

COOPERATIVE AGREEMENT
(Northfield Campus/Sports Complex Site)

THIS COOPERATIVE AGREEMENT (“**Agreement**”) is made and entered into, effective as of the latest date on signature pages to this Agreement, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the "**City**"), and **SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO**, (hereinafter referred to as "**DPS**"), either of which may be individually referred to herein as a “**Party**” or jointly referred to as the “**Parties**”.

RECITALS

WHEREAS, DPS is in the process of acquiring a parcel of land located at the southeast corner of Central Park Boulevard and 56th Avenue within the boundaries of the City and County of Denver for the purpose of developing a high school campus, tentatively denominated as “Northfield High School and Paul Sandoval Campus,” as such parcel is generally depicted as “DPS 20.65 Acres” on the drawing attached as **Exhibit A** to this Agreement (the “**Northfield Campus**”); and

WHEREAS, the City is in the process of acquiring a parcel of land of approximately 20.65 acres adjoining the Northfield Campus on the east side and located at the southwest corner of Dallas Street and 56th Avenue, tentatively denominated as the “Sports Complex Site”, as such parcel is generally depicted as “DPR-W 11.07 Acres” and “DPR-E 8.27 Acres” on the drawing attached as **Exhibit A** to this Agreement (“**Sports Complex Site**”). The Sports Complex Site, along with the parcel generally depicted as “DPR-T 3.64 Acres” on the drawing attached as **Exhibit A** to this Agreement (“**Regional Trail**”), is being acquired as part of Trunk Open Space in accordance with the Master Facilities Development Agreement dated February 12, 2001, as it has been amended from time to time, entered by the City, Forest City Enterprises, Inc., and the Park Creek Metropolitan District, and Individual Facilities Development Agreement No. 41, entered by the City, Forest City Stapleton, Inc., and Park Creek Metro District; and

WHEREAS, DPS and the City, through its Department of Parks and Recreation (“**Parks**”), desire to develop the Sports Complex Site, in two or more phases, as athletic facilities, including a track and field, tennis courts, ball fields, restrooms, sidewalks and related amenities (collectively the “**Athletic Facilities**”); and

WHEREAS, the first phase of the development of the Athletic Facilities on the Sports Complex Site shall include such facilities as generally depicted on the drawing attached as **Exhibit A** to this Agreement and further delineated in Exhibit 1 to the First Addendum to this Agreement (“**Sports Complex Phase I**”), along with the Regional Trail which is being developed by Park Creek Metropolitan District prior to conveyance of the Regional Trail to the City; and

WHEREAS, the City will own the Sports Complex Site and the Regional Trail, and DPS will construct the Athletic Facilities for Sports Complex Phase I and all subsequent phases for

the development of the Athletic Facilities in the locations within the Sports Complex Site and in the manner as the City and DPS mutually agree in accordance with this Agreement, for the benefit and shared use of the students attending the Northfield Campus and the Denver general public; and

WHEREAS, for the Sports Complex Phase I and the subsequent phases for the development of the Sports Complex Site, the City and DPS agree that the Athletic Facilities will be used, maintained, repaired and replaced as provided in this Agreement; and

WHEREAS, the City and DPS recognize the benefits to Denver students and the Denver general public for DPS and the City to cooperate in the development, use, maintenance, and repair of City parks and DPS school facilities, in order to avoid a duplication of facilities and to achieve a more efficient use of the facilities; and

WHEREAS, in accordance with the Colorado Constitution, § 29-1-203, C.R.S. and Section 2.4.4 of the City Charter, the City and DPS are authorized to enter into agreements regarding the shared use of facilities for the benefit of the people of Denver.

NOW, THEREFORE, in consideration of the mutual promises and benefits stated and contained herein, and other good and valuable consideration, the City and DPS agree as follows:

1. Basic Terms and Conditions; Addenda.

1.1 This Agreement shall not be effective until the Effective Date of this Agreement as specified in Section 2 of this Agreement. Upon receipt by the City of a deed for the Sports Complex Site, but no sooner than the Effective Date of this Agreement, a copy of said dated deed and a legal description and corresponding drawing of the Sports Complex Site shall be provided to DPS. During the Term of this Agreement, the Sports Complex Site shall be owned by the City. No property right, title or interest is being created or granted by this Agreement. All rights and obligations with respect to the Sports Complex Site, including the rights and obligations with respect to the control and management of the Athletic Facilities within the Sports Complex, shall be as expressly provided in this Agreement and its Addenda.

1.2 DPS shall construct or install the Athletic Facilities for the Sports Complex Phase I and all subsequent phases for the development of the Sports Complex Site as prescribed in the **First Addendum** to this Agreement, which is attached to this Agreement and incorporated herein by this reference. The costs of construction or installation of the Athletic Facilities in the Sports Complex Site shall be funded solely by DPS through whatever financial means DPS shall arrange. All design and construction plans for Sports Complex Phase I and all subsequent phases for the development of the Sports Complex Site, shall be submitted by the DPS Facility Management Executive Director (“**DPS Executive Director**”) to, and are subject to the prior written approval of the Executive Director of the City’s Department of Parks and Recreation (the “**Parks Executive Director**”) and the Executive Director of the City’s Department of Public Works (the “**Public Works Executive Director**”) or their designees. It is acknowledged and agreed that the design and construction technical requirements and specifications set forth in the **First Addendum** shall control, and shall be enforceable, with

respect to the construction or installation of the Athletic Facilities. The Athletic Facilities constructed or installed under the Sports Complex Phase I shall be completed within two (2) years of the Effective Date of this Agreement. The Athletic Facilities shall not be utilized by DPS for athletic or recreational purposes until the constructed or installed Athletic Facilities are approved and accepted by the City, and the same shall apply to all subsequent phases for the development of the Sports Complex Site.

1.3 DPS shall maintain, repair, and replace, as needed, all Athletic Facilities constructed or installed by DPS on the Sports Complex Site as prescribed in the **Second Addendum** to this Agreement, which is attached to this Agreement and incorporated herein by this reference. The costs of such maintenance, repair and replacement shall be funded solely by DPS. DPS shall be responsible for any drainage system installed by DPS as part of the Athletic Facilities, but DPS shall not be responsible for the maintenance and repair of the storm water drainage system generally serving the Sports Complex Site and the remainder of the Trunk Open Space south of the Sports Complex Site and the Northfield Campus.

1.4 DPS and the City agree to share the use of the Athletic Facilities within the Sports Complex Site as prescribed in the **Third Addendum** to this Agreement, which is attached to this Agreement and incorporated herein by this reference. Any use of the Sports Complex Site and the Athletic Facilities, whether by DPS or the City, shall be subject to any restrictions and prohibitions contained or identified in the title exceptions in the deed by which the City takes title to the Sports Complex Site. The Athletic Facilities shall be utilized by DPS in conjunction with its operation, and in programmatic support, of the Northfield Campus.

1.5 The improvements to the Regional Trail, which should be substantially completed prior to the Effective Date of this Agreement, shall be operated, maintained, repaired and replaced by the City. DPS agrees, at DPS's sole expense, to repair or replace, as needed and in a timely fashion, any improvements to the Regional Trail that are damaged or destroyed during the performance of any DPS' obligations under this Agreement.

2. Term.

This Agreement shall commence on the date the City is delivered title to the Sports Complex Site or the last date this Agreement is signed by the City and DPS, whichever date is latest ("**Effective Date**") and shall end fifty (50) years after such Effective Date ("**Term**"). A document signed by the DPS Executive Director and the Parks Executive Director acknowledging the Effective Date shall be completed in duplicate within a reasonable time after the Effective Date. The Term of this Agreement may be renewed or extended by an Amendment to this Agreement approved and executed by the Parties in the same manner as this Agreement.

3. Notice.

Whenever a notice is either required or permitted to be given, it shall be given in writing and delivered personally, or delivered by the postal service, certified mail, return receipt requested, to the other Party at the address indicated below, or at such other address as may be designated by either Party:

If to the City: Mayor
City and County Building, Room 350
1437 Bannock Street
Denver, CO 80202

with a copies to: Executive Director
Department of Denver Parks and Recreation
201 West Colfax Avenue, Dept. 601
Denver, CO 80202

City Attorney
City and County Building, Room 353
1437 Bannock Street
Denver, CO 80202

If to DPS: Superintendent
Denver Public Schools
1860 Lincoln Street
Denver, CO 80203

with copies to: General Counsel
Denver Public Schools
1860 Lincoln Street
Denver, CO 80203

Executive Director of Facility Management
Denver Public Schools
2800 West Seventh Avenue
Denver, CO 80204

4. Liability.

4.1 DPS shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission of DPS or its officers, employees, contractors and agents in connection with the subject matter of this Agreement.

4.2 City shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by the City, or its officers, employees, contractors and agents in connection with the subject matter of this Agreement.

4.3 Nothing in this Section 4 or any other provision of this Agreement shall be construed as a waiver, express or implied, of the notice requirements, defenses, immunities and limitations the City or DPS may have under the Colorado Governmental Immunity Act (§§ 24-10-101, C.R.S., et. seq.), as amended or may be amended or replaced or supplemented by

another statute providing immunity or similar protections to governmental entities. Likewise, except as otherwise expressly provided in this Agreement, nothing in this Agreement shall be deemed to be an assumption or acceptance of liability, or a waiver or release of any rights, privileges or protections, by DPS or the City under federal, state or local law or regulation or under common law.

5. Insurance.

5.1 Unless other insurance requirements or obligations are provided for in an Addendum to this Agreement or a duly authorized amendment to this Agreement, each Party shall secure and maintain during the Term of this Agreement statutory worker's compensation and any liability insurance the Party deems appropriate. The specific terms and amounts of each required coverage will be determined in the sole discretion of each Party for their respective coverages. Each Party shall also be responsible for payment of any deductibles for their respective coverages. Each Party shall retain the option of discharging this obligation by means of self-insurance.

5.2 Unless other insurance requirements or obligations are provided for in an Addendum to this Agreement or a duly authorized amendment to this Agreement, DPS shall secure and maintain property insurance for the Athletic Facilities and personal property it owns or leases and retains on the Sports Complex Site. The specific terms and amounts of the property coverage will be determined in the sole discretion of DPS. DPS shall be responsible for payment of any deductibles for its property coverage; however, nothing in this paragraph shall obligate DPS to pay such deductible amounts unless the amount is appropriated and made available in accordance with DPS's laws and standards. DPS shall retain the option of discharging this obligation by means of self-insurance.

5.3 DPS shall require the contractor(s) and any subcontractor(s) retained to construct the Athletic Facilities to retain insurance coverage substantially in the form specified in **First Addendum**. Deviations from the specified requirements shall require the prior written approval of both the City and DPS.

5.4 The amount of insurance or self-insurance coverage retained by either Party or the decision not to obtain or retain insurance or self-insurance coverage by either Party shall not obligate the other Party to provide such insurance or to incur or pay any liability which is the responsibility of the Party with inadequate or no insurance or self-insurance coverage.

6. Default/Remedies.

6.1 Subject to the dispute resolution process set forth in Section 9 of this Agreement and except as otherwise provided in this Agreement and its Addenda, in the event either Party should fail or refuse to perform according to the terms or conditions of this Agreement in any material manner, such Party may be declared in default.

6.2 In the event a Party has been declared in default, such defaulting Party shall be allowed a period of sixty (60) days, from receipt of notice of said default from the non-

defaulting Party, within which to cure said default or reach an written accommodation with the other Party. In the event the default remains uncorrected or an accommodation is not reached, the non-defaulting Party may elect its remedies in law, as set forth below, upon sending written notice to the defaulting Party.

6.3 The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages (notwithstanding termination of the Agreement), as may be available according to the laws and statutes of the State of Colorado; provided, however, the Parties agree to and hereby release any claims for incidental, consequential, or punitive damages; provided, further, no provision of this Agreement nor any action by DPS is to be enforced by the creation or recording of any type of lien against real property owned by the City, including the Sports Complex Site, nor may any foreclosure process be utilized to recover any moneys owed by the City to DPS. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to these terms and conditions contained in this Agreement, and that any failure to comply which results in any recoverable damages shall not cause, by itself, the termination of any rights or obligations under this Agreement.

6.4 In the event the City is in a position under this Agreement or through judicial decree or judgment, and decides, to terminate the Agreement, DPS, without any compensation, shall promptly relinquish to the City, in writing, all rights and interests DPS may have in the Athletic Facilities in the Sports Complex Site.

7. Damage and Destruction.

In the event the Athletic Facilities or some portion thereof is rendered untenable or unfit for its intended use or uses under this Agreement, the Parties agree that DPS shall utilize its best efforts to identify and recover any insurance proceeds available for any loss resulting in the untenable or unfit condition. Upon recovery of any such insurance proceeds, DPS shall apply such proceeds to the repair, restoration or replacement of the affected Athletic Facilities. If such insurance proceeds are not sufficient, DPS shall, subject to a lawful appropriation, endeavor to obtain such additional funds as may be necessary to repair, restore, or replace the affected Athletic Facilities (the "**Additional Funds**"). If DPS is unable to obtain the Additional Funds or sufficient Additional Funds, the City shall have the option, at its sole discretion and subject to a lawful appropriation, to make up the shortfall in such funds in order to allow the repair, restoration or replacement to proceed. If the Parties are unable to substantially repair, restore or replace the Athletic Facilities under the terms of this provision, this Agreement will immediately terminate with no financial obligation accruing to either Party, and DPS shall promptly relinquish to the City, in writing and in a manner reasonably satisfactory to the City, all rights and interests DPS may have remaining in the Athletics Facilities in the Sports Complex Site.

8. Subject to Appropriations.

8.1 It is expressly understood and agreed that the obligation of DPS for all or any part of its performance or payment obligation hereunder, whether direct or indirect, shall

extend only to the payment of funds duly and lawfully appropriated by the Board of Education for the purpose of this Agreement. In the event the Board of Education for DPS fails to annually appropriate sufficient funds to pay for DPS's necessary costs to fulfill its obligations under this Agreement for any DPS fiscal year, then DPS shall consult with the City concerning any reduction in service by DPS before any reduction is implemented. The reduction of said services shall not constitute a default under this Agreement.

8.2 It is expressly understood and agreed that the obligation of the City for all or any part of its performance or payment obligation hereunder, whether direct or indirect, shall extend only to the payment of funds duly and lawfully appropriated by the City Council for the purpose of this Agreement, and paid into the Treasury of the City. In the event the City Council of the City fails to annually appropriate sufficient funds to pay for the City's necessary costs to fulfill its obligations under this Agreement for any City fiscal year, then the City shall consult with DPS concerning any reduction in service by the City before any reduction is implemented. The reduction of said services shall not constitute a default under this Agreement.

8.3 Each Party agrees to timely and properly budget for, request, and pursue the annual appropriation of sufficient funds to meet its obligations hereunder from that Party's legislative body(ies), and to pursue all available appeals and reviews of any denial or rejection of such requested appropriation.

8.4 In the event that DPS should fail or be unable to make available all of the funds needed for the maintenance, repair or replacement of the Athletic Facilities, as provided in this Agreement, for more than one (1) year, the City may restrict or reduce DPS's rights to use of the Athletic Facilities as provided in **Third Addendum** proportionate to the reduction or elimination of such funding by DPS or commensurate with the costs or resource commitment the City may elect to make for any maintenance or repairs for the Athletic Facilities resulting from the reduction or elimination of such funding by DPS. Nothing in this paragraph shall obligate the City to undertake any maintenance or repairs for the Athletic Facilities.

8.5 Notwithstanding any other provision of this Agreement to the contrary, the City and DPS acknowledge and agree that (i) neither Party, by this Agreement, irrevocably pledges present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.

9. Dispute Resolution.

The Parties shall resolve disputes regarding the Athletic Facilities at the lowest staff level possible. In the event that the Parties are unable to resolve disputes arising as a result of this Agreement, the Parties shall make a good faith effort to participate in a tiered dispute resolution process. The Parties agree that this tiered process must be exhausted prior to seeking redress in a court of law. In the event of a dispute at the staff level, the DPS Executive Director of Facilities Management and the City's Deputy Executive Director of Parks and Planning shall resolve the dispute. In the event that the DPS Executive Director of Facilities Management and Deputy Executive Director of Parks and Planning cannot resolve the dispute, the dispute, along

with any supporting documentation supporting the respective positions of the Parties, shall be referred to the DPS Superintendent and the Executive Director of Parks and Recreation for resolution.

10. General Provisions.

10.1 Reasonable Efforts; Good Faith. DPS and the City agree to work diligently together and in good faith, using reasonable efforts to obtain or appropriate all funding necessary to perform the terms and conditions of this Agreement, to resolve any unforeseen issues and disputes, and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement.

10.2 Fair Dealing. In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing in this Agreement shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length.

10.3 Financial Interests. The Parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed or improvements made under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by the City from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to the rights and title of the City under this Agreement.

10.4 Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

10.5 Examination of Records/Audit. The Parties agree that, during the term of this Agreement and for a period of at least three (3) years after the expiration or termination of this Agreement, any duly authorized representative of either Party, including the Denver Auditor or designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the other Party involving any matter related to this Agreement. Any Party shall be entitled to review and audit the performance of this Agreement at that Party's sole expense.

10.6 Compliance with Law; Exercise of Authority. The Parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, both Parties agree that neither Party shall enact or adopt any ordinance, resolution, rule, regulation, policy, or standard or take any action by its governing body (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective Parties.

10.7 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver, and the applicable resolutions and ordinances of DPS. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

10.8 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Parties further agree to insert the foregoing provision in all approved contracts and subcontracts hereunder.

10.9 Conflict of Interest. The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and DPS further agrees not to hire or contract for services any official, officer or employee of Denver or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

10.10 *Force Majeure*. Neither Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. “*Force majeure*” shall mean causes beyond the reasonable control of a Party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Parties.

10.11 Further Assurances. From time to time, upon the request of a Party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under

this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Party is entitled under the Agreement.

10.12 Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract. No Party shall be liable or have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the other Party contracts or has a contractual arrangement.

10.13 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DPS and the City; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of DPS and the City that any person or entity other than DPS and the City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

10.14 Claims. In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

10.15 Entire Agreement. This Agreement, including the exhibits and addenda which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

10.16 Amendment. Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

10.17 No Assignment. No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.

10.18 Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will achieve the original intent and purposes of the Parties hereunder.

10.19 Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

10.20 Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

10.21 Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by the Parties' respective governing bodies, if such approval is required, and is fully executed by all required signatories of the City and DPS.

10.22 Electronic Signatures and Electronic Records. DPS consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

FIRST ADDENDUM to COOPERATIVE AGREEMENT
ASSIGNMENT for IMPROVEMENTS to SPORTS COMPLEX SITE

All Athletic Facilities in the Sports Complex Site are to be designed, constructed and installed in accordance with the City Charter and City ordinances, this **First Addendum** to the Cooperative Agreement, and the Cooperative Agreement to which this **First Addendum** is attached.

1. **IMPROVEMENTS**: The “**Improvements**” are those Athletic Facilities improvements to be designed, constructed, and installed by DPS in the Sports Complex Site. For Sports Complex Phase I, the Improvements are as generally described, with applicable standards, in **Exhibit 1** to this **First Addendum**. Improvements designed, constructed, and installed in subsequent phases for the development of the Sports Complex Site shall be approved through an amendment to the Cooperative Agreement and shall be subject to this **First Addendum** unless otherwise provided in the amendment to the Cooperative Agreement. DPS shall provide all funds necessary for, and shall undertake, the design, construction and installation of the Improvements in accordance with the 60% design and construction plans prepared by LOA Architecture and dated October 10, 2014, which have been fully reviewed and approved by the City and DPS (“Construction Plans”), and shall perform or cause to be performed the design, construction and installation work for the Improvements, all in accordance with the terms and conditions of this **First Addendum**. The Construction Plans are in conformance with **Exhibit 1**, which is incorporated into this **First Addendum** by this reference.

2. **ASSIGNMENT**: Pursuant to the authority granted in Section 2.3.3(A) of the City Charter, the Mayor hereby assigns to DPS, as agent for the City, all matters relating to the bidding, design, planning, construction and installation of the Improvements within the Sports Complex Site (the “**Assignment**”).

3. **COORDINATION AND LIAISON**:

(a) The City's Executive Directors of Public Works and Parks and Recreation (the "**City's Executive Directors**") are vested with the authority to act on behalf of the City in performing the City's obligations under this Assignment. The City's Executive Directors may designate certain person(s) to act on the City's Executive Directors' behalf as the authorized representative(s) of the City. An Executive Director may change its authorized representative(s) at any time by providing written notice to DPS of such change.

(b) The DPS Executive Director is DPS's authorized representative under this Assignment and, as such, is responsible for overseeing the satisfactory completion of the Improvements, in accordance with the terms and conditions of this Assignment. DPS may change its authorized representative at any time by providing written notice to the City's Executive Directors of such change.

4. **DPS'S RESPONSIBILITIES**: In addition to its responsibility with respect to undertaking and completing the design, construction and installation of the Improvements and providing all of the required funds for the Improvements in accordance with this Assignment:

(a) DPS is responsible for having established qualifications, competitively selecting, and retaining qualified and licensed engineers, architects, surveyors, or other consultants who prepared the Construction Plans approved for the Improvements and for bidding and letting out the construction work to qualified, licensed and experienced contractors. Any material changes, additions or deletions to the Construction Plans, particularly to those items listed in Exhibit 1 to this First Addendum, must be reviewed and approved in writing by the City's Executive Directors or their designated representatives prior to the commencement of any demolition, construction, or other ground-disturbing activities related to the Improvements. The Construction Plans, along with any material changes or additions or deletions approved in advance and in writing by the City's Executive Directors or their designated representatives, shall be referred to herein as the "**Improvement Plan**". The Improvement Plan shall be reviewed by the City's Executive Directors or their designated representatives at no charge to DPS.

(b) DPS shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the work site to inspect the work site and progress of the Improvements and to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved Improvement Plan and this Assignment. The City shall not charge DPS for inspections, material testing, and construction monitoring. If it is determined that the work is not being so performed, the Executive Director of Public Works or the Executive Director of Parks and Recreation shall promptly notify DPS in writing, whereupon DPS will take all necessary actions to assure that corrections to the work are promptly and effectively made. See subparagraph (o) below.

(c) DPS shall pay standard building permit fees and other regulatory fees mandated by existing ordinance or rule for regulatory construction approvals.

(d) DPS shall be solely responsible for assuring that all phases of the Improvements are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations. This shall include all utility locations and protection of existing utilities on site.

(e) In addition to compliance with the above-mentioned laws, DPS shall be governed and controlled by all limitations and provisions that are imposed on the City Department of Public Works by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with the provisions for payment of prevailing wages set forth in Sections 20-76 through 20-79 of the Denver Revised Municipal Code ("DRMC"), for public art in Sections 20-85 through 28-90, DRMC, and for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained, respectively, in Sections 28-31 through 28-91, DRMC, as the same may be amended or recodified from time to time. No construction contracts shall be entered until DPS has established to the City's reasonable satisfaction that these Charter and ordinance requirements have been fully and appropriately satisfied and that the construction contracts comply with all

such Charter and ordinance requirements, including but not limited to prohibitions against the use of illegal aliens in the performance of construction work set forth in Division 5 of Article IV of Chapter 20, DRMC, and any amendments thereto. DPS shall fully cooperate with City officials, including the City Auditor, in assuring compliance with these requirements. Upon determination by the City that the requirements of subparagraphs (d) and (e) are not being complied with, the City will promptly notify DPS in writing of such non-compliance, and DPS will take all necessary actions to assure that compliance is promptly achieved and any unpaid claims are resolved and/or other remedial action is taken to the reasonable satisfaction of the City. See subparagraph (o) below.

(f) DPS shall require the design professionals, contractors and sub-contractors to obtain and maintain insurance in the amounts and types of coverages appropriate for the work. The City and DPS shall be named as additional insured on all insurance coverages, except professional liability and workers' compensation coverage. The insurance requirements shall be those specified in **Exhibit 2** attached to and incorporated by reference into this Assignment. Upon determination by the City that the requirements of subparagraph (f) are not being complied with, the City will promptly notify DPS in writing of such non-compliance, and DPS will take all necessary actions to assure that compliance is promptly achieved and any unpaid claims are resolved and/or other remedial action is taken to the reasonable satisfaction of the City. See subparagraph (o) below.

(g) DPS shall obtain and maintain, or require its contractor(s) and sub-contractor(s) to obtain and maintain, in advance and subject to approval by the Denver City Attorney's Office, one hundred percent (100%) payment and performance bonds from an acceptable surety. The City and DPS shall be named as obligees on all bonds. In addition, all design professionals, contractors and sub-contractors shall be required to include an indemnification and "hold harmless" clause, approved by and for the benefit of the City and DPS, to protect both parties against claims, actions, and demands arising from or related to the work performed by the design professionals, contractors and sub-contractors. In addition to the terms and conditions above, the provided performance and payment bonds must be conditioned (1) that DPS and its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work on any phase of the Improvements, and the contractors shall indemnify the City to the extent of all payments in connection with performing the work, and (2) so as to guarantee performance of DPS and its contractors to complete the Improvements. DPS shall provide evidence satisfactory to the City that all architects, engineers, designers, and other enrolled professionals have been fully paid. DPS's obligations set out in this subparagraph (g) shall survive the termination of this Assignment. Upon determination by the City that the requirements of subparagraph (g) are not being complied with, the City will promptly notify DPS in writing of such non-compliance, and DPS will take all necessary actions to assure that compliance is promptly achieved and any unpaid claims are resolved and/or other remedial action is taken to the reasonable satisfaction of the City. See subparagraph (o) below.

(h) DPS shall obtain, exercise and enforce warranties and guarantees for all construction work it contracts and shall designate the City as an additional express beneficiary

for enforcing all warranties and guarantees. DPS's obligations set out in this subparagraph (h) shall survive the termination of this Assignment.

(i) DPS shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any work or labor performed or materials or equipment furnished by any person or legal entity to or on behalf of DPS, either pursuant to C.R.S. § 38-26-107 or by any other authority. DPS shall promptly pay when due all bills, debts and obligations incurred in connection with this Assignment and shall not permit the same to become delinquent. DPS shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Assignment. DPS's obligations set out in this subparagraph (i) shall survive the termination of this Assignment.

(j) DPS shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. DPS shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. DPS' obligations set out in this subparagraph (j) shall survive the termination of this Assignment.

(k) DPS and its contractors and subcontractors shall take all reasonable measures to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from work and activities associated with the Improvements and to avoid adverse impacts to the Sports Complex Site and surrounding property, wherever possible, as a result of noise, water and air pollution, water discharges, and soil erosion resulting from the work and activities.

(l) In the event of any material default or breach by any design professional, contractor or sub-contractor under a design contract or a construction contract or subcontract or otherwise, DPS agrees to diligently undertake and pursue all available remedies against the breaching or defaulting party, and to timely advise the City as to efforts and progress made by DPS in this regard and to allow for the City's participation, if the City so requests.

(m) DPS and/or its contractors and subcontractors shall pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State and the City on any tangible property built into or incorporated into the work. Upon request by the City,

an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City.

(n) If, for any reason, construction of any phase of the Improvements is delayed or halted while in process for more than twenty-one (21) days, DPS shall take reasonable measures to protect the existing Improvement site from weather damage, erosion, vandalism and other similar threats and to protect public safety on and around the Improvement.

(o) DPS shall ensure that all improvements are constructed in accordance with the Improvement Plan and that no material changes, additions or deletions to the Improvement Plan will occur during construction, unless approved in advance and in writing by the City's Executive Directors or their designated representatives. Upon determination by the City that the requirements of subparagraph (o) are not being complied with, the City will promptly notify DPS in writing of such non-compliance, and DPS will take all necessary actions to assure that compliance is promptly achieved and remedial action is taken to the reasonable satisfaction of the City. Notwithstanding any provision of this paragraph 4 of the Assignment to the contrary, DPS acknowledges and agrees that it is responsible for properly and completely correcting, at its own expense, any aspect of work or performance that is not in conformance with this Assignment or the approved Improvement Plan. The responsibility shall include repairs, replacement, additions, deletions or reconstruction, as appropriate and necessary, to assure compliance and the paying of any fines, penalties, interest, costs or other financial obligations that arise for failure to comply with the requirements of paragraph 4 of this Assignment or the approved Improvement Plan.

(p) DPS shall provide the City's Executive Directors with written notification of substantial completion in order that the City may participate in all punch list reviews and sign off on the Improvements. DPS shall provide the City's Executive Directors with written notification of final completion in order that the City may inspect the Improvements as constructed and verify that the Improvements have been constructed in accordance with the Improvement Plan and this Assignment without any material deviations, and the work is at final completion. Upon determination that the requirements set forth in this subparagraph (p) have been fully satisfied, the City's Executive Directors shall jointly issue a written letter accepting the Improvements.

(q) DPS shall provide detailed and stamped "as built" construction plans to the City's Executive Directors within sixty (60) days following the City's final inspection.

(r) Upon acceptance of the improvements by the City, DPS shall be authorized to operate, utilize and maintain the Improvements in accordance with the Agreement and the **Second Addendum** and the **Third Addendum** to the Agreement.

EXHIBIT 1

General Description of Athletic Facilities Improvements

<u>Improvements</u>	<u>Applicable Standards</u>
Fine grading of entire Sports Complex Site	
-- Turf and natural areas	2% grade minimum
-- Tennis courts	Diagonal at 1% grade
-- Multi-use field	Flat (synthetic turf with underdrain)
-- Baseball/softball fields	2% grade (see additional standard below)
Native grass seeding	Varies due to conditions, to be determined; refer to specifications; coordinate with DPR Naturalist
Utilities serving Sports Complex Site	Sanitary, potable water and electricity
Sidewalks (within Sports Complex Site and connecting to Northfield Campus)	Concrete, 12' wide minimum
Restrooms (men and women)	DPR restroom standards
Baseball field	
-- Dugout	Fenced outside of playing field and roofed
-- Dimensions	Foul lines 320'; center field 400'
-- Orientation	Home plate/pitcher's mound axis runs E-NE
-- Backstops	30' tall with hoods; 4 panels @ 30' tall, 20' wings
-- Fencing	Black chain link fence fabric and poles
-- Scoreboards	Fairplay radio controlled or approved equal
-- Bases/base anchors	Heavy duty 1 ½' CH anchor; Bolco "Bury all"
-- Bleachers	Seating for 60
-- Slope & drainage	1.5% from home to infield edge; 2% outfield
-- Infield materials	"Sta-lock" or "Stabilizer" material – Razum Red
-- Lighting	Musco lighting with satellite/cell phone system
-- Irrigation	DPR standard for layout, DPS standard for equipment; irrigated infield

ImprovementsApplicable Standards

Softball field	
-- Dugout	Refer to DPR standards
-- Dimensions	Outfield fence 235' (female fast pitch)
-- Orientation	Home plate/pitcher's mound axis runs W-NW
-- Backstops	30' tall with hoods; 4 panels @ 30' tall, 20' wings
-- Fencing	Black chain link fence fabric and poles
-- Scoreboards	Fairplay radio controlled or approved equal
-- Bases/base anchors	Heavy duty 1 ½' CH anchor; Bolco "Bury all"
-- Bleachers	Seating for 60
-- Slope & Drainage	1.5% from home to infield edge; 2% outfield
-- Infield materials	"Sta-lock" or "Stabilizer" material – Razum Red
-- Lighting	Musco lighting with satellite/cell phone system
-- Irrigation	DPR standard for layout, DPS standard for equipment; irrigated infield
Gates to ball fields	Coded keypad lock
Multi-use field	Synthetic turf; track
-- Dimensions	180' x 360'
-- Sideline dimensions	12' minimum
-- Orientation	Long axis 15 degrees E of N-S
-- Goals	"Scoremaster" portable
-- Surface	Level from endline to endline
-- Lining/stripping	Integral seam; multi-colors
-- Corner marks	Corner marks for all possible field layouts
-- Line	Soccer, football, lacrosse
-- Underdrain system	Connect to storm drain
-- Security fencing	6' high black vinyl coated chain link fence with signage that field is open to the public as provided in Third Addendum
-- Edging	Concrete
-- Maintenance	Multiple Quick couplers for washing
Tennis courts	Two
-- Court dimensions	36' x 78'
-- Clearance dimensions	12' sidelines; 21' ends
-- Orientation	North-south
-- Base	Post tensioned concrete
-- Surfacing	Cushion system; acrylic color blue or green
-- Net	Heavy duty vinyl coated headband; 3.5 mm braided poly.net body; 5/8" wooden dowels; 42' length
-- Posts	3.15" square powder coated steel; brass winder
-- Lighting	8 lights per court; installed for 2 courts with wiring for future court build-out
-- Fencing	10' tall 8 gauge black vinyl coated; top, middle, bottom horizontal bar

<u>Improvements</u>	<u>Applicable Standards</u>
Storage facility	See paragraph 4 of <u>Second Addendum</u>
Furnishings (if included in project)	
-- Picnic tables	Little Tikes # 266-6-07 single pedestal, powder coated
-- Benches	6' Denver Ribbon Bench (Vic. Stanley, BRP, etc.)
-- Drinking fountains	Part of restrooms; Haws 3500 series
-- Bicycle racks	Wausau Tile MF 9006 inverted U, powder coated
-- Trash receptacles	Wausau Tile 3200 side door, powder coated

EXHIBIT 2

CONTRACTOR INSURANCE REQUIREMENTS

(To be Included in all Construction Contracts Entered under First Addendum of the Agreement)

(1) **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Construction Contract, the following insurance covering all operations, goods or services provided pursuant to this Construction Contract. Contractor shall keep the required insurance coverage in force at all times during the term of the Construction Contract, or any extension thereof, during any warranty period, and for three (3) years after termination of the Construction Contract. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to School District No. 1/Denver Public Schools ("DPS") and Denver Risk Management in the event any of the policies described herein are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to DPS at its address and Denver Risk Management, City and County of Denver, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to DPS and Denver Risk Management by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, Denver Risk Management and DPS must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Construction Contract are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Construction Contract.

(2) **Proof of Insurance:** Contractor shall provide a copy of this Construction Contract to its insurance agent or broker. Contractor may not commence services or work relating to the Construction Contract prior to placement of coverage required herein. Contractor certifies that the certificate(s) of insurance shall be provided to DPS and Denver Risk Management prior to commencement of services or work, preferably ACORD certificate(s), which will comply with all insurance requirements of this Construction Contract. The acceptance by DPS or Denver Risk Management of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Construction Contract shall not act as a waiver of Contractor's breach of this Construction Contract or of any of the rights or remedies of DPS or the City and County of Denver under these insurance requirements. DPS or Denver Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, Contractor's and subcontractor's insurer(s) shall name DPS and the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages required herein, Contractor's and subcontractor's insurer(s) shall waive subrogation rights against DPS and the City and County of Denver.

(5) **Subcontractors and Subconsultants:** All subcontractors and sub-consultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional

insured under its policies (with the exception of Workers' Compensation) or shall contractually ensure that all such subcontractors and sub-consultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by DPS or Denver Risk Management.

(6) **Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to DPS and the City and County of Denver, as a material representation upon which they are relying in entering into this Construction Contract, that none of Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Construction Contract, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Construction Contract.

(7) **Commercial General Liability:** Contractor shall maintain a Commercial General Liability Insurance, written on an "occurrence" form and not a "modified occurrence" or "claims made" form, covering bodily injury, property damage and personal injury with a limit of liability not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 general aggregate. The aggregate limit of liability is to apply separately to the Contract. Such insurance coverage shall include (a) premises and operations, (b) products/completed operations, and (c) explosion, collapse and underground (XCU). All such coverage shall extend to all operations by or on behalf of Contractor (including those of any Subcontractor). Such policy shall provide that costs of defense are covered in addition to and not as part of the limits of liability.

(8) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services or work under this Construction Contract. If transporting hazardous material or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

(9) **Contractors Pollution Liability:** Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; cleanup costs incurred as a result of pollution conditions arising from Contractor's operations and completed operations; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. (Construction Contractors Only).

(10) **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. (Design Professionals only).

(11) **Property Insurance:** Property insurance covering the full replacement cost of any property of Contractor that may be used in connection with the work, including without limitation any property that may be brought on the site.

(12) **Builders' Risk:** Unless DPS elects at its sole option to obtain builder's risk insurance for the Project, Contractor shall purchase and maintain builder's risk insurance on the entire Work for the full insurable replacement cost of the work, on a completed value basis, with permissible deduction of the

cost. Such coverage shall be in force before the commencement of Construction work and shall remain in effect until final completion and include permission to occupy the Sports Complex Site. The builder's risk policy shall not include a coinsurance clause, and any deductible amounts under such insurance policy shall be the responsibility of Contractor. Such insurance shall insure against "all risk" of physical loss or damage including coverage for theft, vandalism, malicious mischief, collapse, debris removal (including demolition occasioned by enforcement of any applicable legal requirements), loss resulting from faulty workmanship, faulty materials or error in design, and offsite storage and transit exposures, and shall also cover reasonable compensation for any plans and specifications, services, and expenses required because of such insured loss.

(13) Additional Provisions:

(a) For Commercial General Liability and Contractors Pollution Liability, the policies must provide the following:

- (i) That this Construction Contract is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by DPS or the City and County of Denver.

(b) For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided under this Construction Contract, whichever is earlier

(c) Contractor shall advise DPS and Denver Risk Management in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

(14) Failure to Insure: In the event Contractor or any subcontractor fails to maintain any insurance required by these **CONTRACTOR INSURANCE REQUIREMENTS**, such failure shall be a default of the construction contract, and, in addition to DPS's other remedies under the construction contract, at law or in equity, DPS may procure such additional insurance for the benefit of itself and the City and County of Denver, it reasonably deems necessary to protect its interests, and Contractor shall be liable to reimburse DPS for one hundred fifteen percent (115%) of its costs of such insurance.

SECOND ADDENDUM to COOPERATIVE AGREEMENT
MAINTENANCE, REPAIR AND REPLACEMENT OF ATHLETIC FACILITIES

Once constructed or installed by DPS within the Sports Complex Site and accepted by the City, the Improvements provided for in the **First Addendum** to the Cooperative Agreement, whether constructed or installed as part of Sports Complex Phase I or any subsequent phases, shall be maintained by DPS, at DPS' sole expense, as provided in this **Second Addendum**.

1. Except as otherwise provided in this **Second Addendum**, the Athletic Facilities located within the Sports Complex Site, including but not limited to those Improvements described in **Exhibit 1** to the **First Addendum** but excluding the Regional Trail, shall be maintained and repaired by DPS, as needed and in a manner equivalent to DPS's maintenance and repairs standards of similar facilities owned by DPS. Maintenance and repairs shall be performed in a manner that assures that the terms and conditions of any warranties are not violated and that the warranties are not invalidated. All water, sanitary and electrical service costs and related charges for the Athletic Facilities are the responsibility of DPS.

2. Any upgrades, renovations, restorations or replacements of the Athletic Facilities, or any portion thereof, shall be designed, constructed and installed by DPS in accordance with an amendment to the Cooperative Agreement allowing for such work within the Sports Complex Site. All design and construction plans for upgrades, renovations, restorations or replacements of the Athletic Facilities, or any portion thereof, must be submitted by the DPS Executive Director to, and must be approved in advance and in writing by, the Executive Directors of the City's Department of Parks and Recreation and the City's Department of Public Works, and all technical requirements and specifications shall be as specified in the **First Addendum**, unless an exception is granted by the Executive Director of Parks and Recreation.

3. With respect to the baseball and softball fields, DPS shall be responsible for site preparation only for DPS' use of these fields. The City's Department of Parks and Recreation ("**Parks**") shall be responsible for site preparation for Parks' uses of these fields, including permitted uses. Site preparation shall include but is not limited to chalk striping, bases installation, base line and pitcher mound grooming, and equipment use.

4. Materials, equipment, and maintenance supplies needed individually by DPS and Parks for their respective uses of the baseball and softball fields, the multi-use field and the tennis courts shall be kept in separate storage facilities installed by DPS within the Sports Complex Site and secured separately by DPS and Parks. DPS and Parks shall individually be responsible for acquiring, replacing and maintaining the materials, equipment, and maintenance supplies needed for their respective uses of the Athletic Facilities.

THIRD ADDENDUM to COOPERATIVE AGREEMENT
SHARED USE OF ATHLETIC FACILITIES

Once constructed or installed by DPS within the Sports Complex Site and accepted by the City, the Improvements provided for in the **First Addendum** to the Cooperative Agreement, whether constructed or installed as part of Sports Complex Phase I or any subsequent phases, shall be used by DPS and the City as provided in this **Third Addendum**.

1. DPS shall have primary use of the Athletic Facilities within the Sports Complex Site for its Northfield Campus physical education classes, athletic programs, and team sports (“**DPS Sports**”) at such times as school is in session on the Northfield Campus, from 6:00 a.m. to 5:30 p.m., Monday through Friday and Saturday morning until noon, but excluding school holidays and breaks (“**Primary Use**”).

2. Any proposed use by DPS of the Athletic Facilities within the Sports Complex Site outside of the Primary Use identified in paragraph 1 above shall require the approval of the Permitting Office of the City’s Department of Parks and Recreation (the “**Permitting Office**”), which shall be readily granted if the proposed use by DPS does not conflict with DPR Sports scheduled under paragraph 3 below.

3. The Permitting Office shall have the right to schedule its own programmatic sports activities and to issue permits to individuals, leagues or teams for sport activities at the Athletic Facilities within the Sports Complex Site when said Athletic Facilities are not in use or not being prepared for use by DPS as a Primary Use (“**DPR Sports**”).

4. At any time the baseball and softball fields, the multi-use field, and the tennis courts are not in use or not being prepared for use by DPS as a Primary Use under paragraph 1 above, or DPS has not scheduled the use of these facilities under paragraph 2 above, and the Permitting Office has not scheduled or reserved the use of these facilities under paragraph 3 above, the recreating public shall have the right to access and use the Athletic Facilities within the Sports Complex Site for sports and recreational purposes.

5. DPS shall endeavor to provide to the Permitting Office, and keep current, a schedule of DPS Sports for Primary Use of the Athletic Facilities within the Sports Complex Site. Any proposed use by the Permitting Office for DPR Sports during Primary Use above shall require the approval of DPS, which shall be readily granted if the proposed use by the Permitting Office does not conflict with DPS Sports during Primary Use.

6. The Park Use Rules and Regulations adopted by the City’s Department of Parks and Recreation, as well as the corresponding provisions of Article I of Chapter 39 of the Denver Revised Municipal Code, shall apply to, and be enforced with respect to, the public and student use of, and conduct in, the Athletic Facilities in the Sports Complex Site. DPS may adopt and enforce additional rules and regulations with respect to the public and student use of, and conduct in, the Athletic Facilities in the Sports Complex Site, but the DPS rules and regulations must be consistent with, and complementary to, the Park Use Rules and Regulations unless the

Executive Director of Parks and Recreation agrees otherwise in writing. Dogs (except for “service animals”) are not permitted within the Athletic Facilities. City parks curfew (11 p.m. to 5 a.m. daily) shall be applicable to the Sports Complex Site, unless the Executive Director of Parks and Recreation and the Superintendent of DPS agree, in writing, to different curfew times, and these curfew times are posted within the Sports Complex Site (referred to below as “Curfew”).

7. Primary security for the Sports Complex Site shall be provided by DPS. The baseball and softball fields, multi-use field, and tennis courts may be locked by DPS during Curfew through a coded keypad or other locking devices, and the Permitting Office shall be provided the access code or keys, as appropriate. The access code or locking devices shall not be changed by DPS unless the Permitting Office is first provided with the new access code or keys. DPS will police its uses of the Athletic Facilities for DPS Sports, and the City will police uses it permits at the Athletic Facilities for DPR Sports. The baseball and softball fields, multi-use field and the tennis courts must remain unlocked at all times except during Curfew and during active and necessary conduct of maintenance or repairs or when the Athletic Facilities, in whole or part, are closed due to unplayable conditions or significant vandalism (but not graffiti).

8. Public parking for the Sports Complex Site shall be in the DPS parking lots within the Northfield Campus until such time as a new parking lot is added to the Sports Complex Site in accordance with an amendment to the Cooperative Agreement. The use and maintenance of the new parking lot shall be as provided in the amendment to the Cooperative Agreement.

9. Any new Athletic Facilities to be added to the Sports Complex Site in phases subsequent to Sports Complex Phase I shall be added to the Sports Complex Site in accordance with an amendment to the Cooperative Agreement. Any maintenance and/or use of the new Athletic Facilities different from what is provided in the **Second Addendum** and the **Third Addendum** shall be as provided in the amendment to the Cooperative Agreement.

Contract Control Number: PARKS-201418528-00

Contractor Name: School District No.1

By: Jan A. De

Name: Trena A. Deane
(please print)

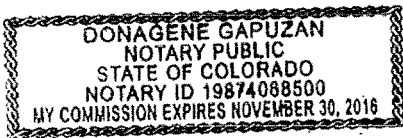
Title: Executive Director
(please print)

ATTEST: [if required]

By: Donagene Gapuzan

Name: Donagene Gapuzan
(please print)

Title: Executive Secretary
(please print)



Approved As To Form: [Signature]
General Counsel
Denver Public Schools



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

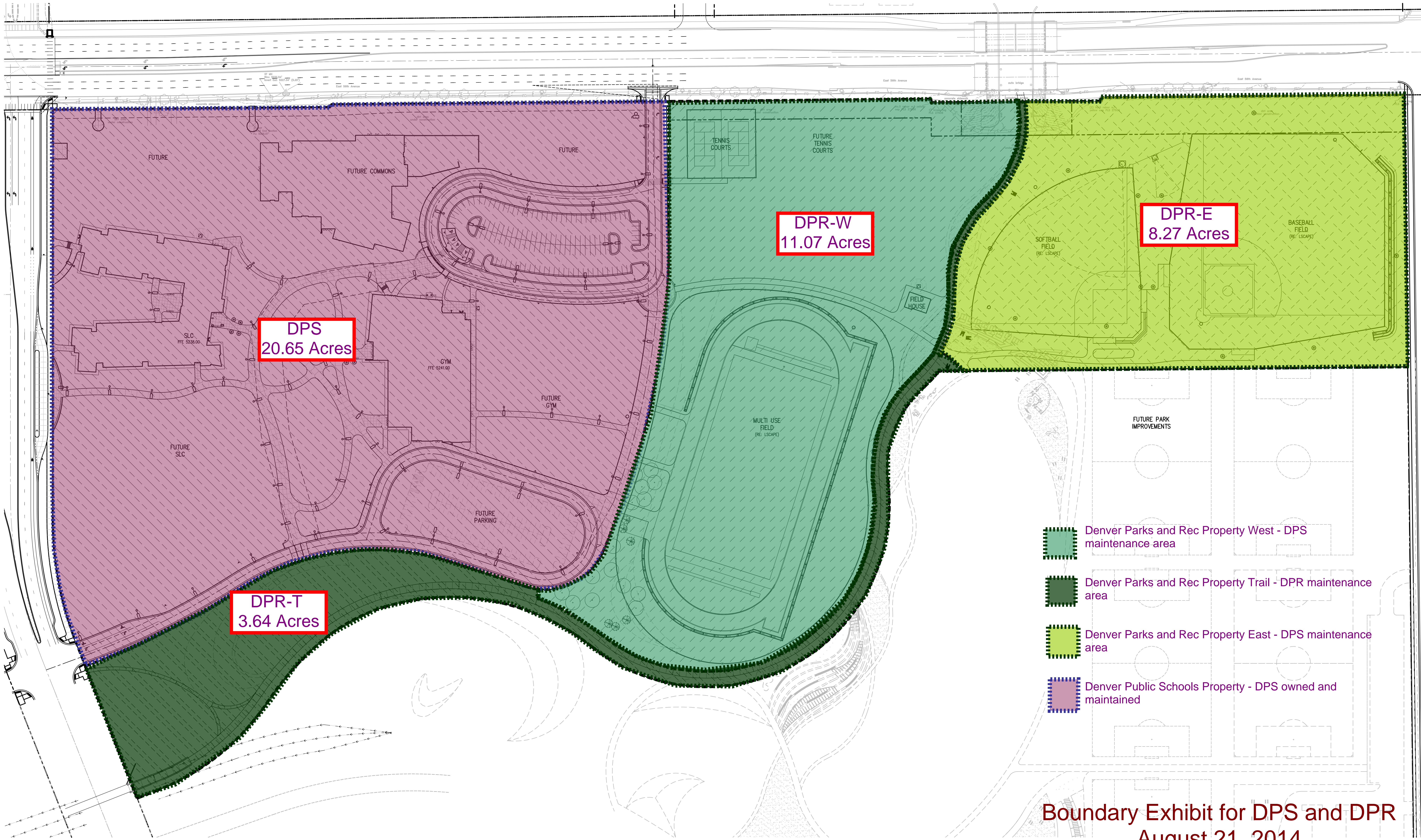
REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____





Boundary Exhibit for DPS and DPR
August 21, 2014

N
Scale 1=60