

COOPERATIVE AGREEMENT

BETWEEN

THE CITY AND COUNTY OF DENVER, COLORADO

AND

EVERGREEN PARK AND RECREATION DISTRICT

REGARDING A PORTION OF DEDISSE PARK

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**Agreement**”) is made and entered into, as of the date set forth on the City’s signature page (“**Effective Date**”), by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“**Denver**”) and EVERGREEN PARK & RECREATION DISTRICT, a Title 32 special district and political subdivision of the State of Colorado (“**EPRD**” or “**District**”); each of which may be referred to in this Agreement as a “**Party**” or both of which may be referred to as “**Parties**”.

RECITALS:

A. The Denver Mountain Parks are a collection of parks and conservation areas owned by Denver and located in four counties in Colorado. Since 1912, Denver has acquired, and opened to the public, several Denver Mountain Parks in Jefferson County. The Denver Mountain Parks are administered by the Denver Department of Parks and Recreation.

B. Dedisse Park is a Denver Mountain Park, the largest part of which was acquired by Denver in 1920. As well as being a part of the Denver Mountain Park system, Dedisse Park is a designated park in accordance with the City Charter, and carries all the protections therewith, and the Executive Director of the Department of Parks and Recreation has full authority and discretion over the use, management and operation of Dedisse Park. The Evergreen Dam was constructed by Denver and the Evergreen Lake was formed within Dedisse Park.

C. EPRD is a special district created in 1969 for the purpose of providing recreational opportunities and facilities in the Evergreen area. EPRD’s mission is to improve the quality of life of the Evergreen community by providing a wide range of excellent, financially responsible park and recreation amenities and programs while maintaining and enhancing the area’s mountain character (“**EPRD Mission**”).

D. Denver and the Evergreen Metropolitan District (“**EMD**”), the provider of water and sanitary sewer service for residents in and around Evergreen, entered into that certain Cooperative Agreement, dated April 15, 1980, setting forth the terms and conditions by which EMD assumed responsibility for the operation and maintenance of the Evergreen Dam and Lake and adjacent property (the “1980 Cooperative Agreement”). EMD was authorized under the 1980 Cooperative Agreement to enter into a contract with other governmental entities to provide recreation at the Lake.

E. EMD and Jefferson County agreed to an assignment of the responsibilities under the 1980 Cooperative Agreement to Jefferson County Open Space for the purpose of providing recreational programs and facilities at Evergreen Lake, in that certain Cooperative Agreement dated March 13, 1981 (the “1981 Cooperative Agreement”). Soon thereafter, Jefferson County entered into an Assignment Agreement with EPRD (then known as Evergreen Metropolitan Recreation and Park District) by which EPRD largely assumed the rights, duties and obligations of Jefferson County under the 1981 Cooperative Agreement with regard to recreation programs

and activities. Jefferson County has over the years provided the funding via several grants to EPRD to improve the amenities and recreational facilities surrounding Evergreen Lake, including funds to develop and maintain a system of trails, and to install and operate the Evergreen Lake House (defined in Paragraph 5(a)), among other upgrades to the Evergreen Lake and facilities within Dedisse Park.

F. Since that time, EPRD has operated and maintained recreational facilities and programs within that portion of Dedisse Park located in the vicinity of Evergreen Lake, as this area is further described and depicted in this Agreement, below, and surrounding property. EPRD has also made certain improvements, including construction of the Evergreen Lake House in 1993, and invested substantial public funding into the various improvements and programming offerings at the Evergreen Lake in accordance with the EPRD Mission.

G. EPRD intends to continue its recreational activities and programs within Dedisse Park for the benefit of district residents and the general public, also in accordance with the EPRD Mission.

H. The Parties now wish to clarify and define the relationship between EPRD and Denver with respect to the current and future operations and recreational programming at Dedisse Park.

I. It is in the interest of Denver and EPRD, and the public they both serve, that a cooperative agreement should be entered into directly between Denver and EPRD whereby EPRD shall continue: 1) to cooperate and collaborate with Denver and, in particular, Denver's Department of Parks and Recreation, with respect to the existing and future public benefits from EPRD's operations and activities within Dedisse Park; 2) to operate and maintain certain facilities as currently are in place or as may be developed in the future and to conduct public programs and activities within Dedisse Park, both independently and in conjunction with Denver and with other respective partners, including EMD, as the Board of Directors of EPRD determines are appropriate and in accordance with this Agreement in the best interest of park patrons, residents of the City and County of Denver, District residents situated in and around a number of Jefferson County communities, and the general public; and 3) to further the mission of Denver Parks and Recreation, cited below in Paragraph 2, as well as the EPRD Mission.

J. As a result, the Parties have determined that the 1980 Cooperative Agreement and the assignment of recreational duties pursuant to the 1981 Cooperative Agreement and the Assignment Agreement should be amended and restated by the terms of this Agreement between Denver and EPRD, with regard to recreational activities and programming, as well as by a separate agreement between Denver and EMD, with regard to EMD's use of Evergreen Lake and Dam. As a consequence, Denver intends that any and all agreements in effect and subject to the terms of the 1980 Cooperative Agreement shall be amended and restated by separate agreements, which shall include a separate agreement between Denver and EMD.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained in this Agreement, Denver and EPRD agree as follows:

1. **KEY DEFINITIONS.** As used in this Agreement:

(a) **Entities and Officials.**

(1) The term “**Denver**” shall mean the City and County of Denver and those officials, officers and employees of Denver with authority to act on behalf of Denver.

(2) The acronym “**DPR**” shall mean the Denver Department of Parks and Recreation, including its Denver Mountain Parks division, and those officials, officers and employees of DPR with authority to act on behalf of DPR.

(3) The phrase “**DPR Executive Director**” shall mean the Executive Director of DPR or the DPR Executive Director’s designated representative(s).

(4) The acronym “**EMD**” shall mean Evergreen Metropolitan District and those officials, officers and employees of EMD with authority to act on behalf of EMD.

(5) The acronym “**EPRD**” shall mean Evergreen Park & Recreation District and those officials, officers and employees of EPRD with authority to act on behalf of EPRD.

(6) The phrase “**EPRD Director**” shall mean the Executive Director of EPRD or the EPRD Director’s designated representative(s).

(b) **Legal Sources.**

(1) The phrase “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including but not limited to: 1) the City Charter and the Denver Revised Municipal Code, as either may be amended from time to time; 2) rules and regulations promulgated by DPR and applicable to Denver Mountain Parks (unless expressly modified or waived in this Agreement); 3) executive orders issued by Denver’s Mayor; 4) the applicable special district provisions of Title 32 of C.R.S. and any other laws governing special district operations; 5) rules and regulations adopted by EPRD not in conflict with or contrary to the laws and regulations of Denver applicable to the Denver Mountain Parks as may be agreed upon by the Parties under this Agreement; and 6) rules and regulations adopted by EMD with regard to use of Evergreen Lake.

(2) The phrase “**City Charter**” shall mean the Charter for the City and County of Denver, as it may be or may have been amended or re-codified from time to time.

(3) The acronym “**C.R.S.**” shall mean the Colorado Revised Statutes, as they may be or may have been amended or re-codified from time to time.

(4) The acronym “**DRMC**” shall mean the Denver Revised Municipal

Code, as it may be or may have been amended or re-codified from time to time.

(5) The phrase “**DPR Park Rules**” shall mean the “Park Use Rules and Regulations” adopted by DPR on May 11, 2012 (including the Administrative Citation Rules and Regulations), and as amended and restated May 27, 2015, and as the DPR Park Rules may be amended in the future as provided in sub-paragraph 11(d) of this Agreement. DPR Park Rules shall also include the corresponding enforcement ordinance set forth in Article I of Chapter 39, DRMC.

(6) The phrase “**EPRD Park Rules**” shall mean the rules and regulations as adopted by the EPRD Board of Directors (“**Board of Directors**”) or its designee to further the general public health, safety and welfare of the visitors and residents of EPRD, including the “General Park Rules & Regulations,” revised as of November 18, 2014 and as the EPRD Park Rules may be amended in the future as provided in sub-paragraph 11(d) of this Agreement, but only to the extent EPRD Park Rules are approved by DPR and comport with DPR Park Rules.

(c) **Parks and Facilities.**

(1) The phrase “**Denver Property**” shall mean the Denver Mountain Parks, Dedisse Park, the Dedisse Premises, the Dedisse Facilities, and any and all real property identified, depicted or described in **Exhibit A** and subparagraphs 1(c)(2), (3), (4) and (5), below.

(2) The acronyms “**DMP**” and “**DMPs**” shall mean a Denver Mountain Park or the plural, Denver Mountain Parks, which are operated and managed by a division of DPR also known as Denver Mountain Parks.

(3) The phrase “**Dedisse Premises**” shall mean that specific portion of Dedisse Park depicted and described in **Exhibit A**, a copy of which is attached hereto and incorporated herein by reference. The Dedisse Premises shall not include any portion of the Evergreen Golf Course or any other portion of Dedisse Park outside of the border depicted in **Exhibit A**. The Dedisse Premises includes (i) the boundaries of Evergreen Lake as depicted in **Exhibit A**, and (ii) the surface use of all of Evergreen Lake for recreational programming and uses permitted by this Agreement. The boundaries of the Dedisse Premises depicted in **Exhibit A** may not be expanded or otherwise altered, and the Dedisse Facilities as defined in this Agreement may not be constructed, installed, relocated, undertaken, conducted, or extended beyond the boundaries of the Dedisse Premises depicted in **Exhibit A**, except as expressly provided in this Agreement.

(4) The phrase “**Dedisse Facilities**” shall mean all Permanent Improvements presently existing, or as may be authorized and constructed, installed, expanded, renovated, or replaced in the future, on, attached to, below or above ground within the boundaries of the Dedisse Premises, in accordance with this Agreement, except any facilities owned, operated and maintained by EMD. Among other Permanent Improvements located in the Dedisse Premises, the Dedisse Facilities includes the Evergreen Lake House; the Boat House and related docks, the garage near the Boat House, the flood lighting near the garage and Boat House (all as limited by Paragraph 6(c)); the Evergreen Lake House parking lot labeled Lot A on **Exhibit A**; those portions

of trails within the Dedisse Premises; the pump house; and the outdoor restroom facility, all as identified in the attached **Exhibit A**. Unless otherwise specified, reference to “Dedisse Premises” shall include the Dedisse Facilities. EPRD has no responsibility regarding the pump house as set forth in Paragraph 7(a)(4).

(5) The phrase “**Other DMP Facilities**” shall mean any portions of Dedisse Park located outside of the Dedisse Premises including the surface of Evergreen Lake not used by EPRD for actively managed seasonal activity and those Permanent Improvements, such as trails, trailheads, picnic areas, or playgrounds, presently existing in a DMP located outside of and excluded from the Dedisse Premises and solely owned, operated and maintained by Denver, unless otherwise set forth in this Agreement. Other DMP Facilities may include park and recreational facilities constructed or installed, currently or in the future, by Denver, Jefferson County, the State of Colorado, or other entity. EPRD’s operational and management responsibilities in accordance with this Agreement shall be limited to the Dedisse Premises and that area depicted in **Exhibit A**, and shall not include Other DMP Facilities unless otherwise agreed upon in writing by the DPR Executive Director. Other DMP Facilities shall be regarded as real property under this Agreement.

(d) Permanent Improvements; Fixtures; EPRD Property; and Capital Improvement Projects.

(1) The phrase “**Permanent Improvements**” shall mean any installed or constructed improvements existing now or constructed, re-constructed, expanded, renovated, rehabilitated or replaced in the future (but excluding Fixtures), as authorized by Denver under this Agreement or other applicable authority, located at the Dedisse Premises and/or as part of the Dedisse Facilities. Evergreen Lake House and its facilities (as defined in Paragraph 5) and any facilities owned, operated and maintained by EMD shall not be included as Permanent Improvements, unless any construction, reconstruction, expansion, renovation, or rehabilitation to the Lake House results in an exterior visual impact or modifies the footprint of the Lake House. Permanent Improvements include, without limitation, the following and as may be further defined within this Agreement: 1) all buildings and structures: community centers, recreational facilities, lodges, pavilions, out structures, maintenance and storage facilities, parking lots, driveways, walkways, trails, boardwalks, bridges, ramps, and porches and decks; 2) structural elements: foundations, roofs and roof supports, exterior walls and interior structural walls, brick or stone facades, ceiling and floor structures, and retaining walls; and 3) systems: mechanical, electrical, utility, plumbing, HVAC, fire suppression, communication, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, vents, meters, panels, and related equipment and appurtenances. Except as set forth in Paragraph 6 and this Paragraph 1(d)(1), or otherwise agreed between the Parties, Denver shall solely own all Permanent Improvements constructed or installed in the future, which shall be regarded as real property under this Agreement.

(2) The word “**Fixtures**” shall mean 1) windows and window frames; 2) doors and door frames; 3) handles and locks; 4) built-in or attached cabinets, counters, and bars; 5) carpet, floor tiles, and other flooring; 6) paints, stains and sealants; 7) non-structural walls,

woodwork, wall paneling and tiles, drywall, and plastering; 8) sinks, toilets, urinals, showers, garbage disposals, and dishwashers; 9) light switches, plugs, and lighting; 10) fire and carbon monoxide detection devices; 11) ceiling tiles and surfaces, drywall, and plaster; 12) built-in or attached electrical fans, stove or grill venting systems, and kitchen hood and related fire suppression and recharging systems; 13) built-in or attached refrigerators or refrigeration units; 14) stoves, ovens, cooktops, ranges and grills; 15) drinking fountains; 16) perimeter and other fences and gates; and 17) items of similar character or use, and associated appurtenances. Unless otherwise set forth in this Agreement, and except as specified regarding the Evergreen Lake House, all Fixtures currently existing or installed in the future shall belong to Denver. EPRD shall be responsible for removing Fixtures owned by EPRD at the termination of this Agreement, otherwise, the Fixture shall become the property of Denver.

(3) The phrase “**EPRD Personal Property**” shall mean equipment, furnishings, goods, supplies, wares, vehicles, and other personal property acquired by, given to, or otherwise owned or leased by EPRD for use on the Dedisse Premises or any other Denver Property including the Evergreen Golf Course.

(4) The phrase “**Capital Improvement Projects**” shall mean the design, planning, construction, installation, demolition, re-construction, expansion, remodeling, rehabilitation, repair, or replacement of Permanent Improvements, as further described or restricted in Paragraph 10 of this Agreement. Capital Improvement Projects shall only apply to work to the Lake House that results in an exterior visual impact or modifies the footprint of the Lake House, and shall include Fixtures when the construction, installation or replacement of Fixtures is part of a Capital Improvements Project. Capital Improvement Projects does not include work performed to the interior of the Lake House. Capital Improvement Projects shall not include EPRD Personal Property nor maintenance and repairs as provided in paragraph 7 of this Agreement.

2. **AUTHORITY; PURPOSE.**

(a) Denver and EPRD acknowledge and affirm that the authority, and any limits on such authority, applicable to the Parties entering into, performing and complying with this Agreement are set forth in the following:

(1) Denver’s City Charter, including: (a) Section 2.4.4 and, in particular, section 2.4.4(F), which authorizes i) the entry into a cooperative agreement, subject to approval by City ordinance, with a public agency for the development of park and recreational facilities, programs and activities; and ii) the delegation, subject to approval by City ordinance, of the function of the Manager (now Executive Director) of the Denver Department of Parks and Recreation as specified in the cooperative agreement; and (b) Section 2.4.5, which mandates that any lease of a Denver park must be restricted to “park purposes” and that any such lease must be approved by Denver City Council.

(2) Home rule authority of Denver under Article XX of the State Constitution and any other applicable provision of the State Constitution, including Section

18(2)(A) of Article XIV and the implementing statutes found in section 29-1-203, C.R.S., regarding intergovernmental agreements (but excluding the establishment of a separate governmental entity).

(3) Section 31-25-216(1), C.R.S., which, among other things, establishes that Denver, when it has “acquired lands outside its municipal limits for parks, . . . has full police power and jurisdiction and full municipal control and full power and authority in the management, control, improvement, and maintenance of and over any such lands so acquired.”

(4) The special district provisions of Article I of Chapter 32 of C.R.S., as they pertain to the authority and powers of EPRD operating as a park and recreation district, including the authority to enter contracts and agreements as specified in section 32-1-1001(1)(d), and the applicable provisions of Title 24, C.R.S. with respect to EPRD government operations.

(b) Purposes of Agreement; DPR Mission. This Cooperative Agreement, and all associated efforts and actions, shall further DPR’s Mission, which is as follows: “As stewards of Denver’s legacy, Denver Parks and Recreation is dedicated to customer satisfaction and enhancing lives by providing innovative programs & safe, beautiful sustainable places.” EPRD shall use its best efforts, for the benefit of the citizens of Denver, the residents of Jefferson County served by EPRD, and the general public, to encourage, promote, and allow public use and enjoyment of those portions of Denver Property (Dedisse Premises) operated and maintained by EPRD for recreational and social purposes; to provide and obtain sufficient financial support as necessary and appropriate within the budgetary limits and authority of the Board of Directors to sustain recreational programs at the Dedisse Premises; to achieve these purposes in accordance with the intents and goals, as well as the express terms and conditions, of the Agreement; and to further both the EPRD Mission and the DPR Mission. Denver intends that Dedisse Premises and Dedisse Park shall at all times remain open and accessible to the general public, except as stated in the EPRD Park Rules, for EPRD park and Lake House permitted events, when closed for safety or maintenance purposes, closed with the DPR Executive Director’s approval, or as otherwise provided for in this Agreement.

(c) Authority Regarding the Dedisse Premises.

(1) The Dedisse Premises. Denver hereby grants authority to EPRD for the occupancy, use, operation, maintenance, administration, and care of the Dedisse Premises, which includes the Dedisse Facilities, in accordance with the authority and for the purposes stated in Paragraph 2 of this Agreement, and subject to the terms and conditions of this Agreement. The authority granted herein shall extend to the Dedisse Facilities constructed, re-constructed, installed, replaced, expanded, rehabilitated or renovated in the future, subject to the prior approval of plans and subsequent acceptance of such Dedisse Facilities by Denver, as provided in this Agreement. Unless otherwise stated, this Agreement does not grant authority to EPRD for use of other Denver Property outside of the Dedisse Premises. Notwithstanding anything to the contrary in this Agreement, the rights herein granted to EPRD are not, and shall not be construed as, a permanent lease, easement, or other interest in the Dedisse Premises, Denver Property, or any real property.

(2) **Limitations.** The granting of the right and authority to operate and manage the Dedisse Premises and set forth in this Agreement shall not create or grant, nor shall be construed as creating or granting, a property ownership, interest or title on the part of or to EPRD in Denver Property, other than such rights specified in this Agreement. EPRD accepts the condition of the Dedisse Premises in an “AS IS, WHERE IS” condition, with all faults and defects. Denver does not make, and disclaims, any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting property being used by EPRD. EPRD accepts the current environmental condition, including any asbestos and lead-based paint, if any, and without any expectation that Denver will remove or remediate the environmental conditions unless conditions become such that Denver or some other responsible entity is compelled by federal or state law to do so. EPRD shall bear all obligation, responsibility and liability for environmental conditions in, around, caused by, or attributable to the Evergreen Lake House.

(3) **No Prior Authorization for Inclusion.** City acknowledges and agrees that the Dedisse Premises is within EPRD’s jurisdictional boundaries and service area. This Agreement shall not be construed as acknowledgement or granting of prior authorization for EPRD to include any other Denver Property into EPRD’s jurisdictional boundaries or service area that is not currently within its boundaries or service area in accordance with Title 32, CRS, and reserves all rights under Title 32.

(4) **Right of Access.** Any rights granted by this Agreement is not intended to prevent or restrict the right of Denver to access, inspect, or use any part of the Denver Property, provided that such access or use is consistent with the terms and conditions of this Agreement. Denver shall at all times carry all responsibility and liability for its own programming, events and activities it performs within the Dedisse Premises.

3. TERM and EXTENSION. This Agreement shall commence as of the Effective Date and shall expire on December 31, 2052 (“Expiration Date”), unless otherwise terminated or extended as provided herein. Beginning with the Expiration Date and on December 31st every tenth (10th) anniversary thereafter, the term of this Agreement shall automatically and without further action be extended for a further ten (10)-year period, until December 31, 2072, unless and until either EPRD or Denver, at its discretion, gives written notice to the other of its election that this automatic extension shall cease. Such notice shall be signed by the Mayor of Denver, or the Deputy Mayor as provided in Article II of the City Charter, or the Chairman or a Vice Chairman of the Board of Directors, as appropriate, and shall be sent to the other Party no later than six (6) months prior to the Expiration Date or the end of any subsequent tenth (10th) anniversary period. Any other change to the terms and conditions of this Agreement, other than the automatic term extensions provided in this paragraph 3, must be approved and executed by the Parties in the same manner as this Agreement.

4. 1980 COOPERATIVE AGREEMENT RESTATED; OTHER PRIOR AGREEMENTS.

(a) 1980 Cooperative Agreement. Denver and EMD intend to amend and restate the 1980 Cooperative Agreement which relates to provision of recreational programs and facilities on the Dedisse Premises. EPRD shall continue to provide and operate the recreational programming for Dedisse Park under this Agreement. EMD shall have no further obligation regarding recreation by contract or otherwise.

(b) Effect of Non-termination. If no new agreement between Denver and EMD is executed at the time this Agreement is executed, the 1980 Cooperative Agreement shall remain in effect with respect to EMD's use of Evergreen Lake and Dam, and this Agreement will govern the park and recreation programming provided by EPRD only, but will not modify, alter or otherwise affect EMD's rights and obligations under the 1980 Cooperative Agreement. EMD shall have no responsibility for park and recreational programming.

(c) Conflict Among Agreements. This Agreement shall take precedence over any other agreements related to the operation of recreational programming of Dedisse Park subject to the provisions in subparagraph 4(b). To the extent of conflict among the terms of this Agreement and other agreements among the Parties, the Parties agree to separately identify such potentially conflicting agreements and to cooperatively reconcile such conflicts. If the Parties agree to terminate conflicting agreements, if any, then the Parties will exercise reasonable efforts to timely terminate the conflicting agreements.

5. REAL AND PERSONAL PROPERTY.

(a) Evergreen Lake House; Dedisse Facilities; Transfer of Property Interests. Subject to the 1981 Cooperative Agreement and the 1980 Cooperative Agreement, EPRD was assigned the right to build upon Denver-owned land. EPRD financed and undertook the construction of the Evergreen Lake House on Denver Property for the purposes of providing recreation activities and programming. Denver thereby permitted the Evergreen Lake House to remain on Denver Property at no cost to EPRD, including the charging of rent or other compensation. No transfer or assignment of any fee ownership of the land supporting the Evergreen Lake House, or any part of Denver's real property, was affected by construction of the Evergreen Lake House. EPRD is, and shall remain, fully and solely responsible for the, operation, management, all capital improvements, major expenses, repair and maintenance of the Evergreen Lake House, including the Fixtures, in accordance with and as limited by this Agreement. EPRD is also solely responsible for providing and maintaining all insurance for the Lake House. Any structural work, changes, modifications or alterations to the Evergreen Lake House ("**Structural Work**") shall require at least thirty (30) days advance written notice and review and approval by Denver, which approval shall not be unreasonably withheld. EPRD shall comply with all applicable Denver, Jefferson County, State and Federal standards, laws, rules and regulations related to Structural Work. Consistent with this Agreement, EPRD is solely responsible for such requirements and shall defend and indemnify Denver for any claims or damages. For the purposes of this Agreement the Evergreen Lake House shall continue to remain situated on Denver Property. However, upon any expiration or termination of this Agreement, including for breach, EPRD shall have one hundred eighty (180) days to remove the Evergreen Lake House including associated fixtures as defined in Paragraph 1.(d)(2) of this Agreement from Denver Property. EPRD shall

have no right to encumber the land supporting the Evergreen Lake House by any financial interest or obligations.

(b) Dedisse Facilities. As of the Effective Date of this Agreement, EPRD donates, gives, grants, conveys, transfers and quitclaims to Denver, for the use and benefit of the people of the City and County of Denver and the general public, all such right, title, and interest, if any, EPRD holds in and to the Dedisse Facilities subject to the restrictions herein, including all Permanent Improvements and Fixtures. Should EPRD create, acquire or receive in the future any new property interest in or to the Dedisse Facilities or Other DMP Facilities, including Permanent Improvements and Fixtures, EPRD shall take all actions necessary and proper, and acceptable to Denver, to donate, give, grant, convey, transfer and quitclaim all such right, title or interest to Denver. The title transferred by EPRD to Denver shall be unencumbered by any financial interest or obligation. Any transfer of property made in accordance with this sub-paragraph 5(b) is not intended, and shall not be construed, to modify, reduce or qualify any rights or obligations of EPRD set forth in this Agreement. No part of this sub-paragraph 5(b) grants any ownership, right, title or property interest of any type or kind in the land underneath and supporting the Evergreen Lake House, the Dedisse Facilities or any of the Improvements or Fixtures or any property owned, operated and maintained by EMD.

(c) Real Property Ownership. Fee title to Denver Property, including the Dedisse Premises, shall remain solely with Denver, including the land supporting the Evergreen Lake House, and the land supporting any and all other Dedisse Facilities. EPRD shall have no authority, under any circumstances, to sell, convey or grant any permanent property interest, including any easement, in any part of Denver Property, provided, however, that any leasehold interest or licensed use of any of the Dedisse Premises that pre-exists this Agreement shall be accepted for all purposes and shall not be terminated by Denver for at least the full term of any such pre-existing leasehold interest or license; and no authority to encumber by financial interest or obligation on any portion of the Dedisse Premises or Denver Property. Any Permanent Improvements constructed or installed by or on behalf of EPRD in, on, or under any part of Denver Property, including the Dedisse Premises shall become the property of Denver upon acceptance, in accordance with this Agreement.

(d) Use of Denver Property. EPRD shall have no authority to make any use, or allow any use to be made, of any part of Denver Property, including the Dedisse Premises, except as allowed by, or authorized under, this Agreement, or as may be granted by other agreement with Denver. Under no circumstances shall EPRD make any use, or allow any use to be made, of Denver Property in violation of federal, state or Denver law. EPRD shall have no authority to grant any license, lease, concession license, user right, agreement, or permit to a third party for occupancy or use of any part of Denver Property except as expressly authorized in this Agreement. Any revenue received by EPRD for any authorized license, concession license, user right, or use permit shall be subject to Paragraph 13, below, including Annual Payment requirements.

(e) EPRD Personal Property. EPRD Personal Property shall be owned or leased by EPRD. In the interest of faithfully conforming to the intent and terms of this Agreement and subject to Applicable Law and any restrictions imposed on any gifts or grants, EPRD may, from

time to time (as EPRD determines to be prudent and warranted), relocate, replace, lend or dispose of EPRD Personal Property, and may encumber EPRD Personal Property by any financial interest or obligation EPRD allows. EPRD, at its election, may cooperate with any Denver department willing and authorized to participate in the exchange, sharing, or loan of equipment or vehicles or in the joint purchase of equipment or vehicles, subject to applicable City Charter and DRMC requirements.

(f) Fixtures. Any Fixtures installed by or on behalf of EPRD on Dedisse Premises shall become the property of Denver and shall be unencumbered by any financial interest or obligation, except for Fixtures at or attached to the Lake House, which shall remain the sole and exclusive property of EPRD. Notwithstanding City ownership, Fixtures may be installed, replaced and/or disposed of by EPRD, as specified in this Agreement, and the proceeds received for the sale of Fixtures shall be retained by EPRD to be utilized as provided in this Agreement.

6. The DEDISSE PREMISES and the DEDISSE FACILITIES.

(a) As set forth in this Paragraph 6, and as otherwise described or limited by this Agreement, the Dedisse Premises and the following listed Dedisse Facilities, which are considered to be within the Dedisse Premises, shall be used, operated and maintained by EPRD for the purposes set forth in this Agreement. EPRD shall have no authority to permit reuse, or to lease or license, any part of the Dedisse Premises or Dedisse Facilities, unless otherwise set forth in this Agreement, or unless by separate agreement.

(b) Name of Park. The name “Dedisse Park” is the formal name of the subject park, which includes but is not limited to the Dedisse Premises and the Dedisse Facilities, in recognition of the family from whom Denver acquired the park. The Parties may refer to the lake within Dedisse Park as “Evergreen Lake.”

(c) Boat House (“Warming Hut”)

(1) Historic Structure. The Boat House, previously known as the Warming Hut, is a historic structure for which a Colorado Historical Society grant was obtained for restoration and preservation of the building. The Warming Hut at Evergreen Lake, by Ordinance No. 932, was designated as a structure for preservation pursuant to Article 1 of Chapter 30 of DRMC. Any uses and changes to the Boat House shall be subject to any restrictions set forth by the Denver Landmark Preservation Commission, the Colorado Historical Society grant agreement, and Paragraph 10(e), below, and shall require the advanced written approval of the DPR Executive Director.

(2) Operation. The Boat House is and shall remain the real property of Denver. The Boat House and its appurtenances including the decks are expressly included in the rights granted to EPRD to support public access to and use of Evergreen Lake for skating, boating and fishing (subject to the terms of this Agreement) and may be used by EPRD for other public activities conducted or permitted by EPRD within the Dedisse Premises. EPRD may also issue use permits or enter into Use Agreements with third-parties for the use of the Boat House, subject to

this Agreement and to prior approval by Denver. Extension or amendment to Use Agreements are also subject to Denver approval. Notwithstanding the foregoing, Denver shall retain use of a portion of the Boat House for programs, activities and storage so long as Denver's use does not unreasonably interfere with EPRD's use under this Agreement including EPRD's programming and use under sub-paragraph (3) below. EPRD shall sweep, clean and perform other general and routine day-to-day maintenance. However, Denver shall retain responsibility for construction, reconstruction, renovation, replacement, expansion, repair and capital maintenance of the Boat House and garage, in accordance with this Agreement, as further described in Paragraph 10 of this Agreement. EPRD may perform limited alterations or repairs, at EPRD's sole cost, to the structure with the approval of the DPR Executive Director, subject to further review and approval of the Landmark Commission as may be required by applicable law.

(d) Restrooms. Denver and EPRD mutually agree that the August 4, 2009 Assignment Agreement for the construction of the free-standing restrooms located on the westerly end of the parking lot serving the Dedisse Premises (the "**Restrooms**") is hereby terminated. EPRD shall provide routine maintenance and security for the Restrooms consistent with this Agreement, and with all applicable federal, state and local environmental health laws regarding operation and maintenance of restroom facilities, including but not limited to Guidelines on Individual Sewage Disposal Systems, 5 CCR 1003-6 adopted by the Water Quality Division of the Colorado Department of Public Health and Environment. Should replacement or re-construction of the restrooms be required, this will be a joint responsibility of Denver and EPRD, subject to appropriation of adequate funding by both Parties.

(e) Art Work Signs & Displays.

(1) Temporary Art Work. Denver shall permit EPRD to have control, responsibility, and discretion with respect to the acquisition, borrowing and temporary display of works of art on the Dedisse Premises ("**Temporary Art Work**"). Temporary Art Work shall mean art work placed within the Dedisse Premises for display for one (1) year or less, or art work that is not created for a particular space and not permanently or structurally installed or attached to any part of the Dedisse Premises in a manner that would result in damage upon removal, and is not owned by Denver. The DPR Executive Director reserves its right to review and approve Temporary Art Work proposed to be placed within the Dedisse Premises. Unless otherwise agreed upon or authorized by the artist or owner of the Temporary Art Work, Temporary Art Work shall be regarded as EPRD Property for all purposes. Temporary Art Work shall not belong to Denver without Denver City Council approval as required by DRMC. EPRD shall adopt policies and procedures for the display of Temporary Art Work, and, upon request, shall provide a copy of said policies and procedures to the DPR Executive Director. EPRD shall be responsible for the costs of installation and maintenance including any repairs or rehabilitation of the Art Work. EPRD shall also be responsible for obtaining any artists' rights or permissions regarding Temporary Art Work, including for the installation, moving or removal of Temporary Art Work. EPRD accepts all liability for damage or injury to persons or property, including damage to any Denver Property, as a result of installation or display for Temporary Art Work and art owned by EPRD. Under no circumstances shall Denver be held liable for damage or injury caused by or in any way related to the Temporary Art Work. EPRD shall require each and every artist and contractor responsible for

the Temporary Art Work to indemnify, defend and hold harmless Denver against any claims for damages related to the display of Temporary Art Work including intellectual property infringement claims and claims for damage to Art Work. EPRD agrees to be jointly and severally responsible for any damage to Denver caused by or in any way related to the Temporary Art Work.

(2) EPRD, for itself or on behalf of owners of Temporary Art Work or the artist, retains all rights under the Copyright Act of 1976, 17 U.S.C. §§101 et seq.; except that EPRD's rights, or owner's or artist's rights, under 17 U.S.C. §106A(a) are waived for purposes of this Agreement. EPRD, or owner or artist, also retains all other rights expressly granted in this Agreement. To the extent the Temporary Art Work in its final form is upon, attached or affixed to Denver-owned property, EPRD, or the owner or artist, shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Temporary Art Work, or grant permission to others to make such reproductions, in a manner that includes or depicts any Denver-owned property as a part of the Temporary Art Work except with the written permission of Denver. The restriction for duplication or reproduction does not prohibit EPRD from creating derivative works which are not exact duplicates and shall not apply to the EPRD's use of photographic reproductions of the Temporary Art Work in portfolio or in critical and scholarly writings. EPRD's waived rights to make reproductions of the Temporary Art Work as upon, attached or affixed to Denver-owned property are assigned to Denver. EPRD and Denver and their respective assigns hold an irrevocable license to make two-dimensional reproductions of the Temporary Art Work, including photographs, for non-commercial purposes, in the sole discretion of EPRD or Denver and their respective assigns, including but not limited to reproductions used in brochures, media publicity, and catalogues or other similar publications. Denver is unable to grant permission of any kind for political use of the Temporary Art Work.

(3) Permanent Art Work. "Permanent Art Work" shall mean those pieces of art work intended to be owned by Denver; or art work that will not be removed from the Dedisse Premises. EPRD shall obtain DPR's written permission to install Permanent Art Work and comply with (1) the Public Art Program contained in Division 4 of Article IV of Chapter 20, DRMC; (2) procedures with respect to Capital Improvement Projects under this Agreement; and (3) the Procedure for Acceptance of Works of Art in Article IX of Chapter 2, DRMC, or other applicable donation requirements. Denver at all times retains the exclusive right to place Permanent Art Work on any Denver Property.

(4) Signs. Signs are limited to those that provide public information essential to the use and enjoyment by patrons of the Dedisse Premises, including but not limited to identifying facilities and features, providing directions and warnings, stating applicable rules and regulations and describing pertinent historical or environmental information ("**Signs**"). Signs described under subparagraph 13(i) are also permitted, subject to the requirements of this subparagraph (4). All Signs installed at the Dedisse Premises by EPRD or its contractors or agents and those allowed under subparagraph 13(i) of this Agreement shall conform with DPR sign standards unless the prior, written permission of the DPR Executive Director is obtained; and shall be regarded as Denver Property unless the DPR Executive Director specifies otherwise. EPRD shall purchase, maintain and properly display Federal and State flags at its sole cost and expense, and any City of Denver flag which shall be provided by Denver to EPRD for this purpose and

replaced from time to time in the discretion of the DPR Executive Director as needed. Denver authorizes EPRD to fly a flag bearing the EPRD logo within any portion of the Dedisse Premises operated or maintained by EPRD, along with any location granted for use to EPRD, including public facilities located on Denver Property and granted for joint public use by and between EMD and EPRD.

(5) **Displays.** Other installations on Dedisse Premises, most commonly temporary displays which are not necessarily signs (“**Displays**”), are not allowed unless the Display is installed and owned by Denver or EPRD. Any displays must comply with DPR Rules and Regulations, DRMC., and Denver’s advertising and sponsorships policies. The placement of temporary lighting shall not be construed to be a “Display” for purposes of this Agreement.

(f) **Landscaping and Wetlands.** Formal landscaping shall be limited to areas within the Dedisse Premises where such irrigated landscaping currently exists. The maintenance of formal and natural landscaped areas within the Dedisse Premises shall be the responsibility of EPRD. Any existing wetlands located on the Dedisse Premises shall be preserved and protected. Any material changes to the landscaping or wetlands areas shall require the prior written approval of the DPR Executive Director.

7. **DENVER FACILITIES.**

(a) **Existing.** The Other DMP Facilities set forth in this Paragraph 7 are considered to be outside of the Dedisse Premises, are owned as real property by Denver, and shall be operated, maintained and managed by Denver.

(1) **Trails.** Certain trails exist outside of the Dedisse Premises and are regularly used by park patrons and the general public. EPRD and EMD entered into a License Agreement dated January 1, 1982, as modified by a Supplemental Agreement dated May 28, 1987, wherein EMD authorized EPRD, subject to specified terms and conditions, to construct, utilize, maintain, repair and replace a system of trails, boardwalks, steps and bridges for public use within Dedisse Park (jointly, the “**EPRD-EMD Agreement**”). This Agreement shall supersede the EPRD-EMD Agreement to the extent that the requirements, specifications or final approval authority specified in the EPRD-EMD Agreement conflict with or are contrary to Denver’s requirements, specifications or final approval authority specified in this Agreement. Consistent with Paragraph 8, EPRD shall only be responsible for maintaining and operating the portions of trails within the Dedisse Premises as depicted in **Exhibit A**. DPR shall maintain and operate trails outside of the Dedisse Premises. However, EPRD may perform minor maintenance on trails outside of the Dedisse Premises to ensure the trails are safe, clean and free of obstructions and litter. Any Capital Improvements or repairs EPRD proposes to perform on any part of the trails, whether within or outside of the Dedisse Premises, are subject to the requirements under this Agreement regarding improvements performed by EPRD. The Parties agree that any rights and obligations regarding any water facilities and infrastructure, including rights of access for the purpose of operating and maintaining the water facilities, shall remain with EMD and shall be further memorialized and described in future agreements between Denver and EMD. Any granting of rights and obligations herein described shall occur only by permission and approval of Denver

in consultation with EMD and, if required, through the execution of formal amendments or agreements. If EPRD or EMD determines there is need to close any trail for operational or safety reasons, Denver must be notified as soon as reasonably possible.

(2) Trailhead. A trailhead, constructed by EPRD and donated to Denver, is situated within Dedisse Park north of the intersection of Evergreen Parkway and Upper Bear Creek Road, generally described as the fishing parking lot and trailhead access across from the intersection of Colorado Highway 74 & Upper Bear Creek Road (the “**Trailhead**”). A Trailhead Plan was implemented on or about November 28, 1997 and expired as of September 30, 2017. The Trailhead is located outside of the Dedisse Premises, and is an Other DMP Facility under this Agreement. Denver shall maintain and operate the Trailhead. If EPRD or EMD determines it needs to close the Trailhead for operational or safety reasons, Denver must be notified as soon as reasonably possible.

(3) Bridge over Bear Creek. The bridge over Bear Creek (“**Bridge**”) is and shall remain the real property of Denver. The Bridge provides ingress and egress for Dedisse Park, including Dedisse Premises, to and from Upper Bear Creek Road. The Bridge shall be under the operational control of Denver unless otherwise set forth by separate agreement. EPRD shall be responsible for snow removal on the bridge, and snow removal and sweeping of the pavement adjacent to the bridge the road extending from the bridge to the Lake House. EPRD shall obtain prior written approval from Denver before performing construction, renovations, modifications, replacements or Capital Improvements to the Bridge or abutting road or pavement in accordance with Paragraph 10. Except with regard to significant damage or repairs, EPRD will ensure the bridge and road are passable and available for public ingress and egress. Denver and EPRD reserve the right to close and otherwise restrict access to the Bridge to preserve health and safety, to abate imminent dangers, and to respond to emergencies. Either Party will provide prior notice to the other should a closure be deemed necessary.

(4) Pump House. The Pump House is the shed located between the Boat House and its garage within Dedisse Park. The Pump House is owned and operated by Denver. EPRD shall have no responsibilities with respect to the Pump House other than to notify Denver if it becomes aware of any damage to the Pump House, if the Pump House is inoperable or of unlawful activity including public interference with the Pump House.

(b) Future Facilities. Any construction and operations that EPRD may propose for Other DMP Facilities shall be undertaken only by separate agreement between Denver and EPRD, including those procedures and Assignment Agreement under Paragraph 10 as applicable, unless otherwise set forth in this Agreement.

(c) Use. Other DMP Facilities not identified in this Agreement shall be and continue to be managed, operated and maintained by Denver. Any Other DMP Facility not specifically included in this Agreement shall not be operated, maintained, repaired or replaced by EPRD, except as granted for use to EPRD under separate agreement.

8. GENERAL MAINTENANCE AND REPAIR

(a) EPRD Services.

(1) Operations and Maintenance. Except as otherwise expressly provided in this Agreement, EPRD shall, as needed and at its own expense, provide operation and maintenance to the Dedisse Facilities and, Dedisse Premises, Permanent Improvements, Fixtures, and EPRD Property, in a healthy, safe and usable condition, in all public and non-public areas, including any needed snow and/or debris removal. Maintenance shall not include Capital Improvements, construction, modifications or alterations to any Denver Property or any facility regarded as Denver's real or personal property. Any trash and debris on Denver Property outside of the Dedisse Premises caused by EPRD use shall be cleaned and removed by EPRD.

(2) EPRD Personal Property. EPRD shall, as needed in the sole determination of the Board of Directors and its designee(s), and at its own expense, repair or replace, and perform Capital Improvements as needed, to all damaged, defective, broken, or worn out EPRD Property and shall, promptly and at its own expense, make such emergency repairs of EPRD Property as necessitated by exigent circumstances as provided in Paragraph 10(j). The responsibility for ownership, operation and maintenance of the EPRD Property shall be the sole responsibility of EPRD, and the discretion of the Board of Directors to determine, delay, or amend any schedule and/or capital budget or to repair, replace, remove, operate and maintain any EPRD Property, the exercise of which shall not be deemed as a Breach of this Agreement. City may in its discretion and subject to prior appropriation perform repairs, replacements or Capital Improvements in instances when public health or safety are threatened, which includes the right to block, close or restrict access only as necessary for the repair, replacement or Capital Improvement under this sub-paragraph 8(a)(2).

(3) Fixtures.

(i) EPRD shall, as needed in the sole determination of the Board of Directors and its designee(s), and at its own expense, repair and replace all damaged, defective, broken, worn out, or inadequate Fixtures which are not considered to be a Capital Improvement Project, which work for such repair or replacement shall include the design, planning, construction, installation, and removal of old Fixtures. Any single project costing Five Thousand Dollars (\$5,000.00) or less, or any series of related projects costing Fifty Thousand Dollars (\$50,000.00) or less over a six (6) month period, and involving Fixture repairs or replacements shall be performed at EPRD's discretion and shall not require approval from or notice to Denver except when the work will result in an exterior visual impact. Denver may in its discretion and subject to appropriation perform repairs, replacements or Capital Improvements in instances when public health or safety are threatened, which includes the right to block, close or restrict access only as necessary for the repair, replacement or Capital Improvement under this sub-paragraph 8(a)(3)(i).

(ii) For any repair or replacement EPRD determines to be performed on Fixtures within the Dedisse Premises, EPRD shall comply with all applicable laws, statutes, ordinances, rules, and regulations; including ordinances related to Denver's, minority-owned and women-owned enterprises and small business enterprises under §28-31 through §28-

40, §28-51 through §28-90, DRMC.; and prevailing wages under §20-76, DRMC.

(b) Landmark and Historic Preservation. Non-emergency, general structural maintenance work to be undertaken by EPRD or its contractors or subcontractors on or in the Boat House and any other historic structures designated as Denver Landmarks or listed on the National Registry of Historic Places shall not be performed unless all approvals required under § 30-6, DRMC., for landmark designated structures are obtained, all applicable requirements and restrictions are complied with, and advanced written approval is granted by the DPR Executive Director, including any required Assignment Agreements.

(c) Contracting. All general operations and maintenance work or service which EPRD is obligated to perform under Paragraph 8 of this Agreement may be contracted to a qualified and skilled contractor and shall be subject to the provisions of this Agreement, with this requirement being specifically recognized in the service or work contract. Unless a specific waiver is authorized in writing by Denver, any such service or work contract shall also be subject to Applicable Law governing the performance of the work. For contracts over Fifty Thousand Dollars (\$50,000.00) EPRD shall additionally comply with Denver ordinances regarding Denver's women, minority and small business participation ordinance, prevailing wage ordinance and Denver's confirmation of lawful employment ordinance, the provision of appropriate and sufficient insurance, and the provision of sufficient bonds or other authorized surety assuring faithful performance and complete payment for labor, materials and supplies, and equipment, and obtaining and maintaining all necessary permits and licenses. Compliance with the terms and restrictions of this sub-paragraph 8(c) is the responsibility of EPRD. EPRD shall, upon request, provide Denver a copy of any written contract or agreement for work or services provided.

(d) Capital Improvements. Any work that qualifies as a Capital Improvement Project under Paragraph 10, below, of this Agreement shall be subject to the Capital Improvement Project requirements.

(e) City Services. Denver may, in the discretion of the DPR Executive Director, furnish maintenance and repair services, including with its "on-call" forces, for any part of the Denver Property, including Dedisse Premises, and shall have the right, but not the obligation, to perform any emergency repairs necessitated by exigent circumstances, subject to Paragraph 10(j). Denver shall make all good faith efforts to provide EPRD with prior notice of services it intends to perform. The cost of any such discretionary service shall be EPRD's responsibility subject to prior notice to EPRD and EPRD's approval of the cost. If EPRD does not approve of the cost, then Denver retains discretion to proceed with the service at its own cost.

(f) Records. Upon request EPRD shall provide to DPR copies of all documents, agreements, plans, designs, as-builts, invoices, payment applications, and correspondences associated with any work performed under this Paragraph 8, regardless of whether the DPR Executive Director's approval is required.

9. MASTER PLANNING.

(a) Master Plans. Any Denver Master Plan impacting the Dedisse Premises shall be provided to EPRD and updated whenever any new Denver Master Plan impacting the Dedisse Premises is adopted, and such Denver Master Plan shall take precedence over any other master plan. The DPR Executive Director shall give the EPRD Director notice of the schedule of proposed actions and sufficient information, including drafts of a new or materially changed master plan, and shall provide the EPRD Director a reasonable opportunity to participate in the process. Any EPRD master plans that proposes to include the Dedisse Premises; materially changes any master plans that previously included the Dedisse Premises; or otherwise proposes to add the Dedisse Premises to a master plan, any of which includes Capital Improvement Projects or significant operational or programmatic strategies related to or within the Dedisse Premises, then that portion of the proposed master plan that includes or is associated with the Dedisse Premises shall be submitted to the DPR Executive Director for review and approval of the pertinent portion at least one hundred twenty (120) days in advance of the anticipated adoption action by EPRD. Denver and/or the DPR Executive Director shall not unreasonably withhold approval of master plans or changes. The EPRD Director shall give the DPR Executive Director notice of the schedule of proposed actions and sufficient information, including drafts of a new or materially changed master plan, and shall provide the DPR Executive Director a reasonable opportunity to participate in the process. Notwithstanding the foregoing, any construction by EPRD within the Dedisse Premises, whether or not by master plan, requires approval and separate Assignment Agreement with Denver.

(b) Procedure; Public Process. The DPR Executive Director and the EPRD Director shall determine the procedure for reviewing and implementing master plans affecting the Dedisse Premises on a case-by-case basis; and shall cooperate in conducting the agreed upon process. The Parties understand and agree that if the DPR Executive Director determines that a public input process is appropriate as part of the action on the master plan, the approval of the DPR Executive Director shall be contingent on the conducting of any public input process. The Parties shall cooperate in conducting the public input process and shall jointly consider and address questions and concerns raised by the public.

(c) Material Change. As used in this Paragraph 9, “material change” shall mean any written statement or other tangible expression of EPRD’s strategic plans or objectives that changes, modifies, or expands upon one or more material provision of the master plan to the extent it affects the Dedisse Premises. Decisions made and actions taken by EPRD in the normal course of maintaining, managing, operating, and controlling the Dedisse Premises or any portion thereof, or in implementing, interpreting or applying the master plan in a coherent and reasonable manner shall not, as such, be deemed a “material change” subject to the processes set forth in this Paragraph 9. EPRD’s annual planning and budgeting process shall not be deemed to be a “material change” except to the extent that this process results in an action, strategy, or decision directly contrary to or inconsistent with the master plan as it may affect the Dedisse Premises.

(d) Implementation and Compliance. The Parties acknowledge and agree that EPRD shall not be obligated to develop or implement any master plan but shall not take any actions to make Capital Improvements or pursue programmatic strategies contrary to or inconsistent with any master plan, unless otherwise expressly authorized in accordance with this Agreement.

10. CAPITAL IMPROVEMENT PROJECTS.

(a) Obligations. EPRD has no obligation to make any Capital Improvements or perform Capital Improvement Projects on or for any part of Denver Property, Dedisse Premises, Dedisse Facilities or Fixtures. EPRD shall make no Capital Improvements and shall perform no Capital Improvement Projects on or for any part of Denver Property, including within the Dedisse Premises, to Dedisse Facilities, or to Fixtures (except for the Lake House as provided in this Agreement), unless by prior discussion, negotiation, approval, and written agreement with Denver.

(b) Capital Improvements; Capital Projects. Consistent with Paragraph 1(d)(1) and 1(d)(4), and except as excluded under subparagraph (c) below related to the Lake House, “**Capital Improvement**”, “**Capital Project**”, or “**Capital Improvement Project**” shall mean the design, construction, reconstruction, repair, replacement or installation of Dedisse Facilities, Permanent Improvements or Fixtures at Dedisse Park; or the additions to, significant renovations of, or replacement to the Dedisse Facilities, Permanent Improvement or Fixtures to address or correct defects or deterioration to Dedisse Facilities, Permanent Improvements or Fixtures.

(c) Exclusions for The Lake House. Also consistent with Paragraphs 1(d)(1) and 1(d)(4), Capital Improvements shall not include Capital Improvements to the Lake House unless such Capital Improvements result in an exterior visual impact, or modification of the footprint of the Lake House. For Capital Improvement Projects that EPRD, in its sole discretion, requests to perform at the Dedisse Premises, including Improvements that result in an exterior visual impact, or modification of the footprint of the Lake House, Denver agrees to use best efforts to review, negotiate and timely respond to any request for such Capital Improvement Project, and shall not unreasonably withhold approval of proposed Capital Improvements provided such Capital Improvements are for the purposes permitted by this Agreement. No Capital Improvement or Capital Improvement Project shall interfere with or impair EMD’s property or EMD’s use of Evergreen Lake and Dam. To the extent Denver and EPRD agree that EPRD will perform Capital Improvements to or on the Dedisse Premises, then that work shall proceed only in accordance with an Assignment Agreement with Denver, under Paragraph 10(d), below. EPRD shall notify Denver of any intent to perform Capital Improvements prior to any substantive planning or negotiation with contractors, designers, or consultants for the work. Denver at all times reserves the right to reject any proposed design or construction, regardless of whether EPRD provided prior notice, and shall have no responsibility for any costs incurred by EPRD. To the extent Denver authorizes EPRD to perform Capital Improvement Projects, the project or work shall be subject to this Paragraph 10, along with the terms, conditions and obligations of any Assignment Agreement. Once authorized by Denver, EPRD may proceed at its own expense to complete any approved Capital Improvement Project or approved Permanent Improvements subject to this Paragraph 10.

(d) Coordination between Denver and EPRD. In the event that Denver and/or EPRD, jointly or individually, should determine that a Capital Improvement Project is needed on or for Dedisse Premises, Denver and EPRD shall cooperate and coordinate in an effort to negotiate and execute an Assignment Agreement (or, at Denver’s discretion, waive the requirement for such agreement) to develop plans to evaluate the Capital Improvement Project needs and costs; to

coordinate project activities with EMD; and to develop strategies and plans for procuring funds necessary to complete the Capital Improvement Project in a timely and efficient manner, subject to the terms and conditions of this Agreement. Denver and EPRD intend to confer at least annually in accordance with Paragraph 13(l) to discuss Capital Improvements and Capital Projects for the upcoming years as well as those matters referenced in Paragraph 13. Nothing in this sub-paragraph 10(d) shall obligate Denver to approve the plans for the proposed Capital Improvement Projects or, except upon satisfaction of such requirements as expressly provided in this Paragraph 10, to directly fund or assist with fundraising efforts, or taking on the responsibility for, the proposed Capital Improvement Project. Upon request, and at Denver's discretion, Denver may provide its own services or its "on-call" forces for the performance of construction and Capital Improvements on any Denver Property, including the Dedisse Premises.

(e) Grant Funding for Dedisse Premises including Capital Improvements.

EPRD may seek opportunities to secure and utilize grant funding for Capital Improvements. However, any grants pursued by EPRD and intended for the benefit of Dedisse Park or Denver Property that require the approval of Denver per sub-paragraph 13(f), regardless of whether for Capital Improvements, must be approved by the DPR Executive Director or a designee, which shall not be unreasonably withheld. However, Denver shall not be obligated to approve any grant until the DPR Executive Director or designee has had sufficient and reasonable opportunity to review grant information. The DPR Executive Director's approval of a grant shall not mean that any plans or other project submissions are also approved. EPRD shall remain obligated to meet all review and approval requirements under this Agreement regardless of grant approval.

(f) Conformance with Denver Master Plan.

Except for a Capital Improvement Project necessitated by an emergency, any proposed Capital Improvement Project shall be in conformance with the Denver Master Plan or any other Denver planning effort that affects the Dedisse Premises, if any, and any approved amendments thereto, unless the DPR Executive Director and the EPRD Director agree that, while the proposed Capital Improvement is not specifically addressed in the master plan or any approved amendments thereto, is nevertheless consistent with and supportive of the master plan. Any other proposed Capital Improvement not consistent with or supportive of the master plan shall require an amendment to the master plan in accordance with Paragraph 9 of this Agreement.

(g) Assignment of Authority.

(1) Once reviewed and approved by Denver in accordance with Paragraph 10(a), and at the discretion of the Mayor for Denver (and upon approval by the Denver City Council if the project costs more than \$500,000), EPRD may be assigned the responsibility for the design, planning, construction, re-construction, expansion, rehabilitation and renovation of Capital Improvements or Permanent Improvements, limited to the Dedisse Premises, but including the Evergreen Lake Trail. If Denver determines to assign such authority to EPRD, then Denver and EPRD shall enter into and execute a separate Assignment Agreement. Any requirements, timelines and approval processes shall be subject to the separate Assignment Agreement.

(2) EPRD shall observe and strictly abide by, and shall require all of its

consultants, sub-consultants, contractors and subcontractors to observe and strictly abide by, all requirements of this Agreement and the Assignment Agreement applicable to Capital Improvements Projects, including but not limited to the provisions related to payment of prevailing wages, women, minority and small business enterprise participation, Americans with Disability Act and related laws, audits, insurance, indemnification, bonding or other financial assurances, liens, non-discrimination, confirmation of lawful employment, and subcontracting. EPRD shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including all payroll or other documents the Denver Auditor's Office may require, to Denver Auditor's Office with respect to any Capital Improvement Project on the Dedisse Premises.

(h) Contracting. If EPRD is performing service or work that does not require an Assignment Agreement, or unless a specific waiver is authorized in writing by Denver, any such service or work contract for Capital Improvements shall also be subject to Applicable Law governing the performance of the work, including Denver's women, minority and small business participation ordinance, prevailing wage ordinance, confirmation of lawful employment ordinance, the provision of appropriate and sufficient insurance, the provision of sufficient bonds or other authorized surety assuring faithful performance and complete payment for labor, materials and supplies, and equipment, and obtaining and maintaining all necessary permits and licenses. Compliance with the terms and restrictions of this sub-paragraph 10(h) is the responsibility of EPRD. EPRD shall, upon request, provide Denver a copy of any written contract or agreement for work or services provided.

(i) Licenses for Location of Utilities.

(1) Capital Improvement Project Utilities. If installation of utilities is required as a part of Capital Improvement Projects, then a Utility Permit shall be required for the location of utilities on Denver Property and the utilities part of a Capital Improvement Project. The EPRD Director shall provide, or require the utility provider to provide, in writing, a request to the DPR Executive Director as to the nature and the need for the utility service. The request shall include a description of the project and work, depiction of the installation location, reasons why the installation serves Dedisse Park, and the nature of and the need for the utility service. If the request is in accordance with DPR's Utility Policy, a Utility Permit will be issued to the utility provider. For work that extends outside of the Dedisse Premises, the utility installer may also require additional permits, for example a Temporary Construction Access Permit, for its work. The DPR Executive Director reserves the right to reject and withhold approval of a utility placement or installation that does not meet DPR requirements, rules or policies. This procedure for issuing a Utility Permit shall apply to utility installation, regardless of whether it is a part of a Capital Improvement Project.

(2) Easements. No easements shall be granted to a utility provider or any other entity that would burden Denver Property. Existing easements on Denver Property, as recognized under DPR's Utility Policy, shall be honored. Any easement or other utility rights held by EMD under prior agreements, including the 1980 Cooperative Agreement shall be honored.

(j) Trails. 1998 Cooperative Agreement. Denver and EPRD entered into a

Cooperative Agreement dated November 17, 1998, setting forth the procedures, standards and requirements for trail construction and operations by EPRD in Denver's Mountain Parks ("1998 Cooperative Agreement"). Denver and EPRD agree that this Agreement shall supersede and replace, in its entirety, the 1998 Cooperative Agreement as of the Effective Date of this Agreement.

(k) Temporary Construction Access Permits. When applicable, EPRD or its contractors performing work on any part of Denver Property outside of the Dedisse Premises shall be required to obtain a Temporary Construction Access Permit ("TCAP") issued by DPR. Regardless of other notification requirements, EPRD shall notify Denver of any project EPRD believes will require access to Denver Property that is outside of the Dedisse Premises. Denver will inform EPRD whether a TCAP is required. Any party issued a TCAP is subject to the obligations and requirements of the TCAP, as well as this Agreement.

(l) Prevailing Wage. In those cases where Denver may approve and authorize EPRD to complete any Capital Improvement Project on Denver Property, and unless otherwise waived, all applicable work performed on such Capital Improvements on any part of Denver Property including Dedisse Premises, shall be subject to payment of Prevailing Wages pursuant to Sections 20-76 *et seq.*, DRMC.

(1) EPRD shall require every contractor or subcontractor to post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the contractor and subcontractors of all tiers under Section 20-76, DRMC.

(2) In performance of all Capital Improvements under this Agreement, including Assignment Agreements, as may be applicable, EPRD agrees to comply with and be bound by all requirements and conditions of the Denver's Payment of Prevailing Wages Ordinance, Sections 20-76 *et seq.*, DRMC, including but not limited to all any anniversary date wage rate adjustments, and any determinations made by Denver pursuant thereto. As such, EPRD shall require every contractor and subcontractor of any tier performing work under this Agreement to pay all workers, mechanics, and laborers in accordance with the rates and classifications established under the federal Davis-Bacon Act and Section 20-76 of DRMC and require that employees be paid weekly. EPRD shall require every contractor and subcontractor to fully familiarize themselves with all the terms, conditions, and requirements of said DRMC Section 20-76.

(3) In accordance with Section 20-76(b), DRMC, the Prevailing Wage rate schedule applicable to any work performed under this Agreement shall be the most current schedule available at the time EPRD executes a contract. The most current schedules are available from the Denver's Career Service Authority and the Auditor's Office. Such schedule must be attached to and incorporated in any contract for construction of improvements or installation of fixtures authorized under this Agreement. EPRD shall require every contractor and subcontractor of any tier performing work that is covered by the Section 20-76 of DRMC to furnish to Denver for each week during which workers are employed, copies of the payroll records of all such workers demonstrating compliance with the prevailing wage requirements. These payroll records must contain information showing classification, the number of hours worked, itemized

deductions made from the pay of each worker, and the gross and net amount of pay received by each worker for the week ending period covered by the payroll. Upon request, the contractor or subcontractor shall provide other documentation deemed necessary by Denver. All copies of the payroll records shall be accompanied by sworn statements of the contractor or subcontractor that the copies are true and correct and are the payroll records of all mechanics, workers, and laborers employed; that the payments were made to the workers as stated in the said payroll records; and that no deductions were made other than those set forth in the payroll records. Three sets of these payroll records are required. The original shall be transmitted to the Denver Auditor's Office and copies to other Denver departments or agencies if directed.

(4) If any laborer, mechanic, or worker employed by any contractor or any subcontractor to perform work pursuant to this Paragraph 10 for EPRD at the Dedisse Premises or any Denver Property on behalf of EPRD has been or is being paid less than the rate of wages required by the applicable Prevailing Wage rate schedule, Denver may suspend or revoke the applicable Assignment Agreement or this Agreement. In the event of revocation, Denver may prosecute the work to completion by contract or otherwise, and EPRD and its sureties shall be liable to Denver for any additional costs to Denver. No payroll shall be approved by the Denver Auditor's Office unless the party presenting such payroll, or in whose behalf it is presented, has filed with the Denver Auditor's Office the reports and statements described herein, nor while any such contractor or any subcontractor under him shall be in default in the payment of such wages as are required by the Agreement.

(m) Emergencies.

(1) In the event of an existing or imminent emergency where any of the Dedisse Facilities within the Dedisse Premises are at substantial risk either Party is authorized, without prior notice to the other Party, to take such prompt and prudent measures as necessary to secure, protect, and preserve Dedisse Premises, and public health and safety, including any necessary work. EPRD is authorized to perform that amount of emergency work outside of the Dedisse Premises reasonably necessary to abate the emergency. The work need not exceed what is necessary to eliminate the immediate danger or risk. Notice shall be provided as soon as reasonably possible to the other Party as to reasons for the emergency work, the time, place, and manner of the emergency work, and the costs incurred due to the emergency work. This subparagraph 10(m) shall be applicable to emergency repairs as addressed in Paragraph 8 of this Agreement.

(2) EPRD shall be responsible for all costs it incurs for emergency responses and associated work it performs within the Dedisse Premises. If EPRD performs emergency work on Denver Property outside of the Dedisse Premises, then EPRD shall be entitled to reimbursement of the costs of work that mitigated or prevented adverse effects of the emergency. Denver shall be responsible for all costs it incurs for emergency responses and associated work it performs on Denver Property outside of Dedisse Premises. If Denver performs emergency work on the Dedisse Premises, then Denver shall be entitled to reimbursement of its costs for work that mitigates or prevents adverse effects of the emergency.

11. PUBLIC USE, ACTIVITIES, REGULATION and SAFETY.

(a) Public Access & Use.

(1) Open Outside of Curfew. The Dedisse Premises but not the Dedisse Facilities or access to Evergreen Lake, shall typically be open to the general public outside of curfew hours established by Denver's Park Use Rules, as specified by EPRD, including ingress and egress roads and trails; accessible areas outside of the Dedisse Premises; and areas used by EPRD in accordance with any additional permit that may be issued by Denver.

(2) Seasons, Days & Hours of Operation. Specific seasons, days and hours for public access and use may be established by EPRD for the Dedisse Facilities. A complete written schedule of restrictions as to seasons, days and hours for public access and use shall be provided by the EPRD Director to the DPR Executive Director upon request.

(3) Restricted Use and Closures. EPRD may bar or restrict public access to administrative, service, storage, work areas, and other non-public areas and may control parking in public parking areas, subject to sub-subparagraph (4) below, to assure the safe and productive use of the Dedisse Premises. If EPRD should close the Dedisse Premises, or any portions thereof, for reasons other than for scheduled events, standard seasonal closures, inclement weather conditions, safety, scheduled or emergency repair or construction work, or due to *force majeure* which endures for more than fourteen (14) days, the EPRD Director shall promptly inform the DPR Executive Director in writing as to the cause of the closure and the expected re-opening date. EPRD is not authorized to close any other Denver Property or Other DMP Facility, unless in response to an emergency in accordance with Paragraph 10(m), without prior authorization from Denver.

(4) Parking.

(i) Those parking areas depicted in **Exhibit B** and labeled "Lot A Dedisse Premises Parking (EPRD)" shall be considered part of Dedisse Premises and shall generally be available to park patrons at no charge. EPRD may designate no more than twenty-five percent (25%) of Lot A parking spaces for employee and Lake House event parking. EPRD may close Lot A to park patrons in association with large events held at the Lake House or large events occurring on the Dedisse Premises. EPRD shall retain operational control of Lot A and shall be responsible for all routine maintenance and repairs of Lot A, except two designated parking spaces located closest to the Boat House/Warming Hut for Denver staff use.

(ii) Those parking areas depicted in **Exhibit B** and labeled "Lot B Dedisse Park Parking (Denver)" shall not be considered part of Dedisse Premises and shall generally be available to park patrons at no charge. EPRD may submit to Denver a request for the closure of Lot B in association with a large event on the Dedisse Premises. Any such closure is subject to Denver's approval. Denver retains operational control of Lot B and shall be responsible for all maintenance and repairs of Lot B.

(iii) Those parking areas depicted in **Exhibit B** and labeled “Lot C Dedisse Park Parking (Denver)” shall not be considered part of Dedisse Premises. Lot C shall be used by Denver staff and for Denver programming participants. Lot C may be used by EPRD staff parking, passive use parking, non-event parking and non-reserved parking during normal park hours. Denver retains operational control of Lot C. Denver may install parking control equipment to restrict access to Lot C.

(iv) EPRD may charge a reasonable fee for public parking for its events in its parking areas that are within the Dedisse Premises, subject to approval of the terms and conditions of the fees by the DPR Executive Director or its designee, and approval of those fees by Denver City Council. EPRD shall submit its proposed fee schedule to Denver and shall promptly submit proposed changes to those fees. Fees for parking cannot be implemented until approved as set forth in this Agreement.

(v) EPRD shall not have oversight or control over the Evergreen Golf Course parking lot, unless EPRD obtains specific permission from Denver, or is allowed by permit issued by Denver to use Evergreen Golf Course parking lot. Lake House guests are not permitted to park at the Evergreen Golf Course unless allowed by prior arrangement.

(b) Recreation on Evergreen Lake; Permitted Use.

(1) Allowed Activities. EPRD may use and program the surface waters of Evergreen Lake for the public, recreational and park purposes it sees fit. Evergreen Lake shall also remain open for general public use subject to applicable EPRD or Denver rules and regulations. EPRD may maintain and operate a motorized boat on Evergreen Lake for the purpose of emergency and maintenance services. Swimming and similar recreational programs or activity that may affect water quality are not allowed on Evergreen Lake, unless authorized in advance and in writing by the DPR Executive Director, the EPRD Director and EMD.

(2) Regulated Activities. Any activity allowed under Paragraph 11(b)(1) of this Agreement that requires federal, state or local permits or approvals when conducted in or on a park or on a body of water within the City and County of Denver shall require the same federal, state or local permits or approvals when conducted by EPRD at Evergreen Lake. EPRD or its agent, contractor or permittee shall be required to take all appropriate and necessary measures to obtain, comply with, and pay any fees or costs associated with, said federal, state or local permits or approvals and to comply with any related federal, state or local rules and regulations. It shall be the responsibility of EPRD to assure that its agents, contractors, and permittees obtain, comply with, and pay for such federal, state or local permits or approvals and to inquire with the DPR Executive Director if there is any doubt about such permit or approval requirements. Examples of regulated activities are the state licenses that may be required for boating and fishing.

(3) Equipment Rental; Lessons. Equipment rentals and lessons for all allowed activities in Paragraph 11(b)(1) above may be provided by EPRD or through a concessionaire retained by EPRD in accordance with this Agreement.

(4) **Permitting.** If EPRD requires permits or admission passes for certain uses specified by EPRD, or use allowed watercraft on or at Evergreen Lake, EPRD shall issue such permits or admission passes, impose such fees and charges, and for appropriate activities, require insurance and release and waivers, in accordance with this Agreement and subject to the requirements applicable to allowed and regulated activities stated above. EPRD may, in its discretion, restrict fishing on its shoreline within the Dedisse Premises in accordance with **Exhibit A**. Denver shall be solely responsible for regulating public use on those portions of Evergreen Lake and its shoreline that are outside of the Dedisse Premises described in **Exhibit A**.

(5) **Safety.** All public activities on Evergreen Lake shall be subject to the safety requirements set forth in Paragraph 11(e), below. All equipment made available for patron usage shall be kept in a good and safe condition, and routine maintenance and safety checks shall be conducted on all such equipment. Life preservers shall be provided for free to patrons using watercraft provided by EPRD or EPRD's concessionaire. All children under sixteen (16) years of age shall be required to wear life preservers when on watercraft. All use and safety requirements and guidelines shall be prominently posted for patrons.

(6) **Motorized Vehicles on Ice.** EPRD shall implement and enforce written safety standards and restrictions, with respect to any motorized vehicles operated by EPRD, its agents, contractors or concessionaires on the ice at Evergreen Lake, or other use allowed by EPRD.

(7) **Liability and Responsibility.** EPRD is authorized to operate, conduct and permit activities and programs on Evergreen Lake, and may contract with third parties to conduct activities and programming. EPRD shall require third party contractors conducting activities and programming on behalf of EPRD to obtain the proper liability insurance to include Denver and EMD as additional insureds; and shall require that the third-party contractor indemnify Denver and EMD, both consistent with and in accordance with this Agreement. EPRD is solely responsible and liable for its activities and programs it conducts on Evergreen Lake. EPRD does not by this Agreement assume any heightened or additional liability or responsibility for passive park use.

(c) Dedisse Premises Activities and Commercial Activity.

(1) **Allowed Activities.** The Dedisse Premises have been used for a variety of social and recreational activities during EPRD's tenure of operating the Dedisse Premises. Denver and EPRD agree that such social and recreational activities should continue. In order to assure compliance with the "park purpose" restrictions of § 2.4.5 of the City Charter, it is agreed that all such social and recreational activities shall be those common and customary to parks and recreational facilities operated by governmental entities and that any question as to whether a proposed new social or recreational activity, or any part of such activity, is common and customary shall be submitted in advance and in writing, to the DPR Executive Director for a determination prior to such activity being authorized.

(2) **Regulated Activities.** Any activity allowed under Paragraph 11(c)(1) that requires federal, state or local permits or approvals when conducted in or on a park operated by Denver, including within any Denver Mountain Park, shall require the same federal, state or local permits or approvals when conducted or allowed by EPRD at the Dedisse Premises. EPRD or its agent, contractor or permittee shall be required to take all appropriate and necessary measures to obtain, comply with, and pay any fees or costs associated with, said federal, state or local permits or approvals. It shall be the responsibility of EPRD to assure that its agents, contractors, and permittees obtain, comply with, and pay for such federal, state or local permits or approvals and to inquire with the DPR Executive Director if there is any doubt about such permit or approval requirements.

(i) **Fireworks.** In addition to the requirements of this subparagraph (c)(2), any fireworks display on any part of Denver Property, whether for staging of the display or seating of observers, shall require that EPRD or the third party hosting the display obtain a permit from the Denver Fire Department, along with a permit from Denver. Displays at the Evergreen Golf Course, whether the display is staged at the Evergreen Golf Course or observers are seated at the Evergreen Golf Course, or both, shall require that EPRD or the third party hosting the display obtain a permit from Denver Golf Enterprise, along with the permit from Denver Fire Department. EPRD or the third party shall apply by no later than sixty (60) days prior to the intended date of the fireworks display.

(ii) **Winter Activities.** EPRD shall have no authority to permit winter activities on any other Denver Property, including the Evergreen Golf Course, unless by separate agreement or permit.

(3) **Commercial Activity.** Commercial activities including commercial sales or promotions are allowed at or on the Dedisse Premises only so long as the commercial activity is associated with an event or facility rental and serves a park purpose. EPRD may allow for-profit or non-profit entities to sponsor EPRD events. Events for sponsorship may include, but are not limited to, runs, races, walks, public gatherings, concerts, and special occasions. Authorized concessions as provided for in this Agreement and caterers providing food and beverage service for permitted events, including EPRD preferred caterers and caterers selected by individuals pursuant to a special permit for a such permitted event(s) are allowed. Restrictions against commercial activity shall not apply to EPRD retail operations, and non-profit organizations and groups which have a permit issued by EPRD in accordance with sub-paragraph 12(a) of this Agreement and which are engaged in fundraising for a charity or a public good or which are selling goods, food and beverages for the direct benefit of the non-profit purpose of the organization or group. No commercial activity is permitted to directly compete with Denver Golf retail operations at the Evergreen Golf Course. Under all circumstances, the sale or sampling of the following is strictly prohibited: tobacco products; packaged liquor, wine, or beer intended for consumption off-premises; marijuana; adult materials; fireworks; firearms; and food or beverages in glass bottles or glass containers.

(d) **Rules and Regulations.**

(1) Denver and EPRD shall develop a coordinated system of regulating public behavior and activities in or on the Dedisse Premises in order to protect and preserve safety and all Denver Property. All rules for Dedisse Parks proposed by EPRD are subject to prior review and written approval by DPR. DPR Park Rules and Regulations as well as Denver laws, ordinances and regulations shall apply and take precedence on all Denver Property, including the Dedisse Premises. However, EPRD Park Rules may apply in addition to the DPR Rules, only to the Dedisse Premises, and only to the extent that they do not conflict with DPR Park Rules. EPRD may enforce rules that have additional restrictions, above, beyond, supplemental to and not in conflict with, DPR Park Rules, which Denver agrees are appropriate for the Dedisse Premises upon prior written approval from DPR. In the event that any EPRD Park Rules should ever be contrary to or inconsistent with the DPR Park Rules, directives of the DPR Executive Director, or other applicable City ordinance, the DPR Park Rules, directives of the DPR Executive Director, or other applicable City ordinances shall apply and pre-empt any contrary or inconsistent EPRD Park Rules. The rules agreed upon by DPR and EPRD applicable to the Dedisse Premise shall together be referred to as “Park Rules”.

(2) Enforcement. In the case where a park patron fails to comply with Park Rules and EPRD determines that enforcement assistance or action may be needed, EPRD may contact Denver Park Rangers for enforcement of Park Rules, or the Jefferson County Sheriff’s Department for other enforcement assistance.

(3) EPRD Park Rules Exemption. To the extent EPRD Park Rules may apply, EPRD Park Rules shall not be applicable to Denver’s officials, employees, agents, fire or law enforcement personnel, park rangers, or contractors acting within the scope of their official, employment or contractual authority, including in the enforcement ordinances, rules, regulations and other applicable laws of Denver on Denver Property; provided, however, that EPRD shall not be responsible for the conduct of any personnel, or liability that may be caused by such personnel exempted by this sub-paragraph 11(d)(3).

(4) DPR Retained Rights. The DPR Executive Director retains the right to exercise the regulatory powers and authority delegated to the DPR Executive Director by the City Charter, as implemented in the DPR Park Rules, and to pursue enforcement through Article I of Chapter 39 of the DRMC, on Denver Property including the Dedisse Premises. The DPR Executive Director may apply DPR Park Rules to Denver Property and direct DPR staff, including park rangers, or request the Jefferson County Sheriff’s Office to engage in such enforcement on any part of Denver Property.

(5) DPR Park Rules Exemption. The DPR Park Rules shall not be applicable to EPRD officials, employees, agents, or contractors acting within the scope of their official, employment or contractual authority.

(6) Exceptions to the Application of DPR Park Rules. To the extent that an activity or use is expressly and unqualifiedly authorized under this Agreement, but which would otherwise be in violation of DPR Park Rules, such activity shall be regarded as an exception from the application of the DPR Park Rules. If EPRD determines that a proposed activity or use which

would otherwise be in violation of DPR Park Rules should be allowed, the EPRD Director shall submit a prior written request to the DPR Executive Director requesting such an exception and explaining the circumstances and conditions under which an exception is necessary and appropriate. The DPR Executive Director shall have the sole discretion to grant or deny the exception.

(7) Amendments to Rules. Denver and EPRD agree to provide each other with reasonable notice of any changes proposed to the DPR Park Rules to the extent changes may affect the Dedisse Premises and the EPRD Park Rules applicable to Dedisse Premises in advance of such changes being adopted or enacted. EPRD shall retain the right to request reasonable exemptions from current or proposed rules. The DPR Executive Director reserves the right to reject any new or amended EPRD Park Rules that are contradictory to or would result in a violation of City laws, including DPR Park Rules. Denver and EPRD will not, in any event, propose any changes in laws, rules, or regulations applicable to any Denver Property as a means to depart from or negate the express terms of this Agreement.

(e) Safety. All public activities at Dedisse Premises and Evergreen Lake shall be subject to the safety requirements and rules and regulations specified in this Agreement and any safety requirements and rules and regulations applicable under federal, state or local law. EPRD shall establish written safety standards and emergency response protocols to protect the public health and safety, as well as EPRD employees, contractors, and volunteers, and shall, upon request, provide a copy of the policies and programs, and any amendments thereto, to the DPR Executive Director. Upon reasonable request from DPR, EPRD shall provide incident reports involving safety issues, instances of theft, property damage, or personal injury.

(f) Denver Programming.

(1) Denver and EPRD will, from time to time and consistent with each Party's mission, coordinate and cooperate on joint programming in Dedisse Park and on Evergreen Lake. Denver and EPRD will develop procedures to coordinate their respective programming in Dedisse Park including Evergreen Lake.

(2) No later than ninety (90) calendar days prior to the beginning of the summer season (May 1) and prior to the beginning of the winter season (November 1), each Party shall provide the other Party its intended programming schedule for the upcoming season related to Dedisse Park and the Lake. EPRD's proposed schedule shall include any proposed third-party use. No DPR programming or use is intended to interfere with EPRD activities, concessions, services or any passive use at the Dedisse Premises. Each Party shall provide comments to the other Party within ten (10) calendar days of submission. A final schedule shall be agreed upon within seventy-five (75) calendar days before the beginning of the season. A Party shall provide schedule modifications to the other as soon as reasonably possible to avoid disruption to other Party's use.

(3) Should overall usage of Evergreen Lake become a safety concern or potentially impact the natural areas, Denver, in consultation with EPRD and EMD, will establish

safe and reasonable capacity metrics that best serve the proposed activities. A proportionate reduction of each Party's programming will be required if the agreed upon capacity is projected to be exceeded. Denver may be charged discounted rental rates for equipment usage. There shall be no charge for Denver's activities conducted by Denver's Recreation division in Dedisse Park and on Evergreen Lake.

12. FACILITY PERMITS; PERMITTED ALCOHOL; EPRD EVENTS; CONCESSIONS; CITY USE OF LAKE HOUSE.

(a) Facility Permits. EPRD shall have the right to issue permits ("Facility Permits"), subject to approval by DPR and Denver City Council of fees charged for permits, allowing for and regulating groups, organizations or private parties that wish to reserve all or a part of the Dedisse Premises (and limited only to the Dedisse Premises) for short term public and private events ("Events"), subject to all of the following terms and conditions:

(1) EPRD has adopted, implemented, and administered a permit system for Events at the Dedisse Premises.

(2) The EPRD permit system, and its implementation and enforcement, is in conformance with this Agreement and all Applicable Law.

(3) Any proposed Event complies with the allowed and regulated activities stated in sub-paragraphs 11(b)(1) and (2) and 11(c)(1) and (2) of this Agreement.

(4) Food and beverage service by permittees or caterers retained by permittees for Events shall be subject to all health and sanitation requirements of Jefferson County Public Health and any other applicable health and food laws.

(5) EPRD may at its discretion hold Events within the Dedisse Premises. Any Event outside of the Dedisse Premises, whether or not it requires the payment of admission charge or other consideration to the organizer or sponsor of the Event, shall require an event permit or some other form of written permission issued by Denver, which may be given via email, letter, or similar means at Denver's discretion. Events proposed to occur outside of the Dedisse Premises, or to use of Denver Property outside of the Premises but for an event, shall require approval by DPR. EPRD shall submit requests for Events or for use outside of the Dedisse Premises to DPR, and DPR will promptly review for approval. Denver shall not unreasonably withhold approval for such events or use. Denver reserves the right to implement additional fees or requirements for events or for use proposed or anticipated to expand beyond Dedisse Premises, for example, races or runs using trails on Denver Property but outside of the Dedisse Premises.

(6) General liability and other insurance appropriate for the proposed Event, whether inside or outside of the Dedisse Premises, shall be required as a condition of the issuance of an Event permit. EPRD shall require that Denver is named as an additional insured on all insurance, and shall require that Denver is specifically indemnified by the Event permittee. The EPRD Director shall consult with the DPR Executive Director and Denver's Risk Management

Office from time to time as to the appropriate insurance requirements for Events. Permittee is required to add EPRD and EMD as additional insureds and indemnitees.

(7) Any fees and charges required by EPRD for Facility Permits are subject to the terms and conditions set forth in subparagraph 13(c) of this Agreement regarding the approval of fees by the DPR Executive Director and Denver City Council; however, EPRD may set, collect and retain separate charges set by EPRD for the use of EPRD Property or services provided by EPRD as set forth in sub-paragraph 13(d).

(8) EPRD shall require all permit holders, renters or other users to sign a release and waiver form as approved by for Denver's Attorney's Office on behalf of Denver and by EPRD and its legal counsel. Said form shall expressly include a release and waiver with respect to liability claims against Denver and EPRD, and against EMD with respect to Evergreen Lake.

(9) Any trash and debris on Denver Property outside of the Dedisse Premises caused by EPRD use or an EPRD permitted Event shall be cleaned and removed by EPRD.

(b) Permitted Alcohol. Except as otherwise agreed and unless EPRD is expressly exempted by Denver ordinance or regulation, this Agreement or special event policies promulgated by Denver, the following alcohol restrictions will apply to the Dedisse Premises.

(1) Definitions. For the purposes of this sub-paragraph 12(b):

(i) "Concession License" shall mean a license authorizing the operation of a concession under sub-paragraph 12(d) of this Agreement and which expressly authorizes the concessionaire to sell or serve Permitted Alcohol for public consumption solely within the specified concession site and which is only granted upon concessionaire demonstrating that the required license has been obtained, and continues to be maintained, in accordance with State Liquor Laws.

(ii) "Facility Permit" shall mean a permit authorized and issued under sub-paragraph 12(a) of this Agreement, which Facility Permit expressly authorizes the permittee to sell or serve Permitted Alcohol for public consumption solely within the permitted area of the Dedisse Premises, the Dedisse Facilities and which is only issued upon permittee obtaining and maintaining any license or permit required under State Liquor Laws.

(iii) "Permitted Alcohol" shall mean fermented malt beverages or malt liquor (beer), vinous liquor (wine), and spirituous liquor (hard liquor) as defined in the Colorado Liquor Code, as that code may be amended from time to time.

(iv) "State Liquor Law" shall mean any legal requirement, restriction or prohibition contained in the Colorado Liquor Code and any license or permit, issued by the State of Colorado or Jefferson County, under State Liquor Law.

(2) Authorization Required. The sale or service of Permitted Alcohol

within the Dedisse Premises and the consumption of Permitted Alcohol sold or served at the Dedisse Premises or the Dedisse Facilities are permitted to the extent expressly allowed by State Liquor Law.

(3) License or Permit. The right of a concessionaire operating under a Concession License or a permittee operating under an issued Facility Permit to engage in the service or sale of Permitted Alcohol to the public shall be subject to the same obtaining and strictly complying with all relevant licenses, permits and approvals issued in accordance with State Liquor Law (“**Liquor License**”) and with any additional requirements or restrictions set forth in this paragraph 12.

(4) Location. No service or sale of, and no consumption of served or sold, Permitted Alcohol shall be allowed outside of the Dedisse Premises, except with separate permission from Denver, whether by written and issued permit or other permission or authorization. If any other regulation or licensing restriction should further limit the location for the sale, service or consumption of Permitted Alcohol, concessionaire or permittee, as applicable, shall comply with said regulation or licensing restriction.

(5) The sale, service and consumption of Permitted Alcohol shall not be allowed until sufficient evidence of liquor legal liability insurance coverage is provided to EPRD by the concessionaire or permittee, as applicable, unless EPRD obtains the liquor liability insurance, which EPRD may obtain in favor of the concessionaire or permittee. EPRD and EPRD’s concessionaire or permittee shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Denver and EPRD and their respective elected and appointed officials, employees and volunteers shall be included as additional insureds on this liquor legal liability insurance coverage. The liquor legal liability insurance requirements may be changed as specified by Denver’s Risk Management Office.

(c) EPRD Events & Fundraisers. EPRD shall have the right to organize and stage its own Events, including fundraising events for the benefit of EPRD and Denver Property, on Dedisse Premises; provided that the Events held by EPRD complies with the allowed and regulated activities stated in sub-paragraphs 11(b)(1) and (2) and 11(c)(1) and (2) of this Agreement. The sale and service of Permitted Alcohol at such an event shall be in strict conformance with sub-paragraph 12(b) of this Agreement.

(d) Concessions; Licenses.

(1) EPRD Concession Authority. EPRD shall have the exclusive right to conduct on its own, or provide by a Concession License agreement between EPRD and qualified concessionaires, operation of multiple-year or seasonal concessions for the sale of food, drink, merchandise, rides, and such other services, products, activities and uses which EPRD, in its reasonable discretion and in accordance with this Agreement, determine is appropriate within or on the Dedisse Premises. All such new or renewed agreements entered into after the execution of this Agreement (“New or Renewed Concession Agreements”) shall contain a provision that DPR may require EPRD to terminate the concession agreement. New or Renewed Concession Agreements may be canceled by DPR if the concessionaire fails to follow applicable law or fails

to comply with this Agreement. DPR shall give written notice to EPRD stating with specificity the reasons for the proposed termination and providing for a ninety (90) calendar day period for cure of the violation. EPRD shall timely inform the concessionaire of DPR's notice to allow the concessionaire the opportunity to cure within the 90-day period. The concessionaire's failure to cure within the 90-day period may result in cancellation of the Concession License.

(2) Food and Beverage Service. If food and beverage service is proposed as part of the concession, such service by a concessionaire shall be subject to all health and sanitation requirements of Jefferson County Public Health. EPRD or EPRD's concessionaire shall obtain all required permits or approvals for the operation of a commissary or restaurant within the Dedisse Premises authorized for concessions.

(3) Insurance. General liability, business automobile, workers compensation/employers' liability, personal property, liquor legal liability insurance (if alcohol beverages are served or sold) and other insurance appropriate for the concession shall be required as a condition to operate a concession, and evidence of that insurance, upon request by Denver, shall be provided. If, as part of a New or Renewed Concession Agreements, EPRD allows a concessionaire to operate, or provide the public with the use of, watercraft on Evergreen Lake, watercraft excess liability insurance coverage in the amount of \$300,000 individual/\$700,000 total shall be obtained and maintained. Denver and EPRD and their respective elected and appointed officials, employees and volunteers shall be included as additional insureds on all insurance required under this sub-paragraph (d)(3). During the term of any concession, EPRD shall obtain and retain current certificates of insurance provided by the concessionaire's insurers and shall provide copies of these certificates to the DPR Executive Director upon request. The insurance requirements shall be subject to review and may be changed as specified by Denver's Risk Management Office.

(4) Effect of this Agreement. The concessionaire to provide service under a New or Renewed Concession Agreements shall be provided with a copy of this Agreement prior to execution of the Concession License agreement and properly informed that the terms and conditions of this Agreement shall control and prevail over any contradictory or inconsistent terms and conditions of the concession license agreement. The requirements of this paragraph shall be specifically stated in the concession license agreement.

(e) Lake House Use by Denver. Provided Denver gives at least thirty (30) days but not more than ninety (90) days advance written notice to EPRD, and provided there is availability at the Lake House for a selected date, Denver shall be entitled to the free (no charge) use of Evergreen Lake House and the parking lot near the Evergreen Lake House. The free (no charge) use of the Evergreen Lake House shall be limited to no more than three (3) times a year by Denver staff, public official, and Denver agency use. Denver agrees to pay for any rentals of equipment or other items necessary for use the Lake House, and to pay for any staff time or consumables required by Denver use, both at negotiated discount rates. Denver shall be solely responsible for the conduct of its staff, public officials and Denver agents during any permitted Lake House use subject to Governmental Immunity and self-insurance. Denver shall follow and observe all rules and regulations applied to other members of the public during permitted uses at

the Lake House.

13. REVENUES; EXPENDITURES; FEES and CHARGES; GIFTS; SPONSORSHIPS; GRANTS and FUNDING; COMMUNICATIONS.

(a) Annual Payment. Commencing on the Effective Date, EPRD shall be charged **Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)** per year for the use of Dedisse Park (“**Annual Payment**”), due to Denver by December 31 of each year. In lieu of making the Annual Payment, EPRD may opt to retain the \$25,000.00 and apply that amount to future Capital Improvements to Dedisse Park. EPRD shall only retain a maximum Annual Payment amount of **One Hundred Thousand Dollars and Zero Cents (\$100,000.00)**. Any Annual Payment in excess of the \$100,000.00 maximum shall be paid to Denver. The Annual Payment balance shall be reported in the Financial Report required under this Paragraph 13. Funds from the Annual Payment shall not be applied to Lake House Capital Improvements.

(b) Expenditures. All EPRD expenditures at or on Dedisse Premises shall be paid by EPRD out of funds it generates as specified in sub-paragraph 13(g) of this Agreement.

(c) Admission Fees. No fees or charges shall be set, assessed or collected by EPRD as a condition of public admission to or use of any part of the Dedisse Premises including Evergreen Lake (“**Admission Fees**”), unless a full schedule of the Admission Fees are submitted for the prior written approval of the DPR Executive Director. DPR shall duly submit proposed Admission Fees to Denver City Council for approval in accordance with Denver City Charter and Ordinance. Any proposed new or modified Admission Fees also require written approval by the DPR Executive Director and Denver City Council approval. Admission Fees proposed by EPRD shall not be implemented until approved by the DPR Executive Director and by Denver City Council by ordinance. In no case shall the Admission Fees require Denver citizens to pay more than the most favorable rate for admission charged by EPRD.

(d) Other Charges or Recovered Costs. In connection with its operations on Denver Property, EPRD shall have the authority to set, assess, and collect any charges, other than Admission Fees, fees for Facility Permits and fees for rental of Facilities or real property, without the prior approval of the DPR Executive Director, and to recover costs against parties other than Denver for expenditures incurred by EPRD. This right shall include fees, charges and recovered costs for rental or use of EPRD Personal Property, lessons, special services, clean up, repairs for damages caused by third parties, and similar matters.

(e) Gifts and Sponsorships. EPRD shall have the authority to accept and utilize gifts, donations, and contributions made directly to EPRD of money and personal property (“**Gifts**”), including Gifts conditioned upon certain recognitions, except as limited in this sub-paragraph (e). Any Gifts provided by for-profit and nonprofit entities conditioned upon naming rights (“**Sponsorships**”) shall only be accepted in accordance with Denver’s sponsorship or naming rights laws and policies. EPRD shall notify Denver of any Gifts received for the benefit of Dedisse Park in order to comply with Chapter 39, Article XI, D.R.M.C. EPRD may, in its discretion, refuse to accept any Gift or Sponsorship if EPRD determines that such Gift or Sponsorship would not be in the best interests of the Dedisse Premises or EPRD, or not consistent

with this Agreement. EPRD may develop policies, regarding formal recognition, acknowledgments, or memorials associated with Gifts or Sponsorships, including but not limited to signs posted on Dedisse Property, which shall be submitted to DPR for review and approval prior to execution or installation. These policies must be consistent with the terms and conditions of this Agreement, City laws and regulations, and DPR policies and the policies adopted by EPRD. EPRD shall be responsible for complying with the terms and conditions of this Gifts and Sponsorships provision. EPRD shall submit proposals for recognition and signage for approval by DPR before accepting and agreeing to any recognition or signage. DPR reserves the right to approve, reject or modify the proposed recognition or signage. Gifts and Sponsorships to Denver or for the benefit of other Denver Property shall only be accepted and approved by Denver.

(f) Grants. EPRD shall have the right to apply for, accept and utilize, for the benefit and use of Dedisse Premises and EPRD, including for the purposes under paragraph 10(e), grants and other governmental or private financial assistance (“**Grants**”). EPRD and Denver agree to collaborate and support each other’s efforts to obtain Grants for the development of Denver Property including the Dedisse Premises and the support and enhancement of programs and activities conducted by EPRD. Any matching fund requirement of a Grant to benefit the Dedisse Premises shall be the responsibility of EPRD unless Denver has approved in advance the matching fund requirement in accordance with Denver ordinance and appropriated its share of the matching funds. Any Grant which requires certain covenants, conservation easements, or other restrictions be imposed on the Dedisse Premises, in whole or part, as a condition of obtaining the Grant must be approved in advance by the DPR Executive Director and, if applicable, through Denver’s established contract process including Denver City Council approval, prior to submittal of the grant application. EPRD shall be responsible for complying with the terms and conditions of Grants received by and for the benefit of EPRD. Any grant or other funding for the sole or partial benefit of, or requiring the approval of the owner of the real property, shall require the prior approval of DPR. No other Denver agency is authorized to approve a grant intended to benefit the Dedisse Premises or any other land or facility operated and managed under DPR’s authority.

(g) Funding. In order for EPRD to achieve and continue the public purpose of this Agreement, funding for the operation and development of Dedisse Premises shall be provided or obtained, and may also include funding for other Denver Property with Denver approval only, subject to the terms and conditions stated in this Agreement, from the sources listed below:

(1) All revenues generated or received by EPRD through its operation or use of the Dedisse Premises or other Denver Property, including but not limited to those revenues generated under Paragraphs 12 and 13 of this Agreement.

(2) Funds accepted by EPRD for Gifts, Sponsorships, and Grants and any funds received from fundraising for development or operation of the Dedisse Premises.

(3) Income and interest earned by EPRD on investments of revenues it holds in association with the Dedisse Premises.

(4) Funds received by EPRD or its subusers or agents for the benefit

and use of Dedisse Premises from, and utilized in accordance with, the provisions of the Scientific and Cultural Facilities District Act (C.R.S. § 32-13-101 *et seq.*) as amended or replaced.

(5) Donations of money or grants made to Denver with donor restrictions for the use and benefit of Dedisse Premises may be transferred to the control of EPRD at the sole discretion of the DPR Executive Director.

(6) Appropriations made by EPRD based on taxes and other revenue sources authorized under the special district provisions of Article 1 of Title 32 of C.R.S. and collected by EPRD and made available by EPRD for the use and benefit of Dedisse Premises.

(7) Appropriations made by Denver for the benefit of Dedisse Property or EPRD in such amounts and upon such availability as Denver determines, in its sole discretion, to be necessary or desirable.

(8) Bond proceeds designated for developing Dedisse Premises, subject to any required voter approval, may be issued by Denver or EPRD in the amounts and for the stated purposes.

(h) Political Activity. No funds provided by Denver or through Grants or Gifts shall be used by EPRD or its subusers or agents in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. A strict accounting of all funds used by EPRD for political activity shall be maintained and available for public review.

(i) Recognition Signs. Except as limited by Section 13(e) regarding naming rights and sponsorships, EPRD or its subusers or agents may post discreet and appropriate signs recognizing the financial support of Denver, or the provider of any Grant or Gift and shall post specified signs required as a condition of the financial support. These and any other signs on the Dedisse Premises shall comply with DPR and Denver signage standards and requirements.

(j) Annual Report and Plan. The EPRD Director shall, on an annual basis and after approval by the Board of Directors within sixty (60) days of the close of the fiscal year, provide to the DPR Executive Director a written report of its activities during the preceding year, and proposed activities and plans for the upcoming year (“**Annual Report and Plan**”), which shall be submitted in addition to the Financial Report, defined below in subparagraph (k). The Annual Report and Plan shall include those items identified below. If no changes or proposals were made in the preceding year, then EPRD shall so state in the Annual Report and Plan.

- (i) Proposed Facility Permit fees or rental fees and/or Admission Fees changes for the upcoming year;
- (ii) Proposed changes to parking rates for the upcoming year;
- (iii) List of new event plans for operation or use of Dedisse Premises

- not part of an adopted master plan;
- (iv) List of completed construction, renovation or maintenance projects from the preceding year, and copies of as-builts where applicable;
- (v) List of any donated money or donated property made for the benefit of the Dedisse Premises or any Denver Property (details shall be provided in the Financial Report);
- (vi) Planned or proposed Capital Improvement Projects for the upcoming year;
- (vii) Planned or proposed modifications to EPRD's master plan affecting the Dedisse Premises;
- (viii) Proposed changes to EPRD Park Rules or regulations;
- (ix) Changes to the personnel policy made in the preceding year;
- (x) Proposed Events in Dedisse Premises for the upcoming year;
- (xi) Proposed annual budget for the upcoming year;
- (xii) Number of participants in EPRD programs on Dedisse Premises;
- (xiii) Number of individual and group permits issued for lake usage;

(k) Financial Report. EPRD shall annually provide, within fifteen (15) days of receipt by EPRD, copies of audited financial statements ("**Financial Report**"), including but not limited to all Admission Fees and other fees or other charges related to the operation and use of Dedisse Premises or participation in programs or activities on Dedisse Premises. EPRD shall also report whether it has opted to retain the Annual Payment under Paragraph 13(a) and provide the balance of the retained Annual Payment, if any.

(l) Meeting. EPRD and Denver staff shall also meet at least once each year during the calendar year, unless DPR waives the meeting, to discuss any accounting, rules, operations, administration or other proposed or necessary matters. DPR may request EPRD to provide additional reporting no more than quarterly per calendar year.

14. UTILITIES and MEDIA SERVICES; UTILITY POLICY and PERMITS; and MEDIA SYSTEMS.

(a) Utilities & Media Services. EPRD shall provide, at its own expense, all utilities used to operate and maintain Dedisse Premises, including water, sanitary sewer, storm sewer, gas, heat and cooling, electricity, solar, telephone, cable, satellite, internet, wireless internet, and other utility, media or communication services. EPRD shall timely and fully pay all utility charges, service charges and related taxes, assessments and surcharges for utilities, media or communication services for the Dedisse Premises. EPRD shall, consistent with the proper maintenance of the Dedisse Premises and the safety of the public, use reasonable efforts to conserve water and energy use at the Dedisse Premises consistent with Denver's and EMD's water conservation programs or efforts. The EPRD Director shall submit to the DPR Executive Director such reports of its water and energy conservation programs as the DPR Executive Director may reasonably request.

(b) Utility Permits Not Associated with Capital Improvements.

(i) The DPR Utility Policy applies to all DPR managed and operated land including the Dedisse Premises and any part of the Denver Property. Any installation of new public utility components, or modification of existing utility components, including but not limited to, water pipes or lines; gas pipes or lines; electrical lines or conduits; or other public utilities or infrastructure, within the Dedisse Premises or other Denver Property shall require a utility permit issued by DPR regardless of whether the installation is a part of a specific EPRD project or improvement. Any utility installed on the Dedisse Premises or on other Denver Property must provide exclusive or primary benefit to the Dedisse Premises or Denver Property. Utility installations that do not provide an exclusive or primary benefit to the Dedisse Premises or other Denver Property are prohibited unless DPR provides a prior written exception. Privately owned utilities are prohibited unless otherwise allowed by DPR.

(ii) In order to obtain approval for a public utility installation, EPRD shall provide a request for installation by letter to the DPR Executive Director. The request may be prepared by EPRD or by the utility provider. The letter request shall contain a description of the project and work, depiction of the installation location, reasons why the installation serves Dedisse Park, and the nature of and the need for the utility service. The request must also confirm that the utility is intended to serve a public purpose. The installation shall be at the provider's sole cost unless a part of an EPRD or Denver project or improvement. If the request meets these requirements and is in accordance with DPR's Utility Policy the DPR Executive Director will issue a Utility Permit to the utility provider. A TCAP may be required for work performed outside of the Dedisse Premises.

(iii) Utilities owned by EMD shall not require a DPR Utility Permit. Any additional or ancillary utility installations that EMD requires for the function or operation of its facilities shall be requested by and issued to EMD.

(c) Media Systems. Telephone cell towers, mobile service towers or antennae, or other broadcasting media or communication systems intended to provide media or communication services to customers (i.e., wide broadcast equipment, not including wifi boxes or wifi signal enhancer devices) ("**Media Systems**") are not allowed to be located or operated on the Dedisse Premises. The only exception to this Media Systems restriction are emergency broadcast or warning systems operated by governmental entities or their agents and which are authorized by contract or other legal arrangement with Denver, or EPRD managed recording announcement systems related to conditions for public use of the Dedisse Premises.

15. PERSONNEL.

(a) EPRD Employees. All employees hired or engaged by EPRD to work on Dedisse Premises shall be solely employees of EPRD ("**EPRD Employees**"). EPRD shall have the sole authority to hire, fix the compensation and benefits of, supervise, train, evaluate, discipline and discharge all EPRD Employees, without regard to Denver personnel classification and pay plans and rules and regulations, but otherwise in conformance with all laws governing public employers. Under no circumstances shall EPRD Employees be regarded as employees of Denver;

however, EPRD is expected to inform and all EPRD Employees are expected to comply with the terms and conditions of this Agreement as they may be applicable.

(b) Personnel Policy. EPRD shall maintain a written personnel policy to govern the conduct and rights of EPRD Employees as EPRD may deem necessary and appropriate. Upon request, EPRD shall provide the DPR Executive Director a copy of its current personnel rules and regulations and a description of its pay and benefits for the EPRD Employees.

16. INSURANCE; LOSS OR DAMAGE; and PERSONAL PROPERTY.

(a) Worker's Compensation/Employers' Liability, General Liability. Unless other insurance requirements or obligations are provided for in this Agreement, EPRD shall secure, maintain and pay for, at all times, statutory worker's compensation insurance, employers' liability insurance, and general liability insurance to meet its liabilities under the Colorado Governmental Immunity Act, 24-10-101 *et seq.*, C.R.S. EPRD shall be responsible for payment of any deductibles or self-insured retention for its insurance coverage. These insurance obligations shall survive the termination of this Agreement.

(b) Property Insurance. Unless other insurance requirements or obligations are provided for in this Agreement, EPRD shall secure, maintain and pay for All-Risks Property Insurance, on a replacement cost basis ("**Property Insurance**"), including coverage for personal property and business interruption, for the Dedisse Premises (including to the extent that a specific other Denver Property may be brought as described in sub-paragraph 7(b) of this Agreement) and for EPRD Property. For facilities located in a flood zone, flood insurance will be included or purchased separately. Denver reserves the right to obtain and maintain its own property insurance on the Dedisse Premises and Other DMP Facilities; however, the EPRD Property Insurance shall be primary and non-contributory with other coverage or self-insurance maintained by Denver. EPRD shall strictly comply with all requirements and conditions imposed by the insurer as a condition of coverage under the Property Insurance. EPRD shall be responsible for payment of any deductibles for its Property Insurance. These insurance obligations shall survive the termination of this Agreement, with coverage for Denver Property losses that occur prior to termination of the Agreement. Required insurance shall not apply to losses that occur after termination of the Agreement.

(c) Other Provisions. The type or amount of insurance coverage retained by EPRD or the failure to obtain or maintain insurance shall not obligate Denver to provide such insurance or to incur or pay any liability which is the responsibility of EPRD under this Agreement is if EPRD has inadequate or no insurance or self-insurance coverage. The minimum insurance requirements set forth in Paragraph 16 shall not be deemed to limit, modify or define the obligations of EPRD under this Agreement. Denver's Risk Management Office retains the right to review insurance requirements and amend such requirements as needed based on the current insurance market conditions or business needs.

(d) Evidence of Insurance. EPRD shall provide to Denver a certificate of insurance evidencing the required insurance annually upon renewal of all required insurance.

Certificates of insurance shall be sent to the addresses included in the Notices paragraph of this Agreement. Denver's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(e) Loss or Damage: Denver shall not be liable or responsible to EPRD for any loss or damage to any property or person occasioned by theft, fire, vandalism, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or requisition or regulatory order of any governmental entity. In the event of a fire or other casualty in or to the Dedisse Premises, the EPRD Director shall immediately give notice thereof to the DPR Executive Director. If a Permanent Improvement is totally destroyed by fire or other casualty, or partially damaged by fire or other casualty, so as to render the Permanent Improvement untenable or unusable, whether or not the fire or casualty is due to fault or neglect of EPRD, its agents, employees, contractors, volunteers, or invitees, then EPRD shall be free to elect to repair or replace the damaged or destroyed Permanent Improvement or to terminate this Agreement with respect to the damaged or destroyed Permanent Improvement. If EPRD elects to repair or replace damaged or destroyed Permanent Improvement, the work shall be done in accordance with the requirements of Paragraph 10 of this Agreement regarding Capital Improvements Projects. If EPRD does not elect to repair or replace the damaged or destroyed Permanent Improvement, EPRD agrees to promptly pay or pay when available to Denver, or to assign any rights EPRD has to, any proceeds EPRD receives or is entitled to receive from the Property Insurance, and the Agreement with respect to the damaged or destroyed Permanent Improvement shall terminate.

(f) Personal Property. In the event that EPRD suffers a loss to EPRD Property due to theft or damage of or to the EPRD Property resulting from the sole negligence or deliberate misconduct of Denver's officers, employees, agents or contractors, EPRD may request, in writing, that Denver replace or repair, as appropriate, the lost or damaged EPRD Property and, subject to appropriation and available funds, Denver may elect to so compensate EPRD to the extent of the proven loss or damage.

17. LIABILITY; LEGAL REVIEW.

(a) EPRD. To the extent authorized by law and except as otherwise provided in this Agreement and subject to the limitations of the Colorado Governmental Immunity Act, EPRD 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 action or omission of EPRD or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

(b) Denver. To the extent authorized by law and except as otherwise provided in this Agreement and subject to the limitations of the Colorado Governmental Immunity Act, Denver 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 Denver, or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

(c) Officials and Employees. EPRD and Denver are each responsible for its own negligence and that of their officials, officers, employees, and agents, to the extent provided

in the Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

(d) Governmental Immunity. Nothing in this Paragraph 17 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations of liability the Parties may have under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, or to any other defenses, immunities, or limitations of liability available to Denver and EPRD against third parties by law.

(e) Limitation of Liability. No official, officer, employee, or agent of either Party shall be charged personally, or held contractually, liable to the other Party or its officials, officers, employees, or agents, under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(f) Claims and Liabilities. EPRD shall be responsible for defending against any claims, demands, suits, judicial actions, administrative proceedings and similar legal actions made or brought by members of the public, vendors, contractors, subcontractors, consultants or sub-consultants, concessionaires, permittees and invitees who are or were authorized by EPRD to be on Dedisse Premises or who are or were engaged in uses and activities on Dedisse Premises under this Agreement (“**Claims**”). These Claims shall include but not be limited to those pertaining to payments for work contracted by or on behalf of EPRD, worker’s compensation claims of EPRD employees, debts created or owed by EPRD, violation of civil rights caused or allowed by EPRD, and damage to property and/or injury to persons (including death) caused, or contributed to, by EPRD or its officials, officers, employees, agents, contractors, subcontractors, consultants, sub-consultants, concessionaires, permittees and/or invitees. This sub-paragraph 17(f) shall apply whether the Claims are brought against EPRD, Denver, or both EPRD and Denver. To the extent that a legal liability should arise from such Claims for any judgment, damages, moneys owed, garnishment or execution, costs, expenses, attorney’s fees or similar financial liabilities except as provided in sub-paragraph 17(b) of this Agreement (“**Liabilities**”), EPRD shall be solely responsible for paying or settling such Liabilities.

(g) Notice of Claims. In the event that any Claim is made or brought by any person or entity against EPRD or Denver related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said Claim to the other Party. The Parties shall cooperate in defending against the Claim subject to sub-paragraph 17(f) of this Agreement and to the extent such common defense is consistent with each Party’s rights and obligations under this Agreement.

18. TAXES; LICENSES; LIENS, and DEBTS.

(a) Taxes. EPRD shall collect and remit all applicable sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) Licenses. EPRD shall take out, keep current, and comply with all licenses,

permits, or other authorizations (local, state, or federal) required for the performance of this Agreement.

(c) Liens. EPRD shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon Denver Property, or any part thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for EPRD, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(d) Debts. EPRD shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of Dedisse Premises and shall not permit the same to become delinquent. EPRD shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of Denver under this Agreement or its rights to Denver Property.

(e) Final Adjudication. EPRD may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. EPRD may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing Denver's rights until final adjudication.

19. TERMINATION; DEFAULT; SURRENDER AND RE-ENTRY; and CONCLUDING AFFAIRS.

(a) Mutual Termination. Denver and EPRD may mutually agree to terminate this Agreement at any time and upon reasonable mutual agreement for procedures to unwind the operating responsibility for programming pursuant to this Agreement. If such mutual agreement to terminate occurs, EPRD shall vacate all of the Denver Property in accordance with sub-paragraph 19(c) and 5(a) of this Agreement and shall conclude its affairs with respect to Denver Property in accordance with sub-paragraph 19(d) of this Agreement.

(b) EPRD Default. Denver may, in its reasonable discretion and upon written notice describing in detail the specific incidents and terms of the Agreement constituting a perceived default, terminate this Agreement in the event that EPRD shall default or breach, on its part, in the performance or fulfillment of one or more material terms, promises, or conditions of this Agreement ("**EPRD Default**") and shall fail to cure or correct such EPRD Default within ninety (90) days (or such later date as specified by the DPR Executive Director) (the "**Termination Date**") following delivery of written notice from the DPR Executive Director to the EPRD Director specifying the EPRD Default and the Termination Date on which Denver may exercise its right to terminate the Agreement if such EPRD Default is not cured or corrected. If the nature of the EPRD Default is such that more than ninety (90) days are reasonably required for its cure or correction, then EPRD shall not be deemed to be in default if EPRD commences such cure or correction, in good faith, within the ninety (90) day period, and thereafter diligently prosecutes such cure or correction to completion. The fact that there is an established Termination Date or

an extended period for any cure or correction for an EPRD Default shall not excuse the obligation of EPRD to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to Dedisse Premises or adjacent Denver Property or any existing or imminent threat to public health and safety. If the EPRD Default is not substantially cured or rectified by the Termination Date or the end of any extended period specified above, the DPR Executive Director may elect to terminate the Agreement as the DPR Executive Director determines is appropriate. Upon termination, Denver shall have a right to re-enter the property and assume control and full use of the property, and EPRD shall vacate all of the Dedisse Premises in accordance with sub-paragraph 19(c) of this Agreement and shall conclude its affairs with respect to Dedisse Premises in accordance with sub-paragraph 19(d) of this Agreement.

(c) Surrender and Re-Entry of Property. At the expiration or termination of this Agreement, EPRD shall deliver all of the Dedisse Premises to Denver, subject to the procedures in Paragraph 5(a), in substantially the same condition as the Denver Property was in at the beginning of this Agreement, ordinary wear and tear excepted and with the addition of any new Permanent Improvements or Fixtures as authorized under this Agreement. EPRD shall promptly remove all EPRD Property and vacate all of the Dedisse Premises and shall follow the rights to removal provided within Paragraph 5(a) of this Agreement, including any time periods provided for in this Agreement. Any EPRD Property not removed upon vacation by EPRD or re-entry by Denver shall be conclusively deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Denver without notice to EPRD or any other person and without any obligation to account or pay for the property. If the Agreement has been terminated by Denver as provided in sub-paragraph 19(b) of this Agreement and EPRD fails to deliver all of the Dedisse Premises to Denver as set forth herein, Denver shall have the right to re-enter and occupy all of the Dedisse Premises without further notice.

(d) Concluding Affairs.

(1) Financial Obligations. EPRD shall be solely responsible for paying, before or after delinquency, any and all financial and contractual liabilities and obligations related to EPRD's occupancy and use of, and any business conducted on, the Dedisse Premises, any property or goods leased or under contract by EPRD and used or kept on the Dedisse Premises, or Lessee's financial liabilities, including but not limited to any taxes, assessments, fines, judgments and other costs and charges, any of which become payable or due prior to or after expiration or termination of the Agreement.

(2) Permanent Improvements or Fixtures. All rights, title and interests to or in Permanent Improvements or Fixtures on Dedisse Premises, for which EPRD has not transferred, as of expiration or termination of this Agreement, and subject to Paragraph 5(a), shall be transferred to Denver and shall become the property of Denver; however, any financial obligations of EPRD with respect to said Permanent Improvements or Fixtures shall remain solely the obligation of EPRD and shall be promptly paid. Upon request, EPRD shall execute and timely deliver bills of sale to Denver for the unencumbered transfer of these Permanent Improvements and Fixtures.

(3) Gifts, Sponsorships and Grants. All unspent and unobligated funds and other personal property acquired by EPRD through Gifts, Sponsorships or Grants shall be used, distributed or returned by EPRD consistent with the duties and obligations of EPRD has towards the donors or grantees of any such funds or personal property and in accordance with Applicable Law.

20. GENERAL PROVISIONS.

(a) Status of Parties. EPRD and Denver are both independent governmental entities working cooperatively for the purposes of this Agreement.

(b) Nature of Agreement. This Agreement is not intended, nor shall be deemed to create, an agency, partnership or joint venture relationship between Denver and EPRD. In addition, Denver does not employ or hire EPRD to provide services by this Agreement.

(c) Scope of EPRD Authority. The scope of authority of EPRD may exercise shall be as expressly granted or allowed under, or necessarily implied in, this Agreement. EPRD shall have no authority to avoid, modify or waive any applicable City Charter provisions or City ordinances or regulatory requirements enacted or adopted under Denver's police or taxing powers.

(d) Agent. Unless prior, written approval is obtained from both the DPR Executive Director and the EPRD Director, the officials, officers, employees, agents or contractors of one Party shall not be deemed to be the agent of the other Party. Under no circumstances shall such officials, officers, employees, agents or contractors of one Party be deemed an agent for the other Party with respect to entering contracts, sub-contracts or other formal agreements or making an assignment.

(e) Contracts. The authority granted under this Agreement shall not be construed to allow EPRD the right or power to bind, or to impose any liability or financial responsibility upon, Denver through any contracts or agreements EPRD may make, unless the prior, written approval of the DPR Executive Director is obtained and the contract or agreement is in accordance with all Applicable Law. Likewise, Denver shall have no authority to bind, or to impose liability or financial responsibility upon, EPRD through any contracts or agreements Denver may make, unless the prior, written approval of EPRD is obtained and the contract or agreement is in accordance with all Applicable Law.

(f) Work 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 the terms and conditions of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract. Except as otherwise expressly stated in this Agreement, 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. The contracting Party shall, upon request, provide to the other Party a copy of any written contract or subcontract entered for work or services covered by this Agreement.

(g) Assignment. Other than contracting or subcontracting work as provided in this Agreement, EPRD shall not assign or otherwise transfer any rights or obligations under this Agreement, in whole or in part, without the prior written approval of the DPR Executive Director, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of EPRD under this Agreement and (2) shall agree to be bound by the terms and conditions of this Agreement to be performed or satisfied with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment or transfer must be approved and executed in the same manner as this Agreement.

(h) Financial Interests and Encumbrances. Except for financial interests expressly authorized by both Denver and EPRD in accordance with their respective governing laws, any financial interests or obligations created or used by EPRD or its agent(s) 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, Uniform Commercial Code filings, or other debt or financial security instruments, shall expressly exclude any property right, title and interest held by Denver in Denver Property. 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 or used by the financial instrument(s) are subordinate to this Agreement and may not encumber Denver's right, title and interest in Denver Property.

(i) Reasonable Efforts; Good Faith. EPRD and Denver 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. Without limiting either Party's right to assert claims including litigation against the other, the Parties agree and acknowledge that if during the course of a dispute or litigation with a third parties, the Parties fail to agree or cooperate, Denver as fee owner of Dedisse Park and the Denver Property, shall lead the prosecution or defense of the dispute and shall have the final determination in resolving issues.

(j) Appropriation. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that the rights and obligations under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. Failure by either Party to appropriate the necessary funds shall not constitute a breach of this Agreement. This provision shall not be an exception to or a defense against any other alleged breach by either Party leading to termination of the Agreement.

(k) TABOR. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried

over to subsequent years.

(l) 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 good faith, and 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 and conditions hereof; provided, however, that, except as expressly provided in this Agreement, nothing in this sub-paragraph (l) shall be construed as imposing on either Party any greater non-contractual duty or obligation to the other Party or a third party 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.

(m) Non-waiver. Failure to act or exercise rights under this Agreement shall not be construed of a waiver of that right. 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.

(n) No Discrimination in Employment. In connection with the performance of 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, gender identity or gender expression, 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.

(o) Conflict of Interest. EPRD agrees that no official, officer or employee of Denver shall have any personal or beneficial interest whatsoever in the services or property described herein, and EPRD 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.

(p) Applicable Law. The Parties agree to comply with all Applicable Law in existence as of the Effective Date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement. All Applicable Law shall be reviewed and applied in accordance with judicial standards for legislative and administrative acts, as appropriate under the circumstances, and not as a matter of contract law.

(q) Adoption and Interpretation of Law. No Party shall enact or adopt, or take action to interpret in a new or different way, any ordinance, resolution, rule, regulation, policy, directive, standard, or similar legal authority which would directly and substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part. Nothing in this sub-paragraph shall limit the powers and authority of the Parties in adopting any ordinance, resolution, rule, regulation, policy, directive, standard, or similar action, which is of broad and general applicability, or restrict either Party in exercising

existing lawful regulatory or taxing powers and authority so long as this exercise is not done in a discriminatory manner against the other Party nor is done in a manner that fails or refuses to recognize the other Party's governmental tax exemption.

(r) Taxes and Charges. To the extent that it is within its legal authority, EPRD shall waive, or compensate Denver for, any taxes, assessments, fees, charges, or costs imposed by EPRD and applicable to Denver Property; imposed by Jefferson County or the State of Colorado and applicable to Denver Property as the result of the exercise of rights or obligations under this Agreement by EPRD or its officials, employees, agents, contractors, concessionaires, or permittees; or imposed by EPRD or any other taxing authority due to purchases, uses, or activities of Denver directly related to the performance of this Agreement.

(s) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, the applicable provisions of the Denver City Charter, the Denver Revised Municipal Code, and Executive Orders of Denver's Mayor. Venue for any legal action relating to this Agreement shall lie either in the District Court in and for Denver and County of Denver or the District Court for Jefferson County, as the Party bringing the legal action may choose. The Parties agree to first attempt to pursue informal, non-binding resolution of, any dispute which may be or become the subject of any legal action provided for herein.

(t) Enforcement. 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 and recovery of unpaid payments, including interest, required under this Agreement (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, indirect, special, consequential, or punitive damages; provided, further, no provision of this Agreement nor the laws may be enforced by the creation or recording of any type of lien against real property owned by either Party, nor may any property foreclosure process be utilized to recover any moneys owed by one Party to the other Party. 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.

(u) Alcohol & Drugs Policy; Smoking Policy.

(1) EPRD, its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in Denver barring EPRD from further participating in operations related to the Dedisse Premises. EPRD, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. EPRD shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. EPRD agrees

not to use any funds received from Denver under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(2) EPRD has adopted and agrees to enforce with respect to its employees a “no smoking” policy on and in the immediate vicinity of the Dedisse Facilities in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the DPR Executive Director and generally applicable to specified facilities under the auspices of DPR. EPRD will do nothing to violate any Denver policy with regard to public smoking in the immediate vicinity of the Dedisse Facilities; however, EPRD does not have the authority to exercise the police powers of Denver and any enforcement of such policy shall be at the sole authority and discretion of Denver.

(v) 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 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.

(w) 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.

(x) Examination of Records and Audit. Any authorized agent of Denver, including the Denver Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at Denver’s election in paper or electronic form, any pertinent books, documents, papers and records related to EPRD’s performance pursuant to this Agreement, provision of any goods or services to Denver, and any other transactions related to this Agreement. EPRD shall cooperate with Denver representatives and Denver representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the Denver Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require EPRD to make disclosures in violation of state or federal privacy laws. EPRD shall at all times comply with D.R.M.C. 20-276.

(y) Notices. All notices, demands, consents or approvals required or permitted under this Agreement shall be in writing and delivered personally or by overnight courier with written confirmation or sent by certified mail, return receipt requested, to the following:

To EPRD: Executive Director
Evergreen Park & Recreation District
1521 Bergen Parkway
Evergreen, CO 80439

With a copy to: Linda M. Glesne
Cockrel Ela Glesne Greher & Ruhland
44 Cook St. Suite 620
Denver, Colorado 80206

To Denver: Executive Director
Department of Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

With a copy to: City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

The officials or addresses set forth above may be changed at any time by written notice in the manner provided herein.

(z) No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other entity or third person under this Agreement. Any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(aa) Entire Agreement. This Agreement, including the exhibits 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.

(bb) Amendment. Except as expressly provided in this Agreement, this Agreement must 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.

(cc) Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable by a court of law (following all legal rights of appeal or the expiration of time therefore), all other provisions nevertheless shall remain effective, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term, condition, or provision held to be invalid; provided, however, if the invalidated term, condition, or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft and agree to a term, condition or provision that will legally achieve the original intent and purposes of the Parties hereunder.

(dd) No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

(ee) 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.

(ff) 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 and conditions. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement. A Party shall have the right, in its discretion, to either temporarily suspend or permanently terminate the Agreement if there is any valid dispute as to the legal authority of the other Party or the person signing this Agreement on behalf of the other Party to enter into this Agreement.

(gg) Execution of Agreement. This Agreement shall not become effective or binding until it has been approved by the governing bodies of each Party and fully executed by all required signatories of each Party.

(hh) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

(ii) Electronic Signatures and Electronic Records. EPRD consents to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. 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.

[SIGNATURE BLOCK ON NEXT PAGE.]

Contract Control Number: PARKS-202263452-00
Contractor Name: Evergreen Park and Recreation District

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:

Attorney for the City and County of Denver

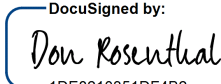
By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202263452-00
Evergreen Park and Recreation District

By:  _____
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Name: Don Rosenthal
(please print)

Title: President, EPRD Board of Directors
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

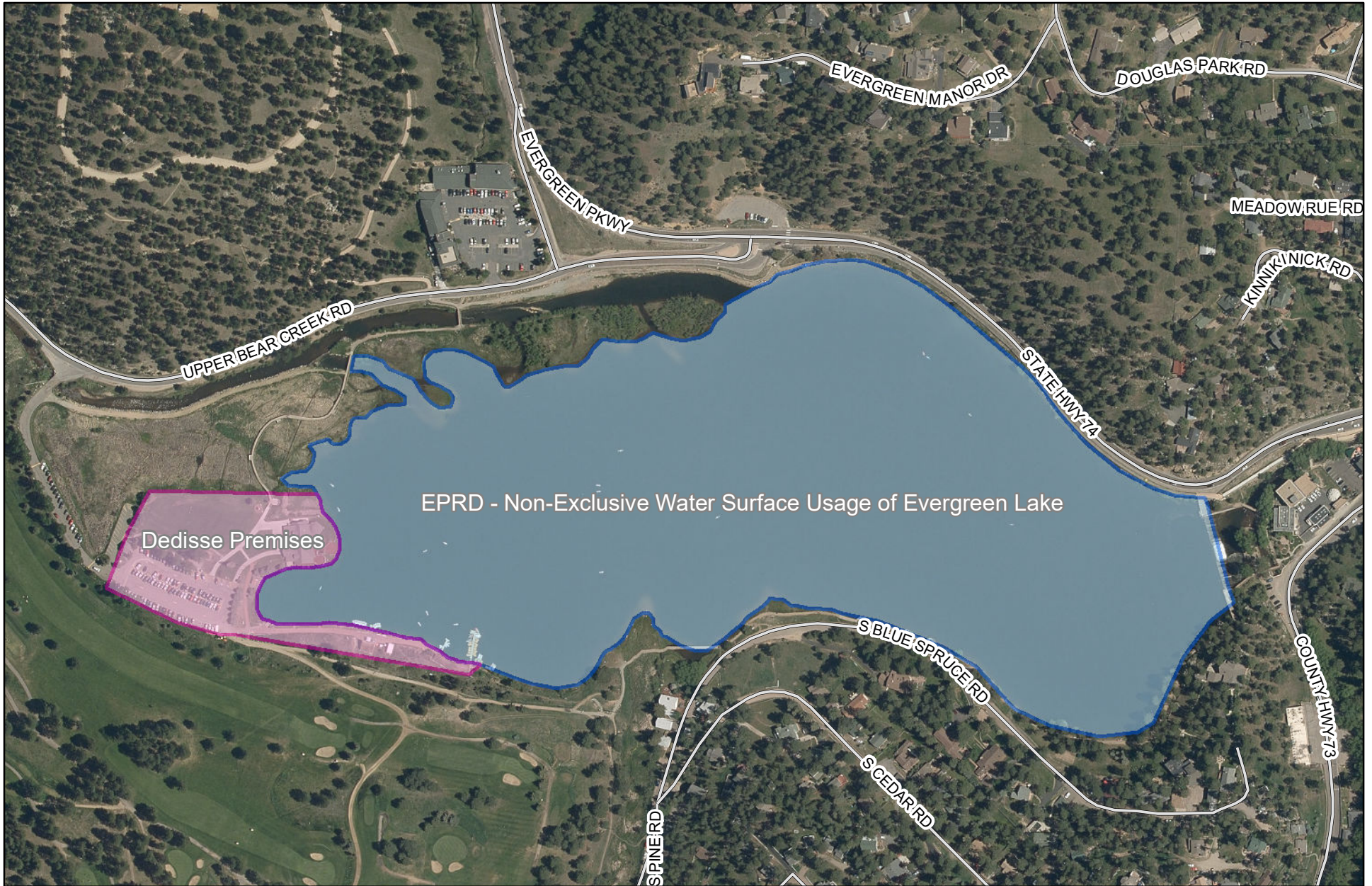
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(please print)



Dedisse Park

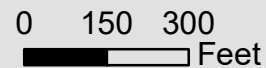
Exhibit A - Facilities





Dedisse Park

Exhibit A - Premises





Dedisse Park

Exhibit B - Parking

