

(Exhibit D)

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE
CITY AND POTOMAC FARMS METROPOLITAN DISTRICT REGARDING
THE SERVICE PLAN FOR THE DISTRICT**

THIS INTERGOVERNMENTAL AGREEMENT (the “IGA”) is made and entered into as of this _____ day of _____, 2017, by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality (the “City”), and the POTOMAC FARMS 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 _____ (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 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. Covenant Enforcement and Design Review Services: The District may assume the responsibility of performing the purposes and objectives of the Declaration Document.
4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, 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.

12. Eminent Domain. 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.
13. 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.
14. 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. If an area of inclusion (an "Inclusion Area") is proposed, the District agrees not to include within the District Boundary any property inside the Inclusion Area Boundaries 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.
15. 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.
16. 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.
17. Initial Debt. 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.
18. Total Debt Issuance. The District shall not issue Debt in excess of eight million three hundred thousand Dollars (\$8,300,000). Such limitation shall not be applicable to refundings of Bonds and other Debt authorized to be issued hereunder.
19. 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.
20. 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.

21. 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.

22. Service Plan Amendment Requirement. Any actions of the District that violate the limitations set forth in V.A.1-23, 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.

30. 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: Potomac Farms Metropolitan District
8354 Northfield Blvd, Suite 3700
Denver, CO 80238
Attn: Charles Wolfersberger
Phone: (720) 541-7725
Fax: (720) 282-5996

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.

31. 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.

32. 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 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 for a finding of reasonable diligence in accordance with section 32-1-1101.5 of the Special District Act.

33. 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.

34. 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 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.

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

POTOMAC FARMS METROPOLITAN DISTRICT

By: _____
Angelo Celeste, President _____

ATTEST:

By: _____
Dale Jones, Secretary _____

CITY OF COMMERCE CITY

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Robert D. Sheesley, City Attorney

Recommended for approval:

Christopher C. Cramer, Director
Department of Community Development