

TEMPLATE
McGEADY BECHER P.C.
UPDATED JUNE 12, 2020

SERVICE PLAN
FOR

EBERLY PLACE METROPOLITAN DISTRICT ~~NO. 1~~

CITY OF COMMERCE CITY, COLORADO

Approved: _____

Style Definition: Heading 1,h1

Style Definition: Subtitle,st: Space After: 12 pt

Formatted: Font color: Black

Formatted: Font: Times New Roman

Formatted: Font: Times New Roman, Font color: Auto

Formatted: Font: Times New Roman

TABLE OF CONTENTS

I. DEFINITIONS	1
II. PURPOSE AND OBJECTIVES OF DISTRICT	3
A. Purpose and Intent	3
B. Need for the District	4
C. Objective of City Regarding Service Plan	4
III. DISTRICT BOUNDARIES	4
IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION	5
V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES	5
A. Powers of the District and Service Plan Amendment	5
1. Operations and Maintenance Limitation	5
2. Fire Protection Limitation	6
3. Television Relay and Translation Limitation	6
4. Telecommunication Facilities	6
5. Construction Standards Limitation	6
6. Zoning and Land Use Requirements	6
7. Growth Limitations	6
8. Privately Placed Debt Limitation	6
9. Eminent Domain Limitation	7
10. Water Rights/Resources Limitation	7
11. Inclusion Limitation	7
12. Exclusion Limitation	7
13. Overlap Limitation	7
14. Initial Debt Limitation	7
15. Total Debt Issuance Limitation	8

16. Fee Limitation.....	8
17. Public Improvements Fee Limitation.....	8
18. Sales and Use Tax.....	8
19. Consolidation and Subdistrict Limitation.....	8
20. Bankruptcy Limitation.....	9
21. Reimbursement Agreement.....	9
22. Material Modification Service Plan Amendment 45 Day Notice.....	9
B. Preliminary Engineering Survey.....	10
VI. FINANCIAL PLAN.....	11
A. General.....	11
B. Maximum Voted Interest Rate and Maximum Underwriting Discount.....	11
C. Maximum Debt Mill Levy, Operation and Maintenance Mill Levy and Maximum Combined Mill Levy.....	11
D. Maximum Debt Mill Levy Imposition Term.....	12
E. Debt Repayment Sources.....	13
F. Debt Instrument Disclosure Requirement.....	13
G. Security for Debt.....	13
H. TABOR Compliance.....	13
I. District Operating Costs.....	14
VII. ANNUAL REPORT.....	14
A. General.....	14
B. Reporting of Significant Events.....	15
VIII. DISSOLUTION.....	15
IX. DISTRICT TRANSPARENCY.....	16
A. Disclosure to Purchasers.....	16
B. Disclosure to Potential Residential Buyers.....	16

C. Board Meetings	16
D. Annual Notices	16
X. DISTRICT ACTIVITIES IGA	18
XI. CONCLUSION	18
I. DEFINITIONS	1
II. PURPOSE AND OBJECTIVES OF DISTRICT	3
A. Purpose and Intent	3
B. Need for the District	4
C. Public Benefit	4
D. Objective of City Regarding Service Plan	4
III. DISTRICT BOUNDARIES	4
IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION	5
V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES	5
A. Powers of the District and Service Plan Amendment	5
1. Operations and Maintenance Limitation	5
2. Fire Protection Limitation	6
3. Television Relay and Translation Limitation	6
4. Telecommunication Facilities	6
5. Construction Standards Limitation	6
6. Zoning and Land Use Requirements	6
7. Growth Limitations	6
8. Privately Placed Debt Limitation	6
9. Eminent Domain Limitation	7
10. Water Rights/Resources Limitation	7
11. Inclusion Limitation	7

12.	Exclusion Limitation.	7
13.	Overlap Limitation.....	7
14.	Initial Debt Limitation.	7
15.	Total Debt Issuance Limitation.....	8
16.	Fee Limitation.....	8
17.	Public Improvements Fee Limitation.....	8
18.	Nontaxable Property.	8
19.	Special Assessments.	8
20.	Sales and Use Tax.....	8
21.	Consolidation and Subdistrict Limitation.....	8
22.	Bankruptcy Limitation.....	9
23.	Reimbursement Agreement.	9
24.	Material Modification – Service Plan Amendment – 45 Day Notice.	9
25.	Land Acquisition.	9
26.	Public Improvements Conveyance.....	9
27.	Undeveloped Property.	10
28.	IGAs with other Governmental Entities.....	10
29.	Extraterritorial Service Agreements.....	10
30.	Developer reimbursements.	10
B.	Preliminary Engineering Survey.....	10
VI.	FINANCIAL PLAN	11
A.	General.	11
B.	Maximum Voted Interest Rate and Maximum Underwriting Discount.	11
C.	Maximum Debt Mill Levy, Operation and Maintenance Mill Levy and Maximum Combined Mill Levy.	11
D.	Maximum Debt Mill Levy Imposition Term.	12

E.	Debt Repayment Sources.....	13
F.	Debt Instrument Disclosure Requirement.....	13
G.	Revenue Pledge Agreements.....	13
H.	Security for Debt.....	13
I.	TABOR Compliance.....	13
J.	District Operating Costs.....	14
VII.	ANNUAL REPORT.....	14
A.	General.....	14
B.	Annual Report Contents.....	14
C.	Reporting of Significant Events.....	15
VIII.	DISSOLUTION.....	15
IX.	DISTRICT TRANSPARENCY.....	16
A.	Disclosure to Purchasers.....	16
B.	Disclosure to Potential Residential Buyers.....	16
C.	Annual Notices.....	16
D.	Website.....	16
X.	DISTRICT GOVERNANCE.....	17
A.	Board Meetings.....	17
B.	Board Membership.....	17
C.	City Fees.....	17
XI.	MATERIAL MODIFICATIONS.....	17
XII.	DISTRICT ACTIVITIES IGA.....	18
XIII.	SANCTIONS.....	18
XIV.	CONCLUSION.....	18

LIST OF EXHIBITS

EXHIBIT A-1	Legal Description and Map of initial District Boundaries modify language if no Inclusion Area
EXHIBIT A-2	Legal Description and Map of Inclusion Area include if appropriate; otherwise, delete
EXHIBIT B	Commerce City Vicinity Map
EXHIBIT C	District Activities IGA
EXHIBIT D	Estimated Costs of the Public Improvements
EXHIBIT E	Financial Plan

I. DEFINITIONS

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof 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 for the area within the District, (e) any other agreements between the City and the District relating to the area within the District, including, as applicable, the ~~Intergovernmental Agreement~~ District Activities IGA, 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.

District: ~~the~~ Eberly Place Metropolitan District.

District Activities IGA: an intergovernmental agreement between the District and the City regarding certain limitations of the District's activities, 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 initial 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 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.A. ~~17~~16, below.

Financial Plan: the Financial Plan described in Section VI and Exhibit E 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 for the first budget year.

~~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~~

~~Inclusion Area Boundary Map: the map attached hereto as part of Exhibit A-2, describing the property proposed for inclusion into the District Boundaries.
Delete this definition if there is no anticipated inclusion area~~

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.C. ~~53~~, hereof.

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

Maximum Debt Mill Levy Imposition Term: ~~the maximum term for imposition of a mill levy on a residential property as identified in Section VI.D, below: a maximum of forty (40) 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.~~

Mill Levy Adjustment: means if, on or after January 1 of the year of approval of the Service Plan, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the Maximum Debt Mill Levy, ~~the Operations and Maintenance Mill Levy~~, and the Maximum Combined Mill Levy (as a result of a change to the Maximum Debt Mill Levy) may be increased or decreased to reflect such changes, such increases and decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted for changes occurring after such January 1, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

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.

Operation and Maintenance Mill Levy: means the mill levy the District is permitted to impose for the payment of Operation and Maintenance Costs, as set forth in Section VI.C.43 below.

Project: the development or property commonly referred to as _____-Eberly Place.

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 in Section V below, that benefit the District and serve the future residents and taxpayers of the District, as determined by the Board.

PUD Zone Document: 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 as approved by the City pursuant to the City Code and as amended pursuant to the City Code from time to time.

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.

Special District Act: Sections 32-1-101, *et seq.*, of the Colorado Revised Statutes, as amended from time to time. This Service Plan shall be subject to the requirements contained in SB21-262, amending the Special District Act, even if SB21-262 is repealed or does not take effect for any reason, and 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. 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 these 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 and 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. 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. Public Benefit. ~~The District shall participate in financing of a regional detention pond, contributions towards completion of Blackhawk Street, contributions towards an offsite traffic signal, road connections for future development sites and a regional waterline extension identified by the City as critical public infrastructure addressing locally-significant changes within and without the boundaries of the District.~~

C.D. Objective of City Regarding Service Plan.

Formatted: Keep with next

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, subject to the Maximum Debt Mill Levy, and/or repaid by Fees as limited by Section V.A. ~~47~~16.

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 through the District Activities IGA, attached hereto as **Exhibit C**.

3. It is the intent of the District to 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 ~~an~~ 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. It is the intent of this Service Plan to assure to the extent possible that no property shall bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy in amount and that no property developed for residential use shall bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the costs of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

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.~~ 34 acres. A legal description and map of the ~~initial~~ District Boundaries and the Inclusion Area Boundaries are attached hereto as ~~Exhibits~~ Exhibit 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~~

Formatted: Font color: Black

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

A. The District Boundaries ~~and the Inclusion Area Boundaries; delete if not applicable~~ consist of approximately ~~_____ ()~~ 34 acres of ~~insert type of use currently vacant land; intended to be developed for residential use.~~ 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 sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District at build-out is estimated to be approximately ~~_____ () people~~ Three Hundred Eighty Five (385) people based on an average of 2.5 persons per residential unit.

B. 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

Formatted: Keep with next, Keep lines together

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 set forth herein. 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.

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. 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, including, but not limited to, detention pond, park and recreation, landscaping and open space and perform covenant enforcement and control~~

services. Further, the District ~~Activities IGA, except that the District is~~ may be required and obligated to Operate and Maintain ~~any certain~~ park and recreation improvements within the District. Unless otherwise specified in the District Activities IGA, all parks and trails shall be open to the general public free of charge.

Formatted: Not Hidden

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. 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.

4. 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.

5. Construction Standards Limitation. 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.

6. 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.

7. 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.

8. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, or the execution of any 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.

~~Interest may accrue and compound annually or semi-annually on the District's Debt; provided, however, that any interest accruing on Debt originally issued to (or any other reimbursement obligation of the District payable to) a developer of property within the District shall not compound.~~

9. 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.

10. 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 the South Adams County Water and Sanitation District ("South Adams"). The District's powers with regard to water and sanitary sewer service is 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.

11. 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. ~~Delete reference to Inclusion Area Boundaries if no Inclusion Area~~

12. Exclusion Limitation. The District may not exclude property from the District Boundaries without a prior resolution of the City Council approving such exclusion.

13. 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 ~~for 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.

14. Initial Debt Limitation. On or before the effective date of approval by the City of a PUD Zone Document, the District shall not: (a) issue any Debt; (b) 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; or (c) impose or collect any Fees used for the purpose of repayment of Debt.

15. Total Debt Issuance Limitation. The District shall not issue Debt in excess of \$~~9,700,288.55~~ total principal amount, which ~~is equals the estimated costs of the Public Improvements and further is LESS than~~ the product of: (a) the bonding capacity of the District, which was derived 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 40 years; and (iv) debt service coverage is no less than 100%; and (v) the levying by the District of ~~50 mills for Debt, adjusted;~~ and (b) 125%. The Total Debt Issuance Limitation shall not apply to bonds, loans, notes, or other instruments issued for the purpose of refunding, refinancing, reissuing or restructuring outstanding Debt.

16. Fee Limitation. The District may impose and collect Fees as a source of revenue for repayment of Debt, funding of capital costs, and/or for Operations and Maintenance. 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. 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.

17. 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.

18. Nontaxable Property. Prior to any sale of real property within the District Boundaries for a nontaxable use, Seller shall demonstrate to the satisfaction of the Board that the tax-exempt use of the property shall 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, authorize non-compliance with this provision. The District shall provide prior notice to the City the Board's consideration of any action implicating this subsection.

19. Special Assessments. The District shall not impose a special assessment without the prior written approval of City Council.

18.20. Sales and Use Tax. No District shall invoke or exercise any actual or perceived City sales and use tax exemption.

19.21. 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. District shall not form a subdistrict without a prior resolution of the City Council approving the formation of such subdistrict.

20.22. 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).

21.23. Reimbursement Agreement. If a reimbursement agreement exists or is entered into for an improvement financed by the District, 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.

22.24. Material Modification – Service Plan Amendment – 45 Day Notice. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District that violate the limitations set forth in Sections V or VI herein 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. Any notice ~~give~~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 of 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.

25. 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 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.

26. Public Improvements Conveyance. Public improvements shall be certified as to inventory and cost by an independent professional engineer for acquisition or financing by the District. Improvements and facilities 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.

27. Undeveloped Property. 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.

28. IGAs with other Governmental Entities. At present the District does not anticipate entering into any other intergovernmental agreements other than the District Activities IGA with the City. 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 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.

29. Extraterritorial Service Agreements. 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.

30. Developer reimbursements. No reimbursement agreement by which the District would reimburse any owner of property or developer of land within the District Boundaries, or any person of entity affiliated with any such owner or developer shall (a) allow for the accrual of compound interest; (b) permit the reimbursement of more than \$25,000 of the costs of organizing the District; or (c) permit the reimbursement of any development security expenses.

B. Preliminary Engineering Survey.

1. The District is authorized to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance and financing of the Public Improvements within and without the District Boundaries, to be more specifically defined in the City Approvals. An estimate of the costs of the Public Improvements that may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the District Boundaries and is approximately \$ ~~_____~~ \$9,700,288.55 and is attached hereto as **Exhibit D.**

2. All Public Improvements shall be designed in accordance with City standards or South Adams' standards, as applicable and shall comply with the requirements of the City Approvals. The District shall be authorized to construct Public Improvements that shall be more specifically defined in the City Approvals. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

3. No reimbursement shall be made by the District to the Developer unless the District has hired an independent third party engineer to review such costs and such independent engineer has issued a certification that: 1) the costs are for improvements that constitute Public Improvements hereunder; 2) the costs to be reimbursed are reasonable for the Commerce City market; 3) the Public Improvements for which reimbursement is sought have

been installed in accordance with the plans and specifications therefor and comply with all applicable local, State or Federal requirements.

VI. FINANCIAL PLAN

A. General.

1. The District is authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District shall be to issue 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. The total Debt the District shall be permitted to issue shall not exceed \$ 9,700,288.55 and shall be permitted to be issued 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. The Total Debt Issuance Limitation shall not apply to bonds, loans, notes, or other instruments issued for the purpose of refunding, refinancing, reissuing or restructuring outstanding. 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. The District will also rely upon various other revenue sources authorized by law. Such sources will include the power to assess Fees, rates, tolls, penalties or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time.

B. 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. ~~In the event of a default, the~~ The maximum interest rate on any Debt ~~is shall~~ not ~~expected to~~ exceed ~~eighteen~~ twelve percent (~~48%-12%~~), ~~including an event of default.~~ The maximum underwriting discount will be ~~five~~ three percent (~~53%~~). 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.

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

1. 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. The Maximum Debt Mill Levy shall not exceed 50 mills, ~~subject to using 2022 as the base year for any~~ Mill Levy ~~Adjustment~~ Adjustments.

~~2. If the total amount of District Debt is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate. For purposes of the foregoing, once Debt has been determined to be within the parameters of the foregoing sentence, so that the District is entitled to pledge to its payment an unlimited ad valorem mill levy, the District may provide that~~

Formatted: Keep with next

Formatted: Heading 3 (no TOC), Keep with next

~~such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio.~~

~~3.2.~~ 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.

~~4.3.~~ The District may impose an ad valorem Operation and Maintenance Mill Levy (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. ~~Until such time as the Maximum Debt Mill Levy becomes unlimited in accordance with Section VI.C.2, above, the~~ The Maximum Combined Mill Levy, which includes both the Maximum Debt Mill Levy and the Operation and Maintenance Mill Levy, shall not exceed ~~60 mills, but after (subject to the Debt Mill Levy Adjustment for the Maximum Debt Mill Levy becomes unlimited, the).~~ The Maximum Operation and Maintenance Mill Levy shall not exceed ~~10 mills, subject to the Mill Levy Adjustment.~~

~~4.~~ In the event the City adopts a policy requiring the imposition of a mill levy for regional improvements, the District agrees to enter into an intergovernmental agreement with the City to govern the terms of imposition of such regional improvement mill levy, provided that such regional improvement mill levy shall not be included within the Maximum Combined Mill Levy. An election question shall be proposed as part of the District's organization, allowing for the imposition of a regional improvement mill levy and the remittance thereof to the City or other entity as may be agreed upon pursuant to an intergovernmental agreement.

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" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this subsection C, 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 Operations and Maintenance Mill Levy. For example, if a subdistrict levies twenty mills on the 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 exceed with respect to the property within the subdistrict's boundaries.

D. 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 ~~forty (40) years after the year of the initial imposition of such mill levy unless a majority of the Board: (i) are residents of the District; and (ii) have voted in favor of a refunding of a part or all of the Debt and such refunding will result in a net present value savings as set forth in Sections 11-56-101, et seq., C.R.S. the~~ Maximum Debt Mill Levy Imposition Term. Each instrument evidencing Debt and any 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

Formatted: Default Paragraph Font

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Default Paragraph Font, Font color: Auto

Formatted: Font color: Auto

be discharged at the end of the Maximum Debt Mill Levy Imposition Term regardless of whether such obligation is paid in full.

E. Debt Repayment Sources. The District may impose a mill levy on Taxable Property within the District Boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon various other revenue sources authorized by law; and this Service Plan. At the District's discretion, these may include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(I), C.R.S., as amended from time to time and as limited by Section V.A. 16-17-48.-.

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 ~~bond~~Debt agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this bond contained herein, in the resolution of the District authorizing the issuance of this bond and in the Service Plan for creation of 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. Revenue Pledge Agreements. At least thirty (30) days before their execution, the District shall submit to the City Manager the terms of any agreement including a pledge of revenue to any entity or a promise to reimburse, using District revenue, funds to another metropolitan district. The City may, in its sole discretion, comment on such proposed terms or use any remedy available to the City. Neither this provision on the City's comment, or failure to do so, shall be construed as approval or consent to such agreement. 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.A.2, above, shall not be subject to this section.

G.H. 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.I. TABOR Compliance. The District shall comply with TABOR. In the discretion of the Board, 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.J. 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 as set forth above, the Developer may not receive reimbursement from Debt proceeds in excess of \$25,000 for the costs of organizing the District.~~

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 ~~first year's 2022~~ operating budget for ~~each the~~ District is estimated to be ~~Twenty Five~~approximately Forty Thousand Dollars (~~\$2540,000~~) which is anticipated to be derived from ad valorem property taxes and other revenues.

VII. ANNUAL REPORT

A. General. The District shall be responsible for submitting an annual report to the Community Development Department no later than July 1st 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 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.

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.

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

Formatted: Not Hidden

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 that involves the Public Improvements as of December 31 of the prior year.

~~5. Status of the District's construction of the Public Improvements as of December 31 of the prior year.~~

~~6. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the prior year.~~

~~7. The assessed valuation of the District for the current year.~~

~~8. Current year budget including a description of the Public Improvements to be constructed in such year.~~

~~9. Audit of the District's financial statements, for the year ending December 31 of the previous year, prepared in accordance with generally accepted accounting principles or audit exemption, if applicable.~~

~~10.5.~~ Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

~~11.6.~~ 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.

VIII. DISSOLUTION

Upon an independent determination of 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.

IX. 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, including the estimated taxes upon full assessment of the residential property. 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 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. 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.~~

D.C. Annual Notices. In addition to the requirements of the Special District Act, each 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. Prior to the date the first certificate of occupancy is issued for a residence within the District Boundaries, the District shall establish a website that can be searched by using the name of the District. The website shall contain information pertaining to the District's meeting schedule and may also contain copies of this Service Plan, District Map, Budget or a link to where such documents may be located.

X. 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 five 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.
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.A.16.c 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.

XI. MATERIAL MODIFICATIONS

A. Material modifications to this Service Plan may be made only in accordance with C.R.S. Section 32-1-207 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 facilities 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 and the District Activities IGA. Actions of the District that violate the limitations set forth herein 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. 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;

3. Failure to perform a service or function, construct an improvement, or acquire a facility required by the Service Plan; and

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

X.XII. 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 the form attached as **Exhibit C** at its first Board meeting after its organizational election. Failure of the District to execute the District Activities IGA as required herein 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.

XIII. 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 as provided herein 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. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or

3. Exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunction relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

XI.XIV. 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 District Boundaries

EXHIBIT PARCEL A:

Formatted: Font: Bold, Underline

THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH P.M., COUNTY OF ADAMS, STATE OF COLORADO.

Formatted: Body Text,b0

~~Legal Description and Map of Inclusion Area include if appropriate; otherwise, delete~~

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS THE STRIP OF LAND 200 FEET BY 100 FEET OFF OF THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4, AS DESCRIBED IN DEEDS RECORDED IN BOOK 462 AT PAGE 415 AND BOOK 490 AT PAGE 578 IN OLD ARAPAHOE COUNTY RECORDS, AND AS DESCRIBED IN DEEDS RECORDED JANUARY 26, 1889 IN BOOK A31 AT PAGE 17 AND RECORDED MAY 23, 1889 IN BOOK A19 AT PAGE 194 IN ADAMS COUNTY RECORDS.

AND

EXCEPTING THEREFROM THAT PORTION IN DEED RECORDED AUGUST 6, 1968 IN BOOK 1454 AT PAGE 303, AND CORRECTION DEED RECORDED OCTOBER 23, 1970 IN BOOK 1638 AT PAGE 303, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ON AN ASSUMED BEARING ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 A DISTANCE OF 302.50 FEET; THENCE NORTH 88 DEGREES 58 MINUTES 00 SECONDS EAST AND PARALLEL TO THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 A DISTANCE OF 390.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST AND PARALLEL TO THE WEST LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4 A DISTANCE OF 302.50 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE SOUTH 88 DEGREES 58 MINUTES 00 SECONDS WEST ALONG SAID NORTH LINE A DISTANCE OF 390.00 FEET TO THE POINT OF BEGINNING, EXCEPT THE WEST 30.00 FEET THEREOF, COUNTY OF ADAMS, STATE OF COLORADO.

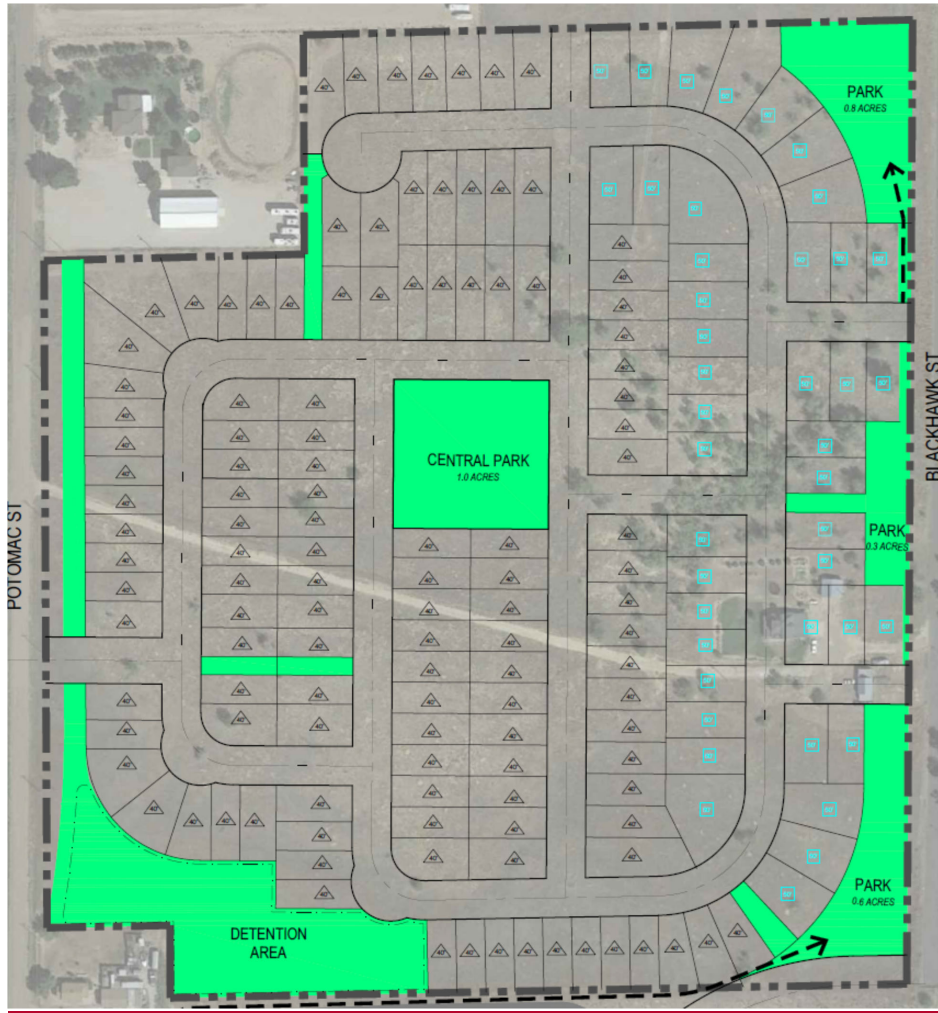
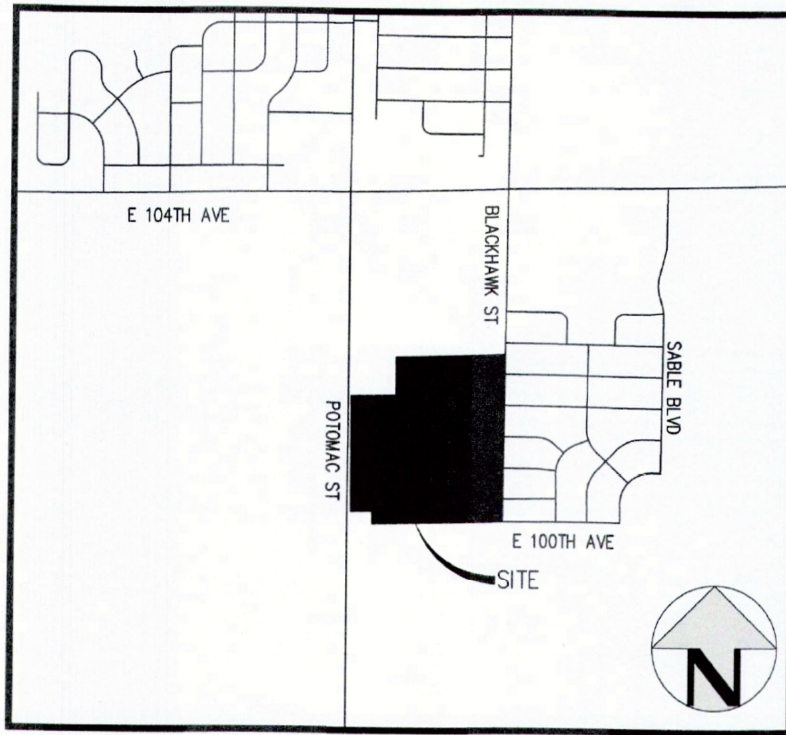


EXHIBIT B

Commerce City Vicinity Map



VICINITY MAP

Formatted: Normal, Tab stops: 3.25", Centered

EXHIBIT C

District Activities IGA

INTERGOVERNMENTAL AGREEMENT BETWEEN AND AMONG THE CITY OF COMMERCE CITY AND EBERLY PLACE METROPOLITAN DISTRICT REGARDING THE SERVICE PLAN FOR THE DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (the "IGA") is made and entered into as of this _____ day of _____, 20____, by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality (the "City"), and the EBERLY PLACE METROPOLITAN, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

WHEREAS, the District was organized to provide the services and exercise the powers more specifically set forth in the Service Plan approved by the City on [_____] (the "Service Plan"); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement among the City and the District regarding certain limitations of the District's activities; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this IGA.

NOW THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used herein shall, unless expressly defined in this IGA, shall have the meaning ascribed to them in and by the Service Plan.

2. Operations and Maintenance. The District shall dedicate the Public Improvements to the City in a manner consistent with the approved PUD Zone Document and other rules and regulations of the City and applicable provisions of the City Code. The District shall be allowed to operate in lieu of a homeowner's association, including, performing covenant control and enforcement, as well as owning and maintaining common area, parks and open space. Such services may include, but not be limited to, park and recreation services, programming, detention pond repair and maintenance, landscaping, and snow removal. The District is required and obligated to operate and maintain any park and recreation improvements and are permitted to operate and maintain street landscape and monumentation improvements throughout the Project. Unless otherwise specified in this IGA, all parks and trails shall be open to the general public free of charge.

3. Fire Protection. The District shall not plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services unless this IGA is amended, as herein provided, to make provision therefor. The ability and authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire

hydrants and related improvements installed as part of a water system shall not be limited by this provision.

4. Television Relay and Translation. With the exception of the installation of conduit as a part of a street construction project, the District shall not plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services unless this IGA is amended, as herein provided, to make provision therefor.

5. Telecommunication Facilities. 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.

6. Construction Standards Limitation. The District shall 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 any such work.

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

8. Growth Limitations. The District acknowledges and agrees 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 revenue to the District.

9. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, or the execution of any developer reimbursement agreement, the issuing 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.

10. Eminent Domain. 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.

11. Water Rights/Resources. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to this IGA. Water and sanitary sewer facilities shall be conveyed to the South Adams County Water and Sanitation District ("South Adams"). The District's powers with regard to water and sanitary sewer is 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.

12. Inclusion Limitation. No District may include property outside of the District Boundary into its boundary without a prior resolution of the City Council approving such inclusion.

13. Exclusion Limitation. The District shall not exclude property from the District Boundaries without a prior resolution of the City Council approving such exclusion.

14. Overlap Limitation. The District shall not consent to the organization of any additional metropolitan district organized under the Special District Act within the District Boundaries that will overlap the District Boundary unless the aggregate mill levy for payment of Debt will not at any time exceed the Maximum Debt Mill Levy of the District.

15. Initial Debt Limitation. On or before the effective date of approval by the City of a PUD Zone Document, the District shall not: (a) issue any Debt; (b) 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; nor (c) impose and collect any Fees used for the purpose of repayment of Debt.

16. Total Debt Issuance. The District shall not issue Debt in excess of \$9,700,288.55 equals the anticipated costs of the Public Improvements and which amount is LESS than the product of: (a) the bonding capacity of the District, which was derived 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 40 years; and (iv) debt service coverage is no less than 100%; and (v) the levying by each of the Districts of 50 mills for Debt; and (b) 125%. The Total Debt Issuance Limitation shall not apply to bonds, loans, notes, or other instruments issued for the purpose of refunding, refinancing, reissuing or restructuring outstanding Debt, nor shall the Total Debt Issuance Limitation apply to a District's pledge of its property tax or specific ownership tax revenues to the Debt.

17. Fee Limitation. The District may impose and collect Fees as a source of revenue for repayment of Debt, funding of capital costs, and/or for Operations and Maintenance. 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. 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.

18. Public Improvements Fee Limitation. Unless this IGA is amended, as herein provided, to make provision therefor, the District shall not impose, collect, receive, spend or pledge to any Debt any fee, assessment, tax or charge that is collected by a retailer in the District Boundary on the sale of goods or services by such retailer and that is measured by the sales price of such goods or services.

19. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Trust Funds or other funds available from or through governmental or non-profit entities for which the City is eligible to unless this IGA is amended, as herein provided, to make provision therefor. The District acknowledges and agrees that such monies are often critical to fund improvements to parks, trails and other public amenities and that it is in the best interests of the residents of both the District and the City that the parties not dilute the pool of applicants for such funds. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

20. 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. No District shall form any subdistrict without a prior resolution of the City Council approving the formation of such subdistrict.

21. Service Plan Amendment Requirement. Any actions of the District that violate the limitations set forth in V.A.1-22, V.B., or VI.B-G of the Service Plan shall be deemed to be material modifications to the Service Plan, and the City shall be entitled to all remedies available under State and local law to enjoin such actions.

22. Notices. All notices, demands, requests or other communications hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the address or by courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Eberly Place Metropolitan District
c/o McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Attn: Paula Williams
Phone: 303-592-4390
Fax: 303-592-4385

To the City: City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022
Attn: Community Development Department
Phone: 303-289-3683
Fax: 303-289-3731

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice in accordance with the provisions hereof, each party shall have the right from time to time to change its address.

23. Default/Remedies. Upon the occurrence of any event of breach or default by either party, the non-defaulting party shall provide written notice to the party in default. The defaulting party shall immediately proceed to cure or remedy such breach or default, and in any event, such breach or default shall be cured within fifteen (15) days after receipt of the notice. Following such cure period, the non-defaulting Party shall be entitled to exercise all remedies available by law or in equity, specifically including suits for specific performance and/or monetary damages.

24. Annual and Continued Five Year Review. The District shall submit an annual report to the City in every year following the year in which the Order and Decree creating the District has been issued until the year following the dissolution of the District. Such annual report shall be submitted to the Community Development Department no later than July 1st of each year following the year in which the Order and Decree creating the District has been issued and shall include the information required by the Service Plan. The District shall submit an application to the City every five (5) years for a finding of reasonable diligence in accordance with Section 32-1-1101.5, C.R.S.

25. No City Liability. The City has no obligation whatsoever to construct any improvements that the District are required to construct, or to pay any Debt or liability of the Districts.

26. General Provisions.

(a) Entire Agreement; Binding Effect. Except as expressly provided herein, the Service Plan and this IGA contains the entire agreement of the parties relating to the subject matter hereof and may not be modified or amended except by written agreement of the parties. This IGA shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

(b) Amendment. This IGA may be amended, modified, changed or terminated in whole or in part only by a written agreement duly authorized and executed by the parties and without amendment to the Service Plan.

(c) No Waiver. The waiver of any breach of a term, provision or requirement of this IGA shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this IGA.

(d) No Assignment. Neither party shall assign any of its rights or delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

(e) No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to the District and the City. It is the express intention of the parties that any person other than the City and the District shall be deemed to be only an incidental beneficiary under this IGA.

(f) Governing Law and Venue; Recovery of Costs. This IGA shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17th Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this IGA, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.

(g) Severability. In the event a court of competent jurisdiction holds any provision of this IGA invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this IGA.

(h) Paragraph Headings. Paragraph headings used in this IGA are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this IGA.

(i) Counterparts. This IGA may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**EBERLY PLACE METROPOLITAN
DISTRICT**

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

CITY OF COMMERCE CITY

Mayor

ATTEST:

City Clerk

Approved as to form:

[Assistant/Deputy] City Attorney

EXHIBIT D

Estimated Costs of the Public Improvements

EXHIBIT ~~D~~E
Financial Plan