change in the assessment ratio remains revenue neutral to the district. So, while the mill levy itself may change, the actual tax bill paid by property owners do not change. It is important to note that this is a provision that no other municipality in Colorado currently has as part of their model service plan.
- **Withholding building permits for a material modification of a service plan is not reasonable.** This will create challenges and additional uncertainty for home builders that are building homes in Commerce City, increasing the cost of housing. It is extremely unconventional to tie land use approvals and actions to a governmental entity's actions and powers. The City retains the ability to set forth requirements for developers and builders in development agreements, land use codes, etc. However, tying governmental functions to the land use approvals is unheard of and will have a significant chilling effect on development within the City.

- The prohibition on sub-debt: Subordinate debt is often required to fund the infrastructure needed to get a project off the ground. Restricting this tool will lead to higher costs to the residents because those improvements will have to be financed through conventional construction loans which are at significantly higher interest rates. In turn, these increased costs are front-loaded into the lot prices that residents pay. Responsible limitations and parameters can be placed on subordinate debt to ensure the tool remains functional and the financing of improvements remains as low as possible.

I understand the fears that many have with regard to metro districts and financing tools associated therewith; however, I do believe that the fears are and can be allayed when education is provided regarding the tools and when responsible guardrails are put in place. These are not issues that cannot be addressed but they can be addressed in ways that allow the tool to continue to operate as intended.

I look forward to the ability to discuss these concerns with you, Council, and/or staff and would request that Council not take action until a stakeholder process can be conducted and these issues worked through with responsible changes. Thank you!



**JENNIFER GRUBER TANAKA, ESQ.**

**SHAREHOLDER**

WHITE BEAR ANKELE TANAKA & WALDRON  
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Centennial, Colorado 80122

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## Gibson, Dylan - CM

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**From:** Kristi Pollard <metrodistricteducation@gmail.com>  
**Sent:** Friday, May 13, 2022 6:05 PM  
**To:** Huseman, Benjamin - CC; Davis, Rick - CC; Madera, Oscar - CC; Allen-Thomas, Jennifer - CC; Noble, Susan - CC; Douglas, Kristi - CC; Hurst, Craig - CC; Grimes, Meghan - CC; Ford, Sean - CC; Tinklenberg, Roger - CM  
**Cc:** Rogers, Jason - CM; Tolbert, James - CD; Gibson, Dylan - CM  
**Subject:** Proposed Changes to Metro District Regulations -- Ordinance No. 2379 (Series 2022)

Dear Mayor Huseman and Members of the City Council:

Please accept this letter as part of the public record regarding the proposed changes to metropolitan district regulations, Ordinance No. 2379 (Series 2022) that the City Council is considering on Monday, May 16, 2022.

As a non-profit committed to educating the public on the role that metro districts play in our communities to help keep the cost of housing low, we are extremely concerned with proposed Ordinance No. 2379 and the unintended consequences that may result from its enactment. Metro districts are an important tool for cities and counties to design, build and maintain the public infrastructure that is essential to all residential communities. By allowing cities and counties to access low-interest, tax-exempt bonds, metro districts allow growth to pay its own way while helping to keep the cost of housing low. Without this tool, cities must either finance the public infrastructure themselves or developers will have to pay for the infrastructure through traditional financing at much higher interest rates which means the total cost of roads, sewers, parks, etc. are more expensive and the cost gets added into the total cost of each resident's home. With the rising cost of housing on everyone's mind, we are sensitive to any action that will exacerbate Colorado's affordability challenges.

While we understand City Council's intention to create greater protections for its residents, we are concerned with three provisions specifically that will have severe unintended consequences. We have enumerated these concerns below:

1. No Allowance for a mill levy adjustment (formerly called a Gallagher Adjustment): If assessment ratios are reduced in the future, as they have the past two legislative sessions, revenue generated by the mill levy to pay for infrastructure drops. The uncertainty in the value of the future property tax revenue stream **makes it nearly impossible to sell metro district debt** because investors rely upon the district's promise to generate the projected revenues in order to repay the debt. This is a provision that no other municipality in Colorado currently has as part of its model service plan.
2. The prohibition on sub-debt: Subordinate debt is often required to fund the infrastructure needed to get a project off the ground. Restricting this tool will lead to higher costs to the residents as other, even higher interest rate capital fills the gap.
3. Withholding building permits for a material modification of a service plan is not reasonable. This will create challenges and additional uncertainty for home builders that are building homes in Commerce City, increasing the cost of housing.

We would welcome the opportunity to work alongside you and City staff to address the concerns that you have in a precise manner should you be willing to engage in a stakeholder process. However, we are very concerned with the proposed language and the unintended consequence of unnecessarily raising house prices they will bring.

We respectfully request that you vote no on Ordinance No. 2379 (Series 2022).

Thank you for your attention to these very important matters.

Sincerely,  
Kristi Pollard

Kristi Pollard  
Executive Director  
Metro District Education Coalition  
(970) 270-5594  
MetroDistrictEducation.com







HOME BUILDERS  
ASSOCIATION  
of  
METRO DENVER®

May 2, 2022

City of Commerce City  
Mayor Benjamin Huseman  
Members of City Council  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Dear Mayor and City Council:

I am writing to share our thoughts and concerns regarding Commerce City's proposed changes to metropolitan district regulations that are coming to City Council on Monday, May 2, 2022.

These comments are being provided on behalf of the Home Builders Association of Metro Denver. As the largest HBA in Colorado, the HBA of Metro Denver represents over 500 homebuilders, developers, remodelers, architects, mortgage lenders, title companies, subcontractors, suppliers and service providers in the eight metro-area counties we serve.

In Commerce City, the HBA of Metro Denver represents a diverse collection of developers and builders doing business in Commerce City.

We have done our best to try and stay current on all of the policies and code changes the City of Commerce City is enacting upon new development and home building. Given how specific the proposed regulations are to the home building industry and how closely the HBA of Metro Denver is working with the City on various issues, we are disappointed in the amount of time we were given to review the proposed regulations, as we only just received them last week on April 25<sup>th</sup>.

We have done our best to compile our comments, concerns and suggestions below and hope City staff, the Mayor and City Council will take them into account.

**The biggest concern** we have is the lack of what we previously called "Gallagher Adjustment." If the assessment ratios change in the future—which they most certainly will—this will have a huge negative impact on metropolitan district financing and raise the cost of capital for districts in Commerce City significantly. This will result in higher interest rates on debt in Commerce City to offset the additional risk that the assessment ratios will change.

If we could suggest Commerce City staff and the Mayor and Council focus on one item from all of the proposed changes, it would be the above issue. That being said, we also want to convey the following additional comments, which are also important and will have an impact on future development in Commerce City:

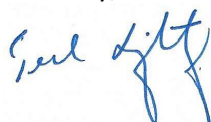
- 35-year limitation on debt service mill levy is shorter than we usually see and could result in less ability for public improvements to be constructed and higher interest rates.
- The concept of “extraordinary public benefits” is concerning not because we don’t agree about providing public benefits, but because it is a very subjective and amorphous standard that does not provide a good standard or set of criteria to follow.
- The prohibition against entering into any intergovernmental agreements/extra-territorial service agreements seems overly burdensome on the district’s ability to operate in accordance with its service plan. The result will be having to go back to the City for these items, which can result in service delays, additional costs in negotiating and getting the agreements approved (which ultimately will be paid by the homeowner).
- The total combined mill levy cap of 50 mills, with a limitation of 10 mills (of the total 50) being for operations and maintenance is really low.
- The prohibition on adjustments to the mill levy for changes in assessed valuation calculation will result in services being ratcheted down when such changes occur and less proceeds from debt that is issued.
- The annual oversight fee is something we have not seen before and left our members curious how this will be implemented and districts will be billed.
- Withholding building permits for a perceived material modification of a service plan seems pretty aggressive. This could be a challenge for home builders if they are building in a community that has an issue that is a result of the previous landowner or land developer, but preventing them from pulling a building permit.
- The limit to 80% of public infrastructure cost reimbursement and \$25,000 of organizational costs will present numerous financing challenges for developers in Commerce City.

The Home Builders Association supports smart regulations on metropolitan districts so this important tool for financing and building public infrastructure and amenities can continue. Again, without metropolitan districts, cities are not able to pay for infrastructure like streets, sidewalks and parks to serve new development. And based on recent housing figures and trajectory, our supply/demand issue with housing is not going to get better unless and until we can find ways to drive down the cost of housing (not up).

We hope Commerce City will consider these comments in any final amendments or regulation changes that are adopted.

Thank you for your time and consideration of this matter.

Sincerely,



Ted Leighty  
Chief Executive Officer  
Home Builders Association of Metro Denver

Cc: Roger Tinklenberg, City Manager  
Jason Rogers, Deputy City Manager  
Jim Tolbert, Community Development Director

## Gibson, Dylan - CM

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**From:** Brooke Hutchens <bhutchens@dadco.com>  
**Sent:** Thursday, May 19, 2022 8:36 AM  
**To:** Gibson, Dylan - CM  
**Subject:** Commerce City Model Service Plan: Adjusting Mill levies  
**Attachments:** Mill Levy Adjustments.pdf

Mr. Gibson,

In addition to the letter we submitted with commentary on the proposed revisions to the model Metropolitan District Service Plan, we wanted to provide the attached two slides which visually illustrate how the current, permitted mill levy adjustments are revenue neutral and why they are critical to the ability to issue bonds in the public market. The proposed revision to eliminate the mill levy cap adjustments makes it nearly impossible to sell bonds for Metropolitan Districts which have both a limited tax base and a limited mill levy. The second slide illustrates the possible revenue shortfalls an investor would experience due to the lack of adjustment. These shortfalls would be impossible to predict the timing or the scope – and a risk that has no bounds or predictability would make the bonds unmarketable. No other municipality has this provision in their Service Plan because of how crippling it would be on public bond issuance throughout the lifecycle of a district – from the earliest stages to even likely preventing any debt from ever being investment grade.

Hopefully the visual demonstration helps advance the conversation with Council and staff. I appreciate your assistance in gathering comments in advance of the continued hearing.

Regards,

**BROOKE HUTCHENS | Managing Director, Public Finance Banker**  
bhutchens@dadco.com | 303.764.5724  
D.A. Davidson & Co.  
1550 Market Street, Suite 300, Denver, CO 80202



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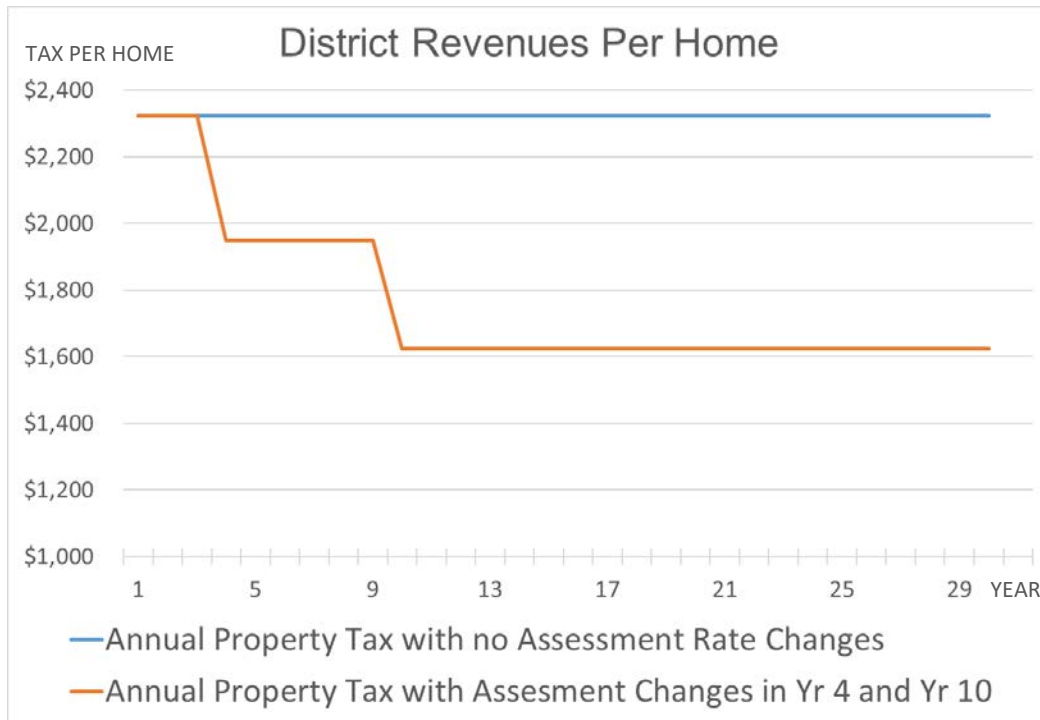
# MAINTAINING TAX NEUTRALITY

	<div>Property Value</div>	×	<div>Assessment Rate</div>	×	<div>Mill Rate</div>	=	<div>Annual Taxes</div>
<b>2021 Assessment Rate</b>	\$650,000	×	7.15%	×	50.000	=	<b>\$2,324</b>
<b>Future Assessment Rate</b>	\$650,000	×	6.00%	×	59.583	=	<b>\$2,324</b>



IF THE STATE MANDATES A CHANGE TO ASSESSMENT RATE,  
ALLOWING THE MILL RATE TO ADJUST RESULTS IN A \$0 CHANGE IN TAX

# MAINTAINING TAX NEUTRALITY IS CRITICAL TO THE CAPITAL MARKETS THAT FUND PUBLIC INFRASTRUCTURE



- Assessment ratios are subject to reduction by the legislature or electors.
- Assessment ratios have not increased, only decreased.
- There is a current legislative proposal to reduce residential to 6.5% (and commercial to 26%). Every year, such measures are considered.
- If a Metropolitan District's levy does not adjust to offset a reduction in assessment rates, total taxes would decline resulting in the inability to repay investors seeking to funds public infrastructure projects.

**PREVENTING THE MILL LEVY TO ADJUST TO MAINTAIN A CONSITENT TAX OVER TIME WILL PREVENT THE CAPITAL MARKETS FROM INVESTING IN PUBLIC INFRASTRUCTURE PROJECTS**