

PLACEMENT AGENT AGREEMENT

COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT In the City of Commerce City Adams County, Colorado

**\$14,135,000
Limited Tax General Obligation Loan
Series 2021**

This **PLACEMENT AGENT AGREEMENT** (this “Agreement”) is entered into this _____ day of _____, 2021 by and between the **COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT**, in the City of Commerce City, Adams County, Colorado (the “District”) and **D.A. DAVIDSON & CO.**, Denver, Colorado (“D.A. Davidson”).

RECITALS

WHEREAS, the District is a public or quasi-municipal subdivision of the State of Colorado (the “State”) and body corporate, duly and regularly created as a general improvement district under the Constitution and laws of the State, in particular the General Improvement District Act constituting Sections 31-25-601 et seq., C.R.S. (the “General Improvement District Act”), and pursuant to Ordinance No. 1966, adopted by the City Council (the “City Council”) of the City of Commerce City, Colorado (the “City”) on July 15, 2013; and

WHEREAS, the District was established to undertake the design, acquisition, construction, completion and installation of public improvements permitted pursuant to the General Improvement District Act, including, but not limited to all utilities, gas, electric, water, storm sewer, sanitary sewer, drainage, all communications facilities such as cable, fiber, and broadband, roadways and alleyways, trails and sidewalks, environmental remediation, fill, street lights, landscaping, irrigation, public parking areas, signage, parks, and open space, together with land, easements and extensions of and improvements to said facilities within and without the boundaries of the District (collectively, the “Project”); and

WHEREAS, at a regular election of the eligible electors of the District, duly called and held on November 5, 2013 (the “Election”) in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the Election voted in favor of, inter alia, the issuance of District indebtedness and the imposition of taxes for the payment thereof, for the purpose of providing certain improvements and facilities; and

WHEREAS, the District has the power and authority to issue bonds (which may include notes, certificates of indebtedness, debentures or other contractual obligations) pursuant to the General Improvement District Act and the Supplemental Public Securities Act, constituting Sections 11-57-201 et seq., C.R.S. (the “Supplemental Act”), to finance the activities or

operations permitted and authorized to be undertaken by the District under the General Improvement District Act and the Election; and

WHEREAS, the City Council of the City, acting *ex officio* as the Board of Directors of the District, had made a determination that the District shall incur indebtedness for the purpose of funding a portion of the Project, and that such indebtedness shall be in the form of a direct loan; and

WHEREAS, the parties desire to enter into this Agreement to confirm the engagement of D.A. Davidson as placement agent for the District's Limited Tax General Obligation Loan, Series 2021 (the "Loan"), to provide for additional detail and clarification of D.A. Davidson's services and compensation as placement agent, as well as to make certain disclosures of conflicts of interest arising in connection with the form of such compensation; and

WHEREAS, D.A. Davidson has also provided a separate disclosure letter (the "Disclosure Letter") to the District containing certain disclosures with respect to the Loan, which disclosures are in compliance with MSRB Rule G-17.

NOW, THEREFORE, for and in consideration of the foregoing and the agreements made herein, the parties hereto hereby agree as follows:

Section 1. Appointment of D.A. Davidson as Placement Agent; Scope of D.A. Davidson's Duties.

(a) The District hereby appoints D.A. Davidson as placement agent (the "Placement Agent") for the District in connection with the Loan, and D.A. Davidson hereby accepts such appointment, all of which is subject to the terms, conditions, and acknowledgements set forth herein. The District acknowledges that D.A. Davidson is acting solely as the Placement Agent of the District and not as a principal. In addition, the District acknowledges that this Agreement is solely with respect to the role of D.A. Davidson with respect to the Loan and not with respect to any other obligations of the District issued and delivered concurrently with the issuance of the Loan or otherwise.

(b) The parties hereby agree that D.A. Davidson's services as Placement Agent have been and shall be limited to assisting the District in soliciting proposals from various banks and financial institutions on behalf of the District, evaluating the responses to such proposals, negotiating, on behalf of the District, the terms of the Loan with the lender selected by the District (the "Lender"), discussing with the Lender any financial and other information about the District that is or was provided by the District, computing the statistics necessary for the District to prepare and file Form 8038G with the Internal Revenue Service, and providing such certificates as may be reasonably requested by bond counsel to the District.

(c) The District hereby acknowledges that since the time the District requested that D.A. Davidson provide assistance in connection with the private direct placement of the Loan, the services provided by D.A. Davidson to the District have been consistent with the scope of services set forth in Section 1(b) hereof.

(d) The District acknowledges that D.A. Davidson has made the following disclosures to the District in satisfaction of certain requirements of MSRB Rule G-23:

(i) In connection with the Loan, D.A. Davidson is acting as the District's placement agent and not as the District's financial advisor, underwriter, or municipal advisor.

(ii) The primary role of a placement agent is to directly place a loan or new issue of municipal securities on behalf of the District. D.A. Davidson does not assume any financial advisory or fiduciary responsibilities with respect to the District in connection with the direct placement of the Loan.

(iii) As Placement Agent, D.A. Davidson is not acting as the District's fiduciary and may have financial and other interests that differ from those of the District.

(e) The District has consulted and will continue to consult with its legal counsel, accountant, municipal advisor, tax advisor and other consultants and advisors, as the District deems necessary and appropriate in connection with the Loan.

(f) The District acknowledges receipt of the Disclosure Letter as required by MSRB Rule G-17.

Section 2. Compensation for Agent's Services; Disclosure of Conflict of Interest.

(a) As compensation for the Placement Agent services for the Loan, the District shall pay to D.A. Davidson a fee in the amount equal to 1.5% of the original principal amount of the Loan (the "Placement Agent Fee").

(b) The Placement Agent Fee shall be payable by the District by wire transfer of immediately available funds upon or prior to the closing of the Loan.

(c) The Placement Agent Fee is contingent upon the closing of the Loan.

(d) D.A. Davidson hereby discloses to the District that a conflict of interest may result from the form of compensation of the Placement Agent Fee. Compensation which is contingent on the closing of a financing or size of a financing transaction presents a potential conflict of interest since D.A. Davidson may have an incentive to recommend unnecessary financings or financings that are disadvantageous to the District or to recommend that the size of the transaction be larger than is necessary. For example, when facts or circumstances arise that could cause the financing or other transaction to be delayed or fail to close, D.A. Davidson may have an incentive to discourage a full consideration of such facts and circumstances, or to discourage consideration of alternatives that may result in the cancellation of the financing or other transaction.

(e) The District hereby acknowledges the existence of the conflict of interest arising from D.A. Davidson's form of compensation as described in Section 2(d) above

and agrees that the District has been given the opportunity to raise questions and discuss the foregoing with D.A. Davidson.

Section 3. Term and Termination. This Agreement shall become effective upon the execution and delivery hereof by the District and D.A. Davidson, and shall continue in full force and effect until the date when D.A. Davidson receives compensation for its services hereunder as provided in Sections 2(a) and (b) hereof, unless terminated earlier by mutual agreement of the parties.

Section 4. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, the obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other party hereto.

Section 5. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy, or any other reason, such circumstances shall not have the effect of rendering the provisions in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

Section 6. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument. Executed copies hereof may be delivered by facsimile or email of a pdf document, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Signature pages may be detached and reattached to physically form one document.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to its choice of law rules.

[End of Agreement; Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Placement Agent Agreement to be duly executed as of the day and year first above written.

COMMERCE CITY E-470 COMMERCIAL AREA
GENERAL IMPROVEMENT DISTRICT

By: _____
Name: _____
Title: _____

D.A. DAVIDSON & CO.

By: _____
Name: _____
Title: _____

[Signature Page to Placement Agent Agreement]