

SERVICE PLAN

FOR

ENERGY PARK ONE METROPOLITAN DISTRICT

CITY OF FORT COLLINS, COLORADO

Submitted: November 30, 2007

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## I. INTRODUCTION

### A. Purpose and Intent.

In conjunction with the Energy Park One Business Improvement District (the "BID"), the Energy Park One Metropolitan District will assist in the financing of the Public Improvements benefiting the Project. The primary purposes of the District will be to assist the BID in the planning, financing and construction of the Public Improvements benefiting the Project, as well as providing for certain operation and maintenance functions related thereto. Upon formation, the District will be an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Service Plan, its activities are subject to review by the City only insofar as they may deviate in a material manner from the requirements of the Service Plan.

The District is further authorized under the provisions of this Service Plan for operations and maintenance of all Public Improvements that are not dedicated to, accepted by or otherwise conveyed to the City, the BID, or another public entity, including but not necessarily limited to landscaping or other amenities of the Project. All such operational activities of the District shall be conducted in the manner most appropriate and necessary to facilitate the Project as a first class mixed-use development.

### B. Need for the District.

Formation of the District is necessary in order for the Public Improvements required for the Project to be financed, constructed and provided in the most economic manner possible, and to ensure that owners of residential units developed within the boundaries of the Project pay an equitable share of the costs associated with the Public Improvements benefiting such residential units.

The Business Improvement District Act, Section 31-25-1201 *et seq.*, C.R.S. does not allow residentially assessed properties to be included within the BID's boundaries, and residentially assessed properties are not subject to ad valorem property taxes levied by the BID. Formation of the District ensures that future commercial property owners do not pay a disproportionate share of the costs of the Public Improvements benefiting the Project. It is anticipated that Fees collected by the District will be pledged to the BID pursuant to the terms of an intergovernmental agreement by and between the BID and the District, in order to assist the BID with servicing debt service payments on bonds anticipated to be issued by the BID to assist with the design, acquisition, financing and construction of the Public Improvements.

Without the formation of the District, there would be no manner to ensure that residentially assessed properties share in the costs of the Public Improvements benefiting the Project.

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

The City's objective in approving the Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation, and redevelopment of the Public Improvements through Fees to be imposed on residential units within the Project. At the current time, it is anticipated that all Debt approved by the District will be repaid by Fees. Following formation of the District, the Board will adopt a schedule of Fees for facilities and services it provides, and the Fees shall be imposed by the District against residentially assessed units within its Service Area. The District shall not be authorized to impose Fees against commercially assessed properties located within the Project.

This Service Plan is intended to establish a limited purpose for the District. Unlike traditional metropolitan district service plans, this Service Plan does not authorize the District to issue general obligation indebtedness. The District will not be authorized, unless approved in a subsequent Service Plan Amendment, to impose a debt service mill levy. The primary purpose of the District will be to impose Fees on residential units located within the Project and to remit said Fees to the BID to assist the BID with servicing debt service on bonds issued to pay for Public Improvements benefiting the Project. This Service Plan also authorizes the District to undertake operational activities related to all Public Improvements that are not dedicated to, accepted by or otherwise conveyed to the City, the BID, or another public entity.

**II. DEFINITIONS AND OVERVIEW**

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

Approved Development Plan: means an approved final development plan or administrative site plan that identifies, among other things, Public Improvements necessary for development of the property within the Service Area, as approved by the City pursuant to the City Code, as amended from time to time.

BID: means the Energy Park One Business Improvement District, organized pursuant to Section 31-25-1201 *et seq.* of the Colorado Revised Statutes.

Board: means the board of directors of the District.

City: means the City of Fort Collins, Colorado.

City Code: means the Municipal Code of the City of Fort Collins, Colorado.

City Council: means the City Council of the City of Fort Collins, Colorado.

Debt: means specifically a multiple fiscal year intergovernmental agreement with the BID, under which the District will be required to pledge certain revenues of the District, including but not limited to Fees and/or other legally available revenues of the District, to the BID to assist the BID with the repayment of bonds or other debt issued to assist with

the design, planning, construction, acquisition, or financing of the Public Improvements benefiting the Project.

District: means the Energy Park One Metropolitan District.

District Boundaries: means the initial boundaries of the area described in the District Boundary Map, as the same may be amended from time to time.

District Boundary Map: means the map attached hereto as **Exhibit B**, depicting the initial boundaries of the District, as further and more specifically described in the legal description attached to this Service Plan as **Exhibit A**.

Fees: means any rate, fee, toll, penalty, or charge imposed by the District against residential units located within the Service Area for services, programs or facilities furnished or to be furnished by the District.

Financial Plan: means the Financial Plan described in Section VI which describes how the Public Improvements are to be financed.

Maximum Operating Mill Levy: means the maximum mill levy the District is permitted to impose for general District administration, and the operation and maintenance of the Public Improvements.

Project: means the development and re-development of property commonly referred to as Energy Park One.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as authorized by the Special District Act, except as specifically limited in Section V below to serve the future taxpayers and property owners of the Project or of the Service Area as determined by the Board.

Service Area: initially means the property defined in **Exhibits A and B**, as may be amended in the future by inclusions and exclusions. Notwithstanding the definition of "Service Area," the District shall have authorization to provide Public Improvements both within and without the District Boundaries.

Service Plan: means this service plan for the District as approved by City Council as the same may be amended from time to time.

Service Plan Amendment: means an amendment to the Service Plan approved by City Council in accordance with the City's rules and regulations and applicable state law.

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

State: means the State of Colorado.

Total Debt Approval Limitation: means the total Debt the District is authorized to approve, as set forth in Section V.A.4.

A. District Revenue Structure.

It is anticipated that the District, in conjunction with the BID, will undertake the financing of the Public Improvements. The District's primary source of revenue will be Fees imposed against residential units developed within the boundaries of the Project. The District will also be authorized to impose an ad valorem property tax, which tax may not exceed the Maximum Operating Mill Levy. The mill levy shall only be levied against property located within the District Boundaries.

B. Needs Analysis / Basis for Statutory Findings.

In order to establish compliance with the standards for Service Plan approval as set forth in Section 32-1-203, C.R.S., **Exhibit D** attached hereto provides a needs' analysis for the District.

C. District Functions Generally.

All Debt is subject to the Total Debt Approval Limitation. Debt approved by the District within these parameters and pursuant to the provisions of this Service Plan will protect property owners from excessive Fees and/or property tax burdens and will ensure that the Debt is discharged in a timely and reasonable fashion.

The District expects and is authorized to own, operate and maintain certain Public Improvements not dedicated to the City or other governmental entities. Certain other Public Improvements will be dedicated to the City, or in the case of water and sanitation improvements to the ELCO Water District ("ELCO") or the Box Elder Sanitation District ("BESD"), respectively, according to the requisite procedures for each specific entity (including but not limited to applicable standards related to construction). Determination of both the scope and manner in which specific Public Improvements will be dedicated to the City, ELCO, BESD, and/or other governmental entities will be the subject of specific agreements among the District and the aforementioned entities. Further detail on operations and maintenance of certain Public Improvements is discussed below.

The City shall have and will exercise sole and exclusive jurisdiction over land use and building, e.g. zoning, subdivision, building permit issuance, and property development within the boundaries of the District. Construction of the Public Improvements shall be subject to applicable provisions of the City Code and regulations of other governmental entities having jurisdiction.

### **III. BOUNDARIES**

The total combined land area of the Project includes approximately one hundred thirty nine and one-half (139.5) acres and is comprised solely of property currently owned by Airpark

Village, LLC. A legal description of the District Boundaries is attached hereto as **Exhibit A**. The District Boundary Map is attached hereto as **Exhibit B**.

As set forth herein, the District Boundaries shall initially include approximately 15.6 acres located in the southeast portion of the Project.

#### **IV. PROPOSED LAND USE**

Approval of this Service Plan by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of any residential units or the total site/floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

#### **V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

##### **A. Powers of the District and Service Plan Amendment.**

The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Colorado Constitution, subject to the limitations set forth herein. The services to be provided by the District includes but are not limited to: Water; Streets; Traffic and Safety Controls; Transportation; Parks and Recreation; Mosquito Control; Television Relay and Translation/Communications; and Sanitation and Drainage; all as further set forth in Title 32, C.R.S.

A material modification of this Service Plan shall be deemed to exist in accordance with the provisions of section 32-1-207(2), C.R.S., and shall specifically include, but not necessarily be limited to the following events: (1) approval by the District of Debt in excess of the Total Debt Approval Limitation; (2) imposition of an ad valorem mill levy in excess of the Maximum Operating Mill Levy; and (3) violation of any of the below items in Section V(A) 1-6, herein. Any and all material modifications shall be undertaken in accordance with the provisions of the Special District Act and shall require a Service Plan Amendment, approved by the City Council.

Portions of the legal boundaries of the District overlap the legal boundaries of both ELCO Water District and Box Elder Sanitation District. The District shall comply with the applicable provisions of Section 32-1-107, C.R.S., relating to districts with overlapping services and shall obtain consent as necessary from such entities not later than the date of the District Court's order and decree of organization granted pursuant to Section 32-1-305(6), C.R.S. If such consents are not obtained prior to the entry of the court order, then the District shall not exercise such power unless and until consents are obtained as required.

1. **Fire Protection Limitation.** The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the City and any overlapping fire protection district, as may be applicable. 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.

2. ELCO Water District and Box Elder Sanitation District. The District hereby acknowledges that ELCO will be the sole provider of water services within the District. The District's authorization in this regard shall be limited to the financing and construction of all internal water improvements needed to serve residential units within the Project, and the financing and construction of water improvements outside the Project that are needed to connect the District's internal infrastructure to ELCO's existing lines. All water improvements authorized for financing and construction by the District shall be designed and constructed in accordance with ELCO's standards and shall be conveyed to ELCO upon completion. The District shall not amend this Service Plan in any manner that would affect or expand the water powers contemplated herein without the express written consent of ELCO.

The District hereby acknowledges that BESD will be the sole provider of sanitation services within the District. The District agrees not to sell any sewer taps and will not construct, finance or otherwise provide for any sanitation treatment facility. The District shall be expressly prohibited from entering into any contract with any other sanitary sewer provider, other than BESD, for such treatment facilities. The District's authorization in this regard shall be limited to the financing and construction of all internal sanitation improvements needed to provide service to residential units within the Project, and the financing and construction of sanitation improvements outside the Project that are needed to connect the District's internal infrastructure to BESD's existing lines. Notwithstanding the aforesaid, the District's authorization with respect to the construction of sanitation improvements outside of the Project shall be exercised only with the prior written consent of BESD. All sanitation improvements authorized for financing and construction by the District shall be designed and constructed in accordance with BESD's standards and shall be conveyed to BESD upon completion. The District shall not amend this Service Plan in any manner that would affect or expand the sanitary sewer powers contemplated herein without the express written consent of BESD.

3. 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.

4. Total Debt Approval Limitation. The District shall not approve Debt in excess of Five Million Dollars (\$5,000,000) without City approval.

5. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to specific ownership taxes which shall be distributed to, and be a revenue source for, the District without any limitation.

6. Bankruptcy Limitation. All of the limitations contained in this Service Plan,

including, but not limited to, those pertaining to the Maximum Operating Mill Levy have been established under the authority of the City to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdictions 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).

7. Service Plan Amendment Requirement. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-6 above shall be deemed to be material modifications to this Service Plan and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

8. Service Plan Amendment Procedure. Section 32-1-204.5, C.R.S. and 32-1-207, C.R.S. do not provide a specific procedure for amending a service plan of a district within a municipality. The following procedure will be followed for amendments to the Service Plan:

(a) In such detail as may be reasonably requested by the City, the District shall set forth a written proposal for the modification of the Service Plan ("Amendment").

(b) The District shall file the Amendment with the City Manager and the City Attorney.

(c) The City Clerk shall cause to be scheduled, and shall inform the District of, the date, time, and place for a public hearing by the City Council on the Amendment.

(d) The City shall provide posted public notice of the date, time, place and purpose of the public hearing on the Amendment. Such notice may be combined in the notice of any other agenda item that may come before the Council and shall be posted at the time, in the location, and in the manner, as is provided by City ordinance for the posting of notice for meetings of the Council. Failure of the notice to specify that a public hearing shall be conducted concerning the Amendment shall not affect the validity of the notice.

(e) The Council shall hold a public hearing on the Amendment in accordance with its regular procedures for public hearings.

(f) The Council shall, within 30 days of the conclusion of the public hearing, adopt a resolution approving, conditionally approving, or disapproving the Amendment as appropriate under the circumstances.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed in cooperation with the BID was prepared based upon a preliminary engineering survey and estimates derived from the projected build-out of residential and commercial development within the Service Area and is approximately Fifty Million Dollars (\$50,000,000).

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

As set forth in Section I.B., above, it is currently anticipated Fees collected by the District will be pledged to the BID pursuant to the terms of an intergovernmental agreement by and between the BID and the District, in order to assist the BID with servicing debt service payments on bonds anticipated to be issued by the BID to assist with the design, acquisition, financing and construction of the Public Improvements.

**VI. FINANCIAL PLAN**

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues including but not limited to the proceeds of Fees to be imposed by the District. The Financial Plan for the District shall be to approve such Debt as the District can reasonably pay from revenues derived from Fees and other legally available revenues. The total Debt that the District shall be permitted to approve shall not exceed the Total Debt Approval Limitation. The Financial Plan discussed in this Service Plan represents one method that might be used by the District to finance the cost of the Public Improvements. As detailed in the financial pro forma attached to the BID's 2008 Operating Plan and Budget, the Fees have been initially estimated at \$1,000 per residential unit. The Fees will be collected by the District and remitted to the BID pursuant to the terms of an intergovernmental agreement to be entered into by and between the BID and the District, following legal formation of the entities. The amount of the Fees to be imposed by the District against residential units will be determined by the Board, and must be rationally related to the costs of the Public Improvements benefiting the residential units located within the Project. Due to initial support expected to be received from the Developer and the BID, the Financial Plan as outlined in this Service Plan demonstrates that the cost of the Public Improvements may be provided with reasonable Fees and other revenues available to the District.

B. 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 such District for District administration, and operation and maintenance of the Public Improvements. The Maximum Operating Mill Levy shall be ten (10) mills; provided that if, on or after January 1, 2008, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2008, 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.

C. Revenue Sources.

The District may impose a mill levy on property within its boundaries as a primary source of revenue for District administration and for operations and maintenance of the Public Improvements. The District may also rely upon various other revenue sources authorized by law. At the District's discretion, these may include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time. In no event shall the mill levy in the District exceed the Maximum Operating Mill Levy.

D. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the Debt identified in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

E. TABOR Compliance.

The District will comply with the provisions of TABOR. In the discretion of the Board, the District may set up other qualifying entities or enterprises to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by the District will remain under the control of the Board.

F. District's Operating Costs.

The first year's operating budget is estimated to be One Hundred Thousand Dollars (\$100,000) which is anticipated to be derived from property taxes, developer advances, and other legally available revenues.

## **VII. ANNUAL REPORT**

### **A. General.**

If requested in writing by City Council, the District shall be responsible for submitting an annual report to the City's Finance Director no later than August 1<sup>st</sup> of each year following the year in which the Order and Decree creating the District has been issued.

### **B. Reporting of Significant Events.**

The annual report may include information as to changes in any of the following:

1. Boundary changes made or proposed to the District's boundaries as of December 31st of the prior year.
2. Intergovernmental Agreements with other governmental entities, either entered into or proposed as of December 31st of the prior year.
3. Copies of the District's rules and regulations, if any, as of December 31st of the prior year.
4. A summary of any litigation which involves the Public Improvements as of December 31st of the prior year.
5. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City or the BID as of December 31st of the prior year.
6. The assessed valuation of the District for the current year.
7. Current year budget including a description of the Public Improvements anticipated to be constructed in such year.
8. Audit of the District's financial statements, for the year ending December 31st of the prior year, prepared in accordance with generally accepted accounting principles or audit exemption, if applicable.
9. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.
10. A summary of the financial ability of the District to discharge its existing or proposed Debt.

## **VIII. DISCLOSURE TO PURCHASERS**

The District will use reasonable efforts to assure that all developers of the property located within the Project provide written notice to all purchasers of property in the Project

regarding the existence of the District and a general description of the District's authority to impose and collect the Fees.

## **IX. CONCLUSION**

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

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

EXHIBIT A  
Legal Descriptions

A portion of Airpark Village Annexation, situate in Sections 7 and 8, Township 7 North, Range 68 West of the Sixth P.M., City of Fort Collins, County of Larimer, State of Colorado, which considering the North line of the West 1/2 of said Section 8 as bearing S89°28'51"E and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point which bears S 16°03'23"W 4527.65 feet from the North 1/4 Corner of said Section 8, and run thence S00°17'01"W 520.95 feet; thence N59°04'20"W 269.73 feet; thence S38°07'20"W 228.23 feet; thence along the arc of a 200.00 foot radius curve concave to the South a distance of 9.52 feet, whose central angle is 02°43'43", the long chord of which bears N50°33'00"W 9.52 feet; thence N51°54'51"W 931.26 feet; thence N36°50'08"E 653.68 feet; thence S53°09'52"E 903.71 feet to the point of beginning, containing 15.5745 acres, more or less.

THE TOTAL ACREAGE INCLUDED WITHIN THE DISTRICT'S INITIAL BOUNDARIES AS IDENTIFIED IN THIS SERVICE PLAN IS 15.5745 ACRES MORE OR LESS.

EXHIBIT B  
District Boundary Map

EXHIBIT C  
Resolution of Approval

**RESOLUTION # \_\_\_\_\_**

**A RESOLUTION OF THE FORT COLLINS CITY COUNCIL  
APPROVING THE SERVICE PLAN FOR THE ENERGY PARK  
ONE METROPOLITAN DISTRICT**

WHEREAS, pursuant to Section 32-1-204.5 C.R.S., as amended, the Service Plan for the Energy Park One Metropolitan District (the "Service Plan") has been submitted to the City Council; and

WHEREAS, a copy of said Service Plan is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, the boundaries of the proposed Energy Park One Metropolitan District (the "District") are wholly contained within the boundaries of the City; and

WHEREAS, pursuant to the provisions of Title 32, Article 1, C.R.S., as amended, the City Council held a public hearing on the Service Plan for the District on \_\_\_\_\_, 2008; and

WHEREAS, the City Council has considered the Service Plan, and all other testimony and evidence presented at the hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO:

1. That, following due notice, the hearing before the City Council was open to the public; that all interested parties were heard or had the opportunity to be heard; and that all relevant testimony and evidence submitted to the City Council was considered.

2. That evidence satisfactory to the City Council for finding each of the following was presented at the hearing:

a. there is sufficient existing and projected need for organized service in the area to be served by the District;

b. the existing service in the area to be served by the District is inadequate for present and projected needs;

c. the District is capable of providing economical and sufficient service to the area within its proposed boundaries;

d. the area to be included within the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;

3. That the City Council hereby determines that the requirements of Sections 32-1-202(2), C.R.S., relating to the filing of the Service Plan for the District, and the requirements of Section 32-1-204.5 C.R.S., relating to the approval by the City Council have been fulfilled in a timely manner.

4. That the City Council does hereby approve the Service Plan for the District as submitted.

5. That a certified copy of this Resolution shall be filed in the records of the City and the Larimer County Clerk and Recorder, and submitted to the petitioners under the Service Plan for the purpose of filing in the District Court of Larimer County.

6. That nothing herein limits the City's powers with respect to the District, the property within the District, or the improvements to be constructed by the District.

7. That this Resolution shall go into effect as of the date and time of its approval by the Council.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT D  
Statutory Considerations

A. **There is sufficient existing and projected need for organized service in the area to be served by the District.** The Service Plan describes the overall development plans for the Project. The Project will require substantial Public Improvements, totaling approximately \$50,000,000 (in 2007 dollars). The District is anticipated to work closely with the Energy Park One Business Improvement District (the "BID") to finance a portion of the Public Improvements (subject to the District's Total Debt Approval Limitation of \$5,000,000 as contained in the Service Plan). The creation of the District ensures that residential development occurring within the boundaries of the Project will pay an equitable share of the cost of providing Public Improvements of benefit to the entire Project. The District is proposed in order to ensure that organized service is provided to the Project.

B. **The existing service in the area to be served by the District is inadequate for the present and projected needs / adequate service through other governmental entities, including existing special districts, will not be available within a reasonable time and on a comparable basis.** There are currently no other entities in existence in the immediate vicinity of the Project which have the ability and/or desire to undertake the design, financing and construction of the Public Improvements identified in this Service Plan. It is also the understanding of the proponents of the District that the City does not consider it feasible or practicable for the City to provide the necessary services and facilities for the Project. As set forth in the Service Plan, ELCO and BESD will be providing water and sanitary sewer services to the Project. The formation of the District is in the best interests of the area to be served.

C. **The District is capable of providing economical and sufficient service to the area within its boundaries.** The proposed District is necessary in order to provide the most economical and efficient means of undertaking the Public Improvements and related operation and maintenance function to serve existing and future residential property owners within its Service Area. The Financing Plan discussed in the Service Plan demonstrates that the District will be able to provide economical and sufficient service to the Project.

D. **The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.** The Service Plan demonstrates that the District will have the ability to discharge the Total Debt Approval Limitation of \$5,000,000 on a reasonable basis. The Financial Plan for the District, as set forth in the Service Plan, is to have the District impose Fees against residential units within the Service Area (currently estimated at \$1,000 per unit), and to remit said Fees to the BID in accordance with the terms of an intergovernmental agreement to be entered into by and between the District and the BID.