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September 24, 2020

VIA E-MAIL: LORISEAGO@ELPASOCO.COM

Lori Seago
El Paso County Attorney Office
200 South Cascade Ave., Suite 150
Colorado Springs, CO 80903

Re: Covenant Enforcement and Design Review Services and Gallagher Amendment
Adjustment to Mill Levy Cap by Waterview II Metropolitan District

Dear Ms. Seago:

Our firm serves as general counsel to the Waterview II Metropolitan District (the "District"), which is an existing Title 32 metropolitan district located within El Paso County, Colorado (the "County"). Please accept this letter, along with an electronic copy of the District's 2006 Service (the "Service Plan") and 2006 Organization Election Certified Results, as our formal submittal advising El Paso County (the "County") of the District's intent to make Gallagher Amendment adjustment to its mill levy cap and to perform Covenant Enforcement and Design Review Services.

I. BACKGROUND

The District was formed pursuant to the Service Plan for the construction, installation, financing, operation and maintenance of public infrastructure to support the needs of the development contained within its boundaries (the "Project"). Due to the effects of the 2008 recession, Project development was delayed. However, economic recovery now allows for development activity within the District and District financing of the public improvements necessary for the Project.

II. ADDITIONAL EXPRESS POWERS AND IMPLIED SERVICES AND POWERS GRANTED BY COLORADO LAW

Service Plan Section I.D.9.b.iii., states that the District shall have the authority to provide all such additional services and exercise such powers as are expressly or impliedly granted by Colorado law, and which the District is required to provide or exercise or, in its discretion, chooses to provide or exercise. County approval shall be required prior to the District exercising any such additional express or implied service and powers granted by Colorado law but not described in the Service Plan. However, in Section I.D.9.b.iv., the Service Plan states that the District shall have

the authority to exercise all necessary and implied powers under Title 32, C.R.S., in the reasonable discretion of the board of directors of the District.

A. **Contemplated Covenant Enforcement and Design Review Services.** In 2004, Section 32-1-1004(8), C.R.S., became Colorado law granting metropolitan districts the power to furnish covenant enforcement and design review services. Service Plan Sections II.B and II.D both note and contemplate that the District, rather than a homeowners' association, will supply services to the Project. Therefore, it is the District's belief that pursuant to Service Plan Section I.D.9.b.iv., the District has the authority, without requiring additional County approval, to exercise its statutory covenant enforcement and design review powers, and that the District's exercise of such powers is in lieu of such services being provided by a homeowners association as contemplated in Service Plan Section II.B ("covenants" being expressly noted).

B. **Gallagher Amendment Adjustment to 40 Mill Levy Cap.** In 1982, Article X of the Colorado Constitution was amended by the Gallagher Amendment which divides the State's total property tax burden between residential and non-residential property with 45% of the total property tax collection coming from residential property and 55% of the total property tax collection coming from non-residential property, and requiring the assessment rate for non-residential property to be fixed at 29%. In 2006, when the Service Plan was approved, the residential assessment rate was at 7.96%. Today, fourteen years later, the residential assessment rate is 7.15%.

In Service Plan Section IV.A, the District is limited to an aggregate forty (40) mills for debt service and operational service costs. This cap was required to be and was described in the organizational ballot questions. In addition to the forty (40) mill cap being noted in the relevant ballot questions, the same ballot questions also describe and permit a Gallagher Amendment Adjustment to the forty (40) mill levy cap should the assessment rate change (see ballot questions 4 through 9 enclosed herewith). The District, via its TABOR elections, already possesses the separate requisite TABOR/electoral authority to perform Gallagher Amendment Adjustments. However, the Service Plan is silent on Gallagher Amendment Adjustments to the mill levy cap.

Property taxes are a metropolitan district's primary source of funding and property tax revenues fund the various services provided by the District. The County has approved numerous service plans over the years that allow the stated mill levy cap to undergo a Gallagher Amendment Adjustment commencing with the year the Service Plan is approved. A Gallagher Amendment Adjustment to the existing forty (40) mill levy cap is not a material modification to the Service Plan as this is not a change in the basic services provided by the District, and the District is not asking for a higher mill levy cap. Rather, a Gallagher Amendment Adjustment to the mill levy cap is intended to offset the effects of adjustments to the ratio between market value and assessed value of taxable property within the District that cause a reduction in the revenue otherwise produced from the limited mill levy.

To the extent Service Plan Section I.D.9.b.iii., applies, then County approval is needed before the District makes Gallagher Amendment Adjustments to its limited forty (40) mill levy cap commencing with 2006 (i.e. the Service Plan approval year). Allowing the District to Gallagher

Lori Seago
County Attorney
RE: Waterview II Metropolitan District
September 24, 2020
Page 3 of 3

Amendment Adjust its forty (40) mill levy cap will also treat the District similar to so many other County approved districts which are able to make such adjustments to their mill levy cap.

The District hopes the County approval for Gallagher Amendment Adjustment to the mill levy cap can be granted administratively as this is not a material modification, there are no changes to the mill levy cap or basic services, and it simply is intended to offset the effects of the State's residential assessment ratio changes since 2006.

We look forward to obtaining County approval and receiving your thoughts on these matters.

Sincerely,

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



Sean Allen
Of Counsel

cc: Waterview II Metropolitan District, Board of Directors
Mike Sullivan, D.A. Davidson & Co.

Enclosures:

- A. 2006 Service Plan
- B. 2006 Certified Organization Election Results