INTERGOVERNMENTAL AGREEMENT REGARDING COST SHARING AND COLLABORATION ON THE HIGH LINE CANAL UNDERPASSES PROJECT AT HAMPDEN AVENUE AND COLORADO BOULEVARD

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is made and entered into, as of the date on Denver's signature page below ("**Effective Date**"), by and among the **CITY AND COUNTY OF DENVER** ("**Denver**"), a Colorado municipal corporation; **THE CITY OF CHERRY HILLS VILLAGE**, a Colorado municipal corporation ("**Cherry Hills**"); and **THE BOARD OF COUNTY COMMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO** ("**Arapahoe**") (collectively, "Parties" and individually, a "Party").

RECITALS

A. Denver and the Colorado Department of Transportation ("**CDOT**") are in the process of entering into an agreement (Routing # 16 HA1-ZH-00155; SAP ID # 471000904), a copy of which is attached to and incorporated into this Agreement as **Exhibit A** (the "**CDOT Agreement**") for the financing, design and construction of two multi-use underpasses connecting the High Line Canal Trail, one of which is to be located beneath Colorado Boulevard (State Highway 2) about 200 feet north of Hampden Avenue and the second of which is to be located beneath Hampden Avenue (US Highway 285) about 1500 feet west of Colorado Boulevard (COLORADO TAP M320-102(21119) Region 1)(the "**Underpass Project**").

B. The Parties acknowledge and concur that the Underpass Project will result in a safer and more usable route for the High Line Canal Trail as it traverses through the jurisdictions of all three Parties and that the Underpass Project will benefit all Parties and the citizenry they serve. Consequently, the Parties acknowledge and concur that they will collaborate and cooperate with one another to achieve the purposes of this Agreement and the CDOT Agreement.

C. Under the CDOT Agreement, federal funds in the amount of $4,050,000.00 will be made available through CDOT for the Underpass Project ("**Federal Funding**"), contingent upon a twenty percent (20%) fund match by the local agency ("**CDOT-Required Matching Funds**") of $1,012,500.00.

D. The Federal Funding was originally awarded to Cherry Hills through a 2016-2021 Transportation Improvement Program ("**TIP**"), as TIP ID: 2016-038, through the Denver Regional Council of Governments ("**DRCOG**"), with the understanding that there would be five percent (5%) "overmatch" so that the fund match through the local agency would be at twenty-five percent (25%), making the total local match equal $1,350,000.00 ("**DRCOG-Required Matching Funds**").

E. Denver, identified as the "Local Agency" under the CDOT Agreement, has an understanding with Cherry Hills and Arapahoe, through this Agreement, that all three entities will participate in sharing the obligations for the local agency matching funds requirements.

F. Despite the fact that the CDOT-Required Matching Funds requirements, as stated in the CDOT Agreement, are less than the DRCOG-Required Matching Funds, each Party, as specified in this Agreement, agrees that it will equally participate in the DRCOG-Required Matching Funds by appropriating and contributing $450,000 towards the costs of the Underpass Project as needed over the three-year life of the Underpass Project.

G. Arapahoe has further agreed to make available an additional $1,000,000.00 to cover any contingencies or cost overruns (the "**Arapahoe Contingency**") should the Federal Funding and the DRCOG-Required Matching Funds provided by the Parties prove to be deficient in covering the entirety of the costs for the Underpass Project.

H. The total project cost for the Underpass Project, not including the Arapahoe Contingency, is anticipated to be $5,400,000.00 ("**Project Cost**").

I. Denver has agreed to undertake the design, environmental and construction contracting, as specified in the CDOT Agreement and in accordance with Denver design and construction standards, and to manage the construction of the Underpass Project so long as the Federal Funding, the DRCOG-Required Matching Funds, and the Arapahoe Contingency are available, as and when needed, to cover the costs of the Underpass Project.

J. The Parties desire to proceed to take advantage of the Federal Funding provided through CDOT with the goal of initiating the design and environmental work for the Underpass Project in 2016, completing the design work and initiating construction in 2017, and completing the construction in 2018, and the Parties will participate in the cost sharing and other obligations for the Underpass Project with the goal of achieving this schedule.

NOW, THEREFORE, in consideration of the premises set forth in the Recitals above and consideration contained in the agreement below, the Parties agree as follows:

1. CDOT Agreement and Underpass Project.

(a) Denver shall be responsible for (1) entering into the CDOT Agreement with CDOT; (2) administering compliance with and implementation of the terms and conditions of the CDOT Agreement; and (3) arranging for, directing and overseeing all design plans, environmental evaluations, bidding and construction work for the Underpass Project in accordance with the CDOT Agreement and this Agreement. Denver is under no obligation to include any more elements in the designs, plans and specifications for the Underpass Project than is covered by the Project Cost and required by the CDOT Agreement. Any Overrun Costs will be addressed as provided in paragraph 3 of this Agreement. Any substantive enlargement of this scope of the Underpass Project or changes that will create costs in excess of the Project Cost shall be regarded as an Upgrade which is addressed in paragraph 4 of this Agreement.

(b) Cherry Hills and Arapahoe shall cooperate and coordinate with Denver in the performance of Denver's responsibilities under sub-paragraph 1(a) above and, to this end, each will appoint a representative to attend design and construction meetings, to participate in

planning and scheduling, and to timely review and comment on design plans and construction documents for the Underpass Project as they are prepared. Denver shall provide adequate advance written notice of any such meeting, along with adequate advance time to review and comment upon any design plans and construction documents, along with key timeline elements, of the Underpass Project. Cherry Hills and Arapahoe shall promptly conduct and complete their reviews, and submit their comments, within the reasonable timeframes specified by Denver or Denver's contractor(s).

(c) Upon request by either Cherry Hills or Arapahoe, Denver will share with Cherry Hills and Arapahoe such financial and other records and reports Denver is required to provide to CDOT or other entities under the CDOT Agreement. Upon completion of the Underpass Project, Denver will make available, to the extent Denver is permitted to do so under law and subject to such restrictions as contained in the CDOT Agreement and Denver's contracts with its consultants and contractors, the "as-built" construction plans and any other documentation in the possession of Denver establishing that the Underpass Project has been satisfactorily completed.

(d) In the event there is any conflict or inconsistency between the CDOT Agreement and this Agreement, the CDOT Agreement shall control; however, the rights and obligations of the Parties, financial or otherwise, shall be limited to those set forth in this Agreement. To the extent that the CDOT Agreement and/or this Agreement do not set forth specifications and standards applicable for the Underpass Project, Denver's standards and specifications for underpass design and construction, as determined by its Department of Public Works, shall be applicable. Any Upgrade to the Underpass Project shall be addressed as set forth in paragraph 4 of this Agreement.

(e) No Party shall have any obligation to perform under this Agreement in the event that (i) the CDOT Agreement is not executed by CDOT or is terminated by CDOT for any reason; or (ii) the Federal Funding is not available, in whole or part, for the Underpass Project; in which case, if no other arrangement is made by separate agreement amongst the Parties, the Agreement shall terminate and all unspent and unobligated funds shall be returned to their originating sources on a pro rata basis and in accordance with the CDOT Agreement and this Agreement.

(f) Each Party shall be responsible for securing access and use of property within each Party's jurisdiction, outside of the CDOT right of way for Hampden Avenue and Colorado Boulevard, as needed for the successful completion of the Underpass Project and the eventual operation and maintenance of the two underpasses. Cherry Hills has or will obtain an easement for the realignment of the High Line Canal Trail south of Hampden Avenue to the existing pedestrian bridge near Covington Drive and Jefferson Avenue, at its sole cost and expense, and will cover all costs associated with the design and construction of such realigned trail connection, including any cost overruns ("Trail Connection").

(g) The Parties agree to consult with and advise each other as to the progress of, and the funding for, the Underpass Project; provided, however, Denver shall proceed ahead with the Underpass Project in an expeditious manner consistent with the available funding and as

provided in this Agreement, the CDOT Agreement and the City's contract with the construction contractor. Denver shall have no liability for damages with respect to any incidental, indirect, special or consequential costs or damages to Cherry Hills and Arapahoe resulting from any delays, stoppages or failure of its consultant(s) and/or contractor(s) to perform with respect to the Underpass Project. The Parties understand that 1) Denver is individually responsible to CDOT for the project completion and delivery; 2) the Parties have a common interest in the safe and efficient administration of the CDOT Agreement; 3) Hampden Avenue and Colorado Boulevard fall under the jurisdiction of CDOT and all work associated with these streets are subject to the control and oversight of CDOT; and consequently, in light of these facts, 4) the Parties will collectively strive to work toward and achieve a satisfactory and beneficial result for all, including CDOT.

(h) The Parties agree to acknowledge each other as contributors to the Underpass Project in all publications, news releases and other publicity related to the Underpass Project to the extent such publicity refers to financial contributors of the Underpass Project. Any signage posted on or adjacent to the site recognizing the participants in the Underpass Project shall include all of the Parties to this Agreement.

(i) It is anticipated that the Parties will eventually enter, prior to the completion of the Underpass Project, a long-term maintenance and repair agreement for the two underpasses. The terms and conditions of said maintenance and repair agreement shall be subject to the prior approval of CDOT.

2. Cost Sharing; Expenditures; Denver Obligations; Remedies.

(a) The amount of the DRCOG-Required Matching Funds to be delivered by Cherry Hills and Arapahoe to Denver for each fiscal year of the Underpass Project shall be as set forth in this chart below:

Party	2016 Funding Allocation	2017 Funding Allocation	2018 Funding Allocation	Total Funding for Each Party
Denver	$167,000	$116,500	$166,500	$450,000
Cherry Hills	$166,500	$117,000	$166,500	$450,000
Arapahoe	$166,500	$116,500	$167,000	$450,000
Total Funding for each Fiscal Year	$500,000	$350,000	$500,000	Total: $1,350,000

Cherry Hills and Arapahoe shall deliver their allocations for Fiscal Year 2016 to Denver within thirty (30) calendar days following the Effective Date of this Agreement. Cherry Hills and Arapahoe shall deliver their allocations for Fiscal Years 2017 and 2018 to Denver on or before March 1st of 2017 and 2018. Denver shall have appropriated and made available its allocation for each Fiscal Year at the time the allocated funds are received from Cherry Hills and Arapahoe.

(b) The commitment of each of the Parties to contribute to the DRCOG-Required Matching Funds as set forth in paragraph 2(a) is legally binding; however, if for any

reason, Cherry Hills or Arapahoe fail to make its annual allocated contribution, in whole or part, Denver reserves the right, at Denver's sole discretion, to terminate this Agreement if the party failing to make its annual allocated contribution does not completely cure within fifteen (15) business days following written notice from Denver, and no portion of any remaining DRCOG-Required Matching Funds previously provided to Denver shall be returned to Cherry Hills or Arapahoe. Upon such termination, the Parties shall have no further rights or obligations under this Agreement, and Denver shall have no obligations to Cherry Hills and Arapahoe with respect to the Underpass Project. In the alternative and at its discretion, Denver may suspend performance under this Agreement until the required DRCOG-Required Matching Funds are delivered to Denver, provided that any required concurrence by CDOT is first obtained. Also in the alternative and at its sole discretion, Denver may seek to enforce this Agreement as provided in paragraph 6(n) of this Agreement to the extent such legal and equitable remedies are available at law.

(c) Denver shall be under no obligation to contract for the Underpass Project design until the 2016 allocated contributions specified in paragraph 2(a) are received from Cherry Hills and Arapahoe without any further qualification except as provided in this Agreement. Denver shall be under no obligation to contract for the Underpass Project construction until the 2017 allocated contributions specified in paragraph 2(a) are received from Cherry Hills and Arapahoe without any further qualification except as provided in this Agreement. Denver shall be under no obligation to commence the construction for the Underpass Project until Cherry Hills and Arapahoe provide such assurances that the 2018 allocated contributions will be fully paid when due on March 1, 2018, or, if the construction is not scheduled to commence until on or after March 1, 2018, Denver shall be under no obligation to commence the construction for the Underpass Project until the 2018 allocated contributions specified in paragraph 2(a) are received from Cherry Hills and Arapahoe without any further qualification except as provided in this Agreement.

(d) Denver shall retain and expend the DRCOG-Required Matching Funds contributed by the Parties, including interest accrued on such funds (if any) in Denver's accounts, solely for the purposes of completing the Underpass Project, in accordance with the CDOT Agreement and this Agreement. In the event that the Parties mutually agree to an Upgrade under paragraph 4 below, Denver shall retain and expend all funds provided by any Party solely for the purposes of implementing the agreed design changes for the Upgrade, in accordance with the CDOT Agreement and this Agreement.

(e) Upon completion of the Underpass Project and the payment of all incurred costs, if the Project Cost should be less than $5,400,000, then the remaining Federal Funding portion shall be adjusted and returned to CDOT in accordance with the CDOT Agreement, and the remaining DRCOG-Required Matching Funds actually held by Denver, to the extent it is not expended or obligated to pay actual costs for the Underpass Project, shall be adjusted and returned to each Party (including Denver) in an equal and proportionate amount.

3. Cost Overruns; Arapahoe Contingency; Remedies.

(a) In the event that the Project Costs are exceeded any time during the Underpass Project, despite Denver's efforts to contain these costs within the available Federal Funding and the Parties' contributions under the DRCOG-Required Matching Funds ("**Cost Overruns**"), but excluding any Upgrade addressed in paragraph 4 of this Agreement, Arapahoe will make available, upon request by Denver and upon Denver providing documentation as to the cause for the Cost Overruns, such amounts, not to exceed $1,000,000.00, from the Arapahoe Contingency as are necessary to cover the Cost Overruns, as they have been incurred or as they are projected to be incurred.

(b) If the Arapahoe Contingency should prove to be deficient to cover all Cost Overruns, Denver retains the discretionary right, but has no obligation, to appropriate and pay for said additional Cost Overruns not covered by the Arapahoe Contingency and/or to accept from Cherry Hills and/or Arapahoe any contributions which either is, in its sole discretion, willing to appropriate and make available to cover said additional Cost Overruns. Denver and Arapahoe shall endeavor, in good faith, but neither legally binds itself by this Agreement, to appropriate and make available their proportionate share of the funds needed for said Cost Overruns exceeding Project Costs and the Arapahoe Contingency. Cherry Hills shall not be obligated for any Cost Overruns associated with the Underpass Project, it being understood that Cherry Hills' contribution to the Project Underpass is its equal share of the DRCOG-Required Matching Funds and the Trail Connection. If funds are not made available as needed to cover said Cost Overruns, Denver reserves the right, at Denver's sole discretion, to terminate this Agreement and no portion of any remaining DRCOG-Required Matching Funds or the Arapahoe Contingency previously provided to Denver shall be returned to Cherry Hills or Arapahoe. Upon such termination, the Parties shall have no further rights or obligations under this Agreement, and Denver shall have no obligations to Cherry Hills or Arapahoe with respect to the Underpass Project. In the alternative and at its discretion, Denver may suspend performance under this Agreement until adequate funds are made available to Denver to cover the Cost Overruns, provided that any required concurrence by CDOT is first obtained. Also in the alternative and at its sole discretion, Denver may seek to enforce this Agreement as provided in paragraph 6(n) of this Agreement to the extent such legal and equitable remedies are available at law.

4. Upgrade.

If any Party or Parties should desire to have additional improvements not identified in the Underpass Project designs, plans and specifications included in the design and made as part of the Underpass Project and if the cost of the revised design and these additional improvements should cause the Underpass Project to exceed the Project Cost (an "**Upgrade**"), then said Party or Parties desiring the Upgrade shall be responsible for obtaining the approval of the other Party or Parties, and if necessary approval of CDOT, for the Upgrade. No Upgrade shall be approved or constructed unless all Parties agree to such Upgrade. If the other Party or Parties agree to the Upgrade but do not agree to share in the costs of the Upgrade, then the Party or Parties desiring the Upgrade shall be solely responsible for paying the cost of the Upgrade. Denver shall have no obligation to prepare designs based on an Upgrade or undertake construction for any Upgrade until all funds for such Upgrade are delivered by the responsible Party or Parties to Denver.

5. Term.

This Agreement shall commence on the Effective Date of this Agreement and shall remain in effect until the Underpass Project is completed and all incurred costs have been paid or until this Agreement is terminated as provided herein. The Parties shall endeavor, in good faith, to complete the Underpass Project by December 31, 2018.

6. General Provisions**.**

(a) Reasonable Efforts; Good Faith: The Parties 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 timely and reasonably review and comment on design and construction documents, 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.

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

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

(d) Appropriation: Notwithstanding any provision of this Agreement to the contrary but with the understanding that all Parties shall endeavor in good faith to comply with paragraphs 6(a) and (b) of this Agreement, 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. 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.

(e) Non-waiver: No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party or Parties 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.

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

(g) Applicable Law/Exercise of Authority: In the performance of this Agreement, the Parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, the Parties agree that no Party shall enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective Parties.

(h) 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, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and the Parties further agree to insert the foregoing provision in all approved contracts and subcontracts hereunder.

(i) Conflict of Interest: The Parties agree that no official, officer or employee of Denver shall have any personal or beneficial interest whatsoever in the services or property described herein, and, in performance of this Agreement, Cherry Hills and Arapahoe further agree 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.

(j) Liability:

1) To the extent authorized by law, Cherry Hills shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission of Cherry Hills or its officers, employees, and agents in connection with the subject matter of this Agreement.

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

3) To the extent authorized by law, 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 officers, employees, and agents in connection with the subject matter of this Agreement.

4) Nothing in this paragraph 6(j) or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the Parties against third parties by law.

(k) *Force Majeure*: No 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 Parties. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Parties.

(l) Further Assurances: From time to time, upon the request of a Party, the other Parties agree 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 be reasonably 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 Parties are entitled under this Agreement.

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

(n) Enforcement: The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, and/or for actual

damages (notwithstanding termination of the Agreement), as may be available according to the laws and statutes of the State of Colorado; provided, however, the Parties agree to and hereby release any claims for incidental, indirect, consequential, special or punitive damages; provided, further, no provision of this Agreement nor the rules and regulations of any of the Parties may be enforced by the creation or recording of any type of lien against real property owned by any other Party, nor may any foreclosure process be utilized to recover any moneys owed by any Party to another 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.

(o) Governing Law; Venue: This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver, and, with respect to the funding provisions of this Agreement, the applicable ordinances, resolutions, rules and regulations of Cherry Hills and Arapahoe. Venue for any legal action relating to this Agreement shall lie in either the District Court in and for the City and County of Denver or the District Court in and for Arapahoe County, as the Party initiating the legal action may choose, unless the CDOT Agreement requires that the legal action be brought in the District Court in and for the City and County of Denver.

(p) Limitation on Application of Agreement: The provisions of this Agreement are intended to govern the Underpass Project, as provided in this Agreement, and shall not be construed to prohibit, limit, modify, or waive any term or provision of other agreements between any of the Parties currently existing or entered into in the future.

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

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

(s) Notice: All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally, or by appropriate facsimile transmission (receipt verified by telephone), or by certified mail, return receipt requested, to the Parties to this Agreement at the addresses listed below. The notification addresses may be changed at any time by written notice in the manner provided herein.

To Denver: Executive Director
Department of Public Works
City and County of Denver
201 West Colfax Ave., Dept. 608
Denver, Colorado 80202

With copies to: Project Manager
Department of Public Works
City and County of Denver
201 West Colfax Ave., Dept. 506
Denver, Colorado 80202

City Attorney
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

To Cherry Hills: City of Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, Colorado 80113

To Arapahoe: Board of County Commissioners
Arapahoe County
5334 South Prince Street
Littleton, Colorado 80120-1136

With copies to: Arapahoe County Open Spaces
6934 South Lima Street, Unit A
Centennial, Colorado 80112

Arapahoe County Attorney
5334 South Prince Street
Littleton, Colorado 80120-1136

(t) 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.

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

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

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

(x) 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.

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

(z) Execution of Agreement: This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully approved by the governing bodies and executed by all required signatories of the Parties.

(aa) Electronic Signatures and Electronic Records: Cherry Hills and Arapahoe consent to the use of electronic signatures by Denver. This 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.

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