

**INTERGOVERNMENTAL AGREEMENT
(Central Park Boulevard/Related Infrastructure Improvements)**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2015 by and between the **CITY OF COMMERCE CITY**, a home rule city and municipal corporation of the State of Colorado, whose primary offices are at 7887 East 60th Avenue, Commerce City, Colorado 80022 (hereinafter, “Commerce City”), the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado, whose primary offices are at 1437 Bannock Street, Denver, Colorado 80202 (hereinafter, “Denver”), and the **PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose primary offices are at 7350 East 29th Avenue, Suite 200, Denver, Colorado 80238 (hereinafter, “District” and together with Commerce City and Denver, the “Parties” and separately, a “Party”, and Commerce City and Denver may also be referred to as the “Cities” and separately as a “City”).

RECITALS

A. Commerce City and Denver have entered into various intergovernmental agreements related to the design, construction and maintenance of portions of 56th Avenue and Quebec Streets, including that certain Intergovernmental Agreement dated February 13, 2007 and known as the “2006 Project” (Denver City Clerk File No. 07-085) and that certain Intergovernmental Agreement dated July 14, 2010 and known as the “2010 Project” (collectively, the “56th Avenue Projects” or the “56th Avenue IGAs”, as applicable), both of which 56th Avenue Projects have been completed.

B. The District was organized to provide for the financing, construction, maintenance and operation of certain in-tract and trunk infrastructure within the Stapleton Service Area (the “Improvements”) in accordance with the District Service Plan, the Master Facilities Development Agreement (“MFDA”) dated as of February 12, 2001 among Denver, the District and Forest City Enterprises, Inc. (“Enterprises”), and various Individual Facility Development Agreements (“IFDA”) for Improvements processed and approved in accordance with the MFDA, including without limitation IFDA No. 49 (“IFDA 49”), which in part includes the Section 10 CPB Improvements (as defined in Recital E).

C. Denver currently owns portions of the undeveloped real property located north of the 56th Avenue Projects, which real property is generally referred to herein as the “Section 10 Property.” The Section 10 Property will be transferred from Denver to Stapleton Development Corporation (“SDC”) who intends to transfer the Section 10 Property to the District or to affiliates of Enterprises, including without limitation to FC Stapleton II, LLC and Forest City Stapleton, Inc. (“FC Stapleton”) and such affiliates collectively, “Forest City”) in accordance with the Master Lease and Disposition

Agreement by and between Denver and SDC and the Amended and Restated Stapleton Purchase Agreement by and between SDC and Enterprises.

D. Commerce City, Denver, and the District, through their respective staff and consultants, are planning the funding, design, construction, maintenance and operation of certain Improvements and related public infrastructure within or adjacent to the Section 10 Property, which Improvements will be funded, designed, constructed, maintained and operated by the Parties as hereinafter set forth.

E. The Section 10 Property is contiguous to, and will contain Improvements to Central Park Boulevard and other street, water, sanitation and stormwater facilities, and streetscaping (the “Section 10 CPB Improvements”) that directly impact and provide access to other property, roadways, utilities and public improvements owned, operated and maintained by the Cities.

F. In order to facilitate the completion of the Section 10 CPB Improvements, to integrate the Section 10 CPB Improvements with the existing public improvements of the Cities, and to provide for the shared rights and responsibilities of the Parties related to the funding, design, construction, maintenance and operation of the Section 10 CPB Improvements after completion, the Parties wish to define the roles and responsibilities of each Party in this Agreement.

G. The Parties are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, Section 29-1-203, C.R.S., and their home rule charters.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and the recitals as set forth above and incorporated herein, the Parties hereby agree as follows:

1. **Scope of this Agreement.** This Agreement sets forth the understandings of the Parties with respect to (i) the funding, design and construction of the Section 10 CPB Improvements, as further defined in Section 2 below and identified in Exhibit A attached hereto and incorporated herein by reference, (ii) the inter-connection of the Section 10 CPB Improvements with existing public improvements of the Cities, and (iii) the continued operation and maintenance responsibilities of the Parties with respect thereto as summarized in Exhibit B attached hereto and incorporated herein by reference.

2. **Section 10 CPB Improvements/Project.** The Section 10 CPB Improvements will, more specifically, include the extension of Central Park Boulevard north of 56th Avenue to existing Prairie Parkway and the related inter-connection of Central Park Boulevard with Denver and Commerce City feeder streets, along with curbs, gutters, medians, traffic signals, stormwater drainage, irrigation, landscaping, street lighting and related infrastructure improvements, all as described in Exhibit A (the

“Project”). The Section 10 CPB Improvements will be funded, designed, constructed, operated and maintained pursuant to the terms of (i) this Agreement, including the “Improvements Development Plan” as more specifically set forth in Exhibit A and the “Improvement Operations Matrix” as more specifically set forth in Exhibit B, both of which together describe and depict the plans for construction, maintenance and operation of the Section 10 CPB Improvements, and (ii) IFDA 49 to be approved by Denver, Forest City and the District prior to the commencement of any construction of the Section 10 CPB Improvements, which shall incorporate this Agreement as a material part thereof. This Agreement, however, shall be controlling and shall override any material conflict between the terms of IFDA 49 and this Agreement. Otherwise, the Section 10 CPB Improvements shall be completed in accordance with the terms of both this Agreement and IFDA 49.

3. Project Management, Coordination, and Liaison.

(a) **Contractors:** The contractor or contractors responsible for the construction of the Section 10 CPB Improvements to be completed by the District (the “District Contractor”) will be chosen by the District according to its procurement procedures and legal requirements for the award of public works contracts and according to the Service Plan, the MFDA and IFDA 49. The District shall be solely responsible for managing the District Contractor’s performance of the Project work and completion of the District portion of the Project, more particularly, the Phase 1 Project Improvements (as defined herein), in coordination with both the representatives of Commerce City and Denver, as applicable. The contractor responsible for the construction of the Section 10 CPB Improvements to be completed by Commerce City or its designee (the “Commerce City Contactor”) will be chosen by Commerce City or its designee according to its procurement procedures and legal requirements for the award of public works contracts. Commerce City or its designee shall be solely responsible for managing the Commerce City Contractor’s performance of the Project work and completion of Commerce City’s portion of the Project, more particularly, the Phase 2 Project Improvements (as defined herein), in coordination with the District and Denver, as appropriate.

(b) **Commerce City Representative:** Commerce City’s Director of Public Works (“Director”) is vested with authority to act on behalf of Commerce City under this Agreement and is responsible for carrying out Commerce City’s obligations and responsibilities under this Agreement. The Director may designate in writing a representative to act on the Director’s behalf with respect to Commerce City’s obligations and responsibilities under this Agreement.

(c) **Denver Representative:** Denver’s Manager of Public Works (“Manager”) is vested with authority to act on behalf of Denver under this Agreement and is responsible for carrying out Denver’s obligations and responsibilities under this Agreement. The Manager may designate in writing a representative to act on the

Manager's behalf with respect to Denver's obligations and responsibilities under this Agreement.

(d) **District Representative.** The President of the District ("President") is vested with authority to act on behalf of the District under this Agreement. The President hereby authorizes FC Stapleton (attention: Charlie Nicola) and M.A. Mortenson Company (attention: Kerry O'Connell) (together, the "Project Managers") to be responsible for carrying out the District's obligations and responsibilities for completion of the District's portion of the Project.

(e) **Cooperation and Coordination:** The District agrees to cooperate and coordinate fully with both Denver and Commerce City in completing the Project in accordance with the terms and conditions of this Agreement and IFDA 49. To facilitate this cooperation and coordination, the Parties agree to provide to one another timely notice of all Section 10 CPB Improvements related bidding, contract awards, meetings and presentations. The District further agrees to provide to Denver and Commerce City, if requested in writing by the Director or Manager, copies of all communications from and to the District Contractor regarding the award, performance of work, contract compliance and satisfactory completion of the Phase 1 Project Improvements.

(f) **Grant of Access – 56th Avenue, Central Park Boulevard and Prairie Parkway:** Commerce City hereby grants to the District and Denver, their officers, employees, consultants, Project Managers and agents, and to the District Contractor, its officers, employees, agents and subcontractors, the right of access to and use of rights-of-way for those portions of Central Park Boulevard, 56th Avenue, Prairie Parkway and any adjacent property owned by Commerce City and located within the Project area as depicted in the Improvements Development Plan attached as Exhibit A for all necessary Project activities, including without limitation surveying, construction and completion of the Section 10 CPB Improvements reasonably necessary to complete the Project. Further, Commerce City will authorize the use of any property within Commerce City that is required for completion of the Phase 1 Project Improvements or the Phase 2 Project Improvements in or adjacent to the Central Park Boulevard right-of-way as depicted in the Improvements Development Plan attached as Exhibit A. If necessary, Commerce City will dedicate and plat any property of Commerce City that is required for completion of the Section 10 CPB Improvements in the Central Park Boulevard right-of-way as depicted in the Improvements Development Plan attached as Exhibit A. If necessary, Denver will, subject to the permitting provisions set forth herein, provide to Commerce City and the District, their officers, employees, consultants, Project Managers and agents, and to the District Contractor and, where necessary for the construction and completion of the Phase 2 Project Improvements, the Commerce City Contractor, their officers, employees, agents and subcontractors, the right of access to and use of those portions of the rights-of-way for 56th Avenue and Central Park Boulevard that are owned and operated by Denver and located within the Project area as depicted in

the Improvements Development Plan attached as Exhibit A for all necessary Project activities, including without limitation surveying, construction and completion of the Section 10 CPB Improvements reasonably necessary to complete the Project; provided that, if the District has title to any portion of the Central Park Boulevard right-of-way at the time that Commerce City commences construction of the Phase 2 Project Improvements, then the District hereby grants such rights of access to and use of the Central Park Boulevard right-of-way to Commerce City and the Commerce City Contractor, and their officers, employees, agents, consultants and subcontractors. Further, any Party that must have access to or use of any City-owned right-of-way shall first apply for and obtain appropriate access, occupancy or right-of-way permits from such City.

(g) **Grant of Access – Adjacent Non-Right-of-Way Property:**

Commerce City hereby grants to the District, its officers, employees, consultants, Project Managers and agents, and the District Contractor, its officers, employees, agents and subcontractors, the right of access to and the use of any real property owned by Commerce City which is immediately adjacent to the Project area as depicted in the Improvements Development Plan attached as Exhibit A for all necessary Project activities, including without limitation construction of the Section 10 CPB Improvements reasonably necessary to complete the Project. If required by Commerce City, any grant of access provided for herein shall be subject to the terms and conditions set forth in the form of license attached hereto as Exhibit C and incorporated herein by reference and shall be used as applicable to document such right of access. If required by Denver, the District shall apply for and obtain appropriate access rights from Denver for the use of any City-owned non-right-of-way property. In addition, the District shall obtain all necessary right-of-way permits for work within any dedicated right-of-way owned by the City as may be required by such City.

4. **Project Phasing and Costs.**

(a) **Phasing and Costs:** The District and Commerce City shall share equally (50%/50%) in the funding of all actual costs associated with the design, construction and completion of the Section 10 CPB Improvements as projected in the Preliminary Estimate of Project Costs attached hereto as Exhibit D and incorporated herein by reference, excluding Park Creek District Costs and Park Creek District Direct Expenses. The Section 10 CPB Improvements shall be funded, constructed and completed in two phases as follows:

(i) Phase 1 of the Project shall be funded, designed, constructed and completed by the District and consist of (A) the four-lane north and southbound segments of Central Park Boulevard from the interconnection with 56th Avenue north to 57th Avenue, (B) the easterly two-lane only segment of Central Park Boulevard and all related street improvements from 57th Avenue to the intersection with Prairie Parkway (extended), except for medians, as depicted in the Improvements Development Plan

attached as Exhibit A, (C) any temporary or permanent stormwater drainage and other infrastructure improvements required to serve all Section 10 CPB Improvements,(D) the water line only for irrigation of landscaping to be installed in Central Park Boulevard medians, and (E) if the traffic signals planned at Central Park Boulevard and 58th Avenue meet warrants prior to construction of Phase 2 of the Project by Commerce City, such traffic signals per the Project Plans (as defined herein) (together, the “Phase 1 Project Improvements”). The Phase 1 Project Improvements shall also include all design and related engineering services for the Phase 2 Public Improvements. Following completion of the Phase 1 Project Improvements, the District shall compile and certify to Commerce City the actual costs of the design, engineering, construction management, construction and all related expenses of the Phase 1 Project Improvements (together, the “Phase 1 Project Improvements Costs”); and

(ii) Phase 2 of the Project shall be funded, constructed and completed by Commerce City and consist of (A) the westerly two-lane segment of Central Park Boulevard and all related street improvements, except for temporary or permanent storm water drainage improvements other than inlets for Phase 2 per the Project Plans (as defined in Section 6(b)), north of 57th Avenue to the intersection with Prairie Parkway (extended), (B) all medians from the intersection with Prairie Parkway to the four-lane segment of Central Park Boulevard completed in the Phase 1 Project Improvements, including irrigation systems and landscaping within medians, as depicted in the Improvements Development Plan attached as Exhibit A, and (C) if not completed in Phase 1 of the Project, the traffic signals at Central Park Boulevard and 58th Avenue, which shall be constructed at such time as such traffic signals meet warrants per the Project Plans, including, if applicable, following the completion of other Section 10 CPB Improvements(together, the “Phase 2 Project Improvements”); provided, however, that if requested by Commerce City, the District shall prepay one-half of the contract price of the Phase 2 Project Improvements, including 50% of the estimated costs of the traffic signal costs to be installed at a future date if not warranted at the time of the Phase 2 of the Project, on or before thirty (30) days following notice of award of the prime contract to the Commerce City Contractor. Following completion of the Phase 2 Project Improvements, Commerce City shall compile and certify to the District the actual costs of the construction management, construction and all related expenses of the Phase 2 Project Improvements (together, the “Phase 2 Project Improvements Costs”).

(iii) On or before forty-five (45) days after Commerce City’s certification of the Phase 2 Project Improvements Costs and, if applicable, the Parties’ resolution of any dispute over the Phase 1 or Phase 2 Project Improvements Costs, the District shall pay to Commerce City an amount equal to one-half of the difference between the Phase 2 Project Improvements Costs and the Phase 1 Project Improvements Costs (less any credit for prepayment under subparagraph (ii) above), but if the Phase 1 Project Improvements Costs are greater than the Phase 2 Project Improvements Costs, then Commerce City shall pay one-half of such differential amount to the District. The

intent of this final settlement clause is to equalize the funding of the Phase 1 and Phase 2 Project Improvements Costs between Commerce City and the District.

(b) **Fees/Penalties**: The permitting and inspection fees and sales and use tax ordinances of each City shall apply to the Project work and materials, equipment and other tangible personal property purchased, installed and used for those portions of the Section 10 CPB Improvements located within such City in accordance with allocations reasonably determined by the District and such City in accordance with applicable laws. Nothing in this Agreement shall be construed to provide any exemption from permitting and inspection requirements of either City.

(c) **District Appropriation**: Notwithstanding any other term or condition of this Agreement, it is expressly understood and agreed that the District's obligations for all or any part of the Section 10 CPB Improvements, whether direct or contingent, including future maintenance obligations, shall extend only to payment of monies duly and lawfully appropriated and encumbered for such purpose by the District's Board of Directors. Further, the District does not by the terms of this Agreement create a multiple fiscal year financial obligation or debt of any nature. It is anticipated that appropriations for the purpose of this Agreement, if made at all, will be made by the Board of Directors on an annual basis. This Agreement does not bind any future Board of Directors to make such appropriations.

(d) **Commerce City Appropriation**: Notwithstanding any other term or condition of this Agreement, it is expressly understood and agreed that Commerce City's obligations for all or any part of the Section 10 CPB Improvements, whether direct or contingent, including future maintenance obligations, shall extend only to payment of monies duly and lawfully appropriated and encumbered for such purpose by Commerce City's City Council. Further, Commerce City does not, by the terms of this Agreement create a multiple fiscal year financial obligation or debt of any nature. It is anticipated that appropriations for the purpose of this Agreement, if made at all, will be made by the Commerce City City Council on an annual basis. This Agreement does not bind any future Commerce City City Council to make such appropriations.

(e) **Denver Appropriation**: Notwithstanding any other term or condition of this Agreement, it is expressly understood and agreed that Denver's obligations for all or any part of the Section 10 CPB Improvements, whether direct or contingent, including future maintenance obligations, shall extend only to payment of monies duly and lawfully appropriated and encumbered for such purpose by Denver's City Council. Further, Denver does not by the terms of this Agreement create a multiple fiscal year financial obligation or debt of any nature. It is anticipated that appropriations for the purpose of this Agreement, if made at all, will be made by the Denver City Council on an annual basis. This Agreement does not bind any future Denver City Council to make such appropriations.

5. **Project Design, Construction and Completion.**

(a) **Design and Construction Standards:** The design and construction of the Section 10 CPB Improvements, regardless of the City jurisdiction in which the Section 10 CPB Improvements are located, will be completed according to (i) all applicable ordinances, rules, regulations, design, engineering and construction standards of Denver (the “Regulations”), (ii) the Improvements Development Plan attached as Exhibit A, (iii) the Project Plans, except as otherwise provided in this Agreement, and (iv) IFDA 49 as it relates to the Phase 1 Project Improvements. There shall be no change in the Project Plans following approval by each City, except as necessary to conform to the Regulations. Commerce City shall not be subject to any Denver ordinances or regulations, including without limitation those concerning the procurement or administration of public works contracts, except Denver’s design, engineering and construction standards as expressly set forth herein.

(b) **Phase 1 Project Improvements:** Following approval and execution of IFDA 49 for the Section 10 CPB Improvements, the District shall, or shall cause the District Contractor to, construct and complete all of the Phase 1 Project Improvements in accordance with the Regulations, the Project Plans, IFDA 49 and the Improvements Development Plan attached as Exhibit A.

(c) **Phase 2 Project Improvements:** Commerce City or its designee shall, or shall cause the Commerce City Contractor to, construct and complete all of the Phase 2 Project Improvements when funding is available and appropriated for the Phase 2 Project Improvements work, in accordance with Denver’s design, engineering and construction standards (except for any Denver ordinances relating to prevailing wages, small business enterprises and related socio-economic programs not otherwise applicable within Commerce City), the Project Plans and the Improvements Development Plan attached as Exhibit A. Commerce City’s obligations for the completion of the Phase 2 Project Improvements shall be subject to the timely completion and submittal of acceptable Project Plans by the District.

(d) **Project Completion:** In accordance with the terms and conditions of this Agreement, the Project Plans and the Improvements Development Plan as depicted in Exhibit A, the District and Commerce City respectively shall perform or cause to be performed all Project work required to complete the Section 10 CPB Improvements. The Parties shall cooperate with one another and, once appropriate approvals are obtained, shall execute any additional documents necessary to provide temporary construction easements, licenses or dedicated rights of way for the installation of the Section 10 CPB Improvements.

(e) **Applicable Laws:** The District shall be responsible for obtaining and maintaining and/or causing to be obtained and maintained all required permits, licenses or other governmental authorizations and approvals necessary to complete the

Phase 1 Project Improvements and shall, at all times during construction, ensure or cause to be ensured compliance with all Regulations, Project Plans, IFDA 49 and the terms and conditions of this Agreement. Commerce City shall be responsible for obtaining and maintaining, or causing to be obtained and maintained, all required permits, licenses, or other governmental authorizations and approvals necessary to complete the Phase 2 Project Improvements and shall, at all times during construction, ensure or cause to be ensured compliance with Denver's design, engineering and construction standards (to the extent provided in this Agreement), the Project Plans and all terms and conditions set forth in this Agreement.

(f) **Project Administration**: The District will enter into and cause to be performed all administrative and management functions required for (i) the completion of the Phase 1 Project Improvements, including bidding, awarding, letting, and administration of all Phase 1 Project Improvements design and construction contracts, and (ii) the preparation of the Project Plans for the Phase 2 Project Improvements. Commerce City shall be responsible to the same extent for the Phase 2 Project Improvements, except for the preparation of the Project Plans of such improvements.

(g) **Bonds and Insurance**: The District will require the District Contractor and its subcontractors to obtain insurance and payment and performance bonds in an amount sufficient to satisfy the requirements of Denver as set forth in IFDA 49 for the Phase 1 Project Improvements. Commerce City will require the Commerce City Contractor and its subcontractors to obtain (i) commercial general and automobile liability and workmen's compensation insurance in amounts and coverages appropriate for the Project work, but not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for liability insurance, and (ii) payment and performance bonds from an acceptable surety in the full amount of the construction contract for the Phase 2 Project Improvements. All Parties shall be named as additional insureds on all required insurance coverages, except professional liability coverage, and all Parties shall be named as obligees or dual obligees on all bonds.

(h) **Warranties**: In all construction contracts for the Phase 1 Project Improvements, the District shall designate Commerce City and Denver as an express third party beneficiary for enforcing all warranties, guarantees, defective performance rights, and rights of recovery for any defects in the Phase 1 Project Improvements for which such Party has ownership of and jurisdiction over. The warranty period for all Phase 1 Project Improvements shall be as set forth in the Regulations or IFDA 49 as applicable. The District shall assign to Commerce City and/or Denver, as applicable, all remaining warranty, guarantee, defective performance, delay and damage recovery contractual rights, including without limitation any assignable rights under professional services contracts for the Project Plans (excluding any rights to liquidated damages) enforceable with respect to the Phase 1 Project Improvements constructed within and

transferred to each City respectively for ownership, operation and maintenance in accordance with the Improvements Operations Matrix attached as Exhibit B at the time of acceptance by each respective City, unless the warranty has already expired.

(i) **Acceptance Process**: After consultation with each City as applicable, acceptance of the Phase 1 Project Improvements within Denver shall be effected in accordance with the provisions of IFDA 49, and acceptance of the Phase 1 Project Improvements within Commerce City shall be effected in accordance with applicable ordinances and regulations of Commerce City. Acceptance of the Phase 2 Project Improvements by Commerce City shall be effected in accordance with applicable ordinances and regulations of Commerce City after consultation with Denver.

6. **Additional Phase 1 Project Improvements Provisions.**

(a) **Design Review and Construction Meetings**: The District shall give notice to and provide opportunity for the Director, the Manager and other City representatives to attend and participate in all design review and construction meetings with the District Contractor for the Phase 1 Project Improvements, along with full access to the construction site during Project work.

(b) **Project Plans**: The District shall be responsible for engaging professional engineers to prepare designs for the Section 10 CPB Improvements, including both the Phase 1 and Phase 2 Project Improvements (the “Project Plans”). Any professional services contract for preparation of the Project Plans for the Phase 2 Improvements shall be assignable by its terms to Commerce City and shall name Commerce City as a third party beneficiary thereunder. The District will ensure that the Phase 1 Project Improvements are constructed in accordance with the approved Project Plans and that (i) no changes to the approved Project Plans affecting the Phase 1 Project Improvements within Commerce City’s municipal boundaries will occur during construction, unless first approved in writing by the Director or the Director’s designee, and (ii) no changes to the approved Project Plans affecting the Phase 1 Project Improvements within Denver’s municipal boundaries will occur during construction, unless approved in writing by the Manager or the Manager’s designee. Any changes to the Project Plans for any Phase 1 Project Improvements located outside of one City’s municipal boundaries may be made by the District and the City in which Phase 1 Project Improvements are located after consultation with the other City.

(c) **Substantial Completion**: The District shall provide the Director and the Manager with notification of the substantial completion (as that term is defined in the District Contractor’s construction contract) of each major element of the Phase 1 Project Improvements work in conformance with the Regulations. Upon notification of substantial completion, the Director and the Manager or their respective representatives may, in regards to the portion of the Phase 1 Project Improvements located within their respective municipal boundaries: (i) undertake such inspection as deemed necessary to

verify, to their satisfaction, that the portion of the Phase 1 Project Improvements located within their municipal boundaries respectively have been constructed in accordance with the Project Plans, and (ii) review and comment upon the District Contractor's final completion punch list pursuant to any applicable Regulations. The Cities shall coordinate the opening of Central Park Boulevard and other Section 10 CPB Improvements for use by the public upon substantial completion and acceptance of such streets by each City respectively. Applicable warranties for the Phase 1 Project Improvements shall commence as of the date of substantial completion as provided in the District Contractor's construction contract and shall be transferred to each respective City at the time of acceptance, if any warranty period remains.

(d) **Final Inspection and Final Acceptance:**

(i) Upon the District's notification that all punch list items have been completed and all clean-up has been performed, each City shall make a final inspection of the portion of the Phase 1 Project Improvements located within the municipal boundaries of such City for the purpose of ascertaining that such Improvements have been fully completed in accordance with the Project Plans (the "Final Inspection"). Denver shall follow the process for final inspection and acceptance in IFDA 49. After each City has made its Final Inspection and is satisfied that the portion of the Phase 1 Project Improvements located within its municipal boundaries has been completed in accordance with the Project Plans, each City shall issue, within ten (10) business days, a letter evidencing final acceptance ("Final Acceptance") or as otherwise provided for in IFDA 49.

(ii) Following Commence City's Final Acceptance of that portion of the Phase 1 Project Improvements located within the municipal boundaries of Commerce City, and upon Denver's Final Acceptance of that portion of the Phase 1 Project Improvements located within the municipal boundaries of Denver, the District may proceed with publishing the "Notice of Final Settlement" in accordance with Colorado statutory requirements (as may be modified by any provision of the District Contractor's construction contract or supplemental conditions), which may, in the District's sole discretion, occur at the same time or in sequence for that portion of the Phase 1 Project Improvements located within each City's boundaries, if Final Acceptance does not occur concurrently. Each City shall be advised of and may participate in the processing of the Notice of Final Settlement to the extent that the requirements for Final Acceptance are directly related to those portions of the Phase 1 Project Improvements located within such City's municipal boundaries. The District retains ultimate authority to determine when to issue the document evidencing Final Settlement with respect to the Phase 1 Project Improvements and when to authorize final payment to the Contractor, including the authority to authorize partial payment for any portion of the Project located within the boundaries of only one City.

(e) **Prevailing Wage and Other Requirements:** The Parties acknowledge that all Project construction work performed by the District or the District Contractor in connection with the completion of the Phase 1 Project Improvements shall comply with (i) the prevailing wage requirements of Section 20-76 of the Denver Revised Municipal Code and the federal Davis-Bacon Act wage requirements and (ii) the applicable provisions of the Denver Revised Municipal Code relating to small business and minority and women business enterprises.

(f) **Prairie Parkway Connection Option.**

(i) The District will include in the Project Plans the design for the two-lane east and west extension of Prairie Parkway from its existing location to the planned extension of Central Park Boulevard in the Phase 1 Project Improvements as if part of the Phase 1 Project Improvements (“Prairie Parkway Extension”). The District will provide Commerce City with an estimated cost for the construction of the Prairie Parkway Extension no later than thirty (30) days before the issuance of bids for the construction of the Phase 1 Project Improvements. Commerce City shall pay the actual costs of design and engineering for the Prairie Parkway Extension, which costs shall be paid by Commerce City within forty-five (45) days following the District’s submittal of itemized invoices therefor.

(ii) If requested by Commerce City before the issuance of bids for the construction of the Phase 1 Project Improvements, the District will include the Prairie Parkway Extension in the bid package and will construct the Prairie Parkway Extension concurrently with the Phase 1 Project Improvements.

(iii) Commerce City shall prepay one-half of the contract price of the Prairie Parkway Extension on or before thirty (30) days following notice of award of the prime contract to the District Contractor. Following completion of the Prairie Parkway Extension, the District shall compile and certify to Commerce City the actual costs of the construction management, construction, and all related expenses of the Prairie Parkway Extension, which costs and expenses will be paid by Commerce City (less the amount of the prepayment) within forty-five (45) days.

(iv) Commerce City shall own and be responsible for the maintenance and operation of the Prairie Parkway Extension.

7. **Ownership, Maintenance and Operation Responsibilities of the Parties.**

(a) **Ownership:** Each City shall have ownership of the Section 10 Improvements that are located within its municipal boundaries as more fully detailed in the Improvements Operations Matrix attached as **Exhibit B**. Transfer of ownership of the Section 10 CPB Improvements to Commerce City shall be effectuated in accordance

with the City's standard requirements. Transfer of ownership of the Phase 1 Project Improvements to Denver shall be effectuated in accordance with IFDA 49.

(b) **Maintenance and Operation**: The operation and maintenance of the Section 10 CPB Improvements shall be performed in accordance with the Improvements Operations Matrix attached as **Exhibit B** and the following terms:

(i) **Street Lights**: Each City, in accordance with their respective franchise agreements shall be responsible for electrical utilities and the maintenance, repair, removal and replacement of street lights located within such City's municipal boundaries. Street lights in both Phase 1 and Phase 2 Project Improvements shall be similar in height and design. Before construction of any Project Improvements, the Parties shall agree to a uniform light design standard allowed under applicable franchise agreements.

(ii) **Traffic Signals**: Denver shall operate and maintain all of the traffic signals and related equipment for Central Park Boulevard, except as may be required for any cross streets located solely on Commerce City property. Commerce City shall have an opportunity to provide input into signal timing changes prior to modification. Commerce City in cooperation with Denver shall be provided access to control traffic signals for scheduled special events held in Commerce City. For a scheduled special event, Commerce City will submit an event traffic management plan for review and acceptance by Denver for purposes of signal timing coordination. Upon acceptance of the event traffic management plan, Denver shall permit and perform authorized signal timing adjustments for the accommodation of such special event.

(iii) **Street Improvements**: Each City shall be responsible for the operation, maintenance and repair of the surface, slope and other improvements of Central Park Boulevard and related street improvements located within its municipal boundaries, except as otherwise set forth in this Agreement and IFDA 49.

(iv) **Medians**: Ownership of the medians, including irrigation and landscaping, shall be split between the Cities with the dividing line being maintained at the municipal boundary between the Cities. Water for irrigation to all median areas will be supplied by Denver Water, and all lines, facilities and tap fees for water irrigation will be a Project expense and constructed as part of the Phase 1 or Phase 2 Project Improvements. The District shall provide for the operation and maintenance of the medians, including paying the costs of irrigation.

(v) **Snow and Ice Control Operations**: Commerce City shall be responsible for snow and ice removal on both north and south-bound Central Park Boulevard in consideration of Denver's furnishing of similar services on 56th Avenue between Quebec and Central Park Boulevard and as further detailed in the Improvements Operations Matrix attached as Exhibit B.

(vi) **Sanitary Sewer and Stormwater Drainage**: Each City shall be responsible for the maintenance and repair of the stormwater drainage improvements located within its municipal boundaries; provided, however, that Denver will be responsible for any stormwater drainage improvements that serve properties in both Cities. In addition, each City shall be responsible for the treatment of stormwater drainage runoff in its municipal boundaries without regard to the source of the runoff and any other applicable stormwater drainage regulations. Commerce City hereby agrees, subject to the permitting provisions in Section 3(f) to provide Denver all necessary access for the maintenance, operation, repair and replacement of that portion of the sanitary force main installed within rights-of-way or adjacent property owned by Commerce City; provided that Denver shall first obtain access permits from Commerce City for any major repairs or replacements.

(vii) **Tree Lawns**: Until such responsibility is transferred to a property owner or entity other than the City or as otherwise set forth in IFDA 49, each City shall be responsible for the operation, maintenance, repair and irrigation of all sidewalks and landscaped areas located between the roadway curb and the right-of-way limits for Central Park Boulevard within its respective municipal boundaries as shown on the Project Plans, except as otherwise set forth in IFDA 49.

(viii) **56th Avenue IGAs**. The provisions of this Agreement regarding snow and ice removal shall supersede, modify and control any conflicting provisions regarding the same in the 56th Avenue IGAs between Commerce City and Denver.

8. **Central Park Boulevard Right-of-Way Dedication**. Subject to and conditioned upon appropriate action by the Commerce City City Council, Commerce City shall dedicate all land needed for Central Park Boulevard as set forth in the approved Project Plans as a public right-of-way. Dedications in Denver will be as set forth in IFDA 49. Upon request, the District will provide documents acceptable in form to each City respectively to effectuate such conveyances. It is anticipated that Commerce City shall dedicate the western portion of Central Park Boulevard from 56th Avenue northward to Prairie Parkway, and Denver shall dedicate the eastern portion of Central Park Boulevard from 56th Avenue northward to Prairie Parkway. The operation, maintenance and repair of these segments of Central Park Boulevard shall be allocated according to the municipal jurisdiction having control over each segment of roadway dedication in accordance with the Improvements Operations Matrix attached as **Exhibit B**.

9. **Slopes**. The Parties recognize that the construction and grade of Central Park Boulevard is being designed to accommodate future development. Each City respectively shall be required to maintain the slope grade as constructed within any City-owned right-of-way (unless otherwise set forth in IFDA 49), until such time as development adjacent to Central Park Boulevard occurs and the owner of adjacent property is made legally responsible for maintaining slope grades on such owner's

property. Each Party shall cooperate and take all necessary steps to ensure that development of property adjacent to Central Park Boulevard is performed in such manner as to maintain the functional integrity of Central Park Boulevard. The Project Plans shall provide appropriate erosion control measures over unvegetated slopes and other unpaved areas.

10. **Term of Agreement.** This Agreement shall become effective upon execution by all of the Parties and shall continue in effect until terminated by written agreement of all of the Parties.

11. **Liability.**

(a) The Parties hereto agree that the only remedies in law or equity available against any other Party shall be (i) with respect to Commerce City and the District only, an action for any amounts due hereunder and (ii) specific performance. Rights to seek damages of any kind and attorney fees, except attorney's fees for recovery of amounts due hereunder between Commerce City and the District, are expressly waived.

(b) Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, limitations and protections that any Party 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 a Party by law.

(c) In any design or construction contract for the Section 10 CPB Improvements, the contracting Party shall include provisions in such contract holding the engineer or contractor responsible for the acts or omissions of such engineer or contractor, its employees, agents and subcontractors, and providing liability insurance and standard indemnification to the Parties for any claims, judgments, losses or liabilities associated therewith.

12. **Exhibits.** The following exhibits are attached to and incorporated in this Agreement:

- **Exhibit A:** Improvements Development Plan
- **Exhibit B:** Improvements Operations Matrix
- **Exhibit C:** Form of Access License Commerce City
- **Exhibit D:** Preliminary Estimate of Project Costs

13. **Reasonable Efforts.** The Parties agree to work in good faith using reasonable efforts to resolve any unforeseen issues and disputes, to review and approve submittals, and to facilitate the prompt and expeditious payment of permits, invoices, fees, reimbursements and charges for the Section 10 CPB Improvements. The intent of the Parties is to expedite and not to delay the completion of the Project.

14. **Examination of Records.** The Parties agree that, for a period of at least two (2) years from the final scheduled payment under this Agreement, any duly authorized representative of either Party, including the Denver Auditor or his representative and representatives of the Commerce City Tax Division, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Parties involving the Project and other activities related to this Agreement.

15. **Notice.** Any notice required by this Agreement shall be given in writing by U.S. Mail or overnight delivery by a national courier company to the Parties as follows or as may subsequently be changed by notice to each Party:

To Commerce City:

City Manager
7887 East 60th Avenue
Commerce City, Colorado 80022

With copies to: Director of Public Works
8602 Rosemary Street
Commerce City, Colorado 80022

City Attorney
7887 East 60th Avenue
Commerce City, Colorado 80022

To Denver:

Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to: Manager of Public Works
201 West Colfax Avenue, Department 608
Denver, Colorado 80202

City Attorney
201 W. Colfax, Dept. 1207
Denver, Colorado 80202

To the District: Park Creek Metropolitan District
Attn: President
7350 East 29th Avenue, Suite 200
Denver Colorado 80238

With copies to: Paul Cockrel, General Counsel
Collins, Cockrel and Cole, P.C.
390 Union Blvd., Suite 400

16. **Conditions Precedent**. The Parties agree that this Agreement is contingent upon (i) the approval and execution of IFDA 49 by Denver, FC Stapleton and the District and (ii) all funding necessary for the construction and completion of the Section 10 CPB Improvements and all other obligations herein, including without limitation the design, construction, operation and maintenance of the Section 10 CPB Improvements being budgeted, appropriated and otherwise made available by the respective Party responsible for each of the purposes set forth herein on or before the applicable funding or commencement date.

17. **Applicable Law**. The Parties agree to comply with all applicable federal, state and local statutes, charter provisions, ordinances, rules, regulations and standards in effect at the time that this Agreement is executed, subject to any express terms of this Agreement to the contrary.

18. **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 District, Denver and Commerce City, and nothing contained in this Agreement shall give any other entity or third person a claim or right of action arising from this Agreement. It is the express intention of the District, Denver and Commerce City that any entity or person other than the District, Denver and Commerce City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

19. **Conflict of Interest**. The Parties agree that no official, officer, or employee of any Party shall have any personal or beneficial interest whatsoever in the work or property described herein. Denver and the District further agree not to hire or contract for work or services from any official, officer, or employee of the District, Denver or Commerce City or any other person which would cause a 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.

20. **Non-Waiver**. The Parties shall not be excused from complying with any provision of this Agreement as a result of the failure by any other Party to insist upon or to seek compliance with such provision.

21. **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 substitute a provision that will achieve the original intent of the Parties hereunder.

22. **Amendment.** The Agreement may be amended, modified or changed, in whole or in part, only by a written agreement executed by each Party. No Denver City Council action shall be necessary, unless required by the Denver Charter.

23. **Enforcement.** The Parties agree that, except as expressly provided in Section 11, this Agreement may be enforced only through specific performance or injunctive relief as may be available according to the laws and statutes of the State of Colorado. Each Party waives the right to seek damages against any other Party. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to all terms contained herein, and that any breach hereof shall not cause the termination of any obligations created by this Agreement. Venue for any action shall be in the District Court in and for the City and County of Denver.

24. **Force Majeure.** No Party shall be liable for failure to perform hereunder, if such 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 such force majeure. "Force majeure" shall mean causes beyond the reasonable control of a Party that results in delay to the Project, including without limitation weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, nonperformance by Contractors, subcontractors, utility companies or third parties, fire or other casualty, or any action of governmental authorities, whether or not directly related to this Agreement.

25. **Intent of Agreement.** Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of any Party.

26. **No Assignment.** No Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other Parties. Such consent may be granted by the President for the District, the Director for Commerce City and the Manager for Denver.

27. **Heading for Convenience and Miscellaneous.** 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 provisions of this Agreement. Unless the context indicates otherwise, the singular of any word shall also include the plural.

28. **Further Assurances.** At any time, and from time to time, upon request of any 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, in

the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of the Parties under this Agreement.

29. **Authority.** Each Party represents that it has taken all actions necessary or required by its charter, ordinances, procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of such Party. The persons signing this Agreement on behalf of each of the Parties have full authorization to execute this Agreement.

30. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures by any of the Parties. This Agreement and any other documents requiring a signature may be signed electronically by a Party in the manner specified by the ordinances, regulations or bylaws of such Party. The Parties agree not to deny the legal effect or enforceability of this 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, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Remainder of Page Intentionally Left Blank]

THEREFORE, IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of _____.

CITY AND COUNTY OF DENVER

ATTEST:

DEBRA JOHNSON,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
D. SCOTT MARTINEZ,
Attorney For the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance

By: _____
Auditor

PARK CREEK METROPOLITAN DISTRICT

By: _____
President

Attest:

Secretary

CITY OF COMMERCE CITY, a Home Rule
City and Municipal Corporation

ATTEST:

By: _____
Laura Bauer, City Clerk

By: _____
Sean Ford, Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

By: _____
Robert Sheesley, Senior City Attorney

By: _____
Maria D'Andrea, Director of Public Works

EXHIBIT A
Improvements Development Plan

EXHIBIT B
Improvements Operations Matrix

EXHIBIT C
Form of Access License Commerce City

[to be attached]

EXHIBIT D
Preliminary Estimate of Project Costs