

**AMENDED AND RESTATED
SERVICE PLAN
FOR
BUFFALO RUN MESA METROPOLITAN DISTRICT**

CITY OF COMMERCE CITY, COLORADO

Prepared

by

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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.

Declaration Document: means the Declaration of Covenants, Conditions and Restrictions for Buffalo Run Mesa that was recorded with the Adams County Clerk and Recorder's Office on February 28, 2003, and any amendments thereto.

District: the Buffalo Run Mesa 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 within the District who is intended to become burdened by the imposition of ad valorem property taxes. 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.15 below.

Financial Plan: the Financial Plan described in Section VI that describes (i) the manner in which the District's Debt is expected to be repaid; (ii) the manner in which any new Debt is expected to be incurred; and (iii) the estimated operating revenue to be derived from property taxes in 2017.

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.C below.

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 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 within the Service Area subject to ad valorem taxes imposed by the District.

II. PURPOSE AND OBJECTIVES OF DISTRICT

A. **Purpose and Intent.** 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 matter 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 inhabitants and taxpayers of the District. The primary purpose of the District will be to repay the debt used to finance the construction of these Public Improvements, carry out the purposes of the Declaration Document and to provide ongoing park and recreation services 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 within the Service Area. The District is therefore necessary in order for the Public Improvements to be financed, and in certain cases, maintained by the District 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 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/or repaid by Fees as limited by Section V.A.15.
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 an 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 Imposition Term. It is the intent of this Service Plan to assure to the extent possible 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 one hundred and sixty nine (169) 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 one hundred and sixty nine (169) acres of residential use land. The current assessed valuation of the Service Area is \$9,133,660 for purposes of this Service Plan and is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District is currently estimated to be approximately one thousand two hundred and seventy (1,270) 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. **Covenant Enforcement and Design Review Services.** The District may assume the responsibility of performing the purposes and objectives of the Declaration Document.
3. **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.
4. **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 unless such facilities and services are provided pursuant to the District Activities IGA.
5. **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.
6. **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.

7. **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.
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, 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 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. If an Inclusion Area is proposed, the District shall not 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.
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. **Total Debt Issuance Limitation.** The District shall not issue Debt in excess of eight million Dollars (\$8,000,000). Such limitation shall not be applicable to refundings of Bonds and other Debt authorized to be issued hereunder.
16. **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.
17. **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.
18. **Sales and Use Tax.** The District shall not invoke or exercise any actual or perceived City sales and use tax exemption.
19. **Monies from Other Governmental Sources.** The District shall not apply for or accept 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 and Conservation Trust Funds which shall be distributed to and be a revenue source for the District without any limitation.
20. **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.
21. **Bankruptcy Limitation.**
 - a) All limitations contained in this Service Plan, including, but not limited to, those pertaining to the 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 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.

22. **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 financed by the District, any and all resulting reimbursements received for such improvement shall be deposited in the District’s debt service fund and used for the purpose of retiring Debt.

23. **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-H 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.

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 eight million Dollars (\$8,000,000) 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. Such limitation shall not be applicable to refundings of Bonds and other Debt authorized to be issued hereunder. 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 within 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%). 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 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.

D. **Debt Repayment Sources.** The District may impose a mill levy on taxable property within the District Boundary 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(I), C.R.S., as amended from time to time and as limited by Section V.A. 15-16. In no event shall the debt service mill levy in the District exceed the Maximum Debt Mill Levy Imposition Term, except pursuant to the District Activities IGA.

E. **Debt Instrument Disclosure Requirement.** In the text of each Bond and any other instrument representing and constituting Debt issued subsequent to the effective date of this amended and restated Service Plan, 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.

F. **Security for Debt.** 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.

G. **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.

H. **District Operating Costs.** 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 District's 2017 operating budget is estimated to be two hundred and thirty two thousand and fifty two Dollars (\$232,052) which is anticipated to be derived from property taxes and other revenues.

VII. ANNUAL REPORT

- A. **General.** The District shall be responsible for submitting an annual report to the Community Development Department and Public Works Department within six 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 file petitions in 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. 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 the City approves this amended and restated Service Plan. 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**.

X. 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 in the District has the financial ability to discharge the District's 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 Descriptions

EXHIBIT B: Commerce City Vicinity Map

EXHIBIT C: District Boundary Map

EXHIBIT D: District Activities IGA