



AGENDA
THORNTON DEVELOPMENT AUTHORITY (T.D.A.)
SPECIAL MEETING
Council Chambers/Virtual Meeting
February 13, 2024
Immediately following the City Council Meeting

1. CALL TO ORDER
2. ROLL CALL OF AUTHORITY
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES - October 24, 2023
5. BUSINESS
 - A. A resolution approving the Compliance Order on Consent between the Thornton Development Authority and the Colorado Department of Public Health and Environment through the Hazardous Materials and Waste Management Division.
 - B. A resolution approving the Intergovernmental Cooperation Agreement between the Thornton Development Authority and the 25 Commerce Park Metropolitan District regarding Tax Increment Revenues derived from the District's Mill Levy.
6. ADJOURNMENT

Agenda prepared by Kristen N. Rosenbaum, City Clerk, for Kevin S. Woods, Secretary



AGENDA SUMMARY
THORNTON DEVELOPMENT AUTHORITY (T.D.A.)
SPECIAL MEETING
Council Chambers/Virtual Meeting
February 13, 2024

BUSINESS

- A. A resolution approving the Compliance Order on Consent between the Thornton Development Authority and the Colorado Department of Public Health and Environment through the Hazardous Materials and Waste Management Division.

Adam Krueger, Economic Development Director

In anticipation of the Thornton Development Authority's (TDA) acquisition of title to the Thornton Shopping Center property (Property) as part of the ongoing condemnation proceedings, and in accordance with representations made in the November 2022 Corrective Action Plan Transfer Letter entered into by the TDA and Colorado Department of Public Health and Environment (CDPHE), the TDA and CDPHE have negotiated a Compliance Order on Consent (Consent Order). The Consent Order accomplishes the mutual objective of the parties, including but not limited to, establishing compliance requirements and schedules for corrective action at the Property pursuant to state law.

- B. A resolution approving the Intergovernmental Cooperation Agreement between the Thornton Development Authority and the 25 Commerce Park Metropolitan District regarding Tax Increment Revenues derived from the District's Mill Levy.

Tami Yellico, City Attorney

The 25 Commerce Park Metropolitan District (District), located within the North Washington Corridor Urban Renewal Area (URA), was organized to provide certain improvements within the District's Boundaries, as more specifically set forth in the District's Service Plan, which City Council approved on August 22, 2023. The District intends to issue bonds to pay for the improvements and levy ad valorem taxes to pay for the debt service on the bonds. Because the District was organized subsequent to the creation of the URA, any taxes imposed by the District will go to the Thornton Development Authority (TDA) as tax increment revenues unless otherwise provided by an agreement between the TDA and the District. The Intergovernmental Cooperation Agreement assures that taxes levied by the District are made available to the District for purposes of paying the debt service on its bonds and administrative costs as provided by the District's Service Plan, so that the District can construct and pay for improvements within its boundaries.

MINUTES
THORNTON DEVELOPMENT AUTHORITY
SPECIAL MEETING
OCTOBER 24, 2023

1. CALL TO ORDER – By Chairperson Jan Kulmann at 9:29 p.m. in the Council Chambers of the Thornton City Hall and by way of an electronic meeting through Zoom software.
2. ROLL CALL – Those present were: Chairperson Jan Kulmann; Vice-Chairperson Jessica Sandgren; and Commissioners Karen Bigelow, Eric Garcia, Kathy Henson, Julia Marvin, and Tony Unrein. Virtual – Commissioner David Acunto. Absent – Commissioner Adam Matkowsky.

STAFF MEMBERS PRESENT – Robb Kolstad, Deputy City Manager; Tami Yellico, City Attorney; Robb Kolstad, Deputy City Manager; Stephen Kelley, Fire Chief; Kim Newhart, Finance Director; Adam Krueger, Economic Development Director; Adam Stephens, Deputy City Attorney; Erika Delaney Lew, Senior Assistant City Attorney; Alex Mansfield, Management Analyst; Kristen Rosenbaum, City Clerk; and Lori Leppek, Assistant City Clerk.

3. APPROVAL OF AGENDA

MOTION WAS MADE BY COMMISSIONER HENSON AND SECONDED BY VICE-CHAIRPERSON SANDGREN TO APPROVE THE AGENDA AS PRESENTED. MOTION PASSED UNANIMOUSLY BY A ROLL CALL VOTE OF THE AUTHORITY.

4. APPROVAL OF MINUTES – September 26, 2023

MOTION WAS MADE BY COMMISSIONER UNREIN AND SECONDED BY COMMISSIONER ACUNTO TO APPROVE THE SEPTEMBER 26, 2023 THORNTON DEVELOPMENT AUTHORITY MINUTES AS PRESENTED. MOTION PASSED UNANIMOUSLY BY A ROLL CALL VOTE OF THE AUTHORITY.

5. BUSINESS

- A. A resolution authorizing and approving a Deed of Perpetual Non-Exclusive Emergency Access Easement and Temporary Construction Easement to Adams 12 Five Star Schools.

Adam Krueger, Economic Development Director, presented slides and information on this item.

MOTION WAS MADE BY VICE-CHAIRPERSON SANDGREN AND SECONDED BY COMMISSIONER HENSON TO APPROVE A RESOLUTION AUTHORIZING AND APPROVING A DEED OF PERPETUAL NON-EXCLUSIVE EMERGENCY ACCESS EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT TO ADAMS 12 FIVE STAR SCHOOLS. MOTION WAS DISCUSSED AND PASSED UNANIMOUSLY BY A ROLL CALL VOTE OF THE AUTHORITY.

6. ADJOURNMENT

MOTION WAS MADE BY COMMISSIONER BIGELOW AND SECONDED BY COMMISSIONER HENSON TO ADJOURN THE MEETING AT 9:35 P.M. MOTION PASSED UNANIMOUSLY BY A VOICE VOTE OF THE AUTHORITY.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lori Leppek", written over a horizontal line.

Lori Leppek, Assistant City Clerk, for Kevin S. Woods, Secretary

ATTEST:

Chairperson at time of approval

Approved at the February 13, 2024, TDA meeting.

TDA COMMUNICATION

Meeting Date: February 13, 2024	Agenda Item: 5A	Agenda Location: BUSINESSSS	<input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading
Subject: A resolution approving the Compliance Order on Consent between the Thornton Development Authority and the Colorado Department of Public Health and Environment through the Hazardous Materials and Waste Management Division.			
Department Head Review: Adam Krueger, Economic Development Director		Approved by: Kevin S. Woods, City Manager	Ordinance previously introduced by: _____
Presenter(s): Chad Howell, Redevelopment Administrator			

SYNOPSIS:

In anticipation of the Thornton Development Authority's (TDA) acquisition of title to the Thornton Shopping Center property (Property) as part of the ongoing condemnation proceedings, and in accordance with representations made in the November 2022 Corrective Action Plan Transfer Letter entered into by the TDA and Colorado Department of Public Health and Environment (CDPHE), the TDA and CDPHE have negotiated a Compliance Order on Consent (Consent Order). The Consent Order accomplishes the mutual objective of the parties, including but not limited to, establishing compliance requirements and schedules for corrective action at the Property pursuant to state law.

RECOMMENDATION:

Staff recommends Alternative No. 1, adopt the resolution approving the Compliance Order on Consent and authorizing the Executive Director of the TDA to execute the same.

BUDGET/STAFF IMPLICATIONS:

Once effective, the Compliance Order on Consent and associated Work Plan will require the TDA to expend funds to (1) remediate the environmental contamination on the Property and undertake monitoring of the same; and (2) reimburse CDPHE for all costs incurred pursuant to the Compliance Order on Consent, including but not limited to, document review and activity fees

ALTERNATIVES:

1. Adopt the resolution approving the Compliance Order on Consent.
2. Do not adopt the resolution.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

Upon the TDA's possession of the Property it was deemed to be an "Operator," which carries with it certain responsibilities under the Resource Conservation and Recovery Act (RCRA) and the Colorado Hazardous Waste Act (CHWA). In anticipation of the TDA's Operator status, the CDPHE issued a letter to the TDA informing the TDA that it will assume control of the phased Corrective Action Plan process under Colorado law, and specifically identified the following responsibilities that transferred to the TDA upon the TDA's possession of the Property:

COMMUNICATION

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- (1) proper management and disposal of waste stored onsite from previous investigations;
- (2) groundwater sampling, after consulting with the CDPHE regarding sample locations and analytes;
- (3) submission of written quarterly groundwater monitoring and sampling reports, analytical data, and updates to the CDPHE;
- (4) remedial investigation and work plan design that will prioritize source removal activities and will form a new remedial work plan that will replace the CAP; and,
- (5) continued negotiation of a Consent Order with the CDPHE.

The letter also stated the CDPHE's and TDA's intent to make good faith efforts to negotiate and enter into a Corrective Action Compliance Order on Consent regarding the Property, detailing the TDA's RCRA/CHWA obligations for corrective actions.

The negotiated Consent Order accomplishes the following mutual objectives of the parties:

- a) Establishes compliance requirements and schedules for corrective action at the Property pursuant to the Colorado Hazardous Waste Act (CHWA) and its implementing regulations;
- b) Resolves the TDA's liability for response costs incurred by the State of Colorado pursuant to section 107(a)(4)(B) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which will in turn provide the TDA with contribution protection in accordance with CERCLA section 113(f);
- c) Defines the TDA's responsibilities under the CHWA as the prospective owner, eventual owner, and current operator of the Property; and,
- d) Serves as an enforceable mechanism in lieu of a permit for the Property under the CHWA.

The Consent Order also achieves the TDA's objective of securing, for the benefit of prospective purchasers and/or tenants of the Property, appropriate "comfort" letters to be issued by CDPHE as soil remediation is completed on parts of the Property protective of the intended use of the Property, even if some groundwater remediation is ongoing.

In consultation with an environmental consultant, staff is currently in the process of preparing the Consent Order's required Work Plan. The Work Plan will be subject to public review and comment prior to submission to the CDPHE for review and approval.

The Consent Order will become effective on the date the TDA takes title to the Property, and requires the TDA to submit to the CDPHE within 30 days of its effective date a proposed Remedial Investigation and Corrective Measures Work Plan (Work Plan) for review and approval. The Work Plan will serve as the TDA's approved plan for remediating the environmental contamination on the Property and monitoring both on- and off-site groundwater and the effectiveness of corrective measures.

Upon the effective date of the Consent Order, and upon the CDPHE's approval of the Work Plan, the CDPHE will have the right to enforce the Consent Order and Work Plan in District Court and seek monetary civil penalties or administrative penalties for any TDA violation of the same.

ATTACHMENTS:

RESOLUTION

A RESOLUTION APPROVING THE COMPLIANCE ORDER ON CONSENT BETWEEN THE THORNTON DEVELOPMENT AUTHORITY AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THROUGH THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION.

WHEREAS, the Thornton Development Authority (TDA) is a corporate body that was established under and operates per the provisions of C.R.S. § 31-25-101 *et seq.* (Act); and

WHEREAS, the TDA has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Act; and

WHEREAS, the TDA has the specific power to undertake urban renewal projects and to make and execute any and all contracts and other instruments which it may deem necessary or convenient to the exercise of its powers under the Act, per C.R.S. § 31-25-105(1)(b); and

WHEREAS, on August 1, 2022, the TDA filed a Petition in Condemnation in Adams County District Court Case No. 2022CV031024 (Condemnation Action), naming Thornton LLC and other interested parties as Respondents, to acquire the Thornton Shopping Center property (Property) for purposes of carrying out an urban renewal project; and

WHEREAS, on November 22, 2022, the Court issued an order in the Condemnation Action granting the TDA immediate possession of the Property, and the TDA took possession of the Property on January 3, 2023; and

WHEREAS, in anticipation of the TDA's acquisition of immediate possession of the Property, the Colorado Department of Public Health & Environment (CDPHE) and the TDA entered into a letter agreement detailing, among other things, the transfer of Corrective Action Plan responsibility to the TDA, effective upon the TDA's possession of the Property (CAP Transfer Letter); and

WHEREAS, the CAP Transfer Letter identified the intent of the CDPHE and TDA to make good faith efforts to negotiate and enter into a Compliance Order on Consent regarding the Property; and

WHEREAS, the parties have negotiated a Compliance Order on Consent that accomplishes the following mutual objectives:

- a) Establishes compliance requirements and schedules for corrective action at the Property pursuant to the Colorado Hazardous Waste Act (CHWA) and its implementing regulations;
- b) Resolves the TDA's liability for response costs incurred by the State of Colorado pursuant to section 107(a)(4)(B) of the Comprehensive

Environmental Response, Compensation and Liability Act (CERCLA), which will in turn provide the TDA with contribution protection in accordance with CERCLA section 113(f);

- c) Defines the TDA's responsibilities under the CHWA as the prospective owner, eventual owner, and current operator of the Property; and
- d) Serves as an enforceable mechanism in lieu of a permit for the Property under the CHWA.

WHEREAS, the Compliance Order on Consent also achieves the TDA's objective of securing, for the benefit of prospective purchasers and/or tenants of the Property, appropriate "comfort" letters to be issued by CDPHE as soil remediation is completed on parts of the Property protective of the intended use of the Property, even if some groundwater remediation is ongoing; and

WHEREAS, the Compliance Order on Consent requires, within 30 calendar days of the effective date of the Compliance Order on Consent, that the TDA submit to the CDPHE a Remedial Investigation and Corrective Measures Work Plan for review and approval, which will serve as the TDA's approved plan for remediating the environmental contamination on the Property and monitoring both on- and off-site groundwater and the effectiveness of corrective measures; and

WHEREAS, the Compliance Order on Consent will be effective on the date the TDA obtains title to the Property; and

WHEREAS, CDPHE may enforce the Compliance Order Consent Order in District Court and may seek civil monetary penalties or administrative penalties for any TDA violation of the same; and

WHEREAS, the Compliance Order on Consent Order requires the TDA to reimburse CDPHE for all costs incurred by CDPHE pursuant to the Compliance Order on Consent, including but not limited to, document review and activity fees; and

WHEREAS, the TDA has reviewed the Compliance Order on Consent and desires to approve the same.

NOW, THEREFORE, BE IT RESOLVED BY THE THORNTON DEVELOPMENT AUTHORITY, AS FOLLOWS:

1. The TDA hereby approves the Compliance Order on Consent, Number 23-11-09-01, between the Thornton Development Authority and the Colorado Department of Public Health & Environment through the Hazardous Materials and Waste Management Division in substantially the same form attached to this resolution.

2. The Executive Director of the TDA is authorized to execute, and the City Clerk to attest, the Compliance Order on Consent.

PASSED AND ADOPTED at a regular meeting of the Thornton Development Authority, on _____, 2024.

THORNTON DEVELOPMENT AUTHORITY

Jan Kulmann, Chairperson

ATTEST:

Kristen N. Rosenbaum, City Clerk



COLORADO

Department of Public Health & Environment

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

COMPLIANCE ORDER ON CONSENT

Number: 24-02-01-01

IN THE MATTER OF THORNTON DEVELOPMENT AUTHORITY, THORNTON SHOPPING CENTER, EAST 88th AVENUE AND WASHINGTON STREET, THORNTON, CO

The Colorado Department of Public Health and Environment, through the Hazardous Materials and Waste Management Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under section 25-15-308(2), C.R.S. of the Colorado Hazardous Waste Act (“the Act”), sections 25-15-101 to 515, C.R.S., and its implementing regulations, 6 CCR 1007-3 (“the Regulations”), with the express consent of the Thornton Development Authority (“TDA”). The Division and TDA may be referred to collectively as “the Parties.”

BACKGROUND AND STATEMENT OF PURPOSE

1. The Thornton Shopping Center is located at the northeast corner of East 88th Avenue and Washington Street, Thornton, Colorado (the “Facility”). The Facility comprises 15.86 acres (Parcel Nos. 0171923318043 and 0171923318037) and contains three buildings originally constructed between 1955 and 1976, totaling approximately 102,402 square feet.
2. Thornton, LLC purchased the shopping center in 2005. Shortly after purchasing the Facility, Thornton, LLC and its manager and Facility operator, Jay Brown (collectively, “Thornton LLC”), learned that groundwater contamination attributable to releases from dry cleaners that formerly operated at the Facility was migrating offsite. The Division began requiring remedial action at the Facility to address groundwater and soil contamination.

3. Thornton LLC did not fully implement the phased corrective action plan (“CAP”) required by the Division and never implemented the property improvements that it had planned. As a result, the Facility has remained contaminated and in disrepair.
4. On January 11, 2022, the City of Thornton City Council authorized TDA to exercise its power of eminent domain, if necessary, to acquire the Facility. On August 1, 2022, TDA filed a Petition in Condemnation in Adams County District Court seeking to condemn the Facility. The Petition was consistent with TDA’s urban renewal plan and memorialized its commitment to eliminate blight at the Facility.
5. On November 2, 2022, TDA agreed to and signed an October 27, 2022 letter agreement from the Division entitled “Transfer of CHWA Corrective Action Plan” outlining how responsibility for the corrective action at the Facility would transfer from Thornton LLC to TDA on the date TDA took possession of the Facility (“Transfer Letter”). Pursuant to the Transfer Letter, the Division approved the transfer of CAP responsibility from Thornton LLC to TDA effective the date TDA took possession of the Facility, and the Parties agreed the Transfer Letter would govern corrective action at the Facility until the Parties agreed to and executed a new compliance order on consent and TDA obtained title to the Facility.
6. The Division and TDA agreed in the Transfer Letter that after taking possession of the Facility and before taking title to the Facility, TDA would fulfill the following obligations: (1) proper management and disposal of waste stored onsite from previous investigations; (2) groundwater sampling, after consulting with the Division regarding sample locations and analytes; (3) submission of written quarterly groundwater monitoring and sampling reports, analytical data, and updates to the Division; (4) remedial investigation and work plan design that will prioritize source removal activities and will form a new remedial work plan that will replace the CAP; and (5) continued negotiation of a consent order with the Division.
7. The Parties further agreed in the Transfer Letter that in negotiating a consent order, the Parties would negotiate an order that includes Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), protection language similar to that in the Corrective Action Order on Consent No. 21-09-27-01, *In the Matter of the Former Koppers Wood Treating Facility*, 465 W. 56th Avenue, Denver, Colorado, and that the consent order would include the following provisions: (1) TDA assumption of on and off-site responsibilities under the Act; (2) protection from contribution actions or claims as provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2), in exchange for compliance with the Division-approved order and Division-approved corrective action documents; (3) release and covenant not to sue with respect to response costs incurred by the State of Colorado (“State”) related to the Facility upon satisfaction of the terms and conditions of the consent order; (4) interim milestones that will allow for Facility redevelopment upon completion of soils remediation; (5) status “comfort” letters, as appropriate from the Division for new buyers of portions of the

redeveloped Facility even if some groundwater remediation is ongoing; and (6) institutional controls at the Facility to the extent required by Section 25-15-320, C.R.S.

8. On November 22, 2022, TDA was awarded immediate possession of the Facility upon deposit of \$2.5 million in the court registry. On January 3, 2023, TDA took possession of the Facility. Under the terms of the Transfer Letter, when TDA took possession of the Facility, it assumed control over the phased CAP process pursuant to 6 CCR 1007-3, §100.26(b)(2). TDA expects to take title to the property within eighteen (18) months of possession, and at that point will be both the owner and operator of the Facility.
9. As anticipated by the Transfer Letter, the Parties now enter into this Consent Order to govern corrective action at the Facility, effective as of the date TDA acquires title to the Facility.
10. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To establish compliance requirements and schedules for corrective action at the Facility pursuant to the Act and the Regulations.
 - b. To resolve TDA's liability for response costs (as defined in Paragraph 30 below) incurred by the State of Colorado pursuant to section 107(a)(4)(B) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a)(4)(B), which will in turn provide TDA with contribution protection in accordance with CERCLA section 113(f).
 - c. To define TDA's responsibilities under the Act as the prospective owner, eventual owner, and current operator of the Facility, on which there has been a release of hazardous wastes and hazardous constituents to the environment, as described in Paragraphs 11 and 12.
 - d. To serve as an enforceable mechanism in lieu of a permit for the Facility under the Act.

DIVISION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the Division's investigation, and in accordance with section 25-15-308(2), C.R.S., the Division has made the following findings of fact and conclusions of law.

11. Prior to TDA's involvement with the property, a number of dry cleaning businesses operated at the Facility at 8866, 8876, and 8946 Washington Street and possibly other locations on the Facility. Groundwater beneath the Facility and neighboring properties is contaminated with a dry cleaning solvent known as tetrachloroethylene (alternatively, "perchloroethylene," "PCE," or "perc"), as well as related chemicals which can result from the breakdown of PCE, including but not necessarily limited to trichloroethylene ("TCE"), cis-1,2-dichloroethylene, and vinyl chloride. The primary source of the PCE release is located underneath a now-vacant unit (8866 Washington Street) in the Facility.

The nature and extent of contamination has not been fully characterized to date. Further characterization of nature and extent is required.

12. PCE, TCE, and the other chlorinated solvent chemicals at the Facility are listed hazardous waste regulated by the Act and Regulations. Due to the unpermitted release of hazardous waste at the Facility during prior ownership and operation on or after 1980, the Facility is a “treatment, storage, or disposal site or facility” as that term is defined in section 25-15-101(18), C.R.S.
13. The Act requires all “treatment, storage, or disposal site[s] or facilit[ies]” to have a permit. Section 25-15-303(1), C.R.S.
14. The Division has authority to issue and enforce the conditions of permits for treatment, storage and disposal sites or facilities. § 25-15-301(2)(a), C.R.S. This Consent Order serves as an enforceable mechanism in lieu of a permit.
15. TDA represents that it is a properly constituted urban renewal authority, existing and organized pursuant to § 31-25-101, *et seq.*, C.R.S.
16. TDA acquired possession of the Facility on January 3, 2023 through a condemnation action pursuant to § 38-1-101, *et seq.*; and § 38-7-101, *et seq.*, C.R.S.
17. Upon completion of additional condemnation proceedings, TDA expects to become the “owner” of the Facility as that term is defined in 6 CCR 1007-3, section 260.10.
18. TDA is an “operator” of the Facility as that term is defined in 6 CCR 1007-3, section 260.10.
19. TDA is a “person” subject to the requirements of the Act as that term is defined in section 25-15-101(13), C.R.S.

ORDER AND AGREEMENT

20. Based on the foregoing factual and legal determinations, pursuant to its authority under section 25-15-308, C.R.S., the Division orders, and TDA agrees to comply with, all provisions of this Consent Order, including all requirements set forth below.
21. TDA agrees to the terms and conditions of this Consent Order. TDA agrees that this Consent Order constitutes an order issued pursuant to section 25-15-308(2), C.R.S., and is an enforceable requirement of Part 3 of the Act. TDA also agrees that this Consent Order serves in lieu of the permit required under section 25-15-303(1), C.R.S. TDA further agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by TDA against the Division:

- a. the issuance of this Consent Order;
 - b. the factual and legal determinations made by the Division herein; and
 - c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
22. Notwithstanding the above, TDA does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by TDA pursuant to this Consent Order shall not constitute evidence of fault by TDA with respect to the conditions of the Facility. TDA expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CORRECTIVE ACTION REQUIREMENTS

23. Within thirty (30) calendar days of the effective date of this Consent Order, TDA must submit a Remedial Investigation and Corrective Measures Work Plan ("Work Plan") for Division review and approval. The Work Plan must include the following:
- a. A proposal for indoor air monitoring and reporting to the Division;
 - b. A description of proposed quarterly groundwater monitoring and sampling, on- and off-site, including installation of additional groundwater monitoring wells to fully delineate the groundwater plume;
 - c. Proposed monitoring to assess the effectiveness of corrective action measures, including the off-site BOS-100 injections;
 - d. A proposal for on-site corrective action, which may include source area excavation and contaminated soil removal, a boundary wall or permeable reactive barrier, and bioremediation;
 - e. A proposed work schedule or timeline; and
 - f. A waste management plan.
24. The Division will notify TDA in writing of its approval, approval with modifications, or disapproval of the Work Plan. Once approved, the Work Plan, along with any subsequent modifications, shall be binding on TDA.
25. Within fifteen (15) calendar days of the Division's approval of the Work Plan, TDA must begin to implement the plan in accordance with the procedures and schedules contained in the approved plan.
26. TDA must submit brief written progress reports in writing to the Division, on the first day of each month, which include the following information:

- a. A summary of all activities performed in the previous month; and
- b. A description of activities to be performed in the upcoming month

The requirement to submit a monthly progress report may be waived by the Division.

- 27. All documents submitted under this Consent Order must use the same titles as stated in this Consent Order, and must reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. The Division shall use its best efforts to comply with decision timeframes stated in 6 CCR. 1007-3, section 100.26(b). Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by TDA. All approved plans or plan modifications, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.
- 28. As soil remediation is completed in parts of the Facility protective of the intended use of the Facility or portion thereof, the Division will provide appropriate “comfort letters” to prospective purchasers and/or tenants of such remediated portions even if some groundwater remediation is ongoing. Such letters may provide, by way of example and as appropriate, the Division’s findings that soil remediation has been completed to the extent protective of the proposed use of the Facility or portion thereof and outline the prospective purchaser and/or tenant’s ongoing obligation for further remediation of remaining contamination, if any.
- 29. The Parties anticipate that institutional controls in the form of environmental use restrictions restricting the use of groundwater at the Facility, or portions thereof, may be required pursuant to section 25-15-321.5, C.R.S., and Division policy.

RESOLUTION OF CERCLA SECTION 107(a) LIABILITY

- 30. As further provided in Paragraph 61 below, in addition to performance of the Work Plan and any approved amendments thereto, TDA agrees to pay all document review and activity fees incurred by the Division pursuant to section 100.32 of the Regulations and further agrees that all such fees shall be considered response costs incurred by the Division pursuant to CERCLA section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B).

PUBLIC INVOLVEMENT

31. The Division shall assure meaningful opportunity for public involvement in connection with the issuance of this Consent Order which serves in lieu of a permit for the Facility in accordance with 6 CCR 1007-3, section 265.121(b). At a minimum, this opportunity for public involvement shall include public notice and opportunity for comment on the proposed Work Plan.

CERTIFICATION AND CERCLA SECTION 113(f) CONTRIBUTION PROTECTION

32. By entering into this Consent Order, TDA certifies that to the best of its knowledge and belief it has disclosed to the Division all information known to TDA and all information in the possession and control of its officers, directors, employees, contractors and agents which relates in any way to any existing contamination or any past release of hazardous substances, pollutants or contaminants at or from the Facility.
33. TDA certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Facility.
34. TDA represents that it is a bona fide prospective purchaser ("BFPP") as defined by CERCLA section 101(40), 42 U.S.C. § 9601(40), that it has and will continue to comply with § 9601(40) during its ownership of the Facility, and that it qualifies for the protection from liability under CERCLA section 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the Facility.
35. The Division and TDA agree that this Consent Order constitutes an administrative settlement for the purposes of CERCLA section 113(f), 42 U.S.C. § 9613(f). In accordance with CERCLA section 113(f), TDA is entitled to protection from contribution actions or claims for the matters addressed in this Consent Order.
36. If the Division determines that information provided by TDA is not materially accurate and complete or that TDA has failed to comply with this Consent Order, within the sole discretion of the Division, the covenant not to sue in Paragraph 45 and the contribution protection provisions in Paragraphs 35 and 37 will be null and void and the Division reserves all rights it may have.

SCOPE AND EFFECT OF CONSENT ORDER

37. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the obligations of TDA with respect to the releases cited in Paragraphs 11 and 12. This Consent Order is final agency action. TDA agrees not to appeal this

Consent Order. The Division may enforce this Consent Order in District Court and may seek civil penalties of up to Twenty Five Thousand Dollars (\$25,000) per violation each day of any violation of this Consent Order. Alternatively, the Division may seek administrative penalties for any violation of this Consent Order as provided by C.R.S. § 25-15-308 and 309.

38. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in submissions required hereunder. All approved submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
39. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act not specifically cited herein, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.
40. TDA shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

**LIMITATIONS, RELEASES, COVENANTS NOT TO SUE,
AND RESERVATION OF RIGHTS AND LIABILITY**

41. Upon the effective date of this Consent Order, and until the Division approves completion of all required actions in this Consent Order, this Consent Order shall stand in lieu of any other enforcement action by the Division against TDA with respect to the release of hazardous constituents cited in Paragraphs 11 and 12. Notwithstanding the covenant not to sue in Paragraph 45, the Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties and/or injunctive relief.
42. This Consent Order does not grant any release of liability for any violations not specifically cited herein or any matters not addressed.
43. TDA reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order, including, without limitation, the monetary limitations or any other rights, immunities, and protection provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., and any and all defenses to liability available to TDA under CERCLA in the absence of this Consent Order.

44. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment. Any such additional requirements shall be subject to, and disputes regarding such requirements shall be resolved in accordance with, the Dispute Resolution process provided for in paragraphs 55 through 58 below.
45. Except as provided in Paragraph 37, the State covenants not to sue or take administrative action against TDA pursuant to 107(a) of CERCLA, 42 U.S.C. 9607(a), for matters addressed in this Consent Order and payments of response costs pursuant to Paragraph 30. These covenants shall take effect upon the Effective Date of this Consent Order and are conditioned upon the complete performance by TDA of its obligations under this Consent Order and on the veracity of the information provided by TDA to the State relating to TDA's involvement with the Facility and the certifications and representations made in Paragraphs 32, 33, and 34.
46. TDA releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of TDA, or those acting for or on behalf of TDA, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. TDA shall not hold out the State of Colorado or its employees, agents or representatives as (a) a party to any contract entered into by TDA in carrying out activities pursuant to this Consent Order; or (b) an owner, operator or generator of hazardous wastes at the Facility. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the Parties, their employees, agents or representatives.

OFFSITE ACCESS

47. To the extent any plan submitted by TDA requires access to property not owned or controlled by TDA, TDA shall use its best efforts (but not including eminent domain powers) to obtain site access from the present owners of such property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, TDA shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

48. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any

time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining TDA's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview TDA personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.

49. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by TDA. TDA must notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and must provide split samples to the Division when the Division requests them in advance of the sampling event.
50. TDA must notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. TDA must provide the Division any blue print, diagram, construction or other permits for any construction or corrective action activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

51. TDA shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of TDA, and which cannot be overcome by due diligence.
52. Within seventy-two (72) hours of the time that TDA knows or has reason to know of the occurrence of any event which TDA has reason to believe may prevent TDA from timely compliance with any requirement under this Consent Order, TDA shall provide verbal notification to the Division. Within seven (7) calendar days of the time that TDA knows or has reason to know of the occurrence of such event, TDA shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

53. The burden of proving that any delay was caused by a force majeure shall at all times rest with TDA. If the Division agrees that a force majeure has occurred, the Division will so notify TDA. The Division will also approve or disapprove of TDA's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of TDA's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to TDA. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, TDA may file an objection.
54. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, TDA shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

55. If the Division determines that remediation of contamination at, or relating to, the Facility is necessary; that additional corrective action requirements are necessary pursuant to paragraph 44; that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by TDA to mitigate the delay caused by a force majeure are inadequate; or, that TDA's Notice of Completion should be rejected, the Division shall provide a written explanation of its determination to TDA. Within fifteen (15) calendar days of receipt of the Division's determination, TDA shall:

- a. Submit a notice of acceptance of the determination to the Division; or
- b. Submit a notice of dispute of the determination to the Division.

If TDA fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

56. If the Division disapproves or approves with modifications any original or revised Work Plan submitted by TDA pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, TDA shall:
- a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. TDA may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by TDA; or

- c. Submit a written notice of dispute of the disapproval or approval with modifications to the Division.

If TDA fails to do any of the above within the specified time, TDA shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

- 57. If TDA submits a revised Work Plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify TDA in writing of its approval, approval with modifications, or disapproval of the revised Work Plan. If the Division disapproves the revised Work Plan, it may include in its disapproval a Work Plan for implementation by TDA. Such disapproval and Work Plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedure Act, sections 24-4-101 through 108, C.R.S. (the "APA"), unless TDA submits a notice of dispute, pursuant to paragraph 56 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division-approved Work Plan shall not become effective pending resolution of the dispute.
- 58. If TDA files any notice of dispute pursuant to paragraph 55, 56, or 57, the notice shall specify the particular matters in the Division's determination that TDA seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by TDA. The Division and TDA shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement, during which time TDA must provide any additional evidence or argument to the administrative record. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

- 59. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Richard Mruz, Jr., Unit Leader
Corrective Action Unit
Colorado Department of Public Health and Environment
Mail Code: HMWMD-B2

4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For TDA:

Chadwick Howell
Redevelopment Administrator
City of Thornton Economic Development
9500 Civic Center Drive
Thornton, CO 80229

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

60. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by TDA of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. TDA agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for TDA and the Facility to achieve and maintain compliance with State law.

REIMBURSEMENT OF COSTS

61. Pursuant to 6 CCR 1007-3, section 100.3, TDA shall reimburse the Division for all costs incurred by the Division pursuant to this Consent Order, including, but not limited to document review and activity fees, which, pursuant to Paragraph 30, shall also constitute CERCLA section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), response costs. Payment is due thirty (30) calendar days after billing by the Division.

MODIFICATIONS

62. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

63. TDA shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject TDA's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects TDA's Notice of Completion, it shall include in its notice a statement

identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. TDA shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

- a. Submit a written notice of acceptance of the determination to the Division; or
- b. Submit a written notice of dispute to the Division.

If TDA fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

64. This Consent Order shall be effective on the date TDA obtains title to the Facility ("Effective Date").

BINDING EFFECT AND AUTHORIZATION TO SIGN

65. This Consent Order is binding upon TDA and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. TDA agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR THORNTON DEVELOPMENT AUTHORITY:

Kevin S. Woods
Executive Director

Date

ATTEST:

Kristen Rosenbaum
City Clerk

Date

Approved as to form:

Tami Yellico
Attorney to the Thornton Development Authority

Date

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Richard Mruz
Corrective Action Unit Leader
Hazardous Materials and Waste
Management Division

Digitally signed by
Richard Mruz
Date: 2024.02.01
17:05:17 -07'00'

2/1/24

Date

Approved as to form:

Emily Splitek Digitally signed by Emily
Splitek
Date: 2024.02.06
10:19:27 -07'00'

Date

Emily Splitek #46619 *
Senior Assistant Attorney General
Office of the Attorney General
Natural Resources and Environment Section
Attorneys for the Division

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203
Telephone: (720) 508-6453

*Counsel of Record

TDA COMMUNICATION

Meeting Date: February 13, 2024	Agenda Item: 5B	Agenda Location: BUSINESS	<input type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading
Subject: A resolution approving the Intergovernmental Cooperation Agreement between the Thornton Development Authority and the 25 Commerce Park Metropolitan District regarding Tax Increment Revenues derived from the District's Mill Levy.			
Department Head Review: Tami Yellico, City Attorney		Approved by: Kevin S. Woods, City Manager	Ordinance previously introduced by: _____
Presenter(s): Matt Court, Senior Assistant City Attorney			

SYNOPSIS:

The 25 Commerce Park Metropolitan District (District), located within the North Washington Corridor Urban Renewal Area (URA), was organized to provide certain improvements within the District's Boundaries, as more specifically set forth in the District's Service Plan, which City Council approved on August 22, 2023. The District intends to issue bonds to pay for the improvements and levy ad valorem taxes to pay for the debt service on the bonds. Because the District was organized subsequent to the creation of the URA, any taxes imposed by the District will go to the Thornton Development Authority (TDA) as tax increment revenues unless otherwise provided by an agreement between the TDA and the District. The Intergovernmental Cooperation Agreement assures that taxes levied by the District are made available to the District for purposes of paying the debt service on its bonds and administrative costs as provided by the District's Service Plan, so that the District can construct and pay for improvements within its boundaries.

RECOMMENDATION:

Staff recommends Alternative No. 1, adopt the resolution approving the Intergovernmental Cooperation Agreement and authorizing the Executive Director of the TDA to execute the same.

BUDGET/STAFF IMPLICATIONS:

City Staff will be required to segregate tax revenue generated by the District and remit the same to the District within 45 days of the end of each calendar quarter.

ALTERNATIVES:

1. Adopt the resolution approving the Intergovernmental Cooperation Agreement.
2. Do not adopt the resolution.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

On August 22, 2023, City Council approved the District's Service Plan in substantially the same form as the City's model Service Plan. The District's service area includes approximately 37.16 acres of non-residential land known as 25 Commerce Park located entirely within the City. The District is

COMMUNICATION
PAGE 2

generally located on the west side of Washington Street, and south of East 152nd Avenue. The District is a non-residential metropolitan district with three warehouse/industrial buildings. The District has a debt limit of \$11,460,000.

ATTACHMENTS:

RESOLUTION

A RESOLUTION APPROVING THE INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE THORNTON DEVELOPMENT AUTHORITY AND THE 25 COMMERCE PARK METROPOLITAN DISTRICT REGARDING TAX INCREMENT REVENUES DERIVED FROM THE DISTRICT'S MILL LEVY.

WHEREAS, the Thornton Development Authority (TDA) is a corporate body that was established under and operates per the provisions of C.R.S. § 31-25-101 *et seq.* (Act); and

WHEREAS, the TDA and the Thornton City Council have adopted an urban renewal area based on the North Washington Corridor Urban Renewal Plan (North Washington Urban Renewal Area) under and pursuant to the Act; and

WHEREAS, in accordance with the North Washington Corridor Urban Renewal Plan and the Act, the TDA is authorized to finance project improvements through the use of sales and property tax increment financing (Tax Increment Revenues) within the North Washington Urban Renewal Area; and

WHEREAS, the 25 Commerce Park Metropolitan District (District) was organized to provide certain improvements within or immediately adjacent to the District's boundaries as more specifically set forth in the District's Service Plan, approved by the City of Thornton on August 22, 2023 (Service Plan); and

WHEREAS, the District plans to provide for the design, acquisition, construction, installation, and financing of certain water, sanitation, street and safety protection, park and recreation, transportation and mosquito control improvements and services within the District's boundaries (Improvements); and

WHEREAS, pursuant to the District's Service Plan, the District intends to issue bonds to pay for the Improvements and levy *ad valorem* taxes to pay for the debt service on the bonds; and

WHEREAS, because the District was created subsequent to the creation of the North Washington Urban Renewal Area, any taxes imposed by the District will go to the TDA unless otherwise provided by an agreement between the TDA and the District; and

WHEREAS, the TDA and the District are authorized by the Act to enter into cooperative agreements with respect to projects and activities; and

WHEREAS, the TDA and the District desire to enter into an Intergovernmental Agreement Regarding Tax Increment Revenues Derived from the District's Mill Levy to assure that taxes levied by the District are made available to the District for purposes of paying the debt service on the bonds and administrative costs as provided by the District's Service Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE THORNTON DEVELOPMENT AUTHORITY, AS FOLLOWS:

1. The TDA hereby approves the Intergovernmental Cooperation Agreement Between the Thornton Development Authority and the 25 Commerce Park Metropolitan District Regarding Tax Increment Revenues Derived from the District's Mill Levy in substantially the same form attached to this resolution.
2. The Executive Director of the TDA is authorized to execute, and the City Clerk to attest, the Intergovernmental Agreement.

PASSED AND ADOPTED at a regular meeting of the Thornton Development Authority, on _____, 2024.

THORNTON DEVELOPMENT AUTHORITY

Jan Kulmann, Chairperson

ATTEST:

Kristen N. Rosenbaum, City Clerk

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE
THORNTON DEVELOPMENT AUTHORITY AND THE 25 COMMERCE PARK
METROPOLITAN DISTRICT REGARDING TAX INCREMENT REVENUES DERIVED
FROM THE DISTRICT'S MILL LEVY**

This Intergovernmental Cooperation Agreement (the "Agreement"), dated as of _____, 2023, by and among the THORNTON DEVELOPMENT AUTHORITY ("TDA"), a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado, and 25 COMMERCE PARK METROPOLITAN DISTRICT (the "District"), a quasi-municipal corporation and political subdivision of the State of Colorado created pursuant to Title 32, Article 1, C.R.S., as amended (collectively, the "Parties").

W I T N E S S E T H ;

WHEREAS, TDA and the Thornton City Council have adopted an urban renewal plan to be known as the "North Washington Corridor Urban Renewal Plan" (the "Urban Renewal Plan") under and pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et. seq., C.R.S., as amended (the "Act"); and

WHEREAS, in accordance with the Urban Renewal Plan and the Act, TDA is authorized to undertake urban renewal projects and activities and to finance such projects and activities, in part, by utilization of certain incremental increases in property taxes (the "Tax Increment Revenues"); and

WHEREAS, TDA has previously issued its Thornton Development Authority Tax Increment Revenue Refunding Bonds (North Washington Street Corridor Project), Series 2015 (the "2015 Bonds") pursuant to an Indenture of Trust, dated as of September 22, 2015 (the "2015 Indenture") and has pledged to the payment of the 2015 Bonds, the Pledged Property Tax Revenues (as defined in the 2015 Indenture); and

WHEREAS, the District currently encompasses approximately thirty-seven (37) acres of real property (the "Property"). The boundaries of the Property are set forth in **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, the District plans to provide for the design, acquisition, construction, installation, and financing of certain water, sanitation, street and safety protection, park and recreation, transportation and mosquito control improvements and services to the Property (the "Improvements"); and

WHEREAS, the District is authorized to levy *ad valorem* taxes on real and personal taxable property within its boundaries to finance the Improvements, to provide services and to conduct its operations; and

WHEREAS, pursuant to the service plan for the District approved by the City on August 22,

2023, (the "Service Plan"), the District has the authority to issue a total maximum amount of Eleven Million Four Hundred Sixty Thousand Dollars (\$11,460,000) of Debt, as defined in the Service Plan, which will be secured, in part, by the District Revenues (as herein defined) paid to the District pursuant to this Agreement; and

WHEREAS, TDA and the District are authorized by the Act to enter into cooperative agreements with respect to projects and activities; and

WHEREAS, TDA and the District desire to enter into an agreement setting forth their intent to cooperate as to the provision of the Improvements and to assure that taxes levied by the District are made available to the District for purposes of implementing the Service Plan.

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, TDA and the District hereby agree as follows:

1. Improvements. The District and TDA hereby state their intention to cooperate in providing the Improvements to be financed by the District as may be desirable and to serve the Property. This statement of intention shall not obligate any Party with respect to the Improvements and services which, without this Agreement, would be the obligation of any other Party hereto.

2. Property Taxes. In consideration of the District providing the Improvements and services within the Property, TDA agrees that solely from the Tax Increment Revenues which are not Pledged Property Tax Revenues under the 2015 Indenture an amount equal to the portion of revenues which it receives as a result of Tax Increment Revenues which are attributable to the District's current and future levy of *ad valorem* taxes on real and personal taxable property within the Property and encompassed by the Urban Renewal Plan (the "District Revenues") shall be segregated upon receipt and shall be remitted by TDA to the District within forty-five (45) days of the end of the quarter.

3. District Improvements and Financing. In consideration of the TDA paying the District Revenues to the District, the District agrees to provide the Improvements. In order to provide the Improvements, it will be necessary for the District to incur debt to provide funding for the construction of the Improvements. The obligation of the TDA set forth herein shall constitute an obligation to the District within the meaning of Section 31-25-107(9) of the Act. The District agrees that all District Revenues paid to it pursuant to this Agreement shall be used in accordance with the Act, the Urban Renewal Plan and the District's Service Plan.

4. TDA Covenant Relating to Pledge of Amounts Owed. TDA hereby covenants that so long as this Agreement is in effect, it will not hereafter pledge, encumber or otherwise transfer the District Revenues, but shall maintain the same for the use and benefit of the District until paid to the District. The covenant set forth in this paragraph shall include all revenues received by TDA arising from any mill levy imposed

by the District on real and personal taxable property for payment of operations and maintenance and debt, as authorized by the Service Plan or any subsequent amendments thereto.

5. Cooperation. The TDA and the District covenant with each other that in any action or challenge of the Urban Renewal Plan and/or this Agreement, regarding the legality, validity or enforceability of any provision thereof, the Parties will work cooperatively and in good faith to defend and uphold each and every such provision.

6. Enforcement. The TDA agrees that it shall enforce the collection of all moneys which may qualify as District Revenues.

7. Enforceable Opinion. Each Party agrees that during the Term of this Agreement, either Party may request an opinion from the other Party's bond counsel to the effect that, this Agreement and the obligations of the Parties set forth herein are valid and binding and which shall be reasonably acceptable to the Party requesting the opinion. The District shall pay the costs for any opinions requested pursuant to this section.

8. Litigation. Each of the Parties agrees to promptly notify the other Party hereto in writing of the pendency of any litigation involving this Agreement in which any other Party hereto is not a named party. So long as the Parties are not adverse parties in the litigation, no Party will object to or otherwise oppose any effort by another Party hereto to intervene in such litigation proceeding.

9. Effective Date; Term. This Agreement shall become effective as of the date set forth in the initial paragraph hereof. Unless sooner terminated by mutual consent of the Parties, this Agreement shall remain in full force and effect until the expiration of the tax allocation provision of the Urban Renewal Plan pursuant to the Act (the "Term"). If on or after the expiration of this Agreement, TDA has or receives any District Revenues which would have been due to the District under this Agreement, it shall pay such District Revenues to the District notwithstanding the expiration. TDA shall provide written notice of the expiration of the tax allocation provision and this Agreement to the District.

10. Amendments and Waivers. No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

12. Headings. Paragraph headings in this Agreement are included herein for

convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

13. 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.

14. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Agreement.

15. Electronic Storage and Execution. The Parties hereto agree that the Agreement 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. Without limiting the foregoing, the Parties agree that any individual or individuals who are authorized to execute or consent to this Agreement on behalf of the TDA or the District are hereby authorized to execute this the same electronically via facsimile or email signature. This agreement by the Parties to use electronic signatures is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Transactions Act. Any electronic signature so affixed to this Agreement or any supplement or consent relating thereto shall carry the full legal force and effect of any original, handwritten signature.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto and duly authorized as of the date first above written.

THORNTON DEVELOPMENT AUTHORITY

ATTEST:

City Clerk

APPROVED AS TO FORM:

Attorney for TDA

25 COMMERCE PARK METROPOLITAN DISTRICT

By: David Klebba
David Klebba (Dec 18, 2023 10:30 MST)

Its: President

EXHIBIT A

Boundary Map

