

SERVICE PLAN

FOR

DIATC METROPOLITAN DISTRICT

CITY OF COMMERCE CITY, COLORADO

Prepared

by

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I. INTRODUCTION

A. Purpose and Intent.

The District is an independent unit of local government, separate and distinct from the City, as hereinafter defined, and, except as may otherwise be provided for by State, as hereinafter defined, 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 manner from the requirements of the Service Plan or intergovernmental agreements between the City and the District. It is intended that the District will provide a part or all of the Public Improvements, as hereinafter defined, for the use and benefit of the inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.

B. Need for the 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 needed for the Project, as hereinafter defined. The District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economical manner possible.

C. Objective of the City Regarding District's Service Plan.

The City's objective in approving the Service Plan for the District 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, as hereinafter defined, to be issued by the District. All Debt is expected to be repaid by taxes, fees, rates and tolls. No debt service mill levy shall be imposed and collected at a level higher than the Maximum Debt Mill Levy, as hereinafter defined. Debt which is issued within these parameters, as further described in the Financial Plan, as hereinafter defined, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Service Plan is intended to establish both 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, and to provide certain operation and maintenance services related to the maintenance of landscaping improvements and related to covenant enforcement, as provided under Section 32-1-1004(8)(a), C.R.S. Additional operational activities are allowed, but only as authorized by an intergovernmental agreement with the City.

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 operating functions, to retain only the power necessary to impose and collect taxes or fees to pay for these costs.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from tax revenues collected from a mill levy and other legally available revenue and which debt mill levy shall not exceed the Maximum Debt Mill Levy. It is the intent of this Service Plan to assure to the extent possible that no property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

D. Disclaimer by City.

Notwithstanding any provision in this Service Plan to the contrary, in no event shall approval of this Service Plan be construed as approval by the City of any development, redevelopment or construction that does not first comply with the City's Land Development Code or requirements of the City for Public Improvements.

II. DEFINITIONS

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Approved Development Plan: means a development plan or other process established by the City for identifying, among other things, Public Improvements necessary for facilitating development of property within the Service Area as approved by the City pursuant to the City's Land Development Code and as amended pursuant to the City's Land Development Code from time to time.

Board: means the board of directors of the District.

Bond, Bonds or Debt: means bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy.

City: means the City of Commerce City, Colorado.

City Code: means the Revised Municipal Code of the City of Commerce City, Colorado.

City Council: means the City Council of the City of Commerce City, Colorado.

District: means DIATC Metropolitan District.

External Financial Advisor: means 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 in respect of such securities; (ii) shall be 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.

Financial Plan: means the Financial Plan of the District as described in Section VI, which describes (i) how the Public Improvements are to be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

Inclusion Area Boundaries: means the boundaries of the area described in the Inclusion Area Boundary Map.

Inclusion Area Boundary Map: means the map attached hereto as **Exhibit C-2**, describing the property proposed for inclusion within the boundaries of the District.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C-1**, describing the District's initial boundaries.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VI.C below.

Project: means the development of property commonly referred to as DIA Technology Center.

Public Improvements: means 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 to serve the future taxpayers and inhabitants of the Service Area as determined by the Board of the District. All Public Improvements shall be constructed in accordance with the requirements set forth in Section V.A.4 regarding the Construction Standards Limitations.

Service Area: means the property within the Initial District Boundary Map and the Inclusion Area Boundary Map.

Service Plan: means this service plan for the District as approved by City Council.

Service Plan Amendment: means an amendment to the Service Plan as approved by City Council in accordance with the City's ordinance and the applicable State law.

Special District Act: means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

State: means the State of Colorado.

Taxable Property: means real or personal property within the Service Area subject to *ad valorem* taxes imposed by the District.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately 2,500 square feet and the total area proposed to be included in the Inclusion Area Boundaries is approximately 197.546 acres. A legal description of the Initial District Boundaries and the Inclusion Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries is attached hereto as **Exhibit C-1**, and a map of the Inclusion Area Boundaries is attached hereto as **Exhibit C-2**. It is anticipated that the District's boundaries may change from time to time as it undergoes inclusions and exclusions pursuant to Section 32-1-401, et seq., C.R.S., and Section 32-1-501, et seq., C.R.S., subject to the limitations set forth in Article V below.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Service Area consists of approximately 197.546 acres of land. The current assessed valuation of the Service Area is \$5,380 for purposes of this Service Plan and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. It is estimated at build-out that there will be approximately 2,076,200 square feet of commercial development within the District with an estimated day time population of approximately seven thousand (7,000) people.

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 units or the total site/floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

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 boundaries of the District 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. It is not the District's intention to own any Public Improvements that are of the type that are required by the City to be dedicated to the City. The District shall dedicate the Public Improvements to the appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code.

Those Public Improvements that are not conveyed to the City, or other governmental entities, may be retained by the District or conveyed to an owners association, as appropriate. With regard to those Public Improvements that will be dedicated to an owners association, the District shall undertake the operations and maintenance responsibilities for the

improvements until such time as they are accepted by an owners association. During the period that the District operates such facilities, revenue to pay the expenses of operations may be obtained from fees legally imposed by the District or other legally available revenues of the District. Additionally, the District shall be authorized to provide ongoing services related to the maintenance of landscaping improvements and related to covenant enforcement, as provided under Section 32-1-1004(8)(a), C.R.S. Additional ongoing operational activities are allowed, but only as authorized by an intergovernmental agreement with the City. User fees for use of recreational facilities may be different for residents of the District than for outside users. Approval of this Service Plan by the City constitutes the City's agreement that the District may perform these functions.

2. Water and Sanitation Powers Limitation. The property within the Initial District Boundaries and Inclusion Area Boundaries is within the boundaries of the South Adams County Water and Sanitation District ("SACWSD"), which is the primary provider of municipal water and sanitation services for the property. The District and the owners of property within the boundaries of the District will obtain water and wastewater service from SACWSD and will be subject to its rules and regulations. Any of the Public Improvements which consist of water and/or wastewater improvements shall be designed, constructed and installed in accordance with all rules and regulations and design standards of SACWSD and, if required by SACWSD, shall be dedicated to SACWSD along with appropriate easements.

The District shall not duplicate services provided by SACWSD. The District shall not perform operational activities related to water or wastewater treatment (other than pretreatment) or water delivery or wastewater removal (other than owning and maintaining service lines and other infrastructure on the property-side of a connection to SACWSD's main lines) without the advance written approval of the Board of Directors of SACWSD, which may be withheld in its sole discretion. The District shall not charge any fees for water or wastewater services without the advance written approval of SACWSD, which may be withheld in its sole discretion, but the District may finance water and/or sanitation infrastructure through bonds and/or taxes.

3. Acquisition of Land for Public Improvements and Easements. The District agrees to acquire by easement or plat dedication, or cause the dedication to the City of all land required by the City for construction of public improvements being provided by the District that will be conveyed to the City. Exceptions must be approved by the City in writing. Failure to comply with this provision shall be deemed to be a material modification of this Service Plan.

4. 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 or other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Privately Placed Debt Limit. 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.

6. Inclusion Limitation. The District shall not include within its boundaries any property outside the Service Area without the prior written consent of the City Council. The District shall not include within any of its boundaries 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 of such property as provided in Section 32-1-401(1)(a), C.R.S.

7. Total Debt Issuance Limitation. The District shall not issue Debt in excess of Forty Million Five Hundred Thousand Dollars (\$40,500,000).

8. Monies from Other Governments/Sources. The District shall not apply for or accept Conservation Trust Funds, 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 which shall be distributed to and constitute a revenue source for the District without any limitation.

9. Consolidation Limitation. The District shall not consolidate with another Title 32 district without the prior written consent of the City.

10. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, 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:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) 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).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Debt Mill Levy, 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.

11. 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 which violate the limitations set forth in this Service Plan or an intergovernmental agreement shall be deemed to be material modifications to this Service Plan and breaches of such intergovernmental agreement, and the City shall be entitled to all remedies available at law or in equity under State and local law.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the Service Area and is approximately Twenty Million Dollars (\$20,000,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. FINANCIAL PLAN

A. General.

The District shall be 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 from revenues derived from the Maximum Debt Mill Levy and other legally available revenues. The total Debt that the District shall be permitted to issue shall not exceed Forty Million Five Hundred Thousand Dollars (\$40,500,000) 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 referenced above and phased to serve development as it occurs. 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 to be imposed upon all taxable property of the District. The District will also rely upon various other revenue sources authorized by law. These 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%). The proposed maximum underwriting discount will be five percent (5%). 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.

The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property of the District for payment of Debt, and shall be determined as follows:

1. For any portion of the District’s aggregate Debt which exceeds fifty percent (50%) of the District’s assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VI.C.2 below; adjusted to account for changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement. The mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2011, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

2. For any portion of the District’s aggregate Debt which is equal to or less than fifty percent (50%) of the District’s assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

3. For purposes of the foregoing, once Debt has been determined to be within Section VI.C.2 above, so that the District is entitled to pledge to its payment an unlimited *ad valorem* mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District’s Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term “District” as used herein shall be deemed to refer to the District and to each subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

D. Debt Repayment Sources.

The District may impose a mill levy on taxable property of the District 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. In no event shall the debt service mill levy in the District exceed the Maximum Debt Mill Levy.

E. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, 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 boundaries of the District.

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 will comply with the provisions of 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.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, is part of the estimated cost of Public Improvements, which will be eligible for reimbursement from Debt proceeds.

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 first year's operating budget for the District is anticipated to be approximately fifty thousand dollars (\$50,000) and will be derived from property taxes, developer advances and other revenues.

The Maximum Debt Mill Levy for the repayment of Debt shall not apply to the District's ability to increase its mill levy as necessary for provision of operation and maintenance services to its taxpayers and service users.

VII. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City's Director of Community Development no later than August 1st of each year, commencing the year after the District is organized in accordance with the Special District Act.

B. Report Contents.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31st of the prior year.
2. Agreements with other governmental entities, either entered into or proposed as of December 31st of the prior year.
3. A list of all facilities and improvements constructed or acquired by the District and those that have been dedicated to and accepted by the City as of December 31st of the prior year.
4. Audit of the District's financial statements, for the year ending December 31st of the previous year, prepared in accordance with generally accepted accounting principles or audit exemptions, if applicable.
5. Notice of continuing disclosure undertaking for events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.
6. Any inability of the District to pay its obligations as they come due in accordance with the terms of and Debt instruments, 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 a petition in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event

shall a dissolution occur until the District has provided for the payment or discharge of all its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

IX. DISCLOSURE TO PURCHASERS

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District's authority to impose and collect rates, fees, tolls and charges.

X. INTERGOVERNMENTAL AGREEMENT

The form of the intergovernmental agreement is attached hereto as **Exhibit D**. The District shall approve the intergovernmental agreement in the form attached as **Exhibit D** within ninety (90) days of the date of organization. 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 shall approve the intergovernmental agreement in the form attached as **Exhibit D** as required by Section 32-1-204.5, C.R.S. The intergovernmental agreement may be amended by mutual agreement of the City and District, which amendment shall not require this Service Plan to be amended. In the event of conflict between the intergovernmental agreement and this Service Plan, the intergovernmental agreement shall govern.

XI. CONCLUSION

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
2. The existing service in the area to be served by the District is inadequate for present and projected needs;
3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries;
4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis; and
5. The proposal is in substantial compliance with a comprehensive plan adopted by the City pursuant to the City Code.

EXHIBIT A
Legal Descriptions

Initial District Boundaries

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 28 AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 28, BEING MONUMENTED AS SHOWN ON THE ATTACHED EXHIBIT, TO BEAR NORTH 89°42'33" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 00°17'33" WEST, A DISTANCE OF 50.00 FEET;

THENCE NORTH 89°42'33" EAST, A DISTANCE OF 50.00 FEET;

THENCE SOUTH 00°17'33" EAST, A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER;

THENCE SOUTH 89°42'33" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 50.00 FEET TO THE **POINT OF BEGINNING**,

SAID PARCEL CONTAINING A CALCULATED AREA OF 2,500 SQUARE FEET OR 0.057 ACRE, MORE OR LESS.

Inclusion Area

A PARCEL OF LAND LOCATED IN SECTION 28, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHEAST CORNER OF SAID SECTION 28 AND CONSIDERING THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 TO BEAR NORTH 00°28'09" WEST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 00°28'09" WEST, ALONG SAID EAST LINE, A DISTANCE OF 812.37 FEET;

THENCE SOUTH 89°31'51" WEST, A DISTANCE OF 65.00 FEET TO A POINT ON THE NORTHERLY LINE OF DENVER INTERNATIONAL AIR PARK SUBDIVISION FILING NO. 1, RECORDED UNDER RECEPTION NO. C0291825 OF THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG THE NORTHERLY AND WESTERLY LINES OF SAID SUBDIVISION THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 89°42'53" WEST, A DISTANCE OF 705.56 FEET TO A POINT OF CURVATURE;
2. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 12°08'35", A RADIUS OF 2340.00 FEET, AND AN ARC LENGTH OF 495.93 FEET;
3. NORTH 78°08'32" WEST, A DISTANCE OF 517.26 FEET TO A POINT OF CURVATURE;
4. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 12°08'05", A RADIUS OF 1950.00 FEET, AND AN ARC LENGTH OF 412.99 FEET;
5. SOUTH 89°42'46" WEST, A DISTANCE OF 1680.60 FEET TO A POINT ON A CURVE;
6. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 07°29'52", A RADIUS OF 1750.00 FEET, AN ARC LENGTH OF 229.00 FEET, THE CHORD OF WHICH BEARS SOUTH 85°57'37" WEST;
7. SOUTH 00°17'33" EAST, A DISTANCE OF 1002.05 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 28;

THENCE SOUTH 89°42'33" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1180.21 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF BUCKLEY ROAD;

THENCE NORTH 00°31'25" WEST, ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 1325.12 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 28;

THENCE NORTH 89°37'07" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 2620.32 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 28;

THENCE NORTH 00°30'31" WEST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 1329.45 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 28;

THENCE NORTH 00°30'30" WEST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1710.91 FEET TO A SOUTHERLY LINE OF SECOND CREEK FARM FILING NO. 1 RECORDED AT RECEPTION NO. 20050930001070140 OF THE ADAMS COUNTY CLERK AND RECORDER;

THENCE ALONG SAID SOUTHERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 55°25'26" EAST, A DISTANCE OF 813.02 FEET;
2. SOUTH 77°25'26" EAST, A DISTANCE OF 725.00 FEET;
3. SOUTH 34°25'26" EAST, A DISTANCE OF 850.00 FEET;
4. SOUTH 14°25'26" EAST, A DISTANCE OF 600.00 FEET;
5. SOUTH 84°25'26" EAST, A DISTANCE OF 635.20 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF TOWER ROAD;

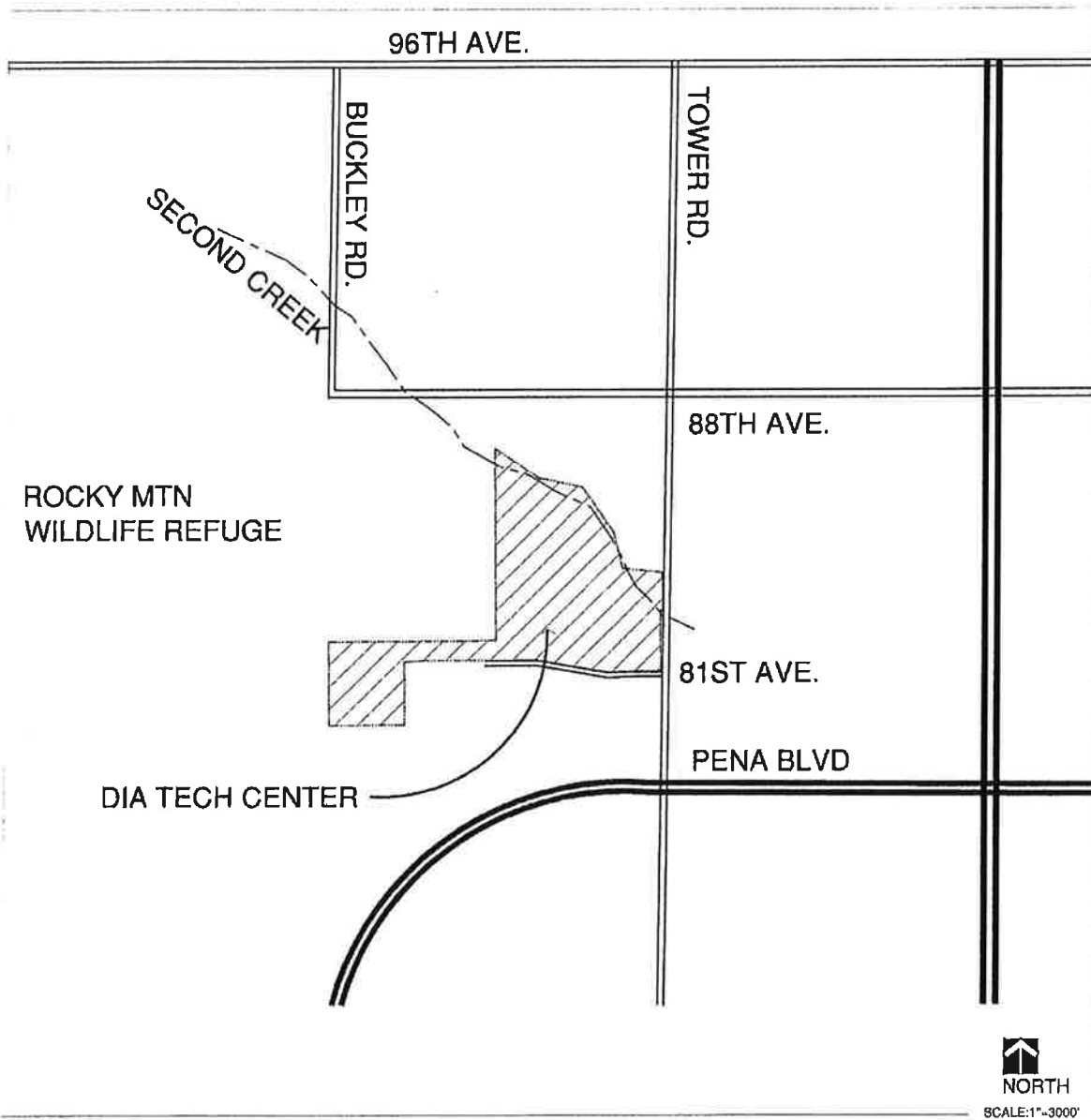
THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES:

1. SOUTH 00°28'09" EAST, A DISTANCE OF 602.47 FEET;
2. SOUTH 89°22'47" WEST, A DISTANCE OF 35.00 FEET;
3. SOUTH 00°28'09" EAST, A DISTANCE OF 978.45 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 197.546 ACRES, MORE OR LESS.

EXHIBIT B

Vicinity Map



DIATC METROPOLITAN DISTRICT
VICINITY MAP

EXHIBIT C-1

Initial District Boundary Map

DIATC METROPOLITAN DISTRICT
Initial District Boundary Map

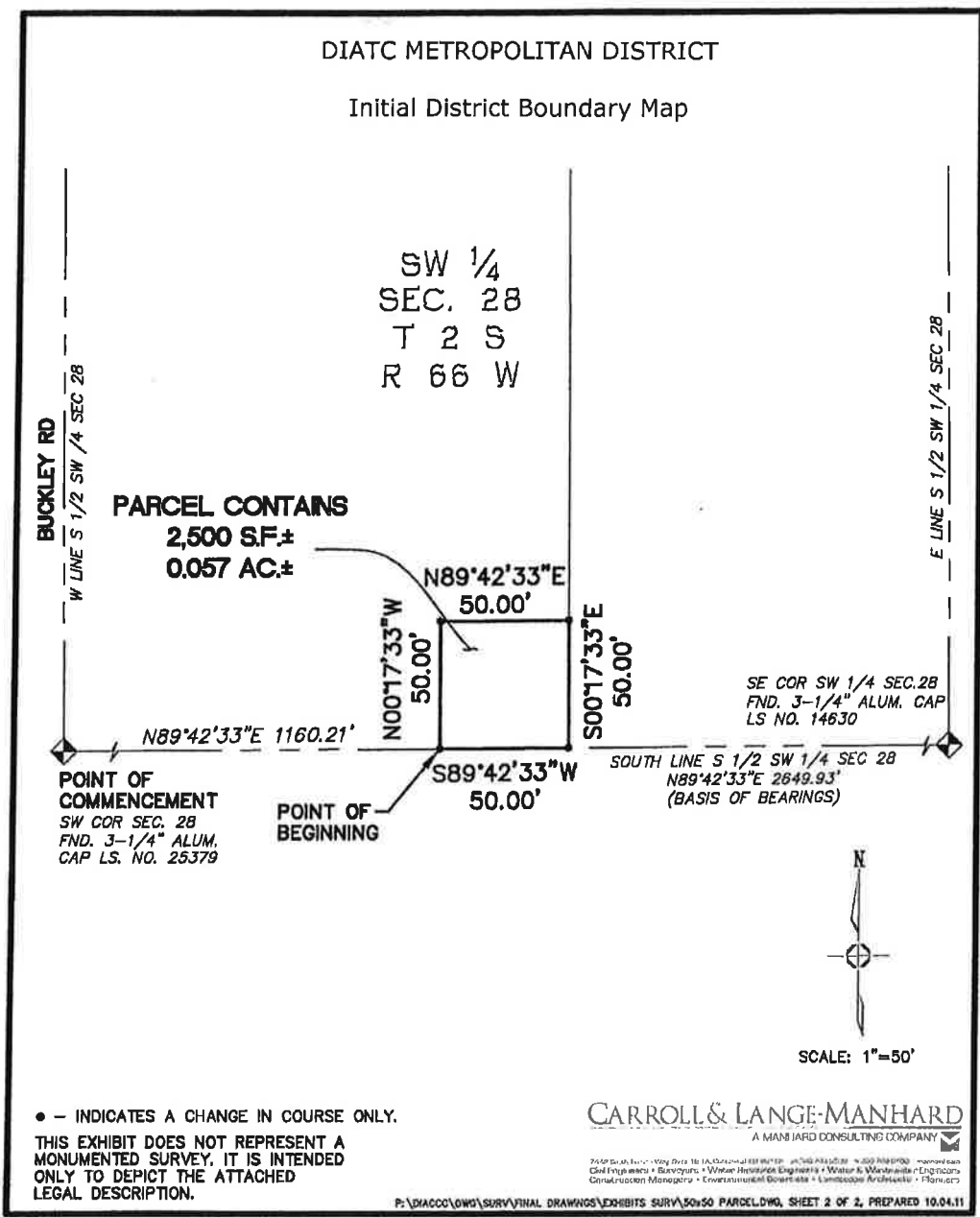


EXHIBIT C-2

Inclusion Area Boundary Map

EXHIBIT D

Intergovernmental Agreement

EXHIBIT D

Intergovernmental Agreement Between the District and Commerce City

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE CITY, COLORADO AND DIATC METROPOLITAN DISTRICT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between the CITY OF COMMERCE CITY, a home-rule municipal corporation of the State of Colorado (“City”), and DIATC METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s Service Plan approved by the City on _____ (“Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the City and the District; 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 Intergovernmental Agreement (“Agreement”).

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 acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Service Plan) to the City, other jurisdiction, or an owners association, as appropriate, in a manner consistent with the Approved Development Plan (as defined in the Service Plan) and other rules and regulations of the City and applicable provisions of the City’s Revised Municipal Code and Land Use Code.

The District is expected to undertake all ownership, operations and maintenance responsibilities for the Public Improvements (as defined in the Service Plan) that are not conveyed to the City or other governmental entities as appropriate, and will do so either itself or by contract with owner associations as noted above. The District is authorized to provide for the ongoing operations and maintenance of landscaping improvements, and is authorized to provide covenant enforcement services, in accordance with Section 32-1-1004(8)(a), C.R.S. Additional ongoing operational activities are allowed, but only as authorized by an intergovernmental agreement with the City. Revenue to pay the expenses of operations may be obtained from fees

legally imposed by the District or other legally available revenues of the District. Whether the facilities are operated directly by District, or are operated by an owners association, user fees may be obtained by the District to offset the expenses. User fees for use of recreational facilities may be different for residents of the District than for outside users.

2. Acquisition of Land for Public Improvements and Easements. The District agrees to acquire by easement or plat dedication, or cause the dedication to the City of, all land required by the City for construction of public improvements being provided by the District that will be conveyed to the City. Exceptions must be approved by the City in writing. Failure to comply with this provision shall be deemed to be a material modification of the Service Plan. The District agrees to acquire all land needed by the City for construction of normal street improvements required by the City through dedication by the District's developers. Exceptions must be approved by the City in writing. Failure to acquire all land needed by the City for such construction of street improvements shall be deemed to be a material modification of the Service Plan.

3. Construction Standards. 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 and in accordance with the requirements of the Approved Development Plan. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

4. 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.

5. Inclusion. The District shall not include within its boundaries any property outside the Service Area (as defined in the Service Plan) without the prior written consent of the City Council. The District shall not include within any of its boundaries any property inside the Inclusion Area (as defined in the Service Plan) boundaries without the prior written consent of the City Council except upon petition of the fee owner or owners of one hundred percent of such property as provided in Section 32-1-401(1)(a), C.R.S.

6. Monies from Other Governments/Sources. The District shall not apply for or accept Conservation Trust Funds, 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 which shall be distributed to and constitute a revenue source for the District without any limitation.

7. Total Debt Issuance. The District shall not issue Debt in excess of Forty Million Five Hundred Thousand Dollars (\$40,500,000).

8. Consolidation. The District shall not consolidate with another Title 32 district without the prior written consent of the City.

9. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy 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:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) 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).

Any Debt issued with a pledge or which results in a pledge that exceeds the Maximum Debt Mill Levy 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.

10. 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 a petition in the appropriate District Court for dissolution pursuant to the applicable State statutes. In no event shall a 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 statutes.

11. Disclosure to Purchasers. The District will use reasonable efforts to assure that all developers of property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District’s authority to impose and collect rates, fees, tolls and charges.

12. Service Plan Amendment Requirement. Actions of the District which violate the limitations set forth in the Service Plan or this Agreement shall be deemed to be material modifications to the Service Plan and breaches of this Agreement and the City shall be entitled to all remedies available at law or in equity under State and local law.

13. Annual Report. The District shall be responsible for submitting an annual report to the City's Director of Community Development no later than August 1st of each year, commencing the year after the District is organized in accordance with the Special District Act.

(a.) Report Contents.

The annual report shall include information as to any of the following:

(i) Boundary changes made or proposed to the District's boundary as of December 31st of the prior year;

(ii) Agreements with other governmental entities, either entered into or proposed as of December 31st of the prior year;

(iii) A list of all facilities and improvements constructed or acquired by the District and those that have been dedicated to and accepted by the City as of December 31st of the prior year;

(iv) Audit of the District's financial statements for the year ending December 31st of the previous year prepared in accordance with generally accepted accounting principles or audit exemptions, if applicable;

(v) Notice of continuing disclosure undertaking for events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

(vi) Any inability of the District to pay its obligations as they come due in accordance with the term of any Debt instruments, which continue beyond a ninety (90) day period.

14. Maximum Debt Mill Levy. The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property of the District for payment of Debt, and shall be determined as follows:

(c) For any portion of the District's aggregate Debt which exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VI.C.2 of the Service Plan; provided that if, on or after January 1, 2011, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes. Such increases or decreases are to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2011, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

(d) For any portion the District's aggregate Debt which is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or at any

time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

(e) For purposes of the foregoing, once Debt has been determined to be within Section VI.C.2 of the Service Plan, so that the District is entitled to pledge to its payment an unlimited *ad valorem* mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

15. Debt Instrument Disclosure Requirement. In the text of each Bond and any other instrument representing and constituting Debt, 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 to 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 boundaries of the District.

16. Security for Debt. The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in the Service Plan. Approval of the Service Plan and this Agreement 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 or this Agreement 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.

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

25. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

27. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

28. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

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[SIGNATURE PAGE FOR INTERGOVERNMENTAL AGREEMENT]

DIATC METROPOLITAN DISTRICT

By: _____
President

Attest:

Secretary

CITY OF COMMERCE CITY, COLORADO

By: _____
Mayor

Attest:

By: _____

Title: _____

APPROVED AS TO FORM: _____