

**JOINT RESOLUTION APPROVING STANDARDS FOR THE INCLUSION OF
PROPERTY IN THE COMMERCE CITY NORTHERN INFRASTRUCTURE
GENERAL IMPROVEMENT DISTRICT**

NO. 2020-61

NO. NIGID 2020-04

WHEREAS, the Commerce City Northern Infrastructure General Improvement District (“NIGID”) is a public improvement district and a body corporate duly organized pursuant to Part 6, Article 25, Title 31, Colorado Revised Statutes, and Ordinance 1212 Series 1997 of the City of Commerce City, Colorado (“City”) adopted by the City Council on August 18, 1997;

WHEREAS, water and wastewater service within the City planning and annexation areas within the NIGID is provided by the South Adams County Water and Sanitation District (“SACWSD”), with such service made available pursuant to SACWSD’s Rules and Regulations, related resolutions of the NIGID and the City, including NIGID Resolution 2016-07i, and the terms of intergovernmental agreements between the City, the NIGID, and SACWSD, including the April 27, 1998 Participation Agreement by and among SACWSD, the City, and the NIGIDii; that April 27, 1998 Agreement between NIGID and SACWSD and its Enterprise for the Purpose of Construction, Installation and Maintenance of Water Lines, Wastewater Lines, Accessories, and Appurtenances Thereto; the 2004 and 2014 intergovernmental agreements between the City and SACWSD, and that July 13, 2016 Intergovernmental Agreement between the City, SACWSD and all City GID’siii and related resolutions of the NIGID and City, including NIGID Resolution 2016-07;

WHEREAS, the NIGID funded or constructed various improvements, including water and wastewater systems that provided direct service to properties or capacity in water and wastewater systems, to serve or support service to development in the NIGID Area, as defined below. The NIGID has also funded or constructed other improvements for the general benefit of the NIGID Area. Currently, there are properties within the NIGID Area that are not annexed into the City, not included in the NIGID, not connected to SACWSD’s water and wastewater services, or receive a level of water and wastewater service from SACWSD that is inadequate to support future uses or development of that property. To properly allocate cumulative infrastructure costs to all properties benefiting from SACWSD’s water and wastewater service within the NIGID Area, properties within the NIGID Area must be included within the NIGID as memorialized in this resolution;

WHEREAS, in furtherance of NIGID Resolution 2016-07 and other authorities referenced above, the NIGID and City desire to formally confirm and memorialize the baseline inclusion requirements that the City will apply when determining when inclusion in the NIGID is required for a property located within the NIGID Area, as defined herein, that has not previously included in the NIGID, by reference to the City’s and the NIGID’s ordinances, resolutions, and agreements, to further the economic development of the City within the NIGID, and to ensure proper planning;

WHEREAS, the NIGID Area, as used herein, consists of the area generally benefited by improvements funded by or through the NIGID, including capacity in water and wastewater systems, to serve or support service to development, as shown on the attached map, that is generally described as those properties located within the Northern Range Area, which for

purposes of this resolution is bounded to the north and west by the City's growth boundary, to the south by that utility easement held by Public Service Company that runs to the east-west at a location generally south of 103rd Street between the South Platte River and Highway 2, east of Highway 2 and north of East 96th Avenue, east of the Rocky Mountain Arsenal National Wildlife Refuge and north of East 88th Avenue, to the east by Tower Road, east of Tower Road on the north side of East 104th Avenue, to E-470, north to East 112th Avenue back to Tower Road to East 124th Avenue. To the east of the RMANWR, the NIGID Area is intended to be adjacent to the inclusion areas of E-470 Commercial Area General Improvement District and the E-470 Residential Area General Improvement District;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT, AND BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

1. Inclusion Requirement. Without replacing existing inclusion requirements and standards, property in the NIGID Area, as defined above, shall be required to include in the NIGID as follows:

a. Non-annexed properties.

i. Properties capable of annexation. Any property that is located within the NIGID Area, is capable of being annexed into the City, but has not previously annexed into the City must include into the NIGID at the time of annexation. An owner may complete the process of annexation and inclusion into the NIGID concurrently. The property must also be included into SACWSD's service area, if it has not been previously included. Nothing herein modifies the City's ordinances, policies, and procedures regarding annexation into the City.

ii. Properties not currently eligible for annexation.

1. Certain properties may not be currently eligible for annexation into the City, including but not limited to properties located in unincorporated Adams County, but are served by SACWSD through an existing Water Resources Agreement with SACWSD. Such property will not be required to include until such time as the property annexes to the City or the development or use of the property requires changes to water or wastewater service on that property. Annexation to the City (or agreement to annex when eligible) may also be required.

2. Certain properties that desire to receive new service from SACWSD but are not then currently eligible for annexation into the City. Such properties must include in the NIGID and must enter into a legally binding agreement with the City to submit a petition for annexation to the City when the property becomes legally eligible for annexation.

3. Eligibility for annexation means legal eligibility as defined by Section 30(1) of Article II of the State Constitution and Sections 31-12-104 and 31-12-105 of the Colorado Revised Statutes.

b. Annexed properties. Properties that are currently annexed into the City but were not included in the NIGID will be required to include in the NIGID in the following situations:

i. The property is rezoned or seeks development approval. An annexed property must include into the NIGID at the time of any of the following development review approval relating to any part of a property: zoning or rezoning; final plat or replat; PUD permit; oil and gas permit; or development plan).

- ii. Connection to SACWSD service. If a property is annexed to the City and included in SACWSD, but has not previously been served by SACWSD, a property must include into the NIGID at the time of connection for either water or wastewater service.
 - iii. Improved connection or increased service. Annexed properties that currently receive service from SACWSD will not be required to include into the NIGID, until any of the following is sought in connection with the property seeks: (a) an improved or enhanced connection of the property to SACWSD's service lines; or (b) an increased level of service to the property.
 - c. Exempt properties. Properties that were identified and evaluated in the Northern Study Project, a project conducted prior to the establishment of the GID, are not subject to the inclusion requirements memorialized in this resolution. Owners must verify to the City and NIGID that the property participated in the Northern Study Project to meet this exemption.
2. Incorporation of Recitals. The recitals to this resolution are made findings of the Board and City Council.
3. Limitation. This resolution does not, and shall not be construed to, rescind, supersede, or replace the provisions or obligations of any existing ordinance, resolution, or approved intergovernmental agreement.

RESOLVED AND PASSED THIS 17TH DAY OF AUGUST 2020.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

RESOLVED AND PASSED THIS 17TH DAY OF AUGUST 2020.

COMMERCE CITY NORTHERN
INFRASTRUCTURE GENERAL
IMPROVEMENT DISTRICT

Benjamin A. Huseman, Chairperson

ATTEST:

Dylan A. Gibson, Secretary

ⁱ In NIGID Resolution 2016-07 (June 20, 2016), the NIGID Board resolved, among other things, as follows:

1. The Board finds and declares that all properties within the City or within the Municipal Service Area of the Commerce City Growth Boundary as stated in the City's comprehensive plan ("Properties" or "Property") to be provided water and/or wastewater service through any Facilities acquired, constructed, installed, operated, or maintained with any direct or indirect financial consideration from the City, the NIGID, ECAGID, or the ERAGID will derive a substantial and direct benefit from the contributions of the City, the NIGID, the ECAGID, or the ERAGID.

2. The Board finds and declares that inclusion in either the NIGID, ECAGID, or ERAGID shall be required for all Properties which are to be provided water and/or wastewater service, as a result of new development or new or improved connections to serve existing development, through any Facilities or capacity acquired, constructed, installed, operated, or maintained with any direct or indirect financial consideration from the City, the NIGID, ECAGID, or the ERAGID.

3. The Board finds and declares that annexation to the City shall be required as a condition to inclusion of any Property in the NIGID, provided that if a Property is not legally eligible for annexation pursuant to Section 30(1) of Article II of the State Constitution and Sections 31-12-104 and 31-12-105 of the Colorado Revised Statutes then service through such Facilities may be provided if all owners of the Property enter into a legally binding agreement with the City to submit a petition for annexation to the City when the Property becomes legally eligible for annexation.

4. The Board finds and declares that the inclusion and annexation requirements established by this resolution shall be satisfied prior to the provision to any Property of water or wastewater services through such Facilities.

ⁱⁱ The 1998 Participation Agreement provided that "no land within or without the boundaries of the GID shall receive a water supply or wastewater services from or through any facilities or capacity constructed as part of the Project, unless the landowner(s) is first approved by GID and SACWSD for such services. The landowner(s) must agree to be bound by: a. The terms and conditions required by GID and SACWSD for such services, including, but not limited to, payment of rebate and recapture costs to the GID for construction and installation of the Project"

ⁱⁱⁱ The 2016 IGA provided that "no Property shall be provided a water supply or wastewater service as a result of new development or new or improved connections to serve existing development through any Facilities acquired, constructed, installed, operated or maintained with any direct or indirect financial consideration from the City, the NIGID, ECAGID or the ERAGID unless the service is first approved by the City, or the NIGID, ECAGID or the ERAGID, as applicable, and SACWSD. Such owner of such Property must agree to be bound by the following: (a) The terms and conditions required by the City or the NIGID, ECAGID or ERAGID, as applicable, and SACWSD for such services, which may include, but not be limited to payment of rebate and recapture costs to the NIGID, ECAGID or ERAGID for construction and installation of the Project; (b) SACWSD's Rules and Regulations (the "Regulations"), as they presently exist or may be amended in the future. (c) The terms and conditions required by the NIGID, ECAGID or ERAGID pursuant to [certain GID resolutions], which terms and conditions include but are not limited to inclusion of properties into the ECAGID ,the ERAGID, or the NIGID, and annexation into the City pursuant to the terms therein."