

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN AND
AMONG THE CITY OF COMMERCE CITY AND CANAL AVENUE
METROPOLITAN DISTRICT REGARDING THE SERVICE PLAN FOR THE
DISTRICT**

THIS FIRST AMENDMENT is made and entered into as of this ____ day of July, 2021, by and between the **CITY OF COMMERCE CITY**, a home-rule municipal corporation of the State of Colorado (“**City**”) and **CANAL AVENUE METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), with **104 COMMERCE PARK 1, LLC**, a Delaware limited liability company (“**Landowner**”), consenting to the provisions of Section 3 of this First Amendment. The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide those services and exercise powers as are more specifically set forth in the District’s Service Plan approved by the City on September 17, 2018 (the “**Service Plan**”); and

WHEREAS, the Service Plan required the execution of an intergovernmental agreement between the City and the District; and

WHEREAS, the City and the District entered into that certain Service Plan Intergovernmental Agreement on February 27, 2019 (the “**Original IGA**”); and

WHEREAS, a Metropolitan District has the power provide the following services: Fire Protection, Mosquito Control, Parks and Recreation, Safety Protection, Sanitation, Solid Waste Disposal Facilities, Street Improvements, Television Relay and Translation, Transportation and Water (the “**Authorized Powers**”); and

WHEREAS, Section V.A. of the Service Plan provides that the “District shall have the power and authority to provide the Public Improvements *and related operation and maintenance services* (emphasis added) within the District Boundary as such power and authority is described in the Special District Act”; and

WHEREAS, the Authorized Powers were limited by Section V.A. of the Service Plan in certain circumstances, including, but not limited to, obtaining the City’s consent before the District can provide operation and maintenance services for the Public Improvements; and

WHEREAS, the foregoing authorization was limited by certain terms of the Service Plan, including, that any operation and maintenance services be consented to by the City in the Original IGA; and

WHEREAS, the Original IGA did not include the City’s consent for the District to own or operate any part of the Public Improvements; and

WHEREAS, the property within the boundaries of the District is being developed for commercial and industrial uses; and

WHEREAS, to effectuate efficiencies and avoid the cost and expense of a separate owner's association, the District desires to own and operate a portion of the Public Improvements for the sole benefit of property within the District, as more fully set forth herein; and

WHEREAS, the City and the District have determined it is in the best interests of their respective taxpayers, residents and property owners to amend the Original IGA to evidence the City's consent to the District's ownership and operation of a part of the Public Improvements on the terms and provisions as set forth herein, on the understanding that the District or other acceptable entity will be solely responsible for the Public Improvements and that the City will never own or be responsible for the Public Improvements; and

WHEREAS, the Landowner is the owner of one hundred percent of the property included in the District, described in **Exhibit A** to this First Amendment ("**Property**"), desires to consent to the provisions of Section 3 this First Amendment.

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 acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **Recitals.** The foregoing recitals are true and are incorporated herein by this reference as though set forth in full.
2. **Defined Terms.** All terms not defined herein shall have the same meaning as set forth in the Original IGA or Service Plan.
3. **Operations and Maintenance.** As noted above, Section V.A. of the Service Plan authorized the District to provide 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. The District was formed and exists as a Metropolitan District. Pursuant to Section 32-1-103(10) of the Special District Act, a Metropolitan District has the power provide the following services: Fire Protection, Mosquito Control, Parks and Recreation, Safety Protection, Sanitation, Solid Waste Disposal Facilities, Street Improvements, Television Relay and Translation, Transportation and Water (the "**Authorized Powers**"). The foregoing Authorized Powers, however, were limited by Section V.A. of the Service Plan in certain circumstances, including, but not limited to, obtaining the City's consent before the District can provide operation and maintenance services for the Public Improvements.

The Parties desire to modify Section 2 of the Original IGA is hereby amended to add:

"Notwithstanding the foregoing, the District shall have the power to own and operate the following Public Improvements (except for those required to be dedicated to the City or any other governmental entity) from and after the date hereof as follows:

- (a) The City consents to the District's ownership, operation and maintenance of a lift station and a portion of a sanitary sewer system as described on **Exhibit A** attached

hereto and incorporated herein provided that any such ownership and operation shall be on the terms and conditions of an intergovernmental agreement to be entered into by and between the District and South Adams County Water and Sanitation District (“SACWSD”) and such ownership and maintenance shall comply with all rules and regulations of SACWSD;

(b) The City consents to the District’s ownership, operation and maintenance of stormwater facilities, including detention and retention ponds, canals and ditches, which are necessary for sanitation and street improvements;

(c) The City consents to the District’s ownership, operation and maintenance of streets and roads, not required to be dedicated to the City, including curb, gutter, signage and sidewalk;

(d) The City consents to the District’s ownership, operation and maintenance of: (i) monument signage which constitutes a street improvement; (ii) fencing and landscaping, including irrigation facilities which constitute park and recreation improvements; and (iii) open space and common areas, which also constitute park and recreation improvements (collectively, the permissions granted in (a) through (d) above are referred to herein as the **”Permitted Facilities”**).

The foregoing powers shall include all Public Improvements appurtenant to the Permitted Facilities that are necessary for the ownership and operation of the Permitted Facilities. The District shall comply with all rules and regulations of the City and SACWSD with respect to its ownership, operation and maintenance of the Permitted Facilities. In the event the District ever determines it is in the best interests of the residents and taxpayers to dissolve, the District must obtain SACWSD consent with respect to a successor entity to assume responsibility for the lift station and other sanitary system improvements and the City’s consent with respect to a successor entity to assume responsibility for any of the other Permitted Facilities. The District agrees that the City will not, in any event including dissolution or otherwise, be required to assume any obligations with respect to the Permitted Facilities (including without limitation finance, design, construction, operation, maintenance, repair, replacement, removal, or emergency response relating to the Permitted Facilities). The Landowner agrees that it or its successors in title will assume responsibility for the other Permitted Facilities in the event that the District dissolves and a successor entity acceptable to the City does not accept such responsibility. The Landowner may assign responsibility for the other Permitted Facilities to an owner’s association willing and capable of assuming such responsibilities. Further, the District must make provision for the transfer of any other Permitted Facilities owned and operated by it, to a successor that is willing and capable of assuming such obligations. The District shall not have the right without further consent of the City to own and operate any other Public Improvements other than the “Permitted Facilities.” The District’s ownership or operation of any of the Permitted Facilities shall not authorize the District to exercise any of the powers or authority granted to a water and sanitation district under the Special District Act except as expressly provided in this First Amendment.”

The benefits and burdens of Section 3 of this First Amendment shall be deemed real covenants and servitudes running with the land and binding on the successors in interest of

Landowner and may be recorded by any party in the real property records of the Adams County Clerk and Recorder.

4. Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Canal Avenue Metropolitan District
c/o McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Attn: Paula Williams
Phone: (303) 592-4380
Email: pwilliams@specialdistrictlaw.com

With Copy to: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Attn: Paula Williams
Phone: (303) 592-4380
Email: legalnotices@specialdistrictlaw.com

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

To the Landowner: 104 Commerce Park 1, LLC
c/o Trammel Crow Company
1225 Seventeenth Street, Suite 3050
Denver, CO 80202
Attn: William Mosher
Email: Bmosher@trammellcrow.com

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 thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

5. Effect of Amendment. Except as expressly set forth in this First Amendment, all provisions of the Original IGA remain unchanged and in full force and effect, valid and binding on the Parties thereto. Nothing in this First Amendment modifies the District's Service Plan

6. Conflict. In the event of any express conflict or inconsistency between the terms of the Original IGA and this First Amendment, this First Amendment shall control and govern.

[SIGNATURE PAGE FOLLOWS]

By: _____
Its: _____

Notary Public

CITY OF COMMERCE CITY

Mayor

STATE OF COLORADO

)

) ss.

COUNTY OF _____

)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, as Mayor of the City of Commerce City.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ATTEST:

City Clerk

Approved as to form:

City Attorney

LANDOWNER:

104 COMMERCE PARK 1, LLC, a Delaware
limited liability company

By: Lion-TCC Development II, LLC, a
Delaware limited liability company,
Its Managing Member

By: TC Industrial Associates, Inc., a
Delaware corporation,
its Managing Member

By: _____
Name: William E. Mosher
Title: Vice President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2021, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

EXHIBIT A

Legal Description

All of the real property contained within the 104th Commerce Park Subdivision located in the City of Commerce City, Adams County, Colorado, according to the final plat therefor recorded at Reception No. 2021000067092 in the official records of Adams County, Colorado on June 2, 2021.