

**AGREEMENT FOR INCLUSION INTO THE COMMERCE CITY E-470 RESIDENTIAL AREA  
GENERAL IMPROVEMENT DISTRICT AND THE COMMERCE CITY E-470 COMMERCIAL  
AREA GENERAL IMPROVEMENT DISTRICT**

This AGREEMENT FOR INCLUSION INTO THE COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT AND THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT (the "Agreement") is made and entered into effective this \_\_\_\_ day of November, 2013, by and among the CITY OF COMMERCE CITY, a Colorado home rule municipality whose principal business address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "City"), the COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado, whose principal business address is 7887 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "ERAGID"), the COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT, a general improvement district organized and existing under and by virtue of the laws of the State of Colorado, whose principal business address is 7887 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "ECAGID"), 96 TOWER INVESTORS, LLC, a Colorado limited liability company whose principal business address is 4340 E. Perry Parkway, Greenwood Village, CO 80121 (the "ERAGID Petitioner"), and DIATC, LLC, a Colorado limited liability company whose principal business address is 5753 Shasta Circle, Littleton, CO 80123 (the "ECAGID Petitioner").

**RECITALS**

- A. The ERAGID, together with the ECAGID, is anticipated to finance the installation and operation of certain public improvements to serve the properties generally referred to as the future development area and described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Future Development Area");
- B. The ERAGID Petitioner petitioned the City for and worked with the City to process the organization of the ERAGID on property owned by the ERAGID Petitioner in the Future Development Area;
- C. The ERAGID Petitioner has requested certain assurances regarding the priority of the projects to be funded by the ERAGID and the process for determining the priority of future projects and the financing of the installation of projects;
- D. The City, the ERAGID, the ECAGID, the ERAGID Petitioner and the ECAGID Petitioner have all agreed upon a process for determining the priority of future projects and the financing of the installation of projects;
- E. A City-wide election question has been placed on the ballot for the November 2013 election, which, if passed, will authorize the City to issue bonds to be repaid from an increase in sales and use taxes from 3.5% to 4.5% (the "City Bonds"). The election question requests City Bonds authorization of up to \$166 million, a portion of the proceeds from which are dedicated to improvements to Tower Road from 103<sup>rd</sup> Avenue to 80<sup>th</sup> Avenue (the "Tower Road Improvements").
- F. At the time the City Bonds are issued, the City will allocate to each of the NAGID, the ERAGID and the ECAGID (collectively, the "GIDs") a percentage of the cost of the improvements to Tower Road, and each of the GIDs will pledge to impose a mill levy that, together with the Operating Mill Levy (defined below) of each, will be at the Combined Mill

Levy Target Rate (defined below) until such time as each GID's share of the costs of the Tower Road Improvements, plus financing costs, have been repaid to the City.

### COVENANTS AND AGREEMENTS

1. The ERAGID Petitioner will proceed with inclusion into the ERAGID of the remaining 160 acres of its ownership of property within the Future Development Area (the "Petitioner's Property"). The ERAGID and the City agree the ERAGID Petitioner shall not be required to pay any fee for the Inclusion of the Petitioner's Property so long as the Petitioner's Property is included within the ERAGID boundaries on or before April 15, 2014.
2. The City will prioritize and fund out of the proceeds of the City Bonds the Tower Road Improvements.
3. After funding of the ERAGID's share of the Tower Road Improvements or the funding of the segment of Tower Road adjacent to the ERAGID Petitioner's Property, whichever first occurs, the ERAGID will fund (i) the costs of 96<sup>th</sup> Ave.; and (ii) the extension of the sanitary sewer line and the irrigation line from 104<sup>th</sup> to 96<sup>th</sup> as generally depicted on **Exhibit B** (the "ERAGID First Priority Improvements"), as such priorities are recommended by the property owner committee discussed below in Section 4.
4. The ERAGID and the ECAGID shall establish a committee constituted of representatives as follows (the "Owners Committee"):
  - a. One representative of the ERAGID Petitioner shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014 and thereafter, so long as the ERAGID Petitioner owns 50 acres or more of property in aggregate within the ERAGID and the ECAGID.
  - b. One representative of the ECAGID Petitioner shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014 and thereafter, so long as ECAGID Petitioner owns 50 acres or more of property in aggregate within the ECAGID and the ERAGID.
  - c. One representative of any other owner of property equal to or greater than 100 acres in aggregate of property that is zoned for residential development within the ERAGID and/or zoned for commercial development within the ECAGID.
5. The purpose of the Owners Committee will be to provide recommendations to the ERAGID with regard to prioritizing projects, other ERAGID First Priority Improvements and the funding of projects.
6. All parties agree the target mill levy for repayment of administration, operation and maintenance costs (the "Operating Mill Levy"), together with the mill levy imposed for debt service (the "Debt Mill Levy") is not planned to exceed 30 mills for residential property and 27 mills for commercial property (the "Combined Mill Levy Target") and so the ERAGID, the ECAGID and the City agree as follows:
  - a. Certain projects may be funded by the City advancing funds for the design and construction or by causing the design and construction to be completed (a "City Advance").

- b. Certain projects may be funded by the owners or developers of property advancing funds for the design and construction or by causing the design and construction to be completed (a “Developer Advance”).
  - c. Certain projects may be funded by metropolitan districts advancing funds for the design and construction or by causing the design and construction to be completed (a “Metro District Advance”).
  - d. A Metro District Advance, Developer Advance or a City Advance may be reimbursed or a project forward funded by the issuance of debt to be repaid from an unlimited general obligation pledge if the debt is: (i) issued through a public offering or an institutional private placement; and (ii) with an independent feasibility analysis (*e.g.*, bond counsel, City’s outside advisor) demonstrating the ability of the ERAGID and/or the ECAGID to fund its operations from an Operating Mill Levy, together with a Debt Mill Levy that is not projected to exceed the Combined Mill Levy Target when imposed upon the assessed valuation in place and estimated for vertical development that may be either partially complete or near completion but that, at the time of issuance, is not yet included in the records of the county assessor because of the assessment cycle.
  - e. Except as provided in Section 6.d. above, no pledge for a Debt Mill Levy for the repayment of any Metro District Advance, Developer Advance and/or City Advance by either the ERAGID or the ECAGID, together with an Operating Mill Levy, shall exceed the Combined Mill Levy Target.
7. The ERAGID and the ECAGID and the City agree that all property owners within the Future Development Area will be required to include their property, if and when zoned for residential development within the ERAGID boundaries, and if and when zoned for commercial development within the ECAGID, prior to the initiation of development on their respective properties and that the provisions regarding the Owners Committee and the Combined Mill Levy Target will be included within those inclusion agreements with the same terms as set forth herein. Any change in the terms regarding the Owners Committee and the Combined Mill Levy Target shall require the consent in writing by the ERAGID Petitioner and the ECAGID Petitioner prior to being made a part of any other inclusion agreement; provided, however, that such requirement shall endure as to each of the ERAGID Petitioner and the ECAGID Petitioner only for so long as they are eligible to serve on the Owners Committee. Subject to Section 1 above, the owner of a property including into the ECAGID and/or the ERAGID, as provided in this Section 7, shall pay the Inclusion Fees at the time of inclusion. The Inclusion Fees shall be in an amount equal to the property taxes that would have otherwise been imposed on such property if the property had been included within the original petition for organization of the GIDs.
8. The City agrees to review the timing on the need for certain storm drainage improvements to be constructed to serve the ERAGID Petitioner’s Property, and, if reasonably possible, will remove the requirement for retention on ERAGID Petitioner’s Property which will result in a smaller detention pond being installed and additional housing units being constructed.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

\_\_\_\_\_  
Cheryl Scott, Acting City Clerk

Approved as to form:

\_\_\_\_\_  
Gregory D. Graham, Assistant City Attorney

Recommended for approval:

\_\_\_\_\_  
Roger Tinklenberg, Director  
Department of Finance

**COMMERCE CITY E-470 RESIDENTIAL  
AREA GENERAL IMPROVEMENT DISTRICT**

\_\_\_\_\_  
Sean Ford, Chair, Board of Directors

ATTEST:

\_\_\_\_\_  
Cheryl Scott, Acting Secretary

Approved as to form:

\_\_\_\_\_  
Gregory D. Graham, Assistant General Counsel

Recommended for approval:

\_\_\_\_\_  
Roger Tinklenberg, Chief Financial Officer

**COMMERCE CITY E-470 COMMERCIAL  
AREA GENERAL IMPROVEMENT DISTRICT**

---

Sean Ford, Chair, Board of Directors

ATTEST:

---

Cheryl Scott, Acting Secretary

Approved as to form:

---

Gregory D. Graham, Assistant General Counsel

Recommended for approval:

---

Roger Tinklenberg, Chief Financial Officer

**ERAGID PETITIONER:**

**96 TOWER INVESTORS, LLC**, a Colorado limited liability company

By: \_\_\_\_\_  
Richard A. Frank, Manager

By: \_\_\_\_\_  
Joel H. Farkas, Manager

**ECAGID PETITIONER:**

**DIATC, LLC**, a Colorado limited liability company

By: C. H. Thompson Company, LLC, a Colorado limited liability company, its Manager

By: \_\_\_\_\_

Name: Christopher H. Thompson

Title: Manager