

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF THORNTON  
AND \_\_\_\_\_ METROPOLITAN DISTRICT REGARDING  
THE SERVICE PLAN FOR THE DISTRICT**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **City of Thornton**, State of Colorado (“City”) and the \_\_\_\_\_ **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, as required by the Thornton City Code; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this 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 or other appropriate jurisdiction or owners association in a manner consistent with the Approved Conceptual Site Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall not be authorized to operate and maintain any part or all of the Public Improvements without the consent of the City except as described in Section VI.I of the Service Plan. The District is required and obligated to operate and maintain park and recreation improvements within the District Boundaries, and all parks and trails shall be open to the general public free of charge.

2. Government Services Limitation. The District shall not be authorized to provide any ongoing governmental services without the consent of the City.

3. Fire Protection. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services without a modification of this Agreement by the Parties. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

4. Television Relay and Translation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services without a modification of this Agreement by the Parties, except for the installation of conduit as a part of a street construction project.

5. Telecommunication Facilities. The District agrees that no telecommunication facilities owned, operated or otherwise allowed by the District shall affect the ability of the City to expand its public safety telecommunication facilities or impair existing telecommunication facilities.

6. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District 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.

7. Zoning and Land Use Requirements. The District agrees that it shall be subject to all of the City's zoning, subdivision, building code and other land use requirements.

8. Growth Limitations. The District acknowledges that the City shall not be limited in implementing City Council- or voter-approved growth limitations, even though such actions may reduce or delay development within the District and the realization of District revenue. Approval of the Service Plan does not constitute an approval of building permit allocations or building permits. The District expressly understands and acknowledges that any expenditure of funds for the construction and installation of any Public Improvements in the District prior to approval of building permit allocations or building permits is exclusively at the District's risk. The District shall be subject to any residential growth limitations, including enactment of any ordinances limiting or slowing down growth, moratoriums, water and/or wastewater tap limitations, building permit limitations, or any other growth management requirements. The City reserves the right, in exercise of its police power, to choose not to grant building permits, or otherwise restrict or condition the granting of building permits within the District based on current or future ordinances of the City. The City does not guarantee capacity in its water or wastewater systems for proposed or future developments. System capacity must be verified throughout the development entitlement process and can be affected by drought, emergency, or infrastructure constraints.

9. Conveyance. The District agrees to convey to the City, at no cost to the City, any real property owned by the District that is necessary, in the City's sole discretion, for any City capital improvement projects for transportation, utilities, or drainage, upon written notification.

10. 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.

11. Eminent Domain. The District agrees not to use eminent domain powers for any real property without a modification of this Agreement by the Parties.

12. Water Rights/Resources. The District agrees not to acquire, own, manage, adjudicate or develop water rights or resources without a modification of this Agreement by the Parties.

13. Inclusion Limitation. The District agrees not to include within any of its boundaries any property outside the Service Area without the prior written consent of the City Council. If an Inclusion Area is proposed, the District agrees not to 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 (100%) of such property as provided in Section 32-1-401(1)(a), C.R.S.

14. Exclusion Limitation. The District agrees not to exclude from its boundaries any property within the Service Area without the prior written consent of the City Council. The District also agrees to follow the procedure for exclusion of property as provided in Section 32-1-502, C.R.S.

15. Overlap Limitation. The District shall not consent to the organization of any other district organized under the Special District Act within the Service Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District.

16. Initial Debt. On or before the effective date of approval by the City of an Approved Conceptual Site Plan and approval and execution of this Agreement, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Fees used for the purpose of repayment of Debt.

17. Total Debt Issuance. The District shall not issue Debt in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

18. Fee Limitation. The District may impose and collect Fees as a source of revenue for repayment of Debt, capital costs, and/or for operations and maintenance until Taxable Property is owned or occupied by an End User subsequent to the issuance of a Certificate of Occupancy for said Taxable Property. No Fee related to the repayment of, or intended to repay, Debt shall be imposed upon or collected from Taxable Property owned or occupied by an End User subsequent

to the issuance of a Certificate of Occupancy for said Taxable Property. No Fee related to funding operation and maintenance costs shall be imposed upon or collected from Taxable Property owned or occupied by an End User subsequent to the issuance of a Certificate of Occupancy for said Taxable Property unless and until the majority of the Board are Residents, and a majority of the Board has voted in favor of imposing and collecting Fees for the purpose of funding operation and maintenance costs of the District.

19. Public Improvement Fee Limitation. The District shall not impose, collect, receive, spend or pledge to any Debt any fee, assessment, tax or charge which is collected by a retailer in the District on the sale of goods or services by such retailer and which is measured by the sales price of such goods or services, without a modification of this Agreement by the Parties.

20. Sales and Use Taxes. The District shall not exercise its City sales and use tax exemption.

21. Costs to be assumed by the City. The City will not be responsible for payment of any costs of construction of the Public Improvements within the District Boundaries. [NOTE: IF THE CITY HAS SOME RESPONSIBILITY FOR COSTS AS ITEMIZED IN EXHIBIT F OF THE SERVICE PLAN, CHANGE THIS PARAGRAPH TO IDENTIFY COSTS]

22. Monies from Other Governmental Sources. The District agrees not to apply for or accept Conservation Trust Funds, Great Outdoors Colorado Trust Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for without a modification of this Agreement by the Parties. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the district without any limitation.

23. Consolidation. The District shall not file a request with any Court to consolidate with another Title 32 district without prior approval of the City Council as evidenced by a resolution after a public hearing thereon.

24. Bankruptcy. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term and the Fees have been established under the authority of the City to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

- (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 and the Maximum Debt Mill Levy Imposition Term, shall be deemed a material

modification of this Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment. The City shall be entitled to all remedies available at law to enjoin such actions of the District.

25. Reimbursement Agreements. If the District utilizes reimbursement agreements to obtain reimbursements from third-party developers or adjacent landowners, for costs of improvements that benefit third-party landowners, such agreements shall be done in accordance with City Code. All reimbursements shall be deposited in the District's Debt service fund and used for the purposes of retiring the District's Debt.

26. Community Engagement. To ensure Residents within the boundaries of a Residential District have an adequate opportunity to participate in the District and remain apprised of the District's operations and functions, the District shall:

- (a) In accordance with the requirements of C.R.S. § 32-1-104.5, as amended from time to time, within twelve (12) months of the date of District formation, establish, maintain and annually update a public website or provide information on a shared community website, on which the District will timely post all information and documents required by C.R.S. § 32-1-104.5, as amended from time to time; and
- (b) Within twelve (12) months after the issuance of the first certificate of occupancy within the District Boundaries, hold all regular and special Board meetings at a location within a five (5) mile radius of the District Boundaries or within the jurisdictional limits of the City if no feasible meeting venue is available within a five (5) mile radius. If a Board meeting is held virtually using an online computer application, the District shall provide information on the District website accessible to all Residents on how to access and participate in the virtual meeting. If the District utilizes email to communicate with Residents, the District shall also send notification of the virtual meeting by email. The District shall provide notification via the District website and, if applicable, email, at least ten (10) days prior to the virtual Board meeting. If the Board schedules a virtual special meeting that will be convened in fewer than ten (10) days, the District shall provide notification via the District website and, if applicable, email, as soon as possible after scheduling the special meeting.

The District shall be exempt from the community engagement requirements set forth in this Section 26 so long as it is an Inactive District.

27. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

28. Disclosure to Purchasers. The District will use reasonable efforts and due diligence to cause each developer and home builder to provide a written notice of disclosure to all initial purchasers of property in the District that describes the general purpose of the District and financial impact on each residential property at the time of entering into the purchase contract. Specifically, the written notice of disclosure shall provide the information required by the Colorado Revised Statutes, including without limitation C.R.S. § 38-35.7-110, as amended from time to time. The District will use reasonable efforts and due diligence to cause each developer and home builder to require that each home buyer acknowledge receipt of such notice of disclosure at the time of entering into the purchase contract. The form of notice shall be substantially in the form of Exhibit H [G if no Exhibit F] of the Service Plan. The District shall record the notice of disclosure in the form of Exhibit H[G] of the Service Plan for each property within the District with Adams County at the time the subdivision plat is recorded, or record the notice of disclosure for each property prior to any building permits for the subdivision being issued if the subdivision plat has already been filed. The District shall provide the City with a copy of the recorded notice of disclosure.

29. Disclosure to Potential Residential Buyers. The District will also provide the information required by Section 28 of this Agreement to the developer or home builders for prominent display at all sales offices, and inspect the sales offices within the District Boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed.

30. Service Plan Amendment Requirement. Material modifications of the Service Plan may be made by the District only by petition to and approval by City Council. Such approval of modifications shall be required with regard to any changes of a basic or essential nature that the City deems, in its sole discretion, a material modification, whether or not they are deemed to be immaterial by the District, and shall include but not be limited to changes to the limitations set forth in Sections V.A.1-26 or VI.B-J of the Service Plan. Changes to the Service Plan of a minor technical nature may be approved administratively by the City. The City shall determine if a change is minor or technical in nature.

31. City Remedies for Material Departure from Service Plan. Pursuant to C.R.S. § 32-1-207(3), as may be amended from time to time, the City may seek to enjoin any material departure from the Service Plan that the City deems, in its sole discretion, a material modification of this Service Plan. References to material modifications in the Service Plan, or District actions or inactions that expressly constitute material modifications pursuant to the terms of the Service Plan or the Special District Act, shall not limit the City's ability to enforce the entirety of the Service Plan, and the City may seek to enjoin any material departure as a material modification. Notwithstanding the foregoing, injunctive relief shall not be the City's exclusive remedy for a material departure the City deems a material modification of the Service Plan, and the City shall be entitled to exercise all remedies available by law or in equity, specifically including the remedies set forth in the City Code, and suits for specific performance and/or monetary damages.

32. 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 within the District for payment of Debt, and shall be determined as follows:

- (a) If the total amount of aggregate District Debt exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy shall be fifty (50) mills; provided, however, that if the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement is changed by law; 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 *[date of Service Plan approval]*, 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.
- (b) For Residential Districts, if the total amount of aggregate District Debt 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 Board, prior to being comprised of a Resident majority, may request City Council approval of a Service Plan Amendment to allow that 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. As part of the Service Plan Amendment request, the Board shall submit detailed justification demonstrating how an unlimited Debt Mill Levy will result in a net present value savings for repayment of District Debt and benefit taxpayers within the District.
- (c) For Residential Districts, at such time that the majority of the Board is comprised of Residents of the District, if the total amount of aggregate District Debt 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 Board may make a determination by majority vote at a properly noticed Board meeting, without City Council approval, that 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.
- (d) For Commercial Districts, if the total amount of aggregate District Debt 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 the conditions described in Section 32(a), 32(b) or 32(c) have been met, 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.

33. Maximum Debt Mill Levy Imposition Term. The District shall not impose a mill levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) that exceeds forty (40) years after the year that the initial District Debt is issued unless a majority of the Board are Residents of the District and have voted in favor of a refunding of a part or all of the Debt and such refunding will result in a net present value savings as set forth in Section 11-56-101, C.R.S.; et seq. [NOTE: THIS REQUIREMENT IS FOR RESIDENTIAL DISTRICTS. FOR A COMMERCIAL DISTRICT, THIS PARAGRAPH CAN BE CHANGED TO INDICATE THAT THERE SHALL BE NO MAXIMUM DEBT MILL LEVY IMPOSITION TERM.]

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

- (a) If the District is a Residential District, unless and until the conditions of Sections 34(b) or 34(c) below are met, the Maximum Operating Mill Levy shall be 10 mills provided that if the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement is changed by law, the Maximum Operating Mill Levy 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 *[date of Service Plan approval]*, 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.
- (b) If the District is a Residential District, prior to the Board being comprised of a Resident majority, the Board may request City Council approval of a Service Plan Amendment and an amendment to this Agreement to increase the Maximum Operating Mill Levy to a specified amount necessary to fund eligible expenses for ongoing administration, operation and maintenance as described in Section VI.I of the Service Plan. The Board shall provide detailed justification for the increase as part of the amendment request. The Maximum Operating Mill Levy shall not exceed 10 mills without City Council approval of the amendment or until the conditions of Section 34(c) below are met.



- (c) If the District is a Residential District, at such time that the majority of the Board is comprised of Residents of the District, the Board may make a determination by majority vote at a properly noticed Board meeting, without City Council approval, to increase the Maximum Operating Mill Levy to any amount necessary to fund eligible expenses for ongoing administration, operation and maintenance as described in Section VI.I of the Service Plan.
- (d) If the District is a Commercial District, it shall not be subject to a Maximum Operating Mill Levy.

35. 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 service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: \_\_\_\_\_ Metropolitan District  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

To the City: City of Thornton  
 9500 Civic Center Drive  
 Thornton, CO 80229  
 Attn: City Development Department  
 Phone: 303-538-7295  
 Fax: 303-538-7373

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

36. Amendment. This Agreement may be amended, modified, changed or terminated in whole or in part by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan.

37. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

38. Default/Remedies. Upon the occurrence of any event of breach or default by either party, the non-defaulting party shall provide written notice to the other party. The defaulting party shall immediately proceed to cure or remedy such breach or default, and in any event, such breach or default shall be cured within 15 days after receipt of the notice. Following the cure period in the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available by law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

39. Governing Law and Venue. This agreement shall be governed and construed under the laws of the State of Colorado.

40. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

41. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

42. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and 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.

43. 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 provisions contained herein, the intention being that such provisions are severable.

44. Annual and Continued Five Year Review. The District shall submit an annual report to the City in every year following the year in which the Order and Decree creating the District has been issued until the year following the dissolution of the District. Such annual report shall be submitted electronically by October 1 of each year for the preceding calendar year, and shall include all information required pursuant to the Special District Act. If the District is an Inactive District, it shall not be required to submit an annual report for any year in which the District was in inactive status for the entire year pursuant to the Colorado Revised Statutes and the Service Plan. The District shall submit an application every five years for a finding of reasonable diligence in accordance with section 32-1-1101.5 of the Special District Act to the City.

45. No Liability of City. The City has no obligation whatsoever to construct any improvements that the District is required to construct, or pay any debt or liability of the District including any bonds.

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

47. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Service Plan.

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

\_\_\_\_\_ METROPOLITAN DISTRICT,  
a quasi-municipal corporation and political  
subdivision of the State of Colorado  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF THORNTON

\_\_\_\_\_  
Name: Kevin S. Woods  
Title: City Manager

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Tami Yellico, City Attorney