

**A RESOLUTION APPROVING AN AMENDMENT INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY OF COMMERCE CITY AND POTOMAC
FARMS METROPOLITAN DISTRICT REGARDING THE SERVICE PLAN FOR THE
DISTRICT TO GRANT A LIMITED AUTHORIZATION OF EMINENT DOMAIN USE**

NO. 2021-47

WHEREAS, on September 18, 2017, the City Council of the City of Commerce City (“City”) approved an Amended and Restated Service Plan (“Service Plan”) for the Potomac Farms Metropolitan District (“District”), which Service Plan, at Section V.A.10, prohibited the District from exercising the power of eminent domain except as otherwise provided pursuant to the District Activities IGA;

WHEREAS, the District Activities IGA, formally known as the Intergovernmental Agreement between the City of Commerce City and Potomac Farms Metropolitan District, dated September 18, 2017 (“District Activities IGA”), the District agreed that it would not use eminent domain powers to acquire any real property without an amendment to the District Activities IGA;

WHEREAS, the Board of the District has requested that the City authorize the District to use eminent domain powers on a limited basis to acquire undeveloped property within the District consisting of the tracts as outlined below;

WHEREAS, the City Council desires to authorize the limited use of eminent domain, within the District’s authority under the Special District Act, C.R.S. 32-1-101 et seq., without authorizing the use of dominant eminent domain and provided that the District’s exercise of eminent domain shall not be used to extinguish any easements or covenants affecting the land;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest. The City Council does not authorize the use of eminent domain by the City with regard to any property herein described.

SECTION 2. Amendment Authorized. The City Council hereby authorizes the City Manager to negotiate and execute an amendment to the District Activities IGA to restated Section 12 thereof as follows:

12. Eminent Domain. Except as provided in this section, the District agrees that it shall not use eminent domain powers to acquire any real property unless this IGA is amended, as herein provided, to make provision therefor. The District is authorized to exercise a limited power of eminent domain, as provided under the Special District Act, to acquire the following tracts within the District:

a. Tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13 according to the final plat of Potomac Farms Filing No 1, recorded on August 23, 2001, at Reception No. C0846476, in the office of the Clerk and Recorder of Adams County, Colorado, as amended from time to time; and

b. Tracts 2, 8, 9, 10, 11, 12, 13 and 15, according to the final plat of Potomac Farms Filing No 2, recorded on May 23, 2002, at Reception No. C0974127, in the office of the Clerk and Recorder of Adams County, Colorado, as amended from time to time, provided such power is exercised by December 31, 2022. The District shall not exercise any power of dominant eminent domain and no exercise of eminent domain by the District shall be used to extinguish any easements, agreements, or covenants affecting the land. To the extent permitted by law, the District will indemnify, defend, and hold harmless the City and its elected and appointed officials and employees for any claim arising from or related to the District's use of the power of eminent domain pursuant to this section.

RESOLVED AND PASSED THIS 21ST DAY OF JUNE 2021.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk