

AMENDED AND RESTATED SERVICE PLAN
FOR
BUFFALO HIGHLANDS METROPOLITAN DISTRICT
CITY OF COMMERCE CITY, COLORADO

Prepared

by

McGeady Sisneros, P.C.
450 East 17th Avenue, Suite 400
Denver, Colorado 80203

Submitted: November 10, 2014

Re-submitted: February 3, 2015

Re-submitted: March 23, 2015

Approved: _____

Initials: _____

TABLE OF CONTENTS

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

14.	Overlap Limitation.....	6
15.	Initial Debt Limitation.	6
16.	Total Debt Issuance Limitation.....	6
17.	Fee Limitation.....	6
18.	Public Improvements Fee Limitation.....	6
19.	Sales and Use Tax.....	7
20.	Monies from Other Governmental Sources.	7
21.	Consolidation Limitation.	7
22.	Bankruptcy Limitation.	7
23.	Reimbursement Agreement.	7
24.	Service Plan Amendment Requirement.	8
B.	Preliminary Engineering Survey.....	8
VI.	FINANCIAL PLAN.....	8
A.	General.....	8
B.	Maximum Voted Interest Rate and Maximum Underwriting Discount.	8
C.	Maximum Debt Mill Levy.	9
D.	Maximum Debt Mill Levy Imposition Term.	9
E.	Debt Repayment Sources.....	9
F.	Debt Instrument Disclosure Requirement.....	10
G.	Security for Debt.....	10
H.	TABOR Compliance.....	10
I.	District Operating Costs.....	10
VII.	ANNUAL REPORT.....	11
A.	General.....	11
B.	Reporting of Significant Events.....	11

VIII. DISSOLUTION.....	11
IX. DISCLOSURE NOTICES.....	12
X. DISTRICT ACTIVITIES IGA	12
XI. CONCLUSION	12

LIST OF EXHIBITS

EXHIBIT A	Legal Descriptions
EXHIBIT B	Commerce City Vicinity Map
EXHIBIT C	District Boundary Map
EXHIBIT D	District Activities IGA

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.

Bond, Bonds or 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.

City: the City of Commerce City, Colorado.

City Code: the City of Commerce City Revised Municipal Code.

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

City Loan: that certain Loan Agreement by and between the City of Commerce City, Colorado (as Lender), and the District (as Borrower), dated July 16, 2013, as amended December 18, 2014, as it may be amended from time to time.

District: the Buffalo Highlands 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 D**.

District Boundary: the boundary of the original District area described in the District Boundary Map.

District Boundary Map: the map attached hereto as **Exhibit C**, describing the District's original boundary.

End User: any owner, or tenant of any owner, of any taxable improvement of the District 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 imposed by the District for services, programs or facilities provided by the District, as described in Section V.A.17 below.

Financial Plan: the Financial Plan described in Section VI 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.

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 particular property as set forth in Section VI.D below.

Project: the development or property commonly referred to as Buffalo Highlands.

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 Service Area and serve the future taxpayers and inhabitants of the Service Area as determined by the Board.

Service Area: the property within the District Boundary Map.

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: Section 32-1-101, *et seq.*, of the Colorado Revised Statutes, as amended from time to time.

State: the State of Colorado.

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

II. PURPOSE AND OBJECTIVES OF DISTRICT

A. Purpose and Intent. The City Council of the City of Commerce City approved the Service Plan for Buffalo Highlands Metropolitan District on September 16, 2002. After an election, the District was organized pursuant to an Order of the Adams County District Court. This document is being presented pursuant to Section 32-1-207, C.R.S., and shall supersede and replace in its entirety the previous Service Plan.

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 inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public

Improvements. The District is not being created to provide ongoing operations and maintenance services other than as specifically set forth in this Service Plan.

B. Need for 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. Objective of City Regarding Service Plan.

1. The City's objective in approving the Service Plan is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than the Maximum Debt Mill Levy Imposition Term, and at a tax mill levy no higher than the Maximum Debt Mill Levy, and/or repaid by Fees as limited by Section V.A.17.

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. Operation and maintenance services are allowed through the District Activities IGA, attached hereto as **Exhibit D**.

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 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, which shall not exceed 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 a 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 BOUNDARY**

The area of the District Boundary includes approximately two hundred fifty-seven (257) acres. A legal description of the District Boundary is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the District Boundary is attached hereto as **Exhibit C**.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

A. The Service Area consists of approximately two hundred fifty-seven (257) acres of land. The current assessed valuation of the Service Area is \$0.00 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 two thousand one hundred fifty (2,150) people.

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.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Service Plan Amendment. The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the District Boundary 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.

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.

a. The District shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners association in a manner consistent with the approved zoning ordinance or public improvement agreement with the City and other rules and regulations of the City and applicable provisions of the City Code.

b. The District is not authorized to operate or maintain any part of the Public Improvements unless provision therefor has been made pursuant to the District Activities IGA.

c. The District is required and obligated to operate and maintain any park and recreation improvements designed, constructed or financed by the District, unless otherwise specified in the District Activities IGA.

d. Unless otherwise specified in the District Activities IGA, all parks and trails shall be open to the general public free of charge.

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

3. 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. Conveyance. Within ninety (90) days after written notice from the City, the District shall convey to the City, at no cost, any real property owned by the District that is necessary, in the City's sole determination, for any City capital improvement project for transportation, utilities or drainage.
9. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, excluding the City Loan, 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.

10. Eminent Domain Limitation. The District shall not exercise the power of eminent domain against the City except as otherwise provided pursuant to the District Activities IGA.

11. 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 or the relevant water district.

12. Inclusion Limitation. The District shall not include within the District Boundary any property outside the Service Area without the prior written consent of the City Council except upon petition of the fee owner or owners of one hundred percent (100%) of such property as provided in Section 32-1-401(1)(a), C.R.S.

13. Exclusion Limitation. The District shall not exclude from the District Boundary any property within the Service Area without the prior written consent of the City Council. The District shall follow the procedure for exclusion of property as provided in Section 32-1-502, C.R.S.

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

15. Initial Debt Limitation. Excluding the City Loan, on or before the effective date of approval by the City of an approved zoning ordinance or public improvement agreement, 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.

16. Total Debt Issuance Limitation. The District shall not issue Debt, inclusive of the City Loan, in excess of Twenty Five Million Dollars (\$25,000,000).

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. 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 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.

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

20. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to specific ownership taxes which shall be distributed to and be a revenue source for the District without any limitation.

21. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City.

22. Bankruptcy Limitation.

a. 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:

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

ii. 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).

b. Any Debt, issued with a pledge or that results in a pledge, that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S., and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment. The City shall be entitled to all remedies available at law to enjoin any such actions of the District.

23. Reimbursement Agreement. If the District enters into reimbursement agreements to obtain reimbursements from third-party developers, or adjacent landowners, for costs of improvements that benefit such third-party landowners or adjacent landowners, such agreements shall be in accordance with the applicable city requirements. If a reimbursement agreement exists or is entered into for an improvement(s) financed by the District, any and all resulting reimbursements received for such improvement(s) shall be deposited in the District’s debt service fund and used for the purpose of retiring Debt.

24. Service Plan Amendment Requirement. 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 V.A.1-23 or in VI.B-G 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. 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 Boundary, to be more specifically defined in an approved zoning ordinance or applicable public improvement agreement with the City. 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 Service Area and is approximately Twenty-Six Million Dollars (\$26,000,000).

2. All Public Improvements shall be designed in accordance with City standards and shall comply with the requirements of the approved zoning ordinance or applicable public improvement agreement with the City. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. FINANCIAL PLAN

A. General. 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 Twenty-Five Million Dollars (\$25,000,000), inclusive of the City Loan, and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of the Financial Plan and phased to serve development as it occurs. All Bonds and other 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 of 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 proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). 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. The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the Taxable Property of the District for payment of Debt, and shall be determined as follows:

1. If the total amount of aggregate District Debt exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy shall be fifty (50) mills; provided, however, that if the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement is changed by law, the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (which determination shall be binding and final) so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2002, 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.

2. If the total amount of aggregate 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.

3. For purposes of the foregoing, once Debt has been determined to be within Section VI.C.2 above, so that the District is entitled to pledge to its payment an unlimited ad valorem mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. 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. To the extent 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.

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 single property developed which exceeds forty (40) years after the year of the initial imposition of such mill levy unless a majority of the Board are residents of the District and 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 Section 11-56-101, C.R.S., *et seq.*

E. Debt Repayment Sources. The District may impose a mill levy on Taxable Property of the District as a primary source of revenue for repayment of debt service and for operations and

maintenance. The District may also rely upon various other revenue sources authorized by law. 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(l), C.R.S., as amended from time to time and as limited by Section V.A. 17-18. In no event shall the debt service mill levy of the District exceed the Maximum Debt Mill Levy or the Maximum Debt Mill Levy Imposition Term, except pursuant to the District Activities IGA.

F. Debt Instrument Disclosure Requirement. Excluding the City Loan, in the text of each Bond and any other 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 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 in respect of 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 Boundary.

G. Security for Debt. Excluding the City Loan, 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 any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

H. TABOR Compliance. The District shall comply with Section 20 of Article X of the Colorado Constitution ("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. 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 One Hundred Thousand Dollars (\$100,000), which will be eligible for reimbursement from Debt proceeds.

2. In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The first year's operating budget is estimated to be Fifty Thousand Dollars (\$50,000), which is anticipated to be derived from property taxes and other revenues.

3. The Maximum Debt Mill Levy for the repayment of Debt shall not apply to the District's ability to increase its mill levy as necessary for provision of operation and maintenance services to its taxpayers and service users.

VII. ANNUAL REPORT

A. General. The District shall be responsible for submitting an annual report to the Community Development Department within six (6) months of the close of the fiscal year.

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

1. Boundary changes made or proposed to the District Boundary 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.
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. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.
11. 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 petition 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.

IX. DISCLOSURE NOTICES

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

X. 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 D**. The District shall approve the intergovernmental agreement in the form attached as **Exhibit D** at its first Board meeting after its organizational election. Failure of the District to execute the intergovernmental agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The City Council will approve the intergovernmental agreement in the form attached as **Exhibit D**.

XI. 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 Boundary.

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 proposed District and Service Plan are in substantial compliance with a comprehensive plan adopted pursuant to the City Code.

H. The proposed District and Service Plan are in compliance with any duly adopted City, 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

Legal Description

THE "PROPERTY"

A PARCEL OF LAND LOCATED IN THE WEST ONE-HALF OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, WHICH CONSIDERING THE WESTERLY LINE OF THE OF SAID SECTION 21 AS BEARING N 00°34'40" W BETWEEN THE FOUND MONUMENTS SHOWN AND DESCRIBED HEREIN, AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO, IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 21;

THENCE N 88°33'21" E, A DISTANCE OF 1553.59 FEET TO THE POINT OF BEGINNING;

THENCE N 39°29'19" W, A DISTANCE OF 660.10 FEET;

THENCE N 09°52'19" E, A DISTANCE OF 158.41 FEET;

THENCE N 40°17'20" W, A DISTANCE OF 124.71 FEET;

THENCE N 81°43'15" W, A DISTANCE OF 244.49 FEET;

THENCE N 27°42'27" W, A DISTANCE OF 598.78 FEET;

THENCE N 09°43'23" W, A DISTANCE OF 636.04 FEET;

THENCE N 04°32'23" W, A DISTANCE OF 2083.90 FEET;

THENCE N 64°23'55" W, A DISTANCE OF 363.65 FEET TO A POINT ON THE WESTERLY LINE OF SAID SECTION 21;

THENCE N 00°34'40" W ALONG SAID WESTERLY LINE, A DISTANCE OF 1006.23 FEET;

THENCE N 89°12'28" E, A DISTANCE OF 2626.58 FEET TO A POINT ON THE EASTERLY LINE OF THE WEST ONE-HALF OF SECTION 21;

THENCE S 00°51'12" E ALONG SAID EASTERLY LINE, A DISTANCE OF 5203.62 FEET TO THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 21;

THENCE S 88°33'21" W ALONG THE SOUTH LINE OF THE WEST ONE-HALF OF SAID SECTION 21, A DISTANCE OF 1098.29 FEET TO THE POINT OF BEGINNING;

CONTAINING 256.52 ACRES MORE OR LESS.

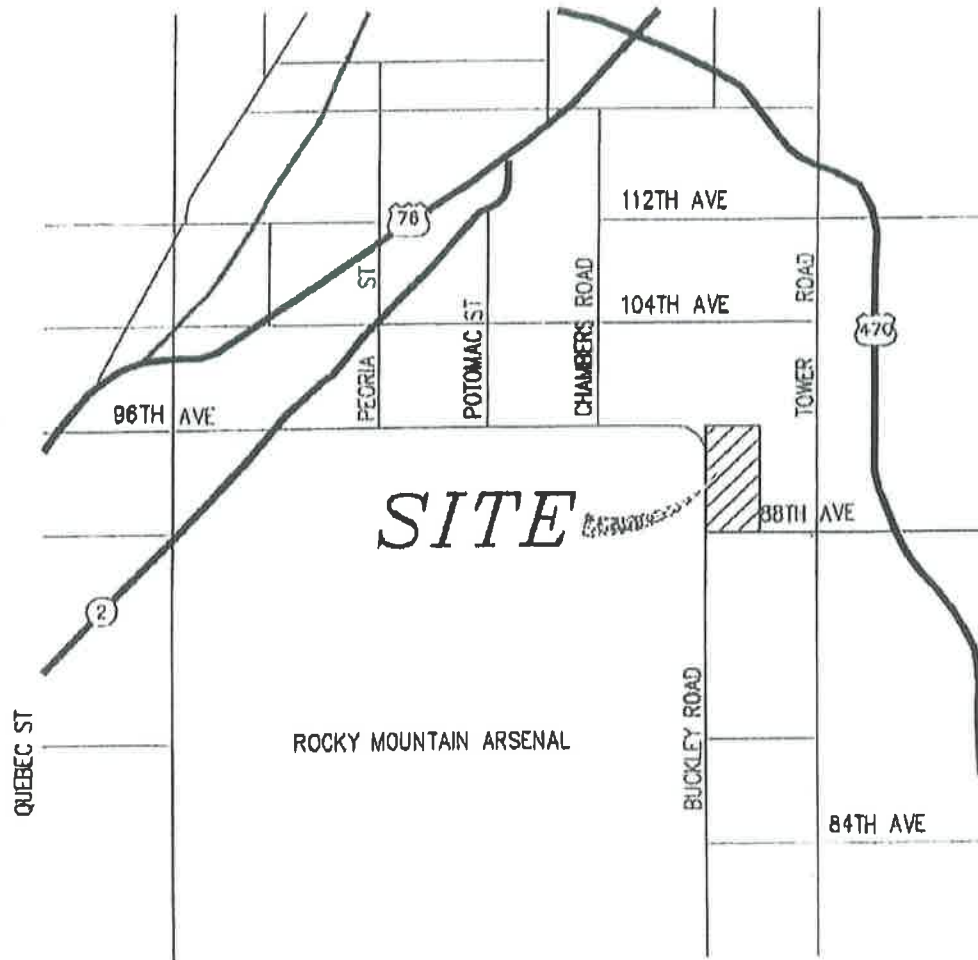
PREPARED BY:

JEHN & ASSOCIATES, INC.
5855 WADSWORTH BYPASS #A-100
ARVADA, CO 80003

EXHIBIT B

Commerce City Vicinity Map

VICINITY MAP



Jehn & Associates, Inc.

PROFESSIONAL ENGINEERS AND SURVEYORS
5855 WADSWORTH BYPASS, SUITE 100
ARVADA, CO 80003 (303) 423-8038



TITLE: FIGURE 1 - VICINITY MAP

CLIENT/PROJECT: BRONCUCIA SITE

SCALE: N.T.S.

DATE: 08/15/01

PROJECT NO. 829-201-052

DWG. NO. 1 OF 2

EXHIBIT C

District Boundary Map

EXHIBIT D

District Activities IGA

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE
CITY AND BUFFALO HIGHLANDS METROPOLITAN DISTRICT REGARDING THE
SERVICE PLAN FOR THE DISTRICT**

THIS INTERGOVERNMENTAL AGREEMENT (the “**IGA**”) is made and entered into as of this _____ day of _____, 2015, by and between the **CITY OF COMMERCE CITY**, a Colorado home rule municipality (the “**City**”), and the **BUFFALO HIGHLANDS METROPOLITAN DISTRICT**, 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 District’s Service Plan approved by the City on September 16, 2002, as amended on _____, 2015 (collectively the “**Service Plan**”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the City and the District, as required by the Commerce City Revised Municipal Code (the “**City Code**”); 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, 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 or other appropriate jurisdiction or owners association in a manner consistent with the approved zoning ordinance and public improvement agreement and other rules and regulations of the City and applicable provisions of the City Code. The District shall not operate or maintain any part or all of the Public Improvements without the consent of the City with the exception of park and recreation improvements. The District is required and obligated to operate and maintain park and recreation improvements within the District Boundary, and 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 impair existing telecommunication facilities or affect the ability of the City to expand its public safety 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 acknowledges and agrees that it is 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 District revenue.
9. Conveyance. The District shall convey to the City, at no cost to the City, any real property owned by the District that is necessary, in the City's reasonable discretion, for any City capital improvement projects for transportation, utilities or drainage, upon written notification.
10. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, excluding the City Loan, 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.

11. Eminent Domain. The District agrees that it shall not use eminent domain powers against the City to acquire any real property unless this IGA is amended, as herein provided, to make provision therefor.

12. Water Rights/Resources. The District shall not acquire, own, manage, adjudicate or develop water rights or resources unless this IGA is amended, as herein provided, to make provision therefor.

13. Inclusion Limitation. The District shall not include within the District Boundary any property outside the Service Area without the prior written consent of the City Council except upon petition of the fee owner or owners of one hundred percent (100%) of such property as provided in Section 32-1-401(1)(a), C.R.S.

14. Exclusion Limitation. The District shall not exclude from the District Boundary any property within the Service Area without the prior written consent of the City Council. The District shall follow the procedure for exclusion of property as provided in Section 32-1-502, C.R.S.

15. Overlap Limitation. The District shall not consent to the organization of any other district organized under the Special District Act within the Service Area that will overlap the District Boundary unless the aggregate mill levy for payment of Debt of such proposed district(s) will not at any time exceed the Maximum Debt Mill Levy of the District.

16. Initial Debt. Excluding the City Loan, on or before the effective date of approval by the City of an approved zoning ordinance and/or a public improvement agreement and approval and execution of this IGA, 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 funds; nor (c) impose and collect any Fees used for the purpose of repayment of Debt.

17. Total Debt Issuance. The District shall not issue Debt, inclusive of the City Loan, in excess of Twenty-Five Million Dollars (\$25,000,000).

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 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}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. The District shall not file a request with any Court to consolidate with another Title 32 district without prior approval of the City Council as evidenced by a resolution thereon.

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: Buffalo Highlands Metropolitan District
141 Union Blvd., Suite 150
Lakewood, CO 80228-1898
Attn: Lisa Jacoby
Phone: 303-987-0835
Email: ljacoby@sdmsi.com

With a copy to: McGeady Sisneros, P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1214
Attn: Mary Jo Dougherty
Phone: 303-592-4380
Email: mjdougherty@mcgeadysisneros.com

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 was issued until the year following the dissolution of the District. Such annual report shall be submitted no later than six (6) months after the close of the District's fiscal year and shall include information as provided by the City Code. The District shall submit an application to the City every five (5) years, commencing in 2020, for a finding of reasonable diligence in accordance with Section 32-1-1101.5 of the Special District Act.

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

26. General Provisions.

a. Entire Agreement; Binding Effect. Except as expressly provided herein, 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 Agreement 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 parties. 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 attorneys' 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.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

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

**BUFFALO HIGHLANDS
METROPOLITAN DISTRICT**, a quasi-
municipal corporation and political subdivision
of the State of Colorado

By: _____
Its: President

ATTEST:

By: _____
Its: Secretary

CITY OF COMMERCE CITY

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Robert Gehler, City Attorney

Recommended for approval:

Chris Cramer, Director
Department of Community Development