

ORDINANCE NO. ECAGID 16

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST,  
HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE OF THE CITY OF COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT AUTHORIZING THE ISSUANCE AND SALE OF THE DISTRICT'S LIMITED TAX GENERAL OBLIGATION LOAN, SERIES 2021 AND DECLARING AN EMERGENCY ON SECOND READING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, ACTING *EX OFFICIO* AS THE BOARD OF DIRECTORS OF THE COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT DISTRICT:

**SECTION 1. Definitions.** Unless otherwise defined herein, the terms defined in this section shall have the designated meanings for such terms set forth in the Loan Agreement (as defined herein), or any document amendatory or supplemental thereto, except where the context by clear implication requires otherwise.

A. Act means the General Improvement District Act, being Title 31, Article 25, Part 6, C.R.S.

B. Authorized Officer means each of the Chairperson, the Executive Director, the Chief Financial Officer or any member of the Board.

C. Board means the City Council of the City, acting *ex officio* as the Board of Directors of the District.

D. Chairperson means the Mayor of the City Council, acting *ex officio* as the Chairperson of the District.

E. Chief Financial Officer means the Chief Financial Officer of the City, acting *ex officio* as the Chief Financial Officer of the District

F. City means the City of Commerce City, Colorado.

G. C.R.S. means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

H. District means the City of Commerce City E-470 Commercial Area General Improvement District and any successors thereto.

I. Election means the election held within the District on November 5, 2013.

J. Executive Director means the City Manager of the City, acting *ex officio* as the Executive Director of the District.

K. Financing Documents means, collectively, the Loan Agreement, the Note, and the Paying Agent Agreement.

L. Lender means Zions Bancorporation, National Association, dba Vectra Bank, in its capacity as lender of the Loan.

M. Loan means the Limited Tax General Obligation Loan, Series 2021, made by the Lender to the District.

N. Loan Agreement means the Loan Agreement between the District and the Lender dated as of its date of delivery.

O. Note means the promissory note evidencing the indebtedness of the Loan from the District to the Lender dated as of its date of delivery.

P. Ordinance means this ordinance of the District, which authorizes the Loan and provides for the execution and delivery of the Note.

Q. Paying Agent means Zions Bancorporation, National Association, or its successors or assigns.

R. Paying Agent Agreement means the Registrar and Paying Agent Agreement between the District and the Paying Agent.

S. Placement Agent means D.A. Davidson & Co., acting as placement agent for the Loan.

T. Placement Agent Agreement means the agreement between the Placement Agent and the District setting forth their respective duties relating to the placement of the Loan.

U. Pledged Revenue means the moneys derived by the District from the following sources, net of any costs of collection:

(1) the Required Mill Levy;

(2) the Specific Ownership Taxes; and

(3) any other legally available moneys which the District determines, in its absolute discretion, to transfer to the Paying Agent for application as Pledged Revenue.

V. Project means the design, acquisition, construction, completion and installation of public improvements permitted pursuant to the Act, including, but not limited to all utilities, gas, electric, water, storm sewer, sanitary sewer, drainage, all communications facilities such as cable, fiber, and broadband, roadways and alleyways, trails and sidewalks, environmental remediation, fill, street lights, landscaping, irrigation, public parking areas, signage, parks, and

open space, together with land, easements and extensions of and improvements to said facilities within and without the boundaries of the District as approved by the voters of the District at the Election.

W. Required Mill Levy means, subject to paragraph (b) below:

(a) an ad valorem mill levy (a mill being equal to 1/10 of one cent) imposed upon all taxable property which is within the District or otherwise responsible for the payment of the debt service on the Loan each year in an amount sufficient to pay the principal of, premium if any, and interest on the Loan as the same become due and payable, and to make up any deficiencies in any debt service reserve for the Loan, if any, but, together with all other District mill levies (including without limitation all mill levies for administration, maintenance and other operating expenses), such limited mill levy shall not exceed 15 mills for collection year 2021 and 2022, and 27 mills thereafter.

(b) Notwithstanding anything herein to the contrary, in no event may the Required Mill Levy be established at a mill levy which would cause the District to derive tax revenue in any year in excess of the maximum tax increases permitted by the District's electoral authorization, and if the Required Mill Levy as calculated pursuant to the provisions of the foregoing paragraph (a) would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by the District's electoral authorization, the Required Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

X. Sale Certificate means a certificate executed by the Chairperson, the Executive Director, or the Chief Financial Officer, or any member of the Board, dated on or before the date of delivery of the Loan, setting forth (i) the rates of interest on the Loan, (ii) the conditions on which and the prices at which the Loan may be prepaid; (iii) the existence and amount of any capitalized interest or reserve fund; (iv) the price at which the Loan will be sold; (v) the aggregate principal amount of the Loan and denominations of the Note; (vi) the amount of principal of the Loan maturing on each date; and (vii) the dates on which principal and interest will be paid and the first interest payment date; all subject to the parameters and restrictions contained in this Ordinance.

Y. Secretary means the City Clerk of the City, acting *ex officio* as the Secretary of the District or his or her successors.

Z. State means the State of Colorado.

AA. Supplemental Act means the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

**SECTION 2. Recitals.**

A. The District is a public or quasi-municipal subdivision of the State and body corporate, duly and regularly created as a General Improvement District under the Constitution and laws of the State, in particular the Act, and pursuant to an ordinance adopted by the City Council of the City.

B. The District was established to undertake the Project.

C. At the Election, a majority of those qualified to vote and voting at the Election voted in favor of, inter alia, the issuance of District indebtedness and the imposition of taxes for the payment thereof, for the purpose of providing certain improvements and facilities in certain categories and in certain maximum principal amounts as set forth below:

<u>Purpose</u>	<u>Principal Amount of Authorization Voted</u>
Street	\$2,000,000,000
Park & Recreation	\$2,000,000,000
Water	\$2,000,000,000
Sanitation	\$2,000,000,000
Transportation	\$2,000,000,000
Refunding	\$2,000,000,000

D. The returns of the Election were duly canvassed and the results thereof duly declared and certified.

E. The District previously issued \$1,240,000 in October 2014, in the form of a loan from the City, pursuant to the authority conferred at the Election, which loan is no longer outstanding.

F. The District has the power and authority to issue bonds (which may include notes, certificates of indebtedness, debentures or other contractual obligations) pursuant to the Act and the Supplemental Act, to finance the activities or operations permitted and authorized to be undertaken by the District under the Act and the Election.

G. The City Council of the City, acting *ex officio* as the Board of Directors of the District, hereby determines to enter into the Loan Agreement with the Lender to obtain a loan in the amount of not to exceed \$15,500,000 to finance the Project.

H. The Loan shall be a limited mill levy obligation of the District, payable solely from the Pledged Revenue.

I. The Note will be executed and delivered pursuant to the Loan Agreement as specifically provided therein.

J. The Loan will be equally and ratably secured by certain revenues to be received by the District and pledged under the Loan Agreement, and will be payable solely from the sources set forth in the Loan Agreement, including the Pledged Revenue.

K. The Loan will be exempt from registration under the Colorado Municipal Bond Supervision Act pursuant to the exemption described in Section 11-59-110(1)(g), C.R.S.

L. The indebtedness of the Loan shall be incurred and the Note shall be executed and delivered pursuant to the provisions of the Act, the Supplemental Act, the Election, and all other laws thereunto enabling.

M. Allocation of the Loan proceeds to the authorized but unissued indebtedness from the Election shall be as set forth in the Sale Certificate, and shall be determined based upon the expected uses of the proceeds thereof as of the date of execution and delivery of the Note.

N. The Board has been presented with a proposal in the form of the Loan Agreement, Paying Agent Agreement, and Placement Agent Agreement.

O. The Board desires to authorize District to incur the indebtedness of the Loan; to issue the Note to evidence the Loan; to execute and deliver the Financing Documents; and to execute, complete, and deliver such certificates and other documents as may be necessary to effect the intent of this Ordinance.

**SECTION 3. Ratification.** All actions not inconsistent with the provisions of this Ordinance heretofore taken by the Board and the officers and agents of the District directed toward effecting the Project and the execution and delivery of the Note, are hereby ratified, approved and confirmed.

#### **SECTION 4. Delegated Authority and Parameters.**

A. In accordance with the Constitution and laws of the State and the provisions of this Ordinance, and for the purpose of defraying the cost of the Project, the Board hereby authorizes to be executed and delivered the Loan Agreement and the Note, in the aggregate principal amount provided in the Sale Certificate, subject to the parameters and restrictions set forth below.

B. Section 11-57-204 of the Supplemental Act provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the Supplemental Act (except Section 11-57-211, C.R.S.) to the Note and the Loan.

C. Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the Chairman, the Executive Director, the Chief Financial Officer or any member of the Board the authority to sign the Sale Certificate, and to make the following determinations with respect to the Loan, subject to the parameters and restrictions set forth in this Section:

- (i) the rate of interest on the Loan;
- (ii) the conditions on which and the prices at which the Loan may be called for redemption (prepaid);
- (iii) the existence and amount of any capitalized interest or reserve funds;
- (iv) the price at which the Loan will be sold;
- (v) the aggregate principal amount of the Loan and denominations of the Note;
- (vi) the amount of principal maturing on each date; and
- (vii) the dates on which principal and interest will be paid and the first interest payment date.

D. Such determinations are subject to the following restrictions and parameters:

- (i) the maximum interest rate on the Loan shall not exceed 2.13%; provided that this limitation shall not apply to any increase in the interest rate resulting from the occurrence and continuation of an Event of Default; and;
- (ii) the maximum annual and total repayment cost of the Loan shall not exceed \$14,000,000 and \$30,000,000 respectively;

- (iii) the sale price of the Loan shall be an amount not less than 100% of the aggregate principal amount of the Loan;
- (iv) the Loan shall mature no later than December 1, 2026; and
- (v) the aggregate principal amount of the Loan shall not exceed \$15,500,000.

**SECTION 5. Authorization, Approvals and Amendments.** In accordance with the Constitution of the State of Colorado; the Act, the Supplemental Act; and all other laws of the State of Colorado thereunto enabling, the District shall incur the indebtedness of the Loan, issue the Note, and execute and deliver the Financing Documents for the purpose of financing a portion of the costs of the Project. The Loan shall constitute a limited tax general obligation of the District as provided in the Loan Agreement. The Board hereby determines to apply all of the provisions of the Supplemental Act (except Section 11-57-211, C.R.S.) to the Note and the Loan.

The Financing Documents are incorporated herein by reference and are hereby approved. The District shall enter into and perform its obligations under the Financing Documents in the forms of such documents presented at this meeting, with only such changes as are not inconsistent herewith. The Authorized Officers are hereby authorized and directed to execute and deliver the Financing Documents and the Placement Agent Agreement, and to affix the seal of the District thereto as appropriate, and to further execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable in order to secure the Loan. Such documents are to be executed in substantially the forms presented at this meeting of the Board, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. Copies of all of the Financing Documents shall be delivered, filed and recorded as provided therein.

Upon execution and delivery of the Financing Documents, the covenants, agreements, recitals and representations of the District therein shall be effective with the same force and effect as if specifically set forth herein, and such covenants, agreements, recitals and representations are hereby adopted and incorporated herein by reference.

The proper officers of the District are hereby authorized and directed to prepare and furnish to any interested person certified copies of all proceedings and records of the District relating to the Loan and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof.

The execution of any instrument by an Authorized Officer of the District in connection with the execution, issuance, sale or delivery of the Financing Documents and the Placement Agent Agreement not inconsistent herewith shall be conclusive evidence of the approval by the District of such instrument in accordance with the terms thereof and hereof

**SECTION 6. Direction to Take Authorizing Action.** The Chairperson, the Secretary, and the officers of the District be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance including without limiting the generality of the foregoing, the original or additional printing of the Note, the execution of such certificates as may reasonably be required, including without limitation certificates relating to the execution and delivery of the Financing Documents, the tenure and identity of the District officials, the assessed valuation and indebtedness of the District, the rate of taxes levied against taxable property within the District, the receipt of the Loan proceeds and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity of the Loan.

**SECTION 7. Authorization to Execute Collateral Documents.** Each Board member and each officer of the District is hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution of such certificates and affidavits as may be reasonably required.

**SECTION 8. Permitted Amendments to Ordinance.** The District may amend this Ordinance in the same manner, and subject to the same terms and conditions, as apply to an amendment or supplement to the Loan Agreement.

**SECTION 9. Costs and Expenses.** All costs and expenses incurred in connection with obtaining the Loan and the issuance, execution and delivery of the Note shall be paid either from the proceeds of the Loan or from legally available moneys of the District, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

**SECTION 10. Pledge of Revenues.** The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan as provided herein shall be governed by Section 11-57-208 of the Supplemental Act, the Loan Agreement, the Note and this Ordinance. The revenues pledged for the payment of the Loan, as received by or otherwise credited to the District, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Loan



and the obligation to perform the contractual provisions made herein and in the Note and the Loan Agreement shall have priority over any or all other obligations and liabilities of the District, except for any parity obligations. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such persons have notice of such liens.

**SECTION 11. No Recourse Against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Note. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Note and as a part of the consideration of execution and delivery thereof, the Lender specifically waives any such recourse.

**SECTION 12. Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization of the Loan or the issuance, execution and delivery of the Note shall be commenced more than thirty days after the authorization of such securities.

**SECTION 13. Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Act, the Note shall contain a recital that it is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note after its delivery for value.

**SECTION 14. Severability.** If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

**SECTION 15. Ordinance Irrepealable.** After the Note has been issued, this Ordinance shall constitute a contract between the District and the Lender, and shall be and remain irrepealable until the Note and the interest thereon, shall have been fully paid, satisfied and discharged, as herein and therein provided.

**SECTION 16. Repealer.** All acts, ordinances and resolutions or parts thereof in conflict with this Ordinance are hereby rescinded, annulled and repealed. This repealer shall not be construed to revive any act, ordinance or resolution, or part thereof, heretofore repealed.

**SECTION 17. Electronic Signatures; Electronic Transactions.** In the event any Authorized Officer or other employee or official of the District that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the “Authorized Documents”) is not able to be physically present to manually sign any such Authorized Document, such individual or individuals are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic means.

Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law

**SECTION 18. Disposition of Ordinance.** This Ordinance, as adopted by the City Council, acting *ex officio* as the Board, shall be numbered and recorded by the City Clerk in the official records of the City. The adoption and publication shall be authenticated by the signatures of the Chairperson and the Secretary of the District respectively, and by the certificate of publication.

**SECTION 19. Charter Controls:** Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Board and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

**SECTION 20. Declaration of Emergency:** In order to effect the Project in a timely manner, including the ability to fix interest rates at historically low rates and allow flexibility to enter the financial market at the most beneficial opportunity for the District, it is

hereby declared that an emergency exists and that this Ordinance is immediately necessary for the preservation of the public peace, health, safety, and financial well-being of the District and that this Ordinance shall be in full force and effect immediately after its passage by an affirmative vote of seven of the members of the Council, acting ex-officio as the Board. This Ordinance is hereby declared, pursuant to Section 6.1 of the Charter, exempt from referendum.

**SECTION 21. Effective Date, Recording and Authentication:** After its passage by the approval of seven members of the Council, this Ordinance shall be recorded, published and posted for informational purposes and authenticated by the signature of the Mayor and the City Clerk as required by the City Charter. This Ordinance shall become effective immediately after its adoption.

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED  
PUBLISHED BY TITLE THIS 22nd DAY OF MARCH, 2021.

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

Attest:

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Mayor, *ex-officio* Chairperson of the District

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City Clerk, *ex-officio* Secretary of the District

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED  
PUBLISHED BY TITLE THIS 22ND DAY OF MARCH 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE  
ORDERED THIS 5TH DAY OF APRIL 2021.

COMMERCE CITY E-470 COMMERCIAL AREA  
GENERAL IMPROVEMENT DISTRICT

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Benjamin A. Huseman, Chairperson

ATTEST

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Dylan A. Gibson, Secretary

STATE OF COLORADO                    )  
  )  
COUNTY OF ADAMS                    ) SS.  
  )  
CITY OF COMMERCE CITY                )

I, Dylan Gibson, the City Clerk of the City of Commerce City, Colorado (the “City”), acting *ex officio* as the Secretary (the “Secretary”) of the City of Commerce City E-470 Commercial Area General Improvement District (the “District”), do hereby certify that:

1. The foregoing pages are a true, correct and complete copy of an ordinance (the “Ordinance”) which was introduced, passed on first reading and ordered published by the City Council, acting *ex officio* as the Board of Directors of the District (the “Board”) at a regular meeting thereof held on March 22, 2021 which Ordinance has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

2. The Ordinance was duly moved and seconded and the Ordinance was passed on first reading at the meeting of March 22, 2021, by an affirmative vote of a majority of the members of the Board as follows:

Name	“Aye”	“Nay”	Absent	Abstain
Benjamin Huseman, Mayor, <i>ex officio</i> Chairperson of the District				
Nicole Frank, Mayor Pro Tem				
Oscar Madera				
Jennifer Allen-Thomas				
Susan Noble				
Jose Guardiola				
Craig Hurst				
Meghan Grimes				
Robyn Smith				

3. That the passage of the Ordinance on second and final reading, which was no earlier than ten days after the first reading, and no earlier than seven days after first publication and posting, was duly moved and seconded at a regular meeting of the City Council on April 5, 2021 and the Ordinance was approved on second and final reading as an emergency by a vote of at least seven of the members of the Council as follows:

Name	“Aye”	“Nay”	Absent	Abstain
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Benjamin Huseman, Mayor, <i>ex officio</i> Chairperson of the District				
Nicole Frank, Mayor Pro Tem				
Oscar Madera				
Jennifer Allen-Thomas				
Susan Noble				
Jose Guardiola				
Craig Hurst				
Meghan Grimes				
Robyn Smith				

4. The members of the Board were present at such meetings and voted on the passage of such Ordinance as set forth above.

5. The Ordinance was approved and authenticated by the signature of the Chairperson of the Board, sealed with the District seal, attested by the Secretary and recorded in the minutes of the City Council.

6. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Ordinance.

7. Notices of the meetings of March 22, 2021 and April 5, 2021 in the forms attached hereto as Exhibit A were posted at City Hall in accordance with law.

8. That the Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten days, or as soon as possible, after first reading in the Sentinel Express, newspapers of general circulation in the City on \_\_\_\_\_, 2021. The Ordinance was published by title and with a statement that the Ordinance is on file in the City Clerk's office for public inspection, within ten days, or as soon as possible, after second and final reading in the Sentinel Express, a newspaper of general circulation in the City, on \_\_\_\_\_, 2021. The affidavits of publication are attached hereto as **Exhibit B**.

WITNESS my hand and the seal of the City affixed this \_\_\_\_ day of April, 2021.

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City Clerk /Secretary

(SEAL)



## EXHIBIT A

(Attach Notices of Meetings of March 22, 2021 and April 5, 2021)

**EXHIBIT B**

(Attach Affidavits of Publication)